



GOV. MSG. NO. 1143

EXECUTIVE CHAMBERS
HONOLULU

May 4, 2011

The Honorable Shan Tsutsui, President
and Members of the Senate
Twenty-Sixth State Legislature
State Capitol, Room 409
Honolulu, Hawaii 96813

The Honorable Calvin Say, Speaker
and Members of the House
Twenty-Sixth State Legislature
State Capitol, Room 431
Honolulu, Hawaii 96813

Dear President Tsutsui, Speaker Say and Members of the Legislature:

This is to inform you that on May 4, 2011, the following bill was signed into law:

HB381 HD1 SD1

RELATING TO STATUTORY REVISION:
AMENDING VARIOUS PROVISIONS OF THE
HAWAII REVISED STATUTES FOR THE
PURPOSE OF CORRECTING ERRORS AND
REFERENCES, CLARIFYING LANGUAGE, AND
DELETING UNNECESSARY PROVISIONS
ACT 043 (11)

Aloha
Sincerely,
Neil Abercrombie

NEIL ABERCROMBIE
Governor, State of Hawaii

A BILL FOR AN ACT

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

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

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PART I

SECTION 1. Section 89-2, Hawaii Revised Statutes, is amended by amending the definitions of "collective bargaining" and "employee organization" to read as follows:

"Collective bargaining" means the performance of the mutual obligations of the public employer and an exclusive representative to meet at reasonable times, to confer and negotiate in good faith, and to execute a written agreement with respect to wages, hours, amounts of contributions by the State and counties to the ~~[Hawaii public employees health fund,]~~ Hawaii employer-union health benefits trust fund, and other terms and conditions of employment, except that by any such obligation neither party shall be compelled to agree to a proposal~~[,]~~ or be required to make a concession. For the purposes of this definition, "wages" includes the number of incremental and longevity steps, the number of pay ranges, and



1 the movement between steps within the pay range and between the
2 pay ranges on a pay schedule under a collective bargaining
3 agreement.

4 "Employee organization" means any organization of any kind
5 in which public employees participate and which exists for the
6 primary purpose of dealing with public employers concerning
7 grievances, labor disputes, wages, hours, amounts of
8 contributions by the State and counties to the [~~Hawaii public~~
9 ~~employees health fund,~~] Hawaii employer-union health benefits
10 trust fund, and other terms and conditions of employment of
11 public employees."

12 SECTION 2. Chapter 89A, Hawaii Revised Statutes, is
13 amended by amending its title to read as follows:

14 "[+]CHAPTER 89A

15 OFFICE OF COLLECTIVE BARGAINING[+] AND MANAGED COMPETITION"

16 SECTION 3. Section 231-40, Hawaii Revised Statutes, is
17 amended to read as follows:

18 "§231-40 Interpretation. Sections 231-34, 231-35, 231-36,
19 and [~~231-7.5~~] 231-36.4 shall be construed in accordance with
20 judicial interpretations given to similar provisions of Title 26
21 of the United States Code; consistent therewith, the term



1 "wilfully" shall mean a voluntary, intentional violation of a
2 known legal duty."

3 SECTION 4. Section 231-41, Hawaii Revised Statutes, is
4 amended to read as follows:

5 **"§231-41 Statute of limitation for criminal penalties.**
6 Notwithstanding any laws to the contrary, prosecutions under
7 sections 231-34, 231-35, 231-36, and [~~231-7.5~~] 231-36.4 shall be
8 commenced within seven years after the commission of the
9 offense."

10 SECTION 5. Section 235-2.35, Hawaii Revised Statutes, is
11 amended to read as follows:

12 **"[+]§235-2.35[+] Operation of certain Internal Revenue**
13 **Code provisions not operative under section 235-2.3.**
14 Notwithstanding the meaning of "Internal Revenue Code" as that
15 term is used in section **[+]235-2.3[+]**, beginning April 1, 2010,
16 the following sections of the federal Internal Revenue Code of
17 1986, as amended as of April 1, 2010, shall be operative for
18 purposes of this chapter:

19 (1) Section 6041 as applicable to persons under section
20 6041(h) (with respect to information returns at the
21 source for certain corporations);



- 1 (2) Section 6038D (with respect to information with
2 respect to foreign financial assets). With respect to
3 persons required to report information under this
4 section, section 6662(j) (with respect to imposition
5 of accuracy-related penalties on underpayments) and
6 section 6501(e) (1) (A) (ii) (with respect to limitations
7 on assessment and collection) shall also be operative
8 for purposes of this chapter and shall be applied
9 consistently with the correlating provisions of
10 [+]sections[+] 231-36.6 and 235-111;
- 11 (3) Section 6045B (with respect to returns relating to
12 actions affecting basis in securities); and
- 13 (4) Section 6050W (with respect to returns relating to
14 payments made in settlement of payment card and third
15 party network transactions)."

