

CHAPTER 445
COUNTY LICENSES

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Repealed parts under former scheme of chapter and as referenced in text are not reflected in above analysis.

"PART I. GENERAL

Note

Sections 445-1 to 445-15 designated and amended as Part I by L 1990, c 164, §28.

Case Notes

Cited: 38 H. 433, 434 (1949).

§445-1 Definition: "Treasurer". Whenever used in this chapter "treasurer" means the treasurer or director of finance of any county of the State. [L 1896, c 64, §2; am imp L 1909, c 151, §1; RL 1925, §1955; RL 1935, §2400; RL 1945, §7001; RL 1955, §155-1; HRS §445-1]

" **§445-2 Treasurer to issue.** The treasurer, upon the application of any person, shall issue to the applicant any license in this chapter upon the terms and conditions in this chapter set forth, provided that the county shall have the option to license those businesses enumerated in section 445-15(1). [L 1896, c 64, pt of §1; RL 1925, §1956; RL 1935, §2401; RL 1945, §7002; RL 1955, §155-2; HRS §445-2; am L 1992, c 232, §3]

Case Notes

No discretion to refuse license conforming to chapter. 11 H. 57 (1897).

" **§445-3 Signed by whom.** Every license shall be signed by the treasurer of the county, within which the license is to be operative. [L 1890, c 28, §3; am L 1909, c 151, §3; am L 1913, c 99, §1; am L 1915, c 89, §1; RL 1925, §1957; RL 1935, §2402; RL 1945, §7003; RL 1955, §155-3; am L 1967, c 248, §1; HRS §445-3; gen ch 1985; am L 1990, c 164, §4]

" **§445-4 Fees in advance.** No license shall be issued under this chapter until the full fee required therein has been paid in advance for the term of one year.

Each treasurer shall account for all fees collected by the treasurer as county realizations. [L 1896, c 64, §6; am L 1909, c 151, pt of §2; RL 1925, pt of §1959; RL 1935, §2404; RL 1945, §7005; RL 1955, §155-5; HRS §445-4; gen ch 1985]

" **§445-5 Fees; date when due and payable.** All fees for licenses prescribed by any law of the State, except as otherwise specifically provided, shall be due and payable at times to be established by the county within which the license is to be operative. [L 1905, c 32, §1; RL 1925, §1960; RL 1935, §2405; RL 1945, §7006; RL 1955, §155-6; HRS §445-5; am L 1990, c 164, §5]

Case Notes

Cited: 36 H. 369, 379 (1943).

" **§445-6 Place of business.** Except as otherwise in this chapter provided, a license granted thereunder authorizes the carrying on of the business licensed only at the place indicated in the license, except in case of removal, and upon the written consent of the treasurer indorsed thereon. The place of business is where business transactions are made within an established place of business. [L 1896, c 64, pt of §1; RL 1925, §1961; RL 1935, §2406; RL 1925, §7007; RL 1955, §155-7; am L 1967, c 248, §2; HRS §445-6]

" **§§445-7 and 445-8 REPEALED.** L 1990, c 164, §§6, 7.

" **§445-9 Canceled on transferring, etc., business; penalty.** If any licensee closes out, transfers, or assigns the business for which a license is held, during the term for which the same was issued, the licensee shall within thirty days from the date of such closing out, transfer, or assignment, notify the treasurer of such fact in writing and return the license to the treasurer for cancellation, under a penalty not to exceed \$100 for failure to do so. [L 1890, c 28, §2; am L 1903, c 8, §2; am L 1909, c 151, §4; RL 1925, §1964; RL 1935, §2409; RL 1945, §7010; RL 1955, §155-10; HRS §445-9; am L 1980, c 160, §1; gen ch 1985]

" **§445-10 Term of license.** (a) Subject to section 445-5, all licenses issued for carrying on the several businesses or doing the acts specified in this chapter shall be issued by the treasurer in accordance with the terms and conditions and for the fees specified in this chapter, for the respective terms of one year from the several dates of issue.

(b) The treasurer shall suspend, refuse to renew, reinstate, or restore, or deny any license or application if the treasurer has received certification from the child support enforcement agency pursuant to the terms of section 576D-13 that the licensee or applicant is not in compliance with an order of support or has failed to comply with a subpoena or warrant relating to a paternity or child support proceeding. Unless otherwise provided by law, the treasurer shall grant, reinstate, renew, or restore the license only upon receipt of an authorization from the child support enforcement agency, office of child support hearings, or family court. [L 1896, c 64, pt of §3; RL 1925, §1965; RL 1935, §2410; RL 1945, §7011; RL 1955, §155-11; HRS §445-10; am L 1997, c 293, §19]

Case Notes

Cited: 11 H. 221, 222 (1897).

" **§445-11 Exposed to view; penalty.** All persons holding a license for any class or kind of business shall keep the license exposed to view, in some prominent place, convenient for inspection, on the premises for which the same is granted. Any person failing to comply with the requirements of this section shall be fined not less than \$10 nor more than \$50. [L 1890, c 28, §1; am L 1903, c 8, §2; am L 1909, c 151, §5; RL 1925, §1966; RL 1935, §2411; RL 1945, §7012; RL 1955, §155-12; HRS §445-11]

Case Notes

Section does not prevent exhibition of license in court in the person's defense. 8 H. 233 (1891).

" **§445-12 Business without license forbidden; not transferable; penalty.** (a) Where a county requires a license for the conduct of any business, or the performance of any act in this chapter enumerated, that business or act, except upon obtaining a license from the appropriate county, is forbidden.

(b) No license required and issued by a county under this chapter shall be transferable.

(c) Any person who:

(1) Engages in or carries on any business, or does any act enumerated in this chapter, the engaging in or doing of which is required to be licensed in the county in which the business is conducted or act is performed, without first obtaining a license from that county;

(2) Sells any goods, wares, merchandise, produce, or thing of value, contrary to the terms of this chapter; or
(3) Violates or fails to observe this chapter;
shall be fined a maximum of \$500 per day, unless otherwise provided in this chapter. [L 1896, c 64, pt of §3; RL 1925, §1967; RL 1935, §2412; RL 1945, §7013; RL 1955, §155-13; HRS §445-12; am L 1990, c 164, §8; am L 1992, c 232, §4]

Case Notes

To justify exercise of police power, act must relate to health, comfort, safety, or welfare of public. 7 H. 489 (1888).
Cited: 11 H. 221, 222 (1897).

" **§445-13 License inspectors.** The deputy sheriff of Kalawao, any police officer, or any authorized representative of the county director of finance duly authorized by a chief of police shall be ex officio license inspectors of the counties for which they are appointed or authorized, and as such, they shall from time to time report to the county director of finance the names of all persons within the county who are liable for the payment of license fees. [L 1913, c 115, §1; RL 1925, §1968; RL 1935, §2413; RL 1945, §7014; RL 1955, §155-14; HRS §445-13; am L 1990, c 164, §9]

" **§445-14 Limits of license.** Except as otherwise in this chapter provided, a license granted thereunder authorizes the carrying on of the business licensed only at the place indicated in the license. A license granted to carry on a business from place to place shall be limited to the county in which the business is to be conducted. [L 1923, c 266, §3; RL 1925, §2113; RL 1935, §2415; RL 1945, §7016; RL 1955, §155-15; am L 1967, c 248, §3; HRS §445-14]

" **§445-15 Control by ordinance.** Each council has the power by ordinance:

- (1) To require, or eliminate the requirement for, the licensing of auctions under part II of this chapter, secondhand dealers under part VII of this chapter, and scrap dealers under part X of this chapter;
- (2) To impose annual license fees;
- (3) To increase, decrease, or waive effective upon the expiration of any existing license, the annual fee for a license issued under this chapter, or to exempt wholly or partially, the payment by any religious, charitable, or educational organization or institution of any license fee imposed in this chapter or any

- ordinance enacted hereunder with respect to any business which is not regularly engaged in or carried on by such organization or institution; and
- (4) To adopt rules not inconsistent with law concerning the conduct of the business of all persons licensed under this chapter, as deemed necessary for the public health, safety, or welfare. [L 1913, c 114, §1; RL 1925, §2116; RL 1935, §2416; RL 1945, §7017; am L 1955, c 235, §1; RL 1955, §155-16; am L 1957, c 128, §1; HRS §445-15; am L 1986, c 59, §1; am L 1990, c 164, §10; am L 1992, c 232, §5]

Revision Note

"Council" substituted for "board of supervisors or city council" to conform to terminology of county charters.

