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## A BILL FOR AN ACT

RELATING TO THE JUDICIARY.

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

1           SECTION 1. The legislature finds that the imposition of  
2 prohibitive high monetary penalties on low-income individuals  
3 can have dire personal and societal consequences. For example,  
4 failure to pay monetary penalties for even minor traffic  
5 infractions can result in a stopper being placed on an  
6 individual's driver's license or registration, which prevents  
7 renewal until the monetary penalties are paid. If the  
8 individual is unable to find alternative means of transportation  
9 to work, or if driving is a required condition for their  
10 employment, the individual may end up losing their employment.  
11 Not only does this loss of income make payment of the monetary  
12 penalties less likely, it also can have widespread and lasting  
13 results, such as the individual becoming homeless or dependent  
14 upon the State.

15           The legislature further finds that the financial hardship  
16 task force, established pursuant to Act 112, Session Laws of  
17 Hawaii 2019, made several recommendations on how to improve the



# H.B. NO. 393

1 current traffic system to address the needs of those who are  
2 experiencing financial hardship. Although many of the task  
3 force's recommendations have already been adopted, the  
4 legislature believes that other recommendations promoting  
5 uniformity and fairness should also be implemented.

6 Accordingly, the purpose of this Act is to:

- 7 (1) Require the judiciary to establish a uniform procedure  
8 for adjusting payments and partner with other state  
9 agencies for ability to pay determinations;
- 10 (2) Set the community service conversion rate for certain  
11 monetary penalties; and
- 12 (3) Appropriate funds for the judiciary to develop a legal  
13 financial obligation calculator.

14 SECTION 2. Chapter 601, Hawaii Revised Statutes, is  
15 amended by adding a new section to be appropriately designated  
16 and to read as follows:

17 "§601-\_\_\_ Ability to pay determinations; uniform  
18 procedure; governmental partnerships. (a) The judiciary shall  
19 establish a uniform procedure to adjust a defendant's monetary  
20 penalty when a defendant claims financial hardship in a uniform  
21 petition for ability to pay determinations or a petition for



1 non-hearing assessments of fine conversions. The judiciary  
2 shall develop the necessary petition forms.

3 (b) The judiciary shall establish partnerships with other  
4 state agencies, such as the department of labor and industrial  
5 relations, department of human services, department of taxation,  
6 and child support enforcement agency, to streamline the sharing  
7 of information, such as whether a person receives public  
8 benefits, to aid ability to pay determinations."

9 SECTION 3. Section 286-136, Hawaii Revised Statutes, is  
10 amended by amending subsection (d) to read as follows:

11 "(d) Any person subject to a fine under this section and  
12 who fails to timely pay the fine shall be given an opportunity  
13 to petition the court to demonstrate that the person's  
14 nonpayment or inability to pay is not wilful; provided that if  
15 the person petitions the court, the court shall make an  
16 individualized assessment of the person's ability to pay based  
17 upon the totality of the circumstances, including the person's  
18 disposable income, financial obligations, and liquid assets;  
19 provided further that if the court determines that the person's  
20 nonpayment or inability to pay is not wilful, the court may  
21 enter an order that allows additional time for payment; reduces



1 the amount of each installment; revokes the fee or fine, or  
2 unpaid portion thereof, in whole or in part; or converts any  
3 outstanding fine to community service[-], at the rate of one  
4 hour of service for every \$25 of the fine."

5 SECTION 4. Section 291D-9, Hawaii Revised Statutes, is  
6 amended by amending subsections (d) and (e) to read as follows:

7 "(d) Upon request of a person claiming inability to pay a  
8 monetary assessment, the court may grant an extension of the  
9 period in which the monetary assessment shall be paid or may  
10 impose community service in lieu thereof[-], at the rate of one  
11 hour of service for every \$25 of the monetary assessment.

12 (e) At any point before full payment of a monetary  
13 assessment, any person who suffers a change in financial  
14 circumstances may request a hearing to modify the monetary  
15 assessment or to request community service in lieu thereof[-],  
16 at the rate of one hour of service for every \$25 of the monetary  
17 assessment."

18 SECTION 5. Section 431:10C-117, Hawaii Revised Statutes,  
19 is amended by amending subsection (a) to read as follows:

20 "(a) (1) Any person subject to this article in the  
21 capacity of the operator, owner, or registrant of a motor



1 vehicle operated in this State, or registered in this State, who  
2 violates any applicable provision of this article, shall be  
3 subject to citation for the violation by any county police  
4 department in a form and manner approved by the traffic and  
5 emergency period violations bureau of the district court of the  
6 first circuit;

7 (2) Notwithstanding any provision of the Hawaii Penal  
8 Code:

9 (A) Each violation shall be deemed a separate offense  
10 and shall be subject to a fine of no less than  
11 \$100 nor more than \$5,000 which shall not be  
12 suspended except as provided in subparagraph (B);  
13 and

14 (B) If the person is convicted of not having had a  
15 motor vehicle insurance policy in effect at the  
16 time the citation was issued, the fine shall be  
17 \$500 for the first offense and a minimum of  
18 \$1,500 for each subsequent offense that occurs  
19 within a five-year period from any prior offense;  
20 provided that the court:



