

ACT 44

H.B. NO. 2350

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:

SECTION 1. Section 371-9, Hawaii Revised Statutes, is amended to read as follows:

“§371-9 Penalties. (a) Any employer, employee, or other person who wilfully violates any lawful rule of the department for which no penalty is otherwise provided shall be fined ~~[not]~~ no more than ~~[\$250,]~~ \$500, or imprisoned ~~[not]~~ no more than six months, or both, for each ~~[such]~~ offense.

(b) Any person who, after twenty-one days written notice and the opportunity to be heard by the director, is found to have violated any lawful rule of the department for which no penalty is otherwise provided, shall be fined ~~[not]~~ no more than ~~[\$250]~~ \$500 for each offense.”

SECTION 2. Section 378-29.3, Hawaii Revised Statutes, is amended by amending subsections (a) and (b) to read as follows:

“(a) Civil. Any employer found in violation of this part shall be subject to a fine of ~~[not]~~ no less than ~~[\$100]~~ \$250 nor more than ~~[\$1,000]~~ \$2,500 to be collected by the director and ~~[such]~~ the fine shall not be suspended. Each violation shall constitute a separate offense. Amounts so collected by the director shall be paid into the general fund.

(b) Criminal. Whoever intentionally resists, prevents, impedes, or interferes with the department or any of its agents or representatives in the performance of duties pursuant to this part, or who in any manner intentionally violates ~~[the law,]~~ any provision of this chapter, or rule adopted thereunder, shall be fined ~~[not]~~ no more than ~~[\$1,000,]~~ \$2,500, or imprisoned ~~[not]~~ no more than one year, or both.”

SECTION 3. Section 378-65, Hawaii Revised Statutes, is amended to read as follows:

“§378-65 Penalties for violations. (a) A person or public employer who violates this part shall be fined ~~[not]~~ no less than ~~[\$500]~~ \$750 nor more than ~~[\$5,000]~~ \$7,500 for each violation.

(b) A civil fine ~~[which]~~ that is ordered pursuant to this part shall be deposited with the director of finance to the credit of the general fund of the State.”

SECTION 4. Section 383-73, Hawaii Revised Statutes, is amended to read as follows:

“§383-73 Penalty for delinquency; remission. (a) A penalty of ten per cent or ~~[\$40,]~~ \$100, whichever is greater, shall be added to the amount of all delinquent contributions, as hereafter defined, and any delinquent contribution and penalty remaining unpaid fifteen days after the date of delinquency shall bear interest from the date of delinquency at the rate of two-thirds of one per cent for each month or fraction of a month until paid. Any penalty and interest ~~[above referred to]~~ assessed pursuant to this section shall be added to the contribution and shall be collected as ~~[though the same were]~~ a part of the contribution. For the purposes of this section, a contribution shall be deemed delinquent:

- (1) Upon a nonpayment thereof on the date prescribed for its payment, but only in case of failure to pay a contribution shown due by a return, or in case of failure to file a return, or in case of failure to pay a contribution because of a false or fraudulent return; and
- (2) Upon nonpayment thereof within the time provided by ~~[paragraph]~~ subsection (c) of section 383-70, in any other case.

(b) Except in cases of fraud or wilful violation of this chapter, or wilful refusal to make a return ~~[(but inclusion in a return of a claim of nonliability for contributions shall not be deemed a refusal to make a return)]~~, the director ~~[of labor and industrial relations]~~ may, in a case of excusable failure to file a return, or pay a contribution within the time required by this chapter, or in a case of uncollectibility of the whole amount due, remit any amount of penalties or interest added to any delinquent contribution. ~~[- In all such cases there shall be placed on file in the director's office a statement showing the name of the person receiving such remission, the principal amount of the contribution, and the period involved.];~~ provided that a claim of nonliability shall not be deemed as a refusal to make a return.

(c) The department shall keep a record of any remittance approved by the director.

(d) Whenever an employer makes a partial payment of a sum owed for delinquent contributions, penalties, and interest, the amount received by the director shall first be credited to interest, then to penalties, and then to principal.”

