

A Bill for an Act Relating to the Hawaii Occupational Safety and Health Law.
Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 396-3, Hawaii Revised Statutes, is amended by amending the definition of "Director" and including a definition for "Employee of the State".

"Director" means the director of labor and industrial relations or his designee.

"Employee of the State" includes officers and employees of the department of labor and industrial relations, and persons acting in behalf of the department in an official capacity, whether temporarily or with or without compensation."

SECTION 2. Section 396-2, Hawaii Revised Statutes, is amended to read:

"Sec. 396-2 Findings and purpose. Through years of research and study, Congress has found that the number of industrial accidents that take place in the United States can be reduced if certain minimum standards are established and enforced.

Congress has also found that personal injuries and illnesses arising out of work situations impose a substantial burden upon, and are a hindrance to, interstate commerce in terms of lost production, wage loss, medical expenses, and disability compensation payments. The overall congressional findings would definitely be applicable to Hawaii. There is a need to assure so far as possible, every working man and woman in the State safe and healthful working conditions. This legislation is also designed to permit and encourage employer and employee efforts to reduce injury and disease arising out of employment, and to stimulate them to institute new programs and to perfect existing programs for providing safe and healthful working environments."

SECTION 3. Section 396-4, Hawaii Revised Statutes, is amended by amending subsection (a) to read:

"(a) Administration. The department shall be responsible for ad-

ministering occupational safety and health standards throughout the State.

- (1) The department shall prescribe and enforce rules and regulations under chapter 91 as may be necessary for carrying out the purposes and provisions of this chapter. The department shall make such reports to the Secretary of Labor in such form and containing such information as the Secretary shall from time to time require pursuant to federal law.
- (2) The department shall adopt, amend, or repeal occupational safety and health standards in the manner prescribed by rules and regulations adopted hereunder. Emergency temporary standards may be promulgated without conforming to chapter 91 and without hearings to take immediate effect upon publication of a notice of such emergency temporary standard in a newspaper of general circulation in the State of Hawaii or upon such other date as may be specified in the notice. An emergency temporary standard may be adopted if the director determines:
 - (A) That employees are exposed to grave danger from exposure to substances or agents determined to be toxic or physically harmful or from new hazards; and
 - (B) That such emergency standard is necessary to protect employees from such danger.

Said emergency temporary standard shall be effective until superseded by a standard promulgated in accordance with the procedures set forth in chapter 91, but in any case shall be effective no longer than six months;

- (3) Variances from occupational safety and health standards promulgated under this chapter may be granted upon application of an employer or employers. Application for variances must correspond to procedures set forth in the rules and regulations of this chapter. The director may issue an order for variance if he determines that the proponent of the variance has demonstrated that the conditions, practices, means, methods, operations or processes used or proposed to be used by the employer will provide employment and places of employment to his employees which are as safe and healthful as those which would prevail if he complied with the standard. The employer shall also notify his employees upon each application for variance and said employees shall be given an opportunity to request and participate in hearings or other proceedings relating to applications for variance. No inference of admission of violation of a standard shall be made against the employer by reason of his application for variance;
- (4) The department may, upon the application of any employer or other person affected thereby, grant such time as may reasonably be necessary for compliance with any order. Any person affected by an order may petition the department for an extension of time, which may be granted if the department finds it necessary."

SECTION 4. Section 396-4, Hawaii Revised Statutes, is amended by amending subsection (b) to read:

“(b) Inspection and investigation.

