

ACT 3

H.B. NO. 915

A Bill for an Act Relating to Employment Security Law.

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

SECTION 1. Chapter 383, Hawaii Revised Statutes, is amended by adding to part III a new section to be appropriately designated and to read as follows:

“§383- Income tax refund offsets. Effective April 1, 2013, any employer in default of contributions, advance payments, or reimbursement may be subject to offset of federal tax refund payments of the amount owed, including penalties, interest, costs, and administrative fees.”

SECTION 2. Section 383-33, Hawaii Revised Statutes, is amended to read as follows:

“§383-33 Determinations, in general. (a) A determination upon a claim filed pursuant to section 383-32 shall be made promptly by a representative of the department of labor and industrial relations authorized to make determinations upon claims and shall include a statement as to whether and in what amount the [claimant] individual is entitled to benefits for the week with respect to which the determination is made and, in the event of a denial, shall state the reasons therefor. A determination with respect to the first week of a benefit year shall also include a statement as to whether the [claimant] individual has been paid the wages required under section 383-29(a)(5) and, if so, the first day of the benefit year, the [claimant's] individual's weekly benefit amount, and the maximum total amount of benefits payable to the [claimant] individual with respect to such benefit year.

(b) If any employer fails to furnish the information necessary to determine whether and in what amount the [claimant] individual is entitled to benefits in the manner and within the time specified by this chapter or regulations of the department, the department shall make a determination based upon such information as is available. ~~[It]~~ Prior to October 1, 2013, in the absence of fraud, any redetermination made on the basis of information furnished by the employer after the prescribed period shall be effective only as to benefits paid after the week in which the information was received. In the absence of a showing by the employer satisfying the department that the employer could not reasonably comply with the department's requirement, any benefits overpaid prior to the effective date of the redetermination as a result of the employer's failure to furnish the information as required shall be charged entirely against the account of the non-complying employer; provided that the overpaid benefits shall not, in any event, be recoverable from the [claimant.] individual. Any redetermination issued on or after October 1, 2013, on the basis of information furnished by the employer or the agent of the employer after the prescribed period shall be effective upon the date of the redetermination. The entire amount of benefits overpaid due to the employer's or agent of the employer's failure to respond timely or adequately to the agency's request for information as required shall be charged against the account of the noncomplying employer."

SECTION 3. Section 383-44, Hawaii Revised Statutes, is amended to read as follows:

**"§383-44 Recovery of benefits paid.** (a) Any [person] individual who has received any amount as benefits under this chapter to which the [person] individual was not entitled shall be liable for the amount unless the overpayment was received without fault on the part of the recipient and its recovery would be against equity and good conscience. Notice of redetermination in these cases shall specify that the [person] individual is liable to repay to the fund the amount of overpaid benefits, the basis of the overpayment, and the week or weeks for which the benefits were overpaid.

(b) Determinations or redeterminations dated on or after October 1, 2013, that an individual has been overpaid benefits under any state or federal unemployment compensation program and is disqualified under section 383-30(5) shall include a penalty assessment amount equal to fifteen per cent of the overpaid amount. Penalty assessments collected under this section shall be deposited in the unemployment compensation fund.

~~(b)~~ (c) The [person] individual liable, in the discretion of the department, shall ~~either~~ repay the overpaid amount and the penalty assessment amount to the department for the fund or have the overpaid amount only deducted from any future benefits payable to the [person] individual under this chapter within two years after the date of mailing of the notice of redetermination or the final decision on an appeal from the redetermination. Effective April 1, 2013, the overpaid benefits amount and the penalty assessment amount, costs, and administrative fees may be deducted from federal income tax refunds.

~~(e)~~ (d) Notwithstanding any other provision of this chapter, the department, by agreement with another state or the United States as provided under section 303(g) of the Social Security Act, may recover any overpayment of benefits paid to any individual under the laws of this State or of another state or under an unemployment benefit program of the United States. Any overpayments subject to this subsection may be deducted from any future benefits payable to the individual under the laws of this State or of another state or under an unem-

### ACT 3

ployment program of the United States. The penalty assessment amount shall not be subject to recovery by deduction from future benefits payable.

~~[(d)]~~ (e) In any case in which under this section an individual is liable to repay any amount to the department, the ~~[amount]~~ overpaid benefits amount, the penalty assessment amount, costs, and administrative fees shall be collectible without interest by civil action in the name of the State by the attorney general.”

SECTION 4. Section 383-123, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) Withdrawals. Moneys requisitioned from the State’s account in the unemployment trust fund shall be used exclusively for the payment of benefits ~~[and for]~~, refunds of contributions pursuant to section 383-76 and section 383-7(a)(6), and for payment of fees authorized under section 6402(f) of the Internal Revenue Code, except that moneys credited to this State’s account pursuant to section 903 of the Social Security Act, as amended, shall be used exclusively as provided in subsection (b). The director of finance shall from time to time, with the approval of the department of labor and industrial relations in accordance with rules prescribed by the comptroller of the State, requisition from the unemployment trust fund such amounts, not exceeding the amount in the State’s account, as it deems necessary for the payment of benefits and refunds of contributions for a reasonable future period. The moneys shall be deposited in the benefit account. Expenditures of such moneys in the benefit account and refunds from the clearing account shall not be subject to any provisions of law requiring specific appropriations or other formal release by state officers of moneys in their custody. All benefits and refunds of contributions shall be paid from the fund upon warrants drawn upon the director of finance by the comptroller of the State supported by vouchers approved by the department. Any balance of moneys requisitioned from the unemployment trust fund that remains unclaimed or unpaid in the benefit account after the expiration of the period for which the sums were requisitioned shall either be deducted from estimates for, and may be used for the payment of, benefits and refunds during succeeding periods or, in the discretion of the department, shall be redeposited with the Secretary of the Treasury of the United States, to the credit of this State’s account in the unemployment trust fund, as provided in section 383-122.”

SECTION 5. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.<sup>1</sup>

SECTION 6. This Act, upon its approval, shall take effect on April 1, 2013.

(Approved April 1, 2013.)

#### Note

1. Edited pursuant to HRS §23G-16.5.