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LEGISLATIVE REFERENCE BUREAU
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Written Testimony

SB3029, SD1

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

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

Presented to the House Committee on Judiciary

Thursday, March 15, 2012, 2:00 p.m.
Conference Room 325

Chair Gilbert S.C. Keith-Agaran and Members of the Committee:

Thank you for the opportunity to testify on S.B. No. 3029, SD1, on what has come to be known as the "statutory revision bill." Bills such as S.B. No. 3029, SD1, are prepared and submitted by the Legislative Reference Bureau pursuant to our statute revision functions, set forth in chapter 23G, Hawaii Revised Statutes (HRS), and are reviewed prior to introduction by the Office of the Attorney General.

All of the amendments in the bill, as it was originally introduced, are intended to be technical in nature to correct errors, omissions, or obsolete law. They either contain no substantive change to the law, or if they do have substantive effect, they are intended to correct the types of errors noted in the memorandum attached to this testimony. Please note that the memorandum explains the rationale for each amendment proposed in this bill, as it was introduced.

In the bill as originally introduced, sections 514A-121.5 and 514B-161, HRS, in sections 13 and 14 were set forth merely for ratification of how they appear in the 2011 supplement. However, the amendments made by the SD1 to the two sections add back substantive language that dropped dead on June 30, 2011, by operation of law pursuant to Act 164, Session Laws of Hawaii 2004, Act 244, Session Laws of Hawaii 2007, Act 205, Session Laws of Hawaii 2008, and Act 9, Session Laws of Hawaii 2009. The amendments relate to the mediation of certain condominium disputes.

Although the amendments made in the SD1 represent policy decisions that certainly are within the purview of the Legislature, we note that adding back statutory language

expressly repealed by operation of law is beyond the type of amendment the Bureau itself would propose in the statutory revision bill under our authority pursuant to section 23G-20, HRS, relating to "removing inconsistencies, redundancies, unnecessary repetition, or otherwise improving clarity" or pursuant to section 23G-15, HRS, relating to correcting manifest errors.

Consequently, because these amendments are not of the type that would normally appear in the revision bill, we are uncertain whether they fit within the scope of the bill's title. We would defer to the Attorney General or the House Majority Attorney on this issue. Further, we note that the Attorney General's review of the revision bill was based upon the bill as originally introduced, not with the amendments made by the SD1.

In view of the foregoing, the Bureau supports the original content of the bill but defers decision on the amendments made to sections 514A-121.5 and 514B-161, HRS, to the Committee.

The Bureau is able to assist the Committee in preparing the committee report and making any changes to the revision bill that the Committee deems appropriate. Should the Committee have any follow-up questions, please contact Alden Lum by phone at ext. 70684 or by email at a.lum@capitol.hawaii.gov.

Attachment

MEMORANDUM CONCERNING PROPOSED
STATUTORY REVISIONS FOR THE 2012 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 AND
THE SESSION LAWS OF HAWAII
FOR THE PURPOSE OF CORRECTING ERRORS AND REFERENCES AND
CLARIFYING LANGUAGE"
PREPARED BY THE LEGISLATIVE REFERENCE BUREAU
PURSUANT TO SECTION 23G-20, HAWAII REVISED STATUTES

PART I

COMMENT

Section 11-156, HRS, refers to certificates of election that shall be delivered only after the filing of expense statements by the person elected in accordance with part XII of chapter 11, HRS. L 2010, c 211, repealed subpart B of part XII of chapter 11, comprised of sections 11-191 to 11-229, HRS, entitled election campaign contributions and expenditures and enacted new provisions under part XIII of chapter 11, entitled campaign finance. Section 11-156, HRS, should be amended by replacing the reference to part XII with part XIII and updating the year prefix referenced in the certificates.

SECTION 1. Section 11-156, Hawaii Revised Statutes, is amended to read as follows:

"§11-156 Certificate of election and certificate of results, form. The chief election officer or county clerk shall deliver certificates of election to the persons elected as determined under section 11-155. The chief election officer or county clerk in county elections shall issue certificates of results where a question has been voted upon. Certificates of election shall be delivered only after the filing of expense statements by the person elected in accordance with part [~~XII~~] XIII and after the expiration of time for bringing an election contest. The certificate of election shall be substantially in the following form:

CERTIFICATE OF ELECTION

I,, chief election officer (county clerk) of Hawaii (county), do hereby certify that
..... was on the day of
[19]20....., duly elected a (name of office) for the
..... district for a term expiring on the
day of, A.D. [19]20.....

Witness my hand this day of,
A.D. [~~19~~20].....

.....
Chief Election Officer (County Clerk)

The certificate of results shall be substantially in the following form:

CERTIFICATE OF RESULTS

I,, chief election officer (county clerk) of Hawaii (county), do hereby certify that (question) was on the day of [~~19~~20]....., duly adopted (rejected) by a majority of the votes cast.

.....
Chief Election Officer (County Clerk)

If there is an election contest these certificates shall be delivered only after a final determination in the contest has been made and the time for an appeal has expired."

COMMENT

Section 11-157, HRS, determines who should be declared the winner in an election contest if there is a tie and is accomplished through a process of determining election rate points. The candidate with the "highest" election rate points is declared the winner; this is consistent with the typical situation in which the candidate with the highest number of votes is declared to be elected under section 11-155, HRS.

Section 11-157(2)(C), HRS, should be amended by adding the word "highest" to the phrase "the candidate with the election rate point total shall be declared the winner" to be consistent with other phrasing throughout the section and to avoid any ambiguity.

