

ACT 187

S.B. NO. 2801

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:

SECTION 1. Chapter 371, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

“§371- Labor law enforcement special fund; establishment; purposes.

(a) There is established in the state treasury the labor law enforcement special fund into which shall be deposited:

- (1) All penalties collected pursuant to section 388-9.7;
- (2) All penalties collected pursuant to section 388-10;
- (3) All civil penalties assessed pursuant to section 396-10;
- (4) Moneys appropriated by the legislature to the fund; and
- (5) Any income and capital gains earned by the fund.

(b) The purpose of the special fund is to provide for sufficient operating costs to collect penalties and fees assessed by the department. Moneys in the fund may be used for:

- (1) Personnel and operating expenses;
- (2) Staff development, training, fees, and expenses; and
- (3) Litigation expenses, including but not limited to transcript costs, and interpretation and translation services.

(c) The unencumbered balance of the fund exceeding \$500,000 at the end of every fiscal year shall be deposited into the general fund on or about June 30 every year.”

SECTION 2. Section 388-10, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) Civil. Any employer who fails to pay wages in accordance with this chapter without equitable justification or violates this chapter or the administrative rules adopted under this chapter shall be liable:

- (1) To the employee, in addition to the wages legally proven to be due, for a sum equal to the amount of unpaid wages and interest at a rate of six per cent per year from the date that the wages were due; and
- (2) For a penalty of not less than \$500 or \$100 for each violation, whichever is greater. The penalty shall be deposited into the [general] labor law enforcement special fund.”

SECTION 3. Section 396-10, Hawaii Revised Statutes, is amended to read as follows:

“§396-10 Violations and penalties. (a) Any employer who violates this chapter, or any occupational safety and health standard promulgated hereunder or any rule issued under the authority of this chapter, or who violates or fails to comply with any citation, notice, or order made under or by virtue of this chapter or under or by virtue of any rule of the department, or who defaces, displaces, destroys, damages, or removes without the authority of the department any safety device, safeguards, notice, or warning required by this chapter or any rule of the department may be assessed a civil penalty as specified in this chapter.

(b) Any employer who has received an order or citation for a serious violation of any standard or rule adopted pursuant to this chapter shall be assessed a civil penalty of not more than \$12,675 for each violation.

(c) Any employer who has received an order or citation for a violation of any standard or rule adopted pursuant to this chapter, and the violation is specifically determined not to be of a serious nature, may be assessed a civil penalty of up to \$12,675 for each violation.

(d) Each day a violation continues shall constitute a separate violation except that during an abatement period only, no additional penalty shall be levied against the employer.

(e) Any employer who violates any of the posting requirements prescribed under this chapter shall be assessed a civil penalty of up to \$12,675 for each violation.

(f) Any employer who wilfully or repeatedly violates this chapter, or any standard, rule, citation, or order issued under the authority of this chapter, shall be assessed a civil penalty of not more than \$126,749 for each violation, but not less than \$9,054 for each wilful violation.

(g) Any employer convicted of wilful or repeated violations of any standard, rule, citation, or order issued under the authority of this chapter resulting in the death of an employee shall be punished by a fine of not more than \$126,749 or by imprisonment for not more than six months, or both, except that if the conviction is for a violation committed after a first conviction, punishment shall be by a fine of not more than \$126,749 or by imprisonment for not more than one year, or both. Failure to correct a violation for which an order or citation of arrest has been issued shall be evidence of wilful conduct.

(h) Any employer who has received an order for violation under section 396-8(e) may be assessed a civil penalty of not more than \$9,054 for each violation.

(i) Any person who gives advance notice of any inspection to be conducted under this chapter, without authority from the director or the director's designees shall, upon conviction, be punished by a fine of not more than \$9,054 or by imprisonment for not more than six months, or by both.

(j) The director shall have authority to assess all civil penalties provided in this section, giving due consideration to the appropriateness of the penalty with respect to the size of the business of the employer being charged, the gravity of the violation, the good faith of the employer, and the history of previous violations.

(k) Civil penalties imposed under this chapter shall be paid to the department and may be recovered by civil action in the name of the department and the State brought in the district or circuit court for the circuit where the violation is alleged to have occurred or where the employer has its principal office.

(l) When an alleged violation of any provision of this chapter or any standard, rule, or order made pursuant to this chapter has occurred, the depart-

ment shall promptly issue a written citation, order, or notice thereof to the employer who shall be required to post the citation, order, or notice. The citation, order, or notice thereof shall include the abatement requirements and within a reasonable time the employer shall be advised of the proposed sanctions, including proposed penalties. Whenever reference is made to posting of any citation, order, notice, petition, decision, or any other type of document issued by the director under this chapter and rules adopted pursuant to this chapter, the employer shall post copies of the document at the work site involved or affected and at the place or places where notices to the employees involved are normally posted. Where posting starts the time for notice of action to or for appeal by employees under this chapter and rules adopted under this chapter, the document shall be posted by the employer upon receipt or on the next business day following receipt.

(m) Whoever knowingly makes any false statement, representation, or certification in any application, record, report, plan, or other document filed or required to be maintained pursuant to this chapter shall, upon conviction, be punished by a fine of not more than \$11,000, or by imprisonment for not more than six months, or by both.

(n) Criminal offenses committed against any employee of the State acting within the scope of the employee's office, employment, or authority under this chapter shall be subject to the penalties set forth in the Hawaii Penal Code; provided that:

- (1) Ten years shall be added to the maximum term of imprisonment (unless life imprisonment is imposed) and \$55,000 shall be added to the maximum fine imposed for conviction of a class A felony;
- (2) Five years shall be added to the maximum term of imprisonment and \$27,500 shall be added to the maximum fine imposed for conviction of a class B felony;
- (3) Three years shall be added to the maximum term of imprisonment and \$11,000 shall be added to the maximum fine for conviction of a class C felony;
- (4) One year shall be added to the maximum term of imprisonment and \$2,200 shall be added to the maximum fine for conviction of a misdemeanor; and
- (5) The maximum term of imprisonment and maximum fines prescribed for misdemeanors under the Hawaii Penal Code shall apply to convictions of a petty misdemeanor.

(o) The director shall adjust penalties pursuant to the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, section 701 of P.L. 114-74, by December 15, 2018, and each year thereafter. The director shall adjust penalty levels using the guidance of the Office of Management and Budget and issue the new penalties by December 15 of each year. The new penalties shall take effect the following January 15 of each year. The director shall submit a report to the legislature no later than twenty days prior to the convening of each regular session on the penalty adjustments.

(p) All civil penalties collected pursuant to this section shall be deposited into the labor law enforcement special fund."

SECTION 4. The attorney general shall establish two additional positions, without regard to chapters 76 and 89, Hawaii Revised Statutes, to carry out the purposes of this Act. The positions shall include an attorney and a legal assistant II.

SECTION 5. There is appropriated out of the general revenues of the State of Hawaii the sum of \$98,163 or so much thereof as may be necessary for fiscal year 2018-2019 to be deposited into the labor law enforcement special fund.

SECTION 6. There is appropriated out of the labor law enforcement special fund the sum of \$98,163 or so much thereof as may be necessary for fiscal year 2018-2019 for the purposes of this Act.

The sum appropriated shall be expended by the department of labor and industrial relations for the purposes of this Act.

SECTION 7. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.¹

SECTION 8. This Act shall take effect on July 1, 2018.

(Approved July 10, 2018.)

Note

1. Edited pursuant to HRS §23G-16.5.