

A Bill for an Act Relating to Wages.

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

SECTION 1. The legislature finds that state labor laws should vigorously protect workers from employers who fail to pay their employees. Wage theft accounts for \$15,000,000,000 stolen each year, which totals more than all stolen money from physical burglaries in the United States combined.

In the ten most populous states in the United States, 2.4 million workers lose \$8,000,000,000 annually in minimum wage violations. The average year-round worker lost \$3,300 per year, which amounts to one-quarter of their yearly salary. Minimum wage theft affects seventeen per cent of low-wage workers, and workers in all demographic categories face effects of stolen wages.

In 2019, the United States Department of Labor cited about eight thousand five hundred employers for taking approximately \$287,000,000 in minimum wage and overtime-pay violations. Major corporations across the United States have collectively taken \$22,000,000 from employees since 2005.

The United States Census Bureau's current population survey found that minorities are disproportionately affected by wage theft. Immigrants and Latino workers were twice as likely to earn less than the minimum wage from 2009 to 2019, compared to white American workers. Additionally, African American workers were nearly fifty per cent more likely to be victims of wage theft in comparison to other races.

Other states have recently increased penalties for employers who wilfully commit wage theft. In 2019, Minnesota passed the Wage Theft Prevention Act to create additional protections for workers, including adding criminal penalties for employers that commit this offense. Now, in Minnesota, an employer may be criminally charged based on the amount of money withheld from the employee. This escalating penalty scale is analogous to the various theft charges in which stealing a \$10 item could result in a misdemeanor charge and a \$1,000 item could result in a felony charge.

In 2019, Colorado passed the Human Right to Work with Dignity Act, which reclassified the intentional nonpayment of over \$2,000 in wages as a felony theft. The purpose of the Colorado law was to ensure accountability for unscrupulous employers who purposefully withhold wages, underpay workers, engage in tax fraud, and deny workers fair compensation and ultimately hurt the economy by undercutting the bids of lawful employers.

The legislature further finds that Hawai'i should provide workers with similar protections as Minnesota, Colorado, and other states that have increased penalties for employers who fail to pay their employees their lawfully earned wages.

Accordingly, the purpose of this Act is to increase the penalty for employers who fail to pay the wages of their employees in accordance with chapter 387, Hawaii Revised Statutes, the wage and hour law, and chapter 388, Hawaii Revised Statutes, governing payment of wages and other compensation, to a class C felony.

SECTION 2. Section 387-12, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) Criminal.

- (1) Any person divulging information in violation of section 387-8;
- (2) Any employer who wilfully violates this chapter or of any rule, regulation, or order issued under the authority of this chapter; or

- (3) Any employer or the employer's agent or any officer or agent of a corporation who discharges or in any other manner discriminates against any employee because the employee has made a complaint to the employee's employer, to the director, or to any other person that the employee has not been paid wages in accordance with this chapter, or has instituted or caused to be instituted any proceeding under or related to this chapter, or has testified or is about to testify in any such proceedings[; or
- (4) ~~Any employer or the employer's agent or any officer or agent of a corporation who pays or agrees to pay any employee compensation less than that which the employee is entitled to under this chapter], shall be guilty of a misdemeanor and, upon conviction thereof, shall be [punished by] subject to a fine of [nø] not less than \$500 nor more than \$5,000, or by imprisonment for a period not to exceed one year, or by both fine and imprisonment[.]; and~~
- (4) Any employer or the employer's agent or any officer or agent of a corporation who pays or agrees to pay any employee compensation less than that which the employee is entitled to under this chapter, shall be guilty of a class C felony and, notwithstanding section 706-640, be subject to a fine of not less than \$500 per offense; provided that each violation shall be deemed a separate offense."

SECTION 3. Section 388-10, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

"(b) Criminal.

- (1) Any employer who does not pay the wages of any of the employer's employees in accordance with this chapter, or any officer of any corporation who knowingly permits the corporation to violate this chapter by failing to pay wages of any of its employees in accordance with this chapter[; or any] shall be guilty of a class C felony and, notwithstanding section 706-640, be subject to a fine of not less than \$500 per offense. Each violation shall be deemed a separate offense.
- (2) Any employer or the employer's agent or any officer or agent of a corporation who discharges or in any other manner discriminates against any employee because the employee has made a complaint to the employee's employer, or to the director, or to any other person that the employee has not been paid wages in accordance with this chapter, or has instituted or caused to be instituted any proceeding under or related to this chapter, or has testified or is about to testify in any such proceedings, or any employer who wilfully fails to comply with any other requirements of this chapter shall be fined not less than \$100 nor more than \$10,000 or imprisoned for not more than one year, or punished by both fine and imprisonment for each such offense."

SECTION 4. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun before its effective date.

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

SECTION 6. This Act shall take effect upon its approval.

(Approved July 12, 2022.)