Case Notes

Under similar law held that city and county was without authority to require physicians, dentists, and lawyers to obtain a city and county license. 29 H. 422 (1926).

Cited: 26 H. 719, 722 (1923).

" **§445-16 REPEALED.** L 1990, c 164, §11.

"PART II. AUCTION

Note

Sections 445-21 to 445-38 designated as Part II by L 1990, c 164, §28.

Assessment under §26H-4 removed. L 1992, c 232, §1.

§445-21 Fee. The annual fee for a license to sell goods, wares, merchandise, or other property at auction, shall be \$100 for each taxation district. [L 1896, c 64, §25; RL 1925, §1973; am L Sp 1932 2d, c 66, §1; RL 1935, §2417; RL 1945, §7018; RL 1955, §155-18; HRS §445-21; am L 1990, c 164, §12]

Case Notes

Discrimination in amount not unconstitutional. 19 H. 651 (1909), aff'd 226 U.S. 184 (1912).

Public auction defined. 19 H. 651 (1909).

"Thirty day money-back guarantee" did not prevent sale from constituting an auction. 51 H. 502, 463 P.2d 914 (1970).

" **§445-22 Public auction unlawful when.** It shall be unlawful for any person to sell, offer for sale, or expose for sale at public auction, any personal property at any place other than in a public auction room, except:

- (1) Household furniture, vehicles, automobiles, machinery, livestock, and such bulky articles as are usually sold in warehouses or places other than auction rooms;
- (2) Sales made under the direction of any court;
- (3) Sales of any personal property belonging to the State or any county;
- (4) A bona fide sale of a stock of merchandise, where the creditors of the owner thereof are engaged in the legitimate closing out of the stock;
- (5) Sales by hawkers on the street or peddlers from vehicles;
- (6) Sales by persons selling fruit, fish, seafood products, vegetables, butter, eggs, or other farm or ranch produce; or
- (7) A bona fide sale of a stock of merchandise, where the owner thereof is engaged in a legitimate closing out of the stock and has been engaged in business at a specified location in the State for not less than six months immediately preceding the commencement of any such sale; provided that the owner, before commencing any such sale, shall affix to each article to be sold a tag designating the article by serial number, and file with the county treasurer a true and sworn statement containing a detailed list and inventory of the stock, which statement shall include:
 - (A) A description of each article to be sold sufficient to identify the same;
 - (B) The article's serial number;
 - (C) The article's cost price; and
 - (D) The approximate date of the article's receipt by the owner, if received by the owner not more than ninety days prior to the date of the statement.

Upon conclusion of sale, the owner shall immediately file with the treasurer a true and sworn statement containing a detailed list and inventory of such stock as has been sold at and during the sale, which statement shall include a description of each article sold sufficient to identify the same, the article's serial number, and the price received therefor.

The treasurer, at any time prior to the filing of the final statement with the treasurer, or within ten days thereafter, shall require the owner to file with the treasurer the invoices and bills of lading of any articles in the stock that appear

from the preliminary statement to have been received by the owner within three months prior to the first day of the sale. The statements, invoices, and bills of lading shall be open to inspection by any interested person upon application to the treasurer. The sale at public auction shall be only of the stock on hand at the time of filing the statement with the treasurer, and the stock shall not be augmented or replenished in anticipation of the auction sale, or pending or during the sale. The auction sale shall be held on successive days, Sundays and legal holidays excepted, and shall not continue for more than thirty days within the period of one year. Failure to comply with any of the foregoing provisions shall be deemed prima facie evidence that the sale was not for the legitimate purpose of closing out the stock.

For the purposes of this chapter, the term "public auction room" means a place designated by a licensed auctioneer in the manner set forth in section 445-29, as the place for holding auction; provided that the treasurer of any county may give a special permit to any regularly licensed auctioneer to conduct the sale of pictures, paintings, furniture, books and bric-a-brac, or personal property under foreclosure of mortgage, at a place other than a public auction room. [L 1923, c 177, pt of §1; RL 1925, §1974; am L 1925, c 195, pt of §1; am L 1931, c 190, pt of §1; RL 1935, §2418; RL 1945, §7019; am L 1951, c 196, §1; RL 1955, §155-19; HRS §445-22; gen ch 1985; am L 1993, c 272, §1]

" **§445-23 Hours for auctions.** No auction sale of goods, wares, and merchandise shall be conducted between the hours of 9:00 o'clock in the evening and 8:00 o'clock in the morning, and no such auction of any nature or description shall be conducted during the months of November and December of any year; provided that this section shall not apply to:

- (1) Sales of household furniture, vehicles, automobiles, machinery, livestock, and like bulky articles;
- (2) Any sale made under the direction of any court;
- (3) Sales of any personal property belonging to the State or any county;
- (4) A bona fide sale of a stock of merchandise, where the creditors of the owner thereof are engaged in the legitimate closing out of the stock;
- (5) Sales by hawkers on the street or peddlers from vehicles;
- (6) Sales by persons selling fruits, fish, seafood products, vegetables, butter, eggs, or other farm or ranch produce; or

(7) Auctions held in public auction rooms that have been established for six months or more. [L 1925, c 195, pt of §1; am L 1933, c 145, §1; RL 1935, §2419; RL 1945, §7020; RL 1955, §155-20; am L 1965, c 183, §1; HRS §445-23; am L 1993, c 272, §2]

" **§445-24 Fictitious bids.** At any auction sale it shall be unlawful for any person to procure any person to make fictitious bids, or to conspire with any person to make any fictitious bid, or knowingly to permit any person to make a fictitious bid; or for any auctioneer fictitiously to raise any bid oneself; or for any person to act as a by-bidder, or what is commonly known as a "capper", "booster", or "shiller", or offer to make any false or fictitious bid, or pretend to bid for, or pretend to buy, any article sold or offered for sale. [L 1925, c 195, pt of §1; RL 1935, §2420; RL 1945, §7021; RL 1955, §155-21; HRS §445-24; gen ch 1985]

Case Notes

Seller in auction not having held out that highest bid would be accepted is not bound by it. 5 H. 325 (1885).

