

ACT 96

S.B. NO. 877

A Bill for an Act Relating to Occupational Safety and Health Hearings.

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

SECTION 1. Chapter 396, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

**“§396- Appeals board.** (a) In any hearing conducted by the appeals board under this chapter and pursuant to chapter 91, notwithstanding section 91-9.5, all parties shall be given written notice of hearing by first class mail at least fifteen days before the hearing.

(b) In all hearings before the appeals board, each board member shall have the same powers as possessed by the circuit courts respecting the admin-

istering of oaths; issuing subpoenas; compelling the attendance of witnesses, the production of documentary evidence, and the taking of depositions; and examining or causing to be examined witnesses. The circuit court of any circuit, upon application by the appeals board or a party, shall have power to enforce, by proper proceedings, the attendance and testimony of any witness subpoenaed. Subpoena and witness fees and mileage in these cases shall be the same as in criminal cases in the circuit courts and paid by the party calling the witness.

No person shall be excused from attending, testifying, or producing material, books, paper, correspondence, memoranda, and other records before the appeals board or in compliance with a subpoena on the grounds that the testimony or evidence, documentary or otherwise, required of the person may tend to incriminate the person or subject the person to a penalty or forfeiture; provided that no person shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter, or thing concerning which the person is compelled, after having claimed the privilege against self-incrimination, to testify or produce evidence, documentary, or otherwise, except that such persons testifying shall not be exempt from prosecution and punishment for perjury committed in testifying.

Pursuant to chapter 91, the appeals board may adopt rules of the Hawaii rules of civil procedure and other rules in conducting any hearing.

(c) Contemptuous conduct at any hearing shall be grounds for summary exclusion from the hearing. Such misconduct, if of an aggravating character and engaged in by an attorney or other representative of a party, shall be grounds for suspension or disbarment from further practice before the appeals board after due notice and hearing. The appeals board may impose other sanctions for contemptuous conduct, including dismissal of the appeal. Any action taken by the appeals board shall be by a simple majority.

(d) As used in this section, "contemptuous conduct" includes the following conduct by a person appearing before the appeals board:

- (1) Failure or refusal to appear in compliance with a subpoena or, having appeared, failure or refusal to testify under oath or affirmation;
- (2) Failure or refusal to answer any relevant question or failure or refusal to furnish any relevant book, paper, or other document subpoenaed by or on behalf of the appeals board; and
- (3) The commission of any other act that is disrespectful or interferes with the administration of justice."

SECTION 2. Section 396-3, Hawaii Revised Statutes, is amended by adding a new definition to be appropriately inserted and to read as follows:

"Aggravating character" means circumstances and behavior that increase the seriousness or outrageousness of contemptuous conduct."

SECTION 3. New statutory material is underscored.<sup>1</sup>

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

(Approved June 14, 2013.)

**Note**

1. Edited pursuant to HRS §23G-16.5.