



GOV. MSG. NO. 621

EXECUTIVE CHAMBERS

HONOLULU

LINDA LINGLE
GOVERNOR

April 21, 2009

The Honorable Colleen Hanabusa, President
and Members of the Senate
Twenty-Fifth State Legislature
State Capitol, Room 409
Honolulu, Hawaii 96813

Dear Madam President and Members of the Senate:

This is to inform you that on April 21, 2009, the following bill was signed into law:

SB92

A BILL FOR AN ACT
RELATING TO STATUTORY REVISION:
AMENDING OR REPEALING VARIOUS
PROVISIONS OF THE HAWAII REVISED
STATUTES AND THE SESSION LAWS OF HAWAII
FOR THE PURPOSE OF CORRECTING ERRORS
AND REFERENCES, CLARIFYING LANGUAGE,
AND DELETING OBSOLETE OR UNNECESSARY
ACT 011 (09)

Sincerely,



LINDA LINGLE

A BILL FOR AN ACT

RELATING TO STATUTORY REVISION: AMENDING OR REPEALING VARIOUS PROVISIONS OF THE HAWAII REVISED STATUTES AND THE SESSION LAWS OF HAWAII FOR THE PURPOSE OF CORRECTING ERRORS AND REFERENCES, CLARIFYING LANGUAGE, AND DELETING OBSOLETE OR UNNECESSARY PROVISIONS.

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

PART I

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SECTION 1. Section 11-228, Hawaii Revised Statutes, is amended by amending subsection (g) to read as follows:

"(g) The provisions of this section shall not apply to any person who, prior to the commencement of proceedings under this section, has paid or agreed to pay the penalties prescribed by sections [~~11-193(a)(5)~~] 11-213.5 and 11-215(c)."

SECTION 2. Section 11-229, Hawaii Revised Statutes, is amended by amending subsection (e) to read as follows:

"(e) The provisions of this section shall not apply to any person who, prior to the commencement of proceedings under this section, has paid or agreed to pay the penalties prescribed by sections [~~11-193(a)(5)~~] 11-213.5 and 11-215(c)."

SECTION 3. Section 237-31, Hawaii Revised Statutes, is amended to read as follows:



1 "**§237-31 Remittances.** All remittances of taxes imposed by
2 this chapter shall be made by money, bank draft, check,
3 cashier's check, money order, or certificate of deposit to the
4 office of the department of taxation to which the return was
5 transmitted. The department shall issue its receipts therefor
6 to the taxpayer and shall pay the moneys into the state treasury
7 as a state realization, to be kept and accounted for as provided
8 by law; provided that:

9 (1) The sum from all general excise tax revenues realized
10 by the State that represents the difference between
11 \$45,000,000 and the proceeds from the sale of any
12 general obligation bonds authorized for that fiscal
13 year for the purposes of the state educational
14 facilities improvement special fund shall be deposited
15 in the state treasury in each fiscal year to the
16 credit of the state educational facilities improvement
17 special fund; and

18 (2) A sum, not to exceed \$5,000,000, from all general
19 excise tax revenues realized by the State shall be
20 deposited in the state treasury in each fiscal year to
21 the credit of the compound interest bond reserve
22 fund[; ~~and~~



1 ~~(3) A sum, not to exceed the amount necessary to meet the~~
2 ~~obligations of the integrated tax information~~
3 ~~management systems performance based contract may be~~
4 ~~retained and deposited in the state treasury to the~~
5 ~~credit of the integrated tax information management~~
6 ~~systems special fund. The sum retained by the~~
7 ~~director of taxation for deposit to the integrated tax~~
8 ~~information management systems special fund for each~~
9 ~~fiscal year shall be limited to amounts appropriated~~
10 ~~by the legislature. This paragraph shall be repealed~~
11 ~~on July 1, 2005]."~~

12 SECTION 4. Section 343-5, Hawaii Revised Statutes, is
13 amended by amending subsection (a) to read as follows:

14 "(a) Except as otherwise provided, an environmental
15 assessment shall be required for actions that:

16 (1) Propose the use of state or county lands or the use of
17 state or county funds, other than funds to be used for
18 feasibility or planning studies for possible future
19 programs or projects that the agency has not approved,
20 adopted, or funded, or funds to be used for the
21 acquisition of unimproved real property; provided that
22 the agency shall consider environmental factors and



1 available alternatives in its feasibility or planning
2 studies; provided further that an environmental
3 assessment for proposed uses under section [~~205-~~
4 ~~2(d)(10)~~] 205-2(d)(11) or [~~+~~205-4.5(a)(13)~~+~~] shall
5 only be required pursuant to section 205-5(b);

6 (2) Propose any use within any land classified as a
7 conservation district by the state land use commission
8 under chapter 205;

9 (3) Propose any use within a shoreline area as defined in
10 section 205A-41;

11 (4) Propose any use within any historic site as designated
12 in the National Register or Hawaii Register, as
13 provided for in the Historic Preservation Act of 1966,
14 Public Law 89-665, or chapter 6E;

15 (5) Propose any use within the Waikiki area of Oahu, the
16 boundaries of which are delineated in the land use
17 ordinance as amended, establishing the "Waikiki
18 Special District";

19 (6) Propose any amendments to existing county general
20 plans where the amendment would result in designations
21 other than agriculture, conservation, or preservation,
22 except actions proposing any new county general plan



1 or amendments to any existing county general plan
2 initiated by a county;

3 (7) Propose any reclassification of any land classified as
4 a conservation district by the state land use
5 commission under chapter 205;

6 (8) Propose the construction of new or the expansion or
7 modification of existing helicopter facilities within
8 the State, that by way of their activities, may
9 affect:

10 (A) Any land classified as a conservation district by
11 the state land use commission under chapter 205;

12 (B) A shoreline area as defined in section 205A-41;
13 or

14 (C) Any historic site as designated in the National
15 Register or Hawaii Register, as provided for in
16 the Historic Preservation Act of 1966, Public Law
17 89-665, or chapter 6E; or until the statewide
18 historic places inventory is completed, any
19 historic site that is found by a field
20 reconnaissance of the area affected by the
21 helicopter facility and is under consideration



1 for placement on the National Register or the
2 Hawaii Register of Historic Places; and

3 (9) Propose any:

4 (A) Wastewater treatment unit, except an individual
5 wastewater system or a wastewater treatment unit
6 serving fewer than fifty single-family dwellings
7 or the equivalent;

8 (B) Waste-to-energy facility;

9 (C) Landfill;

10 (D) Oil refinery; or

11 (E) Power-generating facility."

12 SECTION 5. Section 431:6-322, Hawaii Revised Statutes, is
13 amended by amending its title to read as follows:

14 "§431:6-322 Common trust funds; mutual funds; and
15 [{}exchange{}] traded funds."

16 SECTION 6. Section 431:19-204, Hawaii Revised Statutes, is
17 amended by amending subsection (d) to read as follows:

18 "(d) The commissioner may issue a certificate of authority
19 to transact insurance and reinsurance business as a special
20 purpose financial captive insurance company in this State that
21 shall be valid through the term of the insurance securitization
22 and automatically renewed each April 1 following the date of



1 initial issuance, except as provided for in section 431:19-212,
2 and upon the commissioner's finding that:

- 3 (1) The proposed plan of operation provides for a
4 reasonable and expected successful operation;
- 5 (2) The terms of the special purpose financial captive
6 insurance company contract and related transactions
7 comply with this part; and
- 8 (3) The insurance regulator of the home domicile of each
9 counterparty has notified the commissioner in writing
10 or otherwise provided assurance satisfactory to the
11 commissioner that it has approved or has not
12 disapproved the transaction; provided that the
13 commissioner shall not be precluded from issuing or
14 renewing a certificate of authority [+]in the event
15 that[+] the insurance regulator of the home domicile
16 of a counterparty has not responded with respect to
17 all or any part of the transaction."

18 SECTION 7. Section 431:19-209, Hawaii Revised Statutes, is
19 amended by amending subsection (e) to read as follows:

20 "(e) Unless otherwise approved in advance by the
21 commissioner, a special purpose financial captive insurance
22 company shall not:



- 1 (1) Issue or otherwise administer primary insurance
2 contracts;
- 3 (2) Enter into a special purpose financial captive
4 insurance company contract with a counterparty that is
5 not licensed or otherwise authorized to transact the
6 business of insurance or reinsurance in at least its
7 state or country of domicile;
- 8 (3) Enter into a special purpose financial captive
9 insurance contract that contains any provision for
10 payment by the special purpose financial captive
11 insurance company in discharge of its obligations
12 under the contract to any person other than the
13 counterparty or receiver;
- 14 (4) Have any direct obligation to the policyholders or
15 reinsured of the counterparty; or
- 16 (5) Lend or otherwise invest, or place in custody, trust,
17 or under management any of its assets with, or to
18 borrow money or receive a loan from anyone convicted
19 of a felony, anyone convicted of a criminal offense
20 involving the conversion or misappropriation of funds,
21 including fiduciary funds or insurance amounts, or
22 theft, deceit, fraud, misrepresentation, embezzlement,



1 or [+]corruption, or anyone[+] whom the commissioner
2 has cause to believe has violated, is violating, or is
3 about to violate any provision of this code, any order
4 of the commissioner, or undertakes or plans to
5 undertake any action that may cause the special
6 purpose financial captive insurance company to be in a
7 condition as to render the continuance of the special
8 purpose financial captive insurance company's business
9 hazardous to the public or to the holders of the
10 special purpose financial captive insurance company
11 contracts or special purpose financial captive
12 insurance company securities."