- (1) Authorized representatives of the director shall have the right to enter without delay any place of employment during regular working hours and at other reasonable times;
- (2) The department shall inspect places of employment and machines, devices, apparatus, and equipment for the purpose of insuring adequate protection to the life, safety and health of workers;
- (3) The department shall inspect construction activities for the purpose of protecting the health and safety of employees and the general public. A construction activity includes any activity related to the erection, construction, alteration, demolition or maintenance of buildings, structures, bridges, highways, roadways, dams, tunnels, sewers, underground buildings or structures, underground pipelines or ducts, and any other construction project or facility;
- (4) The department shall inspect, at least semiannually, all mechanically or electrically operated devices considered as major rides and used as amusement rides at a carnival, circus, fair, or amusement park for the purpose of protecting the safety of the general public. This section shall not apply to any coin operated ride or mechanically or electrically operated devices considered or known in the amusement trade as kiddie rides;
- (5) The department may investigate the cause of all industrial injuries resulting in disability or death which occur in any employment, or place of employment, and may make reasonable orders and recommendations with respect to the cause of the injuries;
- (6) The department shall have the right to question privately any employer, owner, operator, agent or employee in investigation, enforcement and inspection activities;
- (7) There shall be a prohibition against advance notice of inspection except that written exception may be expressly authorized by the director in his discretion and pursuant to the rules and regulations promulgated under this chapter. Those inspections requiring advance notice for preparation or for other purposes of inspection as further defined in the rules and regulations promulgated under this chapter shall not be included in the prohibition against advance notice.
- (8) An employee of the State acting within the scope of his office, employment, or authority under this chapter shall not be liable in or made a party to any civil action growing out of the administration or enforcement of this chapter.”

SECTION 5. Section 396-4, Hawaii Revised Statutes, is amended by amending subsection (d) to read:

“(d) Enforcement.

- (1) Whenever right of entry or inspection is refused to an authorized representative of the director, the department may apply to the circuit court of the circuit where such place of employment exists for a search warrant providing on its face that the willful interference with its lawful execution may be punished as a contempt of court.

- (2) Whenever the department finds that any employment or place of employment or the operation of any machine, device, apparatus, or equipment is not safe, or that any practice, means, method, operation, or process employed or used in connection therewith is unsafe or does not afford adequate protection of the life, safety and health of employees in the employment, the department shall make a citation or an order relative thereto which is necessary to render the employment or place of employment safe and to protect the life and safety of employees therein and deliver the same to the employer. The department may in the citation or order direct that, in the manner and within a time specified, such additions, repairs, improvements, or changes be made and such safety devices and safeguards be furnished, provided and used as are reasonably required to render the employment or place of employment safe. The employer shall obey and observe all citations or safety orders and post said citation or order at or near the place where the violation, referred to in the citation or order, occurred.
- (3) Whenever in the opinion of the department the condition of any employment or place of employment, or the operation of any machine, device, apparatus, or equipment, or any practice, means, method, operation, or process employed or used, is in an unsafe condition or is not properly guarded or is dangerously placed, the use thereof may be prohibited by the department, and a citation or order to that effect shall be posted prominently in the working place. The citation or order shall be removed: (A) when a determination has been made by the department that the place of employment, machine, device, apparatus, or equipment is made safe and the required safeguards or safety devices are provided for; and (B) by an authorized representative of the department.
- (4) Whenever in the opinion of the department the condition of any employment or place of employment, or the operation of any machine, device, apparatus, or equipment, or any practice, means, method, operation, or process employed or used constitutes an imminent hazard to the life or safety of any person, the department may apply to the circuit court of the circuit in which such place of employment, machine, device, apparatus, or equipment is situated or such practice, means, method, operation, or process is employed for an injunction restraining the use or operation thereof until the use or operation is made safe.

The application to the circuit court accompanied by an affidavit showing that the use or operation exists in violation of a standard, rule, regulation, citation or order of the department and constitutes an imminent hazard to the life or safety of any employee, and accompanied by a copy of the standard, rule, regulation, citation or order applicable thereto, shall warrant, in the discretion of the court, the immediate granting of a temporary restraining order. If the department arbitrarily or capriciously fails to seek relief under this section, any employee who may be injured by reason of such failure or a representative of said employee may bring an action against the department in the circuit

court of the circuit in which the imminent hazard is alleged to exist for a writ of mandamus to compel the department to seek such an order and for such further relief as may be appropriate. No bond shall be required from the department as a prerequisite to the granting of a restraining order.

