

EXECUTIVE CHAMBERS HONOLULU

DAVID Y. IGE GOVERNOR

July 10, 2017 GOV. MSG. NO. 1227

The Honorable Ronald D. Kouchi, President and Members of the Senate Twenty-Ninth State Legislature State Capitol, Room 409 Honolulu, Hawai'i 96813

The Honorable Scott K. Saiki, Speaker and Members of the House of Representatives **Twenty-Ninth State Legislature** State Capitol, Room 431 Honolulu, Hawai'i 96813

Dear President Kouchi, Speaker Saiki, and Members of the Legislature:

This is to inform you that on July 10, 2017, the following bill was signed into law:

HB1114 HD1 SD2 CD1

RELATING TO OCCUPATIONAL SAFETY AND HEALTH PENALTIES ACT 126 (17)

Sincerely,

DAVID Y. IGE Governor, State of Hawai'i

Approved by the Governor JUL 10 2017

ON ______ON LOCE TO LON HOUSE OF REPRESENTATIVES TWENTY-NINTH LEGISLATURE, 2017 STATE OF HAWAII

A BILL FOR AN ACT

ORIGINAL

ACT 126 H.B. NO.

1114

H.D. 1

S.D. 2 C.D. 1

RELATING TO OCCUPATIONAL SAFETY AND HEALTH PENALTIES.

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

SECTION 1. Section 396-10, Hawaii Revised Statutes, is
 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.

(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
[\$7,700] \$12,675 for each violation.

HB1114 CD1 HMS 2017-3627

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(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
 [\$7,700] \$12,675 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] \$12,675 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 [less than \$5,500 nor] more than [\$77,000] \$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 [\$77,000]

HB1114 CD1 HMS 2017-3627

Page 2

3

1 \$126,749 or by imprisonment for not more than six months, or
2 both, except that if the conviction is for a violation committed
3 after a first conviction, punishment shall be by a fine of not
4 more than [\$77,000] \$126,749 or by imprisonment for not more
5 than one year, or both. Failure to correct a violation for
6 which an order or citation of arrest has been issued shall be
7 evidence of wilful conduct.

8 (h) Any employer who has received an order for violation
9 under section 396-8(e) may be assessed a civil penalty of not
10 more than [\$1,100] \$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 [\$1,100] \$9,054 or by imprisonment for not more than six months, or by both.

16 (j) The director shall have authority to assess all civil 17 penalties provided in this section, giving due consideration to 18 the appropriateness of the penalty with respect to the size of 19 the business of the employer being charged, the gravity of the 20 violation, the good faith of the employer, and the history of 21 previous violations.

HB1114 CD1 HMS 2017-3627

Page 3

Page 4



1 Civil penalties imposed under this chapter shall be (k) 2 paid to the department and may be recovered by civil action in 3 the name of the department and the State brought in the district 4 or circuit court for the circuit where the violation is alleged 5 to have occurred or where the employer has its principal office. 6 (1) When an alleged violation of any provision of this 7 chapter or any standard, rule, or order made [thereunder] pursuant to this chapter has occurred, the department shall 8 9 promptly issue a written citation, order, or notice thereof to 10 the employer who shall be required to post the citation, order, 11 or notice. The citation, order, or notice thereof shall include 12 the abatement requirements and within a reasonable time the 13 employer shall be advised of the proposed sanctions, including 14 proposed penalties. Whenever reference is made to posting of 15 any citation, order, notice, petition, decision, or any other 16 type of document issued by the director under this chapter and 17 rules adopted pursuant to this chapter, the employer shall post copies of the document at the work site involved or affected and 18 19 at the place or places where notices to the employees involved 20 are normally posted. Where posting starts the time for notice 21 of action to or for appeal by employees under this chapter and

HB1114 CD1 HMS 2017-3627

4

Page 5

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.

10 (n) Criminal offenses committed against any employee of 11 the State acting within the scope of the employee's office, 12 employment, or authority under this chapter shall be subject to 13 the penalties set forth in the Hawaii Penal Code; provided that: 14 Ten years shall be added to the maximum term of (1) 15 imprisonment (unless life imprisonment is imposed) and 16 \$55,000 shall be added to the maximum fine imposed for conviction of a class A felony; 17

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

HB1114 CD1 HMS 2017-3627

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1	(3)	Three years shall be added to the maximum term of
2		imprisonment and \$11,000 shall be added to the maximum
3		fine for conviction of a class C felony;
4	(4)	One year shall be added to the maximum term of
5		imprisonment and \$2,200 shall be added to the maximum
6		fine for conviction of a misdemeanor; and
7	(5)	The maximum term of imprisonment and maximum fines
8		prescribed for misdemeanors under the Hawaii Penal
9		Code shall apply to convictions of a petty
10		misdemeanor.
11	(0)	The director shall adjust penalties pursuant to the
12	Federal C	ivil Penalties Inflation Adjustment Act Improvements
13	Act of 20	15, section 701 of P.L. 114-74, by December 15, 2018,
14	and each	year thereafter. The director shall adjust penalty
15	levels using the guidance of the Office of Management and Budget	
16	and issue the new penalties by December 15 of each year. The	
17	new penalties shall take effect the following January 15 of each	
18	year. The director shall submit a report to the legislature no	
19	later than twenty days prior to the convening of each regular	
20	session on the penalty adjustments."	

HB1114 CD1 HMS 2017-3627

Page 6

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1 SECTION 2. This Act does not affect rights and duties that 2 matured, penalties that were incurred, and proceedings that were 3 begun before its effective date.

4 SECTION 3. Statutory material to be repealed is bracketed 5 and stricken. New statutory material is underscored.

6 SECTION 4. This Act shall take effect on January 1, 2018.

APPROVED this ¹⁰ day of ^{JUL} , 2017

GOVERNOR OF THE STATE OF HAWAII



HB No. 1114, HD 1, SD 2, CD 1

THE HOUSE OF REPRESENTATIVES OF THE STATE OF HAWAII

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Date: May 2, 2017 Honolulu, Hawaii

We hereby certify that the above-referenced Bill on this day passed Final Reading in the House of Representatives of the Twenty-Ninth Legislature of the State of Hawaii, Regular Session of 2017.

Gen forte

Joseph M. Souki Speaker House of Representatives

Mi L. Ilit

Brian L. Takeshita Chief Clerk House of Representatives

THE SENATE OF THE STATE OF HAWAII

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Date: May 2, 2017 Honolulu, Hawaii 96813

We hereby certify that the foregoing Bill this day passed Final Reading in the

Senate of the Twenty-ninth Legislature of the State of Hawaii, Regular Session of 2017.

Clerk of the Senate