

ACT NO. 6846

BILL NO. 26-0243

TWENTY-SIXTH LEGISLATURE OF THE VIRGIN ISLANDS

Regular Session

2006

An Act amending 24 V.I.C., chapter 2, the Virgin Islands Occupational Safety and Health Act to incorporate changes in federal law

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Be it enacted by the Legislature of the Virgin Islands:

SECTION 1: Title 24, chapter 2, the Virgin Islands Occupational Safety and Health Act, is repealed and reenacted with amendments to read as follows:

“§31. Purpose

(a) The Legislature has determined that in order for the Territory to better protect its public-sector workers, it should retain the duties of regulation and enforcement of rules in places of public employment by formulating and obtaining federal approval for a Public Employee Only State Plan under section 18 of the Occupational Safety and Health Act of 1970, 29 USC 667.

(b) The Legislature declares it to be its purpose and policy, through the exercise of its power to regulate commerce within the Territory of the Virgin Islands and to provide for the general welfare, to assure so far as possible every public sector employee in the Territory safe and healthful working conditions and to preserve our human resources by :

(1) encouraging public-sector employers and employees in their efforts to reduce the number of occupational safety and health hazards at their places of employment, and to stimulate public-sector employers and employees to institute new programs and to perfect existing programs for providing safe and healthful working conditions;

(2) providing that public-sector employers and employees have separate but dependent responsibilities and rights with respect to achieving safe and healthful working conditions;

(3) authorizing the Commissioner of Labor to set or adopt mandatory occupational safety and health standards applicable to public-sector workplaces within the Virgin Islands;

(4) building upon advances already made through public-sector employer and employee initiatives for providing safe and healthful conditions;

(5) providing for research in the field of occupational safety and health, including the psychological factors involved, and by developing innovative methods, techniques and approaches for dealing with local, occupational safety and health problems;

(6) exploring ways to discover latent diseases, establishing casual connections between diseases and work in environmental conditions, and conducting other research relating to health problems, in recognition of the fact that occupational health standards present problems often different from those involved in occupational safety;

(7) providing medical criteria that will assure insofar as practicable, that no public- sector employee will suffer diminished health, functional capacity, or life expectancy as a result of his work experience;

(8) providing for training programs to increase the number and competence of personnel engaged in the field of occupational safety and health;

(9) providing an effective enforcement program that shall include a prohibition against giving advance notice of any inspection, and sanctions for any individual violating this prohibition;

(10) providing for appropriate reporting procedures with respect to occupational safety and health which will help achieve the objectives of this chapter and accurately describe the nature of the occupational safety and health problems; and

(11) encouraging joint labor-management efforts to reduce injuries and diseases arising out of employment.

§32. Definitions

For the purpose of this chapter

(1) The term "Commissioner" means the Commissioner of the Virgin Islands Department of Labor or the Commissioner's authorized and accredited representatives.

(2) The term "employ" means to suffer or permit to work.

(3) The term "employee" means any individual employed by the Government of the Virgin Islands, its departments, agencies instrumentalities, or political subdivisions, if any.

(4) The term "employer" means the Government of the Virgin Islands, its department, agencies, instrumentalities, or political subdivisions, if any.

(5) The term "Occupational Safety and Health Standard" means a standard that 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.

(6) The term "person" means one or more individuals, departments, agencies instrumentalities, legal representatives, or any organized group of persons in the public sector.

(7) The term "public sector" means the Government of the Virgin Islands, its department, agencies, instrumentalities or political subdivisions, if any.

(8) The term "Secretary" means the Secretary of the United States Department of Labor.

(9) The term, "State Plan" means the agreements and contractual arrangements made by the Commissioner with the United States Department of Labor and the Secretary of Labor under which Territorial development and enforcement of occupational safety and health rules may be carried forward.

(10) The term "workplace" means any area where work is being performed at any time, by any person who is a public-sector employee.

§33. Applicability of this chapter

This chapter applies with respect to employment performed in a public-sector workplace within the Virgin Islands.

§34. Rights, duties or liabilities of public sector employer and employees

Nothing in this chapter may be construed to supersede in any manner to affect any Workers' Compensation Administration law or to enlarge or diminish or affect in any other manner the common law or statutory rights, duties, or liabilities of public-sector employers and employees under any law with respect to injuries, diseases, or death of employees arising out of, or in the course of employment.