" **§445-25 Description of goods sold considered warranties.** Any person selling, disposing of, or offering for sale at public auction any stock of merchandise for the purpose of closing out the same as provided in section 445-22, shall, in describing the same, be truthful with respect to the cost, character, quality, kind, and description of the same, and such descriptions shall, for the purpose of the sale be considered as warranties. [L 1931, c 190, pt of §1; RL 1935, §2421; RL 1945, §7022; RL 1955, §155-22; HRS §445-25]

" **§445-26 Auction at places other than auction room; mock auctions.** It shall be unlawful for any person, other than a licensed auctioneer to hold, conduct, carry on, or maintain any auction room or place for holding public auction sales, or to advertise or hold oneself out to the public as an auctioneer, or to conduct, carry on, or maintain any sale of goods by public auction; and it shall be unlawful to maintain, carry on, or conduct any mock auction, or to advertise or represent as an auction that which is or will be a sale other than auction. [L 1923, c 177, pt of §1; RL 1925, §1975; am L 1933, c 145, §2; RL 1935, §2422; RL 1945, §7023; RL 1955, §155-23; HRS §445-26; gen ch 1985]

" **§445-27 Penalty.** Any person violating any of the provisions of sections 445-22 to 445-26, shall be fined not more than \$500 and the person's auctioneer's license shall be subject to forfeiture at the discretion of the court. Each day that any of the above specified sections are violated constitutes a separate offense, punishable as in this section provided. [L 1923, c 177, pt of §1; RL 1925, §1977; am L 1925, c 195, pt of §1; am L 1931, c 190, pt of §1; RL 1935, §2424; RL 1945, §7026; RL 1955, §155-24; HRS §445-27; gen ch 1985]

" **§445-28 Place of public auction room.** It shall be unlawful for any licensed auctioneer, for the purpose of selling, or exposing for sale, property other than the property duly listed in the statement filed with the county treasurer, as required by section 445-22, to establish a public auction room if a closing-out sale has been conducted on the place, or if property is offered for sale by public auction which has been held for sale on the place, at any time within one year preceding the commencement of the auction, unless sixty days have elapsed after the last day on which the closing-out sale has been conducted, or sixty days have elapsed after the last day on which an auction sale has been conducted in accordance with section 445-22, whichever date is the later. [L 1941, c 155, §1; RL 1945, §7024; am L 1951, c 196, §2; RL 1955, §155-25; HRS §445-28]

" **§445-29 Designation of place for business.** Every licensed auctioneer shall file with the treasurer of the county in which the auctioneer is licensed, a statement in writing signed by the auctioneer designating the auctioneer's place for holding auction in the county. Upon any change in location, the auctioneer shall immediately file a new designation. [L 1923, c 177, pt of §1; RL 1925, §1976; RL 1935, §2423; RL 1945, §7025; RL 1955, §155-26; HRS §445-29; gen ch 1985]

" **§445-30 Record books.** Every auctioneer shall keep and preserve a record book in which shall be entered:

- (1) A detailed list and description of the property received for sale;
- (2) The name of the person from whom, or on account of whom the same is received;
- (3) The date upon which the same is received;
- (4) The date upon which the same is sold;
- (5) The price for which each article is sold;
- (6) The name of the person to whom each article is sold;

which record shall, during the regular business hours be open to the inspection of any person desiring to see the same. Every

such entry shall be made immediately after each transaction required to be recorded. [L 1896, c 64, §27; RL 1925, §1978; RL 1935, §2425; RL 1945, §7027; RL 1955, §155-27; HRS §445-30]

" **§445-31 Bond.** Every person, upon receiving an auction license, shall give a bond to the treasurer in the penal sum of \$3,000, if the license is for the district of Honolulu, and in the penal sum of \$500 for other districts, with good and sufficient surety or sureties to be approved by the treasurer, conditioned:

- (1) That the person will faithfully and truly keep the records required by section 445-30;
- (2) That the person will faithfully, promptly, and truly account to all persons for whom the person may sell property, and promptly pay to them all sums received by the person for sales of the same, after deducting therefrom the person's commissions and expenses;
- (3) That the person will not sell goods, wares, merchandise, or other property, except at public auction;
- (4) That the person will otherwise in all things conform to the laws relating to auctioneers. [L 1896, c 64, §28; RL 1925, §1979; RL 1935, §2426; RL 1945, §7028; RL 1955, §155-28; HRS §445-31; gen ch 1985]

Case Notes

Cited: 19 H. 651 (1909), aff'd 226 U.S. 184, 191 (1912).

" **§445-32 Suit to enjoin violation and action for damages.** Any person, firm, private corporation, incorporated or unincorporated trade association, may maintain a suit to enjoin a continuance of any act in violation of sections 445-22 to 445-31 and, if injured thereby, have recovery of damages. If in any such suit the court finds that the defendant is violating or has violated any of the sections, it shall enjoin the defendant from a continuance thereof. It shall not be necessary that actual damages to the plaintiff or petitioner be alleged or proved in order to obtain the injunction.

No proceeding shall be instituted for an injunction unless or until plaintiff or petitioner has notified the defendant of the plaintiff's or petitioner's intention to file the proceeding unless the defendant ceases and desists from continuing to act in violation of any of the sections, the notice to be given at least twenty-four hours previous to the filing of any action. No injunction shall issue in the event that the defendant ceases violating the sections upon the receipt of the notice, but the

giving of the notice or the bringing of a suit or action under this section shall not prevent the institution or continuance to completion of a prosecution under section 445-27, or of a suit under section 445-33. [L 1951, c 196, §3; RL 1955, §155-29; HRS §445-32; gen ch 1985]

Rules of Court

Injunctions, see HRCPC rule 65.

Case Notes

Injunction issued. 51 H. 502, 463 P.2d 914 (1970).

" **§445-33 Suit on bond.** The treasurer or, by the treasurer's written consent, any person whose property is sold by any auctioneer, concerning which property a record has not been kept as required by section 445-30, or concerning which the auctioneer has otherwise failed to fulfill the terms of the auctioneer's bond, may prosecute the auctioneer under the auctioneer's bond, and recover thereon any actual loss caused to the treasurer or person or sum due to the treasurer or person by the auctioneer, and also the sum of \$5 to the use of the treasury for each item by section 445-30 required to be entered in the record which is omitted therefrom, or which is entered therein incorrectly; and the license of the auctioneer may, in the discretion of any judge or court, be canceled. [L 1896, c 64, §29; RL 1925, §1980; RL 1935, §2427; RL 1945, §7029; RL 1955, §155-30; HRS §445-33; gen ch 1985]

" **§445-34 Suit at whose cost.** In case action on the bond is brought by any person other than the treasurer, the action shall be in the name and at the sole cost, charge, and expense of the plaintiff. [L 1896, c 64, §30; RL 1925, §1981; RL 1935, §2428; RL 1945, §7030; RL 1955, §155-31; HRS §445-34]

" **§445-35 Auctioneer's charges.** Every auctioneer may charge a commission at the rates hereinafter set forth upon all sales and collections made by the auctioneer; and the auctioneer may also charge the actual amounts paid by the auctioneer for advertising the sale of any property sold and any other expenses that may be especially agreed upon between the auctioneer and the owner of the property to be sold. The auctioneer may deduct such commissions and expenses from proceeds of any such sales. The rates of commissions are as follows:

- (1) Upon all sales of personal property, not more than ten per cent;

(2) Upon all sales of real property, not more than five per cent. [L 1896, c 64, §31; RL 1925, §1982; RL 1935, §2429; RL 1945, §7031; am L 1951, c 186, §1; RL 1955, §155-32; HRS §445-35; gen ch 1985]

" **§445-36 Auctioneer may sue.** Every auctioneer may sue in the auctioneer's own name any person purchasing property sold by the auctioneer at auction, whether to enforce specific performance of the sale or to collect the purchase price thereof. [L 1896, c 64, §32; RL 1925, §1983; RL 1935, §2430; RL 1945, §7032; RL 1955, §155-33; HRS §445-36; gen ch 1985]

" **§445-37 Public officers, etc., may sell without license.** Nothing in any law relating to auction licenses shall extend to or affect sales at auction made by the sheriff, deputy sheriff, police officer, poundmaster, tax collector, or other public officer; or by any personal representative, guardian, assignee, or other person who is required or authorized by law to sell any property at auction, and who shall under such authority sell such property; or by a charitable organization. [L 1896, c 64, §33; RL 1925, §1984; am L 1932 2d, c 63, §4; RL 1935, §2431; RL 1945, §7033; RL 1955, §155-34; am L 1963, c 85, §3; HRS §445-37; am L 1971, c 65, §1; am L 1976, c 200, pt of §1; am L 1989, c 211, §10; am L 1990, c 281, §11]

Case Notes

Partition commissioner appointed by probate court did not need a license to conduct sale. 6 H. 276 (1881).

