

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

SECTION 1. Section 396-3, Hawaii Revised Statutes, is amended by adding two new definitions to be appropriately inserted and to read as follows:

““Serious violation” means a violation that carries with it a substantial probability that death or serious physical harm could result from a condition that exists, or from one or more practices, means, methods, operations, or processes that have been adopted or are in use, in a place of employment, unless the employer did not, and could not with the exercise of reasonable diligence, have known of the presence of the violation.

“Wilful violation” means a voluntary act or omission by the employer, as distinguished from an accidental act or omission, that is done with intentional disregard of, or plain indifference to, any standard, rule, citation, or order issued under the authority of this chapter. A wilful violation does not require a showing of malicious intent or bad motive.”

SECTION 2. Section 396-10, Hawaii Revised Statutes, is amended by amending subsections (k) through (o) to read as follows:

“(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) (k) Civil penalties [owed] imposed under this chapter shall be paid to the department and may be recovered [in a] by 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.] (l) When an alleged violation of any provision of this chapter or any [standards,] standard, rule, [regulation,] or order made there-under has occurred, the department shall promptly issue a written citation, order, or notice thereof to the employer who shall be required to post [said] the citation, order, or notice. [Said] The 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] adopted 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] adopted under this chapter, the document shall be posted by the employer upon receipt or on the next business day following receipt.

[(n)] (m) 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)] (n) Criminal offenses committed against any employee of the State acting within the scope of the employee's office, 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 \$50,000 shall be added to the maximum fine imposed for conviction of a class A felony;
- (2) Five years shall be added to the maximum term of imprisonment and \$25,000 shall be added to the maximum fine imposed for conviction of a class B felony;
- (3) Three years shall be added to the maximum term of imprisonment and \$10,000 shall be added to the maximum fine for conviction of a class C felony;
- (4) One year shall be added to the maximum term of imprisonment and \$2,000 shall be added to the maximum fine for conviction 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 of a petty misdemeanor."

SECTION 3. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 4. This Act shall take effect upon its approval.

(Approved June 9, 1993.)