

JAN 24 2013

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A BILL FOR AN ACT

RELATING TO EMPLOYMENT SECURITY LAW.

**BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:**

1 SECTION 1. Chapter 383, Hawaii Revised Statutes, is  
2 amended by adding to part III a new section to be appropriately  
3 designated and to read as follows:

4 "§383- Income tax refund offsets. Effective April 1,  
5 2013, any employer in default of contributions, advance  
6 payments, or reimbursement may be subject to offset of federal  
7 tax refund payments of the amount owed, including penalties,  
8 interest, costs, and administrative fees."

9 SECTION 2. Section 383-33, Hawaii Revised Statutes, is  
10 amended to read as follows:

11 "§383-33 Determinations, in general. (a) A determination  
12 upon a claim filed pursuant to section 383-32 shall be made  
13 promptly by a representative of the department of labor and  
14 industrial relations authorized to make determinations upon  
15 claims and shall include a statement as to whether and in what  
16 amount the [~~claimant~~] individual is entitled to benefits for the  
17 week with respect to which the determination is made and, in the

1 event of a denial, shall state the reasons therefor. A  
2 determination with respect to the first week of a benefit year  
3 shall also include a statement as to whether the [claimant]  
4 individual has been paid the wages required under section 383-  
5 29(a)(5) and, if so, the first day of the benefit year, the  
6 [claimant's] individual's weekly benefit amount, and the maximum  
7 total amount of benefits payable to the [claimant] individual  
8 with respect to such benefit year.

9 (b) If any employer fails to furnish the information  
10 necessary to determine whether and in what amount the [claimant]  
11 individual is entitled to benefits in the manner and within the  
12 time specified by this chapter or regulations of the department,  
13 the department shall make a determination based upon such  
14 information as is available. [~~In~~] Prior to October 1, 2013, in  
15 the absence of fraud, any redetermination made on the basis of  
16 information furnished by the employer after the prescribed  
17 period shall be effective only as to benefits paid after the  
18 week in which the information was received. In the absence of a  
19 showing by the employer satisfying the department that the  
20 employer could not reasonably comply with the department's  
21 requirement, any benefits overpaid prior to the effective date  
22 of the redetermination as a result of the employer's failure to

1 furnish the information as required shall be charged entirely  
2 against the account of the noncomplying employer; provided that  
3 the overpaid benefits shall not, in any event, be recoverable  
4 from the [~~claimant.~~] individual. Any redetermination issued on  
5 or after October 1, 2013, on the basis of information furnished  
6 by the employer or the agent of the employer after the  
7 prescribed period shall be effective upon the date of the  
8 redetermination. The entire amount of benefits overpaid due to  
9 the employer's or agent of the employer's failure to respond  
10 timely or adequately to the agency's request for information as  
11 required shall be charged against the account of the  
12 noncomplying employer."

13 SECTION 3. Section 383-44, Hawaii Revised Statutes, is  
14 amended to read as follows:

15 "**§383-44 Recovery of benefits paid.** (a) Any [~~person~~]  
16 individual who has received any amount as benefits under this  
17 chapter to which the [~~person~~] individual was not entitled shall  
18 be liable for the amount unless the overpayment was received  
19 without fault on the part of the recipient and its recovery  
20 would be against equity and good conscience. Notice of  
21 redetermination in these cases shall specify that the [~~person~~]  
22 individual is liable to repay to the fund the amount of overpaid

1 benefits, the basis of the overpayment, and the week or weeks  
2 for which the benefits were overpaid.

3 (b) Determinations or redeterminations dated on or after  
4 October 1, 2013, that an individual has been overpaid benefits  
5 under any state or federal unemployment compensation program and  
6 is disqualified under section 383-30(5) shall include a penalty  
7 assessment amount equal to fifteen per cent of the overpaid  
8 amount. Penalty assessments collected under this section shall  
9 be deposited in the unemployment compensation fund.

10 [~~b~~] (c) The [~~person~~] individual liable, in the  
11 discretion of the department, shall [~~either~~] repay the overpaid  
12 amount and the penalty assessment amount to the department for  
13 the fund or have the overpaid amount only deducted from any  
14 future benefits payable to the [~~person~~] individual under this  
15 chapter within two years after the date of mailing of the notice  
16 of redetermination or the final decision on an appeal from the  
17 redetermination. Effective April 1, 2013, the overpaid benefits  
18 amount and the penalty assessment amount, costs, and  
19 administrative fees may be deducted from federal income tax  
20 refunds.

21 [~~e~~] (d) Notwithstanding any other provision of this  
22 chapter, the department, by agreement with another state or the

1 United States as provided under section 303(g) of the Social  
2 Security Act, may recover any overpayment of benefits paid to  
3 any individual under the laws of this State or of another state  
4 or under an unemployment benefit program of the United States.  
5 Any overpayments subject to this subsection may be deducted from  
6 any future benefits payable to the individual under the laws of  
7 this State or of another state or under an unemployment program  
8 of the United States. The penalty assessment amount shall not  
9 be subject to recovery by deduction from future benefits  
10 payable.

11 [~~d~~] (e) In any case in which under this section an  
12 individual is liable to repay any amount to the department, the  
13 [~~amount~~] overpaid benefits amount, the penalty assessment  
14 amount, costs, and administrative fees shall be collectible  
15 without interest by civil action in the name of the State by the  
16 attorney general."