13 SECTION 8. Section 451J-7, Hawaii Revised Statutes, is
14 amended to read as follows:

15 "[+]§451J-7[+] **Application for licensure.** Any person who
16 files an application with the department after December 31,
17 1998, shall be issued a license by the department if the
18 applicant provides satisfactory evidence to the department that
19 the applicant is qualified for licensure pursuant to the
20 requirements of this chapter and meets the following
21 qualifications:



- 1 (1) Has completed a master's degree or doctoral degree
2 from an accredited educational institution in marriage
3 and family therapy or in an allied field related to
4 the practice of mental health counseling which
5 includes or is supplemented by graduate level course
6 work comprising a minimum of thirty-three semester, or
7 forty-four quarter hours in the following course
8 areas:
- 9 (A) Marriage and family studies--nine semester or
10 twelve quarter hours;
- 11 (B) Marriage and family therapy studies--nine
12 semester or twelve quarter hours;
- 13 (C) Human development--nine semester or twelve
14 quarter hours;
- 15 (D) Ethical and professional studies--three semester
16 or four quarter hours; [~~or~~] and
- 17 (E) Research--three semester or four quarter hours;
- 18 (2) Has one year practicum with three hundred hours
19 supervised client contact;
- 20 (3) Completes one thousand hours of direct marriage and
21 family therapy, and two hundred hours clinical
22 supervision in not less than twenty-four months; and



1 (4) Has passed the National Marriage and Family Therapy
2 Exam in accordance with section 451J-8.

3 An individual who is a clinical member of the association
4 shall be deemed to have met the educational and clinical
5 experience requirements of this section."

6 SECTION 9. Section 846-30.5, Hawaii Revised Statutes, is
7 amended to read as follows:

8 "**§846-30.5 Expiration date.** Every certificate of
9 identification issued under this part, whether an original or a
10 renewal, shall bear an expiration date which shall be on the
11 person's birthday, six years after the year of issuance;
12 provided that if the person is a legal nonimmigrant, the
13 certificate shall bear an expiration date that is the same as
14 the expiration date on the person's [~~Immigration and~~
15 ~~Naturalization Service~~] U.S. Citizenship and Immigration Services
16 departure card (I-94). All certificates of identification
17 issued without expiration dates shall expire on December 31,
18 1999. To provide for the transition to expiration dates that
19 are birthdays of the persons issued certificates, any
20 certificate issued to a person with an expiration date other
21 than the birthday of that person in the year of expiration shall



1 expire on that person's last birthday immediately preceding the
2 certificate's stated expiration date."

3 SECTION 10. Section 846E-1, Hawaii Revised Statutes, is
4 amended by amending the definition of "sexual offense" to read
5 as follows:

6 ""Sexual offense" means an offense that is:

- 7 (1) Set forth in section 707-730(1)(a), 707-730(1)(b),
8 707-730(1)(c), 707-730(1)(d) or (e), 707-731(1)(a),
9 707-731(1)(b), 707-731(1)(c), 707-732(1)(a), 707-
10 732(1)(b), 707-732(1)(c), 707-732(1)(d), 707-
11 732(1)(e), 707-732(1)(f), 707-733(1)(a), 707-733.6,
12 712-1202(1)(b), or 712-1203(1)(b), but excludes
13 conduct that is criminal only because of the age of
14 the victim, as provided in section 707-730(1)(b), or
15 section 707-732(1)(b) if the perpetrator is under the
16 age of eighteen;
- 17 (2) An act defined in section 707-720 if the charging
18 document for the offense for which there has been a
19 conviction alleged intent to subject the victim to a
20 sexual offense;
- 21 (3) An act that consists of:



- 1 (A) Criminal sexual conduct toward a minor, including
- 2 but not limited to an offense set forth in
- 3 section 707-759;
- 4 (B) Solicitation of a minor who is less than fourteen
- 5 years old to engage in sexual conduct;
- 6 (C) Use of a minor in a sexual performance;
- 7 (D) Production, distribution, or possession of child
- 8 pornography chargeable as a felony under section
- 9 707-750, 707-751, or 707-752;
- 10 (E) Electronic enticement of a child chargeable under
- 11 section 707-756[~~r~~] or 707-757[~~r~~, ~~or~~ ~~707-~~] if
- 12 the offense was committed with the intent to
- 13 promote or facilitate the commission of another
- 14 covered offense as defined in this section [~~846E-~~
- 15 ~~±~~]; or
- 16 (F) Solicitation of a minor to practice prostitution;
- 17 (4) A criminal offense that is comparable to or that
- 18 exceeds a sexual offense as defined in paragraphs (1)
- 19 through (3) or any federal, military, or out-of-state
- 20 conviction for any offense that under the laws of this
- 21 State would be a sexual offense as defined in
- 22 paragraphs (1) through (3); or



1 (5) An act, as described in chapter 705, that is an
2 attempt, criminal solicitation, or criminal conspiracy
3 to commit one of the offenses designated in paragraphs
4 (1) through (4)."

5 SECTION 11. Act 9, Session Laws of Hawaii 2008, is amended
6 by amending section 5 to read as follows:

7 "SECTION 5. This Act shall take effect upon its
8 approval[-]; provided that the amendments made to section 461-1,
9 Hawaii Revised Statutes, by section 3 of this Act, shall not be
10 repealed when section 461-1, Hawaii Revised Statutes, is
11 reenacted on July 1, 2010, pursuant to section 11 of Act 190,
12 Session Laws of Hawaii 2004."

13 SECTION 12. Act 28, Session Laws of Hawaii 2008, is
14 amended by amending section 43 to read as follows:

15 "SECTION 43. Upon its approval, this Act shall take effect
16 retroactive to July 1, 2006; provided that:

- 17 (1) Section 3(2) shall be repealed on June 30, 2008;
- 18 (2) Sections 3(3) and [~~23~~] 23 shall take effect on July
19 1, 2008; and
- 20 (3) The amendments to section 237-24.3, Hawaii Revised
21 Statutes, by section 26 of this Act shall not be
22 repealed when that section is reenacted on December



1 31, 2009, by section 4 of Act 239, Session Laws of
2 Hawaii 2007."

3 SECTION 13. Act 106, Session Laws of Hawaii 2008, is
4 amended by amending section 3 to read as follows:

5 "SECTION 3. This Act shall take effect on July 1, 2008,
6 and shall be repealed on June 30, 2011[-]; provided that section
7 304A-2251, Hawaii Revised Statutes, shall be reenacted in the
8 form in which it read on the day before the effective date of
9 this Act."

10 SECTION 14. Act 120, Session Laws of Hawaii 2008, is
11 amended by amending section 3 to read as follows:

12 "SECTION 3. This Act shall take effect on July 1, 2008,
13 and shall be repealed on July 1, 2013[-]; provided that section
14 431:2-201.5, Hawaii Revised Statutes, shall be reenacted in the
15 form in which it read on the day before the effective date of
16 this Act."

17 SECTION 15. Act 128, Session Laws of Hawaii 2008, is
18 amended by amending section 7 to read as follows:

19 "SECTION 7. This Act shall take effect upon its approval
20 and shall be repealed on July 1, 2011[-]; provided that sections
21 711-1109.1(1), 711-1109.2(1), (3), and (5), and 711-1110.5,



1 Hawaii Revised Statutes, shall be reenacted in the form in which
2 they read on the day before the effective date of this Act."

3 SECTION 16. Act 154, Session Laws of Hawaii 2008, is
4 amended by amending the prefatory language in section 27 to read
5 as follows:

6 "SECTION 27. Section [~~626:1-505.5,~~] 626-1, Hawaii Revised
7 Statutes, is amended by amending subsection (d) of rule 505.5 to
8 read as follows:"

9 SECTION 17. Act 171, Session Laws of Hawaii 2008, is
10 amended by amending section 20 to read as follows:

11 "SECTION 20. This Act shall take effect on July 1, 2008;
12 provided that sections 2 through 11 shall take effect on July 1,
13 2010; provided further that sections 15 and 16 shall be repealed
14 on June 30, 2010~~[-]~~; and provided further that sections 287-
15 20(a) and 291E-61(g), Hawaii Revised Statutes, shall be
16 reenacted in the form in which they read on the day before the
17 effective date of this Act."

18 SECTION 18. Act 177, Session Laws of Hawaii 2008, is
19 amended by amending section 7 to read as follows:

20 "SECTION 7. This Act shall take effect upon its approval,
21 and shall be repealed two years from the date of its
22 approval~~[-]~~; provided that section 431:7-101(a) and (b), Hawaii



1 Revised Statutes, shall be reenacted in the form in which it
2 read on the day before the effective date of this Act."

3 SECTION 19. Act 180, Session Laws of Hawaii 2008, is
4 amended by amending section 6 to read as follows:

5 "SECTION 6. This Act shall take effect on July 1, 2008 and
6 shall be repealed on July 1, 2010[-]; provided that sections
7 586-4(e) and 586-11(a), Hawaii Revised Statutes, shall be
8 reenacted in the form in which they read on the day before the
9 effective date of this Act."