SECTION 5. Section 385-11, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

“(c) Whoever makes a false statement or representation knowing it to be false or who knowingly fails to disclose a material fact to obtain or increase any benefit or other payment under this chapter shall be fined ~~[not]~~ no less than ~~[\$20]~~ \$175 nor more than ~~[\$200,]~~ \$1,750, or imprisoned ~~[not]~~ no more than ~~[thirty days,]~~ one year, or both.”

SECTION 6. Section 386-27, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

“(c) Any health care provider who fails to comply with subsections (a) and (b) may be subject to such sanctions deemed just and proper by the director which may include:

- (1) Disallowance of fees for services rendered to an injured employee;
- (2) Forfeiture of payments for services rendered to an injured employee under this chapter;
- (3) Fines of ~~[not]~~ no more than ~~[\$1,000]~~ \$2,500 for each violation;
- (4) Suspension as a qualified provider; and
- (5) Disqualification as a provider of services under this chapter.”

SECTION 7. Section 386-94, Hawaii Revised Statutes, is amended to read as follows:

“§386-94 Attorneys, physicians, other health care providers, and other fees. Claims for services shall not be valid unless approved by the director or, if an appeal is had, by the ~~[appellate]~~ appeals board or court deciding the appeal. Any claim so approved shall be a lien upon the compensation in the manner and to the extent fixed by the director, the ~~[appellate]~~ appeals board, or the court.

In approving fee requests, the director, appeals board, or court may consider factors such as the attorney’s skill and experience in state workers’ compensation matters, the amount of time and effort required by the complexity of the case, the novelty and difficulty of issues involved, the amount of fees awarded in similar cases, benefits obtained for the claimant, and the hourly rate customarily awarded attorneys possessing similar skills and experience. In all cases, reasonable attorney’s fees shall be awarded.

Any person who receives any fee, other consideration, or gratuity on account of services so rendered, without approval, in conformity with the preceding paragraph, shall be fined by the director ~~[not]~~ no more than ~~[\$10,000-]~~ \$25,000.”

SECTION 8. Section 386-97.5, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) Any person who, after twenty-one days written notice and the opportunity to be heard by the director, is found to have violated any provision of this chapter or rule adopted thereunder for which no penalty is otherwise provided, shall be fined ~~[not]~~ no more than ~~[\$250]~~ \$500 for each offense.”

SECTION 9. Section 386-98, Hawaii Revised Statutes, is amended by amending subsection (e) to read as follows:

“(e) In lieu of the criminal penalties set forth in subsection (d), any person who violates subsections (a) and (b) may be subject to the administrative penalties of restitution of benefits or payments fraudulently received under this chapter, whether received from an employer, insurer, or the special compensation fund, to be made to the source from which the compensation was received, and one or more of the following:

- (1) A fine of ~~[not]~~ no more than ~~[\$10,000]~~ \$20,000 for each violation;
- (2) Suspension or termination of benefits in whole or in part;
- (3) Suspension or disqualification from providing medical care or services, vocational rehabilitation services, and all other services rendered for payment under this chapter;
- (4) Suspension or termination of payments for medical, vocational rehabilitation and all other services rendered under this chapter;
- (5) Recoupment by the insurer of all payments made for medical care, medical services, vocational rehabilitation services, and all other services rendered for payment under this chapter; and
- (6) Reimbursement of attorney’s fees and costs of the party or parties defrauded.”

SECTION 10. Section 387-7, Hawaii Revised Statutes, is amended to read as follows:

“§387-7 Wilful violations; penalty. Any employer who wilfully hinders or delays the director ~~[of labor and industrial relations]~~ or the director’s authorized representative in the performance of the director’s duties in the enforcement of this chapter; or who wilfully refuses to admit the director or the director’s authorized representative to any place of employment; or who fails

to keep or who falsifies any record required under section 387-6 or who refuses to make ~~[such]~~ the records accessible or to give information required for the proper enforcement of this chapter, upon demand, to the director or the director's authorized representative shall be fined ~~[not]~~ no more than ~~[\$500]~~ \$10,000, or imprisoned ~~[not]~~ no more than ninety days, or both."

