

# S.B. NO. 1454

JAN 23 2025

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## A BILL FOR AN ACT

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RELATING TO THE WAGE AND HOUR LAW.

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

1           SECTION 1. Chapter 387, Hawaii Revised Statutes, is  
2 amended by adding three new sections to be appropriately  
3 designated and to read as follows:

4           "§387-A Order of wage payment violation; appeal. (a)

5 When the department, as a result of the department's own  
6 investigation, finds that a violation of this chapter or  
7 administrative rules adopted under this chapter has been  
8 committed and not corrected, the department shall issue an order  
9 of wage payment violation to the employer in violation. The  
10 order shall include any amount assessed pursuant to section 387-  
11 12(a).

12           (b) The order of wage payment violation shall be final and  
13 conclusive unless within twenty days after a copy of the order  
14 of wage payment violation has been sent to the employer, the  
15 employer files a written notice of appeal with the director in  
16 writing.

17           (c) A hearing on the written notice of appeal shall be  
18 held pursuant to chapter 91, by a hearings officer appointed by

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1 the director, within thirty days of the filing of the notice of  
2 appeal. A decision stating the findings of fact and conclusions  
3 of law shall be rendered by the hearings officer within thirty  
4 days after the conclusion of the hearing.

5 (d) Any party to an appeal under this chapter may obtain  
6 judicial review of the decision issued by the hearings officer  
7 in the manner provided under chapter 91.

8 §387-B Remittance of penalties. Until the order of wage  
9 payment violation becomes final, the director may withdraw or  
10 modify the order of wage payment violation or remit all or any  
11 part of a penalty assessed if good cause is shown; provided that  
12 the employer in default complies with this chapter and the  
13 administrative rules adopted under this chapter.

14 §387-C Enforcement of the order of wage payment violation.  
15 The director may file in any court of competent jurisdiction in  
16 the jurisdiction in which the employer does business, a  
17 certified copy of the final order of wage payment violation.  
18 The court shall render a judgment in accordance with the final  
19 order of wage payment violation and notify the parties of the  
20 judgment. The judgment shall have the same effect, and all  
21 proceedings in relation to the judgment shall be the same, as  
22 though the judgment had been rendered in an action duly heard

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1 and determined by the court, except that there shall be no  
2 appeal from the judgment."

3 SECTION 2. Section 371-12.5, Hawaii Revised Statutes, is  
4 amended by amending subsection (a) to read as follows:

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

7 (1) All penalties collected pursuant to section 387-C;

8 (2) All penalties collected pursuant to section 387-  
9 12(a)(2);

10 [~~1~~] (3) All penalties collected pursuant to section 388-  
11 9.7;

12 [~~2~~] (4) All penalties collected pursuant to section 388-  
13 10;

14 [~~3~~] (5) All civil penalties assessed pursuant to section  
15 396-10;

16 [~~4~~] (6) Moneys appropriated by the legislature to the  
17 fund; and

18 [~~5~~] (7) Any income and capital gains earned by the  
19 fund."

20 SECTION 3. Section 387-1, Hawaii Revised Statutes, is  
21 amended by amending the definition of "wage" to read as follows:

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1            "Wage" means (except as the department may provide under  
2 section 387-11) legal tender of the United States or checks on  
3 banks convertible into cash on demand at full face value thereof  
4 as compensation for labor or services rendered by an employee,  
5 whether the amount is determined on a time, task, piece,  
6 commission, or other basis of calculation, and in addition  
7 thereto the reasonable cost as determined by the department, to  
8 the employer of furnishing an employee with board, lodging, or  
9 other facilities if such board, lodging, or other facilities are  
10 customarily furnished by such employer to the employer's  
11 employees. Except for the purposes of the last sentence of  
12 section 387-2, "wage" shall not include tips or gratuities of  
13 any kind."

14            SECTION 4. Section 387-12, Hawaii Revised Statutes, is  
15 amended to read as follows:

16            "**§387-12 Penalties; collection of unpaid wages;**  
17 **injunctions; etc.** (a) Civil. Any employer who fails to pay  
18 wages in accordance with this chapter without equitable  
19 justification or violates this chapter or the administrative  
20 rules adopted under this chapter shall be liable:

21            (1) To the employee, in addition to the wages legally  
22 proven to be due, for a sum equal to the amount of

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1            unpaid wages and interest at a rate of six per cent  
2            per year from the date that the wages were due; and  
3            (2) For a penalty of not less than \$500 or \$100 for each  
4            violation, whichever is greater. The penalty shall be  
5            deposited into the labor law enforcement special fund.

