

S.B. NO. 2906

JAN 23 2020

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A BILL FOR AN ACT

RELATING TO THE DEPARTMENT OF LABOR AND INDUSTRIAL RELATIONS.

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

1 SECTION 1. Section 371-9, Hawaii Revised Statutes, is  
2 amended to read as follows:

3 "**§371-9 Penalties.** (a) Any employer, employee, or other  
4 person who wilfully violates any lawful rule of the department  
5 for which no penalty is otherwise provided shall be fined not  
6 more than [~~\$250,~~ \$500, or imprisoned not more than six months,  
7 or both, for each [~~such~~] offense.

8 (b) Any person who, after twenty-one days written notice  
9 and the opportunity to be heard by the director, is found to  
10 have violated any lawful rule of the department for which no  
11 penalty is otherwise provided, shall be fined not more than  
12 [~~\$250~~ \$500 for each offense."

13 SECTION 2. Section 378-29.3, Hawaii Revised Statutes, is  
14 amended by amending subsections (a) and (b) to read as follows:

15 "~~[§]~~**§378-29.3**~~[§]~~ **Penalties.** (a) Civil. Any employer  
16 found in violation of this part shall be subject to a fine of  
17 not less than [~~\$100~~ \$250 nor more than [~~\$1,000~~ \$2,500 to be  
18 collected by the director and such fine shall not be suspended.

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1 Each violation shall constitute a separate offense. Amounts so  
2 collected by the director shall be paid into the general fund.

3 (b) Criminal. Whoever intentionally resists, prevents,  
4 impedes, or interferes with the department or any of its agents  
5 or representatives in the performance of duties pursuant to this  
6 part, or who in any manner intentionally violates the [~~law,~~] any  
7 provision of this chapter, or rule adopted thereunder, shall be  
8 fined not more than [~~\$1,000,~~] \$2,500, or imprisoned not more  
9 than one year, or both."

10 SECTION 3. Section 378-65, Hawaii Revised Statutes, is  
11 amended to read as follows:

12 "**§378-65 Penalties for violations.** (a) A person or  
13 public employer who violates this part shall be fined not less  
14 than [~~\$500~~] \$750 nor more than [~~\$5,000~~] \$7,500 for each  
15 violation.

16 (b) A civil fine [~~which~~] that is ordered pursuant to this  
17 part shall be deposited with the director of finance to the  
18 credit of the general fund of the State."

19 SECTION 4. Section 383-73, Hawaii Revised Statutes, is  
20 amended to read as follows:

21 "**§383-73 Penalty for delinquency; remission.** (a) A  
22 penalty of ten per cent or [~~\$10,~~] \$100, whichever is greater,

1 shall be added to the amount of all delinquent contributions, as  
2 hereafter defined, and any delinquent contribution and penalty  
3 remaining unpaid fifteen days after the date of delinquency  
4 shall bear interest from the date of delinquency at the rate of  
5 two-thirds of one per cent for each month or fraction of a month  
6 until paid. Any penalty and interest [~~above referred to~~]  
7 assessed pursuant to this section shall be added to the  
8 contribution and shall be collected as [~~though the same were~~] a  
9 part of the contribution. For the purposes of this section, a  
10 contribution shall be deemed delinquent:

11 (1) Upon a nonpayment thereof on the date prescribed for  
12 its payment, but only in case of failure to pay a  
13 contribution shown due by a return, or in case of  
14 failure to file a return, or in case of failure to pay  
15 a contribution because of a false or fraudulent  
16 return; and

17 (2) Upon nonpayment thereof within the time provided by  
18 [~~paragraph~~] subsection (c) of section 383-70, in any  
19 other case.

20 (b) Except in cases of fraud or wilful violation of this  
21 chapter, or wilful refusal to make a return [~~but inclusion in a~~  
22 ~~return of a claim of nonliability for contributions shall not be~~

1 ~~deemed a refusal to make a return}], provided that a claim of  
2 nonliability shall not be deemed as a refusal to make a return,  
3 the director [~~of labor and industrial relations~~] may, in a case  
4 of excusable failure to file a return, or pay a contribution  
5 within the time required by this chapter, or in a case of  
6 uncollectibility of the whole amount due, remit any amount of  
7 penalties or interest added to any delinquent contribution. [~~In~~  
8 ~~all such cases there shall be placed on file in the director's~~  
9 ~~office a statement showing the name of the person receiving such~~  
10 ~~remission, the principal amount of the contribution, and the~~  
11 ~~period involved.]~~~~

12 (c) The department shall keep a record of any remittance  
13 approved by the director.