§35. Duties

(a) Each public-sector employer shall:

(1) furnish to each of its employees employment and a place of employment which are free from recognized hazards that are causing or are likely to cause death or serious physical harm to its employees; and

(2) comply with occupational safety and health standards promulgated under this chapter.

(b) Each public-sector 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.

(c) Space leased by a public-sector employer is subject to all safety and health rules, regulations and orders in effect. Any deficiency, including a deficiency resulting either from occupant use or deferred maintenance by the lessor, is subject to correction in accordance with the governing rules, regulations and orders at the time that the deficiency is cited by the Commissioner. However, a public-sector employer may not execute a lease, unless the leased property is in conformance with such rules, regulations and orders as are in effect at the time the lease is executed.

§36. Powers and duties of the Commissioner

(a) The Commissioner may :

(1) investigate, develop and gather data regarding all aspects of occupational safety and health with respect to public sector employers and employees;

(2) adopt, promulgate, modify and revoke, such occupational safety and health standards as are necessary to carry out the purpose of this chapter in accordance with the procedures established in appropriate Virgin Islands Rules and Regulations; except that all federal occupational safety and health standards and regulations that are in effect as of the effective date of this chapter are adopted as rules and regulations of the Virgin Islands Division of Occupational Safety and Health. All federal occupational safety and health standards and regulations that the United States Secretary of Labor promulgated or amended after this date, in accordance with 29 U.S.C 651 through 678, shall become the Rules and Regulations of the Virgin Islands Division of Occupational Safety and Health upon Federal promulgation and shall go in effect for applicability in the public sector on the effective date specified in the standard. Notwithstanding this paragraph, the Commissioner may promulgate by rules and regulations an alternate standard or regulation that he finds to be as effective or better than the federal standard in providing safe and healthful employment in accordance with all Virgin Islands Statutes and the provisions of this chapter; and

(3) cooperate and consult with the Occupational Safety and Health Administration of the United States Department of Labor;

(b) In carrying out his responsibilities under this chapter, the Commissioner may:

(1) use, with the consent of the appropriate agency, the agency's services, facilities and personnel with or without reimbursement.

(2) employ experts and consultants or organizations thereof under such limitations as the Legislature may hereafter direct.

(3) appoint such personnel as are needed to carry out the purpose of this chapter; except that the appointment of personnel must comply with title 3 Virgin Islands Code, chapter 25.

(c) (1) (A) The Commissioner may adopt an emergency temporary standard immediately upon its issuance and publication in the Federal Register by the Secretary under the terms of the Occupational Safety and Health Act of 1970 (PL 91-596).

(B) The Commissioner shall publish the standard as a rule or notice of the rule for a minimum of three days in newspapers of general circulation in the Virgin Islands in order to provide notice of the rule's existence and the Commissioner's intent to enforce the rule under this chapter, and the Commissioner shall publish such rule in the Virgin Islands Register at his first opportunity.

(C) The notice does not constitute a prerequisite to the enforcement of an emergency temporary rule by the Commissioner

(D) Where a Federal emergency temporary standard is adopted as a temporary rule by the Secretary and the Commissioner, the rule is effective until both the Secretary and the Commissioner have either withdrawn the temporary standard and rule or promulgated a permanent standard and rule superseding the temporary standard and rule.

(2) (E) (A) Where no federal emergency temporary standard has been provided, but the Commissioner determines that public-sector employees are exposed to a grave danger from exposure to substances or agents determined to be toxic or physically harmful or from new hazards, and that the emergency standard is necessary to protect the employees from the danger, the Commissioner shall provide for an emergency temporary rule to take immediate effect upon its publication for a minimum of three successive days in general circulation newspapers in the Virgin Islands.

(B) The Commissioner shall publish the rule in the Virgin Islands Register at his first opportunity and make such further provisions by rule as he considers necessary to inform the public-sector employers and employees of the existence of the rule and his intention to enforce it.

(C) Where the Commissioner has provided for an emergency, temporary rule under paragraph (1) of this subsection, the rule is effective until superseded by a rule promulgated in accordance with the procedures adopted pursuant to this chapter or a determination is made that no rule should be promulgated.

(D) The Commissioner shall promulgate a rule or determine that no rule should be promulgated under this subsection no later than twelve months after publication of the emergency temporary rule, and shall publish notice of his intent within sixty days before the expiration of twelve-month period.

