

ACT 152

H.B. NO. 2193-74

A Bill for an Act Relating to the Hawaii Occupational Safety and Health Law.

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

SECTION 1. Section 396-3, Hawaii Revised Statutes, is amended to read:

“Sec. 396-3 Definitions. When used in this chapter:

‘Department’ means the department of labor and industrial relations.

‘Director’ means the director of labor and industrial relations.

'Appeals board' means the labor and industrial relations appeals board.

'Employer' means:

- (1) The State and every state agency;
- (2) Each county and all public and quasi-public corporations and public agencies therein;
- (3) Every person which has any natural person in service;
- (4) The legal representative of any deceased employer;
- (5) Every person having direction, management, control, or custody of any employment, place of employment, or any employee.

'Employee' means every natural person who is required or directed or permitted or suffered by any employer to engage in any employment, or to go to work or be at any time in any place of employment.

'Place of employment' means any place, and the premises appurtenant thereto, where employment is carried on, except a place the safety jurisdiction over which is vested by law in any federal agency.

'Employment' includes the carrying on of any trade, business, occupation, or work, including all excavation, demolition, and construction work, or any process or operation in any way related thereto, in which any person is engaged to work for hire except domestic service in or about a private home.

'Safe' and 'safety' as applied to an employment or place of employment mean such freedom from danger to employees as the nature of the employment reasonably permits.

'Safety device' and 'safeguard' shall be given a broad interpretation so as to include any practicable method of mitigating or preventing a specific danger.

'Manufacturer' means, for the purpose of the section concerning explosives, any person who is engaged in the manufacture of explosives or who otherwise produces any explosive;

'Occupational safety and health standard' means a standard which requires conditions, or the adoption or use of one or more practices, means, methods, operations, or processes, reasonably necessary or appropriate to provide safe or healthful employment and places of employment.

'Dealer' means, for the purpose of the section concerning explosives, any person, not a manufacturer, engaged in the business of buying and selling explosives."

SECTION 2. Section 396-4, Hawaii Revised Statutes, is amended to read:

"Sec. 396-4 Powers and duties of department. (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) Emergency temporary standards may be promulgated without conforming to chapter 91, without hearings or publication by the department by giving three days written notice for compliance for the protection of employees against new hazards unforeseen by this chapter. Said 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 employer shall also notify his employees upon each application for variance and said 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 his 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.
- (b) Inspection and investigation.
 - (1) Authorized representatives of the director shall have the right to enter without delay any place of employment during regular working hours and at other reasonable times;
 - (2) The department shall inspect places of employment and machines, devices, apparatus, and equipment for the purpose of insuring adequate protection to the life, safety and health of workers;
 - (3) The department shall inspect construction activities for the purpose of protecting the health and safety of employees and the general public. A construction activity includes any activity related to the erection, construction, alteration, demolition or maintenance of buildings, structures, bridges, highways, roadways, dams, tunnels, sewers, underground buildings or structures, underground pipelines or ducts, and any other construction project or facility;
 - (4) The department shall inspect, at least semiannually, all mechanically or electrically operated devices considered as major rides and used as amusement rides at a carnival, circus, fair, or amusement park for the purpose of protecting the safety of the general public. This section shall not apply to any coin operated ride or mechanically or electrically operated devices considered or known in the amusement trade as kiddie rides;
 - (5) The department may investigate the cause of all industrial injuries

resulting in disability or death which occur in any employment, or place of employment, and may make reasonable orders and recommendations with respect to the cause of the injuries;