14 (d) Whenever an employer makes a partial payment of a sum  
15 owed for delinquent contributions, penalties, and interest, the  
16 amount received by the director shall first be credited to  
17 interest, then to penalties, and then to principal."

18 SECTION 5. Section 385-11, Hawaii Revised Statutes, is  
19 amended by amending subsection (c) to read as follows:

20 (c) "Whoever makes a false statement or representation  
21 knowing it to be false or who knowingly fails to disclose a  
22 material fact to obtain or increase any benefit or other payment

1 under this chapter shall be fined not less than [~~\$20~~] \$175 nor  
2 more than [~~\$2007~~] \$1,750, or imprisoned not more than [~~thirty~~  
3 ~~days7~~] one year, or both."

4 SECTION 6. Section 386-27, Hawaii Revised Statutes, is  
5 amended by amending subsection (c) to read as follows:

6 "(c) Any health care provider who fails to comply with  
7 subsections (a) and (b) may be subject to such sanctions deemed  
8 just and proper by the director which may include:

- 9 (1) Disallowance of fees for services rendered to an  
10 injured employee;
- 11 (2) Forfeiture of payments for services rendered to an  
12 injured employee under this chapter;
- 13 (3) Fines of not more than [~~\$1,000~~] \$2,500 for each  
14 violation;
- 15 (4) Suspension as a qualified provider; and
- 16 (5) Disqualification as a provider of services under this  
17 chapter."

18 SECTION 7. Section 386-94, Hawaii Revised Statutes, is  
19 amended to read as follows:

20 "**§386-94 Attorneys, physicians, other health care**  
21 **providers, and other fees.** Claims for services shall not be  
22 valid unless approved by the director or, if an appeal is had,

1 by the [~~appellate~~] appeals board or court deciding the appeal.  
2 Any claim so approved shall be a lien upon the compensation in  
3 the manner and to the extent fixed by the director, the  
4 [~~appellate~~] appeals board, or the court.

5 In approving fee requests, the director, appeals board, or  
6 court may consider factors such as the attorney's skill and  
7 experience in state workers' compensation matters, the amount of  
8 time and effort required by the complexity of the case, the  
9 novelty and difficulty of issues involved, the amount of fees  
10 awarded in similar cases, benefits obtained for the claimant,  
11 and the hourly rate customarily awarded attorneys possessing  
12 similar skills and experience. In all cases, reasonable  
13 attorney's fees shall be awarded.

14 Any person who receives any fee, other consideration, or  
15 gratuity on account of services so rendered, without approval,  
16 in conformity with the preceding paragraph, shall be fined by  
17 the director not more than [~~\$10,000.~~] \$25,000."

18 SECTION 8. Section 386-97.5, Hawaii Revised Statutes, is  
19 amended to read as follows:

20 "[~~§~~]**386-97.5**[~~]~~ **Penalties.** (a) Any person who, after  
21 twenty-one days written notice and the opportunity to be heard  
22 by the director, is found to have violated any provision of this

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1 chapter or rule adopted thereunder for which no penalty is  
2 otherwise provided, shall be fined not more than [~~\$250~~] \$500 for  
3 each offense.

4 (b) All fines collected pursuant to this chapter shall be  
5 deposited into the special compensation fund created by section  
6 386-151."

7 SECTION 9. Section 386-98, Hawaii Revised Statutes, is  
8 amended by amending subsection (e) to read as follows:

9 "(e) In lieu of the criminal penalties set forth in  
10 subsection (d), any person who violates subsections (a) and (b)  
11 may be subject to the administrative penalties of restitution of  
12 benefits or payments fraudulently received under this chapter,  
13 whether received from an employer, insurer, or the special  
14 compensation fund, to be made to the source from which the  
15 compensation was received, and one or more of the following:

16 (1) A fine of not more than [~~\$10,000~~] \$20,000 for each  
17 violation;

18 (2) Suspension or termination of benefits in whole or in  
19 part;

20 (3) Suspension or disqualification from providing medical  
21 care or services, vocational rehabilitation services,

1 and all other services rendered for payment under this  
2 chapter;

3 (4) Suspension or termination of payments for medical,  
4 vocational rehabilitation and all other services  
5 rendered under this chapter;

6 (5) Recoupment by the insurer of all payments made for  
7 medical care, medical services, vocational  
8 rehabilitation services, and all other services  
9 rendered for payment under this chapter; and

10 (6) Reimbursement of attorney's fees and costs of the  
11 party or parties defrauded."

