

HB381,HD1

Testimony

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Written Testimony

HB381, HD1

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.

Testimony by the Legislative Reference Bureau
Charlotte A. Carter-Yamauchi, Acting Director

Presented to the Senate Committee on Judiciary and Labor

Monday, April 4, 2011, 9:00 a.m.
Conference Room 016

Chair Clayton Hee and Members of the Committee:

Thank you for the opportunity to testify in support of House Bill No. 381, H.D. 1, what has come to be known as the "statutory revision bill." Bills such as House Bill No. 381, H.D. 1, 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 to correct errors, omissions, or obsolete law. As is the case each year, the revision bill was reviewed prior to introduction by the Office of the Attorney General. A memorandum explaining the rationale for each amendment proposed by this bill is attached to this testimony.

The Bureau is able 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 followup questions, please contact Irvin Komamura by phone at ext. 70685 or by email at komamura@hawaii.capitol.gov.

Attachment

**MEMORANDUM CONCERNING PROPOSED
STATUTORY REVISIONS FOR THE 2011 REGULAR LEGISLATIVE SESSION
TO BE CONTAINED IN A BILL ENTITLED
"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"
PREPARED BY THE LEGISLATIVE REFERENCE BUREAU
PURSUANT TO SECTION 23G-20, HAWAII REVISED STATUTES**

PART I

COMMENT

The definition of "employee organization" in section 89-2, HRS, was repealed and reenacted on July 1, 2010, to how it read on July 12, 2005, by L 2005, c 245, §8, as amended by L 2007, c 294, §2 and L Sp 2008, c 5, §1. However, the reenacted definition references the "Hawaii public employees health fund" which was repealed by L 2001, c 88 and replaced with the "Hawaii employer-union health benefits trust fund". In addition, the definition of "collective bargaining" in this same section also contains reference to the "Hawaii public employees health fund".

The definitions of "collective bargaining" and "employee organization" in section 89-2, HRS, should be amended to reference the proper fund.

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

"Employee organization" means any organization of any kind in which public employees participate and which exists for the primary purpose of dealing with public employers concerning grievances, labor disputes, 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 of public employees."

COMMENT

L 2000, c 253, §104 and L 2002, c 106, §3 amended the name of the "office of collective bargaining" in chapter 89A, HRS, to "office of collective bargaining and managed competition" but did not amend the title of this chapter to reflect the change. The chapter title should be amended to reflect the name change.

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

"[+]CHAPTER 89A

OFFICE OF COLLECTIVE BARGAINING AND MANAGED COMPETITION[+]"

COMMENT

Section 21 of the final version of H.B. 1739, enacted as L 2009, c 166, redesignated from a prior version of the bill a new section 231-F as section "231-L", relating to wilful failure to collect and pay over tax. Section 22 of L 2009, c 166, amended section 231-40, HRS, to refer to section "231-F" instead of section "231-L". Sections 231-F and 231-L were subsequently designated as sections 231-7.5 and 231-36.4, HRS.

Section 231-40, HRS, should be conformed by replacing the reference to section 231-7.5, HRS, with reference to section 231-36.4, HRS.

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

"§231-40 Interpretation. Sections 231-34, 231-35, 231-36, and [~~231-7.5~~] 231-36.4 shall be construed in accordance with judicial interpretations given to similar provisions of Title 26 of the United States Code; consistent therewith, the term "wilfully" shall mean a voluntary, intentional violation of a known legal duty."

COMMENT

Section 21 of the final version of H.B. 1739, enacted as L 2009, c 166, redesignated from a prior version of the bill a new section 231-F as section "231-L", relating to wilful failure to collect and pay over tax. Section 23 of L 2009, c 166 amended section 231-41, HRS, to refer to section "231-F" instead of section "231-L". Sections 231-F and 231-L were subsequently designated as sections 231-7.5 and 231-36.4, HRS.

Section 231-41, HRS, should be conformed by replacing the reference to section 231-7.5, HRS, with reference to section 231-36.4, HRS.

