

ACT 119

S.B. NO. 1744

A Bill for an Act Relating to Employment Security.

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

SECTION 1. Chapter 383, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

**“§383- Special unemployment insurance administration fund.** (a) There is created in the state treasury a special fund to be known as the special unemployment insurance administration fund. All interest, fines, and penalties collected under this chapter on and after October 1, 1987, shall be paid into this fund and shall not be commingled with other state funds but maintained in a separate account on the books of the depository. Interest earned upon moneys in the administration fund shall be deposited and credited to the administration fund.

All moneys payable to the administration fund shall be transferred immediately into the administration fund from the clearing account of the unemployment compensation fund. The director of finance shall be the treasurer and custodian of the administration fund and shall administer the fund in accordance with directions by the director of labor and industrial relations. The director of finance shall be liable on the director's official bond for the faithful performance of all duties in connection with the administration fund. All sums recovered on such surety bond for losses sustained by the administration fund shall be deposited into the fund.

(b) Notwithstanding any other provisions of this section to the contrary, the moneys in the administration fund shall be used for the payment of the following expenses and obligations relating to the administration of the unemployment insurance program:

- (1) Refunds or adjustments of interest on delinquent contributions and penalties or fines erroneously collected under this chapter;

- (2) Expenses for which allocation of federal funds have been duly requested but not yet received, subject to the reimbursement of the expenditures against the funds received;
  - (3) Expenditures deemed necessary by the director in the administration of this chapter for which no allocations of federal administration funds have been made; and
  - (4) Interest due under the provisions of section 1202(b) of the Social Security Act, as amended, for advances made to the unemployment compensation fund.
- (c) No moneys in the administration fund shall be expended for any purpose for which federal funds would otherwise be available.
- (d) All expenditures from the administration fund, except for refunds of penalties and interest erroneously collected, shall be approved by the director.
- (e) All moneys deposited or paid into the administration fund shall be continuously available to the director for expenditures consistent with this section and shall not lapse at any time. The director may transfer moneys deposited in the administration fund to the unemployment compensation fund as the director deems necessary.
- (f) Twenty days before the convening of the Legislature in regular session each year, the director of finance shall submit a report to the legislature on the financial status of the special unemployment insurance administration fund."

SECTION 2. Section 383-1, Hawaii Revised Statutes, is amended by adding a new definition to be appropriately inserted and to read as follows:

"Administration fund" means the special unemployment insurance administration fund established pursuant to section 383-\_\_\_\_\_."

SECTION 3. Section 383-74, Hawaii Revised Statutes, is amended to read as follows:

**"§383-74 Appeal; correction of assessment or contributions.** Any person aggrieved by any assessment of a contribution or a penalty or contributions assessed pursuant to this chapter, having paid the contribution or penalty, may appeal from the assessment by filing a written notice of appeal with the department within twenty days after the date of mailing of the notice of assessment to the person's last known address. The appeal shall be heard by the referee in accordance with applicable provisions of sections 383-38 and 383-39. Any amount determined to have been erroneously paid as a result of the final determination of the appeal in favor of the employing unit, or as a result of a final judgment for the employing unit in an action brought pursuant to section 40-35, shall be refunded, without interest and without the addition of any other charges, in the same manner as other refunds under this chapter. Notwithstanding any other provisions of law to the contrary, any amount which is paid under protest or which is covered by any appeal or action referred to in this section shall not be held as a special deposit, but the amount shall in all respects be subject to [section] sections 383-122 and 383-\_\_\_\_\_ to the same effect as though the amount had not been paid under protest and was not covered by the appeal or action."

SECTION 4. Section 383-76, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) If not later than four years after the date of payment of any amount as a contribution or contributions or interest thereon or penalty with respect thereto, an employing unit which has made such payment

erroneously makes application for an adjustment thereof in connection with subsequent contribution payments, or for a refund thereof because the adjustment cannot be made within a reasonable time, and if the department of labor and industrial relations determines that payment of such contribution or contributions or interest or penalty or any portion thereof was erroneous, the department shall allow the employing unit to make an adjustment thereof, without interest, in connection with subsequent contribution payments by the employing unit, or if the adjustment cannot be made within a reasonable time, the department shall refund from the unemployment compensation fund[,] or the administration fund as may be appropriate, without interest, the amount erroneously paid. For like cause and within the same period, adjustment or refund may be so made on the department's own initiative. Any number of such payments erroneously made by an employing unit may form the basis of one application. The four-year limitation period stated above shall be applicable with respect to payments made in the year 1937 and in all subsequent years."