- (6) The department shall have the right to question privately any such employer, owner, operator, agent or employee in investigation, enforcement and inspection activities;
 - (7) There shall be a prohibition against advance notice of inspection except that written exception may be expressly authorized by the director in his discretion and pursuant to the rules and regulations promulgated under this chapter. Those inspections requiring advance notice for preparation or for other purposes of inspection as further defined in the rules and regulations promulgated under this chapter shall not be included in the prohibition against advance notice.
- (c) Education and training.
- (1) The department may disseminate through exhibitions, moving pictures, lectures, pamphlets, and any other method of publicity, information to employers, employees and the general public regarding the causes and prevention of industrial accidents and injuries.
 - (2) Where appropriate, the department shall undertake programs in training and consultation with employers and employees as a means of encouraging voluntary compliance.
- (d) Enforcement.
- (1) Whenever right of entry or inspection is refused to an authorized representative of the director, the department may apply to the circuit court of the circuit where such place of employment exists for a search warrant providing on its face that the wilful interference with its lawful execution may be punished as a contempt of court.
 - (2) Whenever the department finds that any employment or place of employment or the operation of any machine, device, apparatus, or equipment is not safe, or that any practice, means, method, operation, or process employed or used in connection therewith is unsafe or does not afford adequate protection to the life, safety and health of employees in the employment, the department shall make an order relative thereto which is necessary to render the employment or place of employment safe and protect the life and safety of employees therein and deliver the same to the employer. The department may in the order direct that, in the manner and within a time specified, such additions, repairs, improvements, or changes be made and such safety devices and safeguards be furnished, provided and used as are reasonably required to render the employment or place of employment safe. The employer shall obey and observe all safety orders and post said order at or near the place where the violation referred to in the order occurred.
 - (3) Whenever in the opinion of the department the condition of any employment or place of employment, or the operation of any machine, device, apparatus, or equipment, or any practice, means,

method, operation, or process employed or used, is in an unsafe condition or is not properly guarded or dangerously placed, the use thereof shall be prohibited by the department, and an order to that effect shall be posted prominently in the working place. The order shall be removed: (A) when a determination has been made by the department that the place of employment, machine, device, apparatus, or equipment is made safe and the required safeguards or safety devices are provided for; and (B) by an authorized representative of the department.

- (4) Whenever in the opinion of the department the condition of any employment or place of employment, or the operation of any machine, device, apparatus, or equipment, or any practice, means, method, operation, or process employed or used constitutes an imminent hazard to the life or safety of any person, the department may apply to the circuit court of the circuit in which such place of employment, machine, device, apparatus, or equipment is situated or such practice, means, method, operation, or process is employed for an injunction restraining the use or operation thereof until the use or operation is made safe. The application to the circuit court accompanied by an affidavit showing that the use or operation exists in violation of an order of the department and constitutes an imminent hazard to the life or safety of any employee, and accompanied by a copy of the order applicable thereto, shall warrant, in the discretion of the court, the immediate granting of a temporary restraining order. No bond shall be required from the department as a prerequisite to the granting of a restraining order.
- (5) The director and his authorized agents shall have the same powers respecting the administering of oaths, compelling the attendance of witnesses, the production of documentary evidence, and examining or causing to be examined witnesses as are possessed by a court, and may take depositions and certify to official acts. The circuit court of any circuit upon application by the director shall have power to enforce by proper proceedings the attendance and testimony of any witness so subpoenaed. Subpoena and witness fees and mileage in such cases shall be the same as in criminal cases in the circuit courts. Necessary expenses of or in connection with any such hearings or investigations shall be payable from the funds appropriated for expenses of administration of the department. No person shall be excused from attending or testifying or producing material, books, paper, correspondence, memoranda, and other records before the director or in obedience to subpoena on the grounds that the testimony or evidence, documentary or otherwise, required of him may tend to incriminate him or subject him to a penalty or forfeiture; but no individual shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter, or thing concerning which he is compelled, after having claimed his privilege against self-incrimination, to testify or produce

evidence, documentary, or otherwise, except that such individuals so testifying shall not be exempt from prosecution and punishment for perjury committed in so testifying.

- (6) Where a condition or practice in a place of employment could reasonably be expected to cause death or serious physical harm, the department shall have the right, independent of any other enforcement powers under this chapter, to: (A) immediately inform the employees and employers of such hazard by meeting, posted notice, or otherwise; (B) take steps to obtain immediate abatement of the hazard by the employer and where appropriate to initiate necessary legal proceedings to require such abatement.”