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

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

COMMENT

When L 2010, c 112, §2 added section 235-2.35, HRS, section 235-2.35 incorrectly referenced "section 231-2.3" as the section defining the term "Internal Revenue Service". There is no "section 231-2.3". The correct section is "section 235-2.3".

Section 235-2.35, HRS, should be amended to ratify the revisor's substitution of "section 235-2.3" for "section 231-2.3".

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

"[+]§235-2.35[+] Operation of certain Internal Revenue Code provisions not operative under section 235-2.3.

Notwithstanding the meaning of "Internal Revenue Code" as that term is used in section [+]235-2.3[+], beginning April 1, 2010, the following sections of the federal Internal Revenue Code of 1986, as amended as of April 1, 2010, shall be operative for purposes of this chapter:

- (1) Section 6041 as applicable to persons under section 6041(h) (with respect to information returns at the source for certain corporations);
- (2) Section 6038D (with respect to information with respect to foreign financial assets). With respect to persons required to report information under this section, section 6662(j) (with respect to imposition of accuracy-related penalties on underpayments) and section 6501(e)(1)(A)(ii) (with respect to limitations on assessment and collection) shall also be operative for purposes of this chapter and shall be applied consistently with the correlating provisions of [+]sections[+] 231-36.6 and 235-111;
- (3) Section 6045B (with respect to returns relating to actions affecting basis in securities); and
- (4) Section 6050W (with respect to returns relating to payments made in settlement of payment card and third party network transactions)."

COMMENT

The definition of "financial institution" in section 237-24.8(b), HRS, included mortgage loan companies and other specified institutions "all as defined in chapter 241". L 2010, c 84, §5 amended the definition of "financial institution" by amending the term "mortgage loan companies" to "mortgage loan originator companies as defined in chapter 454F" that is followed by "and trust companies all as defined in chapter 241". "Mortgage loan originator companies" are not defined in chapter 241.

Section 237-24.8(b), HRS, should be amended by deleting the phrase "mortgage loan originator companies as defined in chapter 454F" from its present placement in the definition of "financial institution" and adding it at the end of the sentence so that the phrase "all as defined in chapter 241" correctly refers only to the other specified institutions in the definition.

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

"(b) As used in this section:

"Activities relating to the general servicing of fiduciary or custodial accounts" means those activities performed by trust companies which are directly or indirectly performed within the fiduciary or custodial relationship between the trust company or trust department of a financial institution and its client and which are not offered to any person outside of the fiduciary or custodial relationship.

"Annual percentage rate" and "finance charge" have the same meaning as defined in the federal Truth in Lending Act (15 United States Code sections 1605(a) to (c) and 1606).

"Deposit" means:

- (1) Money or its equivalent received or held by a financial institution in the usual course of business and for which it has given or is obligated to give credit to:
 - (A) A commercial (including public deposits), checking, savings, time, or thrift account;
 - (B) A check or draft drawn against a deposit account and certified by the financial institution;
 - (C) A letter of credit; or
 - (D) A traveler's check, on which the financial institution is primarily liable;
- (2) Trust funds received or held by a financial institution, whether held in the trust department or held or deposited in any other department of the financial institution;
- (3) Money received or held by a financial institution, or the credit given for money or its equivalent received or held by a financial institution in the usual course

of business for a special or specific purpose, regardless of the legal relationship thereby established, including, without being limited to, escrow funds, funds held as security for an obligation due the financial institution or others (including funds held as dealers' reserves) or for securities loaned by the financial institution, funds deposited by a debtor to meet maturing obligations, funds deposited as advance payment on subscriptions to

United States government securities, funds held for distribution or purchase of securities, funds held to meet the financial institution's acceptances or letters of credit, and withheld taxes;

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

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

"Leasing of personal property" occurs if:

- (1) The lease is to serve as the functional equivalent of an extension of credit to the lessee of the property;
- (2) The property to be leased is acquired specifically for the leasing transaction under consideration, or was acquired specifically for an earlier leasing transaction;
- (3) The lease is on a nonoperating basis where the financial institution may not, directly or indirectly:
 - (A) Provide for the maintenance, repair, replacement, or servicing of the leased property during the lease term;
 - (B) Purchase parts and accessories in bulk or for an individual property after the lessee has taken delivery of the property; or
 - (C) Purchase insurance for the lessee;
- (4) At the inception of the lease the effect of the transaction will yield a return that will compensate the lessor financial institution for not less than the

lessor's full investment in the property plus the estimated total cost of financing the property over the term of the lease, from:

- (A) Rentals;
 - (B) Estimated tax benefits, including capital goods excise tax credit, net economic gain from tax deferral from accelerated depreciation, and other tax benefits with a substantially similar effect; and
 - (C) The estimated residual value of the property at the expiration of the initial term of the lease;
- (5) The maximum lease term during which the lessor financial institution shall recover the lessor's full investment in the property, plus the estimated total cost of financing the property, shall be forty years; and
- (6) At the expiration of the lease, including any renewals or extensions with the same lessee, all interest in the property shall be either liquidated or leased again on a nonoperating basis as soon as practicable but in no event later than two years from the expiration of the lease; provided that in no case shall the lessor retain any interest in the property beyond fifty years after the lessor's acquisition of the property."

COMMENT

Section 291-11.5(e), HRS, as amended by L 2008, c 231, §4, contains three references to the "trauma system fund". The correct name of the fund is the "trauma system special fund" established under section 321-22.5, HRS.

Section 291-11.5(e), HRS, should be amended to ratify the revisor's insertion of the word "special" to reflect the correct name of the fund.

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

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

- (1) For a first conviction, the person shall:
 - (A) Be fined not more than \$100;
 - (B) Be required by the court to attend a child passenger restraint system safety class conducted by the division of driver education; provided that:
 - (i) The class may include video conferences as determined by the administrator of the

- division of driver education as an alternative method of education; and
- (ii) The class shall not exceed four hours;
- (C) Pay a \$50 driver education assessment as provided in section 286G-3;
 - (D) Pay a \$10 surcharge to be deposited into the neurotrauma special fund; and
 - (E) Pay up to a \$10 surcharge to be deposited into the trauma system special fund if the court so orders; and
- (2) For a conviction of a second offense committed within three years of any other conviction under this section, the person shall:
- (A) Be fined not less than \$100 but not more than \$200;
 - (B) Be required by the court to attend a child passenger restraint system safety class not to exceed four hours in length conducted by the division of driver education if the person has not previously attended such a class;
 - (C) Pay a \$50 driver education assessment as provided in section 286G-3 if the person has not previously attended a child passenger restraint system safety class conducted by the division of driver education;
 - (D) Pay a \$10 surcharge to be deposited into the neurotrauma special fund; and
 - (E) Pay up to a \$10 surcharge to be deposited into the trauma system special fund if the court so orders;
- (3) For a conviction of a third or subsequent offense committed within three years of any other conviction under this section, the person shall:
- (A) Be fined not less than \$200 but not more than \$500;
 - (B) Be required by the court to attend a child passenger restraint system safety class not to exceed four hours in length conducted by the division of driver education if the person has not previously attended such a class;
 - (C) Pay a \$50 driver education assessment as provided in section 286G-3 if the person has not previously attended a child passenger restraint system safety class conducted by the division of driver education;
 - (D) Pay a \$10 surcharge to be deposited into the neurotrauma special fund; and

(E) Pay up to a \$10 surcharge to be deposited into the trauma system [†]special[†] fund if the court so orders."

COMMENT

L 2009, c 183, §13 amended section 339D-9, HRS, by adding a new subsection (b) that erroneously referred to section 339-4, HRS, as a section that related to fees assessed upon television manufacturers. The correct reference was section 339D-4, HRS. The revisor substituted the reference to section 339-4, HRS, with section 339D-4, HRS.

Section 339D-9(b), HRS, should be amended by amending subsection (b) to ratify the revisor's substitution of this section number.

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

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

PART II

COMMENT

The Health Care Financing Administration was renamed the Centers for Medicare and Medicaid Services on July 1, 2001 as part of the Department of Health and Human Services' initiative to create a new culture of responsiveness in the agency.