12 SECTION 10. Section 387-7, Hawaii Revised Statutes, is  
13 amended to read as follows:

14 "**§387-7 Wilful violations; penalty.** Any employer who  
15 wilfully hinders or delays the director [~~of labor and industrial~~  
16 ~~relations~~] or the director's authorized representative in the  
17 performance of the director's duties in the enforcement of this  
18 chapter; or who wilfully refuses to admit the director or the  
19 director's authorized representative to any place of employment;  
20 or who fails to keep or who falsifies any record required under  
21 section 387-6 or who refuses to make such records accessible or  
22 to give information required for the proper enforcement of this



1 chapter, upon demand, to the director or the director's  
2 authorized representative shall be fined not more than [~~\$500~~  
3 \$10,000, or imprisoned not more than ninety days, or both."

4 SECTION 11. Section 387-12, Hawaii Revised Statutes, is  
5 amended by amending subsection (a) to read as follows:

6 "(a) Criminal.

7 (1) Any person divulging information in violation of  
8 section 387-8;

9 (2) Any employer who wilfully violates this chapter or of  
10 any rule, regulation, or order issued under the  
11 authority of this chapter;

12 (3) Any employer or the employer's agent or any officer or  
13 agent of a corporation who discharges or in any other  
14 manner discriminates against any employee because the  
15 employee has made a complaint to the employee's  
16 employer, to the director, or to any other person that  
17 the employee has not been paid wages in accordance  
18 with this chapter, or has instituted or caused to be  
19 instituted any proceeding under or related to this  
20 chapter, or has testified or is about to testify in  
21 any such proceedings; or

1           (4) Any employer or the employer's agent or any officer or  
2                   agent of a corporation who pays or agrees to pay any  
3                   employee compensation less than that which the  
4                   employee is entitled to under this chapter,  
5 shall be guilty of a misdemeanor and, upon conviction thereof,  
6 shall be punished by a fine of not less than [~~\$50~~] \$500 nor more  
7 than [~~\$500~~] \$5,000, or by imprisonment for a period not to  
8 exceed one year, or by both [~~such~~] fine and imprisonment."

9           SECTION 12. Section 388-52, Hawaii Revised Statutes, is  
10 amended to read as follows:

11           "~~{}~~**\$388-52**~~{}~~ **Penalties.** Any employer found in violation  
12 of section 388-51 shall be subject to a fine of not less than  
13 [~~\$100~~] \$250 nor more than [~~\$1,000~~] \$2,500 to be collected by the  
14 director and such fine shall not be suspended. Each violation  
15 shall constitute a separate offense. Amounts so collected by  
16 the director shall be paid into the general fund."

17           SECTION 13. Section 392-68, Hawaii Revised Statutes, is  
18 amended to read as follows:

19           "~~{}~~**\$392-68**~~{}~~ **Failure to pay assessments.** If an employer  
20 or insurer fails to pay the assessment required by section 392-  
21 67(a) or section 392-67(b) within thirty days after the end of  
22 the month or quarter for which payment was due, the director

1 shall levy a penalty of at least [~~\$10~~] \$250 but no more than ten  
2 per cent of the assessment due against such employer or insurer,  
3 unless the nonpayment is excused by the director after a showing  
4 by such employer or insurer that the payment of the assessment  
5 could not be made on the date prescribed therefor owing to  
6 conditions over which the employer or insurer had no control and  
7 such employer or insurer forthwith complies."

8 SECTION 14. Section 392-69, Hawaii Revised Statutes, is  
9 amended to read as follows:

10 "**§392-69 Request for wage and employment information.** An  
11 employer to whom the department has sent a request for wage and  
12 employment information for an employee claiming benefits against  
13 the trust fund for disability benefits, shall complete and file  
14 such information within seven days from date the request was  
15 sent. If an employer fails to file such information in seven  
16 days, the director shall levy a penalty of [~~not more than \$10~~]  
17 \$250 for each delinquent request, unless the failure to file  
18 such information is excused by the director after a showing by  
19 such employer that such filing could not be made on the  
20 prescribed date therefor owing to conditions over which the  
21 employer had no control."

1 SECTION 15. Section 392-92, Hawaii Revised Statutes, is  
2 amended to read as follows:

3 "**§392-92 Penalties.** (a) Any person who, after twenty-one  
4 days written notice and the opportunity to be heard by the  
5 director, is found to have violated any provision of this  
6 chapter or rule adopted thereunder for which no penalty is  
7 otherwise provided, shall be fined not more than [~~\$250~~] \$500 for  
8 each offense.

