



**STATE OF HAWAII  
DEPARTMENT OF LABOR AND INDUSTRIAL RELATIONS**

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April 4, 2011

To: The Honorable Gilbert S.C. Keith-Agaran, Chair  
and Members of the House Committee on Judiciary

Date: Tuesday, April 5, 2011

Time: 2:00 p.m.

Place: Conference Room 325, State Capitol

From: Dwight Y. Takamine, Director  
Department of Labor and Industrial Relations

**Re: S.B. No. 1040, SD1HD1 Relating to the Hawaii Occupational Safety and Health Law**

**I. OVERVIEW OF PROPOSED LEGISLATION**

Senate Bill 1040, SD 1 proposes to increase the penalties for violations of the Hawaii Occupational Safety and Health Law by 10%. The department supports this measure.

**II. CURRENT LAW**

The current law imposes maximum penalties of up to \$7,000 per item for most violations of the Hawaii Occupational Safety and Health Law. Willful violations carry penalties of up to \$70,000 with a minimum of \$5,000 per item violated. Violations of §396-8(e), the discrimination or "whistleblower" law, has a maximum civil penalty of not more than \$1,000 for each violation. Providing advance notice of an upcoming inspection also warrants penalties of not more than \$1,000, but may also include imprisonment for not more than six months.

The current penalties were increased in 1992, more than 18 years ago, under a Congressional mandate following a chicken processing plant fire which resulted in the death of 25 women, when they were trapped in the burning building because the employer locked all fire exits. At that time, the maximum penalty was \$1,000.

### III. SENATE BILL 1040 SD1HD1

The department supports this measure for the following reasons:

1. Congressional and state legislative intent is for penalties to be sufficient as deterrence to employers who choose to disregard their obligations to provide a safe and healthful workplace in accordance with the Hawaii Occupational Safety and Health Law. The penalties have not increased in over 18 years.
2. While OSHA and the Hawaii Occupational Safety and Health Division (HIOSH) have adopted various directives to separate out those employers who want to comply but perhaps do not have the resources from those who repeatedly choose to disregard safety and health and who consider accidents to be the cost of doing business, these tools must still be used within the confines of the statutory limits. Although, they can be effective, these modifications to the penalty calculation are often ineffective when dealing with employers new to the state, such as out-of-state contractors, who have not built up an inspection history with our program.

The overwhelming majority of employers in this state really values their workers and wants to do what is right. But they may not have the resources – either the know-how, or the money during these trying economic times. The mission of the Hawaii Occupational Safety and Health Division is to prevent workplace accidents through a mix of incentives and disincentives. Strict enforcement without offering assistance to employers, especially small employers who do not have the resources to readily come into compliance, is counterproductive to voluntary compliance and accident prevention. We need to achieve a balance of compliance assistance and enforcement for Hawaii's employers.

HIOSH procedures currently provides significant penalty reductions of up to 95% for employers that are small, act in good faith to provide worker protections, and have no adverse past inspection history. 72% of HIOSH serious penalties were less than \$1,000 after the credits were applied.

We also offer free on-site consultation assistance to help small businesses reduce workers' compensation costs and comply with OSHA/HIOSH laws.

We are working to rebuild our program to be able to provide that balance of carrot and stick. With the legislature's help and the input and partnerships we are building with all of our stakeholders, we should be able to once again offer meaningful assistance and effective deterrence to help our workers and their families build a better Hawaii.

Therefore, we support this measure.



# ROOFING CONTRACTORS ASSOCIATION OF HAWAII

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April 5, 2011

Testimony To: House Committee on Judiciary  
Representative Gilbert S.C. Keith-Agaran, Chair

Presented By: Tim Lyons, CAE  
Executive Director

Subject: S.B. 1040, SD 1, HD 1 - RELATING TO THE HAWAII OCCUPATIONAL SAFETY  
AND HEALTH LAW

Chair Keith-Agaran and Members of the Committee

I am Tim Lyons, Executive Director of the Roofing Contractors Association of Hawaii and we oppose this bill. We oppose this bill because of the one-sided system that exists under the safety laws which is further exposed by increasing the penalties and, we believe unnecessarily.

By this, what we mean is that the only citations that can be applied are to employers. It doesn't matter if the employer has provided the employee with training, provided them with safety equipment or has given them an ultimatum to use it. If there is a violation, it is the employer that is fined. To HIOSH's credit, there are ways for an employer to mitigate these violations if they can show an affirmative defense however, the fact remains that any employer who is fined the maximum \$70,000.00 has a difficult time recouping that amount of money. Non-serious violations go to a maximum of \$7700.00 and can you imagine if you received a traffic citation for \$7700.00?

As proposed, we also find in this bill that the penalty for failing to post notification of the HIOSH law, which currently has a \$7700.00 penalty, would also rise. It would seem to us that \$7700.00 for failure to put up a poster is already extremely excessive and any increase in that would fall in the same category.

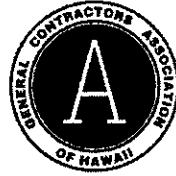
We are not here to say that employers should violate safety laws and in fact, our Association routinely puts on safety seminars for our members and their employees. We are also very supportive of the safety standards and agree that enforcement is something that cannot be put on the side. An employer that follows safety law regulations has a significant higher cost of operation than one who does not. We do not want to make that differential any worse. It is typical that a lot of safety rules are not followed by companies who have a difficult time affording the safety measures and to increase the penalties is only to frustrate the situation.

Lastly, we are not aware of any study which shows penalties higher than \$7000/\$70,000 serve as an incentive to comply or are necessary at this time.

Based on the above, we are not in support of this bill.

Thank you.

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**GCA of Hawaii**

GENERAL CONTRACTORS ASSOCIATION OF HAWAII

Quality People. Quality Projects.

April 5, 2011

TO: THE HONORABLE REPRESENTATIVE GILBERT S.C. KEITH-AGARAN,  
CHAIR AND MEMBERS OF THE COMMITTEE ON JUDICIARY

SUBJECT: S.B. 1040, SD1 HD1 RELATING TO THE HAWAII OCCUPATIONAL  
SAFETY AND HEALTH LAW.

NOTICE OF HEARING

DATE: Tuesday, April 05, 2011  
TIME: 2:00 PM  
PLACE: Conference Room 325

Dear Chair Keith-Agaran and Members of the Committee:

The General Contractors Association (GCA), an organization comprised of over five hundred and eighty (580) general contractors, subcontractors, and construction related firms, is **opposed** to the passage of S.B. 1040, SD1, HD1 Relating to the Hawaii Occupational Safety and Health Law.

The bill proposes to increase the civil and criminal fines for violations of the provisions of Section 396-10, HRS.

The GCA believes that the current fines being imposed for violation of this law are sufficient to curb any intentional violations by employers. Additional fines are not warranted and will not result in better adherence to procedures that insure the health and safety of our employees.

The emphasis of the Occupational Safety and Health law should be to educate and assist the employers to provide safe and healthy work environment for their employees and not to punish the employer by the imposition of large fines for violation.

The GCA is **opposed** to the passage of S.B. 1040, SD1 HD1 and recommends that this bill not be passed.

Thank you for the opportunity to provide our views on this issue.