SECTION 5. Section 383-121, Hawaii Revised Statutes, is amended to read as follows:

**"§383-121 Unemployment compensation fund; establishment and control.** There is established in the treasury of the State as a special fund, separate and apart from all public moneys or funds of the State, an unemployment compensation fund, which shall be administered by the department of labor and industrial relations exclusively for the purposes of this chapter. All contributions pursuant to this chapter shall be paid into the fund and all compensation and benefits payable pursuant to this chapter shall be paid from the fund. All moneys in the fund shall be mingled and undivided. The fund shall consist of:

- (1) All contributions collected pursuant to this chapter[, together with any interest thereon collected pursuant to section 383-73];
- [(2)] All fines and penalties collected pursuant to this chapter;
- [(3)] (2) Interest earned on any moneys in the fund;
- [(4)] (3) Any property or securities acquired through the use of moneys belonging to the fund;
- [(5)] (4) All earnings of such property or securities;
- [(6)] (5) All moneys credited to this State's account in the unemployment trust fund pursuant to section 903 of the Social Security Act, as amended; and
- [(7)] (6) All other moneys received for the fund from any other source."

SECTION 6. Section 383-122, Hawaii Revised Statutes, is amended to read as follows:

**"§383-122 Accounts and deposit.** The director of finance shall maintain within the fund three separate accounts:

- (1) A clearing account;
- (2) An unemployment trust fund account;
- (3) A benefit account.

All moneys payable to the fund, upon receipt thereof by the director of finance, shall be immediately deposited in the clearing account. The director of finance of the State shall be the treasurer and custodian of the fund and shall administer the fund in accordance with directions of the department of labor and industrial relations.

All moneys in the clearing account after clearance thereof shall, except as herein otherwise provided, be deposited immediately with the

Secretary of the Treasury of the United States to the credit of the account of this State in the unemployment trust fund, established and maintained pursuant to section 904 of the Social Security Act, as amended, any provisions of law in this State relating to the deposit, administration, release, or disbursement of moneys in the possession or custody of this State to the contrary notwithstanding. Refunds of contributions payable pursuant to section 383-76 and section 383-7(6) may be paid from the clearing account or the benefit account. The benefit account shall consist of all moneys requisitioned from the State's account in the unemployment trust fund in the United States treasury. Except as herein otherwise provided, moneys in the clearing and benefit accounts may be deposited in any depository bank in which general funds of the State may be deposited, but no public deposit insurance charge or premium shall be paid out of the fund. Moneys in the clearing and benefit accounts shall not be commingled with other state funds, but shall be maintained in separate accounts on the books of the depository bank. The money shall be secured by the depository bank to the same extent and in the same manner as required by the general depository law of this State; and collateral pledged for this purpose shall be kept separate and distinct from any collateral pledged to secure other funds of the State. The director of finance shall be liable on the director's official bond for the faithful performance of the director's duties in connection with the unemployment compensation fund provided for under this chapter. The liability on the official bond shall be effective immediately upon the enactment of this provision. All sums recovered on such surety bond for losses sustained by the unemployment compensation fund shall be deposited in the fund."

SECTION 7. Section 383-123, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) Withdrawals. Moneys requisitioned from the State's account in the unemployment trust fund shall be used exclusively for the payment of benefits and for refunds of contributions pursuant to section 383-76 and section 383-7(6), except that moneys credited to this State's account pursuant to section 903 of the Social Security Act, as amended, shall be used exclusively as provided in subsection (b) of this section. The director of finance shall from time to time, with the approval of the department of labor and industrial relations in accordance with [regulations] rules prescribed by the comptroller of the State, requisition from the unemployment trust fund such amounts, not exceeding the amount standing to this State's account therein, as it deems necessary for the payment of such benefits and refunds of contributions for a reasonable future period. Upon receipt thereof the moneys shall be deposited in the benefit account. Expenditures of such moneys in the benefit account and refunds from the clearing account shall not be subject to any provisions of law requiring specific appropriations or other formal release by state officers of moneys in their custody. All benefits and refunds of contributions shall be paid from the fund upon warrants drawn upon the director of finance by the comptroller of the State supported by vouchers approved by the department. Any balance of moneys requisitioned from the unemployment trust fund which remains unclaimed or unpaid in the benefit account after the expiration of the period for which the sums were requisitioned shall either be deducted from estimates for, and may be utilized for the payment of, benefits and refunds during succeeding periods, or, in the discretion of the department, shall be redeposited with the [secretary] Secretary of the [treasury] Treasury of the United States, to the

credit of this State's account in the unemployment trust fund, as provided in section 383-122."

**SECTION 8.** Statutory material to be repealed is bracketed. New statutory material is underscored.<sup>1</sup>

**SECTION 9.** This Act shall take effect upon its approval.

(Approved May 31, 1987.)

**Note**

1. Edited pursuant to HRS §23G-16.5.