

**ACT 158**

A Bill for an Act Amending Sections 88-15 and 94-13, Revised Laws of Hawaii 1955, and Chapter 95, Revised Laws of Hawaii 1955, as Amended, Relating to Collection and Payment of Wages.

*Be it Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Section 88-15, Revised Laws of Hawaii 1955 is hereby amended as follows:

(a) By placing a period after the word "rules" appearing in the title thereof and deleting therefrom the words "wage claims, joinder of."

(b) By repealing paragraph (d) of said section.

SECTION 2. The fifth paragraph entitled "Restitution of illegal deductions; effect of" of section 94-13, Revised Laws of Hawaii 1955, is hereby amended by deleting therefrom the words and figures "sections 95-3 and 95-4" and substituting therefor the word and figure "chapter 95."

SECTION 3. Chapter 95, Revised Laws of Hawaii 1955; as amended, is further amended to read:

**“CHAPTER 95  
“WAGES, PAYMENT OF**

**“Section 95-1. Definitions.**

“(a) As used in this chapter:

“(1) ‘Director’ means the director of labor and industrial relations.

“(2) ‘Employ’ includes to permit or suffer to work.

“(3) ‘Employer’ includes any individual, partnership, association, joint stock company, trust, corporation, the administrator or executor of the estate of a deceased individual or the receiver, trustee, or successor of any of the same, employing any person, but shall not include the State or any political subdivision thereof or the United States.

“(4) ‘Employee’ includes any person suffered or permitted to work.

“(5) ‘Wages’ means compensation for labor or services rendered by an employee, whether the amount is determined on a time, task, piece, commission or other basis of calculation. It shall include the reasonable cost, as determined by the director under chapter 94, to the employer of furnishing an employee with board, lodging or other facilities if such board, lodging or other facilities are customarily furnished by such employer to his employees but shall not include tips or gratuities of any kind.

**“Section 95-2. Semi-monthly payday.**

“(a) Every employer shall pay all wages due to his employees at least twice during each calendar month, on regular paydays designated in advance by the employer, in lawful money of the United States or with checks on banks convertible into cash on demand at full face value thereof.

“(b) The earned wages of all employees shall be due and payable within seven days after the end of each pay period.

“(c) The director may, upon application showing good and sufficient reasons, permit an employer to establish regular paydays less frequently than semi-monthly provided that the worker shall be paid in full at least once each calendar month on a regularly established schedule.

**“Section 95-3. Employees who are separated from the payroll before paydays.**

“(a) Whenever an employer discharges an employee either with or without cause, the employer shall pay the employee’s wages in full at the time of discharge or if such a discharge occurs at a time and under conditions which prevent an employer from making immediate payment, then not later than the working day following discharge.

“(b) Whenever an employee quits or resigns, the employer shall pay the employee’s wages in full no later than the next regular payday, as provided under section 95-2 of this chapter, either through the regular pay channels or by mail if requested by the employee, except that if the employee gives at least one pay period’s notice of intention to quit the employer shall pay all wages earned by the employee at the time of quitting.

“(c) When work of an employee is suspended as a result of a labor dispute, or when an employee for any reason whatsoever is temporarily laid off, the employer shall pay in full to such employee not later than the next regular payday, as designated under section 95-2 of this chapter,

either through the regular pay channels or by mail if requested by the employee, wages earned at the time of suspension or layoff.

**“Section 95-4. Unconditional payment of wages conceded to be due.**

“(a) In case of a dispute as to the amount of wages, the employer shall pay, without condition and within the time set by this chapter, all wages, or parts thereof, conceded by him to be due, leaving to the employee all remedies he might otherwise be entitled to, including those provided under this chapter, as to any balance claimed.

“(b) The acceptance by an employee of a payment under this section shall not constitute a release or accord and satisfaction with respect to the disputed amount and any release required by an employer as a condition to payment shall be in violation of this chapter and shall be null and void.

**“Section 95-5. Withholding of wages.** No employer may deduct or retain any part or portion of any compensation earned by any employee except where required by federal or state statute or by court process or when such deductions are authorized in writing by the employee, provided that deductions for the following may not be so authorized or collected: (1) fines; (2) cash shortage in a common money till, cash box or register used by two or more persons; (3) breakage; (4) losses due to acceptance by an employee of checks which are subsequently dishonored if such employee is given discretion to accept or reject any check; or (5) losses due to defective or faulty workmanship, lost or stolen property, damage to property, default of customer credit or non-payment for goods or services received by customer if such losses are not attributable to employee’s wilful or intentional disregard of employer’s interest.”