9 (b) All fines collected pursuant to this chapter shall be  
10 deposited into the trust fund for disability benefits created by  
11 section 392-61."

12 SECTION 16. Section 392-101, Hawaii Revised Statutes, is  
13 amended to read as follows:

14 "[~~§~~]**§392-101**[~~§~~] **Limitation of fees.** Any individual  
15 claiming benefits in any proceeding before the department or the  
16 referee may be represented by counsel or other duly authorized  
17 agent; but no such counsel or agent shall either charge or  
18 receive for such services more than an amount approved by the  
19 department or referee, and such amount shall in no case exceed  
20 ten per cent of the total amount of benefits received as a  
21 result of such proceeding. Any person who violates this section  
22 shall, for each such offense, be fined not less than [~~\$50~~] \$325

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1 nor more than [~~\$500~~] \$3,250 or imprisoned not more than six  
2 months, or both."

3 SECTION 17. This Act does not affect rights and duties  
4 that matured, penalties that were incurred, and proceedings that  
5 were begun before its effective date.

6 SECTION 18. Statutory material to be repealed is bracketed  
7 and stricken. New statutory material is underscored.

8 SECTION 19. This Act shall take effect upon its approval.

9

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INTRODUCED BY: *Ann H. Hill*

11

BY REQUEST

**Report Title:**

Department of Labor and Industrial Relations; Assessments;  
Violations

**Description:**

Updates various assessments and penalties under the jurisdiction of the Department of Labor and Industrial Relations by revising the monetary assessments according to changes in the Consumer Price Index.

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

JUSTIFICATION SHEET

**SB. NO. 2906**

DEPARTMENT: Labor and Industrial Relations

TITLE: A BILL FOR AN ACT RELATING TO THE DEPARTMENT OF LABOR AND INDUSTRIAL RELATIONS.

PURPOSE: The purpose of this Act is to improve the effectiveness of monetary penalties and maintaining their deterrent effect in Hawaii's labor laws by revising penalty amounts to account for inflation.

The majority of the revised amounts of the penalties were derived by using the Bureau of Labor Statistics (BLS) Consumer Price Index Inflation Calculator (<https://data.bls.gov/cgi-bin/cpicalc.pl>). Calculations were made by using the month and year of the enactment or amendment of a penalty provision and using the BLS calculator for the equivalent amount in May 2019. Calculations were then rounded or adjusted to a sensible number.

Exceptions to a use of the BLS calculator are the proposed adjustments to sections 392-68 and 392-69 in Temporary Disability Insurance Law. Act 162, SLH 2018, increased the penalty from \$10 to \$250 for failure to submit timely wage and employment information. The proposed amendments to sections 392-68 and 392-69 similarly increase the penalty from \$10 to \$250.

Another exception involves the fine for knowingly making a false statement or misrepresentation in section 385-11, the Additional Unemployment Compensation Benefits Law. The fine is amended to be consistent with the fine in section 710-1063, HRS (Unsworn falsification to authorities).

MEANS: Amend sections 371-9, 378-29.3, 378-65, 383-73, 385-11(c), 386-27(c), 386-94, 386-97.5(a), 386-98(e), 387-7, 387-12(a), 388-52, 392-68, 392-69, 392-92, and 392-101, Hawaii Revised Statutes (HRS).

JUSTIFICATION: The penalties in this Act have not been raised since enactment of the statutes or in the recent past. According to the BLS, the equivalent of many of the penalties with inflation were often double the current statutory amount. As such, these penalties have lost their deterrent effect. Adjusting the penalties to keep pace with the cost of living demonstrates the State's investment in workers as well as its support for sustaining responsible employers who follow the labor laws.

Impact on the public: This measure is intended to improve compliance with labor laws by increasing the sanctions for noncompliance. The public will continue to benefit from enforcement of labor laws as they were intended when originally enacted or amended.

Impact on the department and other agencies: This proposal will improve the department's ability to promote compliance with labor laws by increasing monetary penalties, which have been recognized to be an effective deterrent.

GENERAL FUND: None.

OTHER FUNDS: None.

PPBS PROGRAM DESIGNATION: LBR152, LBR171, LBR183, LBR812, and LBR902.

OTHER AFFECTED AGENCIES: None.

EFFECTIVE DATE: Upon approval.