16 SECTION 6. Section 237-24.8, Hawaii Revised Statutes, is
17 amended by amending subsection (b) to read as follows:

18 "(b) As used in this section:

19 "Activities relating to the general servicing of fiduciary
20 or custodial accounts" means those activities performed by trust
21 companies [~~which~~] that are directly or indirectly performed



1 within the fiduciary or custodial relationship between the trust
2 company or trust department of a financial institution and its
3 client and ~~[which]~~ that are not offered to any person outside of
4 the fiduciary or custodial relationship.

5 "Annual percentage rate" and "finance charge" have the same
6 ~~[meaning]~~ meanings as defined in the federal Truth in Lending
7 Act (15 United States Code ~~[sections]~~ Sections 1605(a) to (c)
8 and 1606).

9 "Deposit" means:

- 10 (1) Money or its equivalent received or held by a
11 financial institution in the usual course of business
12 and for which it has given or is obligated to give
13 credit to:
- 14 (A) A commercial (including public deposits),
15 checking, savings, time, or thrift account;
 - 16 (B) A check or draft drawn against a deposit account
17 and certified by the financial institution;
 - 18 (C) A letter of credit; or
 - 19 (D) A traveler's check, on which the financial
20 institution is primarily liable;



- 1 (2) Trust funds received or held by a financial
2 institution, whether held in the trust department or
3 held or deposited in any other department of the
4 financial institution;
- 5 (3) Money received or held by a financial institution, or
6 the credit given for money or its equivalent received
7 or held by a financial institution in the usual course
8 of business for a special or specific purpose,
9 regardless of the legal relationship thereby
10 established, including [7] without being limited to,
11 escrow funds, funds held as security for an obligation
12 due the financial institution or others (including
13 funds held as dealers' reserves) or for securities
14 loaned by the financial institution, funds deposited
15 by a debtor to meet maturing obligations, funds
16 deposited as advance payment on subscriptions to
17 United States government securities, funds held for
18 distribution or purchase of securities, funds held to
19 meet the financial institution's acceptances or
20 letters of credit, and withheld taxes;



- 1 (4) Outstanding drafts, cashier's checks, money orders, or
- 2 other officer's checks issued in the usual course of
- 3 business for any purpose; or
- 4 (5) Money or its equivalent held as a credit balance by a
- 5 financial institution on behalf of its customer if the
- 6 financial institution is engaged in soliciting and
- 7 holding the balances in the regular course of its
- 8 business.

9 "Financial institution" means banks, building and loan
 10 associations, development companies, financial corporations,
 11 financial services loan companies, small business investment
 12 companies, financial holding companies, [~~mortgage loan~~
 13 ~~originator companies as defined in chapter 454F,~~] and trust
 14 companies all as defined in chapter 241[-], and mortgage loan
 15 originator companies as defined in chapter 454F.

16 "Leasing of personal property" occurs if:

- 17 (1) The lease is to serve as the functional equivalent of
- 18 an extension of credit to the lessee of the property;
- 19 (2) The property to be leased is acquired specifically for
- 20 the leasing transaction under consideration, or was



- 1 acquired specifically for an earlier leasing
2 transaction;
- 3 (3) The lease is on a nonoperating basis where the
4 financial institution may not, directly or indirectly:
- 5 (A) Provide for the maintenance, repair, replacement,
6 or servicing of the leased property during the
7 lease term;
- 8 (B) Purchase parts and accessories in bulk or for an
9 individual property after the lessee has taken
10 delivery of the property; or
- 11 (C) Purchase insurance for the lessee;
- 12 (4) At the inception of the lease, the effect of the
13 transaction will yield a return that will compensate
14 the lessor financial institution for not less than the
15 lessor's full investment in the property plus the
16 estimated total cost of financing the property over
17 the term of the lease, from:
- 18 (A) Rentals;
- 19 (B) Estimated tax benefits, including capital goods
20 excise tax credit, net economic gain from tax
21 deferral from accelerated depreciation, and other



1 tax benefits with a substantially similar effect;
2 and

3 (C) The estimated residual value of the property at
4 the expiration of the initial term of the lease;

5 (5) The maximum lease term during which the lessor
6 financial institution shall recover the lessor's full
7 investment in the property, plus the estimated total
8 cost of financing the property, shall be forty years;
9 and

10 (6) At the expiration of the lease, including any renewals
11 or extensions with the same lessee, all interest in
12 the property shall be either liquidated or leased
13 again on a nonoperating basis as soon as practicable
14 but in no event later than two years from the
15 expiration of the lease; provided that in no case
16 shall the lessor retain any interest in the property
17 beyond fifty years after the lessor's acquisition of
18 the property."