" **§445-38 Auctioneer's agent.** Any auctioneer may appoint any agent or assistant to act for the auctioneer in the conduct of the auctioneer's auction business, for all of the acts of whom the auctioneer shall be responsible in the same manner as though they were done personally by the auctioneer. [L 1896, c 64, §34; RL 1925, §1985; RL 1935, §2432; RL 1945, §7034; RL 1955, §155-35; HRS §445-38; gen ch 1985]

"BALL OR MARBLE MACHINES--REPEALED

§§445-41 to 445-43 REPEALED. L 1986, c 29, §1.

"BILLIARDS AND BOWLING ALLEYS--REPEALED

§§445-51 to 445-53 REPEALED. L 1982, c 15, pt of §1.

" **§445-54 REPEALED.** L 1990, c 164, §13.

"BEEF OR PORK--REPEALED

§445-61 REPEALED. L 1990, c 164, §14.

"PART IIA. FOOD PRODUCTS--REPEALED

§§445-71 and 445-72 REPEALED. L 1996, c 67, §5.

"LAUNDRY, ETC.--REPEALED

§§445-81 and 445-82 REPEALED. L 1990, c 164, §15.

**"PART III. LODGING OR TENEMENT HOUSES, HOTELS,
AND BOARDINGHOUSES**

Note

Sections 445-91 to 445-96 designated and amended as Part III by L 1990, c 164, §28.

Revision Note

In the designation of new parts by L 1990, c 164, §§445-90 and 445-90.5 are unaccounted for. The revisor classified these sections to this Part.

§445-90 Definitions. When used in this chapter, unless the context requires otherwise:

"Boardinghouse" means a building or buildings having at least three rooms for the accommodation of six or more unrelated persons and in which the owner or operator furnishes at least one meal per day as part of the accommodations.

"Hotel" means any building or portion thereof or buildings containing more than nine rooming units, in which space is let by the owner or operator to six or more unrelated persons.

"Lodging or tenement house", "group home", "group residence", "group living arrangement", or "rooming house" means any building or portion thereof containing no more than nine rooming units, in which space is let by the owner or operator to three or more unrelated persons.

"Noisy or disorderly conduct" has the same meaning as defined in chapter 711. [L 1986, c 149, §1; am L 1987, c 333, §3; am L 1988, c 313, §2; am L 1996, c 67, §2]

" **[§445-90.5] Exemption.** A facility owned or used by a government agency or by a nonprofit agency which is registered with the department of commerce and consumer affairs and providing services by contract for a government agency, shall be exempt from this chapter. [L 1987, c 333, §2]

" **§445-91 REPEALED.** L 1987, c 333, §8.

" **§445-92 REPEALED.** L 2001, c 35, §7.

" **§445-93 REPEALED.** L 1996, c 67, §3.

" **§445-94 [Clearance required.]** No person shall operate a lodging or tenement house, group home, group residence, group living arrangement, hotel, or boardinghouse, until the person secures a clearance from the appropriate county agency responsible for ensuring compliance with county building and zoning codes setting forth that an agent of the agency has examined the building or buildings, proposed to be used for such purposes, with a description sufficient to identify and locate the same; and that the same are in compliance with the building and zoning codes. [L 1896, c 64, §70; am L 1898, c 38, §1; RL 1925, §2055; RL 1935, §2477; RL 1945, §7080; RL 1955, §155-61; am L Sp 1959 2d, c 1, §19; HRS §445-94; am L 1986, c 149, §4; am L 1987, c 333, §5; am L 1988, c 162, §1; am L 1990, c 164, §16; am L 2001, c 35, §4; am L 2009, c 8, §1]

Case Notes

No discretionary power to refuse a license. 11 H. 57 (1897); 12 H. 164 (1899).

Cited: 11 H. 363, 364 (1898); 19 H. 628, 630 (1909).

" **§445-95 Conditions for conditional operation.** The owner or operator of a lodging or tenement house, group home, group residence, group living arrangement, hotel, or boardinghouse shall:

- (1) Not permit noisy or disorderly conduct in the building or buildings;
- (2) Not allow any person engaging in acts of prostitution to reside therein or resort thereto;
- (3) Not allow intoxicating liquor or other intoxicating substance to be furnished or sold therein, except as authorized by law;
- (4) Keep the building or buildings and premises in good sanitary condition, in accordance with law and with the orders of the agent of the department of health;

- (5) At all times allow the police and agents of the state department of health and agents of the appropriate county agencies responsible for compliance with the county's building and zoning codes access for purposes of inspection to enforce or administer this chapter and other applicable laws or rules;
- (6) Not allow any gaming;
- (7) If a lodging or tenement house, group home, group residence, group living arrangement, or boardinghouse, keep records identifying its tenants, lodgers, or boarders; and
- (8) Not deliver or purport to deliver health care services or treatment unless it is licensed, certified, or contracted for by the State or other governmental agencies to do so. [L 1896, c 64, §71; RL 1925, §2056; RL 1935, §2478; RL 1945, §7081; RL 1955, §155-62; am L Sp 1959 2d, c 1, §19; HRS §445-95; am L 1986, c 149, §5; am L 1987, c 333, §6; am L 1990, c 164, §17; am L 2001, c 35, §5]

Cross References

Liquor license, see chapter 281.

Case Notes

Building does not lose character as restaurant because portion occupied as dwelling. 11 H. 363 (1898). "Furnish" may include gifts. Id. Subdivision (3) constitutional. Id.

Cited: 11 H. 57, 60 (1897).

" **[\$445-95.1] Unfair or deceptive practices prohibited.** (a) No person shall engage in this State in any act or practice which is prohibited in section 445-95.2 or which is defined in that section as, or determined under that section to be, an unfair or deceptive act or practice in the rooming house business.

(b) Any facility owned or used by a government agency or by a nonprofit agency which is registered with the department of commerce and consumer affairs and providing services by contract for a government agency, shall be exempt from this section.

(c) The department of human services shall enforce the provisions of this section and shall refer to other state and county agencies any violations enforced by those other governmental agencies. [L 1988, c 313, pt of §3]

" **[§445-95.2] Unfair and deceptive practices defined.** The following are defined as unfair or deceptive practices in the rooming house business:

- (1) Requiring, seeking, or encouraging any resident or prospective resident to execute a power of attorney in which the resident or prospective resident names the rooming house, its owner, or any of its agents or employees as attorney-in-fact;
- (2) Making any representation that the rooming house offers medical care, rehabilitation, or therapeutic benefits of any type;
- (3) Negotiating public assistance checks payable to a resident;
- (4) Refusing to refund any deposit as provided in sections 521-44(c) and 521-66;
- (5) Refusing to give any resident a partial rent refund in accordance with section 521-66;
- (6) Encouraging, soliciting, or requiring any resident or prospective resident to consent to the release of information concerning the resident or prospective resident which is maintained by any government agency and otherwise confidential;
- (7) Encouraging, soliciting, or requiring a resident or prospective resident to:
 - (A) Turn over food stamps to the rooming house, its agents, or employees; or
 - (B) Permit authorization to purchase (ATP) food stamp cards to be negotiated by the rooming house, its agents, or employees;
- (8) Limiting, hindering, or restricting access of residents who are food stamp recipients to foodstuffs, food containers, refrigerators, or other food storage facilities;
- (9) Encouraging, soliciting, or requiring any resident or prospective resident to apply for or receive food stamps if the rooming house has meal service;
- (10) Accepting food stamps as payment for or in reduction of rent;
- (11) Charging different rents for similar accommodations based on the amount of a resident's public assistance benefits;
- (12) Encouraging, soliciting, or requiring any resident or prospective resident to have public assistance benefits mailed to the rooming house, its owner, or its agents or employees; and