The following sections contain the term "Health Care Financing Administration" and are amended to reflect this name change.

Additionally, in section 15 that amends the definition of "scientific evidence" in section 432-1.4(d), HRS, the revisor substituted "institutes" for "institute" and "of" for "for" in paragraphs (2) and (5) of the definition to reflect the correct names of the stated entities. The definition should be amended to ratify the revisor's substitutions of the correct names.

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

"Critical access hospital" means a hospital located in the State that is included in Hawaii's rural health plan approved by the federal [~~Health Care Financing Administration~~] Centers for Medicare and Medicaid Services and approved as a critical access hospital by the department of health as provided in Hawaii's

rural health plan and as defined in 42 [~~U.S.C. section~~] United States Code Section 1395i-4."

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

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

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

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

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

"(a) The department of public safety, with the assistance of the department of health, may pursue all available funding through federal programs and private sources. Contingent upon the receipt of sufficient funds, the department of public safety may implement the assessment and treatment services mandated pursuant to this chapter. If at any time funds are not available, the department may not be required to provide these services. In addition, the department of public safety, in conjunction with the department of health, may pursue all available federal matching funds through medicaid for nonhospital residential alcohol and other drug treatment services from the United States [~~Health Care Financing Administration.~~] Centers for Medicare and Medicaid Services."

SECTION 13. Section 431:10A-119, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

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

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

- (2) Reimbursement for residential hospice room and board expenses directly related to the hospice care being provided; and
- (3) Reimbursement for each hospice referral visit during which a patient is advised of hospice care options, regardless of whether the referred patient is eventually admitted to hospice care."

SECTION 14. Section 432:1-608, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) Any other law to the contrary notwithstanding, commencing on January 1, 2000, all mutual benefit societies issuing or renewing an individual and group hospital or medical service plan, policy, contract, or agreement in this State that provides for payment of or reimbursement for hospice care, shall reimburse hospice care services for each insured member covered for hospice care according to the following:

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

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

"(d) For the purposes of this section:

"Cost-effective" means a health intervention where the benefits and harms relative to the costs represent an economically efficient use of resources for patients with the medical condition being treated through the health intervention; provided that the characteristics of the individual patient shall be determinative when applying this criterion to an individual case.

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

"Health intervention" means an item or service delivered or undertaken primarily to treat a medical condition or to maintain or restore functional ability. A health intervention is defined not only by the intervention itself, but also by the medical condition and patient indications for which it is being applied. New interventions for which clinical trials have not

been conducted and effectiveness has not been scientifically established shall be evaluated on the basis of professional standards of care or expert opinion. For existing interventions, scientific evidence shall be considered first and to the greatest extent possible, shall be the basis for determinations of medical necessity. If no scientific evidence is available, professional standards of care shall be considered. If professional standards of care do not exist or are outdated or contradictory, decisions about existing interventions shall be based on expert opinion. Giving priority to scientific evidence shall not mean that coverage of existing interventions shall be denied in the absence of conclusive scientific evidence. Existing interventions may meet the definition of medical necessity in the absence of scientific evidence if there is a strong conviction of effectiveness and benefit expressed through up-to-date and consistent professional standards of care, or in the absence of such standards, convincing expert opinion.

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

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

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

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

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

- (2) Peer-reviewed literature, biomedical compendia, and other medical literature that meet the criteria of the National [†]Institutes[†] of Health's National Library of Medicine for indexing in Index Medicus, Excerpta Medicus (EMBASE), Medline, and MEDLARS database Health Services Technology Assessment Research (HSTAR);
- (3) Medical journals recognized by the Secretary of Health and Human Services under section 1861(t)(2) of the Social Security Act, as amended;
- (4) Standard reference compendia including the American Hospital Formulary Service-Drug Information, American Medical Association Drug Evaluation, American Dental Association Accepted Dental Therapeutics, and United States Pharmacopoeia-Drug Information;
- (5) Findings, studies, or research conducted by or under the auspices of federal agencies and nationally recognized federal research institutes including but not limited to the Federal Agency for Health Care Policy and Research, National Institutes [†]of[†] Health, National Cancer Institute, National Academy of Sciences, [~~Health Care Financing Administration,~~] Centers for Medicare and Medicaid Services, Congressional Office of Technology Assessment, and any national board recognized by the National Institutes of Health for the purpose of evaluating the medical value of health services; and
- (6) Peer-reviewed abstracts accepted for presentation at major medical association meetings.