- (5) The director and his authorized agents shall have the same powers respecting the administering of oaths, compelling the attendance of witnesses, the production of documentary evidence, and examining or causing to be examined witnesses as are possessed by a court, and may take depositions and certify to official acts. The circuit court of any circuit upon application by the director shall have power to enforce by proper proceedings the attendance and testimony of any witness so subpoenaed. Subpoena and witness fees and mileage in such cases shall be the same as in criminal cases in the circuit courts. Necessary expenses of or in connection with any such hearings or investigations shall be payable from the funds appropriated for expenses of administration of the department. No person shall be excused from attending or testifying or producing material, books, paper, correspondence, memoranda, and other records before the director or in obedience to subpoena on the grounds that the testimony or evidence, documentary or otherwise, required of him may tend to incriminate him or subject him to a penalty or forfeiture; but no individual shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter, or thing concerning which he is compelled, after having claimed his privilege against self-incrimination, to testify or produce evidence, documentary, or otherwise, except that such individuals so testifying shall not be exempt from prosecution and punishment for perjury committed in so testifying.
- (6) Where a condition or practice in a place of employment could reasonably be expected to cause death or serious physical harm, the department shall have the right, independent of any other enforcement powers under this chapter, to: (A) immediately inform the employees and employers of such hazard by meeting, posted notice, or otherwise; (B) take steps to obtain immediate abatement of the hazard by the employer and where appropriate to initiate necessary legal proceedings to require such abatement:
- (7) The department may prosecute, defend and maintain actions in the name of the department for the enforcement of the provisions of this chapter, including the enforcement of any order issued by it, the appeal of any administrative or court decision, and other actions necessary to enforce this chapter.”

SECTION 6. Section 396-6, Hawaii Revised Statutes, is amended by amending subsection (a) to read:

“(a) Every employer shall furnish to each of his employees employment and a place of employment which are safe as well as free from recognized hazards. No employer shall require or direct or permit or suffer any employee to go or be in

any employment or place of employment which is not free from recognized hazards that are causing or likely to cause death or serious physical harm to employees or which does not comply with occupational safety and health standards, rules, regulations, citations, or orders made pursuant to this chapter except for the specific purpose of abating said hazard.”

SECTION 7. Section 396-8, Hawaii Revised Statutes, is amended by amending subsection (e) to read:

“(e) Discharge or discrimination against employee for exercising rights prohibited.

- (1) No employer shall discharge, suspend or otherwise discriminate in terms and conditions of employment against any employee by reason of:
 - (A) His failure or refusal to operate or handle any machine, device, apparatus, or equipment which is in any unsafe condition; or
 - (B) His failure or refusal to engage in unsafe practices in violation of this chapter or of any standard, rule, regulation, citation or order issued under the authority of this chapter; or
 - (C) His failure or refusal to operate or handle any machine, device, apparatus, or equipment in violation of this chapter or of any standard, rule, regulation, citation or order issued under the authority of this chapter; or
 - (D) His filing a complaint, having instituted or causing to be instituted any proceeding under or related to this Act, or his intent to testify in any such proceedings, or otherwise acting to exercise rights under this chapter for himself or others.
- (2) Upon discretion of the director or request, names of complainants may be withheld from the employer.
- (3) Within thirty days of the alleged act of discrimination, the employee shall file a complaint with the department setting forth the circumstances thereof.
- (4) The director shall investigate said complaint and if he finds discrimination in violation of this chapter, he shall order the employer to provide necessary relief to the employee. This relief may include rehiring, reinstatement to former job with back pay and restoration of seniority.”

SECTION 8. Section 396-10, Hawaii Revised Statutes, is amended to read:

“**Sec. 396-10 Violations and penalties.** (a) Any employer who violates this chapter, or any occupational safety and health standard promulgated hereunder or any rule or regulation issued under the authority of this chapter, or who violates or fails to comply with any citation, notice or order made under or by virtue of this chapter or under or by virtue of any rule or regulation of the department, or who defaces, displaces, destroys, damages, or removes without the authority of the department any safety device, safeguards, notice or warning required by this chapter or any rule or regulation of the department may be assessed a civil penalty as specified in this chapter. Each day a violation continues shall constitute a separate violation except that during an abatement

period, penalty may be suspended. Posting violations are also specifically covered by this penalty.