SECTION 2. Section 11-157, Hawaii Revised Statutes, is amended to read as follows:

"§11-157 **In case of tie.** In case of the failure of an election by reason of the equality of vote between two or more candidates, the tie shall be decided by the chief election officer or county clerk in the case of county elections in accordance with the following procedure:

- (1) In the case of an election involving a seat for the senate, house of representatives, or county council where only voters within a specified district are allowed to cast a vote, the winner shall be declared as follows:

- (A) For each precinct in the affected district, an election rate point shall be calculated by dividing the total voter turnout in that precinct by the total voter turnout in the district. For the purpose of this subparagraph, the absentee votes cast for the affected district shall be treated as a precinct. The election rate point shall be calculated by dividing the total absentee votes cast for the affected district by the total voter turnout in that district. All election rate points shall be expressed as decimal fractions rounded to the nearest hundred thousandth;
 - (B) The candidate with the highest number of votes in a precinct shall be allocated the election rate point calculated under subparagraph (A) for that precinct. In the event that two or more persons are tied in receiving the highest number of votes for that precinct, the election rate point shall be equally apportioned among those candidates involved in that precinct tie;
 - (C) After the election rate points calculated under subparagraph (A) for all the precincts have been allocated as provided under subparagraph (B), the election rate points allocated to each candidate shall be tallied and the candidate with the highest election rate point total shall be declared the winner; and
 - (D) If there is a tie between two or more candidates in the election rate point total, the candidate who is allocated the highest election rate points from the precinct with the largest voter turnout shall be declared the winner;
- (2) In the case of an election involving a federal office or an elective office where the voters in the entire State or in an entire county are allowed to cast a vote, the winner shall be declared as follows:
- (A) For each representative district in the State or county, as the case may be, an election rate point shall be calculated by dividing the total voter turnout in that representative district by the total voter turnout in the state, county, or federal office district, as the case may be; provided that for purposes of this subparagraph:
 - (i) The absentee votes cast for a statewide, countywide, or federal office shall be treated as a separate representative district and the election rate point shall be

calculated by dividing the total absentee votes cast for the statewide, countywide, or federal office by the total voter turnout in the state, county, or federal office district, as the case may be; and

- (ii) The overseas votes cast for any election in the State for a federal office shall be treated as a separate representative district and the election rate point shall be calculated by dividing the total number of overseas votes cast for the affected federal office by the total voter turnout in the affected federal office district. The term "overseas votes" means those votes cast by absentee ballots for a presidential election as provided in section 15-3.

All election rate points shall be expressed as decimal fractions rounded to the nearest hundred thousandth;

- (B) The candidate with the highest number of votes in a representative district shall be allocated the election rate point calculated under subparagraph (A) for that district. In the event that two or more persons are tied in receiving the highest number of votes for that district, the election rate point shall be equally apportioned among those candidates involved in that district tie;
- (C) After the election rate points calculated under subparagraph (A) for all the precincts have been allocated as prescribed under subparagraph (B), the election rate points allocated to each candidate shall be tallied and the candidate with the highest election rate point total shall be declared the winner; and
- (D) If there is a tie between two or more candidates in the election rate point total, the candidate who is allocated the highest election rate points from the representative district with the largest voter turnout shall be declared the winner."

COMMENT

Section 12-2, HRS, provides that the primary shall be held on the second Saturday of August in every even numbered year. In section 12-6, HRS, the deadline for the filing of nomination papers is the first Tuesday in June. This means that for 2012, the primary election will be held on August 11, 2012 and the deadline for filing nomination papers is June 5, 2012.

Section 12-8(a), HRS, provides that the deadline for voters to object to nomination papers is the "sixtieth day or the next earliest working day prior to the primary or special election" resulting in voters having approximately one week from the deadline to file nomination papers to object to the nomination.

In section 12-8(f), HRS, objections by political parties shall be filed not later than 4:30 p.m. on the sixtieth working day or the next earliest working day prior to that election day. Taken literally, sixty working days prior to the election would result in a deadline being about twenty four calendar days before the nomination papers are even due to be filed.

Section 12-8(f), HRS, should be amended to comport with section 12-8(a), HRS, by deleting the word "working" after the word "sixtieth".

SECTION 3. Section 12-8, Hawaii Revised Statutes, is amended by amending subsection (f) to read as follows:

"(f) If a political party objects to the nomination paper filed by a candidate because the candidate is not a member of the party pursuant to the party's rules filed in conformance with section 11-63, an officer of the party whose name appears on file with the chief election officer shall file a complaint in the circuit court for a prompt determination of the objection; provided that the complaint shall be filed with the clerk of the circuit court not later than 4:30 p.m. on the sixtieth [~~working~~] day or the next earliest working day prior to that election day."

COMMENT

Paragraph (2) in section 121-15, HRS, refers to "an officer who... has completed the years of service required for retirement under chapter 67 of Title 10, United States Code...." Chapter 67 was transferred to part II of subtitle E of Title 10, United States Code and renumbered as chapter 1223.

Section 121-15(2), HRS, should be amended to reflect this change.