10 SECTION 20. Act 212, Session Laws of Hawaii 2008, is
11 amended by amending section 7 to read as follows:

12 "SECTION 7. This Act shall take effect upon its approval
13 and shall be repealed on January 1, 2013[-]; provided that
14 sections 461-1 and 461-14, Hawaii Revised Statutes, are
15 reenacted in the form in which they read on the day before the
16 effective date of this Act; and provided further that the
17 amendments made to section 461-1, Hawaii Revised Statutes, by
18 this Act, shall not be repealed when section 461-1, Hawaii
19 Revised Statutes, is reenacted on July 1, 2010, pursuant to
20 section 11 of Act 190, Session Laws of Hawaii 2004."

21 SECTION 21. Act 226, Session Laws of Hawaii 2008, is
22 amended by amending section 16 to read as follows:



1 "SECTION 16. This Act shall take effect on July 1, 2008[-];
2 provided that the amendments made to section 437D-8.4(a), Hawaii
3 Revised Statutes, by this Act, shall not be repealed when
4 section 437D-8.4, Hawaii Revised Statutes, is reenacted on
5 December 31, 2022, pursuant to Act 247, Session Laws of Hawaii
6 2005."

7 SECTION 22. Act 227, Session Laws of Hawaii 2008, is
8 amended by amending section 5 to read as follows:

9 "SECTION 5. This Act shall take effect upon its approval,
10 and shall be repealed on June 30, 2011[-]; provided that section
11 431:13-103(a), Hawaii Revised Statutes, shall be reenacted in
12 the form in which it read on the day before the effective date
13 of this Act."

14 SECTION 23. Act 11, First Special Session Laws of Hawaii
15 2008, is amended by amending section 15 to read as follows:

16 "SECTION 15. This Act shall take effect on July 1,
17 2008[-]; provided that section 2 shall take effect on June 29,
18 2008."

19 SECTION 24. Chapter 235D, Hawaii Revised Statutes, is
20 repealed.

21 SECTION 25. Section 237-27.1, Hawaii Revised Statutes, is
22 repealed.



1 ~~["§237-27.1 Exemption of sale of alcohol fuels. (a)~~
2 ~~There shall be exempted from and excluded from the measure of~~
3 ~~the taxes imposed by this chapter all of the gross proceeds~~
4 ~~arising from the sale of alcohol fuels for consumption or use by~~
5 ~~the purchaser and not for resale.~~

6 ~~(b) As used in this section, "alcohol fuels" means neat~~
7 ~~biomass-derived alcohol liquid fuel or a petroleum-derived fuel~~
8 ~~and alcohol liquid fuel mixture consisting of at least ten~~
9 ~~volume per cent denatured biomass-derived alcohol commercially~~
10 ~~usable as a fuel to power aircraft, seacraft, spacecraft,~~
11 ~~automobiles, or other motorized vehicles.~~

12 ~~(c) The director of taxation shall adopt rules pursuant to~~
13 ~~chapter 91 necessary to administer this section.~~

14 ~~(d) This section shall be repealed on December 31, 2006."]~~

15 PART II

16 SECTION 26. Section 92-28, Hawaii Revised Statutes, is
17 amended to read as follows:

18 "§92-28 State service fees; increase or decrease of. Any
19 law to the contrary notwithstanding, the fees or other nontax
20 revenues assessed or charged by any board, commission, or other
21 governmental agency may be increased or decreased by the body in
22 an amount not to exceed fifty per cent of the statutorily



1 assessed fee or nontax revenue, to maintain a reasonable
2 relation between the revenues derived from such fee or nontax
3 revenue and the cost or value of services rendered,
4 comparability among fees imposed by the State, or any other
5 purpose which it may deem necessary and reasonable; provided
6 that:

7 (1) The authority to increase or decrease fees or nontax
8 revenues shall be subject to the approval of the
9 governor and extend only to the following: chapters
10 36, 92, 94, 142, 144, 145, 147, 150, 171, 188, 189,
11 231, 269, 271, 321, 338, 373, 412, 414, 414D, 415A,
12 417E, 419, 421, 421C, 421H, 421I, 425, 425E, 428, 431,
13 436E, 437, 437B, 438, 439, 440, 441, 442, 443B, 444,
14 447, 448, 448E, 448F, 448H, 451A, 451J, 452, 453,
15 453D, 454, 455, 456, 457, 457A, 457B, 457G, 458, 459,
16 [460,] 460J, 461, 461J, 462A, 463, 463E, 464, 465,
17 466, 466K, 467, 467E, 468E, 468L, 468M, 469, 471, 482,
18 482E, 484, 485A, 501, 502, 505, 514A, 514B, 514E, 572,
19 574, and 846 (part II);

20 (2) The authority to increase or decrease fees or nontax
21 revenues under the chapters listed in paragraph (1)
22 that are established by the department of commerce and



- 1 consumer affairs shall apply to fees or nontax
2 revenues established by statute or rule;
- 3 (3) The authority to increase or decrease fees or nontax
4 revenues established by the University of Hawaii under
5 chapter 304A shall be subject to the approval of the
6 board of regents; provided that the board's approval
7 of any increase or decrease in tuition for regular
8 credit courses shall be preceded by an open public
9 meeting held during or prior to the semester preceding
10 the semester to which the tuition applies;
- 11 (4) This section shall not apply to judicial fees as may
12 be set by any chapter cited in this section;
- 13 (5) The authority to increase or decrease fees or nontax
14 revenues pursuant to this section shall be exempt from
15 the public notice and public hearing requirements of
16 chapter 91; and
- 17 (6) Fees for copies of proposed and final rules and public
18 notices of proposed rulemaking actions under chapter
19 91 shall not exceed 10 cents a page, as required by
20 section 91-2.5."



1 SECTION 27. Section 235-1, Hawaii Revised Statutes, is
2 amended by amending the definition of "person totally disabled"
3 to read as follows:

4 "Person totally disabled" means a person who is totally
5 and permanently disabled, either physically or mentally, which
6 results in the person's inability to engage in any substantial
7 gainful business or occupation.

8 The disability shall be certified to by (1) a physician or
9 osteopathic physician licensed under chapter 453 [~~or 460, or~~
10 ~~both~~], (2) a qualified out-of-state physician who is currently
11 licensed to practice in the state in which the physician
12 resides, or (3) a commissioned medical officer in the United
13 States Army, Navy, Marine Corps, or Public Health Service,
14 engaged in the discharge of one's official duty. Certification
15 shall be on forms prescribed by the department of taxation."

16 SECTION 28. Section 246-31, Hawaii Revised Statutes, is
17 amended by amending subsection (b) to read as follows:

18 "(b) Any person who is totally disabled, as defined in
19 section 235-1, so long as the person is totally disabled, shall
20 be exempt from real property taxes on all real property owned by
21 the person up to, but not exceeding, a taxable value of \$15,000.
22 The disability shall be certified to by a physician or



1 osteopathic physician licensed under chapter 453 [~~or 460, or~~
2 ~~both~~], on forms prescribed by the department of taxation."

3 SECTION 29. Section 304A-1752, Hawaii Revised Statutes, is
4 amended to read as follows:

5 "[+]§304A-1752[+] **Qualifications for residency program.**

6 The school of medicine of the University of Hawaii shall
7 recommend that two positions within the University of Hawaii
8 medical residency program be filled each year, in accordance
9 with this subpart, by persons who have the necessary
10 qualifications, other than the qualification of residency
11 training, to take the examination for licensure as physicians or
12 osteopathic physicians under chapter 453 [~~or osteopathic~~
13 ~~physicians under chapter 460~~] and who volunteer to enter into
14 contracts under section [+]304A-1753[+], regardless of whether
15 they are graduates of the school of medicine of the University
16 of Hawaii. The department of public safety and the department
17 of health shall notify the school of medicine of the type of
18 physicians or osteopathic physicians needed by the correctional
19 facilities and by rural communities. The school of medicine
20 shall establish procedures to provide for applications by, and
21 selection of, persons who are qualified and interested to fill
22 the positions."



1 SECTION 30. Section 304A-1753, Hawaii Revised Statutes, is
2 amended to read as follows:

3 "[+]§304A-1753[+] **Contract necessary for filling of**
4 **positions.** In order to fill a position under this subpart, a
5 person shall enter into a contract with the school of medicine
6 of the University of Hawaii stating that the person:

7 (1) Agrees to participate in the residency program for the
8 minimum period required to qualify for the licensure
9 examination under chapter 453 [~~er-460~~];

10 (2) Agrees to obtain a permanent license to practice
11 medicine and surgery or osteopathy under chapter 453
12 [~~er-osteopathy under chapter 460,~~] as soon as possible
13 following termination of participation in the
14 residency program;

15 (3) Agrees to serve for two years as:
16 (A) An officer or employee of the department of
17 public safety who is based in a correctional
18 facility and whose normal course of duty requires
19 medical treatment of inmates of the facility,
20 another correctional facility, or both; or

21 (B) An officer or employee of the department of
22 health who is employed to provide primary medical



1 care to residents of and to be based in a rural
2 community with a shortage of physicians; and
3 (4) Agrees to commence fulfilling the requirement under
4 paragraph (3) immediately following the termination of
5 participation in the residency program and licensure."