(b) Any employer who has received an order or citation for a serious violation of any standard, rule, or regulation promulgated pursuant to this chapter, shall be assessed a civil penalty of not more than \$1,000 for each such violation.

(c) Any employer who has received an order or citation for a violation of any standard, rule or regulation promulgated pursuant to this chapter, and such violation is specifically determined not to be of a serious nature may be assessed a civil penalty of up to \$1,000 for each such violation.

(d) Each day a violation continues shall constitute a separate violation except that during an abatement period only, no additional penalty shall be levied against the employer.

(e) Any employer who violates any of the posting requirements, as prescribed under the provisions of this chapter, shall be assessed a civil penalty of up to \$1,000 for each violation.

(f) Any employer who willfully or repeatedly violates this chapter, any standard, rule, regulation, citation or order issued under the authority of this chapter, shall be assessed a civil penalty of not more than \$10,000 for each violation.

(g) Any employer who willfully or repeatedly violates any standard, rule, regulation, citation or order issued under authority of this chapter and that violation caused death to an employee, shall, upon conviction, be punished by a fine of not more than \$10,000 or by imprisonment for not more than six months or both, except that if the conviction is for a violation committed after a first conviction of such person, punishment shall be by a fine of not more than \$20,000 or by imprisonment for not more than one year or by both. Failure to correct a violation for which an order or citation of arrest has been issued shall be evidence of willful conduct.

(h) Any employer who has received an order for violation under section 8(e) herein may be assessed a civil penalty of not more than \$1,000 for each violation.

(i) Any person who gives advance notice of any inspection to be conducted under this chapter, without authority from the director or his designees shall, upon conviction be punished for not more than six months, or by both.

(j) The director shall have authority to assess all civil penalties provided in this section, giving due consideration to the appropriateness of the penalty with respect to the size of the business of the employer being charged, the gravity of the violation, the good faith of the employer, and the history of previous violations.

(k) For the purposes of this section, a serious violation shall be deemed to exist in a place of employment if there is a substantial probability that death or serious physical harm could result from a condition which exists, or from one or more practices, means, methods, operations, or processes which have been adopted or are in use, in such place of employment unless the employer did not, and could not with the exercise of reasonable diligence, know of the presence of the violation.

(l) Civil penalties owed under this chapter shall be paid to the department

and may be recovered in a civil action in the name of the department and the State of Hawaii and brought in the district or circuit court for the circuit where the violation is alleged to have occurred or where the employer has its principal office.

(m) Notice of violation. When an alleged violation of any provision of this chapter or any standard, rule, regulation, or order made thereunder has occurred, the department shall promptly issue a written citation, order or notice thereof to the employer who shall be required to post said citation, order or notice. Said citation, order or notice thereof shall include the abatement requirements and within a reasonable time the employer shall be advised of the proposed sanctions, including proposed penalties. Whenever reference is made to posting of any citation, order, notice, petition, decision or any other type of document issued by the director under this chapter and rules and regulations made pursuant to this chapter, the employer shall post copies of the said document at the work site involved or affected and at the place or places where notices to the employees involved are normally posted. Where posting starts the time for notice of action to or for appeal by employees under this chapter and rules and regulations made under this chapter, the document shall be posted by the employer upon receipt or on the next business day following receipt.

(n) Whoever knowingly makes any false statement, representation, or certification in any application, record, report, plan or other document filed or required to be maintained pursuant to this chapter shall, upon conviction, be punished by a fine of not more than \$1,000, or by imprisonment for not more than six months, or by both.