SECTION 4. Section 121-15, Hawaii Revised Statutes, is amended to read as follows:

"§121-15 Commissioned and warrant officers; transfer to inactive list, retirement, separation. Officers may be transferred to the inactive or retired lists, or separated from the service as follows:

- (1) An officer may be honorably discharged by reason of resignation, removal of residence from the State, failure to meet or maintain the requirements for federal recognition, or acceptance of an incompatible office.
- (2) An officer who is eligible to be placed on the retired list under federal law, or who has completed the years of service required for retirement under chapter [67]

- 1223 of Title 10, United States Code, may at the officer's request be discharged, or with the approval of the governor be placed on the retired list.
- (3) Any commissioned officer who has served in the same grade in the military service of the State for a continuous period of not less than ten years, upon the commissioned officer's own request, may be honorably discharged or placed on the retired list.
 - (4) Any officer who is rendered surplus by the disbandment of the officer's unit, or who changes the officer's residence within the State and is unable to serve with the unit to which the officer was assigned, shall be absorbed in another unit of the army or air national guard, or if there be no such other available unit the officer shall be transferred to an inactive status as authorized by the secretary of the army or of the air force, and may be ordered to perform appropriate duties.
 - (5) At any time the moral character, capacity, and general fitness for the service of any officer may be investigated and determined by an efficiency board of three commissioned or warrant officers, senior in rank to the officer if possible, to be appointed by the governor. The investigation shall be thorough and impartial, and may include misconduct in civil life for which the officer is not amenable to trial by court-martial. If the findings are unfavorable to the officer and are approved by the governor, the officer shall be discharged.
 - (6) At any time the physical fitness for the service of any officer, upon order of the governor, may be investigated and determined by a board of not less than three commissioned officers, not less than two of whom shall be medical officers. If the board reports the officer to be physically unable to perform the duties of the officer's office, and the report is approved by the governor, the officer may be discharged or placed on the retired list.
 - (7) Any officer who is under sentence of imprisonment by a civil court for any offense involving moral turpitude, whether suspended or not, or who has been absent without leave for three months, or who refuses or neglects to report before the board provided in paragraph (5) or (6) within a period of three months from the time the officer is ordered to report before the board may be discharged with the approval of the governor.

- (8) Upon the approval by the governor of a sentence of dismissal rendered by a court-martial, the officer shall be dismissed."

COMMENT

In section 128D-1, HRS, the definition of "national contingency plan" refers to section 311(c) of the Clean Water Act, which was changed to section 311(d) by section 4201(c) of PL 101-380 (the Oil Pollution Act of 1990). The definition of "national contingency plan" in section 128D-1, HRS, should be amended to refer to "section 311(d)".

SECTION 5. Section 128D-1, Hawaii Revised Statutes, is amended by amending the definition of "national contingency plan" to read as follows:

"National contingency plan" means the national contingency plan published under section [~~311(e)~~] 311(d) of the Clean Water Act or revised pursuant to section 105 of CERCLA."

COMMENT

The "National Bureau of Standards" referred to in section 142-61(d), HRS, was reorganized into the "National Institute of Standards and Technology" in 1988. The reference in section 142-61(d), HRS, should be changed to the "National Institute of Standards and Technology".

SECTION 6. Section 142-61, Hawaii Revised Statutes, is amended by amending subsection (d) to read as follows:

"(d) Whenever fences are built on any boundary, or within the exterior boundaries of any privately owned land or lot, or within the exterior boundaries of any leased public land or lot, to keep animals confined to certain areas or to keep farms protected against the trespass of animals, except on the boundary of any government road, it shall be lawful to have fence wire electrically charged, provided such wire is fastened to insulators supported on posts, and provided also that the charge supplied shall be through an approved electric fence controller which shall be labeled or listed as conforming to the standards of either the [~~National Bureau of Standards,~~] National Institute of Standards and Technology, the Underwriters Laboratories, Inc., or any other similar institutions of recognized standing, and provided that an electric fence controller intended for use in the State shall bear a recognized commercial trade name and the name of the selling agency of same."

COMMENT

The "Association of Official Analytical Chemists" referred to in sections 144-4(a)(3), and 144-9(e), HRS, was renamed "AOAC International" in 1991 and should be changed to "AOAC International".

SECTION 7. Section 144-4, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) Any commercial feed, other than custom-mixed or toll-milled feed, distributed in this State or imported shall be accompanied by a legible label bearing the following information:

- (1) The net weight.
- (2) The product name or brand name under which the commercial feed is distributed.
- (3) The guaranteed analysis stated in such terms as the department by rule determines is required to advise the user of the composition of the commercial feed or to support claims made in the labeling. In all cases the substances or elements must be determinable by laboratory methods published by the [~~Association of Official Analytical Chemists.~~] AOAC International.
- (4) The common or official name of each ingredient used in the manufacture of the commercial feed, except as the department may, by rule, permit the use of a collective term for a group of ingredients all of which perform the same function.
- (5) The name and principal address of the person responsible for distributing the commercial feed.
- (6) Adequate directions for use for all commercial feeds containing drugs and for such other commercial feeds as the department may require by rule as necessary for their safe and effective use.
- (7) Such precautionary statements as the department by rule determines are necessary for the safe and effective use of the commercial feed."

SECTION 8. Section 144-9, Hawaii Revised Statutes, is amended by amending subsection (e) to read as follows:

"(e) Sampling and analysis shall be conducted in accordance with methods published by the [~~Association of Official Analytical Chemists~~] AOAC International or in accordance with other generally recognized methods."

COMMENT

In amending section 235-2.4, HRS, L 2011, c 91, §4 redesignated subsection (h) as subsection (i) and added the reference to section "164(b)(5)" of the Internal Revenue Code as a section not operative for purposes of chapter 235, HRS. L 2011, c 97, §2 also amended this subsection by adding a new paragraph to instead limit the operation of section "164(b)(5)" to certain individual taxpayers.

The amendments of both Acts 91 and 97 were blended for compilation of subsection (i) following uniform statute and rule construction guidelines that provide for giving effect to each act. The result was that paragraph (1) now stated that section 164(b)(5) was not operative for purposes of chapter 235, HRS, but paragraph (2) stated that section 164(b)(5) shall only be operative for certain individual taxpayers.