19 SECTION 7. Section 291-11.5, Hawaii Revised Statutes, is
20 amended by amending subsection (e) to read as follows:



1 " (e) Violation of this section shall be considered an
2 offense as defined under section 701-107(5) and shall subject
3 the violator to the following penalties:

4 (1) For a first conviction, the person shall:

5 (A) Be fined not more than \$100;

6 (B) Be required by the court to attend a child
7 passenger restraint system safety class conducted
8 by the division of driver education; provided
9 that:

10 (i) The class may include video conferences as
11 determined by the administrator of the
12 division of driver education as an
13 alternative method of education; and

14 (ii) The class shall not exceed four hours;

15 (C) Pay a \$50 driver education assessment as provided
16 in section 286G-3;

17 (D) Pay a \$10 surcharge to be deposited into the
18 neurotrauma special fund; [+]and[+]

19 (E) Pay up to a \$10 surcharge to be deposited into
20 the trauma system [+]special[+] fund if the court
21 so orders; and



- 1 (2) For a conviction of a second offense committed within
- 2 three years of any other conviction under this
- 3 section, the person shall:
- 4 (A) Be fined not less than \$100 but not more than
- 5 \$200;
- 6 (B) Be required by the court to attend a child
- 7 passenger restraint system safety class not to
- 8 exceed four hours in length conducted by the
- 9 division of driver education if the person has
- 10 not previously attended such a class;
- 11 (C) Pay a \$50 driver education assessment as provided
- 12 in section 286G-3 if the person has not
- 13 previously attended a child passenger restraint
- 14 system safety class conducted by the division of
- 15 driver education;
- 16 (D) Pay a \$10 surcharge to be deposited into the
- 17 neurotrauma special fund; [+]and[+]
- 18 (E) Pay up to a \$10 surcharge to be deposited into
- 19 the trauma system [+]special[+] fund if the court
- 20 so orders;



- 1 (3) For a conviction of a third or subsequent offense
- 2 committed within three years of any other conviction
- 3 under this section, the person shall:
- 4 (A) Be fined not less than \$200 but not more than
- 5 \$500;
- 6 (B) Be required by the court to attend a child
- 7 passenger restraint system safety class not to
- 8 exceed four hours in length conducted by the
- 9 division of driver education if the person has
- 10 not previously attended such a class;
- 11 (C) Pay a \$50 driver education assessment as provided
- 12 in section 286G-3 if the person has not
- 13 previously attended a child passenger restraint
- 14 system safety class conducted by the division of
- 15 driver education;
- 16 (D) Pay a \$10 surcharge to be deposited into the
- 17 neurotrauma special fund; [+]and[+]
- 18 (E) Pay up to a \$10 surcharge to be deposited into
- 19 the trauma system [+]special[+] fund if the court
- 20 so orders."



1 SECTION 8. Section 339D-9, Hawaii Revised Statutes, is
2 amended by amending subsection (b) to read as follows:

3 "(b) Notwithstanding subsection (a), the department shall
4 not have the authority to assess any fees, including an advanced
5 recycling fee, registration fee, or other fee, on consumers,
6 television manufacturers, or retailers for recovery of covered
7 televisions except those noted in sections ~~[+]~~339D-4 ~~[+]~~ and
8 339D-22."

9 PART II

10 SECTION 9. Section 346-1, Hawaii Revised Statutes, is
11 amended by amending the definition of "critical access hospital"
12 to read as follows:

13 "Critical access hospital" means a hospital located in the
14 State that is included in Hawaii's rural health plan approved by
15 the federal ~~[Health Care Financing Administration]~~ Centers for
16 Medicare and Medicaid Services and approved as a critical access
17 hospital by the department of health as provided in Hawaii's
18 rural health plan and as defined in Title 42 ~~[U.S.C. section]~~
19 United States Code Section 1395i-4."



1 SECTION 10. Section 346D-1, Hawaii Revised Statutes, is
2 amended by amending the definition of "critical access hospital"
3 to read as follows:

4 "Critical access hospital" means a hospital located in the
5 State that is included in Hawaii's rural health plan approved by
6 the federal [~~Health Care Financing Administration~~] Centers for
7 Medicare and Medicaid Services and approved as a critical access
8 hospital by the department of health as provided in Hawaii's
9 rural health plan and as defined in Title 42 [U.S.C. section]
10 United States Code Section 1395i-4."

