HB

22

BASIS Bill/Resolution History 10:18 AM 02/16/87
BILL: HB 22
NAME:
TITLE: "An Act relating to hazardous physical agents in the workplace."

PRIME SPONSOR: POURCHOT
CO-SPONSOR: BOYER,ELLIS,DAVIS,KOPONEN,DAVIDSON,BROWN,DONLEY,GOLL

FISCAL NOTE: $000 GENERAL(FNOTE) $000 OTHER(FNOTE)

CURRENT STATUS: (S) HES STATUS DATE: 02/12/87

PRESS <ENTER> TO VIEW ACTION

Selection=>
PF1 HELP PF2 ACTION PF3 EXIT PF4 MENU PF5 TEXT PF6 PRINT PF7 PF8 PF9 PF10 PF11 PF12 QUIT

HB 22 Bill/Resolution Action Page 1 of 2

Current Status: (S) HES

Date		Page	Action
01/12/87	(H)		PREFILE RELEASED
01/19/87	(H)	23	READ THE FIRST TIME - REFERRAL(S)
01/19/87	(H)	23	LABOR & COMMERCE AND HESS
01/21/87	(H)	44	HES REFERRAL WAIVED, FINANCE ADDED
01/21/87	(H)	45	CO-SPONSOR(S) ADDED
01/22/87	(H)	54	CO-SPONSOR(S) ADDED
02/04/87	(H)	144	L&C RPT 6DP 1NR
02/04/87	(H)	144	ZERO FISCAL NOTE PUBLISHED 2/4/87
02/09/87	(H)	177	CO-SPONSOR ADDED: DAVIDSON
02/11/87	(H)	185	FIN RPT 7DP 2NR
02/11/87	(H)		RULES TO CALENDAR 2/11/87
02/11/87	(H)	203	READ THE SECOND TIME
02/11/87	(H)	204	ADVANCED TO THIRD READING UNAN CONSENT
02/11/87	(H)	204	READ THE THIRD TIME HB 22
02/11/87	(H)	204	PASSED Y33 N6 A1
02/11/87	(H)	208	CO-SPONSOR(S) ADDED: BROWN,DONLEY,GOLL
02/11/87	(H)	208	TRANSMITTED TO (S)
02/12/87	(S)	276	READ THE FIRST TIME - REFERRAL(S)

Selection=>
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Current Status: (S) HES

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Alaska State Legislature

REPRESENTATIVE
PAT POURCHOT

HOUSE FINANCE COMMITTEE
COMMITTEE ON OIL AND GAS

ANCHORAGE
P.O. BOX 104836
ANCHORAGE, AK 99510
(W) (907) 276-6818
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JUNEAU
POUCH V
STATE CAPITOL
JUNEAU, AK 99811
(907) 465-3712

House of Representatives

MEMORANDUM

DATE: February 10, 1987

TO: All House Members

FROM: Representative Pat Pourchot

SUBJECT: House Bill 22, Hazardous Physical Agents in the Workplace

HOUSE BILL 22 would amend the current "Worker Right to Know" law by adding ten (10) specific "physical agents" to the existing several hundred hazardous and toxic substances of which employers must inform their employees if the substances or agents are in their workplace.

Existing law (AS 18.60) directs the Department of Labor to prepare information data sheets on hazardous and toxic materials. Employers are required to post this information and provide basic training for employees. These same requirements would be applied to "physical agents" under House Bill 22. "Physical agents" are only those identified by the American Conference of Governmental Industrial Hygienists (ACGIH) having documented health hazards and thresholds for safe exposure. Physical agents include ionizing radiation (x-rays), microwave and ultraviolet radiation.

Enactment of this bill could reduce industrial accidents significantly. For example, accidents such as the microwave exposure which occurred at Clear Air Force Station several years ago may be avoided if workers are better informed of the radiation to which they may be exposed and of preventative and safety precautions. Many occupations are not readily associated with exposure to dangerous levels of physical agents. Welders and pipe fitters, for example, are often unknowingly exposed to hazardous ionizing radiation (x-rays) when examining welds and joints.

It should be emphasized that the burden of providing required information falls to the Department of Labor and not to individual employers. This bill also does not require employers or employees to implement any specific safety practices or measures. The Department of Labor supports this measure and has provided a zero ($0) fiscal note as the needed information is currently available.

Thank you for your consideration on this proposal.

EXAMPLES OF IMPACTS RESULTING FROM EXPOSURE
TO CERTAIN PHYSICAL AGENTS

Physical Stress	Occupation Examples	Effects
Microwave Radiation	Telecommunication station employee	Superheated body core Questionable effects include: cardiac arrythmia, cataracts, and psychoneurological dysfunction
Ionizing Radiation (x-rays)	Hospital employees Welders	Cancer of many kinds including: bone, lung, liver, leukemia, chromosomal damage and reproductive abnormalities
Ultraviolet Radiation	Outdoor construction work	Skin cancer
Infrared Radiation	Welders Glass blowers	Flash burns to the retina, cataracts
Lasers	Hospital employees	Eye damage and burns, blindness
Heat Stress	Outdoor physical work	Heat stroke, overheating of the body, extreme conditions may cause loss of consciousness and death
Cold Stress	Oil field service workers	Frostbite, hypothermia, death
Noise	Forest products (sawmill employees and loggers)	Deafness
Hand/Arm Vibration	Construction workers Jackhammer operators Drill operators	"White finger" damage to nerve sensors that regulate circulation causing arterial spasms, chronic lack of blood to muscles causing muscle waste
Airborne Upper Sonic and Ultrasonic Acoustic Radiation	Major doses: as an industrial cleaner (industrial hygienists are not aware of such an application in Alaska)	Deafness

Rep. Pat Pourchot
House Bill 22

SENATE HESS COMMITTEE HB 22

AN ACT RELATING TO HAZARDOUS PHYSICAL AGENTS IN THE WORKPLACE.....

DEAR SENATORS:

THE DISTRICT COUNCIL OF LABORERS IS IN SUPPORT OF HB-22. WE ALSO SUPPORTED A LIKE BILL (HB-319) LAST SESSION WHICH PASSED THE HOUSE BUT RAN OUT OF TIME ON THE SENATE SIDE. THIS LEGISLATION WOULD EDUCATE THE EMPLOYEES ON THE POTENTIAL IRREVERSIBLE DISABILITIES THAT THOSE PHYSICAL AGENTS COULD CAUSE IF SAFE WORK PRACTICES ARE NOT FOLLOWED.

THE LEGISLATION WOULD ALSO EDUCATE THE EMPLOYERS TO THE POTENTIAL DANGERS OF THESE AGENTS- - AND PROPER MEASURES COULD BE PUT INTO EFFECT. THE ADDITION OF THESE PHYSICAL AGENTS TO THE CURRENT "RIGHT TO KNOW" LAW IS NOT A COST FACTOR TO THE EMPLOYER NOR TO THE EMPLOYEE OR TO THE DEPT. OF LABOR.

I KNOW THE SPONSOR OF THIS BILL, REP. POURCHOT,HAS WORKED WITH MANY GROUPS IN SATISFYING EVERONES CONCERNS AND CAN HONESTLY SAY I CANNOT RECALL ANY OPPOSITION TO THIS BILL OR LAST YEAR'S BILL.

WE URGE THIS COMMITTE TO PASS THIS RESPONSIBLE PIECE OF LEGISLATION.

THANK YOU.

SINCERELY,

Don Rouleau

DON ROULEAU

DISTRICT COUNCIL OF LABORERS

710 W. 9TH ST.

JUNEAU, ALASKA

586-3707

Rep. Pat Pourchot
January, 1987

SUMMARY HOUSE BILL 22
WORKER RIGHT-TO-KNOW TO INCLUDE HAZARDOUS PHYSICAL AGENTS

House Bill 22 amends the "worker right-to-know" statutes to include "physical agents" with other toxic and hazardous substances about which employers must inform their employees.

The existing statute (AS 18.60) directs the Department of Labor to prepare for employers information data sheets on hazardous and toxic materials to which employees may be exposed in the workplace. Information which is compiled by the Department is transmitted to the workers by employers and includes: description of the substantial effects of the substance, known threshold levels where effects occur, activities and situations where the substances are encountered and practices, technology and preventative measures which are available to the workers which will reduce or eliminate the negative impacts of the substance. Safety training for new employees is also required.

The same notice and training requirements for hazardous and toxic substances would be applied to "physical agents" under House Bill 22. Physical Agents are only those identified by the American Conference of Governmental Industrial Hygienists (ACGIH) and include:

Ionizing radiation (x-rays)
Heat and cold stress
Impulsive and impact noise
Radiofrequency, microwave, ultraviolet, and infrared radiation
Lasers
Hand-arm vibrations

With enactment of this bill industrial accidents could be reduced in number and severity. For example, accidents such as the microwave exposure which occurred at Clear Air Force Station several years ago may be avoided if workers are better informed of the substances to which they may be exposed and are not aware of preventative and safety precautions. Many occupations are not readily associate with exposure to dangerous levels of physical agents. Welders and pipe fitters, for example, are often exposed to hazardous exposures of ionizing radiation (x-rays) when examining welds and joints.

It should be emphasized that the bill requires only the dissemination of information and safety training by employers. It does not require that employers or employees implements any safety practices or measures.

I anticipate the fiscal note for the bill to be $0 because the Department of Labor essentially will be editing existing information from national organizations relating to health and safety in the workplace, including the ACGIH, the Center for Disease Control, and the Occupational Safety and Health Administration.

Bill No. House Bill 22

Date January 22, 1987

Title "An Act relating to hazardous physical agents in the workplace."

Contact: Eileen Plate
465-2700

Richard Arab
465-4856

Under existing law, employers are required to provide information and training to employees on certain toxic and hazardous substances. This bill seeks to expand this "Right-to-Know" law to include physical agents.