(d) (1) Any public-sector employer may apply to the Commissioner for a temporary order granting a variance, from a standard or any provision promulgated under this section. The Commissioner may grant a temporary variance only if the employer files an application that meets the requirements of paragraph (2) of this subsection and establishes that (i) the employer is unable to comply with a standard by its effective date because of unavailability of professional or technical personnel or of materials and equipment needed to come into compliance with the standard, or because necessary construction or alteration of facilities cannot be completed by the effective date; (ii) the employer is taking all available steps to safeguard his employees against hazards covered by the standard; and (iii) the employer has an effective program for coming into compliance with the standards as quickly as possible. Any temporary order issued under this paragraph must prescribe the practices, means, methods, operations and process that the employer must adopt and use while the order is in effect and state in detail the employer's program for coming into compliance with the standard. The temporary order may be granted only after notice to public-sector employees and an opportunity for hearing; except that the Commissioner may issue one interim order to be effective until a decision is made on the basis of the hearing. No temporary order may be in effect for longer than the period needed by the employer to achieve compliance with the standard or one year, whichever is shorter, except that the order may be renewed not more than twice, so long as the requirements of this paragraph are met and if an application for renewal is filed at least 90 days prior to the expiration date of the order. No interim renewal of an order may remain in effect for longer than 180 days.

(2) An application for a temporary order under this section must contain:

(A) Name and address of applicant and location or locations to which the application pertains;

(B) A specification of the standard or portion thereof from which the employer seeks a variance;

(C) A representation by the public-sector employer, supported by representations from qualified persons having first-hand knowledge of the facts represented, that the employer is unable to comply with the standard or portion of the standard and a detailed statement of the reason for the inability to comply;

(D) A statement of the steps the employer has taken and will take, including specific dates, to protect employees against the hazard covered by the standard;

(E) A statement of when the employer expects to be able to comply with the standard and what steps the employer will take to come into compliance with the standard, including specific dates; and

(F) A certification that the employer has informed its employees of the application by giving a copy of the application to their authorized representative, posting a statement giving a summary of the application and specifying where a copy may be examined at the place or places where notice to employees are normally posted and by other appropriate means.

(i) A description of how employees have been informed must be contained in the certification.

(ii) The information to employees must also inform them of their right to petition the Commissioner for a hearing.

(e) Any affected public-sector employer for the purpose of this section may apply to the Commissioner for a rule or order for a variance from a standard promulgated under this section.

(1) The Commissioner shall give affected public-sector employees notice of each application and an opportunity to participate in a hearing.

(2) The Commissioner shall issue the rule or order if he determines on the record, after opportunity for an inspection where appropriate and a hearing that the proponent of the variance has demonstrated by a preponderance of the evidence that the conditions, practices, means, methods, operations or processes used or proposed to be used by an employer will provide employment and places for employment to his employees which are as safe and healthful as those that would prevail if he complied with the standard.

(3) The rule or order so issued must identify the establishment and locations affected, prescribe the conditions the employer must maintain, and the practices, means, methods, operations and processes that he must adopt and utilize to the extent that they differ from the standard in question.

(4) The rule or order may be modified or revoked upon application by a public-sector employee, public-sector employer, or by the Commissioner on his motion, in the manner prescribed for its issuance under this subsection at any time after six months from issuance.

(f) Whenever the Commissioner promulgates or revokes an alternative standard or regulation that differs from that adopted by Federal OSHA, or makes any other rule or order, he shall cause a notice of such action to be published in general circulation newspapers in the Virgin Islands not less than once a week for four weeks, and shall afford interested persons a period of thirty days after publication to submit written data or comments.

§37. Inspections, investigations and record-keeping

(b) In order to carry out the purpose of this chapter, the Commissioner or his authorized representatives, upon presenting appropriate credentials to the government official in charge of the public-sector workplace, may:

(1) enter without delay and at reasonable times, any public sector facility, establishment, construction site, or other area, workplace, or environment, where work is performed by an employee of a public-sector employer; and

(2) inspect and investigate, during regular working hours, and at other reasonable times and within reasonable limits and in a reasonable manner, any such place of public sector employment and all pertinent conditions, structures, machines, apparatus, devices, equipment and materials therein, and to question privately any such public-sector employer, operator, agent or employee. In case any person refuses the Commissioner or his representatives entry at any place of employment, or interferes with, or limits, an inspection or investigation provided for in this section, the Commissioner may petition any Superior Court of the Virgin Islands for an order requiring the person to permit entry to the place of employment described in the petition, or to cease and desist from interfering or limiting such inspection or investigation.