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

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

COMMENT

L 2010, c 116, §1(1) enacted section 431:3-304.5, HRS, which provides in subsection (b) that "Documents, materials ... in possession or control of the commissioner shall be confidential by law and privileged, shall not be made public, subject to subpoena or discovery, and shall not be admissible as evidence in any private civil action...". In the final draft of the bill which became L 2010, c 116, the words "shall not be" were inadvertently omitted before the phrase "subject to subpoena or discovery" resulting in ambiguity, as the phrase can mean that the documents and materials are or are not subject to subpoena or discovery. The State Insurance Division has confirmed that the words "shall not be" should be inserted before "subject to subpoena or discovery" for consistency with the rest of the subsection.

Section 431:3-304.5(b), HRS, should be amended to add the words "shall not be" before the phrase "subject to subpoena or discovery" to avoid ambiguity.

SECTION 16. Section 431:3-304.5, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

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

- (1) The commissioner may release the documents to the Actuarial Board for Counseling and Discipline or its successor to the extent that the material is required for the purpose of professional disciplinary proceedings and that the Actuarial Board for Counseling and Discipline or its successor establishes procedures satisfactory to the commissioner for preserving the confidentiality of the documents;
- (2) This section shall not be construed to limit the commissioner's authority to use the documents, materials, or other information in furtherance of any regulatory or legal action brought as part of the commissioner's official duties; and
- (3) Neither the commissioner nor any person who received documents, materials, or other information while acting under the authority of the commissioner shall be permitted or required to testify in any private civil action concerning any confidential documents, materials, or information subject to this subsection."

COMMENT

Section 431:9-203(c)(2), HRS, refers to a licensee who has "registered a trade name pursuant to part I of chapter 482". L 2008, c 108 redesignated the trade names part in chapter 482 from part I to part II. Section 431:9-203(c)(2), HRS, should be amended to ratify the revisor's insertion of this redesignation.

SECTION 17. Section 431:9-203, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

"(c) A licensee shall:

- (1) Inform the commissioner by any means acceptable to the commissioner of any change of status within thirty days of the change; and
- (2) Report any change of status to the business registration division if the licensee is a business

entity registered with the department of commerce and consumer affairs pursuant to title 23 or title 23A, or if the licensee has registered a trade name pursuant to [f]part II[f] of chapter 482.

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

COMMENT

L 2010, c 116, §1(15) amended section 431:10A-105(2)(A)(ii), HRS, by changing the placement of the phrase "on the date of loss" relating to a reduction or denial of coverage, but failed to delete the term "effective" which preceded the phrase. The word "effective" is unnecessary and should be deleted.

SECTION 18. Section 431:10A-105, Hawaii Revised Statutes, is amended to read as follows:

"§431:10A-105 Required provisions. Except as provided in section 431:10A-107, each policy of accident and health or sickness insurance delivered or issued for delivery to any person in this State shall contain the provisions set forth below. These provisions shall be in the words in which they appear below; provided that the insurer may substitute corresponding provisions of different wording certified by an officer of the insurer to be in substantial conformance with the wording below that are in each instance not less favorable in any respect to the insured or the beneficiary. The provisions shall be preceded individually by the specified caption, or by appropriate individual or group captions or subcaptions that are substantially similar to the specified captions. The provisions required by this section are as follows:

- (1) "Entire Contract; Changes: This policy, including the endorsements and the attached papers, if any, constitutes the entire contract of insurance. No change in this policy shall be valid until approved by an executive officer of the insurer and unless the approval is endorsed on or attached to this policy. No agent has authority to change this policy or to waive any of its provisions";
- (2) (A) "Time Limit on Certain Defenses:
 - (i) After three years from the date of issue of this policy no misstatements, except fraudulent misstatements, made by the applicant in the application for this policy shall be used to void this policy or to deny a claim for loss incurred or disability as

defined in the policy commencing after the expiration of the three-year period; and