If the intention was to make section 164(b)(5) only operative for certain individual taxpayers as provided in Act 97, section 235-2.4(i), HRS, should be amended by deleting reference to section "164(b)(5)" in subsection (i)(1).

SECTION 9. Section 235-2.4, Hawaii Revised Statutes, is amended by amending subsection (i) to read as follows:

"(i) Section 164 (with respect to taxes) of the Internal Revenue Code shall be operative for the purposes of this chapter, except that:

- (1) Sections 164(a)(6) [~~164(b)(5)~~] and 164(b)(6) shall not be operative for the purposes of this chapter; and
- (2) The deductions under sections 164(a)(3) and 164(b)(5) shall not be operative for corporate taxpayers and shall be operative only for the following individual taxpayers:
 - (A) A taxpayer filing a single return or a married person filing separately with a federal adjusted gross income of less than \$100,000;
 - (B) A taxpayer filing as a head of household with a federal adjusted gross income of less than \$150,000; and
 - (C) A taxpayer filing a joint return or as a surviving spouse with a federal adjusted gross income of less than \$200,000."

COMMENT

L 2011, c 108, §7, added to chapter 431, HRS, a new part VIII to article 10D entitled "Use of Senior-Specific Designations and Professional Designations", comprised of sections 431:10D-641 and 431:10D-642, HRS, the purpose of which is to protect consumers from misleading and fraudulent marketing practices by prohibiting uses of "senior-specific certifications and professional designations". The new part heading was changed by the revisor to "Use of Senior-Specific

Certifications and Professional Designations" to reflect the content of this part and is set forth below for ratification.

SECTION 10. Chapter 431, Hawaii Revised Statutes, is amended by amending the title of part VIII of article 10D to read as follows:

"[+]Part VIII.[+] Use of Senior-Specific
[+]Certifications[+] and Professional Designations"

COMMENT

Section 432E-5(d), HRS, relating to complaints and appeals procedure and notice requirements for enrollees with a health carrier, references section 432E-35, HRS, for additional notice requirements.

Section 432E-36, HRS, also relate to notice requirements and should be included with the section 432E-35, HRS, reference.

Section 432E-5(d), HRS, should be amended to change the reference to "section 432E-35" to "sections 432E-35 and 432E-36".

SECTION 11. Section 432E-5, Hawaii Revised Statutes, is amended by amending subsection (d) to read as follows:

"(d) A health carrier shall send notice of its final internal determination within sixty days of the submission of the complaint to the enrollee, the enrollee's appointed representative, if applicable, the enrollee's treating provider, and the commissioner. The notice shall include the following information regarding the enrollee's rights and procedures:

- (1) The enrollee's right to request an external review;
- (2) The one hundred thirty day deadline for requesting an external review;
- (3) Instructions on how to request an external review; and
- (4) Where to submit the request for an external review.

In addition to these general requirements, the notice shall conform to the requirements of [~~section 432E-35.~~] sections 432E-35 and 432E-36."

COMMENT

Section 432E-35(d), HRS, refers to a health carrier notifying, among others, an "independent review organization assigned pursuant to subsection (c)" immediately after making a decision to reverse its adverse determination regarding coverage or payment for the health care service that is the subject of its adverse determination. However, it is subsection (e) of section 432E-35, HRS, that refers to the insurance commissioner assigning an "independent review organization" for expedited external review.

Section 432E-35(d), HRS, should be amended to change the reference from "subsection (c)" to "subsection (e)".

Further, in section 432E-35(e), HRS, the reference to "notice provided pursuant to subsection (a) or a determination of the commissioner pursuant to (c)" should be amended to comport with the requirements referenced in that section, namely, that notice is provided in subsection (b) and a determination of the commissioner is provided in subsection (d).

SECTION 12. Section 432E-35, Hawaii Revised Statutes, is amended by amending subsections (d) and (e) to read as follows:

"(d) If the commissioner determines that an enrollee is eligible for expedited external review even though the enrollee has not exhausted the health carrier's internal review process, the health carrier shall not be required to proceed with its internal review process. The health carrier may elect to proceed with its internal review process even though the request is determined by the commissioner to be eligible for expedited external review; provided that the internal review process shall not delay or terminate an expedited external review unless the health carrier decides to reverse its adverse determination and provide coverage or payment for the health care service that is the subject of the adverse determination. Immediately after making a decision to reverse its adverse determination, the health carrier shall notify the enrollee, the enrollee's authorized representative, the independent review organization assigned pursuant to subsection ~~[(e)]~~ (e), and the commissioner ~~[+]in writing[+]~~ of its decision. The assigned independent review organization shall terminate the expedited external review upon receipt of notice from the health carrier pursuant to this subsection.

(e) Upon receipt of the notice pursuant to subsection ~~[(a)]~~ (b) or a determination of the commissioner pursuant to subsection ~~[(e)]~~ (d) that the enrollee meets the eligibility requirements for expedited external review, the commissioner shall immediately randomly assign an independent review organization to conduct the expedited external review from the list of approved independent review organizations qualified to conduct the external review, based on the nature of the health care service that is the subject of the adverse action and other factors determined by the commissioner including conflicts of interest pursuant to section 432E-43, compiled and maintained by the commissioner to conduct the external review and immediately notify the health carrier of the name of the assigned independent review organization."

COMMENT

Section 514A-121.5, HRS, was enacted by L 2007 c 244 and amended by L 2008, c 205, §1, which, along with other amendments, added a new subsection (b)

and realphabetized the existing subsections (b) to (j) as (c) to (k). Subsections (b) to (j) were subject to repeal pursuant to L 2007 c 244, §12 and L 2008, c 205, §5 on June 30, 2009, but the repeal was extended to June 30, 2011 by L 2009, c 9, §§1, 2.