6 SECTION 31. Section 304A-1754, Hawaii Revised Statutes, is
7 amended to read as follows:

8 "~~[+]§304A-1754[+]~~ **Penalty for breach of contract.** A
9 person who is placed in the residency program under this
10 subpart, but who breaches any term of the contract under section
11 ~~[+]304A-1753[+]~~, shall pay to the State damages of \$10,000;
12 provided that a contract shall not be deemed breached if the
13 person has obtained a permanent license to practice medicine and
14 surgery or osteopathy under chapter 453 [~~or osteopathy under~~
15 ~~chapter 460~~], but could not fulfill the requirements of section
16 ~~[+]304A-1753(3) and (4)[+]~~ because no employment vacancy existed
17 in the correctional facilities of the department of public
18 safety or no shortage of physicians or osteopathic physicians
19 existed in any rural community and the department of public
20 safety or the department of health, as applicable, certifies
21 that no employment vacancy or shortage existed."

1 SECTION 32. Section 304A-1755, Hawaii Revised Statutes, is
2 amended to read as follows:

3 "[+]§304A-1755[+] Residency program; defined. For the
4 purpose of this subpart, "residency program" means a graduate
5 medical education program in a hospital in this State that is
6 accredited as a medical school residency program by the school
7 of medicine of the University of Hawaii. The school of medicine
8 may develop a special residency program for the purpose of this
9 subpart; provided that the program, upon completion by the
10 person, qualifies the person to take the licensure examination
11 under chapter 453 [~~or 460~~]."

12 SECTION 33. Section 321-32, Hawaii Revised Statutes, is
13 amended to read as follows:

14 "[+]§321-32[+] Epidemiological specialists.
15 Notwithstanding any other law to the contrary, epidemiological
16 specialists may perform blood collection by venipuncture or
17 capillary puncture and other methods of specimen collection,
18 excluding catheterization, when employed by or acting as an
19 agent of the department and when done under the direct or
20 indirect supervision of a physician or osteopathic physician
21 licensed pursuant to chapter 453 [~~or chapter 460~~]."



1 SECTION 34. Section 321-313, Hawaii Revised Statutes, is
2 amended to read as follows:

3 "[+]§321-313[+] Definition of health care professional. A
4 health care professional means a physician or osteopathic
5 physician as licensed under chapter 453 [~~and an osteopath as~~
6 ~~licensed under chapter 460~~]."

7 SECTION 35. Section 321-373, Hawaii Revised Statutes, is
8 amended by amending subsection (a) to read as follows:

9 "(a) The department shall adopt rules under chapter 91 to
10 implement this part. The rules shall include but not be limited
11 to:

12 (1) Prohibiting the use of injections, unless administered
13 by a physician or osteopathic physician licensed under
14 chapter 453 [~~or 460~~], or by a registered nurse
15 licensed under chapter 457;

16 (2) Appropriate restrictions on topical anesthetics;

17 (3) Prescribing procedures and conditions for
18 sterilization, storage of sterilized equipment,
19 resterilization, and disposal of discarded needles and
20 other equipment;

21 (4) Creating examination standards; and



1 (5) Fixing penalties and fines for violations of this part
2 or any of the rules adopted by the department."

3 SECTION 36. Section 321-374, Hawaii Revised Statutes, is
4 amended by amending subsection (b) to read as follows:

5 "(b) Physicians or osteopathic physicians holding a valid
6 unrevoked license under chapter 453 [~~er 460~~] are exempt from the
7 requirements of this part."

8 SECTION 37. Section 321-376, Hawaii Revised Statutes, is
9 amended to read as follows:

10 "~~§321-376~~ **Facial tattoos.** Application of facial tattoos
11 shall be prohibited except by a physician or osteopathic
12 physician licensed under chapter 453 [~~er 460~~], or by a tattoo
13 artist who is under the general supervision of such a
14 physician[~~-~~] or osteopathic physician."

15 SECTION 38. Section 325-101, Hawaii Revised Statutes, is
16 amended by amending subsection (a) to read as follows:

17 "(a) The records of any person that indicate that a person
18 has a human immunodeficiency virus (HIV) infection, AIDS related
19 complex (ARC), or acquired immune deficiency syndrome (AIDS),
20 which are held or maintained by any state agency, health care
21 provider or facility, physician, osteopathic physician,
22 laboratory, clinic, blood bank, third party payor, or any other



1 agency, individual, or organization in the State shall be
2 strictly confidential. For the purposes of this part, the term
3 "records" shall be broadly construed to include all
4 communication that identifies any individual who has HIV
5 infection, ARC, or AIDS. This information shall not be released
6 or made public upon subpoena or any other method of discovery.
7 Notwithstanding any other provision to the contrary, release of
8 the records protected under this part shall be permitted under
9 the following circumstances:

- 10 (1) Release is made to the department of health in order
11 that it may comply with federal reporting requirements
12 imposed on the State. The department shall ensure
13 that personal identifying information from these
14 records is protected from public disclosure;
- 15 (2) Release is made of the records, or of specific medical
16 or epidemiological information contained therein, with
17 the prior written consent of the person or persons to
18 whom the records pertain;
- 19 (3) Release is made to medical personnel in a medical
20 emergency only to the extent necessary to protect the
21 health, life, or well-being of the named party;



1 (4) Release is made from a physician or osteopathic
2 physician licensed pursuant to chapter 453 [~~er 460~~] to
3 the department of health to inform the sexual or
4 needle sharing contact of an HIV seropositive patient
5 where:

6 (A) There is reason for the physician or osteopathic
7 physician to believe that the contact is or has
8 been at risk of HIV transmission as a result of
9 the index patient having engaged in conduct which
10 is likely to transmit HIV; and

11 (B) The index patient has first been counseled by the
12 physician or osteopathic physician of the need
13 for disclosure and the patient is unwilling to
14 inform the contact directly or is unwilling to
15 consent to the disclosure of the index patient's
16 HIV status by the physician, the osteopathic
17 physician, or the department of health; provided
18 that the identity of the index patient is not
19 disclosed; and provided further that there is no
20 obligation to identify or locate any contact.
21 Any determination by a physician or osteopathic
22 physician to disclose or withhold disclosure of



1 an index patient's sexual contacts to the
2 department of health pursuant to this subsection
3 which is made in good faith shall not be subject
4 to penalties under this part or otherwise subject
5 to civil or criminal liability for damages under
6 the laws of the State;

7 (5) Release is made by the department of health of medical
8 or epidemiological information from the records to
9 medical personnel, appropriate county and state
10 agencies, blood banks, plasma centers, organ and
11 tissue banks, schools, preschools, day care centers,
12 or county or district courts to enforce this part and
13 to enforce rules adopted by the department concerning
14 the control and treatment of HIV infection, ARC, and
15 AIDS, or to the sexual or needle sharing contacts of
16 an HIV seropositive index patient for purposes of
17 contact notification as provided in paragraph (4);
18 provided that the identity of the index patient, if
19 known, shall not be disclosed; provided further that
20 release of information under this paragraph shall only
21 be made by confidential communication to a designated
22 individual charged with compliance with this part;



1 (6) Release of a child's records is made to the department
2 of human services for the purpose of enforcing
3 chapters 350 and 587;

4 (7) Release of a child's records is made within the
5 department of human services and to child protective
6 services team consultants under contract to the
7 department of human services for the purpose of
8 enforcing and administering chapters 350 and 587 on a
9 need to know basis pursuant to a written protocol to
10 be established and implemented, in consultation with
11 the director of health, by the director of human
12 services;

13 (8) Release of a child's records is made by employees of
14 the department of human services authorized to do so
15 by the protocol established in paragraph (7) to a
16 natural parent of a child who is the subject of the
17 case when the natural parent is a client in the case,
18 the guardian ad litem of the child, the court, each
19 party to the court proceedings, and also to an
20 adoptive or a prospective adoptive parent, an
21 individual or an agency with whom the child is placed
22 for twenty-four hour residential care, and medical



1 personnel responsible for the care or treatment of the
2 child. When a release is made to a natural parent of
3 the child, it shall be with appropriate counseling as
4 required by section 325-16. In no event shall
5 proceedings be initiated against a child's natural
6 parents for claims of child abuse under chapter 350 or
7 harm to a child or to affect parental rights under
8 chapter 587 solely on the basis of the HIV
9 seropositivity of a child or the child's natural
10 parents;

11 (9) Release is made to the patient's health care insurer
12 to obtain reimbursement for services rendered to the
13 patient; provided that release shall not be made if,
14 after being informed that a claim will be made to an
15 insurer, the patient is afforded the opportunity to
16 make the reimbursement directly and actually makes the
17 reimbursement;

18 (10) Release is made by the patient's health care provider
19 to another health care provider for the purpose of
20 continued care or treatment of the patient;



1 (11) Release is made pursuant to a court order, after an in
2 camera review of the records, upon a showing of good
3 cause by the party seeking release of the records;

4 (12) Disclosure by a physician[7] or osteopathic physician,
5 on a confidential basis, of the identity of a person
6 who is HIV seropositive and who also shows evidence of
7 tuberculosis infection, to a person within the
8 department of health as designated by the director of
9 health for purposes of evaluating the need for or the
10 monitoring of tuberculosis chemotherapy for the person
11 and the person's contacts who are at risk of
12 developing tuberculosis; or

13 (13) Release is made for the purpose of complying with
14 sections 325-16.5 and 801D-4(b). Nothing in this
15 section shall be construed to prohibit a victim to
16 whom information is released pursuant to section 325-
17 16.5 from requesting the release of information by a
18 physician, osteopathic physician, or HIV counselor to
19 a person with whom the victim shares a privileged
20 relationship recognized by chapter 626; provided that
21 prior to such release, the person to whom the
22 information is to be released shall be required to



1 sign a notice of HIV status disclosure advising them
2 of the confidentiality provisions regarding HIV test
3 results and the penalties for unlawful disclosure to
4 any person other than a designated physician,
5 osteopathic physician, or HIV counselor.