Physical agents are defined as those listed in the "Threshold Limit Values for Chemical Substances and Physical Agents in the Work Environment" as published by the American Conference of Governmental Industrial Hygienists. The latest edition of this publication lists the following physical agents:

- Heat Stress
- Ionizing Radiation
- Lasers
- Noise
- Impulse or Impact Noise
- RF/Microwave Radiation
- Ultraviolet Radiation
- Airborne Upper Sonic and Ultrasonic Acoustic Radiation
- Cold Stress
- Hand-Arm (Segmental) Vibration

Exposure to physical agents can result in permanent disabilities, such as deafness. Often employers and employees are not aware of the harmful effects of a particular hazard present in the workplace, and the training and information requirements provided in this bill would assist in filling this void. This would, in turn, effect implementation of protective measures by the employer to safeguard employees, as well as provide employees with an understanding of the importance of following safe and healthful work practices.

As part of its Occupational Safety and Health program, the Department of Labor enforces regulations to protect employees from certain physical hazards (ionizing radiation, lasers, noise, RF/Microwave radiation, and ultraviolet radiation). The information and training requirement of this bill would, therefore, enhance the Department's efforts to protect Alaska's workers.

The Department of Labor supports House Bill No. 22. It will not have a fiscal impact on the Department.

APPROVED:

Jim Sampson, Commissioner
Department of Labor

POSITION PAPER/Department of Labor

The Right-to-Know Law

In the summer of 1983, Gov. Bill Sheffield signed into law a bill which provides you the right to know about hazardous substances you are working with.

While other federal and state occupational health and safety laws give you access to your workplace medical and exposure records, this new law requires that your employer provide you with information about health effects and proper handling procedures for about 800 hazardous exposures.

Beginning July 1984, each year the Alaska Department of Labor Occupational Safety and Health Section (OSHS) will assemble a list of toxic and hazardous substances to be regulated. The OSHS will include substances on both the U.S. Occupational Safety and Health Administration Toxic and Hazardous Substances List and the American Conference of Governmental Industrial Hygienists' list of hazardous chemicals and physical agents.

If you work with a product containing one of these hazardous substances, your employer must:

► post information relating to your rights under this law, as well as the chemical name of each toxic or hazardous substance you may be exposed to and

► conduct a safety education program for each new work assignment informing you of a) the location and properties of the hazardous substance, b) the known or suspected health effects, c) the nature of any operation that could result in exposure to hazardous or toxic substances, d) any necessary handling or hygienic practices or precautions, and e) the location, proper use, and limitation of personal protective equipment used in the workplace.

If you believe you might be exposed to a hazardous substance, you may request safety and health information about the product or exposure from your employer. The employer must supply an OSHA form 20 material safety data sheet (MSDS) or equivalent information. This should include: the product name and chemical name, the name and address of the manufacturer, principal hazardous components, fire and explosion hazard data, health hazard information, precautions to follow during spills and leaks, proper disposal methods, and handling and storage practices.

Some supporters of the right-to-know legislation watch Gov. Sheffield sign the bill into law. Pictured left to right are Dave Allison, Alaska Environmental Lobby; Resa King, Associated General Contractors; Judy Knight and Richard Arab, Department of Labor; Marlene Neve, Alaska AFL-CIO; and Richard Neve, Department of Environmental Conservation.

If your employer does not have this information available, he/she must contact either OSHS or the product's manufacturer within three days of your request. OSHS will have an information retrieval system to assist employers. Workers also may use this system to obtain health and safety information about hazardous workplace exposures.

If you do not receive the information within 15 days of your request, the employer should eliminate the hazardous workplace exposure.

Note: This new law gives you only the right to know the identity of the hazardous substances with which you are working. It does not provide enforcement of procedures to avoid hazardous exposures. If you believe your work conditions are not safe and healthful, talk with your supervisor and/or union representative. If that doesn't help, file a complaint with OSHS.

For more information contact Alaska Health Project, P.O. Box 103037, Anchorage, Alaska 99510, or phone (907) 276-2354

CAUTION!

Every year hundreds of Alaskan men and women work with chemicals that are potentially dangerous to their health. What kinds of chemicals are YOU exposed to at work???

You Have a Right to Know About Hazardous & Toxic Substances in Your Work Place

Q: What gives me this right?

The Alaska Right To Know Law (AS. 60.068) requires employers, as of July 1, 1984, to collect information on hazardous substances used at their job sites and train workers on those hazards.

Q: Do all Alaskan workers have this right?

YES! The law requires that all Alaskan employers maintain information on the chemicals they use at work and communicate this information to you.

Q: What are my rights?

As an Alaskan worker you have the right to know about the hazards associated with the chemicals you use at work. You have the right to request this information from your employer who must provide you with this information during your work shift. If the information is not immediately available, your employer has 15 days to obtain this information and present it to you. If you do not receive the information within this time period your employer must take measures to prevent your exposure to that substance or substances. Such measures might include removing workers or the substance from the work site. Your employer will provide you with chemical hazard information in the form of a Material Safety Data Sheet (MSDS).

Q: What is a Material Safety Data Sheet (MSDS)?

An MSDS is a form describing chemical health hazard information on a particular chemical product. It also explains emergency handling procedures, disposal information , provides a list of chemical ingredients, and other such information. Of note, a MSDS only provides general information and may not include all the information about a chemical product. Use the MSDS as a stepping stone to obtain more information about the chemicals with which you work. Contact Alaska Health Project if you need assistance.

Q: What responsibility does my boss have?

These are your boss' major responsibilities under the law:

A. Collect and maintain, post, or post notice of the workplace location of MSDSs and provide them to you upon request.

B. Post a poster informing you of your rights under the law (available from the Department of Labor and the Alaska Health Project).

C. Train new employees and other employees who are not aware of the law and who have not received health and safety instruction about the chemicals they may be exposed to at work. See the regulations for specific training requirements.

Q: What should I do with the information once I have it?

Save and study it, then learn as much as you can about the chemicals you work with.

Compare the product name on the MSDS with the name of the chemical you are actually using and make sure they are the same. If not, alert other workers, your foreman, and/or your steward.

Give this information to your doctor when you go for annual check ups and/or emergency situations. This information will help your doctor diagnose any illness or injury that you might have.

Q: How can I get more information on the law and about hazards I may face on the job?

Pick up the phone and call:

Alaska Health Project
276-2864
or
Alaska Department of Labor
264-2594

Please Duplicate & Post

Produced and Distributed by Alaska Health Project, 417 West 8th Ave., Anchorage, AK 99501. Written by David Wigglesworth, Occupational Health Specialist, Alaska Health Project.

U.S. DEPARTMENT OF LABOR
Occupational Safety and Health Administration

Form Approved
OMB No. 44-R1387

MATERIAL SAFETY DATA SHEET

Required under USDL Safety and Health Regulations for Ship Repairing, Shipbuilding, and Shipbreaking (29 CFR 1915, 1916, 1917)

SECTION I

MANUFACTURER'S NAME: WAYNE CHEMICAL CORP.	EMERGENCY TELEPHONE NO.: 1-800-424-9300
ADDRESS (Number, Street, City, State, and ZIP Code): 300 So. Barclay Street, Milwaukee, Wisconsin 53204	
CHEMICAL NAME AND SYNONYMS: Lead Chromate; Yellow-34; C.I. 77600	TRADE NAME AND SYNONYMS: Chrome Yellow Med. Code 89
CHEMICAL FAMILY: Inorganic Pigments	FORMULA: $PbCrO_4$

SECTION II - HAZARDOUS INGREDIENTS

PAINTS, PRESERVATIVES, & SOLVENTS	%	TLV (Units)	ALLOYS AND METALLIC COATINGS	%	TLV (Units)
PIGMENTS Lead as Pb	60	0.15mg/m^3	BASE METAL		
CATALYST			ALLOYS		
VEHICLE			METALLIC COATINGS		
SOLVENTS			FILLER METAL PLUS COATING OR CORE FLUX		
ADDITIVES			OTHERS		
OTHERS Chromate as CrO_3	30	0.10mg/m^3			

HAZARDOUS MIXTURES OF OTHER LIQUIDS, SOLIDS, OR GASES	%	TLV (Units)
Actual compound is $PbCrO_4$ and components as given above are one		
way of expressing the contents of the product.		

Sample

SECTION III - PHYSICAL DATA

BOILING POINT (°F.)	N/A	SPECIFIC GRAVITY (H_2O=1)	5.52
VAPOR PRESSURE (mm Hg.)	N/A	PERCENT, VOLATILE BY VOLUME (%)	1.0
VAPOR DENSITY (AIR=1)	N/A	EVAPORATION RATE (_____ =1)	N/A
SOLUBILITY IN WATER	slight		
APPEARANCE AND ODOR	Fine Yellow Powder; Odorless		

SECTION IV - FIRE AND EXPLOSION HAZARD DATA

FLASH POINT (Method used)	N/A	FLAMMABLE LIMITS	Lel	Uel
EXTINGUISHING MEDIA	Water			
SPECIAL FIRE FIGHTING PROCEDURES	N/A			
UNUSUAL FIRE AND EXPLOSION HAZARDS	N/A			

SECTION V - HEALTH HAZARD DATA

THRESHOLD LIMIT VALUE See Section II

EFFECTS OF OVEREXPOSURE
No immediate harmful effects. Repeated breathing of excessive concentrations can cause minor irritation of skin and mucus membranes.

EMERGENCY AND FIRST AID PROCEDURES

Wash thoroughly with soap and water, especially when exposed to open cuts.
Consult physician if ingested.

SECTION VI - REACTIVITY DATA

STABILITY	**UNSTABLE**		**CONDITIONS TO AVOID**
	STABLE	X	

INCOMPATABILITY *(Materials to avoid)*

HAZARDOUS DECOMPOSITION PRODUCTS

HAZARDOUS POLYMERIZATION	**MAY OCCUR**		**CONDITIONS TO AVOID**
	WILL NOT OCCUR	X	

SECTION VII - SPILL OR LEAK PROCEDURES

STEPS TO BE TAKEN IN CASE MATERIAL IS RELEASED OR SPILLED Wear respirator; vacuum into receptacle for disposal. Wash area with water.

WASTE DISPOSAL METHOD Sanitary landfill in accordance with local, state, and federal regulations.