On June 30, 2011, subsections (b) to (k) and other amendments made to section 514A-121.5, HRS, as enacted by L 2007 c 244 and amended by L 2008, c 205, were repealed by operation of law. The resulting section 514A-121.5, HRS, is set forth for ratification.

SECTION 13. Section 514A-121.5, Hawaii Revised Statutes, is amended to read as follows:

"§514A-121.5 [{}Mediation{}]. If an apartment owner or the board of directors requests mediation of a dispute involving the interpretation or enforcement of the association of apartment owners' declaration, bylaws, or house rules, the other party in the dispute shall be required to participate in mediation. Each party shall be wholly responsible for its own costs of participating in mediation, unless at the end of the mediation process, both parties agree that one party shall pay all or a specified portion of the mediation costs. If an apartment owner or the board of directors refuses to participate in the mediation of a particular dispute, a court may take this refusal into consideration when awarding expenses, costs, and attorney's fees."

COMMENT

Section 514B-161, HRS, was enacted by L 2004 c 164 and amended by L 2007, c 244, §7 and L 2008, c 205, §2. The 2008 amendments were subject to repeal pursuant to L 2008, c 205, §5 on June 30, 2009, but the repeal was extended to June 30, 2011 by L 2009, c 9, §2.

On June 30, 2011, the 2008 amendments to section 514B-161, HRS, were repealed by operation of law and the resulting section 514B-161, HRS, is set forth for ratification.

SECTION 14. Section 514B-161, Hawaii Revised Statutes, is amended to read as follows:

"§514B-161 Mediation. (a) If an apartment owner or the board of directors requests mediation of a dispute involving the interpretation or enforcement of the association of apartment owners' declaration, bylaws, or house rules, the other party in the dispute shall be required to participate in mediation. Each party shall be wholly responsible for its own costs of participating in mediation, unless both parties agree that one party shall pay all or a specified portion of the mediation costs. If a party refuses to participate in the mediation of a particular dispute, a court may take this refusal into consideration when awarding expenses, costs, and attorneys' fees.

- (b) Nothing in subsection (a) shall be interpreted to mandate the mediation of any dispute involving:
- (1) Actions seeking equitable relief involving threatened property damage or the health or safety of association members or any other person;
 - (2) Actions to collect assessments;
 - (3) Personal injury claims; or
 - (4) Actions against an association, a board, or one or more directors, officers, agents, employees, or other persons for amounts in excess of \$2,500 if insurance coverage under a policy of insurance procured by the association or its board would be unavailable for defense or judgment because mediation was pursued.
- (c) If any mediation under this section is not completed within two months from commencement, no further mediation shall be required unless agreed to by the parties."

COMMENT

Gamma hydroxybutyric acid was added as a schedule III controlled substance in section 329-18(c)(13), HRS, by L 2004, c 193. Act 193 also amended the definitions of "dangerous drugs" and "harmful drug" in section 712-1240, HRS, to include reference to this drug, making the nonmedical use of this drug a crime.

L 2008, c 186 amended section 329-18(c), HRS, by adding a new depressant drug named embutramide (Tributame) as section 329-18(c)(5), HRS, and renumbered the existing subsection (c)(5) to (13) as (c)(6) to (c)(14). Gamma hydroxybutyric acid, the former subsection (c)(13) then became (c)(14).

The definitions of "dangerous drugs" and "harmful drug" in section 712-1240, HRS, should be amended to correctly reference gamma hydroxybutyric acid as section 329-18(c)(14), HRS.

SECTION 15. Section 712-1240, Hawaii Revised Statutes, is amended by amending the definitions of "dangerous drugs" and "harmful drug" to read as follows:

"Dangerous drugs" means any substance or immediate precursor defined or specified as a "Schedule I substance" or a "Schedule II substance" by chapter 329, or a substance specified in section [~~329-18(c)(13)~~] 329-18(c)(14), except marijuana or marijuana concentrate.

"Harmful drug" means any substance or immediate precursor defined or specified as a "Schedule III substance" or a "Schedule IV substance" by chapter 329, or any marijuana concentrate except marijuana and a substance specified in section [~~329-18(c)(13)~~] 329-18(c)(14)."

COMMENT

L 2009, c 151, §16 amended section 346-352, HRS, but §28 failed to exempt the amendment to section 346-352, HRS, from the repeal and reenactment provisions of L 2007, c 92, §5 on July 1, 2013.

L 2009, c 151, §28 should be amended to exempt section 346-352, HRS, from the repeal and reenactment provisions of L 2007, c 92, §5.

SECTION 16. Act 151, Session Laws of Hawaii 2009, is amended by amending section 28 to read as follows:

"SECTION 28. This Act shall take effect upon approval[-]; provided that the amendments made to section 346-352, Hawaii Revised Statutes, by this Act shall not be repealed when section 346-352, Hawaii Revised Statutes, is reenacted on July 1, 2013, pursuant to section 5 of Act 92, Session Laws of Hawaii 2007."

PART II

COMMENT

L 2011 c 186 amended section 488-1, HRS, by deleting the definitions of "group legal service plan" and "prepaid legal service plan" and replacing them with the term "legal service plan". The following sections contain reference to the deleted terms and should be amended to conform to the changes made by Act 186.