6 As used in this part, unless the context requires
7 otherwise:

8 "Medical emergency" means any disease-related situation
9 that threatens life or limb.

10 "Medical personnel" means any health care provider in the
11 State, as provided in section 323D-2, who deals directly or
12 indirectly with the identified patient or the patient's
13 contacts, and includes hospital emergency room personnel, the
14 staff of the communicable disease division of the department of
15 health, and any other department personnel as designated by the
16 director."

17 SECTION 39. Section 327C-1, Hawaii Revised Statutes, is
18 amended by amending subsections (a), (b), and (c) to read as
19 follows:

20 "(a) Except as provided in subsection (b), a person shall
21 be considered dead if, in the announced opinion of a physician
22 or osteopathic physician licensed under part I of chapter 453,



1 ~~[physician and surgeon licensed under chapter 460,]~~ physician or
2 osteopathic physician excepted from licensure by section 453-
3 2(b)(3), or registered nurse licensed under chapter 457, based
4 on ordinary standards of current medical practice, the person
5 has experienced irreversible cessation of spontaneous
6 respiratory and circulatory functions. Death will have occurred
7 at the time when the irreversible cessation of the functions
8 first coincided.

9 (b) In the event that artificial means of support preclude
10 a determination that respiratory and circulatory functions have
11 ceased, a person shall be considered dead if, in the opinion of
12 an attending physician or osteopathic physician licensed under
13 part I of chapter 453, ~~[attending physician and surgeon licensed~~
14 ~~under chapter 460,]~~ or attending physician or osteopathic
15 physician excepted from licensure by section 453-2(b)(3), and of
16 a consulting physician or osteopathic physician licensed under
17 part I of chapter 453, ~~[consulting physician and surgeon~~
18 ~~licensed under chapter 460,]~~ or consulting physician or
19 osteopathic physician excepted from licensure by section 453-
20 2(b)(3), based on ordinary standards of current medical
21 practice, the person has experienced irreversible cessation of
22 all functions of the entire brain, including the brain stem. The



1 opinions of the physicians or osteopathic physicians shall be
2 evidenced by signed statements. Death will have occurred at the
3 time when the irreversible cessation of all functions of the
4 entire brain, including the brain stem, first occurred. Death
5 shall be pronounced before artificial means of support are
6 withdrawn and before any vital organ is removed for purposes of
7 transplantation.

8 (c) When a part of a donor is used for direct organ
9 transplantation under chapter 327, and the donor's death is
10 established by determining that the donor experienced
11 irreversible cessation of all functions of the entire brain,
12 including the brain stem, the determination shall only be made
13 under subsection (b). The determination of death in all other
14 cases shall be made under subsection (a). The physicians or
15 osteopathic physicians making the determination of death shall
16 not participate in the procedures for removing or transplanting
17 a part, or in the care of any recipient."

18 SECTION 40. Section 327E-2, Hawaii Revised Statutes, is
19 amended by amending the definition of "physician" to read as
20 follows:

21 ""Physician" means an individual authorized to practice
22 medicine or osteopathy under chapter 453 [~~or 460~~]."



1 SECTION 41. Section 327G-2, Hawaii Revised Statutes, is
2 amended by amending the definition of "physician" to read as
3 follows:

4 ""Physician" means an individual authorized to practice
5 medicine or osteopathy under chapter 453 [~~or osteopathy under~~
6 ~~chapter 460~~]."

7 SECTION 42. Section 329-104, Hawaii Revised Statutes, is
8 amended by amending subsection (c) to read as follows:

9 "(c) This section shall not prevent the disclosure, at the
10 discretion of the administrator, of investigative information
11 to:

12 (1) Law enforcement officers, investigative agents of
13 federal, state, or county law enforcement agencies,
14 prosecuting attorneys, or the attorney general;
15 provided that the administrator has reasonable grounds
16 to believe that the disclosure of any information
17 collected under this part is in furtherance of an
18 ongoing criminal investigation or prosecution;

19 (2) Registrants authorized under chapters 448, 453, [460,]
20 and 463E who are registered to administer, prescribe,
21 or dispense controlled substances; provided that the



1 information disclosed relates only to the registrant's
2 own patient;

3 (3) Pharmacists, employed by a pharmacy registered under
4 section 329-32, who request prescription information
5 about a customer relating to a violation or possible
6 violation of this chapter; or

7 (4) Other state-authorized governmental prescription-
8 monitoring programs.

9 Information disclosed to a registrant, pharmacist, or authorized
10 government agency under this section shall be transmitted by a
11 secure means determined by the designated agency."

12 SECTION 43. Section 329-121, Hawaii Revised Statutes, is
13 amended by amending the definition of "physician" to read as
14 follows:

15 ""Physician" means a person who is licensed to practice
16 medicine or osteopathic medicine under [~~chapters~~] chapter 453
17 [~~and 460,7~~] and is licensed with authority to prescribe drugs and
18 is registered under section 329-32. "Physician" does not
19 include physician's assistant as described in section 453-5.3."

20 SECTION 44. Section 338-1, Hawaii Revised Statutes, is
21 amended by amending the definition of "physician" to read as
22 follows:



1 ""Physician" means a person licensed to practice medicine
2 or osteopathic medicine under part I of chapter 453 or a
3 practitioner of medicine, osteopathic medicine, or surgery
4 excepted from licensure by section 453-2(b)(3). [~~or a person~~
5 ~~licensed to practice osteopathy under chapter 460~~]."

6 SECTION 45. Section 346-67, Hawaii Revised Statutes, is
7 amended as follows:

8 1. By amending subsection (a) to read:

9 "(a) Public assistance recipients in this State who
10 receive medical assistance pursuant to this chapter shall be
11 allowed coverage for medical foods and low-protein modified food
12 products for the treatment of an inborn error of metabolism;
13 provided that the medical food or low-protein modified food
14 product is:

- 15 (1) Prescribed as medically necessary for the therapeutic
16 treatment of an inborn error of metabolism; and
- 17 (2) Consumed or administered enterally under the
18 supervision of a physician or osteopathic physician
19 licensed under chapter 453 [~~or 460~~].

20 The department shall adopt rules pursuant to chapter 91 to
21 effectuate this subsection."

22 2. By amending subsection (c) to read:



1 "(c) For the purposes of this section:

2 "Inborn error of metabolism" means a disease caused by an
3 inherited abnormality of the body chemistry of a person that is
4 characterized by deficient metabolism, originating from
5 congenital defects or defects arising shortly after birth, of
6 amino acid, organic acid, carbohydrate, or fat.

7 "Low-protein modified food product" means a food product
8 that:

- 9 (1) Is specially formulated to have less than one gram of
10 protein per serving;
- 11 (2) Is prescribed or ordered by a physician or osteopathic
12 physician as medically necessary for the dietary
13 treatment of an inborn error of metabolism; and
- 14 (3) Does not include a food that is naturally low in
15 protein.

16 "Medical food" means a food that is formulated to be
17 consumed or administered enterally under the supervision of a
18 physician or osteopathic physician and is intended for the
19 specific dietary management of a disease or condition for which
20 distinctive nutritional requirements, based on recognized
21 scientific principles, are established by medical evaluation."



1 SECTION 46. Section 346C-8, Hawaii Revised Statutes, is
2 amended by amending subsection (b) to read as follows:

3 "(b) An individual qualifying for long-term care services
4 under the program shall have written certification from a
5 physician or osteopathic physician licensed under chapter 453
6 [~~or 460,~~] or an advanced practice registered nurse recognized
7 under section 457-8.5, assigned by the board of trustees
8 certifying that the individual requires one or more long-term
9 care services for the period of time during which the individual
10 receives the benefits under the program. The written
11 certification shall specify that the individual:

- 12 (1) Is unable to perform, without substantial assistance
13 from another individual, at least two of six
14 activities of daily living for a period of at least
15 ninety days due to a loss of functional capacity; or
- 16 (2) Requires substantial supervision to protect the
17 individual from threats to health and safety to self
18 or others due to severe cognitive impairment."

19 SECTION 47. Section 386-1, Hawaii Revised Statutes, is
20 amended by amending the definition of "health care provider" to
21 read as follows:



1 ""Health care provider" means a person qualified by the
2 director to render health care and service and who has a license
3 for the practice of:

4 (1) Medicine or osteopathy under chapter 453;

5 (2) Dentistry under chapter 448;

6 (3) Chiropractic under chapter 442;

7 ~~[(4) Osteopathy under chapter 460;~~

8 ~~-(5)]~~ (4) Naturopathy under chapter 455;

9 ~~[(6)]~~ (5) Optometry under chapter 459;

10 ~~[(7)]~~ (6) Podiatry under chapter 463E; and

11 ~~[(8)]~~ (7) Psychology under chapter 465."

12 SECTION 48. Section 386-27, Hawaii Revised Statutes, is
13 amended by amending subsection (a) to read as follows:

14 "(a) All health care providers rendering health care and
15 services under this chapter shall be qualified by the director
16 and shall remain qualified by satisfying the requirements
17 established in this section. The director shall qualify any
18 person initially who has a license for the practice of:

19 (1) Medicine or osteopathy under chapter 453;

20 (2) Dentistry under chapter 448;

21 (3) Chiropractic under chapter 442;

22 ~~[(4) Osteopathy under chapter 460;~~



1 ~~(5)~~ (4) Naturopathy under chapter 455;

2 ~~(6)~~ (5) Optometry under chapter 459;

3 ~~(7)~~ (6) Podiatry under chapter 463E; and

4 ~~(8)~~ (7) Psychology under chapter 465."