11 SECTION 11. Section 346D-2, Hawaii Revised Statutes, is
12 amended by amending subsection (c) to read as follows:

13 "(c) Medicaid home and community-based waiver program
14 expenditures shall not exceed the amount authorized by the
15 federal [~~Health Care Financing Administration.~~] Centers for
16 Medicare and Medicaid Services."

17 SECTION 12. Section 353G-16, Hawaii Revised Statutes, is
18 amended by amending subsection (a) to read as follows:

19 "(a) The department of public safety, with the assistance
20 of the department of health, may pursue all available funding
21 through federal programs and private sources. Contingent upon



1 the receipt of sufficient funds, the department of public safety
2 may implement the assessment and treatment services mandated
3 pursuant to this chapter. If at any time funds are not
4 available, the department may not be required to provide these
5 services. In addition, the department of public safety, in
6 conjunction with the department of health, may pursue all
7 available federal matching funds through medicaid for
8 nonhospital residential alcohol and other drug treatment
9 services from the United States [~~Health Care Financing~~
10 ~~Administration.~~] Centers for Medicare and Medicaid Services."

11 SECTION 13. Section 431:3-304.5, Hawaii Revised Statutes,
12 is amended by amending subsection (b) to read as follows:

13 "(b) Documents, materials, or other information related to
14 or provided in connection with an actuarial report, working
15 papers, or actuarial opinion summary that are in possession or
16 control of the commissioner shall be confidential by law and,
17 privileged, shall not be made public, shall not be subject to
18 subpoena or discovery, and shall not be admissible as evidence
19 in any private civil action; provided that:

20 (1) The commissioner may release the documents to the
21 Actuarial Board for Counseling and Discipline or its



1 successor to the extent that the material is required
2 for the purpose of professional disciplinary
3 proceedings and that the Actuarial Board for
4 Counseling and Discipline or its successor establishes
5 procedures satisfactory to the commissioner for
6 preserving the confidentiality of the documents;

7 (2) This section shall not be construed to limit the
8 commissioner's authority to use the documents,
9 materials, or other information in furtherance of any
10 regulatory or legal action brought as part of the
11 commissioner's official duties; and

12 (3) Neither the commissioner nor any person who received
13 documents, materials, or other information while
14 acting under the authority of the commissioner shall
15 be permitted or required to testify in any private
16 civil action concerning any confidential documents,
17 materials, or information subject to this subsection."

18 SECTION 14. Section 431:9-203, Hawaii Revised Statutes, is
19 amended by amending subsection (c) to read as follows:

20 "(c) A licensee shall:



1 (1) Inform the commissioner by any means acceptable to the
2 commissioner of any change of status within thirty
3 days of the change; and

4 (2) Report any change of status to the business
5 registration division if the licensee is a business
6 entity registered with the department of commerce and
7 consumer affairs pursuant to title 23 or title 23A, or
8 if the licensee has registered a trade name pursuant
9 to [+]part II[+] of chapter 482.

10 Failure to timely inform the commissioner or business
11 registration division of a change of status shall result in a
12 penalty pursuant to section 431:2-203."

13 SECTION 15. Section 431:10A-105, Hawaii Revised Statutes,
14 is amended to read as follows:

15 "§431:10A-105 Required provisions. Except as provided in
16 section 431:10A-107, each policy of accident and health or
17 sickness insurance delivered or issued for delivery to any
18 person in this State shall contain the provisions set forth
19 below. These provisions shall be in the words in which they
20 appear below; provided that the insurer may substitute
21 corresponding provisions of different wording certified by an



1 officer of the insurer to be in substantial conformance with the
2 wording below that are in each instance not less favorable in
3 any respect to the insured or the beneficiary. The provisions
4 shall be preceded individually by the specified caption[7] or by
5 appropriate individual or group captions or subcaptions that are
6 substantially similar to the specified captions. The provisions
7 required by this section are as follows:

8 (1) "Entire Contract; Changes: This policy, including the
9 endorsements and the attached papers, if any,
10 constitutes the entire contract of insurance. No
11 change in this policy shall be valid until approved by
12 an executive officer of the insurer and unless the
13 approval is endorsed on or attached to this policy.
14 No agent has authority to change this policy or to
15 waive any of its provisions";

16 (2) (A) "Time Limit on Certain Defenses:
17 (i) After three years from the date of issue of
18 this policy, no misstatements, except
19 fraudulent misstatements, made by the
20 applicant in the application for this policy
21 shall be used to void this policy or to deny