(ii) No claim for loss incurred or disability as defined in the policy commencing after three years from the date of issue of this policy shall be reduced or denied on the ground that a disease or physical condition not excluded on the date of loss from coverage by name or specific description [~~effective~~] had existed prior to the effective date of coverage of this policy";

(B) The policy provision set forth in subparagraph (A)(i) shall not be construed to affect any legal requirement for avoidance of a policy or denial of a claim during the initial three-year period, nor to limit the application of section 431:10A-106(1) through (4) in the event of misstatement with respect to age, occupation, or other insurance; and

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

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

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

- (C) A policy in which the insurer reserves the right to refuse any renewal shall have at the beginning of the provision required by subparagraph (A):
"Unless not less than thirty days prior to the premium due date the insurer has delivered to the insured or has mailed to the insured's last address as shown by the records of the insurer written notice of its intention not to renew this policy beyond the period for which the premium has been accepted";
- (4) (A) "Reinstatement: If any renewal premium is not paid within the time granted to the insured for payment, a subsequent acceptance of premium by the insurer or by any agent duly authorized by the insurer to accept the premium, without requiring in connection therewith an application for reinstatement, shall reinstate the policy; provided that if the insurer or agent requires an application for reinstatement and issues a conditional receipt for the premium tendered, the policy shall be reinstated upon approval of the application by the insurer or, lacking approval, upon the forty-fifth day following the date of conditional receipt unless the insurer has previously notified the insured in writing of its disapproval of the application. The reinstated policy shall cover only loss resulting from accidental injury as may be sustained after the date of reinstatement and loss due to sickness as may begin more than ten days after that date. In all other respects the insured and insurer shall have the same rights as they had under the policy immediately before the due date of the defaulted premium, subject to any provisions endorsed hereon or attached hereto in connection with the reinstatement. Any premium accepted in connection with the reinstatement shall be applied to a period for which premium has not been previously paid, but not to any period more than sixty days prior to the date of reinstatement"; and
- (B) The last sentence in subparagraph (A) may be omitted from any policy that the insured has the right to continue in force subject to its terms by the timely payment of premiums until at least age fifty or, in the case of a policy issued

after age forty-four, for at least five years from its date of issue;

- (5) (A) "Notice of Claim: Written notice of claim shall be given to the insurer within twenty days after the occurrence or commencement of any loss covered by the policy, or as soon thereafter as is reasonably possible. Notice given by or on behalf of the insured or the beneficiary to the insurer at (insert the location of the office as the insurer may designate for the purpose) or to any authorized agent of the insurer, with information sufficient to identify the insured, shall be deemed notice to the insurer"; and
- (B) In a policy providing a loss of time benefit that may be payable for at least two years, an insurer may at its option insert the following between the first and second sentences in subparagraph (A): "Subject to the qualification set forth below, if the insured suffers loss of time on account of disability for which indemnity may be payable for at least two years, the insured shall, at least once in every six months after having given notice of claim, give to the insurer notice of continuance of the disability, except in the event of legal incapacity. The period of six months following any filing of proof by the insured or any payment by the insurer on account of the claim or any denial of liability in whole or in part by the insurer shall be excluded in applying this provision. Delay in giving notice shall not impair the insured's right to any indemnity which would otherwise have accrued during the period of six months preceding the date on which notice is actually given";
- (6) "Claim Forms: The insurer, upon receipt of a notice of claim, will furnish to the claimant any forms that are usually furnished by it for filing proofs of loss. If the forms are not furnished within fifteen days after the giving of notice the claimant shall be deemed to have complied with the requirements of this policy as to proof of loss upon submitting, within the time fixed in the policy for filing proofs of loss, written proof covering the occurrence, the character, and the extent of the loss for which claim is made";
- (7) "Proofs of Loss: In case of claim for loss for which this policy provides any periodic payment contingent upon continuing loss, written proof of loss must be

furnished to the insurer at its office within ninety days after the termination of the period for which the insurer is liable, and in case of claim for any other loss within ninety days after the date of loss. Failure to furnish proof of loss within the time required shall not invalidate nor reduce any claim if it was not reasonably possible to give proof within the time required, provided proof is furnished as soon as reasonably possible and in no event, except the absence of legal capacity, later than fifteen months from the time proof is otherwise required";

