

ACT 249

S.B. NO. 3217

A Bill for an Act Relating to Health.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Chapter 342, Hawaii Revised Statutes, is amended by adding a new part to be appropriately designated and to read as follows:

**“PART PENALTIES**

**§342- Negligent violations.** Any person who:

- (1) Negligently violates part III of this chapter or any rule adopted by the department pursuant to part III of this chapter, or any permit condition or limitation implementing part III of this chapter in a permit issued under this chapter or any requirement imposed in a pretreatment program under this chapter or in a permit issued under this chapter; or
- (2) Negligently introduces into a sewer system or into a publicly owned treatment works any pollutant or hazardous substance which such person knew or reasonably should have known could cause personal injury or property damage or, other than in compliance with all applicable federal, state, or local requirements or permits, which causes such treatment works to violate any effluent limitation or condition in any permit issued to the treatment works under this chapter;

shall be punished by a fine of not less than \$2,500 nor more than \$25,000 per day of violation, or by imprisonment for not more than one year, or by both. If a conviction of a person is for a violation committed after a first conviction of such person under this section, punishment shall be by a fine of not more than \$50,000 per day of violation, or by imprisonment of not more than two years, or by both.

**§342- Knowing violations.** Any person who:

- (1) Knowingly violates part III of this chapter or any rule adopted by the department pursuant to part III of this chapter, or any permit condition or limitation implementing part III of this chapter in a permit issued under this chapter or any requirement imposed in a pretreatment program or in a permit issued under this chapter; or
- (2) Knowingly introduces into a sewer system or into a publicly owned treatment works any pollutant or hazardous substance which such person knew or reasonably should have known could cause personal injury or property damage or, other than in compliance with all applicable

federal, state, or local requirements or permits, which causes such treatment works to violate any effluent limitation or condition in a permit issued to the treatment works under this chapter;

shall be punished by a fine of not less than \$5,000 nor more than \$50,000 per day of violation, or by imprisonment for not more than three years, or by both. If a conviction of a person is for a violation committed after a first conviction of such person under this section, punishment shall be by a fine of not more than \$100,000 per day of violation, or by imprisonment of not more than six years, or by both.

**§342- Knowing endangerment.** (a) Any person who knowingly violates part III of this chapter or any rule adopted by the department pursuant to part III of this chapter, or any permit condition or limitation implementing part III of this chapter or in a permit issued under this chapter, and who knows at that time that he thereby places another person in imminent danger of death or serious bodily injury, shall, upon conviction, be subject to a fine of not more than \$250,000 or imprisonment of not more than 15 years, or both.

(b) A person which is an organization, upon conviction of violating this section, shall be subject to a fine of not more than \$1,000,000. If a conviction of a person is for a violation committed after a first conviction of such person under this section, the maximum punishment shall be doubled with respect to both fine and imprisonment.

(c) For the purpose of this section, in determining whether a defendant who is an individual knew that his conduct placed another person in imminent danger of death or serious bodily injury:

- (1) The person is responsible only for actual awareness or actual belief that he possessed; and
- (2) Knowledge possessed by a person other than the defendant but not by the defendant himself may not be attributed to the defendant; except that in proving the defendant's possession of actual knowledge, circumstantial evidence may be used, including evidence that the defendant took affirmative steps to shield himself from relevant information.

(d) It is an affirmative defense to prosecution that the conduct charged was consented to by the person endangered and that the danger and conduct charged were reasonably foreseeable hazards of:

- (1) An occupation, a business, or a profession; or
- (2) Medical treatment or medical or scientific experimentation conducted by professionally approved methods and such other person had been made aware of the risks involved prior to giving consent; and such defense may be established under this section by a preponderance of the evidence.

(e) The term "organization" means a legal entity, other than a government, established or organized for any purpose, and such terms includes a corporation, company, association, firm, partnership, joint stock company, foundation, institution, trust, society, union, or any other association of persons.

(f) The term "serious bodily injury" means bodily injury which involves a substantial risk of death, unconsciousness, extreme physical pain, protracted and obvious disfigurement, or protracted loss or impairment of the function of a bodily member, organ, or mental faculty.

**§342- False statements.** Any person who knowingly makes any false material statement, representation, or certification in any application, record, report, plan or other document filed or required to be maintained under part III of this chapter or who knowingly falsifies, tampers with, or renders inaccurate any mon-

itoring device or method required to be maintained under part III of this chapter, shall upon conviction, be punished by a fine of not more than \$10,000, or by imprisonment for not more than two years, or by both. If a conviction of a person is for a violation committed after a first conviction of such person under this section, punishment shall be by a fine of not more than \$20,000 per day of violation, or by imprisonment of not more than four years, or by both.