SECTION 3. Section 396-6, Hawaii Revised Statutes, is amended to read:

“Sec. 396-6 Employer responsibility: Safe place of employment; safety devices and safeguards. (a) Every employer shall furnish to each of his employees employment and a place of employment which are safe as well as free from recognized hazards. No employer shall require or direct or permit or suffer any employee to go or be in any employment or place of employment which is not free from recognized hazards that are causing or likely to cause death or serious physical harm to employees or which does not comply with occupational safety and health standards promulgated under this chapter except for the specific purpose of abating said hazard.

(b) Every employer shall furnish and use safety devices, and safeguards, and shall adopt and use practices, means, methods, operations, and processes which are reasonably adequate to render such employment and place of employment safe.

(c) No employer shall construct or cause to be constructed any place of employment that is not safe, and no employer shall occupy or maintain any unsafe place of employment.

(d) Every employer shall make such reports as the Secretary of Labor may require pursuant to PL 91596 Section 8 (c).

(e) Each employer shall make, keep and preserve and make available to the department such records regarding his activities relating to this chapter as the department may prescribe by regulation as necessary or appropriate for the enforcement of this chapter or for developing information regarding the causes and prevention of occupational accidents and illnesses.

The department shall prescribe regulations requiring employers to maintain accurate records of, and to make periodic reports on work related deaths, injuries and illnesses other than minor injuries requiring only first aid treatment and which do not involve medical treatment, loss of consciousness, restriction of work or motion, or transfer to another job.

(f) All employers shall be required to post prominently in the working place all posters and information provided by the department for posting as well as notices informing employees of their rights and obligations under this chapter.”

SECTION 4. Section 396-8, Hawaii Revised Statutes, is amended to read:

“Sec. 396-8 Employee responsibility and rights. (a) Employee compliance. Each employee shall comply with occupational safety and health standards and all rules, regulations and orders issued under this chapter which are applicable to his own actions and conduct.

(b) Complaints to the department. Complaints may be made to the department and where reasonable grounds exist for the department to believe there may be a hazard, there shall be an inspection in response to the complaint.

(c) Opportunity for employees to participate in inspections. At the time and place of inspections under section 396-4(b) (2), (3), and (4), an opportunity shall be provided for employees and their representatives to bring possible violations to the attention of the authorized representative of the director conducting said inspection in order to aid inspections. This requirement may be fulfilled by allowing a representative of the employees and a representative of the employer to accompany the director's authorized representative during the physical inspection of the workplace, or in absence of the employees' representative, there shall be a consultation with a reasonable number of employees.

(d) Notice of nonaction to employees. The department shall notify the employees when the department decides not to take compliance action as a result of violations alleged by any employee or any representative of the employees. This notice shall state the decision not to take compliance action, the reasons therefor, and the procedures for informal review of such decision.

(e) Discharge or suspension of employee for refusal to engage in unsafe practices prohibited.

- (1) No employer shall discharge, suspend or otherwise discriminate in terms and conditions of employment against any employee by reason of:
 - (A) his failure or refusal to operate or handle any machine, device, apparatus, or equipment which is in any unsafe condition; or
 - (B) his failure or refusal to engage in unsafe practices in violation of this chapter or of any rule or regulation issued under the authority of this chapter; or
 - (C) his failure or refusal to operate or handle any machine, device, apparatus, or equipment in violation of this chapter or of any rule or regulation issued under the authority of this chapter; or
 - (D) his filing a complaint, testifying or otherwise acting to exercise rights under this chapter for himself or others.
- (2) Upon discretion of the director or request, names of complainants may be withheld from the employer.
- (3) Within thirty days of the alleged act of discrimination, the employee shall file a complaint with the department setting forth the circumstances thereof.