(b) In making his inspection and investigations under this chapter, the Commissioner may require the attendance and testimony of witnesses and the production of evidence under oath. Witnesses must be paid the same fees and mileage that are paid witnesses in the Superior Court of the Virgin Islands. In case of a contumacy, failure, or refusal of any person to obey such an order, any Superior Court of the Virgin Islands within the jurisdiction of which such person is found, or resides, or transacts business, upon application by the Commissioner shall have jurisdiction to issue to such a person an order requiring the person to appear to produce evidence if, as, and when so ordered, and to give testimony relating to the matter under investigation or in question and any failure to obey the order of the court may be punished by the court as contempt.

(c)(1) Each public-sector employer shall make, keep, and preserve, and make available to the Commissioner and the Secretary such records regarding his activities relating to this chapter as the Commissioner may by regulation prescribe as necessary or appropriate for the enforcement of this chapter, or for developing information regarding the causes and prevention of occupational accidents and illnesses. In order to carry out the provisions of this paragraph, the regulations may include provisions requiring public-

sector employers to carry out periodic inspections. The Commissioner shall also issue regulations requiring that employers, through posting of notices or other appropriate means, keep their employees informed of their protections and obligations under this chapter, including the provisions of applicable standards.

(2) The Commissioner shall prescribe rules and regulations requiring public-sector employers to maintain accurate records of, and 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, transfer to another job.

(3) The Commissioner shall adopt standards or issue rules and regulations requiring the use of labels or other appropriate forms of warning as necessary to ensure that the public sector-employees are apprised of all hazards to which they are exposed, relevant symptoms and appropriate emergency treatment, and proper conditions and precautions of safe use or exposure.

(A) Where appropriate, the standards or regulations must also prescribe suitable protective equipment and control or technological procedures to be used in connection with those hazards and must provide for monitoring or measuring employee exposure at such locations and intervals, and in such manner as may be necessary for the protection of employees.

(B) In addition, any such standard or regulation must prescribe the type and frequency of medical examinations or other tests that are available from the public-sector employer or at its cost to employees exposed to the hazards in order to most effectively determine whether the health of the employees is adversely affected by such exposure.

(C) The result of such examinations or tests must be furnished to the Secretary, the Commissioner or, at the employees request, to the employee's physician.

(4) The Commissioner shall issue regulations requiring public sector employers to maintain accurate records of employee exposures to potentially toxic materials or harmful physical agents, for which standard have been set in accordance with the chapter.

(A) The regulations must provide employees or their representatives with an opportunity to observe any monitoring or measuring, and to have access to the records thereof.

(B) The regulations must also make provisions for each employee or former employee to have access to such records as will indicate his exposure to any toxic materials or harmful physical agents.

(5) Each public-sector employer shall promptly notify any employee who has been or is being exposed to any such toxic materials or harmful physical agents in concentrations or at levels that exceed those prescribed by applicable occupational safety and health standards promulgated under section 36(a)(2) of this chapter and shall inform any employee who is being thus exposed of the corrective actions being taken.

(d) Any information obtained by the Commissioner under this chapter must be obtained with a minimum burden upon public-sector employers. Unnecessary duplication of efforts in obtaining information shall be reduced to the maximum extent feasible.

(e) Subject to regulations promulgated by the Commissioner, a representative of the public-sector employer and a representative authorized by the employees must be given an opportunity to accompany the Commissioner or his authorized representative during the physical inspection of any workplace under subsection (a) of this section for the purpose of aiding such inspection. Where there is no authorized employee representative, the Commissioner or his authorized representative shall consult with a reasonable number of employees concerning matters of health and safety in the workplace.

(f)(1) Any public-sector employee or representative of employees who believes that a violation of a safety or health standard exists that threatens physical harm or that an imminent danger exists, may request an inspection by giving notice to the Commissioner or his authorized representative of such violation or danger. Any such notice must be reduced to writing, must set forth with reasonable particularity the grounds for the notice, and must be signed by the employee or representative of employees, and a copy must be presented to the employer or his agent no later than at the time of inspection, except that, upon the request of the person giving such notice, his name and the names of individual employees referred to therein must not appear in such copy or on any record published, released or made available pursuant to subsection (g) of this section. If upon receipt of such notification the Commissioner determines that there are reasonable grounds to believe that such violation or danger exists, he shall make a special inspection in accordance with the provisions of this section, as soon as practicable, to determine if such a violation or danger exists. If the Commissioner determines there are no reasonable grounds to believe that a violation or danger exists, he shall notify the employees or representative of the employees in writing of such determination.