(13) Denying any prospective resident or evicting any resident from living accommodations solely on the basis of age or disability. [L 1988, c 313, pt of §3]

" **[\$445-95.3] Powers of the director.** The director of the department of human services may examine and investigate the affairs of every person, partnership, corporation, or other organization engaged in the rooming house business in this State in order to determine whether any unfair or deceptive practice prohibited by section 445-95.1 has been committed. [L 1988, c 313, pt of §3]

" **[\$445-95.4] Penalty.** Any person, firm, company, association, or corporation committing any unfair or deceptive practice as defined in section 445-95.2 shall be fined \$500 for each violation. [L 1988, c 313, pt of §3]

" **[\$445-95.5] Suits by the State.** The director of the department of human services, by and through the attorney general, may bring an action on behalf of the State to enjoin any violation of section 445-95.2, to enjoin any person, partnership, corporation or other organization who has violated section 445-95.2 from continuing to engage in the rooming house business, to collect the penalties provided by section 445-95.4, or to recover any damages sustained by any person injured by a violation of section 445-95.2. In any such action, the State shall also be entitled to recover the costs of suit together with reasonable attorneys' fees. [L 1988, c 313, pt of §3]

" **[\$445-95.6] Suits by individuals.** Any person injured by a violation of section 445-95.2 has a private right of action and may bring a civil action to recover three times the person's actual damages or \$1,000 for each violation, whichever sum is greater. Any person bringing such an action shall also be entitled to recover the person's costs together with reasonable attorneys' fees. [L 1988, c 313, pt of §3]

" **[\$445-95.7] Jurisdiction, venue.** An action under section 445-95.5 or 445-95.6 shall be brought in the district court and division in which the rooming house is located. [L 1988, c 313, pt of §3]

" **§445-96 Penalty.** (a) Any person who violates or fails to observe any of the requirements or conditions of this chapter shall be fined not less than \$100 nor more than \$1,000 per day of violation for each violation.

(b) Any person who intentionally or knowingly obstructs or interferes with the progress of any authorized inspection pursuant to this chapter shall be guilty of a misdemeanor. [L 1896, c 64, §72; RL 1925, §2057; RL 1935, §2479; RL 1945, §7082; RL 1955, §155-63; HRS §445-96; gen ch 1985; am L 1986, c 149, §6; am L 1987, c 333, §7; am L 1990, c 164, §18; am L 2001, c 35, §6]

Cross References

Administrative inspections and warrants, see §§46-15.4 and 46-15.5.

Case Notes

Cited: 11 H. 57, 60 (1897); 11 H. 363, 364 (1898).

" **§445-97 REPEALED.** L 1986, c 149, §7.

" **§445-98 REPEALED.** L 1982, c 14, §1.

"MILK--REPEALED

§§445-101 to 445-103 REPEALED. L 1990, c 164, §19.

"PART IV. OUTDOOR ADVERTISING

Note

Sections 445-111 to 445-121 designated as Part IV by L 1990, c 164, §28.

§445-111 Definitions. As used in this chapter:

- (1) "Outdoor advertising device" means any device which is:
 - (A) A writing, picture, painting, light, model, display, emblem, sign, or similar device situated outdoors, which is so designed that it draws the attention of persons in any public highway, park, or other public place to any property, services, entertainment, or amusement, bought, sold, rented, hired, offered, or otherwise traded in by any person, or to the place or person where or by whom such buying, selling, renting, hiring, offering, or other trading is carried on;
 - (B) A sign, poster, notice, bill, or word or words in writing situated outdoors and so designed that it

draws the attention of and is read by persons in any public highway, park, or other public place; or

- (C) A sign, writing, symbol, or emblem made of lights, or a device or design made of lights so designed that its primary function is not giving light, which is situated outdoors and draws the attention of persons in any public highway, park or other public place.
- (2) "Billboard" is any board, fence, or similar structure, whether free-standing or supported by or placed against any wall or structure, which is designed or used for the principal purpose of having outdoor advertising devices placed, posted, or fastened upon it.
- (3) Any person who, by oneself or through any agent or independent contractor, maintains or displays any outdoor advertising device, or any person who knowingly causes any outdoor advertising device advertising the person's products, merchandise, or services to be displayed by oneself or any agent or independent contractor; or any person who, being in possession of any land, building, or part of a building, permits any outdoor advertising device on the land, building, or part of a building, shall be deemed to be displaying an outdoor advertising device.
- (4) Any person, who, by oneself or through any agent or independent contractor, erects or maintains a billboard or places any outdoor advertising device upon a billboard, or any person who knowingly causes any of the person's products, merchandise, or services to be advertised upon a billboard by oneself or through any agent or independent contractor; or any person who, being in possession of any land, building, or part of a building, knowingly permits a billboard to be erected or to remain on the land, building, or part of a building, shall be deemed to be maintaining a billboard. [L 1965, c 233, pt of §1; Supp, §155-120; HRS §445-111; gen ch 1985]

" **§445-112 Where and when permitted.** No person shall erect, maintain, or use a billboard or display any outdoor advertising device, except as provided in this section:

- (1) The display of official notices and signs, posted by order of any court or public office, or posted by any public officer in the performance of a public duty, or

posted by any person required to do so by any law or rule having the force of law;

- (2) Any outdoor advertising device announcing a meeting or series of meetings is not prohibited by this section if displayed on the premises where the meeting or series of meetings will be or is being held. Meeting, as used in this section, includes all meetings regardless of whether open to the public or conducted for profit and includes but is not limited to sports events, conventions, fairs, rallies, plays, lectures, concerts, motion pictures, dances, and religious services;
- (3) Any outdoor advertising device indicating that the building or premises on which it is displayed is the residence, office, or place of business, commercial or otherwise, of any individual, partnership, joint venture, association, club, or corporation, and stating the nature of the business;
- (4) Any outdoor advertising device that advertises property or services that may be bought, rented, sold, or otherwise traded in on the premises or in the building on which the outdoor advertising device is displayed;
- (5) The offering for sale of merchandise bearing incidental advertising, including books, magazines, and newspapers, in any store, newsstand, vending machine, rack, or other place where such merchandise is regularly sold;
- (6) Any outdoor advertising device offering any land, building, or part of a building for sale or rent, if displayed on the property so offered or on the building so offered;
- (7) Any outdoor advertising device carried by persons or placed upon vehicles used for the transportation of persons or goods, except as provided under section 445-112.5, relating to vehicular advertising devices;
- (8) Any outdoor advertising device warning the public of dangerous conditions that they may encounter in nearby sections of streets, roads, paths, public places, power lines, gas and water mains, or other public utilities;
- (9) Signs serving no commercial purpose that indicate places of natural beauty, or of historical or cultural interest and that are made according to designs approved by the department of business, economic development, and tourism;

- (10) Any outdoor advertising device or billboard erected, placed, or maintained upon a state office building, if erected, placed, or maintained by authority of a state agency, department, or officer for the sole purpose of announcing cultural or educational events within the State, and if the design and location thereof has been approved by the department of business, economic development, and tourism;
- (11) Signs urging voters to vote for or against any person or issue, may be erected, maintained, and used, except where contrary to or prohibited by law;
- (12) Signs stating that a residence that is offered for sale, lease, or rent is open for inspection at the actual time the sign is displayed and showing the route to the residence; provided that the sign contains no words or designs other than the words "Open House", the address of the residence, the name of the person or agency responsible for the sale, and an arrow or other directional symbol and is removed during such time as the residence is not open for inspection;
- (13) The erection, maintenance, and use of billboards if the billboard is used solely for outdoor advertising devices not prohibited by this section;
- (14) The continued display and maintenance of outdoor advertising devices actually displayed on July 8, 1965, in accordance with all laws and ordinances immediately theretofore in effect;
- (15) The continued maintenance of any billboard actually maintained on July 8, 1965, and the display thereon of the same or new advertising devices, all in accordance with all laws and ordinances in effect immediately prior to July 9, 1965;
- (16) Any outdoor advertising device, displayed with the authorization of the University of Hawaii, on any scoreboard of any stadium owned by the university. An outdoor advertising device displayed under this paragraph shall be on the front of the scoreboard and face the interior of the stadium;
- (17) Any temporary outdoor advertising device attached to or supported by the structure of any stadium owned by the University of Hawaii, located within and facing the interior of the stadium, and authorized to be displayed by the university. For the purpose of this paragraph, "temporary" means displayed for a short period before the official start of organized athletic competition, during the organized athletic

