

THE OCCUPATIONAL SAFETY AND HEALTH (AMENDMENT) BILL, 2005

EXPLANATORY NOTE

(These notes form no part of the Bill but are intended only to indicate its general purport)

This Bill seeks to amend the Occupational Safety and Health Act, 2004.

Clause 1 would provide for the short title of the Bill.

Clause 2 would provide for the interpretation provisions.

Clause 3 would amend section 4 to provide for the deletion and the insertion of certain words and phrases and the addition of two new definitions namely “health surveillance” and “intoxicant” and a change in the definition of ‘young person’ to be in conformity with the Children’s (Amendment) Act, 2000.

Clause 4 would amend section 6 to provide for a new subsection that addresses a general duty for employers’ compliance with all duties imposed under the Act.

Clause 5 would amend section 8, by making typographical corrections and by including a new subsection, which provides a time frame for occupiers to comply with the said section.

Clause 6 would amend section 9, by deleting certain words and inserting new words.

Clause 7 would amend section 10, by adding two new duties of employees and by deleting subsections (2), (3), and (4) and by removing the fine imposed and substituting the words “in accordance with the Offences Against the Person Act”.

Clause 8 would create a new section 13A, which requires an employer to make an annual risk assessment as a part of his general duties and a time frame for the conclusion of such risk assessment.

Clause 9 would amend section 15, by deleting certain words.

Clause 11 would amend section 16, by deleting certain words.

Clause 12 would amend section 18, by making typographical corrections and other amendments including the reduction in the time frame for the inspector’s report from seventy-two hours to twenty-four hours.

Clauses 12, 13 and 14 would amend sections 19, 21 and 25 respectively, by making typographical corrections.

Clause 15 would repeal section 25G, which dealt with risk assessment and was included as a new section 13A.

Clause 16 would amend section 25H by making typographical corrections.

Clause 17 would repeal and replace section 25K for clarity.

Clause 18 would amend section 26, by making certain deletions and inserting a new subsection (17) relating to the annual risk assessment.

Clause 19 would amend section 34, by making typographical corrections.

Clause 20 would amend section 37, by making certain deletions and substitutions in subsection (1).

Clause 21 would amend section 39, by deleting certain words.

Clause 22 would amend section 43, by deleting the words which limit emergency health facilities to a specific number and by creating a connection to the risk assessment in determining whether or not emergency health facilities are required.

Clause 23 would amend sections 46A, by deleting a typographical error.

Clause 24 and 25 would amend sections 48 and 57, by making typographical corrections.

Clause 26 would amend section 58, by inserting an omission.

Clause 27 would amend section 59 by providing for an automatic presumption of approval after thirty days of giving notice of alteration to industrial establishment.

Clause 28 would amend section 65, by inserting the Tobago House of Assembly as a member of the Authority.

Clause 29 would amend section 71(1), by deleting and substituting a new paragraph (a).

Clause 30 would amend section 72, by adding a new paragraph to subsection (3) and inserting a new subsection (4), to address the use of threats against an Inspector and Chief Inspector before a prohibition or improvement notice is issued and further to allow an appeal process by the person on whom a prohibition notice is served.

Clause 31 would amend section 74, by repealing subsection (5) and inserting two new subsections.

Clause 32 would repeal section 79 and substitute a new section to mandate the Inspector to produce his identification on visiting an industrial establishment.

Clause 33 would amend section 83, by creating a safety and health offence and by giving that jurisdiction to the Industrial Court.

Clause 34 would amend section 85, by creating a new subsection to provide a penalty for safety and health offences where none is provided in the Act.

Clause 35 would amend section 86, by making typographical corrections.

A BILL

AN ACT to amend the Occupational Safety and Health Act, 2004

- Enactment ENACTED by the Parliament of Trinidad and Tobago as follows:
- Short title 1. This Act may be cited as the Occupational Safety and Health (Amendment) Act, 2006.
- Interpretation
Act No. 1 of 2004 2. In this Act “the Act” means the Occupational Safety and Health Act, 2004.
- Section 4 amended 3. The Act is amended in section 4 –
- (a) in the definition “approved standard”, by inserting after the words “the Standards Act, 1997” the words “and includes an appropriate type as determined by the Authority”;
 - (b) in paragraph (b) of the definition of “Court”, by inserting after the words “section 83(A)” the words “and 97A,”;
 - (c) by inserting in appropriate alphabetical sequence the following new definitions:
 - “ “health surveillance” means the periodic review, for the purpose of protecting health and preventing occupationally related disease, of the health of employees, so that any adverse variations in their health that may be related to working conditions are identified as early as possible;” ; and
 - “ “intoxicant” means any alcohol, medicament, narcotics and psychotropic substances;”.

- (d) in the definition of “young person”, by deleting the word “fourteen” and substituting the word “sixteen”.

Section 6 amended

4. The Act is amended in section 6 –

- (a) in subsection (2), by deleting paragraph (g) and substituting the following new paragraph:

“ (g) compliance with any other duties imposed on him by this Act”; and

- (b) subsection (10), by deleting the words “section 6(6)” and substituting the words “subsection 6(9)”.