SECTION VIII - SPECIAL PROTECTION INFORMATION

RESPIRATORY PROTECTION *(Specify type)* Dust respirators approved by NIOSH

VENTILATION	**LOCAL EXHAUST** Required	**SPECIAL**
	MECHANICAL *(General)*	**OTHER**

PROTECTIVE GLOVES Leather gloves | **EYE PROTECTION** Safety goggles

OTHER PROTECTIVE EQUIPMENT Throw away plastic inserts in leather gloves.

SECTION IX - SPECIAL PRECAUTIONS

PRECAUTIONS TO BE TAKEN IN HANDLING AND STORING Store in dry area; keep containers tightly closed; protect from physical damage; avoid dust.

OTHER PRECAUTIONS Change clothes before eating, wash face and hands before eating or smoking; keep away from food or food products. Periodic blood tests.

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Alaskan workers should have a basic understanding of this document in order to effectively utilize their right to know about hazardous materials in the workplace.

For more information, contact Alaska Health Project, P.O. Box 10-1037, Anchorage, Alaska 99510, or phone (907) 276-2864

STATE OF ALASKA 1987 LEGISLATIVE SESSION
FISCAL NOTE

Bill Version : HB 22
Publish Date :

REQUEST:

Revision Date:
Title : "An Act relating to hazardous physical agents in the workplace."
Sponsor : Pourchot and Boyer et al.
Requestor : House Labor & Commerce

Agency Affected : Labor
BRU : Occupational Safety & Health
Components : Occupational Safety and Health

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 87	FY 88	FY 89	FY 90	FY 91	FY 92
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0	0	0	0	0	0
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL	0	0	0	0	0	0

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS : (Attach a separate page if necessary)

Prepared by : Tom Stuart, Director
Division : Labor Standards and Safety
Phone : 465-4870
Date : 1/23/87

Approved by Commissioner : Jim Sampson
Agency : Labor
Date : 1/23/87

Distribution (by preparer):
- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)
- Senate Secretary

Chapter 60. Safety.

Article
1. Prevention of Accident and Health Hazards (§§ 18.60.010 — 18.60.105)
2. Search and Rescue (§§ 18.60.120 — 18.60.175)
3. Boilers (§§ 18.60.180 — 18.60.395)
4. Refrigerators and Similar Equipment (§§ 18.60.400 — 18.60.460)
5. Radiation Protection (§§ 18.60.475 — 18.60.545)
6. Electrical Safety (§§ 18.60.580 — 18.60.660)
7. High Voltage Lines (§§ 18.60.670 — 18.60.695)
8. Plumbing Code (§§ 18.60.705 — 18.60.740)
9. Safety Glazing (§§ 18.60.750 — 18.60.780)
10. Elevators (§§ 18.60.800 — 18.60.820)
11. Snow Safety (§ 18.60.822)
12. Alaska Safety Advisory Council (§§ 18.60.830, 18.60.835)
13. Piping Codes (§ 18.60.850)
14. Miscellaneous Provisions (§ 18.60.950)

Opinions of attorney general. — The state has occupational safety and health jurisdiction over all non-maritime employment activities within the state's territorial waters as defined by law. February 16, 1982 Op. Att'y Gen.

Article 1. Prevention of Accident and Health Hazards.

Section
10. Legislative intent
20. Regulations
30. Duties of Department of Labor
40. Report to legislature
55. Division of labor standards and safety
57. Occupational Safety and Health Review Board
58. Reporting of injuries and illnesses
59. Legal counsel
60. Cooperation by other state agencies
65. Importation of toxic and hazardous substances
66. Employee safety education programs
67. Information provided on employee's request
68. Posting of information in workplace
70. Control of funds
75. Safe employment
77. Variance of a standard
80. Contributions
81. Temporary variance
83. Right of entry and inspection
85. Prohibition of unauthorized notice of inspection
87. Employer and employee participation
89. Employee requests for special inspection
89. Prohibition against retribution
91. Citations
93. Enforcement procedures
95. Penalties
96. Imminent dangers
97. Judicial review
98. Employee compensation for appearances
99. Confidentiality of trade secrets
100. Nonabrogation of powers of Department of Health and Social Services
105. Definitions

Opinions of attorney general. — This article applies equally to agencies of state government and to private sector employers. March 27, 1980 Op. Att'y Gen.

The Alaska Department of Labor has sufficient authority under Alaska law to administer and enforce safety and health regulations as to employment conditions on state-operated vessels which are not separately regulated by the federal Occupational Safety and Health Administration, the United States Coast Guard or any other federal agency. February 16, 1982 Op. Att'y Gen.

The state's strong interest in providing occupational safety and health coverage for all of its employees, combined with the primarily local operation of most state ferries and vessels, provides a substantial basis for applying state laws to employment conditions on State of Alaska vessels. February 16, 1982 Op. Att'y Gen.

With respect to state employees working on vessels which are too small to qualify for the Coast Guard's certification requirements, or which are otherwise exempted from Coast Guard inspections, the Department of Labor retains jurisdiction to enforce any applicable existing safety and health standards, as may be supplemented by eventual maritime standards. February 16, 1982 Op. Att'y Gen.

The Department of Labor cannot cite a partnership for a violation of the Occupational Safety and Health Act where the only exposed workers are partners of the partnership; where the facts indicate a bona fide partnership and the only exposed workers are partners who share equally in the control and operation of the partnership, there are no exposed employees under this article and the partnership is not in violation. February 20, 1985 Op. Att'y Gen.

Collateral references. — 61 Am. Jur. 2d, Plant and Job Safety — OSHA and State Laws, § 1 et seq.

56 C.J.S., Master and Servant, §§ 171-481; 57 C.J.S., Master and Servant, §§ 482-554.

Availability in action by third person for damages against public contractor, of provisions in contract as to care to be exercised or precautions to be taken for protection of third persons. 69 ALR 522.

Validity of safety zone ordinance. 79 ALR 1328.

Constitutionality of statute requiring protection against occupational or industrial diseases and accidents with respect to definiteness and completeness. 99 ALR 613.

Delegation to board or officer of police power to require vacation, destruction, or repair of individual building deemed by such officer or board unsafe or unsanitary, apart from noncompliance with specific regulations. 114 ALR 446.

Validity, construction, and application of regulations of business of building or construction contractors. 118 ALR 676.

What is a "factory" within statutes relating to safety and health of employees. 163 ALR 447.

What constitutes a "scaffold" within scaffold safety requirement statutes. 87 ALR2d 977.

Sec. 18.60.010. Legislative intent. (a) The legislature finds that personal injuries and illnesses arising out of work situations impose a substantial burden upon, and are a hindrance to, the people of the state in terms of loss of production, wage loss, medical expenses and disability compensation payments.

(b) For these reasons it is found and declared necessary to undertake a program to reduce the incidence of work-related accidents and health hazards in the state. (§ 2 ch 109 SLA 1955; am § 1 ch 72 SLA 1973)

Cross references. — For employment in underground mines, see AS 23.10.405.

NOTES TO DECISIONS

Duty to enforce safety provisions. — Due to the 1973 amendments, this title now imposes upon the state a duty to enforce the safety provisions once violations have been discovered. Wallace v. State, Sup. Ct. Op. No. 1352 (File No. 2683), 557 P.2d 1120 (1976).

The state is liable for a failure to enforce safety regulations once it has undertaken an inspection and has discovered safety violations in the course of that investigation. Wallace v. State, Sup. Ct. Op. No. 1352 (File No. 2683), 557 P.2d 1120 (1976).

The state Department of Labor, by conducting safety inspections of the pipe installation site, voluntarily assumed a duty, owed to decedent, to use due care in attempting to remedy the unsafe condition discovered in the course of inspection. Wallace v. State, Sup. Ct. Op. No. 1352 (File No. 2683), 557 P.2d 1120 (1976).

And has no immunity under AS 09.50.250. — See Wallace v. State, Sup. Ct. Op. No. 1352 (File No. 2683), 557 P.2d 1120 (1976)

Since negligent performance of inspection is ministerial function. — Although the decision to inspect a site is a discretionary act, the negligent performance of that inspection is a ministerial function and thus not immune. Wallace v. State, Sup. Ct. Op. No. 1352 (File No. 2683), 557 P.2d 1120 (1976).

Quoted in Bachner v. Rich, Sup. Ct. Op. No. 1291 (File No. 2309), 554 P.2d 430 (1976).

Sec. 18.60.020. Regulations. (a) The Department of Labor shall issue the orders and adopt the regulations necessary to carry out the purposes of AS 18.60.010 — 18.60.105.

(b) Upon adopting a regulation or standard, or granting any variance under this chapter, the commissioner shall include a statement of the reasons for the action, forward a copy to the OSHA Review Board, cause a copy to be published in newspapers and submit a news release to the electronic news media in the state so as to receive statewide coverage. (§ 4 ch 109 SLA 1955; am § 2 ch 148 SLA 1957; am § 2 ch 72 SLA 1973; am § 1 ch 276 SLA 1976)

NOTES TO DECISIONS

Action for damages by injured workman not authorized. — Nowhere in either AS 18.60.010 — 18.60.105 or regulations can there be found authorization for a claim for relief and award of civil damages to an injured workman for harm resulting from the breach of AS 18.60.010 — 18.60.105 or the General Safety Code. Morris v. City of Soldotna, Sup. Ct. Op. No. 1296 (File No. 2286), 563 P.2d 474 (1976).

Quoted in Bachner v. Rich, Sup. Ct. Op. No. 1291 (File No. 2309), 554 P.2d 430 (1976); Wallace v. State, Sup. Ct. Op. No. 1352 (File No. 2683), 557 P.2d 1120 (1976).