5 SECTION 49. Section 415A-2, Hawaii Revised Statutes, is
6 amended by amending the definition of "professional service" to
7 read as follows:

8 "Professional service" means any service which lawfully
9 may be rendered only by persons licensed under chapters 442,
10 448, 453, 455, 457, 459, ~~460,~~ 461, 463E, 465, 466, 471, and
11 605, and section 554-2."

12 SECTION 50. Section 431:10A-120, Hawaii Revised Statutes,
13 is amended as follows:

14 1. By amending subsection (a) to read:

15 "(a) Each policy of accident and health or sickness
16 insurance, other than life insurance, disability income
17 insurance, and long-term care insurance, issued or renewed in
18 this State, each employer group health policy, contract, plan,
19 or agreement issued or renewed in this State, all accident and
20 health or sickness insurance policies issued or renewed in this
21 State, all policies providing family coverages as defined in
22 section 431:10A-103, and all policies providing reciprocal



1 beneficiary family coverage as defined in section 431:10A-601,
2 shall contain a provision for coverage for medical foods and
3 low-protein modified food products for the treatment of an
4 inborn error of metabolism for its policyholders or dependents
5 of the policyholder in this State; provided that the medical
6 food or low-protein modified food product is:

- 7 (1) Prescribed as medically necessary for the therapeutic
8 treatment of an inborn error of metabolism; and
- 9 (2) Consumed or administered enterally under the
10 supervision of a physician or osteopathic physician
11 licensed under chapter 453 [~~er-460~~].

12 Coverage shall be for at least eighty per cent of the cost of
13 the medical food or low-protein modified food product prescribed
14 and administered pursuant to this subsection."

15 2. By amending subsection (c) to read:

16 "(c) For the purposes of this section:

17 "Inborn error of metabolism" means a disease caused by an
18 inherited abnormality of the body chemistry of a person that is
19 characterized by deficient metabolism, originating from
20 congenital defects or defects arising shortly after birth, of
21 amino acid, organic acid, carbohydrate, or fat.



1 "Low-protein modified food product" means a food product
2 that:

3 (1) Is specially formulated to have less than one gram of
4 protein per serving;

5 (2) Is prescribed or ordered by a physician or osteopathic
6 physician as medically necessary for the dietary
7 treatment of an inborn error of metabolism; and

8 (3) Does not include a food that is naturally low in
9 protein.

10 "Medical food" means a food that is formulated to be
11 consumed or administered enterally under the supervision of a
12 physician or osteopathic physician and is intended for the
13 specific dietary management of a disease or condition for which
14 distinctive nutritional requirements, based on recognized
15 scientific principles, are established by medical evaluation."

16 SECTION 51. Section 431:10C-308.7, Hawaii Revised
17 Statutes, is amended by amending subsection (g) to read as
18 follows:

19 "(g) For the purposes of this section, the term "health
20 care provider" means any person who is licensed to provide
21 health care services pursuant to chapters 436E, 442, 448, 452,
22 453, 455, 457G, 459, [460,] 461J, 463E, and 465."



1 SECTION 52. Section 431M-1, Hawaii Revised Statutes, is
2 amended by amending the definition of "physician" to read as
3 follows:

4 "Physician" means a person licensed in the practice of
5 medicine or osteopathy pursuant to chapter 453 [~~er-460,~~
6 ~~respectively~~]."

7 SECTION 53. Section 432:1-609, Hawaii Revised Statutes, is
8 amended as follows:

9 1. By amending subsection (a) to read:

10 "(a) All individual and group hospital and medical service
11 plan contracts and medical service corporation contracts under
12 this chapter shall provide coverage for medical foods and low-
13 protein modified food products for the treatment of an inborn
14 error of metabolism for its members or dependents of the member
15 in this State; provided that the medical food or low-protein
16 modified food product is:

17 (1) Prescribed as medically necessary for the therapeutic
18 treatment of an inborn error of metabolism; and

19 (2) Consumed or administered enterally under the
20 supervision of a physician or osteopathic physician
21 licensed under chapter 453 [~~er-460~~].



1 Coverage shall be for at least eighty per cent of the cost of
2 the medical food or low-protein modified food product prescribed
3 and administered pursuant to this subsection."

4 2. By amending subsection (c) to read:

5 "(c) For the purposes of this section:

6 "Inborn error of metabolism" means a disease caused by an
7 inherited abnormality of the body chemistry of a person that is
8 characterized by deficient metabolism, originating from
9 congenital defects or defects arising shortly after birth, of
10 amino acid, organic acid, carbohydrate, or fat.

11 "Low-protein modified food product" means a food product
12 that:

13 (1) Is specially formulated to have less than one gram of
14 protein per serving;

15 (2) Is prescribed or ordered by a physician or osteopathic
16 physician as medically necessary for the dietary
17 treatment of an inherited metabolic disease; and

18 (3) Does not include a food that is naturally low in
19 protein.

20 "Medical food" means a food that is formulated to be
21 consumed or administered enterally under the supervision of a
22 physician or osteopathic physician and is intended for the



1 specific dietary management of a disease or condition for which
2 distinctive nutritional requirements, based on recognized
3 scientific principles, are established by medical evaluation."

4 SECTION 54. Section 432D-19, Hawaii Revised Statutes, is
5 amended by amending subsection (c) to read as follows:

6 "(c) Any health maintenance organization granted a
7 certificate of authority under this chapter shall not be deemed
8 to be practicing medicine or osteopathic medicine and shall be
9 exempt from the provision of chapter 453 relating to the
10 practice of medicine or osteopathic medicine [~~or chapter 460~~
11 ~~relating to the practice of osteopathic medicine~~]."

12 SECTION 55. Section 432E-1.5, Hawaii Revised Statutes, is
13 amended to read as follows:

14 "[+]§432E-1.5[+] **Licensure of managed care plan medical**
15 **directors.** The medical director of any managed care plan
16 providing services in the State shall hold an unlimited license
17 to practice medicine or osteopathic medicine in the State
18 pursuant to chapter 453 [~~or 460~~]."

19 SECTION 56. Section 435E-1, Hawaii Revised Statutes, is
20 amended by amending the definition of "physician" to read as
21 follows:



1 ""Physician" or "surgeon" means any person licensed to
 2 practice medicine or osteopathic medicine under chapter 453 [~~or~~
 3 ~~460~~]; or any professional corporation, partnership, or other
 4 entity whose stockholders or partners are comprised solely of
 5 persons licensed under chapter 453 [~~or 460~~]."

6 SECTION 57. Section 436E-3.5, Hawaii Revised Statutes, is
 7 amended to read as follows:

8 "**§436E-3.5 Physicians and osteopaths not exempt.** Persons
 9 licensed under [~~chapters~~] chapter 453 [~~and 460~~] who desire to
 10 practice acupuncture shall be subject to licensing under this
 11 chapter."

12 SECTION 58. Section 440E-5, Hawaii Revised Statutes, is
 13 amended by amending subsection (b) to read as follows:

14 "(b) No mixed martial arts event shall take place unless
 15 the director has granted a permit for the proposed event. In
 16 addition, the director shall not allow any mixed martial arts
 17 contest unless:

- 18 (1) The contest consists of not more than five rounds of a
- 19 duration of not more than five minutes each with an
- 20 interval of at least one minute between each round and
- 21 the succeeding round;



- 1 (2) Each contestant is at least eighteen years of age, is
2 not disqualified from competing in a similar mixed
3 martial arts contest in another jurisdiction at the
4 time of the contest, and does not use stimulants or
5 banned substances before or during the contest;
- 6 (3) Each mixed martial arts contestant is examined one
7 hour prior to the contest by at least one physician or
8 osteopathic physician licensed under chapter 453 [~~or~~
9 460] who shall certify in writing to the referee of
10 the contest that the contestant is physically fit to
11 engage therein;
- 12 (4) Each contestant furnishes to the director:
- 13 (A) A medical report of a medical examination
14 completed not less than six months before the
15 contest, at the sole expense of the promoter,
16 including the results of HIV and hepatitis
17 testing; and
- 18 (B) Previous fight records that establish the
19 contestant's fitness to compete in the contest;
- 20 (5) The contest is under the control of a licensed referee
21 in the ring who has at least one year of experience in
22 refereeing a match or exhibition involving mixed



1 martial arts and who has passed a physical examination
2 by a physician or osteopathic physician licensed under
3 chapter 453 [~~or 460~~], including an eye examination,
4 within two years prior to the contest;

5 (6) The promoter has complied with sections 440E-6 and
6 440E-7; and

7 (7) All licensees have complied with the requirements of
8 this chapter and rules adopted in accordance with
9 chapter 91, including any rules or requirements that
10 protect the safety of the contestants to the extent
11 feasible."

