

**HB1650**

**LATE**

**TESTIMONY**

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## Written Testimony

### HB1650

# 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 Senate Committee on Judiciary and Labor  
Tuesday, March 11, 2014, 10:00 a.m.  
Conference Room 016

Chair Hee and Members of the Committee:

Thank you for the opportunity to testify in support of House Bill No. 1650. Bills such as House Bill No. 1650 have come to be known as the "statutory revision bill" and are prepared and submitted by the Legislative Reference Bureau pursuant to our statute revision functions, set forth in chapter 23G of the Hawaii Revised Statutes.

All amendments 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 by this bill. Also, please note that the bill was reviewed prior to introduction by the Office of the Attorney General and no changes were recommended.

The Bureau would be pleased 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 Velma Kaneshige, Assistant Director for Revision of Statutes, by phone at ext. 70657 or by email at [kaneshige@hawaii.capitol.gov](mailto:kaneshige@hawaii.capitol.gov).

Attachment

**MEMORANDUM CONCERNING PROPOSED  
STATUTORY REVISIONS FOR THE 2014 REGULAR LEGISLATIVE SESSION  
TO BE CONTAINED IN A BILL ENTITLED  
"A BILL FOR AN ACT RELATING TO STATUTORY REVISION:  
AMENDING OR REPEALING VARIOUS PROVISIONS OF  
THE HAWAII REVISED STATUTES AND THE SESSION LAWS OF HAWAII  
FOR THE PURPOSE OF CORRECTING ERRORS AND REFERENCES,  
CLARIFYING LANGUAGE, AND DELETING OBSOLETE OR  
UNNECESSARY PROVISIONS"  
PREPARED BY THE LEGISLATIVE REFERENCE BUREAU  
PURSUANT TO SECTION 23G-20, HAWAII REVISED STATUTES**

**COMMENT**

**L 2013, c 172, §3 amended the term "automatic teller machine" to "automated teller machine" in section 412:3-501, HRS. "Automatic teller machines" is used in section 102-2(b)(4), HRS. Section 102-2(b)(4), HRS, should be amended by changing "automatic teller machines" to "automated teller machines" to make the term consistent with the amendment by L 2013, c 172, §3.**

SECTION 1. Section 102-2, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

"(b) The bidding requirements of subsection (a) shall not apply to concessions or space on public property set aside for the following purposes:

- (1) For operation of ground transportation services and parking lot operations at airports, except for motor vehicle rental operations under chapter 437D;
- (2) For lei vendors;
- (3) For airline and aircraft operations;
- (4) For [~~automatic~~] automated teller machines and vending machines, except vending machines located at public schools operated by blind or visually handicapped persons in accordance with section 302A-412;
- (5) For operation of concessions set aside without any charge;
- (6) For operation of concessions by handicapped or blind persons; except concessions operated in the public schools by blind or visually handicapped persons in accordance with section 302A-412;
- (7) For operation of concessions on permits revocable on notice of thirty days or less; provided that no such permits shall be issued for more than a one year period;

- (8) For operation of concessions or concession spaces for a beach service association dedicated to the preservation of the Hawaii beach boy tradition, incorporated as a nonprofit corporation in accordance with state law, and whose members are appropriately licensed or certified as required by law;
- (9) For operation of concessions at county zoos, botanic gardens, or other county parks which are environmentally, culturally, historically, or operationally unique and are supported, by nonprofit corporations incorporated in accordance with state law solely for purposes of supporting county aims and goals of the zoo, botanic garden, or other county park, and operating under agreement with the appropriate agency solely for such purposes, aims, and goals;
- (10) For operation of concessions that furnish goods or services for which there is only one source, as determined by the head of the awarding government agency in writing that shall be included in the contract file; and
- (11) For any of the operations of the Hawaii health systems corporation and its regional system boards."

#### COMMENT

**L 2013, c 174 clarified the responsibilities of professional employer organizations, which included meeting the statutory requirements of chapter 373L, HRS, entitled "Professional Employer Organizations". Act 174 also repealed chapter 373K, HRS, entitled "Professional Employment Organizations".**

**The definition of "leased employee" in section 209E-2, HRS, refers to an employee under a "professional employment organization arrangement". The definition should be amended to change "professional employment organization" to "professional employer organization".**

SECTION 2. Section 209E-2, Hawaii Revised Statutes, is amended by amending the definition of "leased employee" to read as follows:

"Leased employee" means an employee under a professional [~~employment~~] employer organization arrangement who is assigned to a particular client company on a substantially full-time basis for at least one year."