(2) Before or during an inspection of a workplace, any public-sector employee or representative of employees employed in such a workplace, may notify in writing the Commissioner or any representative of the Commissioner responsible for conducting the inspection, of any violation of this chapter which he has reason to believe exists in the workplace. The Commissioner shall, by regulation, establish procedures for informal review of any refusal by a representative of the Commissioner to issue a citation with respect to any such alleged violation, and shall furnish the employees requesting the review with a written statement of the reason for the Commissioner's final disposition of the case.

(g)(1) The Commissioner may compile, analyze and publish, either in summary or detailed form, all reports or information obtained under this section and furnish copies of all such reports to the Secretary.

(3) The Commissioner shall prescribe such rules and regulations as he may consider necessary to carry out his responsibilities under this chapter, including rules and regulations relating to the inspection of a public-sector employer's establishment.

§38. Citations

(a) If upon inspection or investigation, the Commissioner or the Commissioner's authorized representative believes that a public-sector employer has violated a requirement of section 35 of this chapter, of any standard, rule or order promulgated pursuant to section 36 of this chapter, or of any regulations prescribed under this chapter, he shall with reasonable promptness issue a citation to the employer. Each citation must be in writing and must describe with particularity the nature of the violation including a reference to the provision of this chapter, standard, rule, regulation or order alleged to have been violated. In addition, the citation must fix a reasonable time for abatement of the violation. The Commissioner may prescribe procedures for issuance of a notice in lieu of a citation with respect to de minimis violations that have no direct or immediate relationship to safety and health.

(b) Each citation issued under this section or a copy of the citation must be prominently posted, as prescribed in regulations issued by the Commissioner, at or near each place a violation referred to in the citation occurred.

(c) No citation may be issued under this section after the expiration of six months following the discovery of a violation during an inspection.

§39. Procedure for enforcement

(a) If after an inspection or investigation the Commissioner issues a citation under section 38(a) of this chapter, he shall, within a reasonable time after the termination of the inspection or investigation, notify the public-sector employer by certified mail of the proposed citation, and that the employer has fifteen working days within which to notify the Commissioner that he wishes to contest the citation, and If, within fifteen working days from the receipt of the notice issued by the Commissioner the employer fails to notify the Commissioner that he intends to contest the citation or proposed assessment of penalty, and no notice is filed by any employee or representative of employees under subsection (c) within such time, the citation and the assessment, as proposed, must be deemed a final order of the Commission and not subject to review by any court or agency.

(b) If the Commissioner has reason to believe that a public sector employer has failed to correct a violation for which a citation has been issued within the period permitted for its correction, which period does not begin to run until the entry of a final order by the Commissioner in the case of any review proceedings under this section initiated by the public-sector employer in good faith and not solely for delay or avoidance

of penalties, the Commissioner shall notify the public sector employer by certified mail of such failure and of the penalty proposed to be assessed under section 44 by reason of such failure, and that the public sector employer has fifteen working days within which to notify the Commissioner that he wishes to contest the Commissioner's notification or the proposed assessment of penalty. If, within fifteen working days from the receipt of notification issued by the Commissioner, the public sector employer fails to notify the Commissioner that he intends to contest the notification or proposed assessment of penalty, the notification and assessment, as proposed, shall be deemed a final order of the Commissioner and not subject to review by any court.

(b) If the public sector employer notifies the Commissioner that he intends to contest a citation issued under section 38 or notification issued under subsection (a) or (b) of this section, or if within fifteen working days of the issuance of a citation under section 38(a), any employee or representative of employees files a notice with the Commissioner alleging that the period of time fixed in the citation for the abatement of the violation is unreasonable, the Commissioner shall immediately advise a hearing examiner of such notification, and the hearing examiner shall afford an opportunity for a hearing. The hearing examiner shall thereafter issue an order, based on finding of facts and conclusions of law affirming, modifying or vacating the Commissioner's citation or proposed penalty, or directing other appropriate relief, and such order shall become final thirty days after its issuance, except as provided in section 41 (b). Upon a showing by a public sector employer of a good faith effort to comply with the abatement requirement in of a citation, and that abatement has not been completed because of factors beyond his reasonable control, the Commissioner, after an opportunity for a hearing as provided in this subsection, shall issue an order affirming or modifying the abatement requirement such citation. The rules of procedure prescribed by the Commissioner shall provide affected public sector employees or representatives of employees an opportunity to participate as parties to hearing under this subsection.

