

ACT 94

H.B. NO. 3051

A Bill for an Act Relating to Occupational Safety and Health Penalties.

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

SECTION 1. Section 396-10, Hawaii Revised Statutes, is amended by amending subsections (b) and (c) to read as follows:

“(b) Any employer who has received an order or citation for a serious violation of any standard[, or rule[, or regulation promulgated] adopted pursuant to this chapter[,], shall be assessed a civil penalty of not more than [\$1,000] \$7,000 for each [such] violation.

(c) Any employer who has received an order or citation for a violation of any standard[, or rule[, or regulation promulgated] adopted pursuant to this chapter, and [such] the violation is specifically determined not to be of a serious nature, may be assessed a civil penalty of up to [\$1,000] \$7,000 for each [such] violation.”

SECTION 2. Section 396-10, Hawaii Revised Statutes, is amended by amending subsections (e), (f), and (g) to read as follows:

“(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] \$7,000 for each violation.

(f) Any employer who willfully or repeatedly violates this chapter, or any standard, rule, [regulation,] citation, or order issued under the authority of this chapter, shall be assessed a civil penalty of not less than \$5,000 nor more than [\$10,000] \$70,000 for each violation.

(g) Any employer [who willfully or repeatedly violates] convicted of willful or repeated violation of any standard, rule, [regulation,] citation,¹ or order issued under authority of this chapter [and that violation caused] resulting in the death [to] of an employee[,] shall[, upon conviction,] be punished by a fine of not more than [\$10,000] \$70,000 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] \$70,000 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.”

SECTION 3. Section 396-10, Hawaii Revised Statutes, is amended by amending subsection (o) to read as follows:

“(o) Criminal offenses committed against any employee of the State acting within the scope of the employee’s 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] \$50,000 shall be added to the maximum fine imposed for conviction [under] of a class A felony;
- (2) Five years shall be added to the maximum term of imprisonment and [\$5,000] \$25,000 shall be added to the maximum fine imposed for conviction [under] of a class B felony;
- (3) Three years shall be added to the maximum term of imprisonment and [\$1,000] \$10,000 shall be added to the maximum fine for conviction [under] of a class C felony;
- (4) One year shall be added to the maximum term of imprisonment and [\$500] \$2,000 shall be added to the maximum fine for conviction [for] of a misdemeanor; and
- (5) The maximum term of imprisonment and maximum fines prescribed

for misdemeanors under the Hawaii Penal Code shall apply to convictions [for] of a petty misdemeanor."

SECTION 4. Section 396-11, Hawaii Revised Statutes, is amended to read as follows:

"§396-11 Review. (a) 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] the citation, proposed penalty, or order.

(b) The employer may petition the director for modification of the abatement requirements in a citation[. The]; provided the employer shall file [said] the 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] if the initial abatement period stated in the citation expires after the twenty-day period for filing a notice of contest has run.

(c) 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 the employer's reasonable control.

(d) Any employee or representative of employees may file with the director 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] the 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]; provided the notice shall be filed within ten days of the posting of the order.

(e) 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] the notice is filed within twenty days after [the] receipt of [such] the order by the employee.

(f) 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] the notice is filed within twenty days after the posting of a final order or decision of the director.

(g) [The] Upon receipt, the director shall advise the appeals board of [a] any notice of contest [upon receiving any such notice].

(h) The appeals board shall afford an opportunity for a de novo 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.

(i) The appeals board may affirm, modify, or vacate the citation, the abatement requirement therein, or 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.

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

(k) The director shall submit annual reports to the legislature on the number of contests filed pursuant to this section, the disposition of each, and information indicating whether the issue involved an employee or employees of the department who failed to act within the scope of their office, employment, or authority under this chapter."

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 May 27, 1992.)

Note

1. Comma should be underscored.