Sec. 18.60.030. Duties of Department of Labor. The Department of Labor shall

(1) study ways and means for prevention of accidents to persons on the streets and highways, in and on the water, in aircraft usage, in homes, on the farms, at schools, industrial and commercial plants, and in public places;

(2) plan and execute safety programs, including educational campaigns, designed to reduce accidents in every field of activity;

(3) work in cooperation with official and unofficial organizations and instrumentalities in the state that are interested in the promotion of safety so that possible resources can be marshalled and utilized to reduce the menace of accidental death and injury;

(4) work toward obtaining better observance and enforcement of laws governing street and highway traffic, and assist in bringing about, wherever feasible, the application of modern engineering measures for the prevention of traffic accidents;

(5) advise with the public agencies responsible for safeguarding the people against accidents, and especially with the Department of Transportation and Public Facilities, the Department of Public Safety, the Department of Education, Department of Natural Resources, Department of Health and Social Services, and the heads or representatives of federal departments and agencies operating in the state particularly concerned with safety programs and accident prevention;

(6) establish and enforce occupational safety and health standards that prescribe requirements for safe and healthful working conditions for all employment, including state and local government employment, and the requirements are to be at least as effective as those requirements adopted by the United States Secretary of Labor under § 6 of Public Law 91-596;

(7) require an employer to maintain records and submit reports to the department which records and reports are necessary or appropriate for the enforcement of AS 18.60.010 — 18.60.105 and to maintain records and submit reports to the United States Secretary of Labor in the same manner and to the same extent as set out in federal law and regulations;

(8) require an employer to maintain records and submit reports appropriate for use in developing information regarding the causes and prevention of occupational accidents and illnesses;

(9) require an employer to make periodic inspections when necessary to carry out the record and reporting requirements of (7) and (8) of this section;

(10) participate in occupational safety and health programs if it finds they are necessary to meet the occupational health and safety needs of the state;

(11) execute on behalf of the state agreements or contracts necessary or desirable to enable the state to participate in occupational safety and health programs, and to receive and expend funds made available for programs of the state;

(12) annually publish a list of toxic and hazardous substances;

(13) maintain a current set of OSHA form 20's or equivalent information for toxic and hazardous substances, and other information relevant to toxic and hazardous substances;

(14) assist employers, upon request, to identify and obtain information on toxic and hazardous substances and develop employee safety education programs. (§ 5 ch 109 SLA 1955; am § 6 ch 104 SLA 1971; am § 3 ch 72 SLA 1973; am § 11 E.O. No. 39 (1977); am § 1 ch 93 SLA 1983)

Effect of amendments. — The 1983 amendment added paragraphs (12)-(14).

Editor's notes. — Section 6 of Public Law 91-596, referred to in paragraph (6) of this section, may be found in 29 U.S.C. § 655.

Legislative history reports. — For adoption of letter of intent relating to ch. 93 SLA 1983, see 1983 Senate Journal, p. 1148 and 1983 House Journal, p. 1959.

Opinions of attorney general. — The Department of Labor can publish its list of designated toxic and hazardous substances pursuant to paragraph (12) and AS 18.60.105(a) without going through the promulgation proceeding in the Administrative Procedure Act. The list is merely a compilation of chemicals and substances from sources already identified by the legislature. July 18, 1984 Op. Att'y Gen.

As the list to be published by the Department of Labor under (12) includes those chemicals and substances described in AS 18.60.105(a)(8)(A), (B), (C) and (D), they are coextensive. July 19, 1984 Op. Att'y Gen.

NOTES TO DECISIONS

The 1973 amendments to this title made mandatory the enforcement of safety regulations in most instances. Wallace v. State, Sup. Ct. Op. No. 1352 (File No. 2683), 557 P.2d 1120 (1976).

What paragraphs (3) and (5) require. — The statutory language of paragraphs (3) and (5) of this section merely requires that the Department of Labor should work in cooperation with and advise other public agencies in safety matters. State v. Morris, Sup. Ct. Op. No. 1330 (File Nos. 2218, 2253), 555 P.2d 1216 (1976).

Paragraphs (3) and (5) do not delegate certain legislative and executive duties. — Paragraphs (3) and (5) of this section did not delegate to the former Department of Highways [now Department of Transportation and Public Facilities] any part of the duty of the executive and legislative branches of government to allocate money, personnel and other resources to the various departments, to instruct them in their various tasks and to determine the priorities of competing governmental policies in the absence of general legal mandates. State v. Morris, Sup. Ct. Op. No. 1330 (File Nos. 2218, 2253), 555 P.2d 1216 (1976).

Applied in Woods & Rohde, Inc. v. State, Dep't of Labor, Sup. Ct. Op. No. 1433 (File No. 2903), 565 P.2d 138 (1977).

Sec. 18.60.040. Report to legislature. Before the sixth day of each regular legislative session the Department of Labor shall submit to the legislature a report showing the accomplishments in this state toward reductions in accidents of all types, and recommendations for legislation, together with a plan for the proposed safety program for the succeeding year. Copies of the report shall be available for public information. (§ 6 ch 109 SLA 1955)

Sec. 18.60.050. Employment for education and enforcement purposes. [Repealed, § 9 ch 72 SLA 1973.]

Sec. 18.60.055. Division of labor standards and safety. As established by AS 23.10.075, there is in the department a division of labor standards and safety. Minimum qualifications must be established for employees of the department acting as safety inspectors under AS 18.60.010 — 18.60.105. These qualifications must include, as a minimum requirement, at least five years general work experience in the field they are assigned to inspect. Training in safety principles, codes and standards may be substituted for work experience up

to a maximum of three years. (§ 4 ch 72 SLA 1973; am § 2 ch 276 SLA 1976; am E.O. No. 52, § 2 (1982))

Effect of amendments. — The 1982 amendment added "As established by AS 23.10.075" to the beginning of the section, deleted "established" preceding "in the department" and substituted "division of labor standards and safety" for "division of occupational safety and health to be administered by a director responsible to the commissioner" in the first sentence, substituted "must be established" for "shall be established" and added "under AS 18.60.010 — 18.60.105" to the end, in the second sentence, and substituted "must include" for "shall include" in the next-to-last sentence.

NOTES TO DECISIONS

The 1973 amendments to this title made mandatory the enforcement of safety regulations in most instances. Wallace v. State, Sup. Ct. Op. No. 1352 (File No. 2683), 557 P.2d 1120 (1976).

Applied in Woods & Rohde, Inc. v. State, Dep't of Labor, Sup. Ct. Op. No. 1433 (File No. 2903), 565 P.2d 138 (1977).

Sec. 18.60.057. Occupational Safety and Health Review Board. (a) There is created the Occupational Safety and Health Review Board within the Department of Labor, referred to in this chapter as the OSHA Review Board. The board shall consist of three members appointed by the governor and confirmed by the legislature in joint session. One member of the board shall represent labor, one member shall represent industry, and the other shall represent the public. Each appointee must have adequate experience in the area of appointment. A member of the board may not be an employee of the state in another capacity nor may a member of the OSHA Review Board be a member or officer of another board or commission for which compensation other than per diem and travel expenses is paid.

(b) The members of the board serve staggered terms of four years. A vacancy caused by the death, resignation, or removal of a member before the expiration of the term for which the member was appointed shall be filled only for the remainder of the unexpired term. A member of the board may be removed by the governor for inefficiency, neglect of duty or malfeasance in office.

(c) The governor shall designate one member of the board as chairman. This member shall serve as chairman for a term of one year, but may be appointed for successive terms.

(d) Members of the board are entitled to compensation in the amount of $50 a day for each day or portion of each day spent in actual meeting or on authorized official business incident to their duties and, in addition, they are entitled to all other transportation and per diem as provided by law for members of other state boards and commissions.

(e) The board may employ persons, subject to legislative appropriation, it considers necessary for the purpose of performing its duties under this chapter. (§ 4 ch 72 SLA 1973; am § 36 ch 37 SLA 1986)

Cross references. — For transportation and per diem expenses for members of boards and commissions, see AS 39.20.180.

Effect of amendments. — The 1986 amendment rewrote subsection (b).

Sec. 18.60.058. Reporting of injuries and illnesses. In the event of an employment accident that is fatal to one or more employees or that results in the overnight hospitalization of one or more employees, the employer shall report the accident by telephone, telegram, radio, or in person to the nearest office of the division of labor standards and safety. The report must relate the circumstances of the accident, the number of fatalities, and the extent of any injuries. The report must be made immediately but in no event later than 24 hours after receipt by the employer of information that the accident has occurred. In the event of an employment accident that is fatal to one or more employees or that results in the overnight hospitalization of two or more employees, no equipment, material, or product related to the injury or fatality may be moved or altered until clearance is given by the department, except when compliance with this requirement would interfere for an unreasonable length of time with work or create additional hazards. If equipment, material, or products must be moved or altered before department clearance, the employer shall submit a detailed investigative report of the accident to the division. (§ 3 ch 276 SLA 1976; am E.O. No. 52, § 3 (1982))

Effect of amendments. — The 1982 amendment deleted the subsection (a) designation, and substituted "the employer" for "their employer" and "division of labor standards and safety" for "division of occupational safety and health" in the first sentence.

Sec. 18.60.059. Legal counsel. (a) The attorney general is legal counsel for the OSHA Review Board. The attorney general shall advise the board on legal matters arising in the discharge of its duties and represent the board in actions to which it is a party. If, in the opinion of the board, the public interest is not adequately represented by counsel in a proceeding, the attorney general, upon request of the board, shall represent the public interest.

(b) Subject to the approval of the attorney general, the board may employ temporary legal counsel from time to time in matters in which the board is involved. (§ 4 ch 72 SLA 1973)

Sec. 18.60.060. Cooperation by other state agencies. The agencies of the state shall cooperate with the Department of Labor in its program of safety activities, and shall make available information needed by the Department of Labor relative to the accident problems and methods employed or recommended for accident prevention. The agencies may lend the personnel who may be spared from their regular duties for short periods to assist in safety programs. (§ 3 ch 109 SLA 1955)

Sec. 18.60.065. Importation of toxic and hazardous substances. Toxic and hazardous substances imported into the state shall be accompanied by a federal Occupational Safety and Health Administration (OSHA) form 20 or equivalent information. This requirement does not apply to a substance for which the in-state purchaser has already received the most current information. (§ 2 ch 93 SLA 1983)

Opinions of attorney general. — Cosmetic products, when used by employees in a commercial establishment, do not fall within the exemption for products intended for personal consumption under AS 18.60.105(a)(9)(B); therefore, this section requires that material safety data sheets be provided for cosmetics to be used in commercial establishments. November 1, 1985 Op. Att'y Gen.