(c) If, after following all the procedures allowed under this act, the Commissioner finds that a public sector employer continues to disregard his responsibility under this act, the Commissioner may submit copies of the citation issued under section 38 to the Governor for further action to achieve compliance.

§ 40. Judicial review

(a) Any person adversely affected or aggrieved by a final order of the hearing examiner issued under subsection (c) of section 39 of this title, or a final order of the Commissioner under section 41(b), may obtain a review of such order in the Superior Court of the Virgin Islands by filing in such court within thirty days following the issuance of such order a written petition praying that the order be modified or set aside. Upon such filing the court shall have jurisdiction of the proceeding and of the question determined therein, and may grant such temporary relief or restraining order as it considers just and proper, and to make and enter upon the pleadings, testimony, and proceeding set forth in such record a decree affirming, modifying, or setting aside in whole or in part, the order of the Commissioner and enforcing the order to the extent that the order is affirmed or modified. The commencement of proceedings under this subsection does not, unless ordered by the Court, operate as a stay of the order of the

Commissioner. No objection that has not been urged before the Commissioner may be considered by the Court unless the failure or neglect to urge the objection is excused, because of extraordinary circumstances. The finding of the Commissioner with respect to question of fact, if supported by substantial evidence on the record considered as a whole, is conclusive. If any party applies to the Court for leave to adduce additional evidence and shall show to the satisfaction of the Court that the additional evidence is material and that there were reasonable grounds for the failure to adduce the evidence in the hearing before the Commissioner, the Court may order the additional evidence to be taken before the Commissioner and to be made a part of the record. The Commissioner may modify the findings as to the fact, or make new findings, by reason of findings with respect to question of fact, if supported by substantial evidence on the record considered as a whole, shall be conclusive, and the recommendations, if any, for the modification or setting aside of its original order. Upon filing of the record with it, the jurisdiction of the Court shall be exclusive and its judgment and decree shall be final, except that the same judgment and decree shall be subject to review by the appellate court.

(b) All proceedings under this section shall be heard summarily and given preference over all other civil proceedings. The Commissioner may petition for enforcement of his final order by filing a petition for such relief in the Superior Court of the Virgin Islands and the provisions of subsections (a) and (b) shall govern such proceedings to the extent applicable. If no petition for review, as provided in subsection (a) of this section is filed within thirty days after service of the Commissioner's order, the Commissioner's findings of fact and order shall be conclusive in connection with any petition for enforcement which is filed by the Commissioner after expiration of such thirty-day period. In any such case, as well as in the case of a non-contested citation or notification by the Commissioner which has become a final order of the Commissioner under subsection (a) or (b) of section 39, the Clerk of the Court, unless otherwise ordered by the Court, shall forthwith enter a decree enforcing the order and shall transmit a copy of the decree to the Commissioner and the employer named in the petition. In any contempt proceeding brought to enforce a decree of the court entered pursuant to this subsection or subsection (a), the Court may assess the penalties provided in section 44 to this chapter, in addition to invoking any other available remedies.

(c) (1) No person shall discharge or in any manner discriminate against any public sector employee because such employee has filed any complaint or instituted or caused to be instituted any proceeding under or related to this chapter or has testified or is about to testify in any such proceeding or because of the exercise by such employee on behalf of himself or others of any right afforded by this chapter.

(2) Any public-sector employee who believes that he has been discharged or otherwise discriminated against by any person in violation of this subsection, may within thirty days after the violation occurs, file a complaint with the Commissioner alleging discrimination. Upon receipt of the complaint, the Commissioner shall cause the investigation to be made as he considers appropriate. If upon investigation, the Commissioner determines that the provisions of this subsection have been violated, he shall bring an action in the Superior Court of the Virgin Islands against the violator. In any such action the Superior Court of the Virgin Islands has jurisdiction, for cause shown, to restrain violations of paragraph (1) of this subsection and order

all appropriate relief, including rehiring or reinstatement of the employee to his former position with back pay. Petitions filed under this subsection must be heard expeditiously.

(3) Within ninety days from the receipt of a complaint filed under this subsection, the Commissioner shall notify the complainant of his determination under paragraph (2) of this subsection.