- competition, and for a short period after the official end of the organized athletic competition;
- (18) Any outdoor advertising device, displayed with the authorization of the stadium authority, on any scoreboard of any stadium operated by the stadium authority. An outdoor advertising device displayed under this paragraph shall be on the front of the scoreboard and face the interior of the stadium; and
- (19) Any outdoor advertising device, displayed with the authorization of the city and county of Honolulu, on the scoreboard of the Waipio peninsula soccer stadium. The outdoor advertising device shall be:
- (A) Attached to the bottom of the scoreboard;
 - (B) No longer than the width of the scoreboard; and
 - (C) No higher than twenty-five per cent of the scoreboard height.

The scoreboard shall be no larger than twenty-eight feet by ten feet. Any outdoor advertising device displayed pursuant to this paragraph shall be on the front of the scoreboard and face the interior of the stadium; provided that the outdoor advertising device shall not be visible from any thoroughfare. [L 1965, c 233, pt of §1; Supp, §155-121; HRS §445-112; am L 1986, c 245, §1; am L 1987, c 336, §7; am L 1990, c 293, §8; am L 1994, c 118, §1; am L 2003, c 194, §4; am L 2006, c 222, §3; am L 2015, c 37, §2]

Attorney General Opinions

Paragraph (11) (prior to 2003 amendment), regulating political signs, was unconstitutional and unenforceable. Att. Gen. Op. 96-4.

" **[\$445-112.5] Vehicular advertising prohibited; penalty.**

(a) It is unlawful for any person to operate or park, or cause to be operated or parked, on any street, roadway, or other public place, or on any private property that can be seen from any street, roadway, or other public place, any vehicle or trailer carrying a vehicular advertising device for consideration or any other economic benefit if the vehicle or trailer is used primarily to display a vehicular advertising device. The phrase "for consideration or any other economic benefit" shall not include any benefit derived by the owner or operator of the vehicle or trailer from the effect of the advertising.

(b) Every day of continued violation of this section shall constitute a separate offense.

(c) Any person convicted of violating this section shall be fined:

- (1) Not less than \$200 or more than \$1,000, for the first offense;
 - (2) Not less than \$500 or more than \$2,000 for the second offense; and
 - (3) Not less than \$1,000 or more than \$5,000 for the third and subsequent offense.
- (d) As used in this section:

"Trailer" means a vehicle or conveyance with or without motive power designed to be pulled or propelled by a vehicle or other form of power.

"Vehicular advertising device" means any sign, writing, picture, poster, painting, notice, bill, model, display, symbol, emblem, or similar device, which is so designed that it draws the attention of persons in any public street, roadway, or other public place. [L 2006, c 222, §2]

" **§445-113 Regulation by counties.** Except for outdoor advertising devices authorized under section 445-112(16) and (17), the several counties may adopt ordinances regulating billboards and outdoor advertising devices not prohibited by sections 445-111 to 445-121. The ordinances may:

- (1) Classify billboards and outdoor advertising devices in the classes set forth in section 445-112, or in any other reasonable manner of classification;
- (2) Regulate the size, manner of construction, color, illumination, location, and appearance of any class of billboard or outdoor advertising device;
- (3) Prohibit the erection or maintenance of any type of billboard or the displaying of any outdoor advertising device in particular parts, or in all parts, of the county; provided that the prohibition shall not apply to any official notice or sign described in section 445-112(1); and provided further that, unless a county ordinance specifies otherwise, the prohibition shall extend to billboards or outdoor advertising devices located in the airspace or waters beyond the boundaries of the county that are visible from any public highway, park, or other public place located within the county;
- (4) Control and license the business of making, erecting, posting, renting, and maintaining outdoor advertising devices and billboards as a business providing advertising for others, and require each person engaging in such business to obtain an annual license, the fee for which shall not exceed \$100. The license

shall be conditioned upon the maintenance of all outdoor advertising devices and billboards in a safe state, and the observance of sections 445-111 to 445-121 and all applicable ordinances and shall be revocable by the licensing authority upon breach of such condition;

- (5) Require that no person, whether licensed under paragraph (4) or not, shall erect or maintain any billboard unless it is licensed by a permit issued by the county, the issuance of which permit shall be conditioned upon compliance with this chapter and all applicable ordinances and the payment to the county of an annual fee not to exceed \$25 per billboard; and
- (6) Provide for such other regulation of billboards and outdoor advertising devices as will promote the public health, welfare, safety, and convenience; encourage and promote the tourist and visitor trade; conserve and develop the natural beauty of the State, as well as objects and places of historic and cultural interest; foster sightliness and physical good order; and promote the purposes and provisions of sections 445-111 to 445-121. [L 1965, c 233, pt of §1; Supp, §155-122; HRS §445-113; am L 1986, c 245, §2; am L 2005, c 188, §1]

" **§445-114 Unlawful posting in public places.** Except for a public officer in performance of a public duty, or a private person in giving legal notice on other than utility poles, it shall be unlawful for any person to paste, post, paint, print, nail, tack, or otherwise fasten any card, banner, handbill, sign, poster, outdoor advertising device, or notice of any kind or cause the same to be done, on any curbstone, lamppost, utility pole, streetlight pole, hydrant, bridge, tree, street sign, traffic sign, or traffic light upon any public property in the State, except as may be required by the ordinances of the county where it is posted, or by the laws of this State or of the United States. [L 1965, c 233, pt of §1; Supp, §155-123; HRS §445-114; am L 1998, c 181, §1]

" **§445-115 Same; consent of owner.** It shall be unlawful for any person, except a public officer or employee in performance of a public duty, or a private person in giving legal notice, to paste, post, paint, print, nail, or tack or otherwise fasten any card, banner, handbill, sign, poster, outdoor advertising device, or notice of any kind upon any property without the oral or written consent of the owner, holder, lessee, agent, or

trustee thereof. [L 1965, c 233, pt of §1; Supp, §155-124; HRS §445-115]

" **§§445-116 to 445-119 REPEALED.** L 1982, c 236, §1.

" **§445-120 Enforcement by civil suit.** Injunction forbidding the erection, maintenance, or display of, or commanding the removal or alteration of any outdoor advertisement or billboard, which does not comply with this statute or any ordinance enacted under the authority of this statute shall be granted upon the suit of the State by the attorney general, or of the county in which the outdoor advertisement or billboard is or probably will be erected, maintained, or displayed, or of the owner of any land, building, or part of a building from which such outdoor advertisement is or will be visible and so conspicuous as to draw attention. Any owner of a freehold or leasehold in such property shall be deemed such owner and entitled to bring such suit. [L 1965, c 233, pt of §1; Supp, §155-129; HRS §445-120]

" **§445-121 Penalty.** (a) Any person violating any provision of sections 445-111 to 445-121 shall be fined not less than \$25 nor more than \$500, or imprisoned not more than one month, or both.