1 a claim for loss incurred or disability as
2 defined in the policy commencing after the
3 expiration of the three-year period; and
4 (ii) No claim for loss incurred or disability as
5 defined in the policy commencing after three
6 years from the date of issue of this policy
7 shall be reduced or denied on the ground
8 that a disease or physical condition not
9 excluded on the date of loss from coverage
10 by name or specific description [effective]
11 had existed prior to the effective date of
12 coverage of this policy";
13 (B) The policy provision set forth in subparagraph
14 (A) (i) shall not be construed to affect any legal
15 requirement for avoidance of a policy or denial
16 of a claim during the initial three-year period,
17 nor to limit the application of section 431:10A-
18 106(1) through (4) in the event of misstatement
19 with respect to age, occupation, or other
20 insurance; and



1 (C) A policy that the insured has the right to
2 continue in force subject to its terms by the
3 timely payment of premium until at least age
4 fifty or, in the case of a policy issued after
5 age forty-four, for at least five years from its
6 date of issue, may contain in lieu of
7 subparagraph (A) (i) the following provision from
8 which the clause in parentheses may be omitted at
9 the insurer's option: "Incontestable: After
10 this policy has been in force for a period of
11 three years during the lifetime of the insured
12 (excluding any period during which the insured is
13 disabled), it shall become incontestable as to
14 the statements contained in the application";

15 (3) (A) "Grace period: A grace period of (insert a
16 number not less than seven for weekly premium
17 policies, ten for monthly premium policies, and
18 thirty-one for all other policies) days will be
19 granted for the payment of each premium falling
20 due after the first premium, during which grace
21 period the policy shall continue in force";



1 (B) A policy that contains a cancellation provision
2 may add at the end of the provision required by
3 subparagraph (A): "subject to the right of the
4 insurer to cancel in accordance with the
5 cancellation provision"; and

6 (C) A policy in which the insurer reserves the right
7 to refuse any renewal shall have at the beginning
8 of the provision required by subparagraph (A):
9 "Unless not less than thirty days prior to the
10 premium due date the insurer has delivered to the
11 insured or has mailed to the insured's last
12 address as shown by the records of the insurer
13 written notice of its intention not to renew this
14 policy beyond the period for which the premium
15 has been accepted";

16 (4) (A) "Reinstatement: If any renewal premium is not
17 paid within the time granted to the insured for
18 payment, a subsequent acceptance of premium by
19 the insurer or by any agent duly authorized by
20 the insurer to accept the premium, without
21 requiring in connection therewith an application



1 for reinstatement, shall reinstate the policy;
2 provided that if the insurer or agent requires an
3 application for reinstatement and issues a
4 conditional receipt for the premium tendered, the
5 policy shall be reinstated upon approval of the
6 application by the insurer or, lacking approval,
7 upon the forty-fifth day following the date of
8 conditional receipt unless the insurer has
9 previously notified the insured in writing of its
10 disapproval of the application. The reinstated
11 policy shall cover only loss resulting from
12 accidental injury as may be sustained after the
13 date of reinstatement and loss due to sickness as
14 may begin more than ten days after that date. In
15 all other respects, the insured and insurer shall
16 have the same rights as they had under the policy
17 immediately before the due date of the defaulted
18 premium, subject to any provisions endorsed
19 hereon or attached hereto in connection with the
20 reinstatement. Any premium accepted in
21 connection with the reinstatement shall be



1 applied to a period for which premium has not
2 been previously paid, but not to any period more
3 than sixty days prior to the date of
4 reinstatement"; and

5 (B) The last sentence in subparagraph (A) may be
6 omitted from any policy that the insured has the
7 right to continue in force subject to its terms
8 by the timely payment of premiums until at least
9 age fifty or, in the case of a policy issued
10 after age forty-four, for at least five years
11 from its date of issue;

12 (5) (A) "Notice of Claim: Written notice of claim shall
13 be given to the insurer within twenty days after
14 the occurrence or commencement of any loss
15 covered by the policy, or as soon thereafter as
16 is reasonably possible. Notice given by or on
17 behalf of the insured or the beneficiary to the
18 insurer at (insert the location of the office as
19 the insurer may designate for the purpose) or to
20 any authorized agent of the insurer, with



1 information sufficient to identify the insured,
2 shall be deemed notice to the insurer"; and
3 (B) In a policy providing a loss of time benefit that
4 may be payable for at least two years, an insurer
5 may at its option insert the following between
6 the first and second sentences in subparagraph
7 (A): "Subject to the qualification set forth
8 below, if the insured suffers loss of time on
9 account of disability for which indemnity may be
10 payable for at least two years, the insured
11 shall, at least once in every six months after
12 having given notice of claim, give to the insurer
13 notice of continuance of the disability, except
14 in the event of legal incapacity. The period of
15 six months following any filing of proof by the
16 insured or any payment by the insurer on account
17 of the claim or any denial of liability in whole
18 or in part by the insurer shall be excluded in
19 applying this provision. Delay in giving notice
20 shall not impair the insured's right to any
21 indemnity which would otherwise have accrued



