

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 by amending the definition of "place of employment" to read:

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

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

"(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 willful 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 is 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.
- (7) The department may prosecute, defend and maintain actions in the name of the department for the enforcement of the provisions of this chapter, including the enforcement of any order issued by it, the appeal of any administrative or court decision, and other actions necessary to enforce this chapter."

SECTION 3. Section 396-9, Hawaii Revised Statutes, is amended by amending subsection (f) to read:

"(f) Unlawful use or possession. It shall be unlawful for any person to use any explosives unless he has a certificate of fitness or is using the explosives under the immediate supervision and direction of a holder of the certificate. It shall be unlawful for any person, other than a manufacturer or dealer, to have any explosives in his possession unless he has a permit therefor, or unless he has the explosives in his possession under the direction and for the purposes of a holder of the certificate.

Any person who violates this section shall be subject to arrest and upon conviction, shall be fined not more than \$1000 or imprisoned not more than one year, or both, provided that an employer or an employee acting within the scope of employment shall not be deemed to be in violation of this section."

SECTION 4. Section 396-10, Hawaii Revised Statutes, is amended by amending subsection (1) to read:

“(1) 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 prominently at or near the place where the violation occurred. Said order shall include the abatement requirements and within a reasonable time the employer shall be advised of the proposed sanctions.”

SECTION 5. Section 396-11, Hawaii Revised Statutes, is amended to read:

“**Sec. 396-11 Appeals.** Any proposed penalty or 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 proposed penalty or order is received by him, petitions the appeals board for a review thereof. Any employee or his representative may, within the twenty-day period after an order for abatement of a violation is posted, file an appeal alleging that the time fixed in such order is unreasonable. After hearing, the appeals board may set aside the proposed penalty or order or continue it upon such terms and conditions as may be deemed necessary. The employees or their representatives shall have the right to participate in all hearings.”

SECTION 6. Section 396-12, Hawaii Revised Statutes, is amended to read:

“**Sec. 396-12 Judicial review.** The decision of the appeals board shall be final and conclusive unless the director or any party to the proceedings before the appeals board obtains a review thereof in the manner provided in chapter 91 by instituting proceedings in the circuit court of the circuit in which the place of employment, machine, device, apparatus, or equipment is situated or such practice, means, method, operation, or process is employed. The hearing on review shall be on the record and the department shall be deemed a party to any such proceedings. The court shall give precedence to such proceedings over all other civil cases.”

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, the appeals board, 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 mate-

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rial 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 May 6, 1975.)

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\*Edited accordingly.