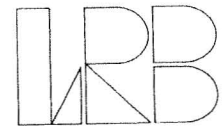


Ken H. Takayama
Director

Charlotte A. Carter-Yamauchi
First Assistant

Research (808) 587-0666
Revisor (808) 587-0670
Fax (808) 587-0681



LEGISLATIVE REFERENCE BUREAU
State of Hawaii
State Capitol
415 S. Beretania Street, Room 446
Honolulu, Hawaii 96813

Written Testimony

SB92

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

Testimony by the Legislative Reference Bureau
Ken H. Takayama, Director

Presented to the House Committee on Judiciary

Tuesday, March 17, 2009, 2:00 p.m.
Conference Room 325

Chair Karamatsu and Members of the Committee:

Thank you for the opportunity to testify in support of Senate Bill No. 92, what has come to be known as the "statutory revision bill". Bills such as Senate Bill No. 92 are prepared and submitted by the Legislative Reference Bureau each year pursuant to our statute revision functions, set forth in chapter 23G of the Hawaii Revised Statutes.

All amendments are of a purely technical nature and correct errors, omissions or obsolete law. As is the case each year, the revision bill was reviewed by the Office of the Attorney General. The rationale for each amendment proposed by this bill accompanies this testimony as an attachment.

The Bureau stands ready to assist the Committee in preparing the committee report and any changes to the revision bill the Committee deems appropriate. Should the Committee have any questions, please contact Irvin Komamura by phone at ext. 70685 or by email at komamura@hawaii.capitol.gov.

SUMMARY OF AMENDMENTS MADE IN SB92 (STATUTORY REVISION BILL)

SECTION 1. L 2008, c 244, §25 amended section 11-193(a)(5), HRS, by deleting the penalty provisions for failure to file or correct an election campaign report. Penalty provisions are now in section 11-213.5, HRS, enacted by L 2008, c 244, §23. However, section 11-228(g), HRS, still refers to "the penalties prescribed by sections 11-193(a)(5) and 11-215(c)".

Section 11-228(g), HRS, should be amended to change the section 11-193(a)(5), HRS, reference to section 11-213.5, HRS.

SECTION 2. L 2008, c 244, §25 amended section 11-193(a)(5), HRS, by deleting the penalty provisions for failure to file or correct an election campaign report. Penalty provisions are now in section 11-213.5, HRS, enacted by L 2008, c 244, §23. However, section 11-229(e), HRS, still refers to "the penalties prescribed by sections 11-193(a)(5) and 11-215(c)".

Section 11-229(e), HRS, should be amended to change the section 11-193(a)(5), HRS, reference to section 11-213.5, HRS.

SECTION 3. L 2006, c 304, §2 amended section 237-31, HRS, by, among other things, repealing paragraph (3), pertaining to the integrated tax information management systems special fund. Paragraph (3) contained a repeal date of July 1, 2005. Act 304, §4 provided that on June 30, 2008, the amendment was to be repealed and section 237-31 was to be reenacted "in the form in which it read on the day before the effective date of this Act", thus reenacting paragraph (3) with its July 1, 2005 repeal date. Moreover, paragraph (3)'s reference to the integrated tax information management systems special fund is obsolete, since the special fund, established by section 231-3.2, HRS, was repealed by L 2007, c 9, §21. Section 237-31(3) is functus and should be deleted.

SECTION 4. References in section 343-5(a)(1), HRS, to sections 205-2(d)(10) and 205-4.5(a)(13) were enclosed in brackets to distinguish editorial changes made by the revisor to conform to the amendments made by Acts 237 and 250 in 2006. L 2008, c 31, §2 amended section 205-2(d), HRS, by adding a new paragraph (6) and renumbering the subsequent paragraphs. Section 205-2(d)(10), HRS, was thus renumbered to 205-2(d)(11), HRS. Section 343-5(a)(1), HRS, should be amended to reflect the renumbering of section 205-2(d)(10) to 205-2(d)(11).

SECTION 5. L 2008, c 142, §9 amended section 431:6-322, HRS, to include references to "exchange traded funds". However, Act 142 amended the section heading to refer to "exchanged traded funds". The revisor substituted the word "exchange" for "exchanged" in the section heading to conform to the section amendments.