SECTION 17. Section 235-1, Hawaii Revised Statutes, is amended by amending the definition of "prepaid legal service plan" to read as follows:

""~~[Prepaid legal]~~ Legal service plan" ("Plan") means a ~~[group legal service]~~ plan in which the cost of the services are ~~[prepaid]~~ paid by ~~[the group member]~~ a member or by some other person or organization in the member's behalf. A ~~[group]~~ legal service plan is a plan by which legal services are rendered to ~~[individual members of a group]~~ members identifiable in terms of some common interest. A plan shall provide:

- (A) That individual members shall be afforded freedom of choice in the selection of their own attorney or attorneys to provide legal services under such plan.
- (B) For the payment of equal amounts for the cost of services rendered without regard to the identity of the attorney or attorneys selected by the plan member or members. No plan shall otherwise discriminate on the basis of such selection."

SECTION 18. Section 235-2.4, Hawaii Revised Statutes, is amended by amending subsection (z) to read as follows:

"(z) Sections 512 to 514 (with respect to taxation of business income of certain exempt organizations) of the Internal Revenue Code shall be operative for the purposes of this chapter as provided in this subsection.

"Unrelated business taxable income" means the same as in the Internal Revenue Code, except that in the computation thereof sections 235-3 to 235-5, and 235-7 (except subsection (c)), shall apply, and in the determination of the net operating loss deduction there shall not be taken into account any amount of income or deduction that is excluded in computing the unrelated business taxable income. Unrelated business taxable income shall not include any income from a [prepaid] legal service plan.

For a person described in section 401 or 501 of the Internal Revenue Code, as modified by section 235-2.3, the tax imposed by section 235-51 or 235-71 shall be imposed upon the person's unrelated business taxable income."

SECTION 19. Section 235-7, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) There shall be excluded from gross income, adjusted gross income, and taxable income:

- (1) Income not subject to taxation by the State under the Constitution and laws of the United States;
- (2) Rights, benefits, and other income exempted from taxation by section 88-91, having to do with the state retirement system, and the rights, benefits, and other income, comparable to the rights, benefits, and other income exempted by section 88-91, under any other public retirement system;
- (3) Any compensation received in the form of a pension for past services;
- (4) Compensation paid to a patient affected with Hansen's disease employed by the State or the United States in any hospital, settlement, or place for the treatment of Hansen's disease;
- (5) Except as otherwise expressly provided, payments made by the United States or this State, under an act of Congress or a law of this State, which by express provision or administrative regulation or interpretation are exempt from both the normal and surtaxes of the United States, even though not so exempted by the Internal Revenue Code itself;
- (6) Any income expressly exempted or excluded from the measure of the tax imposed by this chapter by any other law of the State, it being the intent of this

chapter not to repeal or supersede any express exemption or exclusion;

- (7) Income received by each member of the reserve components of the Army, Navy, Air Force, Marine Corps, or Coast Guard of the United States of America, and the Hawaii national guard as compensation for performance of duty, equivalent to pay received for forty-eight drills (equivalent of twelve weekends) and fifteen days of annual duty, at an:
 - (A) E-1 pay grade after eight years of service; provided that this subparagraph shall apply to taxable years beginning after December 31, 2004;
 - (B) E-2 pay grade after eight years of service; provided that this subparagraph shall apply to taxable years beginning after December 31, 2005;
 - (C) E-3 pay grade after eight years of service; provided that this subparagraph shall apply to taxable years beginning after December 31, 2006;
 - (D) E-4 pay grade after eight years of service; provided that this subparagraph shall apply to taxable years beginning after December 31, 2007; and
 - (E) E-5 pay grade after eight years of service; provided that this subparagraph shall apply to taxable years beginning after December 31, 2008;
- (8) Income derived from the operation of ships or aircraft if the income is exempt under the Internal Revenue Code pursuant to the provisions of an income tax treaty or agreement entered into by and between the United States and a foreign country; provided that the tax laws of the local governments of that country reciprocally exempt from the application of all of their net income taxes, the income derived from the operation of ships or aircraft that are documented or registered under the laws of the United States;
- (9) The value of legal services provided by a [prepaid] legal service plan to a taxpayer, the taxpayer's spouse, and the taxpayer's dependents;
- (10) Amounts paid, directly or indirectly, by a [prepaid] legal service plan to a taxpayer as payment or reimbursement for the provision of legal services to the taxpayer, the taxpayer's spouse, and the taxpayer's dependents;
- (11) Contributions by an employer to a [prepaid] legal service plan for compensation (through insurance or otherwise) to the employer's employees for the costs

- of legal services incurred by the employer's employees, their spouses, and their dependents;
- (12) Amounts received in the form of a monthly surcharge by a utility acting on behalf of an affected utility under section 269-16.3 shall not be gross income, adjusted gross income, or taxable income for the acting utility under this chapter. Any amounts retained by the acting utility for collection or other costs shall not be included in this exemption; and
- (13) One hundred per cent of the gain realized by a fee simple owner from the sale of a leased fee interest in units within a condominium project, cooperative project, or planned unit development to the association of owners under chapter 514A or 514B, or the residential cooperative corporation of the leasehold units.

For purposes of this paragraph:

"Fee simple owner" shall have the same meaning as provided under section 516-1; provided that it shall include legal and equitable owners;

"Legal and equitable owner", and "leased fee interest" shall have the same meanings as provided under section 516-1; and

"Condominium project" and "cooperative project" shall have the same meanings as provided under section 514C-1."