Sec. 18.60.066. Employee safety education programs. (a) An employer shall conduct a safety education program for an employee before the employee performs a new work assignment that may result in the employee being exposed to a toxic or hazardous substance for which the employee has not received safety instruction as provided under (b) of this section.

(b) An employee safety instruction program shall inform the employee of

(1) the location, properties, and known or suspected acute and chronic health effects of the hazardous or toxic substances to which the employee is exposed in the workplace;

(2) the nature of the operations that could result in exposure to hazardous or toxic substances, as well as any necessary handling or hygienic practices or precautions; and

(3) the location, purpose, proper use, and limitations of personal protective equipment used in the workplace. (§ 2 ch 93 SLA 1983)

Sec. 18.60.067. Information provided on employee's request. (a) An employer shall make available to an employee on request a copy of the most recent OSHA form 20 or equivalent written information for a toxic or hazardous substance to which the employee may be exposed. If the employer does not have the copy or information requested, the employer shall request a copy from the department or the manufacturer of the substance within three state government working days after receiving the request.

(b) If the copy or information requested under (a) of this section is not made available to the employee within 15 calendar days after the request is received, the employer shall take measures to assure that employees are not exposed to the substance to which the copy or infor-

mation pertains until the copy or information is made available to the employee who made the request. This subsection applies only to substances for which an OSHA form 20 or equivalent information is required under OSHA regulations. This subsection does not alter, deny, or abrogate any right an employee may have under law to refuse to work under hazardous circumstances. (§ 2 ch 93 SLA 1983)

Sec. 18.60.068. Posting of information in workplace. (a) The department shall print and make available to employers posters that contain notice of the provisions of this chapter relating to toxic and hazardous substances.

(b) An employer whose employees are or may be exposed in the workplace to a toxic or hazardous substance shall display the following information in a manner designed to notify the employees:

(1) a poster printed by the department under (a) of this section; and

(2) an OSHA form 20 or equivalent information for each toxic or hazardous substance to which an employee may be exposed in the workplace

(A) under normal conditions of work; or

(B) during a reasonably foreseeable emergency, including equipment failure and rupture of containers.

(c) Instead of posting the information required under (b)(2) of this section, an employer may post a list of the chemical name and product name of each toxic or hazardous substance to which an employee may be exposed in the workplace, together with an identification of a location, in or near the workplace and accessible to employees, where an employee may inspect the information listed under (b)(2) of this section. (§ 2 ch 93 SLA 1983)

Sec. 18.60.070. Control of funds. Funds appropriated by the legislature for AS 18.60.010 — 18.60.105, and contributions shall be spent only for the purposes of AS 18.60.010 — 18.60.105. (§ 9 ch 109 SLA 1955; am § 5 ch 148 SLA 1957; am § 37 ch 37 SLA 1986)

Effect of amendments. — The 1986 amendment deleted "funds in the boiler fund created for AS 18.60.380" following "AS 18.60.010 — 18.60.105."

Editor's notes. — AS 18.60.380, referred to in this section, was repealed by § 3, ch. 29, SLA 1968.

Sec. 18.60.075. Safe employment. (a) An employer shall do everything necessary to protect the life, health and safety of employees including, but not limited to:

(1) complying with all occupational safety and health standards and regulations adopted by the department;

(2) furnishing and prescribing the use of suitable protective equipment, safety devices and safeguards as are prescribed for the work and work place;

(3) adopting and prescribing control or technological procedures, and monitoring and measuring employee exposure in connection with hazards, as may be necessary for the protection of employees; and

(4) furnishing to each employee employment and a place of employment that are free from recognized hazards that, in the opinion of the commissioner, are causing or are likely to cause death or serious physical harm to the employees.

(b) An employee shall comply with occupational safety and health standards and all regulations issued under AS 18.60.010 — 18.60.105 that are applicable to the employee's own actions and conduct.

(c) *[Repealed, § 9 ch 72 SLA 1973.]* (§ 43-2-21 ACLA 1949; am § 3 ch 148 SLA 1957; am § 1 ch 104 SLA 1970; am §§ 5, 6, 9 ch 72 SLA 1973; am § 4 ch 276 SLA 1976)

NOTES TO DECISIONS

Scope of duty to provide safe worksite. — There is a common-law duty to provide a safe worksite running to whomever supplies and controls that worksite, which duty protects all workers on the site and not just the employees of the defendant. Parker Drilling Co. v. O'Neill, Sup. Ct. Op. No. 2759 (File Nos. 6999, 7436), 674 P.2d 770 (1983).

AS 18.60.010 — 18.60.105 and the General Safety Code unquestionably impose duties on the general contractor. Bachner v. Rich, Sup. Ct. Op. No. 1291 (File No. 2309), 554 P.2d 430 (1976).

The state is not an "employer" for purposes of civil liability per se under the Alaska "Safe Place to Work Act," and various administrative safety regulations. State v. Morris, Sup. Ct. Op. No. 1330 (File Nos. 2218, 2253), 555 P.2d 1216 (1976).

Action for damages by injured workman not authorized. — Nowhere in either AS 18.60.010 — 18.60.105 or regulations can there be found authorization for a claim for relief and award of civil damages to an injured workman for harm resulting from the breach of AS 18.60.010 — 18.60.105 or the General Safety Code. Morris v. City of Soldotna, Sup. Ct. Op. No. 1296 (File No. 2286), 553 P.2d 474 (1976).

Tort liability does not flow from a breach of statutory and regulatory duties as a matter of course. Morris v. City of Soldotna, Sup. Ct. Op. No. 1296 (File No. 2286), 553 P.2d 474 (1976).

Section held not applicable in action pursuant to Wrongful Death Act. — This section and the provisions of the Alaska General Safety Code were held not applicable in an action for damages pursuant to the Alaska Wrongful Death Act. Morris v. City of Soldotna, Sup. Ct. Op. No. 1296 (File No. 2286), 553 P.2d 474 (1976).

Negligence of a servant does not excuse the master from liability to a coservant for an injury which would not have happened had the master performed his duty. Johnson v. Steamship Zelandia, 3 Alaska 662 (1909).

If the negligence of the company contributed to, it must necessarily have been an immediate cause of, the accident, and it is no defense that another was likewise guilty of wrong. Johnson v. Steamship Zelandia, 3 Alaska 662 (1909).

For case discussing duties of employer regarding safety of employees decided prior to the enactment of this section, see Allen v. Knight's Island Consol. Copper Co., 3 Alaska 651 (1909).

Applied in Wallace v. State, Sup. Ct. Op. No. 1352 (File No. 2683), 557 P.2d 1120 (1976); Woods & Rohde, Inc. v. State, Dep't of Labor, Sup. Ct. Op. No. 1433 (File No. 2903), 565 P.2d 138 (1977).

Collateral references. — Non-delegable duty of employer in respect of work which will in the natural course of events produce injury, unless certain precautions are taken. 23 A.L.R. 1016.

Duty of master providing machine of standard make and in common use to equip same with safety device or guard. 36 ALR 1477.

Construction and application of statutes imposing upon employer or owner general duty regarding safety of building. 101 ALR 408.

Violation of statute or ordinance regarding safety of building or premises as creating or affecting liability for injuries or death. 132 ALR 863.

Duty of owner of premises to furnish independent contractor or his employee a safe place of work, where contract is for repairs. 31 ALR2d 1375.

Duty and liability of employer to domestic servant for personal injury or death. 49 ALR2d 317.

Sec. 18.60.077. Variance of a standard. (a) An employer who is affected by AS 18.60.010 — 18.60.105 may apply to the commissioner for a variance from a provision of the safety and health standards adopted by the department. Employees who are affected by an application for variance shall be given notice of the application for variance and an opportunity to participate in the hearing. The commissioner shall issue the variance if the commissioner determines on the basis of the hearing record, after opportunity for an inspection where appropriate, 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 of employment to employees that are as safe and as healthful as those that would prevail if the employer complied with the provisions of the safety and health standards adopted by the department. The variance shall prescribe the conditions the employer must maintain and the practices, means, methods, operations, and processes that the employer must adopt and utilize to the extent they differ from the standard in question. The variance may be modified or revoked upon application by an employer, by employees, or by motion of the commissioner, in the manner prescribed for its issuance under this subsection at any time after six months from its issuance.

(b) When the commissioner grants a variance, the commissioner shall include in this grant a statement of the reasons for the action, and the statement shall be published in a newspaper of statewide circulation and in a newspaper of local circulation in the area where the variance will be implemented. A copy of the statement shall be sent to the OSHA Review Board. (§ 7 ch 72 SLA 1973)

Sec. 18.60.080. Contributions. The Department of Labor may accept contributions of funds, property, materials, supplies and other forms of aid from business firms, organized groups or individuals for furthering the safety program. (§ 10 ch 109 SLA 1955)

Sec. 18.60.081. Temporary variance. (a) An employer who is affected by AS 18.60.010 — 18.60.105 may apply to the commissioner for a temporary variance from a provision of the safety and health standards adopted by the department. A temporary variance shall be issued only if the employer files an application fulfilling the requirements of (b) of this section and the employer establishes that the employer

(1) is unable to comply with a standard by its effective date because of unavailability of the professional or technical personnel or of the materials and equipment needed to come into compliance or because necessary construction or alteration of facilities cannot be completed by the effective date;

(2) is taking all available steps to safeguard employees against the hazards covered by the standard;

(3) has an effective program for coming into compliance with the standards as quickly as practicable.

(b) An application for a temporary variance must contain

(1) a specification of the standard from which the employer seeks a temporary variance;

(2) a representation by the employer, supported by representations from qualified persons having firsthand knowledge of the facts represented, that the employer is unable to comply and a detailed statement of the reasons for this inability;

(3) 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;

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

(5) a certification that the employer has informed employees of the application for temporary variance and of their right to request a hearing by giving a copy of the application and a written statement of the right to a hearing to the employees' authorized representative, by posting a statement giving a summary of the application and stating the employees' right to a hearing and specifying where a copy of the application and notice of right to a hearing may be examined at the place or places where notices to employees are normally posted, and by other appropriate means.