Section 8 amended

5. The Act is amended in section 8 -

- (a) subsection (2)(b), by deleting the words “25H” and substituting the words “13A”.; and

- (b) by inserting after subsection (4), the following new subsection:

“(5) An occupier shall ensure that the requirements under this section under this Act is complied with within three months of the employment of its twenty-fifth employee.”.

Section 9 amended

6. The Act is amended in section 9 –

- (a) by deleting the word “(1)” at the commencement of the section;
- (b) by deleting the words “Environmental Management Authority” wherever they occur and substituting the words “Authority responsible for managing the environment”; and
- (c) by deleting subsections (2), (3) and (4).

Section 10
amended

7. The Act is amended in section 10 -

(a) subsection (1), by inserting after paragraph (d) the following new paragraphs:

“(e) to exercise the discretion under section 15 in a responsible manner; and

(f) to ensure that he is not under the influence of an intoxicant to the extent that he is in such a state as to endanger his own safety, health or welfare at work or that of any other person.”;

(b) subsection (2), by deleting the words “to a fine of ten thousand dollars” and substituting the words “in accordance with the Offences Against the Person Act”.

Chap. 11:08

Section 13
amended

8. The Act is amended by inserting after section 13 the following new section:

“Annual Risk
assessment

13A. (1) Every employer shall make a suitable and sufficient annual assessment of -

(a) the risks to the safety and health of his employees to which they are exposed whilst they are at work; and

(b) the risks to the safety and health of persons not in his employment arising out of or in connection with the environmental impact of his undertaking,

for the purpose of identifying what measures are necessary for compliance with this Act or any other Statutory provision.

(2) Any assessment referred to in paragraph (a) or (b) shall be reviewed by the employer who made it if -

- (a) there is reason to suspect that it is no longer valid; or
- (b) there has been a significant change in the matters to which it relates,

and where as a result of any such review changes to an assessment are required, the employer or self-employed person concerned shall make them.

(3) Where the employer employs twenty-five or more employees, he shall keep a record in accordance with section 75 of -

- (a) the findings of the assessment; and
- (b) any group of his employees identified by the assessment as being exposed to an occupational safety and health risk.

(4) The employer shall submit a report to the Chief Inspector within one (1) month after the conclusion of the annual risk assessment.”.

Section 15
amended

9. The Act is amended in section 15 –
- (a) by inserting the words “sufficient” before the word “reason”;
 - (b) in paragraph (a), by deleting the words “or others”; and
 - (c) by inserting the word “his” after the word “injurious to”.

Section 16
amended

10. The Act is amended in section 16 –
- (a) by deleting the word “promptly” and substituting the word “immediately”; and
 - (b) by inserting the words “refusal or” before the words “intended refusal”.

Section 18
amended

11. The Act is amended in section 18 –
- (a) subsection (1), by deleting the words “16(1)(a), (b) or (c)”

and substituting words “16(2)(a), (b) or (c)” and by inserting after those words, the words “and make a decision”;

(b) subsection (2), by deleting the words “seventy-two” and substituting the words “twenty-four” and by deleting the words “16(a) or (b)” and substituting the words “16(2)(a) or (b)”;

(c) subsection (4), by deleting the words “seek redress under section 83A.” and substituting the words “apply to the Industrial Court to have the matter determined”.

Section 19
amended

12. The Act is amended in section 19(2), by deleting the word “in” occurring in paragraph (b) and substituting the word “is”.

Section 21
amended

13. The Act is amended in section 21, by deleting the words “16(a) or (b)” and substituting the words “16(2)(a) or (b)”.

Section 25
amended

14. The Act is amended in section 25(5), by deleting the words “paragraph (b)” and substituting the words “paragraph (4)(b)”.

Section 25G
repealed

15. The Act is amended by repealing section 25G.

Section 25H
amended

16. The Act is amended in section 25H by deleting the word “it”.

Section 25K
amended

17. The Act is amended in section 25K(1) by inserting the words “annual risk” before the word “assessment”.

Section 26
amended

18. The Act is amended in section 26 -

(a) in subsection (2), by deleting the words “every twenty four months” and substituting the words “in the manner prescribed under this Act,”;

(b) in subsection (4) paragraph (a), by deleting the words “employed or proposed to be employed”; and

(c) by inserting after subsection 16, the following new subsection:

“(17) An employer shall take into consideration the results of the annual risk assessment carried out pursuant to section 13A in determining what is necessary to provide a means of escape in case of fire.”.

Section 34
amended

19. The Act is amended in section 34(1) –

- (a) paragraph (a), by deleting the words “, in” and substituting the word “an”; and
- (b) paragraph (b), by deleting the words “, in” and substituting the word “an”.

Section 37
amended

20. The Act is amended in section 37(1)-

- (a) by inserting the words “or is already employed” after the words “seeks employment”;
- (b) by deleting the word “shall” and substitute the word “may”;
- (c) by inserting the word “a” before the word “medical examination”;
- and
- (d) by inserting after the words “as a precondition of permanent employment” the words “or to determine fitness for work”.