SECTION 20. Section 237-1, Hawaii Revised Statutes, is amended by amending the definition of "prepaid legal service plan" to read as follows:

""~~[Prepaid legal]~~ Legal service plan" ("Plan") means a ~~[group legal service]~~ plan in which the cost of the services are ~~[prepaid]~~ paid by ~~[the group member]~~ a member or by some other person or organization in the member's behalf. A ~~[group]~~ legal service plan is a plan by which legal services are rendered to ~~[individual members of a group]~~ members identifiable in terms of some common interest. A plan shall provide:

- (A) That individual members shall be afforded freedom of choice in the selection of their own attorney or attorneys to provide legal services under such plan.
- (B) For the payment of equal amounts for the cost of services rendered without regard to the identity of the attorney or attorneys selected by the plan member or members. No plan shall otherwise discriminate on the basis of such selection."

SECTION 21. Section 237-23, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) This chapter shall not apply to the following persons:

- (1) Public service companies as that term is defined in section 239-2, with respect to the gross income, either actual gross income or gross income estimated and adjusted, that is included in the measure of the tax imposed by chapter 239;
- (2) Public utilities owned and operated by the State or any county, or other political subdivision thereof;
- (3) Fraternal benefit societies, orders, or associations, operating under the lodge system, or for the exclusive benefit of the members of the fraternity itself, operating under the lodge system, and providing for the payment of death, sick, accident, [~~prepaid legal services,~~] a legal service plan, or other benefits to the members of the societies, orders, or associations, and to their dependents;
- (4) Corporations, associations, trusts, or societies organized and operated exclusively for religious, charitable, scientific, or educational purposes, as well as that of operating senior citizens housing facilities qualifying for a loan under the laws of the United States as authorized by section 202 of the Housing Act of 1959, as amended, as well as that of operating a [~~prepaid legal services~~] legal service plan, as well as that of operating or managing a homeless facility, or any other program for the homeless authorized under part XVII of chapter 346;
- (5) Business leagues, chambers of commerce, boards of trade, civic leagues, agricultural and horticultural organizations, and organizations operated exclusively for the benefit of the community and for the promotion of social welfare that shall include the operation of a [~~prepaid~~] legal service plan, and from which no profit inures to the benefit of any private stockholder or individual;
- (6) Hospitals, infirmaries, and sanitarium;
- (7) Cooperative associations incorporated under chapter 421 or Code section 521 cooperatives which fully meet the requirements of section 421-23, except Code section 521 cooperatives need not be organized in Hawaii; provided that:

- (A) The exemption shall apply only to the gross income derived from activities that are pursuant to purposes and powers authorized by chapter 421, except those provisions pertaining to or requiring corporate organization in Hawaii do not apply to Code section 521 cooperatives;
 - (B) The exemption shall not relieve any person who receives any proceeds of sale from the association of the duty of returning and paying the tax on the total gross proceeds of the sales on account of which the payment was made, in the same amount and at the same rate as would apply thereto had the sales been made directly by the person, and all those persons shall be so taxable; and
 - (C) As used in this paragraph, "section 521 cooperatives" mean associations that qualify as a cooperative under section 521 (with respect to exemption of farmers' cooperatives from tax) of the Internal Revenue Code of 1986, as amended;
- (8) Persons affected with Hansen's disease and kokuas, with respect to business within the county of Kalawao;
 - (9) Corporations, companies, associations, or trusts organized for the establishment and conduct of cemeteries no part of the net earnings of which inures to the financial benefit of any private stockholder or individual; provided that the exemption shall apply only to the activities of those persons in the conduct of cemeteries and shall not apply to any activity the primary purpose of which is to produce income, even though the income is to be used for or in the furtherance of the exempt activities of those persons; and
 - (10) Nonprofit shippers associations operating under part 296 of the Civil Aeronautics Board Economic Regulations."

SECTION 22. Section 431:1-201, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

"(b) The following contracts are not considered to be insurance for the purposes of this code:

- (1) A bond with respect to which no premium is charged or paid;

- (2) A bond or contract or undertaking in the performance of which the surety has an interest other than that of surety;
- (3) A plan or agreement between an employer and any employee or the employee's representative, individually or collectively, by the terms of which the employer or the parties to the plan or agreement agree to contribute to the cost of nonoccupational disability benefits, medical attention, treatment or hospitalization for the employee or members of the employee's family unless such plan is underwritten by an insurer as defined in this article;
- (4) A [~~prepaid~~] legal service plan as defined in chapter 488 other than plans in which either the [~~group~~] person or entity offering the plan or the person administering the plan is otherwise subject to this code;
- (5) Any unincorporated interindemnity or reciprocal or interinsurance contract, which qualifies under chapter 435E between members of a cooperative corporation, whose members consist only of physicians and surgeons licensed in Hawaii, which contracts indemnify solely in respect to medical malpractice claims against such members, and which do not collect in advance of loss any moneys other than contributions by each member to a collective reserve trust fund or for necessary expenses of administration."

SECTION 23. Section 432:1-104, Hawaii Revised Statutes, is amended to read as follows:

"**§432:1-104 Definitions.** For the purposes of this article:

- (1) Commissioner means the insurance commissioner of the State of Hawaii.
- (2) Mutual benefit society is any corporation, unincorporated association, society, or entity:
 - (A) Organized and carried on for the primary benefit of its members and their beneficiaries and not for profit, and:
 - (i) Making provision for the payment of benefits in case of sickness, disability, or death of its members, or disability, or death of its members' spouses or reciprocal beneficiaries or children, or
 - (ii) Making provision for the payment of any other benefits to or for its members,

whether or not the amount of the benefits is fixed or rests in the discretion of the society, its officers, or any other person or persons; and the fund from which the payment of the benefits shall be defrayed is derived from assessments or dues collected from its members, and the payment of death benefits is made to the families including reciprocal beneficiaries, heirs, blood relatives, or persons named by its members as their beneficiaries; or

- (B) Organized and carried on for any purpose, which:
- (i) Regularly requires money to be paid to it by its members, whether the money be in the form of dues, subscriptions, receipts, contributions, assessments or otherwise, and
 - (ii) Provides for the payment of any benefit or benefits or the payment of any money or the delivery of anything of value to its members or their relatives including reciprocal beneficiaries, or to any person or persons named by its members as their beneficiaries, or to any class of persons which includes or may include its members,

whether or not the amount or value of the benefit, benefits, money, or thing of value is fixed, or rests in the discretion of the society, its officers, or any other person or persons; or

- (C) Organized and carried on for any purpose, whose requirements and provisions although not identical with, are determined by the commissioner to be substantially similar to, those enumerated in subparagraphs (A) and (B).