Section 431:6-322, HRS, should be amended to ratify the revisor's substitution of the word "exchange" in the section heading to conform to the amendments made to the section.

SECTION 6. Section 431:19-204, HRS, added by L 2008, c 190, was obviously missing words in subsection (d)(3), between the phrases "certificate of authority" and "the insurance regulator". The phrase "in the event that", present in the original draft of the bill, had apparently been inadvertently omitted from the final draft of the bill and was thus restored by the revisor.

Section 431:19-204(d)(3), HRS, should be amended to ratify the revisor's insertion of the missing phrase.

SECTION 7. L 2008, c 190 added section 431:19-209, HRS. Section 431:19-209(e)(1) to (5), HRS, sets forth certain activities that are prohibited to special purpose financial captive insurance companies. Paragraph (5) consisted of one sentence in the original draft of the bill, but was broken up into two sentences in

the final draft. The second sentence was incomplete and lacked meaning, as it began with the words "Also, anyone ...", but did not clearly indicate a connection with the first sentence. The revisor reconnected the two sentences to clarify the meaning, by replacing the phrase "corruption. Also, anyone" with the phrase "corruption, or anyone".

Section 431:19-209(e)(5) should be amended to ratify the revisor's substitution of the phrase "corruption, or anyone" for the phrase "corruption. Also, anyone".

SECTION 8. L 1998, c 159 added section 451J-7, HRS. Section 451J-7(1), HRS, requires an applicant for licensure as a marriage and family therapist to have completed a "minimum of thirty-three semester, or forty-four quarter hours ..." in certain course areas. However, because the word "or" is placed at the ending of paragraph (1)(D), each subparagraph in paragraph (1) is considered separately and each subparagraph falls short of the minimum course requirements. The requirements would be fulfilled if the respective hours contained in subparagraphs (A), (B), (C), (D), and (E) are combined. Section 451J-7(1)(D), HRS, should be amended to replace the word "or" with "and" to clarify the meaning of paragraph (1).

SECTION 9. Section 846-30.5, HRS, still refers to the "Immigration and Naturalization Service", which is now an obsolete term. The functions of the Immigration and Naturalization Service have been assumed in part by the U.S. Citizenship and Immigration Services, which is part of the Department of Homeland Security. Section 846-30.5, HRS, should be amended to change "Immigration and Naturalization Service" to "U.S. Citizenship and Immigration Services".

SECTION 10. L 2008, c 80, §4(2) amended the definition of "sexual offense" in section 846E-1, HRS, to mean an offense that is an act that consists of "Electronic enticement of a child chargeable under section 707-756, 707-757, or 707-____." Initial drafts of the bill had proposed a new section 707-____, establishing the offense of electronic enticement of a child in the third degree, but that new section 707-____ was not included in Act 80. However, paragraph (3)(E) of the definition of "sexual offense" in section 846E-1, HRS, contained a reference to the proposed section 707-____.

Section 846E-1, HRS, should be amended by amending paragraph (3)(E) of the definition of "sexual offense" to delete the reference to "section 707-____".

SECTION 11. L 2008, c 9, §3 amended section 461-1, HRS, and other sections of the Hawaii Revised Statutes by replacing the term "board of medical examiners" with the term "Hawaii medical board". Section 461-1, HRS, is subject to repeal and reenactment by L 2004, c 190, §11, on July 1, 2010. Thus, L 2008, c 9, §3's amendment to section 461-1, HRS, will be repealed on July 1, 2010, unless Act 9's amendment is exempted from L 2004, c 190's repeal and reenactment provisions.

SECTION 12. L 2008, c 28, §43(2) refers to "Sections 3(3) and (23)". There is no section 3(23) in the Act. The reference should be to sections "3(3) and 23". L 2008, c 28, §43 should be amended to correct this reference.

SECTION 13. L 2008, c 106, §1 amended section 304A-2251, HRS. Act 106, §3 provided that Act 106 take effect on July 1, 2008 and be repealed on June 30, 2011, but failed to provide for the reenactment of section 304A-2251, HRS, in the form in which it read prior to "the effective date of this Act". Thus, it is unclear whether only the L 2008, c 106 amendment will be repealed, or the underlying statute as well.