**“Section 95-6. Notification, posting, and records.**

“Every employer shall:

“(a) notify his employees in writing, at the time of hiring of the rate of pay, and of the day, hour, and place of payment,

“(b) notify his employees in writing or through a posted notice maintained in a place accessible to his employees of any changes in the arrangements specified above prior to the time of such changes,

“(c) make available to his employees in writing or through a posted notice maintained in a place accessible to his employees policies with regard to vacation pay and sick leave,

“(d) furnish each employee at every payday a legible printed, type-written or handwritten record showing the employee’s total gross compensation, the amount and purpose of each deduction, total net compensation, date of payment and pay period covered; and maintain and preserve a copy of such record or its equivalent for a period of at least six years, and

“(e) keep posted in a place accessible to his employees such notices pertaining to the application of this chapter as shall be prescribed by the director.

**“Section 95-7. Provisions of law may not be waived by agreement.**

Except as provided in section 95-11, no provision of this chapter may in any way be contravened or set aside by private agreement.

**“Section 95-8. Enforcement.**

“(a) The director shall enforce and administer the provisions of this

chapter and the director or his authorized representatives are empowered to hold hearings and otherwise to investigate charges of violations of this chapter and to institute actions for penalties hereunder.

“(b) The director or his authorized representatives are empowered to enter and inspect such places, question such employees, and investigate such facts, conditions, or matters as they may deem appropriate to determine whether any person has violated any provision of this chapter or any rule or regulation issued hereunder or which may aid in the enforcement of the provisions of this chapter.

“(c) If any judgment obtained by the director against an employer for nonpayment of wages remains unsatisfied for a period of thirty days after the time to appeal therefrom has expired and no appeal is pending or after such judgment has been finally affirmed on appeal, the director may institute proceedings in the name of the State in the circuit court in which such employer has his principal place of business to compel such employer to cease doing any business until such judgment has been satisfied.

“**Section 95-9. Penalties.** Any employer who wilfully violates any provisions of sections 95-2 and 95-3 of this chapter, or who wilfully fails to comply with any other requirements of this chapter, shall be guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not more than \$500 or imprisoned not more than six months, or both.

“**Section 95-10. Employees’ remedies.**

“(a) Action by an employee to recover unpaid wages may be maintained in any court of competent jurisdiction by any one or more employees for and in behalf of himself or themselves, or such employee or employees may designate an agent or representative to maintain such action.

“(b) Whenever the director determines that wages have not been paid, and that such unpaid wages constitute an enforceable claim, the director may upon the request of the employee take an assignment in trust for such wages without being bound by any of the technical rules respecting the validity of any such assignments and may bring any legal action necessary to collect such claim. With the consent of the assigning employee at the time of the assignment the director shall have the power to settle and adjust any such claim to the same extent as might the assigning employee.

“(c) The court in any action brought under this subsection shall, in addition to any judgment awarded to the plaintiff or plaintiffs, allow costs of action, including costs of fees of any nature, and reasonable attorney’s fees, to be paid by the defendant. The director shall not be required to pay the filing fee or other costs or fees of any nature or to file a bond or other security of any nature in connection with such action or with proceedings supplementary thereto, or as a condition precedent to the availability to the director of any process in aid of such action or proceedings. The director shall have the power to join various claimants in one preferred claim or lien, and in case of suit to join them in one cause of action.

“(d) When the business of any person, corporation, company or firm is suspended as a result of a writ of execution or attachment or is

placed in the hands of a receiver, trustee or assignee for creditors, then in all such cases claims for wages of not more than \$300 to each claimant, earned within six months of the date such business is suspended or placed in the hands of a receiver, trustee or assignee for creditors, shall be paid in full prior to the payment of taxes or any other debts except a debt secured by a mortgage duly recorded before the wages were earned.

“(e) Any employee desiring to enforce his claim for wages under subsections (d), (e) and (f) of this section shall present a statement under oath showing the amount due, the kind of work for which such wages are due, and when such work was performed to the office or person charged with such property within twenty days after the seizure thereof on any execution or writ of attachment or within sixty days after such property has been placed in the hands of a receiver, trustee or assignee for creditors. Any interested party may contest any such claim or part thereof by filing sworn exceptions thereto with such officer or person within ten days after the period for filing claims, and thereupon the claimant shall be required to reduce his claim to judgment before any part thereof shall be paid.

“(f) No claim shall be paid until after the expiration of the time for filing and contesting claims. If the funds realized from the sale of the property are insufficient to pay the total claims for wages presented, then such funds shall be prorated on such claims.

“**Section 95-12.\* Rules and regulations.** The director is authorized to issue such rules and regulations as he determines necessary for the purpose of carrying out the provisions of this chapter.

“**Section 95-13. Separability of provisions.** If any provision of this chapter, or the application thereof to any person or circumstance, is held invalid, the remainder of the chapter, and the application of such provision to other persons or circumstances shall not be affected thereby.”

SECTION 4. This Act shall take effect on January 1, 1964.

(Approved June 3, 1963.) **H.B. 429.**

\* So in original. Section number “95-11” apparently inadvertently omitted.