(c) A temporary variance issued under this section must prescribe the practices, means, methods, operations and processes that the em-

ployer shall adopt and use while the variance is in effect and state in detail the employer's program for coming into compliance with the standard. A temporary variance may be granted only after notice to affected employees and an opportunity for hearing. However, the commissioner may issue one interim order to be effective until a decision is made on the basis of a hearing. A temporary variance may not 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 a temporary variance may be renewed no more than twice if the requirements of (a) and (b) of this section are met and the application for renewal is filed at least 90 days before the expiration date of the variance. An interim renewal of an order may not remain in effect for longer than 180 days. (§ 7 ch 72 SLA 1973)

Sec. 18.60.083. Right of entry and inspection. (a) A representative of the department, upon presenting appropriate credentials to the owner, operator, or agent in charge, may

(1) enter without delay and at reasonable times a factory, plant, establishment, construction site, or other area, work place or environment where work is performed by an employee of an employer; and

(2) inspect and investigate during regular working hours and at other reasonable times, and with reasonable limits and in a reasonable manner, a place of employment and all pertinent conditions, structures, machines, devices, equipment and materials, and to question privately an employer, owner, operator, agent or employee.

(b) In making inspections and investigations under (a) of this section the department may issue subpoenas compelling the attendance of witnesses and the production of papers and records. Witnesses shall be paid the same fees and mileage that are paid witnesses in the courts of the state. If a person fails to grant a right of entry and inspection, the department may seek an order from the superior court compelling the person to submit to entry and inspection. If a person fails to comply with a subpoena or a witness refuses to testify to a matter regarding which the witness may be lawfully interrogated, a superior court may compel obedience by proceedings for contempt as in the case of disobedience of the requirements of a subpoena issued from the court or a refusal to testify before it. (§ 7 ch 72 SLA 1973)

NOTES TO DECISIONS

The 1973 amendments to this title made mandatory the enforcement of safety regulations in most instances. Wallace v. State, Sup. Ct. Op. No. 1352 (File No. 2683), 557 P.2d 1120 (1976).

Paragraphs (1) and (2) of subsection (a) parallel 29 U.S.C. § 657(a). — Paragraphs (1) and (2) of subsection (a), authorizing the right of entry and inspection, substantially parallel the federal counterpart, 29 U.S.C. § 657(a). Woods & Rohde, Inc. v. State, Dep't of Labor, Sup. Ct. Op. No. 1433 (File No. 2903), 565 P.2d 138 (1977).

Warrantless inspection is unconstitutional. — A warrantless Occupational Safety and Health Act inspection, as authorized by subsection (a), constitutes an unconstitutional search in that it is violative of Alaska Const., art. I, § 14. Woods & Rohde, Inc. v. State, Dep't of Labor, Sup. Ct. Op. No. 1433 (File No. 2903), 565 P.2d 138 (1977).

In light of the expansive protections afforded to citizens of Alaska by virtue of Alaska Const., art. I, §§ 14 and 22 against warrantless searches and seizures and invasions of privacy, the Alaska Constitution prohibits warrantless administrative inspections of private business premises. Woods & Rohde, Inc. v. State, Dep't of Labor, Sup. Ct. Op. No. 1433 (File No. 2903), 565 P.2d 138 (1977).

Since violations of Alaska's Occupational Safety and Health Act can result in significant fines and imprisonment, the self-protection and private interests of the owner of business premises are deserving of, although not equivalent to, the significant constitutional solicitude and protection afforded Alaska's citizens in criminal prosecutions, for broad statutory safeguards are inadequate substitutes for individualized judicial review of applications for search warrants. Woods & Rohde, Inc. v. State, Dep't of Labor, Sup. Ct. Op. No. 1433 (File No. 2903), 565 P.2d 138 (1977).

Burden of obtaining warrant will not frustrate purpose of inspections. — Authority to inspect and search one's business premises should be evidenced by a warrant, and the burden of obtaining a warrant is not likely to frustrate the purpose of Occupational Safety and Health Act inspections. Woods & Rohde, Inc. v. State, Dep't of Labor, Sup. Ct. Op. No. 1433 (File No. 2903), 565 P.2d 138 (1977).

For discussion of federal and state decisional law in the area of administrative search and seizure, as well as the federal decisional law relating specifically to the Federal Occupational Safety and Health Act, see Woods & Rohde, Inc. v. State, Dep't of Labor, Sup. Ct. Op. No. 1433 (File No. 2903), 565 P.2d 138 (1977).

Cited in Howard v. State, Sup. Ct. Op. No. 1707 (File No. 3089), 583 P.2d 827 (1978).

Sec. 18.60.085. Prohibition of unauthorized notice of inspection. No unauthorized notice of a department safety or health inspection may be given. A person who gives unauthorized notice of a safety or health inspection, upon conviction, is punishable by a fine of not more than $1,000, or by imprisonment for not more than 180 days, or by both. (§ 7 ch 72 SLA 1973)

Sec. 18.60.087. Employer and employee participation. (a) A representative of the employer and a representative authorized by the employees shall be given an opportunity to accompany the representative of the department during the physical inspection of a work place for the purpose of aiding the inspection. If the authorized representative is an employee, time spent aiding the inspection shall be considered as time worked and the employee shall be compensated accordingly. When there is no authorized employee representative, there shall be consultation with a reasonable number of employees concerning matters of health and safety in the work place.

(b) Comments relating to an employer's compliance with the provisions of AS 18.60.010 — 18.60.105 made by an employee or an employee representative to the representative of the department during the course of an inspection, and the name of any employee or employee representative making these comments to a representative of the department, are confidential and may not be made available by the

department to the employer without the consent of the employee or the employee representative. (§ 7 ch 72 SLA 1973; am § 5 ch 276 SLA 1976)

NOTES TO DECISIONS

Applied in Woods & Rohde, Inc. v. State, Dep't of Labor, Sup. Ct. Op. No. 1433 (File No. 2903), 565 P.2d 138 (1977).

Sec. 18.60.088. Employee requests for special inspection. (a) An employee or a 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 of the violation or danger to the department. The notice shall be in writing and set out with reasonable particularity the grounds for the notice and be signed by the employee or the representative of the employees. If, upon receipt of the notice, the department determines that there are reasonable grounds to believe that a violation or danger exists, the department shall make a special inspection as soon as practicable. If the department determines there are no reasonable grounds to believe that a violation exists, the department shall notify in writing the employee or the representative of the employees of that determination.

(b) If the department makes a special inspection, or an inspection under AS 18.60.083, a copy of an employee notice shall be provided the employer no later than at the time of the inspection. Unless expressly consented to by the person giving the notice, the person's name and the name of employees referred to in the notice shall be kept confidential and may not appear in the copy provided the employer or in any record available to the employer.

(c) The department shall furnish the notifying person a written explanation of why a citation was not issued after a special inspection.

(d) The department shall, by regulation, establish a review procedure for a failure to issue a citation after a special inspection and shall provide the employees requesting a review a written statement of the final disposition of the case. (§ 7 ch 72 SLA 1973; am § 6 ch 276 SLA 1976)

NOTES TO DECISIONS

The 1973 amendments to this title made mandatory the enforcement of safety regulations in most instances. Wallace v. State, Sup. Ct. Op. No. 1362 (File No. 2683), 557 P.2d 1120 (1976).

Sec. 18.60.089. Prohibition against retribution. (a) A person may not discharge or discriminate against an employee because the employee has filed a complaint or instituted or caused to be instituted a proceeding related to the enforcement of occupational safety and health standards, or has testified or is expected to testify in a proceeding relating to occupational safety and health or because an employee has exercised personally or on behalf of others a right afforded under AS 18.60.010 — 18.60.105.

(b) An employee who has been discharged or discriminated against by a person in violation of this section may, within 30 days after the violation occurs, file a complaint with the commissioner alleging the discrimination. Upon receipt of the complaint, the commissioner shall investigate the matter as the commissioner considers appropriate. If, upon investigation, the commissioner determines that this section has been violated, the commissioner shall request the attorney general to bring an action in the superior court against the violator. The superior court has jurisdiction to restrain violations of (a) of this section and to order all appropriate relief including rehiring or reinstatement of the employee to the employee's former position with back pay.

(c) Within 90 days of the receipt of a complaint filed under this section, the commissioner shall notify the complainant of the determination under (b) of this section. (§ 7 ch 72 SLA 1973)

Sec. 18.60.090. Penalty for violations. [Repealed, § 9 ch 72 SLA 1973.]

Sec. 18.60.091. Citations. (a) If, upon inspection or investigation, the department believes that an employer has violated a provision of AS 18.60.010 — 18.60.105 that is applicable to the employer, the department shall with reasonable promptness issue a citation to the employer. Each citation shall be in writing and must describe with particularity the nature of the violation, including reference to the provisions of the chapter or any order or regulation alleged to have been violated, and must fix a reasonable time for abatement of the violation. The department may prescribe procedures for the issuance of a notice instead of a citation with respect to minor violations that have no direct or immediate relationship to safety or health, or violations that are not serious and that the employer agrees to correct within a reasonable time. If an employer does not, within a reasonable time set out in the notice, correct a violation that is not serious, the department shall issue a citation to the employer.

(b) Upon receipt by the employer, each citation issued under this section, or a copy of the citation, shall be immediately and prominently posted, at or near each place the violation referred to in the citation occurred.

(c) A citation may not be issued for a particular violation under this section after the expiration of 180 days following the discovery of the violation by the department or correction of a violation. (§ 7 ch 72 SLA 1973; am § 1 ch 26 SLA 1983)

Effect of amendments. — The 1983 amendment, in subsection (a), deleted "rule" preceding "or regulation" in the second sentence, added the language beginning "or violations which are not serious" to the end of the third sentence, and added the last sentence.