SECTION 11. Section 387-12, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) Criminal.

- (1) Any person divulging information in violation of section 387-8;
- (2) Any employer who wilfully violates this chapter or of any rule, regulation, or order issued under the authority of this chapter;
- (3) Any employer or the employer's agent or any officer or agent of a corporation who discharges or in any other manner discriminates against any employee because the employee has made a complaint to the employee's employer, to the director, or to any other person that the employee has not been paid wages in accordance with this chapter, or has instituted or caused to be instituted any proceeding under or related to this chapter, or has testified or is about to testify in any such proceedings; or
- (4) Any employer or the employer's agent or any officer or agent of a corporation who pays or agrees to pay any employee compensation less than that which the employee is entitled to under this chapter,

shall be guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of ~~[not]~~ no less than ~~[\$50]~~ \$500 nor more than ~~[\$500]~~ \$5,000, or by imprisonment for a period not to exceed one year, or by both ~~[such]~~ the fine and imprisonment."

SECTION 12. Section 388-52, Hawaii Revised Statutes, is amended to read as follows:

"~~[[§388-52]]~~ **Penalties.** Any employer found in violation of section 388-51 shall be subject to a fine of ~~[not]~~ no less than ~~[\$100]~~ \$250 nor more than ~~[\$1,000]~~ \$2,500 to be collected by the director and ~~[such]~~ the fine shall not be suspended. Each violation shall constitute a separate offense. Amounts so collected by the director shall be paid into the general fund."

SECTION 13. Section 392-68, Hawaii Revised Statutes, is amended to read as follows:

"~~[[§392-68]]~~ **Failure to pay assessments.** If an employer or insurer fails to pay the assessment required by section 392-67(a) or section 392-67(b) within thirty days after the end of the month or quarter for which payment was due, the director shall levy a penalty of at least ~~[\$10]~~ \$250 but no more than ten per cent of the assessment due against ~~[such]~~ the employer or insurer, unless the nonpayment is excused by the director after a showing by ~~[such]~~ the employer or insurer that the payment of the assessment could not be made on the date prescribed therefor owing to conditions over which the employer or insurer had no control and ~~[such]~~ the employer or insurer forthwith complies."

SECTION 14. Section 392-69, Hawaii Revised Statutes, is amended to read as follows:

"**§392-69 Request for wage and employment information.** An employer to whom the department has sent a request for wage and employment information for an employee claiming benefits against the trust fund for disability benefits, shall complete and file such information within seven days from date

the request was sent. If an employer fails to file such information in seven days, the director shall levy a penalty of ~~[not more than \$10]~~ \$250 for each delinquent request, unless the failure to file such information is excused by the director after a showing by ~~[such]~~ the employer that such filing could not be made on the prescribed date therefor owing to conditions over which the employer had no control.”

SECTION 15. Section 392-92, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) Any person who, after twenty-one days written notice and the opportunity to be heard by the director, is found to have violated any provision of this chapter or rule adopted thereunder for which no penalty is otherwise provided, shall be fined ~~[not]~~ no more than ~~[\$250]~~ \$500 for each offense.”

SECTION 16. Section 392-101, Hawaii Revised Statutes, is amended to read as follows:

~~“[§392-101]~~ **Limitation of fees.** Any individual claiming benefits in any proceeding before the department or the referee may be represented by counsel or other duly authorized agent; but no such counsel or agent shall either charge or receive for such services more than an amount approved by the department or referee, and such amount shall in no case exceed ten per cent of the total amount of benefits received as a result of such proceeding. Any person who violates this section shall, for each such offense, be fined ~~[not]~~ no less than ~~[\$50]~~ \$325 nor more than ~~[\$500]~~ \$3,250, or imprisoned ~~[not]~~ no more than six months, or both.”

SECTION 17. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun before its effective date.

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

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

(Approved September 15, 2020.)