

ACT 179

H.B. NO. 1696

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 to read:

"Sec. 396-3 Definitions. When used in this chapter:

"Department" means the department of labor and industrial relations.

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

"Appeals board" means the labor and industrial relations appeals board.

"Employer" means:

- (1) The State and every State agency;
- (2) Each county and all public and quasi-public corporations and public agencies therein;
- (3) Every person which has any natural person in service;
- (4) The legal representative of any deceased employer;
- (5) Every person having direction, management, control, or custody of any employment, place of employment, or any employee.

"Employee" means every natural person who is required or directed or permitted or suffered by any employer to engage in any employment, or to go to work or be at any time in any place of employment.

"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.

"Place of employment" means any place, and the premises appurtenant thereto, where employment is carried on.

"Employment" includes the carrying on of any trade, business, occupation, or work, including all excavation, demolition, and construction work, or any process or operation in any way related thereto, in which any person is engaged

to work for hire except domestic service in or about a private home.

"Safe" and "safety" as applied to an employment or place of employment mean such freedom from danger to employees as the nature of the employment reasonably permits.

"Safety device" and "safeguard" shall be given a broad interpretation so as to include any practicable method of mitigating or preventing a specific danger.

"Manufacturer" means, for the purpose of the section concerning explosives, any person who is engaged in the manufacture of explosives or who otherwise produces any explosive;

"Occupational safety and health standard" means a standard which requires conditions, or the adoption or use of one or more practices, means, methods, operations, or processes, reasonably necessary or appropriate to provide safe or healthful employment and places of employment.

"Dealer" means, for the purpose of the section concerning explosives, any person, not a manufacturer, engaged in the business of buying and selling explosives.

SECTION 2. 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 person 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 3. 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.

(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 by a fine of not more than \$1,000 or by imprisonment 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 \$10,000, 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 4. 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 with 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 5. Section 396- , Act 95, Sessions Laws of Hawaii 1976, is amended to read:

"Sec. 396- Exception for federal jurisdiction. Nothing in this chapter shall apply to working conditions of employees with respect to which any federal agency exercises statutory authority to prescribe and enforce standards or regulations affecting occupational safety or health."

SECTION 6. 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 7. This Act shall take effect upon its approval.

(Approved June 4, 1977.)

*Edited accordingly.