

JAN 25 2017

A BILL FOR AN ACT

RELATING TO OCCUPATIONAL SAFETY AND HEALTH PENALTIES.

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

1 SECTION 1. Section 396-10, Hawaii Revised Statutes, is
2 amended to read as follows:

3 "**§396-10 Violations and penalties.** (a) Any employer who
4 violates this chapter, or any occupational safety and health
5 standard promulgated hereunder or any rule [~~or regulation~~]
6 issued under the authority of this chapter, or who violates or
7 fails to comply with any citation, notice, or order made under
8 or by virtue of this chapter or under or by virtue of any rule
9 [~~or regulation~~] of the department, or who defaces, displaces,
10 destroys, damages, or removes without the authority of the
11 department any safety device, safeguards, notice, or warning
12 required by this chapter or any rule [~~or regulation~~] of the
13 department may be assessed a civil penalty as specified in this
14 chapter.

15 (b) Any employer who has received an order or citation for
16 a serious violation of any standard or rule adopted pursuant to
17 this chapter shall be assessed a civil penalty of not more than
18 [~~\$7,700~~] \$12,471 for each violation.

S.B. NO. 980

1 (c) Any employer who has received an order or citation for
2 a violation of any standard or rule adopted pursuant to this
3 chapter, and the violation is specifically determined not to be
4 of a serious nature, may be assessed a civil penalty of up to
5 [~~\$7,700~~] \$12,471 for each violation.

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

9 (e) Any employer who violates any of the posting
10 requirements prescribed under this chapter shall be assessed a
11 civil penalty of up to [~~\$7,700~~] \$12,471 for each violation.

12 (f) Any employer who wilfully or repeatedly violates this
13 chapter, or any standard, rule, citation, or order issued under
14 the authority of this chapter, shall be assessed a civil penalty
15 of not less than [~~\$5,500~~] \$8,908 nor more than [~~\$77,000~~]
16 \$124,709 for each violation.

17 (g) Any employer convicted of wilful or repeated
18 violations of any standard, rule, citation, or order issued
19 under the authority of this chapter resulting in the death of an
20 employee shall be punished by a fine of not more than [~~\$77,000~~]
21 \$124,709 or by imprisonment for not more than six months, or
22 both, except that if the conviction is for a violation committed

S.B. NO. 980

1 after a first conviction, punishment shall be by a fine of not
2 more than [~~\$77,000~~] \$124,709 or by imprisonment for not more
3 than one year, or both. Failure to correct a violation for
4 which an order or citation of arrest has been issued shall be
5 evidence of wilful conduct.

6 (h) Any employer who has received an order for violation
7 under section 396-8(e) may be assessed a civil penalty of not
8 more than [~~\$1,100~~] \$8,908 for each violation.

9 (i) Any person who gives advance notice of any inspection
10 to be conducted under this chapter, without authority from the
11 director or the director's designees shall, upon conviction, be
12 punished by a fine of not more than [~~\$1,100~~] \$8,908 or by
13 imprisonment for not more than six months, or by both.

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

20 (k) Civil penalties imposed under this chapter shall be
21 paid to the department and may be recovered by civil action in
22 the name of the department and the State brought in the district

S.B. NO. 980

1 or circuit court for the circuit where the violation is alleged
2 to have occurred or where the employer has its principal office.

3 (l) When an alleged violation of any provision of this
4 chapter or any standard, rule, or order made thereunder has
5 occurred, the department shall promptly issue a written
6 citation, order, or notice thereof to the employer who shall be
7 required to post the citation, order, or notice. The citation,
8 order, or notice thereof shall include the abatement
9 requirements and within a reasonable time the employer shall be
10 advised of the proposed sanctions, including proposed penalties.
11 Whenever reference is made to posting of any citation, order,
12 notice, petition, decision, or any other type of document issued
13 by the director under this chapter and rules adopted pursuant to
14 this chapter, the employer shall post copies of the document at
15 the work site involved or affected and at the place or places
16 where notices to the employees involved are normally posted.
17 Where posting starts the time for notice of action to or for
18 appeal by employees under this chapter and rules adopted under
19 this chapter, the document shall be posted by the employer upon
20 receipt or on the next business day following receipt.

