

ACT 137

S.B. NO. 1089

A Bill for an Act Relating to Dislocated Workers.

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

SECTION 1. Section 371-12, Hawaii Revised Statutes, is amended to read as follows:

“§371-12 Labor law enforcement; injunction. The department of labor and industrial relations shall:

- (1) Enforce the child labor provisions of this chapter;
- (2) Enforce this chapter relative to the regulation of commercial employment agencies;
- (3) Enforce any other labor laws enacted by the legislature of the State;
- (4) Enforce the provisions of section 394B-9 regarding dislocated workers;

- ~~[(4)]~~ (5) Enforce any rules or regulations of the department. The department may institute proceedings to enjoin any employer from violating this chapter or the rules or regulations of the department when any such employer is violating any such provision or is threatening to do so and the circuit courts are hereby vested with jurisdiction in the premises;
- ~~[(5)]~~ (6) Conduct investigations in connection with the foregoing; and
- ~~[(6)]~~ (7) Perform such additional duties as the director of labor and industrial relations shall by rule prescribe.”

SECTION 2. Section 394B-9, Hawaii Revised Statutes, is amended to read as follows:

“§394B-9 Notification; penalty. (a) An employer in a covered establishment shall provide to each employee and the director written notification of a closing, divestiture, partial closing, or relocation at least sixty days prior to its occurrence.

(b) An employer that violates this section shall be liable to each affected employee for an amount equal to back pay and benefits for the period of violation not to exceed sixty days. This liability may be reduced by any:

- (1) Wages the employer pays during the notice period; and
- (2) Voluntary and unconditional payment not required by a legal obligation.

(c) An employer of a covered establishment that is actively seeking a buyer for a sale, transfer, or merger shall not be required to provide the notice required under subsection (a) until the employer has entered into a binding agreement for the sale, transfer, or merger of the covered establishment that results in a divestiture.

(d) An employer who fails to provide notice under this section shall be subject to a civil penalty not to exceed \$500 for each day of the violation and the amount shall be deposited in the employment and training fund under section 383-128; provided that the employer may avoid the penalty if the employer satisfies its liability to each affected employee within three weeks after the closing. In any suit, the court, in its discretion, may award the prevailing party reasonable attorney’s fees and costs.

(e) The department shall enforce this section and shall have all the powers and duties conferred and imposed upon it pursuant to section 371-12.”

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

SECTION 4. This Act shall take effect on July 1, 2011.

(Approved June 20, 2011.)