## COMMENT

L 2013, c 159, §3(1) amended the definition of "charter school" or "public charter school" in section 302D-1, HRS, by replacing the word "charters" with "charter contracts", so the definition now refers "to those public schools ... that are holding charter contracts", instead of "charters", to operate as charter schools under chapter 302D, HRS.

The definition of "charter schools" in section 302A-101, HRS, refers to "public schools holding charters". The definition of "charter schools" in section 302A-101, HRS, should be amended to reflect the amendment by L 2013, c 159, §3(1).

SECTION 3. Section 302A-101, Hawaii Revised Statutes, is amended by amending the definition of "charter schools" to read as follows:

"Charter schools" means public schools holding [~~charters~~] charter contracts to operate as charter schools under chapter [~~302D~~], including start-up and conversion charter schools, that have the flexibility to implement alternative frameworks with regard to curriculum, facilities management, instructional approach, length of the school day, week, or year, and personnel management."

## COMMENT

L 2013, c 172, §3 amended the term "automatic teller machine" to "automated teller machine" in section 412:3-501, HRS. "Automatic teller machine" is used in section 412:3-502, HRS. Section 412:3-502, HRS, should be amended by changing "automatic teller machine" to "automated teller machine" to make the term consistent with the amendment by L 2013, c 172.

SECTION 4. Section 412:3-502, Hawaii Revised Statutes, is amended to read as follows:

"§412:3-502 **Foreign financial institution.** No foreign financial institution shall receive deposits, lend money, or pay checks, negotiate orders of withdrawal or share drafts from any principal office, branch, agency, [~~automatic~~] automated teller machine, or other location in this State, unless expressly authorized by this chapter, other laws of this State, or federal law; provided that nothing in this section shall prohibit any foreign financial institution from participating in the disbursement of cash through an [~~automatic~~] automated teller machine network or from operating from any location in this State as a licensee under chapter 454F, or as a real estate collection servicing agent."

## COMMENT

**L 2013, c 172, §3 amended the term “automatic teller machine” to “automated teller machine” in section 412:3-501, HRS. “Automatic teller machine” is used in the definition of “branch” in section 412:12-101, HRS. Section 412:12-101, HRS should be amended by amending the definition of “branch” by changing “automatic teller machine” to “automated teller machine” to be consistent with the amendment by L 2013, c 172.**

SECTION 5. Section 412:12-101, Hawaii Revised Statutes, is amended by amending the definition of “branch” to read as follows:

““Branch” means a place of business of a bank, other than its main office, which is open to the public and at which deposits are received and paid. The term does not include an [~~automatic~~] automated teller machine as defined in section 412:3-501.”

## COMMENT

**L 2013, c 168 amended section 454F-1, HRS, by deleting the definition of “Nationwide Mortgage Licensing System” or “Nationwide Mortgage Licensing System and Registry” and adding the definition of “NMLS”. Act 168 also replaced references to “the Nationwide Mortgage Licensing System” and “the Nationwide Mortgage Licensing System and Registry” with “NMLS” in various sections of chapter 454F, HRS.**

**Act 168 did not amend the definitions of “exempt sponsoring mortgage loan originator company” and “unique identifier” in section 454F-1, HRS, which referred to “the Nationwide Mortgage Licensing System”. The revisor changed “the Nationwide Mortgage Licensing System” to “NMLS” in the two definitions in the 2013 HRS Supplement. These amendments should be ratified.**

SECTION 6. Section 454F-1, Hawaii Revised Statutes, is amended by amending the definitions of “exempt sponsoring mortgage loan originator company” and “unique identifier” to read as follows:

““Exempt sponsoring mortgage loan originator company” means any person exempt from or not included in the licensing requirements of this chapter who registers with [+]NMLS[+] for purposes of sponsoring a mortgage loan originator.

“Unique identifier” means a number or other identifier assigned by protocols established by [+]NMLS[+].”

## COMMENT

L 2013, c 168 amended section 454F-1, HRS, by deleting the definition of "Nationwide Mortgage Licensing System" or "Nationwide Mortgage Licensing System and Registry" and adding the definition of "NMLS". Act 168 also replaced references to "the Nationwide Mortgage Licensing System" and "the Nationwide Mortgage Licensing System and Registry" with "NMLS" in various sections of chapter 454F, HRS.