(b) In addition to subsection (a), any person acting knowingly, who is either:

- (1) Responsible for posting material in violation of section 445-114; or
- (2) The person organizing the event or the owner or operator of the business advertised on the posted material,

shall remove the material within seventy-two hours after receipt of written notice of the posting or seventy-two hours after the date of the event advertised on the posted material, whichever occurs first. Failure to remove the posted material within the time specified shall be punishable by an additional fine of not less than \$100 nor more than \$200 per posted material, or community service of not less than ten hours nor more than twenty hours, or both. Such additional penalties shall not be imposed unless the person received written notice of the posting or was responsible for posting material in violation of section 445-114. [L 1965, c 233, pt of §1; Supp, §155-130; HRS §445-121; am L 1998, c 181, §2]

Cross References

Classification of offense and authorized punishment, see §§701-107, 706-640, and 706-663.

"PART V. PAWNBROKERS

Note

Sections 445-131 to 445-136 designated as Part V by L 1990, c 164, §28.

Cross References

Sunset evaluations modified, see §§26H-4 and 26H-5.
Pawnbrokers and secondhand dealers, see chapter 486M.

§445-131 Definitions. As used in this part:

"Holding period" means a period of time not less than thirty days after the maturity date, in which a customer has the right to redeem pledged goods by paying a pawnbroker the amount provided in the applicable pawn transaction agreement and an additional pawn finance charge.

"Maturity date" means the date upon which a pawn transaction agreement expires and the holding period begins to run.

"Month" means that period of time from one date in a calendar month to the corresponding date in the following calendar month, but if there is no corresponding date, then the last day of the following month, and when computations are made for a fraction of a month, a day shall be one-thirtieth of a month.

"Pawnbroker" means a person engaged in the business of making pawn transactions, but does not include financial institutions whose deposits are federally insured and companies that are regulated or supervised by the division of financial institutions.

"Pawn finance charge" means the sum of all charges, payable directly or indirectly by the customer and imposed directly or indirectly by the pawnbroker, including charges for insurance, handling, storage, and any other charge imposed incidental to the pawn transaction.

"Pawn transaction" means the act of lending money on the security of pledged goods or the act of purchasing tangible personal property on condition that it may be redeemed or repurchased by the seller for a fixed price within a fixed period of time.

"Pledged goods" means tangible personal property, other than choses in action, securities, or printed evidences of indebtedness, that is deposited with or otherwise actually delivered into the possession of a pawnbroker in the course of

the pawnbroker's business and in connection with a pawn transaction. [L 1886, c 28, §1; RL 1925, §2072; RL 1935, §2492; RL 1945, §7096; RL 1955, §155-76; HRS §445-131; am L 1992, c 192, §3]

Case Notes

General rules as to the use of articles pawned stated. 1 H. 74 (1851).

" **§445-132 Fee.** The treasurer may grant licenses for the period of one year, to suitable persons, to carry on the business of pawnbroking upon payment of the sum of \$100. [L 1886, c 28, §2; am L 1905, c 35, §1; RL 1925, §2073; RL 1935, §2493; RL 1945, §7097; RL 1955, §155-77; HRS §445-132; am L 1990, c 164, §20]

" **§§445-133 and 445-134 REPEALED.** L 1992, c 192, §6.

" **[\$445-134.11] Pawn transaction agreement; disclosure requirements.** (a) All pawn transaction agreements shall be in writing.

(b) The pawnbroker shall provide the customer with a signed copy of the pawn transaction agreement.

(c) The pawn transaction agreement shall include:

- (1) The name, address, and telephone number of the pawnbroker;
- (2) The name, address, telephone number, and date of birth of the customer;
- (3) The type of identification presented by the customer;
- (4) The pawn transaction number;
- (5) The date on which the pawn transaction agreement is signed;
- (6) The net amount paid to, received by, or paid or payable for the account of the customer, expressed as the "amount financed";
- (7) The dollar amount of the pawn finance charge, expressed as the "finance charge";
- (8) The rate of the pawn finance charge as applied to the amount financed, expressed as the "annual percentage rate";
- (9) The total amount that must be paid to redeem the pledged goods on or before the maturity date, expressed as the "total of payments";
- (10) An identification of pledged goods, including all serial numbers and model numbers, where available, and any other identifying markings or information;

- (11) The maturity date of the pawn transaction;
- (12) A statement to the effect that the customer is not obligated to redeem the pledged goods, and the pledged goods shall be forfeited to the pawnbroker upon the expiration of the last holding period, provided that the pledged goods may be redeemed by the customer within the holding period by making payment of the originally agreed total of payments plus an additional pawn finance charge in accordance with section 445-134.12; and
- (13) The date on which the holding period expires. [L 1992, c 192, pt of §2]

" **§445-134.12 Pawn finance charge.** (a) Pawn finance charges shall be deemed to be earned at the time the agreement for the pawn transaction is made and shall not be subject to a refund.

(b) The maturity date of any pawn transaction may be changed to a subsequent date no more than two times by agreement between the customer and the pawnbroker upon payment of the pawn finance charge, and in that event the pawnbroker may contract for and receive another pawn finance charge computed in accordance with this part as for a new transaction.

(c) Pledged goods not redeemed by the customer on or before the date fixed as the maturity date for the transaction in the pawn agreement shall be held by the pawnbroker for at least thirty days following the maturity date, and may be redeemed by the original customer within the holding period by the payment of an additional pawn finance charge equal to one-thirtieth of the pawn finance charge stated in the pawn transaction agreement for each day following the maturity date, including the day on which the pledged goods are redeemed.

(d) Where a pawnbroker is conducting business in accordance with this part, the pawn finance charge shall not be governed by chapter 478. [L 1992, c 192, pt of §2]

" **§445-134.13 Prohibited practices.** (a) No pawnbroker shall:

- (1) Charge or receive any pawn finance charge exceeding twenty per cent a month;
- (2) Contract for or receive any amounts other than the pawn finance charge in connection with a pawn transaction;
- (3) Accept a pledge or purchase of property from a person under the age of eighteen years;

- (4) Accept any waiver, in writing or otherwise, of any right or protection accorded a customer under this part;
- (5) Fail to exercise reasonable care to protect pledged goods from loss or damage;
- (6) Fail to return pledged goods to a customer within three business days of payment of the full amount due the pawnbroker on the pawn transaction;
- (7) Make any charge for insurance, storage, or handling in connection with a pawn transaction;
- (8) Enter into a pawn transaction which has a maturity date more than one month after the date the pawn transaction agreement is signed;
- (9) Accept pledged goods or buy merchandise from a person unable to supply verification of identity by photo identification card, a state-issued identification card, driver's license, or federal government-issued identification card; provided that in addition to such verification, the pawnbroker shall take the person's thumbprint, and retain the thumbprint on file;
- (10) Make any agreement requiring the personal liability of a customer in connection with a pawn transaction or creating any obligation on the part of the customer to redeem pledged goods or make any payment on a pawn transaction;
- (11) Allow a customer's pawn account to exceed \$10,000. For purposes of this paragraph, "pawn account" means the total accumulation of unpaid pawn finance charges for any single customer; or
- (12) Accept vehicles, vessels, or negotiable instruments as pledged goods, or certificates of title or registration of vehicles or vessels as evidence of possession of pledged goods.

(b) Any person who violates this section shall be penalized pursuant to section 445-136. [L 1992, c 192, pt of §2; am L 1993, c 44, §1; am L 1997, c 121, §2; am L 1998, c 255, §1]

" **[\$445-134.14] Redemption of pledged goods.** (a) Except as otherwise provided by this part, any person properly identified as the customer in a pawn transaction or as the assignee or agent thereof, and presenting a pawn transaction agreement to the pawnbroker, shall be presumed to be entitled to redeem the pledged goods described therein.