To eliminate this ambiguity, L 2008, c 106, §3, should be amended to reenact section 304A-2251, HRS, in the form in which it read prior to the L 2008, c 106 amendment.

SECTION 14. L 2008, c 120, §1 amended section 431:2-201.5, HRS. Act 120, §3 provided that Act 120 take effect on July 1, 2008 and be repealed on July 1, 2013, but failed to provide for the reenactment of section 431:2-201.5, HRS, in the form in which it read prior to "the effective date of this Act". Thus, it is unclear whether only the L 2008, c 120 amendment will be repealed, or the underlying statute as well.

To eliminate this ambiguity, L 2008, c 120, §3, should be amended to reenact section 431:2-201.5, HRS, in the form in which it read prior to the L 2008, c 120 amendment.

SECTION 15. L 2008, c 128, §§2, 3, and 4 amended sections 711-1109.1(1), 711-1109.2(1), (3), and (5), and 711-1110.5, HRS, respectively. Act 128, §7 provided that Act 128 take effect upon its approval and be repealed on July 1, 2011, but failed to provide for the reenactment of sections 711-1109.1(1), 711-1109.2(1), (3), and (5), and 711-1110.5, HRS, in the form in which they read prior to “the effective date of this Act”. Thus, it is unclear whether only the L 2008, c 128 amendments to the sections will be repealed, or the underlying statutes as well.

To eliminate this ambiguity, L 2008, c 128, §7, should be amended to reenact sections 711-1109.1(1), 711-1109.2(1), (3), and (5), and 711-1110.5, HRS, in the form in which they read prior to the L 2008, c 128 amendments.

SECTION 16. The prefatory language of L 2008, c 154, §27 states “Section 626:1-505.5, Hawaii Revised Statutes, is amended by amending subsection (d) to read as follows:”. There is no section 626:1-505.5, HRS. Act 154, §27 should have stated that “Section 626-1, Hawaii Revised Statutes, is amended by amending subsection (d) of rule 505.5, to read as follows:”. The prefatory language of L 2008, c 154, §27 should be amended accordingly.

SECTION 17. L 2008, c 171, §§15 and 16 amended sections 287-20(a) and 291E-61(g), HRS, respectively. Act 171, §20 provided that Act 171 take effect on July 1, 2008 and that sections 15 and 16 be repealed “on June 30, 2010”, but failed to provide for the reenactment of sections 287-20(a) and 291E-61(g), HRS, in the form in which they read prior to “the effective date of this Act”. Thus, it is unclear whether only the L 2008, c 171 amendments will be repealed or the underlying statutes as well.

To eliminate this ambiguity, L 2008, c 171, §20, should be amended to reenact sections 287-20(a) and 291E-61(g), HRS, in the form in which they read prior to the L 2008, c 171 amendments.

SECTION 18. L 2008, c 177, §2 amended section 431:7-101(a) and (b), HRS, relating to licensing and other fees paid to the insurance commissioner and the department of commerce and consumer affairs. Act 177, §7 provided that Act 177 take effect upon its approval (June 16, 2008) and be repealed “two years from the date of its approval” (June 16, 2010), but failed to provide for the reenactment of section 431:7-101, HRS, in the form in which it read prior to “the effective date of this Act”. Thus, it is unclear whether only the L 2008, c 177 amendment will be repealed, or the underlying statute as well.

To eliminate this ambiguity, L 2008, c 177, §7, should be amended to reenact section 431:7-101(a) and (b), HRS, in the form in which it read prior to the L 2008, c 177 amendment.

SECTION 19. L 2008, c 180, §§1 and 2 amended sections 586-4(e) and 586-11(a), HRS, respectively. Act 180, §6 provided that Act 180 take effect on July 1, 2008 and be repealed “on July 1, 2010”, but failed to provide for the reenactment of sections 586-4(e) and 586-11(a), HRS, in the form in which they read prior to “the effective date of this Act”. Thus, it is unclear whether only the L 2008, c 180 amendments will be repealed, or the underlying statutes as well.

To eliminate this ambiguity, L 2008, c 180, §6, should be amended to reenact sections 586-4(e) and 586-11(a), HRS, in the form in which they read prior to the L 2008, c 180 amendments.

