

ACT 347

H.B. NO. 1675

A Bill for an Act Relating to Hoisting Machine Operators.

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:

““Hoisting machine” means a machine with a hoist line, sling, or hydraulic lifting mechanism used in construction, demolition, or excavation work.

“Hoisting machine operator” means any individual who operates a hoisting machine in the State.”

SECTION 2. Section 396-4, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) Administration. The department shall be responsible for administering 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[Said] The emergency temporary standard shall be effective until superseded by a standard promulgated in accordance with the procedures set forth in chapter 91, but in any case shall be effective no longer than six months;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 the director 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 the employer's employees which are as safe and healthful as those which would prevail if the employer complied with the standard. The employer shall also notify the employer's employees upon each application for variance and [said] the 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 the employer's 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[.]; and
- (5) The department shall regulate hoisting machines and shall certify their operators."

SECTION 3. (a) The director of labor and industrial relations shall consult with affected labor organizations, labor/management organizations, and management organizations with expertise in local hoisting operation training and practical testing experience, and shall develop in consultation with the industry, recommendations for certification and a plan for implementing certification of hoisting machine operators.

The recommendations shall include:

- (1) Minimum qualifications for applicants for certification including any approved apprenticeship or other approved training program;
 - (2) Minimum proficiency requirements for certification examinations, including weights to be given for the written and the practical portions;
 - (3) Provisions for oral or reader assisted examinations in lieu of the written examinations where the applicant can demonstrate an inability to pass the written examination;
 - (4) Qualifications of organizations that the department may contract with to perform or administer testing; provided that the department shall give priority to those qualified organizations with expertise and experience in Hawaii;
 - (5) Requirements for any exemptions to certification;
 - (6) Procedures for the issuance, renewal, revocation, and suspension of certification;
 - (7) Classifications of certification;
 - (8) Applicable definitions; and
 - (9) Any other items the department and the various affected organizations determine to be relevant to the issue of certification.
- (b) The director is requested to submit to the legislature no later than twenty days prior to the convening of the regular session of 1998, a report that shall include:
- (1) The recommendations for certification of hoisting machine operators;
 - (2) A plan for implementation of certification procedures; and
 - (3) Any additional concerns the various affected organizations may have, or that may have occurred as a result of developing the recommendations.

SECTION 4. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun, before its effective date.

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

SECTION 6. This Act shall take effect upon its approval; provided that section 2 shall take effect on July 1, 1998.

(Approved July 3, 1997.)