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# A BILL FOR AN ACT

RELATING TO INCOME.

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

1           SECTION 1. The legislature finds that the tip credit  
2 authorized by section 387-2, Hawaii Revised Statutes, allows  
3 employers to pay certain employees at a rate below the state  
4 minimum wage by calculating tips as a portion of the employee's  
5 wages. The legislature further finds that the tip credit  
6 increase associated with the recent increase in minimum wage  
7 pursuant to Act 114, Session Laws of Hawaii 2022, may be  
8 misunderstood, and therefore inconsistently and unfairly applied  
9 by employers. Affected employees who earn less than minimum  
10 wage are likely to be afraid of raising this issue to and about  
11 their employers.

12           The purpose of this Act is to clarify the law on tip credit  
13 by:

14           (1) Requiring the department of labor and industrial  
15 relations to submit an annual report on the  
16 enforcement of the wage and hour law in the State to  
17 the legislature that includes, at a minimum, the



1 complaints filed, investigatory actions taken,  
2 violations found, and penalties collected; and

3 (2) Requiring the director of labor and industrial  
4 relations to establish:

5 (A) Investigation standards that protect the identity  
6 of an employee who files a complaint with the  
7 wage standards division to report any wage and  
8 hour violations by their employer; and

9 (B) An education program for employees and employers  
10 on federal and state wage and hour laws,  
11 including tip credit and prohibitions against  
12 employer retaliation.

13 SECTION 2. Section 371-7, Hawaii Revised Statutes, is  
14 amended to read as follows:

15 "~~§371-7~~ Duties and powers of the department; rules,  
16 procedure for varying. In addition to any other duties and  
17 powers as may be conferred upon the department of labor and  
18 industrial relations by law, the department shall:

19 (1) File with the governor a written report or reports at  
20 times, at least once in each year, and in a form as



1 shall be requested by the governor covering the  
2 condition and activities of the department;

3 (2) No later than twenty days prior to the convening of  
4 each regular session, submit an annual report on the  
5 enforcement of the wage and hour law in the State to  
6 the legislature. The report shall contain, at a  
7 minimum, the complaints filed, investigatory actions  
8 taken, violations found, and penalties collected;

9 ~~[(2)]~~ (3) Make, modify, and repeal reasonable rules of  
10 general application for the protection of life,  
11 health, and safety of employees in every employment or  
12 place of employment; provided that the rules shall not  
13 conflict with any rules of the department of health  
14 covering the same subject matter; provided further  
15 that rules pertaining to any workers' compensation  
16 case arising under chapter 386 shall be adopted or  
17 amended as specified in section 386-72; and

18 ~~[(3)]~~ (4) Make, modify, and repeal ~~[such]~~ other reasonable  
19 rules of general application as may be necessary to  
20 carry into effect this chapter.



1           The rules of the department and any amendments thereto,  
2 when adopted in accordance with chapter 91, shall have the force  
3 and effect of law and shall be enforced in the same manner as  
4 this chapter.

5           If there are practical difficulties or unnecessary  
6 hardships in carrying out a rule, the director of labor and  
7 industrial relations, after public hearing, may make a variation  
8 from the requirement if the spirit of the rule is observed. Any  
9 person affected by the rule, or the person's agent, may petition  
10 for variation, stating the grounds therefor. The director shall  
11 fix a day for a hearing on the petition and give reasonable  
12 notice thereof to the petitioner. A properly indexed record of  
13 all variations made shall be kept in the office of the  
14 department and shall be open to public inspection.

15           Any interested person may obtain a ruling as to the  
16 validity or applicability of any rule in the manner provided in  
17 chapter 91."

18           SECTION 3. Section 387-5, Hawaii Revised Statutes, is  
19 amended to read as follows:



1           "§387-5 Duty of director; employees, salaries. (a) The  
2 director of labor and industrial relations shall enforce this  
3 chapter.

4           (b) The director shall establish investigation standards  
5 that protect the identity of an employee who files a complaint  
6 with the wage standards division to report any violations under  
7 this chapter.

8           (c) The director shall establish a program that educates  
9 employees and employers on the federal and state wage and hour  
10 laws. The program shall also include information on the  
11 application of the tip credit, complaint procedures, prohibition  
12 against employer retaliation, and the penalties for violation.

13           (d) The director may appoint [~~such~~] assistants and [~~such~~]  
14 clerical, stenographic, and other help as may be necessary for  
15 the proper enforcement of this chapter subject to any civil  
16 service act relating to state employees. The salaries of all of  
17 the foregoing appointees and employees shall be as fixed by  
18 law."

19           SECTION 4. Statutory material to be repealed is bracketed  
20 and stricken. New statutory material is underscored.

21           SECTION 5. This Act shall take effect on January 1, 2050.



**Report Title:**

Tip Credit; Department of Labor and Industrial Relation; Wage and Hour Law; Investigative Standards; Education Program; Annual Report

**Description:**

Requires the Department of Labor and Industrial Relations to submit an annual report on the enforcement of the wage and hour law in the State to the Legislature. Requires the Director of Labor and Industrial Relations to establish: (1) investigation standards that protect the identity of an employee who files a complaint with the Wage Standards Division to report any wage and hour violations by their employer; and (2) an education program for employees and employers on federal and state wage and hour laws, including tip credit and prohibitions against employer retaliation. Effective 1/1/2050. (SD1)

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