# H.B. NO. 393

- 1           (i) Shall have the discretion to suspend all or  
2           any portion of the fine if the defendant  
3           provides proof of having a current motor  
4           vehicle insurance policy; provided further  
5           that upon the defendant's request, the court  
6           may grant community service in lieu of the  
7           fine, of no less than seventy-five hours and  
8           no more than one hundred hours for the first  
9           offense, and no less than two hundred hours  
10          nor more than two hundred seventy-five hours  
11          for the second offense; and
- 12          (ii) May grant community service in lieu of the  
13          fine for subsequent offenses at the court's  
14          discretion;
- 15          (3) In addition to the fine in paragraph (2), the court  
16          shall either:
- 17                (A) Suspend the driver's license of the driver or of  
18                the registered owner for:
- 19                   (i) Three months for the first conviction; and  
20                   (ii) One year for any subsequent offense within a  
21                   five-year period from a previous offense;



# H.B. NO. 393

1           provided that the driver or the registered owner  
2           shall not be required to obtain proof of  
3           financial responsibility pursuant to section  
4           287-20; or

5           (B) Require the driver or the registered owner to  
6           keep a nonrefundable motor vehicle insurance  
7           policy in force for six months;

8           (4) Any person subject to a fine under this section and  
9           who fails to timely pay the fine shall be given an  
10          opportunity to petition the court to demonstrate that  
11          the person's nonpayment or inability to pay is not  
12          wilful; provided that if the person petitions the  
13          court, the court shall make an individualized  
14          assessment of the person's ability to pay based upon  
15          the totality of the circumstances, including the  
16          person's disposable income, financial obligations, and  
17          liquid assets; provided further that if the court  
18          determines that the person's nonpayment or inability  
19          to pay is not wilful, the court may enter an order  
20          that allows additional time for payment; reduces the  
21          amount of each installment; revokes the fee or fine,



# H.B. NO. 393

1 or unpaid portion thereof, in whole or in part; or  
2 converts any outstanding fine to community service[+],  
3 at the rate of one hour of service for every \$25 of  
4 the fine;

5 (5) Any person cited under this section shall have an  
6 opportunity to present a good faith defense, including  
7 lack of knowledge or proof of insurance; provided that  
8 the general penalty provision of this section shall  
9 not apply to:

10 (A) Any operator of a motor vehicle owned by another  
11 person if the operator's own insurance covers  
12 such driving;

13 (B) Any operator of a motor vehicle owned by that  
14 person's employer during the normal scope of that  
15 person's employment; or

16 (C) Any operator of a borrowed motor vehicle if the  
17 operator holds a reasonable belief that the  
18 subject vehicle is insured;

19 (6) In the case of multiple convictions for driving  
20 without a valid motor vehicle insurance policy within  
21 a five-year period from any prior offense, the court,





1           in addition to any other penalty, shall impose the  
2           following penalties:  
3           (A) Imprisonment of no more than thirty days;  
4           (B) Suspension or revocation of the motor vehicle  
5           registration plates of the vehicle involved;  
6           (C) Impoundment, or impoundment and sale, of the  
7           motor vehicle for the costs of storage and other  
8           charges incident to seizure of the vehicle, or  
9           any other cost involved pursuant to section  
10          431:10C-301; or  
11          (D) Any combination of those penalties; and  
12          (7) Any violation as provided in paragraph (2)(B) shall  
13          not be deemed to be a traffic infraction as defined by  
14          chapter 291D."

15          SECTION 6. Section 706-644, Hawaii Revised Statutes, is  
16          amended by amending subsection (4) to read as follows:

17          "(4) If it appears that the defendant's default in the  
18          payment of a fee, fine, or restitution is not contumacious, the  
19          court may make an order allowing the defendant additional time  
20          for payment, reducing the amount of each installment, or  
21          revoking the fee, fine, or the unpaid portion thereof in whole



1 or in part, or converting the unpaid portion of the fee or fine  
2 to community service[-], at the rate of one hour of service for  
3 every \$25 of the fee or fine. A defendant shall not be  
4 discharged from an order to pay restitution until the full  
5 amount of the restitution has actually been collected or  
6 accounted for."

7 SECTION 7. There is appropriated out of the general  
8 revenues of the State of Hawaii the sum of \$ or so  
9 much thereof as may be necessary for fiscal year 2023-2024 and  
10 the same sum or so much thereof as may be necessary for fiscal  
11 year 2024-2025 for the judiciary to develop a legal financial  
12 obligation calculator that alleviates the burden of in-person  
13 hearings for ability to pay determinations and assists judges in  
14 determining the appropriate monetary penalty amount to impose by  
15 providing users with a centralized resource that combines laws  
16 specific to the charged crimes, a person's ability to pay, and  
17 tools to determine reasonable payment options.

18 The sums appropriated shall be expended by the judiciary  
19 for the purposes of this Act.



# H.B. NO. 393

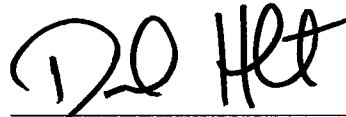
1           SECTION 8. This Act does not affect rights and duties that  
2 matured, penalties that were incurred, and proceedings that were  
3 begun before its effective date.

4           SECTION 9. Statutory material to be repealed is bracketed  
5 and stricken. New statutory material is underscored.

6           SECTION 10. This Act shall take effect upon its approval;  
7 provided that section 7 shall take effect on July 1, 2023.

8

INTRODUCED BY:

  
\_\_\_\_\_  
JAN 20 2023



# H.B. NO. 393

**Report Title:**

Ability to Pay Determinations; Community Service; Appropriation

**Description:**

Requires the judiciary to establish a uniform procedure for adjusting payments and partner with other state agencies for ability to pay determinations. Sets the community service conversion rate for certain monetary penalties. Appropriates funds to develop a legal financial obligation calculator.

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