§ 41. Hearings

(a) One or more hearing examiners shall be appointed by the Governor of the Virgin Islands upon the recommendation of the Commissioner of Labor who by reason of training, education, or experience are qualified to hear and render decisions in contested cases arising under this chapter.

(b) The function of hearing examiners, acting as individuals or in assembly, shall be to hear and make a determination upon any proceeding instituted before them or upon any motion in connection therewith, assigned to them by the Commissioner and shall make a written report of such determination which shall constitute the final disposition of the proceedings. The report of the hearing examiner shall be transmitted by certified mail to the parties. The report of the hearing examiner shall become a final decision and order of the Commissioner within 30 days after receipt of the report by the parties, unless, within such period the Commissioner directs review of the report and the report is modified by the Commissioner. Thereafter, the modified report shall become the final order of the Commissioner. The decision becomes the final order of the Commissioner upon its receipt of the parties when transmitted to the parties by certified mail five working days after its issuance by the Commissioner.

(c) The appointment, terms of office, compensation and removal of hearing examiners shall be fixed in accordance with the provisions of title chapter 25 of the Virgin Islands Code.

(d) The Commissioner may prescribe such rules as are necessary for the lawful and orderly transaction of proceedings and hearings under this chapter.

(e) Hearing examiners may order testimony to be taken by deposition in any proceedings pending before them. Any person may be compelled to appear and depose and to produce papers or documents in the same manner as witnesses may be compelled to appear and testify and produce like documentary evidence before a hearing examiner. Witnesses whose depositions are taken under this subsection and the persons taking such depositions are entitled to the same fees as are paid for like services in the courts of the Virgin Islands.

§ 42. Procedures to counteract imminent dangers

(a) The Superior Court of the Virgin Islands has jurisdiction, upon petition of the Commissioner, to restrain any conditions or practices in any place of public-sector employment which are such that a danger exists that may reasonably be expected to cause

death or serious physical harm immediately or before the imminence of such danger can be eliminated through the enforcement procedures otherwise provided by this chapter. Any order issued under this section may require such steps to be taken as may be necessary to avoid, correct, or remove the imminent danger and prohibit the public-sector employment or presence of any individual in any location or under conditions where the imminent danger exists, except individuals whose presence is necessary to avoid, correct or remove such imminent danger or to maintain the capacity of a continuous process operation to resume normal operations without a complete cessation of operation, or where a cessation of operation is necessary, to permit such to be accomplished in a safe, orderly manner.

(b) Upon the filing of a petition, the Superior Court of the Virgin Islands has jurisdiction to grant injunctive relief or temporary restraining order pending the outcome of an enforcement proceeding pursuant to this chapter. The proceeding shall be as provided by the Rules of the Superior Court of the Virgin Islands, except that no temporary restraining order shall be effective for a period longer than five days.

(c) Whenever and as soon as an inspector concludes that conditions or practices described in subsection (a) of this section exist in any place of employment, he shall inform the affected public-sector employer and employees of the danger and that he is recommending to the Commissioner that relief be sought.

(d) If the Commissioner arbitrarily or capriciously fails to seek relief under this section, any public sector employee who may be injured by reason of such failure or the representative of such employee, may bring an action against the Commissioner in the Superior Court of the Virgin Islands for an order to compel the Commissioner to seek such and order and for such further relief as may be appropriate.

§ 43. Confidentiality of trade secrets

All information reported to or otherwise obtained by the Commissioner or his representative in connection with any inspection or proceeding under this chapter which contains or which might reveal a trade secret referred to in Title 14, section 1665 of the Virgin Islands Code is considered confidential for the purposes of that section, except that such information may be disclosed to other officers and employees concerned with carrying out this chapter, or when relevant in any proceeding under this chapter. In any such proceeding the Commissioner, or the court shall issue such orders as may be appropriate to protect the confidentiality of trade secrets.

§ 44. Penalties

(a) (1) Any public-sector employer who fails to correct a serious violation for which a citation has been issued under section 38(a) within the period permitted for its correction may be assessed a civil penalty of not more than \$1,000 for each day during which such failure or violation continues.

(2) The period permitted for correction in paragraph (a) does not begin to run until the date of the final order of the Commissioner in the case of any review proceeding under section 39 initiated by the public-employer in good faith and not solely for delay or avoidance of penalties.

(b) Any person who gives advance notice of any inspection to be conducted under this chapter, without authority from the Commissioner or the Commissioner's designee 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 the fine and the imprisonment provided in this section.