**§342- Treatment of single operational upset.** For purposes of this part, a single operational upset which leads to simultaneous violations of more than one pollutant parameter shall be treated as a single violation.

**§342- Responsible corporate officer as "person".** For the purpose of this part, the term "person" means, in addition to the definition contained in section 342-1, any responsible corporate officer.

**§342- Hazardous substance defined.** For the purpose of this part, the term "hazardous substance" means:

- (1) Any substance designated pursuant to section 311(b)(2)(A) of the Federal Water Pollution Control Act, as amended (FWPCA);
- (2) Any element, compound, mixture, solution, or substance designated pursuant to section 102 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980;
- (3) Any hazardous waste having the characteristics identified under or listed pursuant to section 3001 of the Solid Waste Disposal Act (but not including any waste the regulation of which under the Solid Waste Disposal Act has been suspended by Act of Congress);
- (4) Any toxic pollutant listed under section 307(a) of the FWPCA; and
- (5) Any imminently hazardous chemical substance or mixture with respect to which the administrator has taken action pursuant to section 7 of the Toxic Substances Control Act."

SECTION 2. Section 342-31, Hawaii Revised Statutes, is amended by adding a new definition to be appropriately inserted and to read as follows:

" "Industrial user" means a source of pollutants into a publicly owned treatment works from any nondomestic source regulated under section 307(b), (c) or (d) of the Federal Water Pollution Control Act."

SECTION 3. Section 342-33, Hawaii Revised Statutes, is amended by amending subsection (c) as follows:

"(c) No person, including any industrial user, shall discharge any pollutant or effluent into a publicly owned treatment works or sewerage system in violation of:

- (1) A pretreatment standard[, ] established by the department or the publicly owned treatment works; or
- (2) A pretreatment condition in a permit[.] issued by the department or a publicly owned treatment works."

SECTION 4. Section 342-11, Hawaii Revised Statutes, is amended to read as follows:

**"§342-11 Penalties.** (a) Violation of the vehicular noise control and vehicular smoke emission rules adopted by the department pursuant to this chapter

shall constitute a violation as defined in section 701-107 and shall be enforceable by police officers. The fine for this violation shall be not less than \$25 nor more than \$2,500 for each separate offense. Each day of violation shall constitute a separate offense.

(b) Violation of the open burning control rules adopted by the department pursuant to this chapter shall constitute a violation as defined in section 701-107 and shall be enforceable by police officers. The fine for this violation shall not exceed \$10,000 for each separate offense. Each day of violation shall constitute a separate offense.

(c) Any person who violates this chapter or any rule, other than vehicular noise control, vehicular smoke emission control, and open burning control rules, shall be fined not more than \$10,000 for each separate offense. Each day of violation shall constitute a separate offense. Any action taken to impose or collect the penalty provided for in this subsection, other than the penalty imposed for violations of vehicular noise control, vehicular smoke emission, and open burning rules, shall be considered a civil action.

(d) Any person who knowingly (1) transports any hazardous waste to a storage, treatment, or disposal facility and who does not have a permit under section 342-53(b) to treat, store, or dispose of that particular hazardous waste; (2) treats, stores, or disposes of hazardous waste without first having a permit under section 342-53(b); or (3) makes a false statement or representation in any application, label, manifest, record, report, permit, or other document filed, maintained, or used for purposes of compliance with chapter 342, part V, shall be subject to criminal penalties of not more than \$25,000 for each day of violation or to imprisonment not to exceed one year, or both. If the conviction is for a violation committed after a first conviction criminal punishment shall be by a fine of not more than \$50,000 for each day of violation, or by imprisonment for not more than two years, or both.

[(e) Any person who wilfully or negligently violates part III of this chapter or any rule adopted by the department pursuant to part III shall be punished by a fine of not less than \$25,000 nor more than \$100,000, per day of violation or by imprisonment for not more than five years, or both.

(f) (e) Any person who wilfully or negligently violates part VII of this chapter or any rule adopted by the department pursuant to part VII shall be punished by a fine of not more than \$5,000 for each violation or imprisonment for not more than one year, or both. If the conviction is for a violation committed after a first conviction, the violator shall be subject to a fine of not more than \$10,000 for each violation, or by imprisonment for not more than two years, or both.

[(g)] (f) Any person who denies, obstructs, or hampers the entrance and inspection by any duly authorized officer or employee of the department of any building, place, or vehicle which the officer or employee is authorized to enter and inspect shall be fined not more than \$500. Any action taken to impose or collect the penalty provided for in this subsection shall be considered a civil action."

SECTION 5. Statutory material to be repealed is bracketed. New statutory material is underscored.

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

(Approved June 9, 1988.)