Act 168 did not amend section 454F-25(a)(3) and (b), HRS, which referred to "the Nationwide Mortgage Licensing System and Registry". The revisor changed "the Nationwide Mortgage Licensing System and Registry" to "NMLS" in section 454F-25(a)(3) and (b), HRS, in the 2013 HRS Supplement. These amendments should be ratified.

SECTION 7. Section 454F-25, Hawaii Revised Statutes, is amended by amending subsections (a) and (b) to read as follows:

"(a) An employee who performs mortgage loan originator activities for a nonprofit organization is exempt from registration and licensure as a mortgage loan originator; provided that:

- (1) The employee's actions are part of the employee's duties as an employee of the nonprofit organization;
- (2) The employee only provides mortgage loan originator services with respect to residential mortgage loans with terms favorable to the borrower; and
- (3) The nonprofit organization registers with [+]NMLS[+].

(b) The commissioner shall periodically examine the books and activities of nonprofit organizations as defined in section 454F-1 and shall revoke an organization's registration as a nonprofit organization with [+]NMLS[+] if the nonprofit organization fails to meet the requirements to be a nonprofit organization."

## COMMENT

The second paragraph of section 466J-8(d), HRS, states, in pertinent part, that: "The board ... shall, as applicable, and without further review or hearing:

- (1) Suspend the license without further review or hearing; ...."

The phrase "without further review or hearing" in paragraph (1) is redundant and may be deleted. Additional technical nonsubstantive amendments are made for purposes of style, clarity, and consistency.

SECTION 8. Section 466J-8, Hawaii Revised Statutes, is amended by amending subsection (d) to read as follows:

"(d) The board shall not renew or reinstate, or shall deny or suspend, any license or application[7] if the board has received certification from an administering entity pursuant to chapter 436C that the licensee or applicant either: is in default or breach of any obligation under any student loan, student loan repayment contract, or scholarship contract that financed the licensee's or applicant's education; or has failed to comply with a repayment plan.

~~[The board in]~~ Upon receipt of a certification pursuant to chapter 436C ~~[shall, as applicable, and]~~, the board, without further review or hearing[÷] shall, as applicable:

- (1) Suspend the license ~~[without further review or hearing]~~;
- (2) Deny the application or request for renewal of the license; or
- (3) Deny the request for reinstatement of the license~~[7 and unless]~~.

Unless otherwise provided by law, the board shall renew, reinstate, or grant the license only upon receipt of an authorization from the administering entity."

#### COMMENT

**Section 459-16, HRS, requires the board of examiners in optometry to promulgate rules that would require a licensed optometrist to report findings of adverse effects experienced by the optometrist's patients from the optometrist's use of pharmaceutical agents during an examination. Section 459-16, HRS, states that the requirement "shall expire on June 30, 1988". Section 459-16, HRS, has not been amended by the legislature since its enactment. Accordingly, section 459-16, HRS, should be repealed as functus.**

SECTION 9. Section 459-16, Hawaii Revised Statutes, is repealed.

~~["{§459-16} Adverse effects, temporary reporting requirements. The board of examiners in optometry shall promulgate rules and regulations as will require a licensed optometrist to report findings of adverse effects experienced by any of the optometrist's patients from the optometrist's use of pharmaceutical agents during an examination. This requirement shall expire on June 30, 1988."]~~



## COMMENT

L 2008, c 212, §§3 and 4 amended sections 461-1 and 461-14, HRS, respectively, effective July 3, 2008. Section 7 of Act 212 provided that Act 212 was to be repealed on January 1, 2013.

L 2009, c 11, §20 amended L 2008, c 212, §7 to provide for the reenactment of sections 461-1 and 461-14, HRS, in the form in which they read on the day before the effective date of L 2008, c 212. L 2009, c 96, §3 also amended L 2008, c 212, §7 to extend the repeal date to January 2, 2014.

L 2013, c 184, §2 amended L 2008, c 212, §7, as amended by Acts 11 and 96, Session Laws of Hawaii 2009, by extending the repeal date to January 1, 2016. L 2013, c 184, §2 did not include the amendments by L 2009, c 11, §20, providing for the reenactment of section 461-14, HRS.

Section 7 of Act 212, Session Laws of Hawaii 2008, should be amended to provide for the reenactment of section 461-14, HRS, in the form in which it read on the day prior to the effective date of the Act.

SECTION 10. Act 212, Session Laws of Hawaii 2008, as amended by Acts 11 and 96, Session Laws of Hawaii 2009, as amended by Act 184, Session Laws of Hawaii 2013, is amended by amending section 7 to read as follows:

"SECTION 7. This Act shall take effect upon its approval and shall be repealed on January 1, 2016[-]; provided that section 461-14, Hawaii Revised Statutes, shall be reenacted in the form in which it read on the day before the effective date of this Act."