Section 39
amended

21. The Act is amended in section 39(1), by deleting the words “except that no such point shall be situated within six metres (or twenty feet) of a washing place, water closet, urinal or other sources of contamination unless a shorter distance is approved in writing by the Chief Inspector”.

Section 43
amended

22. The Act is amended in section 43(4) –

- (a) by deleting the words “more than two hundred and fifty

persons are employed” and substituting the words “there is a risk as determined in accordance with section 13A”;

- (b) by deleting the words “an ambulance” and substituting the words “emergency health facilities”; and
- (c) by inserting a full stop after the word “prescribed” and deleting all the words thereafter.

Section 46A
amended

23. The Act is amended in section 46A, by deleting the word “(1)”.

Section 48
amended

24. The Act is amended in section 48(5), by deleting the word “(3)” and substituting the word “(4)”.

Section 57
amended

25. The Act is amended in section 57, by deleting the word “shall” occurring before the word “obtained”.

Section 58
amended

26. The Act is amended in section 58(2), by inserting the words “shall” before the words “satisfy the Minister”.

Sections 59
amended

27. The Act is amended in section 59 (2) -

- (a) by deleting the words “six weeks” and substituting the words “thirty days”; and
- (b) by deleting the words “where the Chief Inspector shall submit his reason for the delay, in writing, to the applicant.” and substituting the words “such application shall be deemed approved for the purposes of this section.”.

Section 65
amended

28. The Act is amended in section 65(1), by renumbering paragraph (h) as paragraph (i) and inserting after paragraph (g) the following new paragraph:

“(h) a representative of the Tobago House of Assembly;”.

Section 71
amended

29. The Act is amended in section 71 (1) by repealing paragraph (a) and substituting the following new paragraph:

“(a) on the advice of the Chief Inspector-

- (i) designate a suitably qualified public officer as an inspector; or
- (ii) appoint a suitably qualified person as an inspector; and”.

Section 72
amended

30. The Act is amended in section 72 -

(a) subsection (3), by deleting the word “or” occurring at the end of paragraph (c) and inserting after paragraph (d) the following new paragraph:

“(e) uses or threatens to use physical force or violence against an inspector which results or could result in serious bodily harm.”

(b) by renumbering subsection (4) as subsection (5); and

(c) by inserting after subsection (3) the following new subsection:

“(4) Every inspector shall execute his duties under this Act expeditiously and with due care.”.

Section 74
amended

31. The Act is amended in section 74 -

(a) subsection (1), by inserting after the words “he shall” the words “after consultation with the Chief Inspector and”;

(b) by repealing subsection (5) and substituting the following new subsections :

“(5) Where an objection is made pursuant to subsection (4) against a notice:

(a) in the case of the improvement notice, the filing of the objection shall have the effect of suspending the operation of the notice until the hearing of the objection is finally disposed of or, if the objection is withdrawn, until the withdrawal of the objection; or

(b) in the case of a prohibition notice, the filing of the objection shall have like effect if, on the filing of the objection, the Industrial Court so directs.

(6) Any person who, without lawful authority removes, defaces or in any way tampers with a notice posted under this section, is guilty of an offence and shall be subject to the jurisdiction of the Court in accordance with the Supreme Court of Judicature Act.”.

Chap. 4:01

Section 79
amended

32. The Act is amended by repealing section 79 and by substituting the following new section:

“Inspector to to produce certificate 79. Every inspector shall, upon visiting an industrial establishment, produce the prescribed certificate of appointment, identifying himself as an inspector, to the agent or occupier of the industrial establishment.”.

Section 83
amended

33. The Act is amended in section 83 (1) -

- (a) by deleting the words “Notwithstanding anything contained in this Act, but subject” and substituting the word “Subject”;
- (b) by inserting the word ‘duty’ after the words “comply with any”;
- (c) by deleting the words “an offence” and substituting the words “a safety and health offence”; and
- (d) by deleting the words “liable to be dealt with in accordance with the provisions of the Summary Courts Act” and substituting the words “subject to the jurisdiction of the Industrial Court unless otherwise specified”.

Section 85
amended

34. The Act is amended in section 85 -

- (a) by renumbering section 85 as section 85 (1);
- (b) in the renumbered section 85(1) by inserting after the word “offence” the words “, other than a safety and health offence”; and
- (c) by inserting after the renumbered section 85 (1) the following new subsection:

“ (2) A person who commits a safety and health offence under this Act for which no penalty is expressly provided, is liable upon conviction to a fine of twenty thousand dollars.”.

Section 86
amended

35. The Act is amended in section 86(1) -

- (a) by deleting the words “and (3)”; and
- (b) by deleting the word “occasional” and substituting the word “occupational”.

Passed in the House of Representatives this day of , 2006.

Clerk of the House

I confirm the above.

Speaker

Passed in the Senate this day of , 2006.

Clerk of the Senate.

I confirm the above.

President of the Senate.