(c) 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 6 months or by both such fine and imprisonment

(d) The Commissioner may assess all failure to abate penalties provided in this section, giving due consideration to the appropriateness of the penalty with respect to the size of the public sector workplace whose employer being charged, the gravity of the violation, the good faith of the public sector employer and the history of previous violations.

(e) For the purposes of failure-to-abate penalties, a serious violation exists in a place of public-sector employment, if there is a substantial probability that death or serious physical harm could result from a condition that exists, or from one or more practices, means, methods, operations or processes that have been adopted or are in use, in such place of public-sector employment unless the employer did not, and could not with the exercise of reasonable diligence, know of the presence of the violation.

(f) Civil fail-to-abate penalties owed under this chapter, must be paid to the Commissioner for deposit with the Commissioner of Finance and accrue to the Virgin Islands Government Insurance Fund.

(g) Any Division of Occupational Safety and Health employee who violates the provisions of section 43 of this chapter relating to disclosure of trade secrets and confidential information shall, upon conviction, be punished by a fine of not more than \$1,000 or by imprisonment of not more than a year or by both such fine and imprisonment

§ 45. Division of Occupational Safety and Health

(a) There is established in the Department of Labor, a Division of Occupational Safety and Health headed by a Director who has the rank of Assistant Commissioner and is responsible for the administration and operation of the Occupational Safety and Health Program.

(b) The Governor shall appoint the Director. The Director may be removed by the Governor only for good cause shown.

(c) All other personnel must be classified and appointed under the provisions of title 3, chapter 25 of the Virgin Islands Code.

§ 46. Research and Statistics

(a) The Commissioner shall seek the aid of appropriate state and federal agencies in securing information regarding research, experiments, and demonstrations for the purpose of study and development of rules and for developing criteria dealing with toxic materials and harmful agents and substances.

(b) The Commissioner shall secure and maintain any statistical information required for the administration of this chapter and to meet the requirements of the Secretary of Labor under the Federal Act.

§ 47. Training and employee education

(a) The Commissioner may consult with the United States Departments of Labor and Health and Human Services to develop and conduct:

(1) education programs to provide an adequate supply of qualified personnel to carry out the purposes of this chapter; and

(2) informational programs on the importance of the proper use of adequate safety and health equipment.

(b) The Commissioner, in consultation with the United States Departments of Labor and Health and Human Services shall:

(1) provide for the establishment and supervision of programs for the education and training of public-sector employers and employees in the recognition, avoidance, and prevention of unsafe or unhealthful working conditions in places of public sector employment covered by this chapter; and

(2) consult, with and advise of the public-sector employers, employees and organizations thereof, as to effective means of preventing occupational injuries and illnesses.

§ 48. Forcible interference with conduct of inspection or other official duties

(a) Whosoever forcibly assaults, resists, opposes, impedes, intimidates or interferes with any officer or employee of the Virgin Islands Department of Labor while engaged in or on account of the performance of his official duties shall be fined not more than \$5,000 or imprisoned for not more than three years, or shall be both fined and imprisoned as provided in this section.

(b) Whosoever, in the commission of any such act uses a deadly or dangerous weapon, shall be fined not more than \$10,000 or imprisoned for not more than ten years, or both such fine and imprisonment

§ 49. Exemptions for national defense purposes

The Commissioner, upon the recommendation of the Secretary of Labor of the United States, may allow reasonable exemptions from any or all provisions of this chapter when the exemption is necessary to avoid serious impairment of the national defense. An exemption may not be in effect for more the six months, without an opportunity being granted to any affected employee for a hearing.

§ 50. Severability

If any provision of this chapter or the application of the provision to any person or circumstances, is held invalid, the remainder of this chapter, or the application of such provision to persons or circumstances other than those as to which it is held invalid, shall not be affected thereby.

SECTION 2. The section headings to the provisions in SECTION 1 are not part of the law.

Thus passed by the Legislature of the Virgin Islands on June 28, 2006.

10th Witness our Hands and the Seal of the Legislature of the Virgin Islands this Day of July, A.D., 2006.



Lorraine L. Berry
Lorraine L. Berry
President

Juan Figueroa Serville
Juan Figueroa Serville
Legislative Secretary

The above bill is hereby approved.



Witness my hand and the Seal of the Government of the United States Virgin Islands at Charlotte Amalie, St. Thomas, this 19th day of July, A.D., 2006.

Charles W. Turnbull
Charles W. Turnbull
Governor