12 SECTION 59. Section 440E-16, Hawaii Revised Statutes, is
13 amended to read as follows:

14 "[+]§440E-16[+] Physician[+] or osteopathic physician;
15 **duties.** Every promoter holding a license to conduct, hold, or
16 give mixed martial arts contests shall have in attendance at
17 every contest at least two physicians licensed to practice
18 medicine or osteopathic medicine in the State under chapter 453
19 [~~or 460,~~] who shall observe the physical condition of the mixed
20 martial arts contestants and advise the referee with regard
21 thereto and, one hour before each contestant enters the ring,
22 certify in writing as to the physical condition of the



1 contestant to engage in the contest. A report of the medical
2 examination shall be filed with the director not later than
3 forty-eight hours after the conclusion of the contest. If a
4 contestant is knocked down or severely injured during a contest,
5 or for any other [†]reason[†] as provided in rules adopted by
6 the director pursuant to chapter 91, at least one physician
7 shall immediately examine the contestant and file a written
8 medical opinion with the director within forty-eight hours of
9 the contest."

10 SECTION 60. Section 451D-2, Hawaii Revised Statutes, is
11 amended by amending the definitions of "board" and "health care
12 professional" to read as follows:

13 ""Board" means the board of dental examiners, the Hawaii
14 medical board, the board of psychology, the board of nursing,
15 [~~the board of osteopathic examiners,~~] the board of veterinary
16 examiners, the board of acupuncture, the board of massage
17 therapy, the board of examiners in naturopathy, the board of
18 chiropractic examiners, and the board of pharmacy.

19 "Health care professional" includes physicians and surgeons
20 and others licensed pursuant to [~~chapters~~] chapter 453 [and
21 460], podiatrists licensed pursuant to chapter 463E, dentists
22 licensed pursuant to chapter 448, psychologists licensed



1 pursuant to chapter 465, nurses licensed pursuant to chapter
2 457, veterinarians licensed pursuant to chapter 471,
3 acupuncturists licensed pursuant to chapter 436E, massage
4 therapists licensed pursuant to chapter 452, naturopathic
5 physicians licensed pursuant to chapter 455, chiropractors
6 licensed pursuant to chapter 442, and pharmacists licensed
7 pursuant to chapter 461."

8 SECTION 61. Section 457-2, Hawaii Revised Statutes, is
9 amended by amending the definitions of "the practice of nursing
10 as a licensed practical nurse" and "the practice of nursing as a
11 registered nurse" to read as follows:

12 "The practice of nursing as a licensed practical nurse"
13 means the performance of those acts commensurate with the
14 required educational preparation and demonstrated competency of
15 the individual, whereby the individual shall be accountable and
16 responsible to the consumer for the quality of nursing care
17 rendered. The foregoing may include, but not be limited to,
18 implementation of basic nursing procedures in the plan of care;
19 or observing and caring for individuals at all levels of the
20 health spectrum, giving counsel and acting to safeguard life and
21 health and functioning as a part of the health care team, under
22 the direction of a dentist, medical doctor[7] or osteopath,



1 registered nurse, [~~osteopath,~~] or podiatrist licensed in
2 accordance with chapter 448, 453, 457, [~~460,~~] or 463E; or
3 administration of treatment and medication as prescribed; or
4 promotion of health maintenance of individuals, families, or
5 groups; or teaching and supervision of auxiliary personnel.

6 "The practice of nursing as a registered nurse" means the
7 performance of professional services commensurate with the
8 educational preparation and demonstrated competency of the
9 individual having specialized knowledge, judgment, and skill
10 based on the principles of the biological, physical, behavioral,
11 and sociological sciences and nursing theory, whereby the
12 individual shall be accountable and responsible to the consumer
13 for the quality of nursing care rendered. The foregoing may
14 include, but not be limited to, observation, assessment,
15 development, implementation, and evaluation of a plan of care,
16 health counseling, supervision and teaching of other personnel,
17 and teaching of individuals, families, and groups in any stage
18 of health or illness; or administration, supervision,
19 coordination, delegation, and evaluation of nursing practice; or
20 provisions of health care to the patient in collaboration with
21 other members of the health care team as autonomous health care
22 professionals providing the nursing component of health care; or



1 utilization of reasonable judgment in carrying out prescribed
 2 medical orders of a licensed dentist, medical doctor~~[7]~~ or
 3 osteopath, or podiatrist licensed in accordance with chapter
 4 448, 453, ~~[4607]~~ or 463E or the orders of an advanced practice
 5 registered nurse recognized in accordance with this chapter."

6 SECTION 62. Section 461-1, Hawaii Revised Statutes, is
 7 amended by amending the definition of "licensed physician" to
 8 read as follows:

9 "Licensed physician" means a physician or osteopathic
 10 physician licensed by the Hawaii medical board pursuant to
 11 chapter 453 ~~[or 460]~~."

12 SECTION 63. Section 461-8, Hawaii Revised Statutes, is
 13 amended by amending subsection (d) to read as follows:

14 "(d) Beginning with the renewal for the licensing biennium
 15 commencing on January 1, 2008, and every biennial renewal
 16 thereafter, each licensee shall have completed thirty credit
 17 hours in continuing education courses within the two-year period
 18 preceding the renewal date, regardless of the licensee's initial
 19 date of licensure; provided that a licensee who has graduated
 20 from an accredited pharmacy school within one year of the
 21 licensee's first license renewal period shall not be subject to
 22 the continuing education requirement for the first license



1 renewal. The board may extend the deadline for compliance with
2 the continuing education requirement based on any of the
3 following:

4 (1) Illness, as certified by a physician or osteopathic
5 physician licensed under chapter 453 [~~or 460,~~] or
6 licensed in the jurisdiction in which the licensee was
7 treated;

8 (2) Military service under extended active duty with the
9 armed forces of the United States;

10 (3) Lack of access to continuing education courses due to
11 the practice of pharmacy in geographically isolated
12 areas; and

13 (4) Inability to undertake continuing education due to
14 incapacity, undue hardship, or other extenuating
15 circumstances."

16 SECTION 64. Section 461J-4, Hawaii Revised Statutes, is
17 amended by amending subsection (a) to read as follows:

18 "(a) There is established within the department of
19 commerce and consumer affairs for administrative purposes the
20 board of physical therapy. The board shall consist of seven
21 members. Four members shall be physical therapists, one member
22 shall be a physician, osteopathic physician, or surgeon with a



1 permanent license under chapter 453 [~~er-460~~], or a dentist with
2 a permanent license under chapter 448, and two members shall be
3 consumers. All members shall be at least eighteen years of age
4 and residents of the State."

5 SECTION 65. Section 466J-2, Hawaii Revised Statutes, is
6 amended by amending subsection (b) to read as follows:

7 "(b) The board shall consist of ten members. The
8 membership shall be composed of:

9 (1) Two persons licensed to practice medicine or
10 osteopathic medicine pursuant to chapter 453 [~~er-460~~]
11 and certified by the American Board of Radiology;

12 (2) Four persons, each with at least five years'
13 experience and certified in the practice of
14 radiography, two of whom shall be persons engaged in
15 the hospital practice of radiography;

16 (3) One person with at least five years' experience who is
17 certified and engaged in the practice of radiation
18 therapy technology;

19 (4) One person with at least five years' experience, who
20 is certified and engaged in the practice of nuclear
21 medicine technology;

22 (5) One person from the general public; and



1 (6) The director or the director's designated
 2 representative shall be the tenth, ex officio voting
 3 member of the board."

4 SECTION 66. Section 560:5-601, Hawaii Revised Statutes, is
 5 amended by amending the definition of "licensed physician" to
 6 read as follows:

7 ""Licensed physician" means any person who is licensed to
 8 practice medicine or osteopathic medicine in Hawaii under
 9 chapter 453 [~~er 460~~]."

10 SECTION 67. Section 671-1, Hawaii Revised Statutes, is
 11 amended to read as follows:

12 "**§671-1 Definitions.** As used in this chapter:

13 [~~(1)~~] "Health care provider" means a physician, osteopathic
 14 physician, or surgeon licensed under chapter 453, [~~a~~
 15 ~~physician and surgeon licensed under chapter 460,~~] a
 16 podiatrist licensed under chapter 463E, a health care
 17 facility as defined in section 323D-2, and the
 18 employees of any of them. Health care provider shall
 19 not mean any nursing institution or nursing service
 20 conducted by and for those who rely upon treatment by
 21 spiritual means through prayer alone, or employees of
 22 such institution or service.



1 [+2] "Medical tort" means professional negligence, the
2 rendering of professional service without informed
3 consent, or an error or omission in professional
4 practice, by a health care provider, which proximately
5 causes death, injury, or other damage to a patient."

6 SECTION 68. Section 671-5, Hawaii Revised Statutes, is
7 amended by amending subsections (b) and (c) to read as follows:

8 "(b) The insurance commissioner shall forward the name of
9 every health care provider, except a hospital and physician or
10 an osteopathic physician or surgeon licensed under chapter 453
11 [~~or an osteopathic physician or surgeon licensed under chapter~~
12 ~~460~~] or a podiatrist licensed under chapter 463E, against whom a
13 settlement is made, an arbitration award is made, or judgment is
14 rendered to the appropriate board of professional registration
15 and examination for review of the fitness of the health care
16 provider to practice the health care provider's profession. The
17 insurance commissioner shall forward the entire report under
18 subsection (a) to the department of commerce and consumer
19 affairs if the person against whom settlement or arbitration
20 award is made or judgment rendered is a physician or osteopathic
21 physician or surgeon licensed under chapter 453 [~~or an~~



1 ~~osteopathic physician and surgeon licensed under chapter 460]~~ or
2 a podiatrist licensed under chapter 463E.