- (8) "Time of Payment of Claims: Indemnities payable under this policy for any loss other than loss for which this policy provides any periodic payment shall be paid immediately upon receipt of due written proof of loss. Subject to due written proof of loss, all accrued indemnities for loss for which this policy provides periodic payment shall be paid (insert period for payment which must not be less frequently than monthly) and any balance remaining unpaid upon the termination of liability shall be paid immediately upon receipt of due written proof";
- (9) (A) "Payment of Claims: Indemnity for loss of life shall be payable in accordance with the beneficiary designation and the provisions respecting payment which may be prescribed herein and effective at the time of payment. If no designation or provision is then effective, the indemnity shall be payable to the estate of the insured. Any other accrued indemnities unpaid at the insured's death may, at the option of the insurer, be paid either to the designated beneficiary or to the estate of the insured. All other indemnities shall be payable to the insured"; and
- (B) Either or both of the following provisions may be included with the provision set forth in subparagraph (A) at the option of the insurer:
- (i) "If any indemnity of this policy shall be payable to the estate of the insured, or to an insured or beneficiary who is a minor or otherwise not competent to give a valid release, the insurer may pay the indemnity, up to an amount not exceeding \$2,000 to any relative by blood or connection by marriage of the insured or beneficiary who is deemed by the insurer to be equitably entitled

thereto. Any payment made by the insurer in good faith pursuant to this provision shall fully discharge the insurer to the extent of the payment"; and

- (ii) "Subject to any written direction of the insured in the application or otherwise all or a portion of any indemnities provided by this policy on account of hospital, nursing, medical, or surgical services may, at the insurer's option and unless the insured requests otherwise in writing not later than the time of filing proofs of loss, be paid directly to the hospital or person rendering the services; but it is not required that the service be rendered by a particular hospital or person";
- (10) "Physical Examinations and Autopsy: The insurer at its own expense shall have the right and opportunity to examine the person of the insured when and as often as it may reasonably require during the pendency of a claim hereunder and to make an autopsy in case of death where it is not forbidden by law";
- (11) "Legal Actions: No action at law or in equity shall be brought to recover on this policy prior to the expiration of sixty days after written proof of loss has been furnished in accordance with the requirements of this policy. No action at law or in equity shall be brought after the expiration of three years after the time written proof of loss is required to be furnished"; and
- (12) (A) "Change of Beneficiary: Unless the insured makes an irrevocable designation of beneficiary, the right to change the beneficiary is reserved to the insured and the consent of the beneficiary or beneficiaries shall not be requisite to surrender or assignment of this policy or to any change of beneficiary or beneficiaries, or to any other changes in this policy"; and
(B) The first clause of subparagraph (A), relating to the irrevocable designation of beneficiary, may be omitted at the insurer's option."

COMMENT

L 2010, c 135 repealed chapter 587 and replaced it with a new chapter 587A. Act 135, §7 also made conforming amendments to various sections of the HRS to

change references to chapter 587A instead of chapter 587. However, section 588-2, HRS, still refers to repealed section 587-2.

Section 588-2, HRS, should be amended by replacing the two occurrences of "section 587-2" with "section 587A-4".

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

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

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

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

PART III

COMMENT

Sections 353G-5(c), HRS, and 353G-6(c), HRS, contain reference to "42 United States Code section 290dd-3" regarding confidentiality requirements for drug test results or assessments and use. Section 290dd-3, 42 United States Code, has been omitted and replaced with section 290dd-2. Sections 353G-5(c), HRS, and 353G-6(c), HRS, should be amended to refer to the proper section of the United States Code.

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

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

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

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