NOTES TO DECISIONS

The 1973 amendments to this title made mandatory the enforcement of safety regulations in most instances. Wallace v. State, Sup. Ct. Op. No. 1352 (File No. 2683), 557 P.2d 1120 (1976).

Sec. 18.60.093. Enforcement procedures. (a) If, after an inspection or investigation, or after an employer's failure to correct a violation for which the employer has been issued a notice, the department issues a citation, the commissioner shall, at a reasonable time after the termination of the inspection or investigation, or expiration of the time period set out in the notice, notify the employer by certified mail of the penalty proposed to be assessed and that the employer has 15 working days within which to notify the commissioner and the OSHA Review Board that the employer wishes to contest the citation or proposed assessment of penalty. If, within 15 working days after receipt of the penalty notice issued by the commissioner, the employer fails to notify the OSHA Review Board that the employer intends to contest the citation, or proposed assessment of penalty, the citation and the assessment, as proposed, are considered final and not subject to review by any court.

(b) If the commissioner has reason to believe that an employer has failed to correct, within the period allowed, a violation for which a citation has been issued, the commissioner shall notify the employer by certified mail of the failure, of the penalty proposed to be assessed because of the failure, and that the employer has 15 working days within which to notify the commissioner and the OSHA Review Board of a wish to contest the commissioner's notification of the proposed assessment of penalty. If, within 15 working days from the receipt of the notification issued by the commissioner, the employer fails to give notice of an intention to contest the notification or proposed assessment of penalty, the notification and assessment as proposed shall be considered a final order and not subject to review by any court.

(c) If an employer gives notice of an intention to contest the citation or notification issued under (a) or (b) of this section, the OSHA Review Board shall afford an opportunity for a hearing and thereafter issue an order, based on findings of fact, affirming, modifying, or vacating the original citation or proposed penalty, or directing other appropriate relief, and the order is final 30 days after its issuance.

(d) The OSHA Review Board shall notify the authorized representative of the affected employees that an employer is contesting a citation or notification issued under (a) or (b) of this section and afford the representative an opportunity to participate in the hearing on the matter.

(e) An employer, an affected employee or a representative of affected employees has 15 working days from the receipt of a citation within which to notify the commissioner and the OSHA Review Board that the period of time fixed in the citation for the abatement of a violation is unreasonable. The OSHA Review Board shall afford an opportunity for a hearing and thereafter issue an order, based on findings of fact, affirming or modifying the original period for abatement, and the order is final 30 days after its issuance. If the contest is initiated by the employer, the OSHA Review Board shall notify the employees in the same manner as provided by (d) of this section. If the contest is initiated by the employees, the OSHA Review Board shall notify the employer and afford the employer an opportunity to participate in the hearing on the matter. (§ 7 ch 72 SLA 1973; am § 2 ch 26 SLA 1983)

Effect of amendments. — The 1983 amendment, in subsection (a), inserted "or after an employer's failure to correct a violation for which the employer has been issued a notice" and "or expiration of the time period set out in the notice" in the first sentence, substituted "after receipt of the penalty notice" for "from the receipt of the notice" in the second sentence, removed personal pronouns from the first and second sentences, and made a minor word change in the second sentence.

Opinions of attorney general. — Agencies assessed penalties under this section and AS 18.60.095 must, as a general rule, pay those penalties, within the limits of available appropriations, from their operating budgets. In the event an agency wishes to contest a citation, the agency may be represented by its assigned counsel in the Attorney General's Office before the Occupational Safety and Health Act Review Board; if the agency chooses to contest an adverse determination by the review board, outside counsel, funded by the agency, will have to be employed. March 27, 1980 Op. Att'y Gen.

NOTES TO DECISIONS

The 1973 amendments to this title made mandatory the enforcement of safety regulations in most instances. Wallace v. State, Sup. Ct. Op. No. 1352 (File No. 2683), 557 P.2d 1120 (1976).

Sec. 18.60.095. Penalties. (a) An employer who wilfully or repeatedly violates a provision of AS 18.60.010 — 18.60.105 that is applicable to the employer or a standard or regulation adopted under AS 18.60.010 — 18.60.105 may be assessed by the commissioner a civil penalty of not more than $10,000 for each violation.

(b) An employer who receives a citation for a serious violation of a provision of AS 18.60.010 — 18.60.105 that is applicable to the employer or of a standard or regulation adopted under AS 18.60.010 — 18.60.105 shall be assessed by the commissioner a civil penalty of up

to $1,000 for each violation. For purposes of this subsection, a serious violation is considered to exist if the violation creates in the place of employment a substantial probability of death or serious physical harm. However, a serious violation is not considered to exist if the employer did not, and could not with the exercise of reasonable diligence, know of the presence of the violation.

(c) An employer who receives a citation for a violation of a provision of AS 18.60.010 — 18.60.105 that is applicable to the employer of a standard or regulation adopted under AS 18.60.010 — 18.60.105, and the violation is specifically determined not to be of a serious nature, may be assessed by the commissioner a civil penalty of up to $1,000 for each violation.

(d) An employer who fails to correct a violation within the period permitted for its correction for which a citation has been issued may be assessed by the commissioner a civil penalty of not more than $1,000 for each day during which the failure to correct the violation continues.

(e) An employer who wilfully or repeatedly violates a provision of AS 18.60.010 — 18.60.105 that is applicable to the employer or a standard or regulation adopted under AS 18.60.010 — 18.60.105, and the violation causes death to an employee, upon conviction, is punishable by a fine of not more than $10,000, or by imprisonment for not more than six months, or by both. However, upon a second conviction after a prior conviction for a violation causing death, an employer is punishable by a fine of not more than $20,000, or by imprisonment for not more than one year, or by both.

(f) A person who knowingly makes a false statement, representation, or certification in an application, record, report, plan or other document filed or required to be maintained under AS 18.60.010 — 18.60.105, upon conviction, is punishable by a fine of not more than $10,000, or by imprisonment for not more than six months, or by both.

(g) An employer who violates the posting requirements of this chapter shall be assessed by the commissioner a civil penalty of up to $1,000 for each violation.

(h) In assessing a civil penalty, the commissioner shall give due consideration 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. (§ 7 ch 72 SLA 1973)

Opinions of attorney general. — Agencies assessed penalties under AS 18.60.093 and this section must, as a general rule, pay those penalties, within the limits of available appropriations, from their operating budgets. In the event an agency wishes to contest a citation, the agency may be represented by its assigned counsel in the Attorney General's Office before the Occupational Safety and Health Act Review Board; if the agency chooses to contest an adverse determination by the review board, outside counsel, funded by the agency, will have to be employed. March 27, 1980 Op Att'y Gen.

The state may enforce the criminal penalties set out in subsections (e) and (f) on the Annette Islands Reserve. May 3, 1983 Op. Att'y Gen.

NOTES TO DECISIONS

Section and former AS 18.60.090 compared. — See Krall v. Royal Inns of Am., Inc., 374 F. Supp. 146 (D. Alaska 1973).

Whereas former AS 18.60.090 set forth "fines" and "imprisonment" as penalties, this section, which replaced the former section, now specifies "civil penalties" for most violations, saving "fines" and "imprisonment" for serious violations only. Krall v. Royal Inns of Am., Inc., 374 F. Supp. 146 (D. Alaska 1973).

Neither mention tort remedies or nonavailability of contributory negligence. — See Krall v. Royal Inns of Am., Inc., 374 F. Supp. 146 (D. Alaska 1973).

Defense of contributory negligence not abolished. — See Krall v. Royal Inns of Am., Inc., 374 F. Supp. 146 (D. Alaska 1973).

From indicia concerning former AS 18.60.090 the federal district court was not persuaded the legislature intended to abolish the defense of contributory negligence for a violation of the Alaska General Safety Code or in any way intended to depart from the normal practice of allowing the defense. Krall v. Royal Inns of Am., Inc., 374 F. Supp. 146 (D. Alaska 1973).

The Alaska legislature did not intend to deny the defense of contributory negligence to negligence per se based on violations of the Alaska General Safety Code. Krall v. Royal Inns of Am., Inc., 374 F. Supp. 146 (D. Alaska 1973).

The effect of the Alaska General Safety Code and the enabling legislation is not to place the entire responsibility for the harm on the defendant employer. Krall v. Royal Inns of Am., Inc., 374 F. Supp. 146 (D. Alaska 1973).

Action by injured workman for damages not authorized. — Nowhere in either AS 18.60.010 — 18.60.105 or regulations can there be found authorization for a claim for relief and award of civil damages to an injured workman for harm resulting from the breach of AS 18.60.010 — 18.60.105 or the General Safety Code. Morris v. City of Soldotna, Sup. Ct. Op. No. 1296 (File No. 2286), 553 P.2d 474 (1976).

The worker's limited ability to exercise self-protective care because of economic duress did not persuade the federal district court to construe this article to eliminate the defense of contributory negligence. Krall v. Royal Inns of Am., Inc., 374 F. Supp. 146 (D. Alaska 1973).

Fact finder to sift through facts of each case. — By retaining the defense of contributory negligence, it remains to the finder of fact to sift through the facts and circumstances of each case and determine whether the employee met that duty. Krall v. Royal Inns of Am., Inc., 374 F. Supp. 146 (D. Alaska 1973).

Applied in Woods & Rohde, Inc. v. State, Dep't of Labor, Sup. Ct. Op. No. 1433 (File No. 2903), 565 P.2d 138 (1977).

Sec. 18.60.096. Imminent dangers. (a) The commissioner, or a designated agent as authorized by the commissioner, may issue orders restraining a particular condition or practice in any place of employment that constitutes a danger that could reasonably be expected to immediately cause death or serious physical harm. The terms of an order issued under this section may require steps to be taken as necessary to avoid, correct, or remove the imminent danger and may prohibit the employment or presence of an individual in locations or under conditions where imminent danger exists. The terms of the order may allow the presence of individuals necessary to avoid, correct, or remove the imminent danger.

(b) When and as soon as a representative of the department concludes that conditions or practices described in (a) of this section exist

in any place of employment, the representative shall inform the affected employees and employer of the danger and that the representative is recommending to the commissioner, or a designated agent as authorized by the commissioner, the issuance of a restraining order.