1 during the period of six months preceding the
2 date on which notice is actually given";

3 (6) "Claim Forms: The insurer, upon receipt of a notice
4 of claim, will furnish to the claimant any forms that
5 are usually furnished by it for filing proofs of loss.
6 If the forms are not furnished within fifteen days
7 after the giving of notice the claimant shall be
8 deemed to have complied with the requirements of this
9 policy as to proof of loss upon submitting, within the
10 time fixed in the policy for filing proofs of loss,
11 written proof covering the occurrence, the character,
12 and the extent of the loss for which claim is made";

13 (7) "Proofs of Loss: In case of claim for loss for which
14 this policy provides any periodic payment contingent
15 upon continuing loss, written proof of loss must be
16 furnished to the insurer at its office within ninety
17 days after the termination of the period for which the
18 insurer is liable, and in case of claim for any other
19 loss within ninety days after the date of loss.
20 Failure to furnish proof of loss within the time
21 required shall not invalidate nor reduce any claim if



1 it was not reasonably possible to give proof within
2 the time required, provided proof is furnished as soon
3 as reasonably possible and in no event, except the
4 absence of legal capacity, later than fifteen months
5 from the time proof is otherwise required";

6 (8) "Time of Payment of Claims: Indemnities payable under
7 this policy for any loss other than loss for which
8 this policy provides any periodic payment shall be
9 paid immediately upon receipt of due written proof of
10 loss. Subject to due written proof of loss, all
11 accrued indemnities for loss for which this policy
12 provides periodic payment shall be paid (insert period
13 for payment which must not be less frequently than
14 monthly) and any balance remaining unpaid upon the
15 termination of liability shall be paid immediately
16 upon receipt of due written proof";

17 (9) (A) "Payment of Claims: Indemnity for loss of life
18 shall be payable in accordance with the
19 beneficiary designation and the provisions
20 respecting payment which may be prescribed herein
21 and effective at the time of payment. If no



1 designation or provision is then effective, the
2 indemnity shall be payable to the estate of the
3 insured. Any other accrued indemnities unpaid at
4 the insured's death may, at the option of the
5 insurer, be paid either to the designated
6 beneficiary or to the estate of the insured. All
7 other indemnities shall be payable to the
8 insured"; and

9 (B) Either or both of the following provisions may be
10 included with the provision set forth in
11 subparagraph (A) at the option of the insurer:

12 (i) "If any indemnity of this policy shall be
13 payable to the estate of the insured, or to
14 an insured or beneficiary who is a minor or
15 otherwise not competent to give a valid
16 release, the insurer may pay the indemnity,
17 up to an amount not exceeding \$2,000 to any
18 relative by blood or connection by marriage
19 of the insured or beneficiary who is deemed
20 by the insurer to be equitably entitled
21 thereto. Any payment made by the insurer in



1 good faith pursuant to this provision shall
2 fully discharge the insurer to the extent of
3 the payment"; and

4 (ii) "Subject to any written direction of the
5 insured in the application or otherwise all
6 or a portion of any indemnities provided by
7 this policy on account of hospital, nursing,
8 medical, or surgical services may, at the
9 insurer's option and unless the insured
10 requests otherwise in writing not later than
11 the time of filing proofs of loss, be paid
12 directly to the hospital or person rendering
13 the services; but it is not required that
14 the service be rendered by a particular
15 hospital or person";

16 (10) "Physical Examinations and Autopsy: The insurer at
17 its own expense shall have the right and opportunity
18 to examine the person of the insured when and as often
19 as it may reasonably require during the pendency of a
20 claim hereunder and to make an autopsy in case of
21 death where it is not forbidden by law";



1 (11) "Legal Actions: No action at law or in equity shall
2 be brought to recover on this policy prior to the
3 expiration of sixty days after written proof of loss
4 has been furnished in accordance with the requirements
5 of this policy. No action at law or in equity shall
6 be brought after the expiration of three years after
7 the time written proof of loss is required to be
8 furnished"; and

9 (12) (A) "Change of Beneficiary: Unless the insured makes
10 an irrevocable designation of beneficiary, the
11 right to change the beneficiary is reserved to
12 the insured and the consent of the beneficiary or
13 beneficiaries shall not be requisite to surrender
14 or assignment of this policy or to any change of
15 beneficiary or beneficiaries, or to any other
16 changes in this policy"; and

17 (B) The first clause of subparagraph (A), relating to
18 the irrevocable designation of beneficiary, may
19 be omitted at the insurer's option."

