

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.

Sec. 18.60.020. Regulations.

(a) The Department of Labor and Workforce Development 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.

Sec. 18.60.030. Duties of Department of Labor and Workforce Development.

The Department of Labor and Workforce Development 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, in 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) confer with and make recommendations to the public agencies responsible for safeguarding the people against accidents, and especially with and to the Department of Transportation and Public Facilities, the Department of Public Safety, the Department of Education and Early Development, the Department of Natural Resources, the Department of Health, 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 29 U.S.C. 655 (§ 6 of P.L. 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 and physical agents;

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

(14) assist employers, upon request, to develop employee safety education programs and to identify and obtain information on toxic and hazardous substances and physical agents;

(15) make recommendations to the governor and the legislature on the achievement of a coordinated state policy and program for the safety and health of residents of the state;

(16) organize and hold an annual governor's safety conference to bring together citizens interested in safety and health matters; the department may charge a fee to attend the safety conference based on the estimated cost to organize and hold the conference.

Sec. 18.60.040. Report.

Before the sixth day of each regular legislative session, the department shall prepare 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, and the department shall notify the legislature that the report is available.

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 shall 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.

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 and

Workforce Development, 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.

Sec. 18.60.058. Reporting of employment fatalities, hospitalizations, and injuries.

(a) In the event of an employment accident that is fatal to an employee or that results in an employee's in-patient hospitalization, an employee's loss of an eye, or an employee's amputation, the employer shall report the accident. The report must be made by telephone or in person to the nearest office of the division of labor standards and safety or by telephone to the federal toll-free number provided by the division. The report must relate the name of the establishment, the location of the accident, the time of the accident, a contact person and the telephone number of the contact person, a brief description of the accident, the number of fatalities or injured employees, and the extent of any injuries. The report must be made immediately but in no event later than eight hours after receipt by the employer of information that the accident has occurred. However, if the employer first receives information of a fatality, in-patient hospitalization, loss of an eye, or amputation eight or more hours after the accident but not later than 30 days after the accident, the employer must make the report not later than eight hours after receiving the information. This subsection does not apply to an employer that first receives information of a fatality, in-patient hospitalization, loss of an eye, or amputation more than 30 days after the accident.

(b) In the event of an employment accident that is fatal to one or more employees or that results in in-patient hospitalization of two or more employees, equipment, material, or product related to the injury or fatality may not 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.

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.

Sec. 18.60.060. Cooperation by other state agencies.

The agencies of the state shall cooperate with the department in its program of safety activities and shall make available information needed by the department 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.

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.

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 or a physical agent 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 or physical agents 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 or physical agents 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.

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 or for a physical agent 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 information 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.

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 and physical agents.

(b) An employer whose employees are or may be exposed in the workplace to a toxic or hazardous substance or a physical agent 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 and for each physical agent 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 and each physical agent 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.

Sec. 18.60.070. Use of funds and contributions.

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.

Sec. 18.60.075. Safe employment.

(a) An employer shall do everything necessary to protect the life, health, and safety of employees, including

(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 workplace;

(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.]

Sec. 18.60.077. Variance from 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.

Sec. 18.60.080. Contributions.

The department 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.

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 employer 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.

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 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.

Sec. 18.60.085. Prohibition of unauthorized notice of inspection.

A person may not give unauthorized notice of a department safety or health inspection. A person who gives unauthorized notice of a safety or health inspection, upon conviction, is punishable by a fine of not more than \$7,000, or by imprisonment for not more than 180 days, or by both.

Sec. 18.60.087. Employer and employee participation in inspections.

(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.

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 must 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.

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.

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 [AS 18.60.010](#) — 18.60.105 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.

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.

(f) If an employer fails without good cause to appear at a hearing held under this section after receiving proper notice of the hearing, the OSHA Review Board may order the employer to pay all reasonable expenses incurred by the board for the hearing, including the board's actual travel expenses and per diem.

(g) The board shall request the chief administrative law judge ([AS 44.64.020](#)) to appoint an administrative law judge employed or retained by the office of administrative hearings to preside at a hearing conducted under this section. [AS 44.64.060](#) and 44.64.070 do not apply to the hearing. The administrative law judge who presided at the hearing shall be present during the consideration of the case and, if requested by the board, shall assist and advise the board. A member of the board who has not heard all of the evidence may not vote on the decision.

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 the maximum amount or less than the minimum amount established by regulation under (i) of this section 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 not more than the maximum amount established by regulation under (i) of this section. 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 or 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 not more than the maximum amount established by regulation under (i) of this section.

(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 the maximum amount established by regulation under (i) of this section.

(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. This subsection does not preclude prosecution of the employer under [AS 11](#).

(f) A person who knowingly makes a false statement, representation, or certification with the intent to mislead in an application, record, report, plan or other document filed or required to be maintained under [AS 18.60.010](#) — 18.60.105 is guilty of unsworn falsification in the second degree.

(g) An employer who violates the posting requirements of [AS 18.60.010](#) — 18.60.105 shall be assessed by the commissioner a civil penalty of not more than the maximum amount established by regulation under (i) of this section.

(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.

(i) The commissioner shall establish by regulation the maximum civil penalty amounts to be imposed under (a) — (d) and (g) of this section and the minimum civil penalty amount to be imposed for wilful violations under (a) of this section. The maximum amount of the civil penalties may not be greater than the corresponding federal penalty for the specified violations, as provided under 29 U.S.C. 666 (Occupational Safety and Health Act of 1970), and must include any adjustments made to the penalties under 28 U.S.C. 2461 (Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015).

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.

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 the Alaska Rules of Appellate Procedure.

(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 the Alaska Rules of Appellate Procedure.

(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 the Alaska Rules of Appellate Procedure.

(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.

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.

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.

Sec. 18.60.100. Nonabrogation of powers of Department of Health.

[AS 18.60.010](#) — 18.60.105 are not intended to abrogate the powers, duties, and responsibilities of the Department of Health in carrying out the provisions of this title and [AS 17](#).

Sec. 18.60.105. Definitions.

(a) Except as provided in (b) of this section, 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 physical agent, or fumes or other potentially harmful aspect of a substance or physical agent;

(2) “commissioner” means the commissioner of labor and workforce development;

(3) “department” means the Department of Labor and Workforce Development;

(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) “physical agent” means a physical agent that exceeds the threshold established in the 1986-1987 edition of “Threshold Limit Values for Chemical Substances and Physical Agents in the Work Environment” published by the American Conference of Governmental Industrial Hygienists;

(8) “suitable protective equipment” includes such personal protective equipment as is required by regulation issued under this chapter;

(9) “toxic or hazardous substance”

(A) includes

(i) a chemical listed in 29 C.F.R. Part 1910, Subpart Z, Toxic and Hazardous Substances, “General Industry Standards”, Occupational Safety and Health Administration;

(ii) 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);

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

(iv) a substance determined by the department, in accordance with [AS 44.62](#) (Administrative Procedure Act), 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;

(B) does not include

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

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

(iii) 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 (a)(9) of this section,

(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 or physical agent 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.

Article 2. Search and Rescue.