SECTION 20. L 2008, c 212, §§3 and 4 amended sections 461-1 and 461-14, HRS, respectively. Act 212, §7 provided that Act 212 take effect upon its approval (July 3, 2008) and be repealed “on January 1, 2013”, but failed to provide for the reenactment of sections 461-1 and 461-14, HRS. Thus, it is unclear whether only the L 2008, c 212 amendments will be repealed, or the underlying statutes as well.

To eliminate this ambiguity, L 2008, c 212, §7, should be amended to reenact sections 461-1 and 461-14, HRS, in the form in which they read prior to the L 2008, c 212 amendments.

In addition, section 461-1, HRS, is subject to repeal and reenactment by L 2004, c 190, §11, on July 1, 2010. The L 2008, c 212, §3 amendment to section 461-1, HRS, should be exempted from that repeal and reenactment condition.

SECTION 21. L 2008, c 226, §8 amended section 437D-8.4(a), HRS. Act 226, §16 provided that Act 226 take effect on July 1, 2008. Section 437D-8.4, HRS, is subject to repeal and reenactment by L 2005, c 247, §9(3) on December 31, 2022. Act 226 failed to exempt its amendment to section 437D-8.4(a), HRS, from the repeal and reenactment provisions of L 2005, c 247, §9(3).

L 2008, c 226, §16, should be amended to exempt Act 226's amendment to section 437D-8.4(a), HRS, from the L 2005, c 247, §9(3) repeal and reenactment provisions.

SECTION 22. L 2008, c 227, §2 amended section 431:13-103(a), HRS. Act 227, §5 provided that Act 227 take effect upon its approval and be repealed "on June 30, 2011", but failed to provide for the reenactment of section 431:13-103(a), HRS, in the form in which it read prior to "the effective date of this Act". Thus, it is unclear whether only the L 2008, c 227 amendment will be repealed, or the underlying statute as well.

To eliminate this ambiguity, L 2008, c 227, §5, should be amended to reenact section 431:13-103(a), HRS, in the form in which it read prior to the L 2008, c 227 amendment.

SECTION 23. L 2008, 1st Sp, c 11, §2 amended section 2 of Act 285, Session Laws of Hawaii 2006, as amended by Act 204, Session Laws of Hawaii 2007, by extending the existence of the joint legislative committee on aging in place from June 30, 2008 to June 30, 2010. However, the effective date of L 2008, 1st Sp, c 11, is July 1, 2008, one day after the joint legislative committee ceases to exist.

L 2008, 1st Sp, c 11, §15 should be amended to provide that section 2 of Act 11, extending the existence of the joint legislative committee on aging in place from June 30, 2008 to June 30, 2010, takes effect on June 29, 2008.

SECTION 24. L 1999, c 306, enacted chapter 235D, HRS, which provided a qualified improvement tax credit for qualified resort facilities or qualified general facilities. Section 235D-5, HRS, provides "[t]he tax credit allowed under this chapter shall be available for qualified improvement costs incurred during taxable years beginning after December 31, 1998, and before January 1, 2006."

L 1999, c 306, and section 235D-5, HRS, were not amended to extend the tax credit beyond December 31, 2005. Chapter 235D, HRS, is functus and should be formally repealed.

SECTION 25. Section 237-27.1, HRS, exempts the sale of alcohol fuels from the general excise tax law. Section 237-27.1(d), HRS, provides that "[t]his section shall be repealed on December 31, 2006". Section 237-27.1, HRS, has not been amended to delete or extend this repeal provision, and, by operation of law, section 237-27.1, HRS is repealed.

Section 237-27.1, HRS, is functus and should be formally repealed.

SECTIONS 26 TO 74. L 2008, c 5 repealed chapter 460, HRS, relating to osteopathy and amended chapter 453, HRS, to include osteopathic physicians, to enable the Hawaii medical board to regulate physicians and osteopathic physicians more uniformly and efficiently. Act 5 did not make conforming amendments to sections outside of chapter 453 which refer to repealed chapter 460. Act 5 became effective April 3, 2008.

Sections 26 to 74 refer to repealed chapter 460 and are amended to mirror the Act 5 amendments to chapter 453 by deleting the references to repealed chapter 460 and adding references to osteopathy or osteopathic physician as necessary or appropriate.