20 SECTION 16. Section 431:10A-119, Hawaii Revised Statutes,
21 is amended by amending subsection (a) to read as follows:



1 "(a) Any other law to the contrary notwithstanding,
2 commencing on January 1, 2000, all authorized insurers that
3 provide for payment of or reimbursement for hospice care [7]
4 shall reimburse hospice care services for each insured
5 policyholder covered for hospice care according to the
6 following:

- 7 (1) A minimum daily rate as set by the [~~Health Care~~
8 ~~Financing Administration~~] Centers for Medicare and
9 Medicaid Services for hospice care;
- 10 (2) Reimbursement for residential hospice room and board
11 expenses directly related to the hospice care being
12 provided; and
- 13 (3) Reimbursement for each hospice referral visit during
14 which a patient is advised of hospice care options,
15 regardless of whether the referred patient is
16 eventually admitted to hospice care."

17 SECTION 17. Section 432:1-608, Hawaii Revised Statutes, is
18 amended by amending subsection (a) to read as follows:

19 "(a) Any other law to the contrary notwithstanding,
20 commencing on January 1, 2000, all mutual benefit societies
21 issuing or renewing an individual and group hospital or medical



1 service plan, policy, contract, or agreement in this State that
2 provides for payment of or reimbursement for hospice care [7]
3 shall reimburse hospice care services for each insured member
4 covered for hospice care according to the following:

5 (1) A minimum daily rate as set by the [~~Health Care~~
6 ~~Financing Administration~~] Centers for Medicare and
7 Medicaid Services for hospice care;

8 (2) Reimbursement for residential hospice room and board
9 expenses directly related to the hospice care being
10 provided; and

11 (3) Reimbursement for each hospice referral visit during
12 which a patient is advised of hospice care options,
13 regardless of whether the referred patient is
14 eventually admitted to hospice care."

15 SECTION 18. Section 432E-1.4, Hawaii Revised Statutes, is
16 amended by amending subsection (d) to read as follows:

17 "(d) For the purposes of this section:

18 "Cost-effective" means a health intervention where the
19 benefits and harms relative to the costs represent an
20 economically efficient use of resources for patients with the
21 medical condition being treated through the health intervention;



1 provided that the characteristics of the individual patient
2 shall be determinative when applying this criterion to an
3 individual case.

4 "Effective" means a health intervention that may reasonably
5 be expected to produce the intended results and to have expected
6 benefits that outweigh potential harmful effects.

7 "Health intervention" means an item or service delivered or
8 undertaken primarily to treat a medical condition or to maintain
9 or restore functional ability. A health intervention is defined
10 not only by the intervention itself, but also by the medical
11 condition and patient indications for which it is being applied.
12 New interventions for which clinical trials have not been
13 conducted and effectiveness has not been scientifically
14 established shall be evaluated on the basis of professional
15 standards of care or expert opinion. For existing
16 interventions, scientific evidence shall be considered first
17 and, to the greatest extent possible, shall be the basis for
18 determinations of medical necessity. If no scientific evidence
19 is available, professional standards of care shall be
20 considered. If professional standards of care do not exist or
21 are outdated or contradictory, decisions about existing



1 interventions shall be based on expert opinion. Giving priority
2 to scientific evidence shall not mean that coverage of existing
3 interventions shall be denied in the absence of conclusive
4 scientific evidence. Existing interventions may meet the
5 definition of medical necessity in the absence of scientific
6 evidence if there is a strong conviction of effectiveness and
7 benefit expressed through up-to-date and consistent professional
8 standards of care, or in the absence of such standards,
9 convincing expert opinion.

10 "Health outcomes" mean outcomes that affect health status
11 as measured by the length or quality of a patient's life,
12 primarily as perceived by the patient.

13 "Medical condition" means a disease, illness, injury,
14 genetic or congenital defect, pregnancy, or a biological or
15 psychological condition that lies outside the range of normal,
16 age-appropriate human variation.

17 "Physician designee" means a physician or other health care
18 practitioner designated to assist in the decisionmaking process
19 who has training and credentials at least equal to the treating
20 licensed health care provider.