6            [~~a~~] (b) Criminal.

7            (1) Any person divulging information in violation of  
8            section 387-8;

9            (2) Any employer who wilfully violates this chapter or of  
10           any rule, regulation, or order issued under the  
11           authority of this chapter; or

12           (3) Any employer or the employer's agent or any officer or  
13           agent of a corporation who discharges or in any other  
14           manner discriminates against any employee because the  
15           employee has made a complaint to the employee's  
16           employer, to the director, or to any other person that  
17           the employee has not been paid wages in accordance  
18           with this chapter, or has instituted or caused to be  
19           instituted any proceeding under or related to this  
20           chapter, or has testified or is about to testify in  
21           any such proceedings,

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1 shall be guilty of a misdemeanor and, upon conviction  
2 thereof, shall be subject to a fine of not less than \$500  
3 nor more than \$5,000, or by imprisonment for a period not  
4 to exceed one year, or by both fine and imprisonment; and

5 (4) Any employer or the employer's agent or any officer or  
6 agent of a corporation who pays or agrees to pay any  
7 employee compensation less than that which the  
8 employee is entitled to under this chapter, shall be  
9 guilty of a class C felony and, notwithstanding  
10 section 706-640, be subject to a fine of not less than  
11 \$500 per offense; provided that each violation shall  
12 be deemed a separate offense.

13 ~~[(b) Liability to employee. Any employer who violates any~~  
14 ~~provision of sections 387-2 and 387-3 shall be liable to the~~  
15 ~~employee or employees affected in the amount of their unpaid~~  
16 ~~minimum wages or unpaid overtime compensation, and in case of~~  
17 ~~wilful violation in an additional equal amount as liquidated~~  
18 ~~damages.]~~

19 (c) Collection suits; attorney's fee; assignments; relief  
20 from costs. Action to recover such liability may be maintained  
21 in any court of competent jurisdiction by any one or more  
22 employees for and in behalf of oneself or themselves and other

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1 employees similarly situated, or the employee or employees may  
2 designate an agent or representative to maintain action for and  
3 in behalf of all employees similarly situated. The court in  
4 such action shall, in addition to any judgment awarded to the  
5 plaintiff or plaintiffs, in the event the plaintiff or  
6 plaintiffs prevail, allow a reasonable attorney's fee to be paid  
7 by the defendant and costs of the action. At the request of any  
8 person paid less than the amount to which the person is entitled  
9 under this chapter, the director may take an assignment in trust  
10 for the assigning employee of the full amount to which the  
11 employee is entitled under this subsection and may bring any  
12 legal or administrative action necessary to collect the claim,  
13 and the employer shall be required to pay the costs and such  
14 reasonable attorney's fees as may be allowed by the court or  
15 administrative agency in the event the director prevails. The  
16 director shall not be required to pay the filing fee or other  
17 costs in connection with such action, including the opposing  
18 party's attorney's fees and costs. The director, in case of  
19 suit, may join various claimants against the same employer in  
20 one cause of action. The right provided by this subsection to  
21 bring an action by or on behalf of any employee, and the right  
22 of any employee to become a party plaintiff to any such action,

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1 shall terminate upon the filing of a complaint or commencement  
2 of an administrative proceeding by the director in an action in  
3 which restraint is sought of any further delay in the payment of  
4 unpaid minimum wages, or the amount of unpaid overtime  
5 compensation owing to the employee under section 387-2 or 387-3  
6 by an employer liable therefor under this section.

7 (d) Injunctions.

8 (1) Whenever it appears to the director that any employer  
9 is engaged in any act or practice [~~which~~] that  
10 constitutes or will constitute a violation of this  
11 chapter, or of any regulation, the director may in the  
12 director's discretion bring an action in the circuit  
13 court of the circuit in which it is charged the act or  
14 practice complained of occurred to enjoin the act or  
15 practice and to enforce compliance with this chapter  
16 or with the regulation, and upon a proper showing, a  
17 permanent or temporary injunction or decree or  
18 restraining order shall be granted without bond.

