

---

---

# 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:**

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

4           "§371-     Labor law enforcement special fund;  
5 establishment; purposes. (a) There is established in the state  
6 treasury the labor law enforcement special fund into which shall  
7 be deposited:

- 8           (1) All penalties collected pursuant to section 388-9.7;  
9           (2) All penalties collected pursuant to section 388-10;  
10          (3) All civil penalties assessed pursuant to section  
11           396-10;  
12          (4) Moneys appropriated by the legislature to the fund;  
13           and  
14          (5) Any income and capital gains earned by the fund.

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

- 18          (1) Personnel and operating expenses;



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

5        (c) The unencumbered balance of the fund exceeding  
 6        \$500,000 at the end of every fiscal year shall be deposited into  
 7        the general fund on or about June 30 every year."

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

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

14        (1) To the employee, in addition to the wages legally  
 15        proven to be due, for a sum equal to the amount of  
 16        unpaid wages and interest at a rate of six per cent  
 17        per year from the date that the wages were due; and

18        (2) For a penalty of not less than \$500 or \$100 for each  
 19        violation, whichever is greater. The penalty shall be  
 20        deposited into the [~~general~~] labor law enforcement  
 21        special fund."



1 SECTION 3. 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 issued under the  
6 authority of this chapter, or who violates or fails to comply  
7 with any citation, notice, or order made under or by virtue of  
8 this chapter or under or by virtue of any rule of the  
9 department, or who defaces, displaces, destroys, damages, or  
10 removes without the authority of the department any safety  
11 device, safeguards, notice, or warning required by this chapter  
12 or any rule of the department may be assessed a civil penalty as  
13 specified in this chapter.

14 (b) Any employer who has received an order or citation for  
15 a serious violation of any standard or rule adopted pursuant to  
16 this chapter shall be assessed a civil penalty of not more than  
17 \$12,675 for each violation.

18 (c) Any employer who has received an order or citation for  
19 a violation of any standard or rule adopted pursuant to this  
20 chapter, and the violation is specifically determined not to be



1 of a serious nature, may be assessed a civil penalty of up to  
2 \$12,675 for each violation.

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

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

9 (f) Any employer who wilfully or repeatedly violates this  
10 chapter, or any standard, rule, citation, or order issued under  
11 the authority of this chapter, shall be assessed a civil penalty  
12 of not more than \$126,749 for each violation, but not less than  
13 \$9,054 for each wilful violation.

14 (g) Any employer convicted of wilful or repeated  
15 violations of any standard, rule, citation, or order issued  
16 under the authority of this chapter resulting in the death of an  
17 employee shall be punished by a fine of not more than \$126,749  
18 or by imprisonment for not more than six months, or both, except  
19 that if the conviction is for a violation committed after a  
20 first conviction, punishment shall be by a fine of not more than  
21 \$126,749 or by imprisonment for not more than one year, or both.



1 Failure to correct a violation for which an order or citation of  
2 arrest has been issued shall be evidence of wilful conduct.

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

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

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

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



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

19           (m) Whoever knowingly makes any false statement,  
20 representation, or certification in any application, record,  
21 report, plan, or other document filed or required to be



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

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

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

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

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

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



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 Improvements  
7 Act of 2015, section 701 of P.L. 114-74, by December 15, 2018,  
8 and each year thereafter. The director shall adjust penalty  
9 levels using the guidance of the Office of Management and Budget  
10 and issue the new penalties by December 15 of each year. The  
11 new penalties shall take effect the following January 15 of each  
12 year. The director shall submit a report to the legislature no  
13 later than twenty days prior to the convening of each regular  
14 session on the penalty adjustments.

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

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





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

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

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

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

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



**Report Title:**

Labor Law Enforcement Special Fund; Collections; Appropriation

**Description:**

Establishes the Labor Law Enforcement Special Fund to finance the collection of penalties and fees for violations of labor law; establishes two positions, including an attorney and legal assistant, in the Department of the Attorney General to represent the Department of Labor and Industrial Relations in collecting penalties for violations of law. Makes an appropriation. (CD1)

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