21 (m) Whoever knowingly makes any false statement,
22 representation, or certification in any application, record,

S.B. NO. 980

1 report, plan, or other document filed or required to be
2 maintained pursuant to this chapter shall, upon conviction, be
3 punished by a fine of not more than \$11,000, or by imprisonment
4 for not more than six months, or by both.

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

9 (1) Ten years shall be added to the maximum term of
10 imprisonment (unless life imprisonment is imposed) and
11 \$55,000 shall be added to the maximum fine imposed for
12 conviction of a class A felony;

13 (2) Five years shall be added to the maximum term of
14 imprisonment and \$27,500 shall be added to the maximum
15 fine imposed for conviction of a class B felony;

16 (3) Three years shall be added to the maximum term of
17 imprisonment and \$11,000 shall be added to the maximum
18 fine for conviction of a class C felony;

19 (4) One year shall be added to the maximum term of
20 imprisonment and \$2,200 shall be added to the maximum
21 fine for conviction of a misdemeanor; and

22

S.B. NO. 980

1 (5) The maximum term of imprisonment and maximum fines
2 prescribed for misdemeanors under the Hawaii Penal
3 Code shall apply to convictions of a petty
4 misdemeanor.

5 (o) The director shall adjust penalties pursuant to the
6 Federal Civil Penalties Inflation Adjustment Act Improvement Act
7 of 2015, Section 701 of P.L. 114-74, by December 15, 2017, and
8 each year thereafter. The director shall adjust penalty levels
9 using the guidance of the Office of Management and Budget issued
10 by December 15 of each year. The new penalties shall take
11 effect the following January 15 of each year."

12 SECTION 2. Statutory material to be repealed is bracketed
13 and stricken. New statutory material is underscored.

14 SECTION 3. This Act shall take effect upon its approval.

15

16

INTRODUCED BY:



17

BY REQUEST

S.B. NO. 980

Report Title:

Occupational Safety and Health Penalties

Description:

Increases fines for Hawaii Occupational and Safety violations pursuant to the Federal Civil Penalties Inflation Adjustment Act Improvement Act of 2015, Section 701 of P.L. 114-74.

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

SB. NO. 980

JUSTIFICATION SHEET

DEPARTMENT: Labor and Industrial Relations

TITLE: A BILL FOR AN ACT RELATING TO OCCUPATIONAL SAFETY AND HEALTH PENALTIES.

PURPOSE: To increase fines for Hawaii Occupational and Safety violations as required by federal law.

MEANS: Amend section 396-10, Hawaii Revised Statutes (HRS).

JUSTIFICATION: This proposal will increase fines for employers who violate the Hawaii Occupational and Safety rules pursuant to federal law and to account for inflation. The civil penalties adjustments will bring the State into compliance with the federal Occupational Safety and Health Administration (OSHA) requirement that state standards and enforcement must be "at least as effective as federal OSHA's standards and enforcement program."

On November 2, 2015 Congress passed the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (2015 Inflation Adjustment Act) as part of the Bipartisan Budget Act of 2015. The new law directs agencies to adjust their civil monetary penalties to account for inflation every year.

OSHA's penalties - which had not been raised since 1990 - increased by 78 per cent, with its top penalty for serious violations rising from \$7,000 to \$12,471 and its top penalty for willful or repeated violations rising from \$70,000 to \$124,709.

This proposal will bring the State into compliance with the federal law. Staying in conformity with OSHA standards helps ensure federal funding for HIOSH. In fiscal year

SB. NO. 980

2016-2017, federal funding amounted to \$2,089,716.00.

This proposal will also allow the Director of Labor and Industrial Relations to adjust penalties on or about December 15 of each year, using the guidance of the Office of Management and Budget pursuant to the 2015 Inflation Adjustment Act, section 701 of Public Law 114-74.

Impact on the public: This measure is intended to improve compliance with workplace safety and health standards by increasing the sanctions for non-compliance. The public will continue to benefit from enforcement of workplace safety and health laws. Moreover, greater compliance with workplace safety and health standards will reduce costly injuries and fatalities and therefore reduce Workers' Compensation costs for employers.

Impact on the department and other agencies: This proposal will improve the Department's ability to promote compliance with workplace safety and health standards by increasing monetary penalties, which have been recognized to be an effective deterrent.

GENERAL FUND: None.

OTHER FUNDS: None.

PPBS PROGRAM
DESIGNATION: LBR143.

OTHER AFFECTED
AGENCIES: None.

EFFECTIVE DATE: Upon approval.