(c) The attorney general shall, when requested by the commissioner, seek an injunction in superior court to enforce a restraining order issued under this section.

(d) If the commissioner arbitrarily or capriciously fails to issue a restraining order under this section, an employee who may be injured by reason of the failure, or the representative of the affected employees, may bring an action against the commissioner in superior court to compel the commissioner to issue a restraining order and for further relief as may be appropriate. (§ 7 ch 72 SLA 1973; am § 32 ch 127 SLA 1974)

Sec. 18.60.097. Judicial review. (a) A person affected by an order of the OSHA Review Board under AS 18.60.093(c) or (e) or of the commissioner under AS 18.60.096 may obtain a review of the order by filing a notice of appeal in the superior court as provided in Rule 45 of the Rules of Appellate Procedure of the State of Alaska.

(b) The department may obtain review of an order of the OSHA Review Board under AS 18.60.093(c) or (e) by filing a notice of appeal in the superior court as provided in Rule 45 of the Rules of Appellate Procedure of the State of Alaska.

(c) An order of the OSHA Review Board under AS 18.60.093(c) or (e) or of the commissioner under AS 18.60.096 becomes final and is not subject to review by any court if a notice of appeal is not filed with the superior court within the period provided for by Rule 45 of the Rules of Appellate Procedure of the State of Alaska.

(d) An employer seeking judicial review of an order of the OSHA Review Board or of the commissioner must inform the affected employees of the fact that the employer is seeking judicial review.

(e) The court shall review an order of the OSHA Review Board or of the commissioner on a substantial-evidence basis. (§ 7 ch 72 SLA 1973; am § 7 ch 276 SLA 1976)

Sec. 18.60.098. Employee compensation for appearances. (a) The employer shall compensate any of the employer's employees who appear at a board hearing under AS 18.60.010 — 18.60.105 for loss of wages if the employee appears at the hearing as the result of a request of the employer or as the result of a subpoena issued at the employer's request.

(b) The employer shall compensate any of the employer's employees who appear at a judicial proceeding under AS 18.60.010 — 18.60.105

for loss of wages if the employee appears at the proceeding as the result of a request of the employer or as the result of a subpoena issued at the employer's request.

(c) An employee who appears at a board hearing under AS 18.60.010 — 18.60.105 as the result of a request of the state or the OSHA Review Board or as the result of a subpoena issued at the request of the state or the OSHA Review Board shall be compensated at the rate of $30 a day and transportation costs. (§ 7 ch 72 SLA 1973)

Sec. 18.60.099. Confidentiality of trade secrets. Information obtained by the department in connection with an inspection or proceeding related to enforcement of occupational safety and health standards that contains or that might reveal a trade secret referred to in 18 U.S.C. 1905 is confidential. However, the information may be disclosed to other officers or employees concerned with carrying out occupational safety and health enforcement activities. In a proceeding, the commissioner or the court as may be applicable shall issue orders as may be appropriate to protect the confidentiality of trade secrets. (§ 7 ch 72 SLA 1973)

NOTES TO DECISIONS

Applied in Woods & Rohde, Inc. v. State, Dep't of Labor, Sup. Ct. Op. No. 1433 (File No. 2903), 565 P.2d 139 (1977).

Sec. 18.60.100. Nonabrogation of powers of Department of Health and Social Services. AS 18.60.010 — 18.60.105 are not intended to abrogate the powers, duties and responsibilities of the Department of Health and Social Services in carrying out the provisions of this title and AS 17. (§ 7 ch 148 SLA 1957; am § 6 ch 104 SLA 1971)

Sec. 18.60.105. Definitions. (a) In AS 18.60.010 — 18.60.105

(1) "be exposed" means to ingest, inhale, or absorb through the skin or eyes a substance, or fumes or other potentially harmful aspect of a substance;

(2) "commissioner" means the commissioner of labor;

(3) "department" means the Department of Labor;

(4) "employee" means a person who works for an employer;

(5) "employer" means a person, including the state and political subdivisions of the state, who has one or more employees;

(6) "OSHA" means the federal Occupational Safety and Health Administration;

(7) "suitable protective equipment" includes such personal protective equipment as is required by regulation issued under this chapter;

(8) "toxic or hazardous substance" includes

(A) a chemical listed in 29 CFR Part 1910, Subpart Z, Toxic and Hazardous Substances, "General Industry Standards", Occupational Safety and Health Administration;

(B) a chemical listed in "Threshold Limit Values for Chemical Substances and Physical Agents in the Work Environment", American Conference of Governmental Industrial Hygienists (Latest Edition);

(C) a substance for which an OSHA form 20 or equivalent information is required under OSHA regulations; and

(D) a substance determined by the department, in accordance with the Administrative Procedure Act (AS 44.62), to be a health hazard to an employee who is exposed to the substance, including a carcinogen, reproductive toxin, irritant, corrosive, sensitizer, hepatotoxin, nephrotoxin, neurotoxin, agent that acts on the hematopoietic system, agent that damages the lungs, a cutaneous hazard and an eye hazard;

(9) "toxic or hazardous substance" does not include

(A) substances that because of their physical state, volume, or concentration do not pose a health hazard upon exposure;

(B) substances that are goods, food, drugs, cosmetics, or tobacco products intended for personal consumption; or

(C) substances in transit;

(10) "transit" means conveyed in a sealed or unopened container by a mode of transportation.

(b) In AS 18.60.030(14), 18.60.065 — 18.60.068, and 18.60.105(a)(9)

(1) "employee" means a person who works for an employer, but not in a place used primarily as a personal residence;

(2) "employer" means a person, including the state and a political subdivision of the state, who has one or more employees working in a place not used primarily as a personal residence;

(3) "health hazard" means a substance capable of causing acute or chronic adverse effects to health;

(4) "workplace" means a place of employment other than a place used primarily as a personal residence. (§ 43-2-21 ACLA 1949; am § 3 ch 148 SLA 1957; am § 8 ch 72 SLA 1973; am §§ 3, 4 ch 93 SLA 1983)

Revisor's notes. — Subsection (a) was reorganized in 1983 to alphabetize the defined terms.

Effect of amendments. — The 1983 amendment added the paragraphs defining "be exposed," "OSHA," "toxic or hazardous substance," and "transit" to subsection (a) and added subsection (b).

Opinions of attorney general. — The Department of Labor can publish its list of designated toxic and hazardous substances pursuant to AS 18.60.030(12) and subsection (a) without going through the promulgation proceeding in the Administrative Procedure Act. The list is merely a compilation of chemicals and substances from sources already identified by the legislature. July 18, 1984 Op. Att'y Gen.

As the list to be published by the Department of Labor under AS 18.60.030(12) includes those chemicals and substances described in paragraph (a)(8), they are coextensive. July 18, 1984 Op. Att'y Gen.

The Department of Labor does not have the authority, under subparagraph (a)(9)(A), to promulgate regulations excluding from its list of toxic and hazardous substances those described under subparagraph (a)(8)(A) and (B). July 18, 1984 Op. Att'y Gen.

Cosmetic products, when used by employees in a commercial establishment, do not fall within the exemption for products intended for personal consumption under subparagraph (a)(9)(B); therefore, AS 18.60.065 requires that material safety data sheets be provided for cosmetics to be used in commercial establishments. November 1, 1985 Op. Att'y Gen.

NOTES TO DECISIONS

AS 18.60.010 — 18.60.105 and the General Safety Code unquestionably impose duties on the general contractor. Bachner v. Rich, Sup. Ct. Op. No. 1291 (File No. 2309), 554 P.2d 430 (1976).

Activities covered. — The Alaska Occupational Safety Health Act, AS 18.60.010 — 18.60.105, embraces an enormous number of "unrelated and disparate activities" which make up private enterprise in the State of Alaska and reaches many commercial undertakings which have no history of regulation, let alone a history of intensive regulation. Woods & Rohde, Inc. v. State, Dep't of Labor, Sup. Ct. Op. No. 1433 (File No. 2903), 565 P.2d 138 (1977).

Article 2. Search and Rescue.

Section
120. Search and rescue parties
130. Expenses of search and rescue parties
140. Limitation of amount of expenditure for search and rescue
145. Search and rescue fund
146. Civil air patrol
148. Transfer of forfeited aircraft to civil air patrol
150. Report of mysterious disappearance or separation from companions
160. Violation a misdemeanor
170. Report and investigation of disappearance
175. Regulations

Collateral references. — 1 Am. Jur. 2d, Absentees, § 10; 22 Am. Jur. 2d, Death, §§ 304, 305, 310, 313.

Sec. 18.60.110. Fund for rescue and relief of lost persons. [Repealed, § 1 ch 15 SLA 1968.]

Sec. 18.60.120. Search and rescue parties. Upon being notified that a person is lost, injured, killed, or is in need of immediate rescue, the commissioner of public safety or a designee may appoint a competent person to organize, direct, and guide a search and rescue party for the purpose of rescuing or retrieving the person or the person's remains. (§ 40-8-3 ACLA 1949; am § 3 ch 24 SLA 1966; am § 1 ch 57 SLA 1970; am § 1 ch 109 SLA 1980)

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(B) a chemical listed in "Threshold Limit Values for Chemical Substances and Physical Agents in the Work Environment", American Conference of Governmental Industrial Hygienists (Latest Edition);

(C) a substance for which an OSHA form 20 or equivalent information is required under OSHA regulations; and

(D) a substance determined by the department, in accordance with the Administrative Procedure Act (AS 44.62), to be a health hazard to an employee who is exposed to the substance, including a carcinogen, reproductive toxin, irritant, corrosive, sensitizer, hepatotoxin, nephrotoxin, neurotoxin, agent that acts on the hematopoietic system, agent that damages the lungs, a cutaneous hazard and an eye hazard;

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(B) substances that are goods, food, drugs, cosmetics, or tobacco products intended for personal consumption; or

(C) substances in transit;

(10) "transit" means conveyed in a sealed or unopened container by a mode of transportation.

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