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# A BILL FOR AN ACT

RELATING TO OCCUPATIONAL SAFETY AND HEALTH PENALTIES.

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

1 SECTION 1. Section 396-10, Hawaii Revised Statutes, is  
2 amended to read as follows:

3 "§396-10 Violations and penalties. (a) Any employer who  
4 violates this chapter, or any occupational safety and health  
5 standard promulgated hereunder or any rule [~~or regulation~~]  
6 issued under the authority of this chapter, or who violates or  
7 fails to comply with any citation, notice, or order made under  
8 or by virtue of this chapter or under or by virtue of any rule  
9 [~~or regulation~~] of the department, or who defaces, displaces,  
10 destroys, damages, or removes without the authority of the  
11 department any safety device, safeguards, notice, or warning  
12 required by this chapter or any rule [~~or regulation~~] of the  
13 department may be assessed a civil penalty as specified in this  
14 chapter.

15 (b) Any employer who has received an order or citation for  
16 a serious violation of any standard or rule adopted pursuant to



1 this chapter shall be assessed a civil penalty of not more than  
2 [~~\$7,700~~] \$12,471 for each violation.

3 (c) Any employer who has received an order or citation for  
4 a violation of any standard or rule adopted pursuant to this  
5 chapter, and the violation is specifically determined not to be  
6 of a serious nature, may be assessed a civil penalty of up to  
7 [~~\$7,700~~] \$12,471 for each violation.

8 (d) Each day a violation continues shall constitute a  
9 separate violation except that during an abatement period only,  
10 no additional penalty shall be levied against the employer.

11 (e) Any employer who violates any of the posting  
12 requirements prescribed under this chapter shall be assessed a  
13 civil penalty of up to [~~\$7,700~~] \$12,471 for each violation.

14 (f) Any employer who wilfully or repeatedly violates this  
15 chapter, or any standard, rule, citation, or order issued under  
16 the authority of this chapter, shall be assessed a civil penalty  
17 of not [~~less than \$5,500 nor~~] more than [~~\$77,000~~] \$124,709 for  
18 each violation[~~-~~], but not less than \$8,908 for each wilful  
19 violation.

20 (g) Any employer convicted of wilful or repeated  
21 violations of any standard, rule, citation, or order issued



1 under the authority of this chapter resulting in the death of an  
2 employee shall be punished by a fine of not more than [~~\$77,000~~  
3 \$124,709 or by imprisonment for not more than six months, or  
4 both, except that if the conviction is for a violation committed  
5 after a first conviction, punishment shall be by a fine of not  
6 more than [~~\$77,000~~ \$124,709 or by imprisonment for not more  
7 than one year, or both. Failure to correct a violation for  
8 which an order or citation of arrest has been issued shall be  
9 evidence of wilful conduct.

10 (h) Any employer who has received an order for violation  
11 under section 396-8(e) may be assessed a civil penalty of not  
12 more than [~~\$1,100~~ \$8,908 for each violation.

13 (i) Any person who gives advance notice of any inspection  
14 to be conducted under this chapter, without authority from the  
15 director or the director's designees shall, upon conviction, be  
16 punished by a fine of not more than [~~\$1,100~~ \$8,908 or by  
17 imprisonment for not more than six months, or by both.

18 (j) The director shall have authority to assess all civil  
19 penalties provided in this section, giving due consideration to  
20 the appropriateness of the penalty with respect to the size of  
21 the business of the employer being charged, the gravity of the



1 violation, the good faith of the employer, and the history of  
2 previous violations.

3 (k) Civil penalties imposed under this chapter shall be  
4 paid to the department and may be recovered by civil action in  
5 the name of the department and the State brought in the district  
6 or circuit court for the circuit where the violation is alleged  
7 to have occurred or where the employer has its principal office.

8 (l) When an alleged violation of any provision of this  
9 chapter or any standard, rule, or order made [~~thereunder~~]  
10 pursuant to this chapter has occurred, the department shall  
11 promptly issue a written citation, order, or notice thereof to  
12 the employer who shall be required to post the citation, order,  
13 or notice. The citation, order, or notice thereof shall include  
14 the abatement requirements and within a reasonable time the  
15 employer shall be advised of the proposed sanctions, including  
16 proposed penalties. Whenever reference is made to posting of  
17 any citation, order, notice, petition, decision, or any other  
18 type of document issued by the director under this chapter and  
19 rules adopted pursuant to this chapter, the employer shall post  
20 copies of the document at the work site involved or affected and  
21 at the place or places where notices to the employees involved



1 are normally posted. Where posting starts the time for notice  
2 of action to or for appeal by employees under this chapter and  
3 rules adopted under this chapter, the document shall be posted  
4 by the employer upon receipt or on the next business day  
5 following receipt.

6 (m) Whoever knowingly makes any false statement,  
7 representation, or certification in any application, record,  
8 report, plan, or other document filed or required to be  
9 maintained pursuant to this chapter shall, upon conviction, be  
10 punished by a fine of not more than \$11,000, or by imprisonment  
11 for not more than six months, or by both.

12 (n) Criminal offenses committed against any employee of  
13 the State acting within the scope of the employee's office,  
14 employment, or authority under this chapter shall be subject to  
15 the penalties set forth in the Hawaii Penal Code; provided that:

16 (1) Ten years shall be added to the maximum term of  
17 imprisonment (unless life imprisonment is imposed) and  
18 \$55,000 shall be added to the maximum fine imposed for  
19 conviction of a class A felony;



- 1           (2) Five years shall be added to the maximum term of  
2           imprisonment and \$27,500 shall be added to the maximum  
3           fine imposed for conviction of a class B felony;
- 4           (3) Three years shall be added to the maximum term of  
5           imprisonment and \$11,000 shall be added to the maximum  
6           fine for conviction of a class C felony;
- 7           (4) One year shall be added to the maximum term of  
8           imprisonment and \$2,200 shall be added to the maximum  
9           fine for conviction of a misdemeanor; and
- 10          (5) The maximum term of imprisonment and maximum fines  
11          prescribed for misdemeanors under the Hawaii Penal  
12          Code shall apply to convictions of a petty  
13          misdemeanor.
- 14          (o) The director shall adjust penalties pursuant to the  
15          Federal Civil Penalties Inflation Adjustment Act Improvements  
16          Act of 2015, section 701 of P.L. 114-74, by December 15, 2017,  
17          and each year thereafter. The director shall adjust penalty  
18          levels using the guidance of the Office of Management and Budget  
19          and issue the new penalties by December 15 of each year. The  
20          new penalties shall take effect the following January 15 of each  
21          year. The director shall submit a report to the legislature no



1 later than twenty days prior to the convening of each regular  
2 session on the penalty adjustments."

3 SECTION 2. This Act does not affect rights and duties that  
4 matured, penalties that were incurred, and proceedings that were  
5 begun before its effective date.

6 SECTION 3. Statutory material to be repealed is bracketed  
7 and stricken. New statutory material is underscored.

8 SECTION 4. This Act shall take effect on July 1, 2050.



**Report Title:**

Occupational Safety and Health Penalties; Director of Labor and Industrial Relations

**Description:**

Amends fines for Hawaii Occupational Safety and Health violations and requires the Director of Labor and Industrial Relations to adjust the penalties each year pursuant to federal law. Requires the Director of Labor and Industrial Relations to report to the Legislature each year. Takes effect on 7/1/2050. (SD2)

*The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.*