17 SECTION 4. Section 383-123, Hawaii Revised Statutes, is  
18 amended by amending subsection (a) to read as follows:

19 "(a) Withdrawals. Moneys requisitioned from the State's  
20 account in the unemployment trust fund shall be used exclusively  
21 for the payment of benefits [~~and for~~], refunds of contributions  
22 pursuant to section 383-76 and section 383-7(a)(6), and for

1 payment of fees authorized under section 6402(f) of the Internal  
2 Revenue Code, except that moneys credited to this State's  
3 account pursuant to section 903 of the Social Security Act, as  
4 amended, shall be used exclusively as provided in subsection  
5 (b). The director of finance shall from time to time, with the  
6 approval of the department of labor and industrial relations in  
7 accordance with rules prescribed by the comptroller of the  
8 State, requisition from the unemployment trust fund such  
9 amounts, not exceeding the amount in the State's account, as it  
10 deems necessary for the payment of benefits and refunds of  
11 contributions for a reasonable future period. The moneys shall  
12 be deposited in the benefit account. Expenditures of such  
13 moneys in the benefit account and refunds from the clearing  
14 account shall not be subject to any provisions of law requiring  
15 specific appropriations or other formal release by state  
16 officers of moneys in their custody. All benefits and refunds  
17 of contributions shall be paid from the fund upon warrants drawn  
18 upon the director of finance by the comptroller of the State  
19 supported by vouchers approved by the department. Any balance  
20 of moneys requisitioned from the unemployment trust fund that  
21 remains unclaimed or unpaid in the benefit account after the  
22 expiration of the period for which the sums were requisitioned

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1 shall either be deducted from estimates for, and may be used for  
2 the payment of, benefits and refunds during succeeding periods  
3 or, in the discretion of the department, shall be redeposited  
4 with the Secretary of the Treasury of the United States, to the  
5 credit of this State's account in the unemployment trust fund,  
6 as provided in section 383-122."

7 SECTION 5. Statutory material to be repealed is bracketed  
8 and stricken. New statutory material is underscored.

9 SECTION 6. This Act, upon its approval, shall take effect  
10 on April 1, 2013.

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INTRODUCED BY:



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BY REQUEST

**Report Title:**

Employment Security Law

**Description:**

Prohibits noncharging of an employer's account when the employer (or agent) is at fault and imposes a fifteen per cent penalty on fraudulent benefit overpayments effective October 1, 2013; provides for deductions from federal income tax refunds to recover delinquent debts effective April 1, 2013; and allows the withdrawal of fees from the unemployment trust fund effective April 1, 2013.



JUSTIFICATION SHEET

SB. NO.

1146

DEPARTMENT: Labor and Industrial Relations

TITLE: A BILL FOR AN ACT RELATING TO EMPLOYMENT SECURITY LAW.

PURPOSE: The purpose of this bill is to conform to federal law, the Trade Adjustment Assistance Extension Act of 2011 (TAAEA), which requires states to: (1) impose a minimum fifteen percent monetary penalty on fraudulent overpayments; and (2) prohibit states from relieving charges to an employer's account when an overpayment results from the failure of the employer (or agent) to respond timely or adequately to a written request for information from the Unemployment Insurance (UI) Division.

This bill also allows the department to recoup certain outstanding debts through the Treasury Offset Program (TOP) operated by the U.S. Department of the Treasury. Federal income tax refunds can be intercepted for: (1) individuals with overpayments resulting from fraud or unreported earnings; and (2) employers with delinquent accounts.

MEANS: Add a new section to chapter 383 and amend sections 383-33, 383-44, and 383-123(a), Hawaii Revised Statutes.

JUSTIFICATION: The TAAEA requirements must be operational by October 21, 2013. Failure to implement the mandatory fifteen percent penalty for fraud overpayments may jeopardize the State's certification for the UI administration grant as prescribed in section 303(a)(11) of the Social Security Act. If \$13,000,000 in grant funding is lost, UI offices and operations will be shut down and workers will not be able to file for benefits.

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Failure to prohibit noncharging of overpaid amounts where the employer (or agent) is at fault may result in loss of the "additional" offset credit provided under section 3302(b), Federal Unemployment Tax Act (FUTA). Without the additional tax credits, employers who pay reduced state tax rates will not be able to benefit and reduce their FUTA tax liability by deducting the difference between what is owed to the state and a maximum credit of 5.4 percent.

Participation in TOP is strongly encouraged by the U.S. Department of Labor (USDOL) because it is a core integrity activity that supports the USDOL's national direction to prevent, detect, and recover improper payments. Further, TOP is a prerequisite to qualify for future supplemental USDOL funding. To meet the prerequisites, Hawaii applied for a TOP supplemental funding grant and committed to complete this activity by March 31, 2013. Implementation will begin April 1, 2013.

In July 2012, the UI Division applied for \$402,000 in supplemental budget requests (SBR) to fund three projects. While \$1,850,000 - \$2,200,000 per state in incentive funds were also offered to implement additional integrity activities, only states having implemented core activities such as TOP were eligible to apply.

Impact on the public: Persons who commit fraud on unemployment claims will be liable for the overpaid amount plus an additional fifteen percent penalty assessment. Federal income tax refunds may be withheld, plus an additional fee levied by the U.S. Treasury, for persons with outstanding unemployment debts due to fraud or unreported earnings and employers with delinquent unemployment accounts.

Impact on the department and other agencies:  
To implement the penalty assessment and TOP, the UI Division will work with the Information and Communications Services Division (ICSD) of the Department of Accounting and General Services in developing specifications, programming modifications and testing of our automated benefit and tax systems. ICSD is currently involved in several other UI projects that are in various stages of development and implementation in 2012 and through 2013.

GENERAL FUND: None.

OTHER FUNDS: Federal.

PPBS PROGRAM  
DESIGNATION: LBR 171.

OTHER AFFECTED  
AGENCIES: Department of Accounting and General  
Services

EFFECTIVE DATE: April 1, 2013.