(o) Criminal offenses committed against any employee of the State acting within the scope of his office, or employment, or authority under this chapter shall be subject to the penalties set forth in the Hawaii Penal Code provided that:

- (1) Ten years shall be added to the maximum term of imprisonment (unless life imprisonment is imposed) and \$10,000 shall be added to the maximum fine imposed for conviction under a Class A felony;
- (2) Five years shall be added to the maximum term of imprisonment and \$5,000 shall be added to the maximum fine imposed for conviction under a Class B felony;
- (3) Three years shall be added to the maximum term of imprisonment and \$1,000 shall be added to the maximum fine for conviction under a Class C felony;
- (4) One year shall be added to the maximum term of imprisonment and \$500 shall be added to the maximum fine for conviction for a misdemeanor;
- (5) The maximum term of imprisonment and maximum fines prescribed for misdemeanors under the Hawaii Penal Code shall apply to convictions for a petty misdemeanor."

SECTION 9. Section 396-11, Hawaii Revised Statutes, is amended to read:

"Sec. 396-11 Review. Any citation, proposed penalty or order of the director shall be final and conclusive against the employer unless the employer files with the director a written notice of contest of the citation, the abatement

period stated in the citation, the proposed penalty, or order within twenty days after receipt of such citation, proposed penalty or order.

The employer may petition the director for modification of the abatement requirements in a citation. The employer shall file said petition no later than the close of the next business day following the date on which abatement is required or under exceptional circumstances and for good cause shown at a later date. The petition for modification may be filed after the twenty day period for contesting the citation has expired where the initial abatement period stated in the citation expires after the twenty day period for filing a notice of contest has run.

The director shall issue an order either affirming or modifying the abatement requirement. The director may issue an order modifying the abatement requirement upon a showing by the employer of a good faith effort to comply with the abatement requirements of a citation and that abatement has not been completed because of factors beyond his reasonable control.

Any employee or representative of employees may file a written notice of contest of the initial abatement period stated in a citation or order within the director alleging that the period of time fixed for abatement is unreasonable, provided such notice is filed within twenty days after the citation or order has been posted. Any employee or representative of employees may also file a written notice of contest of an order granting modification of the abatement period. Such notice shall be filed within ten days of the posting of the order.

Any employee or representative of employees may file a notice of contest of an order of the director denying a complaint of discrimination filed by an employee pursuant to section 396-8(e), provided that in each case such notice is filed within twenty days after the receipt of such order by the employee.

Any employee or representative of employees may file a notice of contest of an order granting an employer's application for a variance under section 396-4(a) (3), provided such notice is filed within twenty days after the posting of a final order or decision of the director.

The director shall advise the appeals board of a notice of contest upon receiving any such notice.

The appeals board shall afford an opportunity for a hearing on any notice of contest. Such hearings before the appeals board shall be de novo except where rules and regulations require a prior formal hearing at the department level, the proceedings of which are required to be transcribed in which case review before the appeals board shall be confined to the record only.

The appeals board may affirm, modify or vacate the citation, the abatement requirement therein, the proposed penalty or order or continue the matter upon such terms and conditions as may be deemed necessary, or remand the case to the director with instructions for further proceedings or direct such other relief as may be appropriate.

The affected employees or representatives of affected employees shall be provided an opportunity to participate as parties to hearings under this section."

SECTION 10. Section 396-12, Hawaii Revised Statutes, is amended to read:

"Sec. 396-12 Judicial review. Except where an order has already become

final for failure to contest, the decision and order of the appeals board shall be final and conclusive unless the director or any party to the proceedings before the appeals board obtains a review thereof in the manner provided in chapter 91 by instituting proceedings in the circuit court of the circuit in which the place of employment, machine, device, apparatus or equipment is situated or such practice, means, method, operation, or process is employed. The hearing on review shall be on the record and the department shall be deemed a party to any such proceedings. The court shall give precedence to such proceedings over all other civil cases.

SECTION 11. Statutory material to be repealed is bracketed. New material is underscored. In printing this Act, the revisor of statutes need not include the brackets, the bracketed material, or the underscoring.*

SECTION 12. This Act shall take effect upon its approval.

(Approved May 13, 1976.)

*Edited accordingly.