## COMMENT

L 2010, c 120, §1 amended section 321-15.62(b), HRS. Act 120, §4 provided that Act 120 shall take effect upon its approval (May 18, 2010) and be repealed on June 30, 2013, but failed to provide for the reenactment of section 321-15.62(b), HRS, in the form in which it read prior to the effective date of Act 120. Thus, it was unclear whether only the L 2010, c 120 amendment was to be repealed or the underlying statute as well.

On June 30, 2013, the 2010 amendments were repealed by operation of law. The revisor reenacted section 321-15.62(b), HRS, in the form in which it read prior to the L 2010, c 120 amendment, in the 2013 HRS Supplement. The resulting section 321-15.62(b), HRS, is set forth for ratification.

SECTION 11. Section 321-15.62, Hawaii Revised Statutes, is amended by ratifying the reenactment by the revisor of subsection (b) to read as follows:

"(b) The director of health shall adopt rules regarding expanded adult residential care homes in accordance with chapter

91 that shall implement a social model of health care designed to:

- (1) Protect the health, safety, civil rights, and rights of choice of residents in a nursing facility or in home- or community-based care;
- (2) Provide for the licensing of expanded adult residential care homes for persons who are certified by the department of human services, a physician, advanced practice registered nurse, or registered nurse case manager as requiring skilled nursing facility level or intermediate care facility level of care who have no financial relationship with the home care operator or facility staff; provided that the rules shall allow group living in the following two categories of expanded adult residential care homes as licensed by the department of health:
  - (A) A type I home shall consist of five or fewer residents with no more than two nursing facility level residents; provided that more nursing facility level residents may be allowed at the discretion of the department; and provided further that up to six residents may be allowed at the discretion of the department to live in a type I home; provided that the primary caregiver or home operator is a certified nurse aide who has completed a state-approved training program and other training as required by the department; and
  - (B) A type II home shall consist of six or more residents, with no more than twenty per cent of the home's licensed capacity as nursing facility level residents; provided that more nursing facility level residents may be allowed at the discretion of the department;provided further that the department shall exercise its discretion for a resident presently residing in a type I or type II home, to allow the resident to remain as an additional nursing facility level resident based upon the best interests of the resident. The best interests of the resident shall be determined by the department after consultation with the resident, the resident's family, primary physician, case manager, primary caregiver, and home operator;
- (3) Comply with applicable federal laws and regulations of title XVI of the Social Security Act, as amended; and

- (4) Provide penalties for the failure to comply with any rule."

**COMMENT**

L 2010, c 73, §3 amended section 201-12.8, HRS, subject to repeal and reenactment on June 30, 2015, pursuant to section 14 of Act 73. L 2010, c 175, §3 also amended section 201-12.8(a), HRS. Act 175's amendment to section 201-12.8(a), HRS, is not exempt from Act 73's repeal and reenactment on June 30, 2015.

L 2010, c 175, §5 should be amended to exempt the amendment by Act 175 to section 201-12.8(a), HRS, from the repeal and reenactment provisions of L 2010, c 73, §14.

SECTION 12. Act 175, Session Laws of Hawaii 2010, is amended by amending section 5 to read as follows:

"SECTION 5. This Act shall take effect on July 1, 2010[-]; provided that the amendments made to section 201-12.8(a), Hawaii Revised Statutes, by this Act shall not be repealed when that section is reenacted on June 30, 2015, pursuant to section 14 of Act 73, Session Laws of Hawaii 2010."

**COMMENT**

L 2013, c 205, §4 states that section "711-1110" is amended by adding a new definition, that of "law enforcement animal". Section 711-1110, HRS, is entitled "Relating to agent of society" and pertains to an agent of a society formed or incorporated for the prevention of cruelty to animals. The presumed intent was to add the new definition of "law enforcement animal" to section 711-1100, HRS, which is entitled "Definitions".

The prefatory language of L 2013, c 205, §4 should be amended to state that section "711-1100", HRS, is amended.

SECTION 13. Act 205, Session Laws of Hawaii 2013, is amended by amending the prefatory language in section 4 to read as follows:

"SECTION 4. Section [~~711-1110,~~] 711-1100, Hawaii Revised Statutes, is amended by adding a new definition to be appropriately inserted and to read as follows:"