- (4) The director shall investigate said complaint and if he finds discrimination in violation of this chapter, he shall order the employer to provide necessary relief to the employee. This relief may include rehiring, reinstatement to former job with back pay and restoration of seniority.
- (5) Nothing in this section shall prevent a penalty being levied against the employer under section 396-10.
- (f) Except for those complainants alleging violations under subsection (e) above, names of all complainants and witnesses shall be withheld from the employer unless prior permission is given by the complainant or witness to release his name."

SECTION 5. Section 396-10, Hawaii Revised Statutes, is amended to read:

"Sec. 396-10 Violations and penalties. (a) Any employer who violates this chapter, or any occupational safety and health standard promulgated hereunder or any rule or regulation issued under the authority of this chapter, or who violates or fails to comply with any notice or order made under or by virtue of this chapter or under or by virtue of any rule or regulation of the department, or who defaces, displaces, destroys, damages, or removes without the authority of the department any safety device, safeguards, notice or warning required by this chapter or any rule or regulation of the department may be assessed a civil penalty as specified in this chapter. Each day a violation continues shall constitute a separate violation except that during an abatement period, penalty may be suspended. Posting violations are also specifically covered by this penalty.

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

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

(d) Each day a violation continues shall constitute a separate violation except that during an abatement period only, no additional penalty shall be levied against the employer.

(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 for each violation.

(f) Any employer who wilfully or repeatedly violates this chapter, any occupational safety and health standard promulgated hereunder, or any rule or regulation issued under the authority of this chapter, shall be assessed a civil penalty of not more than \$10,000 for each violation.

(g) Any employer who wilfully violates any standard, rule, or order promulgated pursuant to this chapter and that violation caused death to an employee, shall, upon conviction, be punished by a fine of not more than \$10,000 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 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 wilful conduct.

(h) Any person who gives advance notice of any inspection to be conducted under this chapter, without authority from the director or his designees shall, upon conviction be punished by a fine of not more than \$1,000 or by imprisonment for not more than six months, or by both.

(i) The director shall have authority to assess all civil penalties provided in this section, giving due consideration to the appropriateness of the penalty with respect to the size of the business of the employer being charged, the gravity of the violation, the good faith of the employer, and the history of previous violations.

(j) 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.

(k) Civil penalties owed under this chapter shall be paid to the department and may be recovered in a 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.

(l) Notice of violation. When an alleged violation of any provision of this chapter or any rule or regulation promulgated thereunder has occurred, the department shall promptly issue a written order to the employer who shall be required to post said order in a prominent place. Said order shall include the abatement requirements and within a reasonable time the employer shall be advised of the proposed sanctions.

(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."

SECTION 6. Section 396-11, Hawaii Revised Statutes, is amended to read:

"Sec. 396-11 Appeals. Any order of the director issued under this chapter shall be final and conclusive against the employer unless the employer, within twenty days after a copy of such order is received by him, petitions the appeals board for a review thereof. After hearing, the appeals board may set aside the order or continue it upon such terms and conditions as may be deemed necessary. The filing with the appeals board of a petition for review shall not stay or suspend the operation of the order, and no stay shall be granted by the appeals board pending its decision. The

employees or their representatives shall have the right to participate in all hearings.”

SECTION 7. Section 396-13, Hawaii Revised Statutes, is amended to read:

“**Sec. 396-13 Trade secrets.** Information obtained by the department containing or revealing a trade secret shall be held confidential and access shall be limited to authorized representatives of the director concerned with carrying out this chapter or when relevant in any proceeding under this chapter. In such proceeding the director or the court shall issue such orders as may be appropriate to protect the confidentiality of trade secrets.”

SECTION 8. Statutory material to be repealed is bracketed. New material is underscored. In printing this Act, the revisor of statutes need not include the brackets, the bracketed material, or the underscoring.*

SECTION 9. This Act shall take effect upon its approval.

(Approved June 4, 1974.)

*Edited accordingly.