1 "Scientific evidence" means controlled clinical trials that
2 either directly or indirectly demonstrate the effect of the
3 intervention on health outcomes. If controlled clinical trials
4 are not available, observational studies that demonstrate a
5 causal relationship between the intervention and the health
6 outcomes may be used. Partially controlled observational
7 studies and uncontrolled clinical series may be suggestive, but
8 do not by themselves demonstrate a causal relationship unless
9 the magnitude of the effect observed exceeds anything that could
10 be explained either by the natural history of the medical
11 condition or potential experimental biases. Scientific evidence
12 may be found in the following and similar sources:

13 (1) Peer-reviewed scientific studies published in or
14 accepted for publication by medical journals that meet
15 nationally recognized requirements for scientific
16 manuscripts and that submit most of their published
17 articles for review by experts who are not part of the
18 editorial staff;

19 (2) Peer-reviewed literature, biomedical compendia, and
20 other medical literature that meet the criteria of the
21 National [+]Institutes[+] of Health's National Library



1 of Medicine for indexing in Index Medicus, Excerpta
2 Medicus (EMBASE), Medline, and MEDLARS database Health
3 Services Technology Assessment Research (HSTAR);

4 (3) Medical journals recognized by the Secretary of Health
5 and Human Services under ~~[section]~~ Section 1861(t)(2)
6 of the Social Security Act, as amended;

7 (4) Standard reference compendia including the American
8 Hospital Formulary Service-Drug Information, American
9 Medical Association Drug Evaluation, American Dental
10 Association Accepted Dental Therapeutics, and United
11 States Pharmacopoeia-Drug Information;

12 (5) Findings, studies, or research conducted by or under
13 the auspices of federal agencies and nationally
14 recognized federal research institutes including but
15 not limited to the Federal Agency for Health Care
16 Policy and Research, National Institutes ~~[+]~~of~~[+]~~
17 Health, National Cancer Institute, National Academy of
18 Sciences, ~~[Health Care Financing Administration,]~~
19 Centers for Medicare and Medicaid Services,
20 Congressional Office of Technology Assessment, and any
21 national board recognized by the National Institutes



1 of Health for the purpose of evaluating the medical
2 value of health services; and

3 (6) Peer-reviewed abstracts accepted for presentation at
4 major medical association meetings.

5 "Treat" means to prevent, diagnose, detect, provide medical
6 care, or palliate.

7 "Treating licensed health care provider" means a licensed
8 health care provider who has personally evaluated the patient."

9 SECTION 19. Section 588-2, Hawaii Revised Statutes, is
10 amended to read as follows:

11 "~~§~~588-2 **Definitions of child abuse.** For purposes of this
12 chapter:

13 "Child sexual abuse" means any of the offenses described
14 under chapter 707, part V, when committed ~~[on]~~ against a person
15 under the age of eighteen years or as set forth in paragraph (2)
16 of the definition of "harm" in section ~~[587-2-]~~ 587A-4.

17 "Serious physical child abuse" means any of the offenses
18 described in paragraph (1) of the definition of "harm" set forth
19 in section ~~[587-2]~~ 587A-4 when the offense rises to the degree
20 of a felony as defined in section 701-107."

21 **PART III**



1 SECTION 20. Section 353G-5, Hawaii Revised Statutes, is
2 amended by amending subsection (c) to read as follows:

3 "(c) Anyone receiving drug test results or assessment
4 results under subsection (a) shall keep that information
5 confidential in accordance with the requirements of Title 42
6 United States Code [~~section 290dd-3.~~] Section 290dd-2."

7 SECTION 21. Section 353G-6, Hawaii Revised Statutes, is
8 amended by amending subsection (c) to read as follows:

9 "(c) Except as provided in this chapter, any information
10 obtained as a result of an assessment program or a treatment
11 program, including positive drug tests, shall be kept
12 confidential in accordance with the requirements of Title 42
13 United States Code [~~section 290dd-3.~~] Section 290dd-2."

14 PART IV

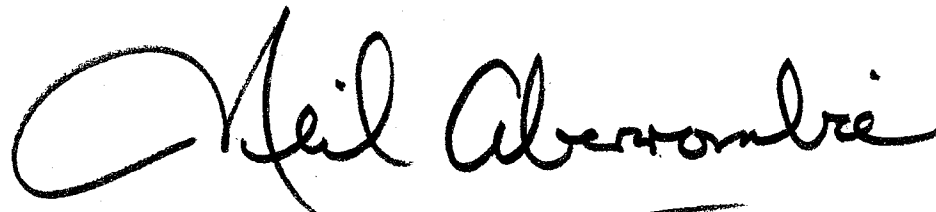
15 SECTION 22. Statutory material to be repealed is bracketed
16 and stricken. New statutory material is underscored.

17 SECTION 23. This Act shall take effect upon its approval.



H.B. NO. 381
H.D. 1
S.D. 1

APPROVED this 4 day of MAY, 2011

A handwritten signature in black ink, reading "Neil Abernethy". The signature is written in a cursive style with a large initial "N".

GOVERNOR OF THE STATE OF HAWAII