3 (c) A failure on the part of any self-insured health care
4 provider to report as requested by this section shall be grounds
5 for disciplinary action by the Hawaii medical board [~~board of~~
6 ~~osteopathic examiners,~~] or the state health planning agency, as
7 applicable. A violation by an insurer shall be grounds for
8 suspension of its certificate of authority."

9 SECTION 69. Section 671-11, Hawaii Revised Statutes, is
10 amended as follows:

11 1. By amending subsection (b) to read:

12 "(b) A medical claim conciliation panel shall be formed
13 for each claim filed pursuant to section 671-12 and after each
14 panel renders its decision or the claim is otherwise disposed of
15 it shall be disbanded. Each medical claim conciliation panel
16 shall consist of one chairperson selected from among persons who
17 are familiar with and experienced in the personal injury claims
18 settlement process, one attorney licensed to practice in the
19 courts of the State and experienced in trial practice, and one
20 physician, osteopathic physician, or surgeon licensed to
21 practice under chapter 453 [~~or chapter 460~~]. The chairperson
22 shall be appointed by the director of the department of commerce



1 and consumer affairs from a list of eligible persons approved by
 2 the chief justice of the supreme court of Hawaii. The attorney
 3 shall be appointed by the chairperson from a list of not less
 4 than thirty-five attorneys experienced in trial practice
 5 submitted annually by the supreme court. The physician,
 6 osteopathic physician, or surgeon shall be appointed by the
 7 chairperson and shall be currently licensed and in good standing
 8 under chapter 453 [~~or under chapter 460~~]."

9 2. By amending subsection (g) to read:

10 "(g) The Hawaii medical board [~~and board of osteopathic~~
 11 ~~examiners~~] shall [~~each~~] prepare a list of physicians,
 12 osteopathic physicians, surgeons, and podiatrists, as the case
 13 may be, along with their respective specialties. These
 14 physicians, osteopathic physicians, and surgeons shall be
 15 eligible to serve as consultants to the panel in their
 16 respective fields. Panel members may consult with other legal,
 17 medical, and insurance specialists."

18 SECTION 70. Section 671-15, Hawaii Revised Statutes, is
 19 amended by amending subsection (a) to read as follows:

20 "(a) Within thirty days after the completion of a hearing,
 21 the medical claim conciliation panel shall file a written
 22 advisory decision with the insurance commissioner who shall



1 thereupon mail copies to all parties concerned, their counsel,
2 and the representative of each health care provider's liability
3 insurance carrier authorized to act for such carrier, [~~and the~~
4 ~~board of osteopathic examiners,~~] as appropriate. The insurance
5 commissioner also shall mail copies of the advisory decision to
6 the department of commerce and consumer affairs, if the claim is
7 against a physician, osteopathic physician, or surgeon licensed
8 under chapter 453 [~~or an osteopathic physician and surgeon~~
9 ~~licensed under chapter 460~~] or a podiatrist licensed under
10 chapter 463E. The panel shall decide the issue of liability and
11 shall state its conclusions in substantially the following
12 language: "We find the health care provider was actionably
13 negligent in his or her care and treatment of the patient and
14 we, therefore, find for the claimant"; or "We find the health
15 care provider was not actionably negligent in his or her care
16 and treatment of the patient and we, therefore, find for the
17 health care provider"."

18 SECTION 71. Section 671D-4, Hawaii Revised Statutes, is
19 amended by amending the definition of "physician" to read as
20 follows:

21 ""Physician" means an individual licensed under chapter 453
22 [~~or 460, or both,~~] or section 463E-1, to practice medicine or



1 surgery or osteopathy or podiatric medicine; an individual
2 licensed under chapter 448 to practice dentistry or dental
3 surgery; or any individual who, without authority, holds oneself
4 out to be so authorized."

5 SECTION 72. Section 707-730, Hawaii Revised Statutes, is
6 amended by amending subsection (1) to read as follows:

7 "(1) A person commits the offense of sexual assault in the
8 first degree if:

9 (a) The person knowingly subjects another person to an act
10 of sexual penetration by strong compulsion;

11 (b) The person knowingly engages in sexual penetration
12 with another person who is less than fourteen years
13 old;

14 (c) The person knowingly engages in sexual penetration
15 with a person who is at least fourteen years old but
16 less than sixteen years old; provided that:

17 (i) The person is not less than five years older than
18 the minor; and

19 (ii) The person is not legally married to the minor;

20 (d) The person knowingly subjects to sexual penetration
21 another person who is mentally defective; or



1 (e) The person knowingly subjects to sexual penetration
 2 another person who is mentally incapacitated or
 3 physically helpless as a result of the influence of a
 4 substance that the actor knowingly caused to be
 5 administered to the other person without the other
 6 person's consent.

7 Paragraphs (b) and (c) shall not be construed to prohibit
 8 practitioners licensed under chapter 453[7] or 455[~~7~~ ~~or~~ 460~~7~~]
 9 from performing any act within their respective practices."

10 SECTION 73. Section 707-731, Hawaii Revised Statutes, is
 11 amended by amending subsection (1) to read as follows:

12 "(1) A person commits the offense of sexual assault in the
 13 second degree if:

14 (a) The person knowingly subjects another person to an act
 15 of sexual penetration by compulsion;

16 (b) The person knowingly subjects to sexual penetration
 17 another person who is mentally incapacitated or
 18 physically helpless; or

19 (c) The person, while employed:

20 (i) In a state correctional facility;

21 (ii) By a private company providing services at a
 22 correctional facility;



1 (iii) By a private company providing community-based
2 residential services to persons committed to the
3 director of public safety and having received
4 notice of this statute;

5 (iv) By a private correctional facility operating in
6 the State of Hawaii; or

7 (v) As a law enforcement officer as defined in
8 section 710-1000(13),
9 knowingly subjects to sexual penetration an imprisoned
10 person, a person confined to a detention facility, a
11 person committed to the director of public safety, a
12 person residing in a private correctional facility
13 operating in the State of Hawaii, or a person in
14 custody; provided that paragraph (b) and this
15 paragraph shall not be construed to prohibit
16 practitioners licensed under chapter 453[~~7~~] or 455[~~7~~
17 ~~or 460~~] from performing any act within their
18 respective practices; and further provided that this
19 paragraph shall not be construed to prohibit a law
20 enforcement officer from performing a lawful search
21 pursuant to a warrant or exception to the warrant
22 clause."



1 SECTION 74. Section 707-732, Hawaii Revised Statutes, is
2 amended by amending subsection (1) to read as follows:

3 "(1) A person commits the offense of sexual assault in the
4 third degree if:

5 (a) The person recklessly subjects another person to an
6 act of sexual penetration by compulsion;

7 (b) The person knowingly subjects to sexual contact
8 another person who is less than fourteen years old or
9 causes such a person to have sexual contact with the
10 person;

11 (c) The person knowingly engages in sexual contact with a
12 person who is at least fourteen years old but less
13 than sixteen years old or causes the minor to have
14 sexual contact with the person; provided that:

15 (i) The person is not less than five years older than
16 the minor; and

17 (ii) The person is not legally married to the minor;

18 (d) The person knowingly subjects to sexual contact
19 another person who is mentally defective, mentally
20 incapacitated, or physically helpless, or causes such
21 a person to have sexual contact with the actor;

22 (e) The person, while employed:



- 1 (i) In a state correctional facility;
- 2 (ii) By a private company providing services at a
- 3 correctional facility;
- 4 (iii) By a private company providing community-based
- 5 residential services to persons committed to the
- 6 director of public safety and having received
- 7 notice of this statute;
- 8 (iv) By a private correctional facility operating in
- 9 the State of Hawaii; or
- 10 (v) As a law enforcement officer as defined in
- 11 section 710-1000(13),
- 12 knowingly subjects to sexual contact an imprisoned
- 13 person, a person confined to a detention facility, a
- 14 person committed to the director of public safety, a
- 15 person residing in a private correctional facility
- 16 operating in the State of Hawaii, or a person in
- 17 custody, or causes the person to have sexual contact
- 18 with the actor; or
- 19 (f) The person knowingly, by strong compulsion, has sexual
- 20 contact with another person or causes another person
- 21 to have sexual contact with the actor.



1 Paragraphs (b), (c), (d), and (e) shall not be construed to
2 prohibit practitioners licensed under chapter 453[~~r~~] or 455[~~r~~~~or~~
3 460~~r~~] from performing any act within their respective practices;
4 provided further that paragraph (e)(v) shall not be construed to
5 prohibit a law enforcement officer from performing a lawful
6 search pursuant to a warrant or an exception to the warrant
7 clause."

8 PART III

9 SECTION 75. Statutory material to be repealed is bracketed
10 and stricken. New statutory material is underscored.

11 SECTION 76. This Act shall take effect upon approval,
12 provided that:

- 13 (1) Section 23 shall take effect retroactive to June 29,
14 2008;
- 15 (2) Part II shall take effect retroactive to April 3,
16 2008; provided that sections 58 and 59, amending
17 sections 440E-5 and 440E-16, Hawaii Revised Statutes,
18 shall take effect on July 1, 2009; and
- 19 (3) Section 62, amending section 461-1, Hawaii Revised
20 Statutes, shall not be repealed when section 461-1,
21 Hawaii Revised Statutes, is reenacted on July 1, 2010,



1 pursuant to section 11 of Act 190, Session Laws of
2 Hawaii 2004.

3

APPROVED this 21 day of APR , 2009



GOVERNOR OF THE STATE OF HAWAII