19 (2) The circuit courts shall have jurisdiction, for cause  
20 shown, to restrain any withholding of payment of  
21 minimum wages or overtime compensation found by the

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1 court to be due to employees under section 387-2 or  
2 387-3.

3 (e) Restitution of illegal deductions; effect of.  
4 Whenever in the course of an inspection made for the purposes of  
5 this chapter it is determined that there has been an illegal  
6 deduction of wages under chapter 388, the director or the  
7 director's authorized representative may secure restitution of  
8 such deductions. If the restitution is made, no prosecution  
9 under chapter 388 shall be instituted or maintained."

10 SECTION 5. This Act does not affect rights and duties that  
11 matured, penalties that were incurred, and proceedings that were  
12 begun before its effective date.

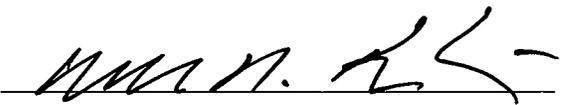
13 SECTION 6. In codifying the new sections added by section  
14 1 of this Act, the revisor of statutes shall substitute  
15 appropriate section numbers for the letters used in designating  
16 or referring to the new sections in this Act.

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

19 SECTION 8. This Act shall take effect upon its approval.

20

21

INTRODUCED BY: 

22

BY REQUEST

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**Report Title:**

Order of Wage Payment Violation; Wage and Hour; Enforcement; Penalties

**Description:**

Authorizes the Department of Labor and Industrial Relations to issue an order of wage payment violation to the employer found to be in violation of wage and hour provisions. Establishes penalties, enforcement, and appeal procedures. Amends the definition of "wage" to include compensation for labor or services rendered by an employee, whether the amount is determined on a time, task, piece, commission, or other basis of calculation.

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

JUSTIFICATION SHEET

**SB. NO. 1454**

DEPARTMENT: Labor and Industrial Relations

TITLE: A BILL FOR AN ACT RELATING TO THE WAGE AND HOUR LAW.

PURPOSE: To authorize the Department to issue an Order of Wage Payment Violation to the employer found to be in violation of wage and hour provisions, amend the definition of "wage" to include compensation for labor or services rendered by an employee, whether the amount is determined on a time, task, piece, commission, or other basis of calculation, and collect and deposit penalties into the labor law enforcement special fund.

MEANS: Add three new sections to chapter 387, Hawaii Revised Statutes (HRS), and amend sections 371-12.5(a), 387-1, and 387-12, HRS.

JUSTIFICATION: Orders of Wage Payment Violation are issued under chapter 388, HRS, Payment of Wages and Other Compensation Law. However, when the Department's investigation reveals the unpaid wages includes overtime or minimum wage, the Department is precluded from issuing an Order of Wage Payment Violation as there is no provision for an Order of Wage Payment Violation under chapter 387, HRS, Wage and Hour Law. Consequently, this bill amends chapter 387 to include provisions for the issuance of an Order of Wage Payment Violation, including penalties, enforcement, and appeal procedures; amends the definition of "wage" under section 387-1, HRS, to align with the definition of "wages" in chapter 388, HRS, Payment of Wages and Other Compensation Law; amends the penalty provisions under section 387-12, HRS, to establish a civil penalty; and amends section 371-12.5(a), HRS, to include penalties collected under sections 387-C and

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387-12, HRS, would be deposited into the labor law enforcement special fund.

Impact on the public: This bill will provide a more efficient administrative remedy similar to that currently available under chapter 388, HRS, allowing workers a faster recovery of unpaid overtime and minimum wage.

Impact on the department and other agencies: This bill will standardize enforcement mechanisms between chapter 387, HRS, and chapter 388, HRS; empower the Wage Standards Division to assist employees in the recovery of unpaid wages that include overtime and minimum wage by authorizing the Department to issue an Order of Wage Payment Violation to the employer found to be in violation of wage laws; and authorize the Department to assess established penalties for both the employee and the labor law enforcement special fund.

GENERAL FUND: None.

OTHER FUNDS: None.

PPBS PROGRAM  
DESIGNATION: LBR 152.

OTHER AFFECTED  
AGENCIES: None.

EFFECTIVE DATE: Upon approval.