Participating in a [~~prepaid~~] legal service plan subject to chapter 488 shall not in itself make a corporation, unincorporated association, society, or entity a mutual benefit society and subject to this article."

SECTION 24. Section 432:2-101, Hawaii Revised Statutes, is amended to read as follows:

"§432:2-101 **Scope of article.** This article relates only to fraternal benefit societies, as defined herein, which desire to be authorized to pay benefits in accordance with this article after July 10, 1961. This article shall not apply to [~~prepaid~~] legal service plans subject to chapter 488 even though the plan may be offered by a fraternal benefit society."



**TESTIMONY OF
THE DEPARTMENT OF THE ATTORNEY GENERAL
TWENTY-SIXTH LEGISLATURE, 2012**

ON THE FOLLOWING MEASURE:

S.B. NO. 3029, S.D. 1, RELATING TO STATUTORY REVISION: AMENDING VARIOUS PROVISIONS OF THE HAWAII REVISED STATUTES AND THE SESSION LAWS OF HAWAII FOR THE PURPOSE OF CORRECTING ERRORS AND REFERENCES AND CLARIFYING LANGUAGE.

BEFORE THE:

HOUSE COMMITTEE ON JUDICIARY

DATE: Thursday, March 15, 2012 **TIME:** 2:00 p.m.
LOCATION: State Capitol, Room 325
TESTIFIER(S): David M. Louie, Attorney General, or
Diane Erickson, Deputy Attorney General

Chair Keith-Agaran and Members of the Committee:

The Department of the Attorney General has concerns about this bill as presently drafted.

Article III, section 14, of the State Constitution provides in part that "[e]ach law shall embrace but one subject, which shall be expressed in its title." As set forth in the title of this bill, it makes statutory revision amendments to the Hawaii Revised Statutes and the Session Laws of Hawaii for the purpose of correcting errors and references and clarifying language. Its purpose is not to make substantive amendments to Hawaii's laws. However, this S.D. 1 has two sections that do contain substantive amendments to Hawaii law, specifically section 13, on pages 17 and 18 of the bill, and section 14, on pages 18 and 19 of the bill.

While we understand that the changes to those sections were made to correct an apparent inadvertent consequence of an automatic repealer, the resulting amendments are substantive amendments to the law, not amendments that correct technical errors and references and clarify wording. Therefore, they are not within the scope of the title of this bill.

We respectfully recommend that sections 13 and 14 of the bill be amended to read as they did in the original version of this bill, which was prepared by the Legislative Reference Bureau. The substantive changes to sections 514A-121.5 and 514B-161, Hawaii Revised Statutes, that were made in this S.D. 1 should be made in another bill.

**PRESENTATION OF THE
REAL ESTATE COMMISSION**

**TO THE HOUSE COMMITTEE ON
JUDICIARY**

**TWENTY-SIXTH LEGISLATURE
Regular Session of 2012**

Thursday, March 15, 2012
2:00 p.m.

**TESTIMONY ON SENATE BILL NO. 3029, S.D.1 - RELATING TO STATUTORY
REVISION: AMENDING VARIOUS PROVISIONS OF THE HAWAII REVISED
STATUTES AND THE SESSION LAWS OF HAWAII FOR THE PURPOSE OF
CORRECTING ERRORS AND REFERENCES AND CLARIFYING LANGUAGE.**

**TO THE HONORABLE GILBERT S.C. KEITH-AGARAN, CHAIR,
AND MEMBERS OF THE COMMITTEE:**

My name is Carol Ball and I am the Chairperson of the Hawaii Real Estate Commission ("Commission"). The Commission appreciates the opportunity to present testimony in support of the proposed amendments in sections 13 and 14 of Senate Bill No. 3029, S.D.1.

The proposed amendments in sections 13 and 14 of Senate Bill No. 3029, S.D.1, adopt the amendments suggested by the Commission in its February 23, 2012, testimony submitted to the Senate Committee on Judiciary and Labor to which Senate Bill No. 3029 was referred . The proposed amendments in sections 13 and 14 are:

- Intended to be technical in nature to correct for the unintended errors related to the now expired condominium dispute resolution pilot program.

The proposed amendments may have substantive effects but the amendments are intended to provide further clarity and consistency in the condominium law; and

- Ensures that the housekeeping amendments made to the condominium laws by the repeal of section 12 of Act 244 (SLH 2007), Section 5 of Act 205 (SLH 2008), and Act 9 (SLH 2009) as of July 1, 2011; do not preclude the availability of any ongoing mediation for condominium disputes. The Commission believes that the legislature intended to repeal the referenced pilot program by a certain date. However, the Commission firmly believes that the deletion of certain enumerated condominium disputes from mediation was made in error and unintended. Mediation is one of the major alternative dispute areas for condominium dispute and condominium self governance and should be maintained for certain specified condominium disputes.

Thank you for the opportunity to testify in support of the proposed amendments of sections 13 and 14 of Senate Bill No. 3029, S.D.1.