(b) If a pawn transaction agreement is lost, destroyed, or stolen, the customer may so notify the pawnbroker in writing, and receipt of such notice shall invalidate the pawn transaction agreement as an instrument to redeem the pledged goods, if the

pledged goods have not previously been redeemed. Before delivering the pledged goods or issuing a new pawn transaction agreement, the pawnbroker may require the customer to sign a written statement or affidavit concerning the loss, destruction, or theft of the pawn transaction agreement. [L 1992, c 192, pt of §2]

" **[\$445-134.15] Pawnbroker's recourse.** (a) Unless found to be stolen, mortgaged, or otherwise encumbered, any pledged goods not redeemed within the last holding period may thereafter, at the option of the pawnbroker, be forfeited and become the property of the pawnbroker.

(b) Where the customer has pledged defective goods, the only recourse of a pawnbroker shall be against the pledged goods. [L 1992, c 192, pt of §2]

" **[\$445-134.16] Pawnbroker liability.** Where the pawnbroker has exercised reasonable care in holding pledged goods, a pawnbroker's liability shall be limited to twice the original pawn amount or replacement in kind, at the pawnbroker's option, where the pledged goods have become lost, damaged, or stolen. [L 1992, c 192, pt of §2]

" **[\$445-134.17] Recordkeeping.** A copy of all pawn transactions shall be kept on the pawnshop premises and open to inspection by the proper authorities for a period of one year after the maturity date. [L 1992, c 192, pt of §2]

" **[\$445-134.18] Compliance with other applicable law.** All pawnbrokers shall comply with the requirements of chapter 486M. [L 1992, c 192, pt of §2]

" **[\$445-134.19] Conformity with federal law.** Every pawn transaction agreement that complies with the disclosure requirements of the federal Truth in Lending Act as of the date upon which the pawn transaction agreement is signed shall be deemed to comply with the disclosure provisions of this part. [L 1992, c 192, pt of §2]

" **§445-135 Acting without license; penalty.** No person shall engage in business as a pawnbroker without first obtaining a license from the treasurer. Any person who carries on the business of pawnbroker except by authority of the license provided for in this part shall be fined not less than \$5,000 nor more than \$25,000. [L 1886, c 28, §4; am L 1903, c 8, §2; RL 1925, §2075; RL 1935, §2496; RL 1945, §7100; RL 1955, §155-80; HRS §445-135; am L 1992, c 192, §4]

" **§445-136 Breach of condition; penalty.** Every licensed pawnbroker who fails to comply with any of the provisions of this part shall be fined not more than \$2,500 for each violation and shall forfeit the pawnbroker's license. [L 1886, c 28, §5; am L 1903, c 8, §2; RL 1925, §2076; RL 1935, §2497; RL 1945, §7101; RL 1955, §155-81; HRS §445-136; gen ch 1985; am L 1992, c 192, §5]

"PART VI. PEDDLERS

Note

Section 445-141 designated as Part VI by L 1990, c 164, §28.

§445-141 Licensing. Each council shall have the power to enact ordinances providing for the licensing and regulation of any person who peddles merchandise. [L 1907, c 96, pt of §1; am L 1917, c 122, §1; am L 1923, c 111, §1; RL 1925, §2077; RL 1935, §2498; am L 1935, c 182, §1; am L 1939, c 109, §1; RL 1945, §7102; am L 1953, c 230, §1; am L 1955, c 193, §1; RL 1955, §155-82; HRS §445-141; am L 1978, c 182, §2; am L 1990, c 164, §22]

Case Notes

License a tax, when. 36 H. 661 (1944).

" **§445-142 REPEALED.** L 1981, c 38, §1.

"PEDDLING CAKE--REPEALED

§445-146 REPEALED. L 1982, c 209, §1.

"POISONOUS DRUGS--REPEALED

§§445-151 to 445-153 REPEALED. L 1987, c 17, §1.

"PUBLIC SHOWS--REPEALED

§§445-161 to 445-165 REPEALED. L 1982, c 208, §1.

" **§445-166 REPEALED.** L 1990, c 164, §23.

"PART VII. SECONDHAND DEALERS

Note

Sections 445-171 and 445-172 designated as Part VII by L 1990, c 164, §28.

Assessment under §26H-4 removed. L 1992, c 232, §1.

Cross References

Pawnbrokers and secondhand dealers, see chapter 486M.

§445-171 Fee, conditions. The treasurer may grant licenses to suitable persons to be dealers and traders in secondhand articles, and may revoke such licenses for cause satisfactory to the treasurer. The licensees shall pay to the treasurer an annual fee of \$10.

Every license granted under this section shall designate the place where the business is carried on and shall continue for one year unless sooner revoked. Every dealer shall keep a book in which shall be written a description of every article received, the name, residence, and a general description of the person from whom, and the time and hour when the article was received. The book, the place where the business is carried on, and the articles of property therein, may be examined at any time by the treasurer, the chief of police, or by any person presenting to such dealer a written authorization so to do from the treasurer or chief of police. [L 1905, c 31, §1; am L 1911, c 54, §1; RL 1925, §2091; am L 1932 1st, c 1, pt of §1; am L 1932 2d, c 66, §13; RL 1935, §2509; RL 1945, §7113; RL 1955, §155-93; HRS §445-171; gen ch 1985]

Cross References

Used motor vehicles parts and accessories, see chapter 289.

" **§445-172 Prohibitions; penalty.** Every person who engages in the business of buying or selling secondhand articles, or who deals therein, unless licensed therefor according to law, or after notice that the person's license has been revoked, or who, being licensed, neglects to keep the book and make the entries therein prescribed in section 445-171, or who refuses to allow the inspections in the section prescribed, or who purchases or receives by way of exchange any article from any minor, knowing or having reason to believe that the person is a minor, shall be fined not more than \$100. [L 1905, c 31, §2; RL 1925, §2092; RL 1935, §2510; RL 1945, §7114; RL 1955, §155-94; HRS §445-172; gen ch 1985]

"PART VIII. SOLICITORS--REPEALED

§§445-181 to 445-186 REPEALED. L 1996, c 32, §1 and c 67, §6.

"STEAM LAUNDRIES, HONOLULU--REPEALED

§§445-191 to 445-194 REPEALED. L 1990, c 164, §25.

"SURETY, BAIL BOND--REPEALED

§§445-201 to 445-203 REPEALED. L 1990, c 164, §26.

Cross References

For present provision, see §804-62.

"TOBACCO, CIGARS, AND CIGARETTES--REPEALED

§§445-211 to 445-213 REPEALED. L 1990, c 164, §27.

Cross References

For present provision, see §709-908.

"PART IX. VEHICLES AND DRIVERS FOR HIRE--REPEALED

§§445-221 to 445-226 REPEALED. L 1996, c 67, §7.

"PART X. SCRAP DEALERS

Note

Sections 445-231 to 445-235 designated as Part X by L 1990, c 164, §28.

Assessment under §26H-4 removed. L 1992, c 232, §1.

§445-231 Definitions. As used in this chapter, unless the context otherwise requires:

"Beer keg" means a metal container used to hold five gallons or more of liquid that is stamped, engraved, stenciled, or otherwise marked with the name of a brewery manufacturer; provided that a deposit beverage container, as defined under section 342G-101, shall not be considered a beer keg.

"Copper" means copper in all different forms, including tubing, sheets (includes plates), gutters, down spouts, bars, bare wire or cable, insulated wire or cable, and aluminum/copper coil used in air conditioning and refrigeration.

"Scrap" means any secondhand or used metal except those used motor vehicle parts provided in chapter 289.

"Scrap dealer" means any person engaged in the business of buying, selling, or dealing in scrap, or any person operating, carrying on, conducting, or maintaining a scrap yard.

"Scrap yard" means any yard, plot, space, enclosure, building, or any other place where scrap is collected, stored, gathered together, and kept.

"Urn" means a container that is or has been used to hold human ashes. [L 1976, c 230, pt of §2; am L 2007, c 197, §§1, 7; am L 2008, c 16, §20 and c 53, §§2, 6; am L 2009, c 44, §§1, 2; am L 2016, c 199, §2]

" **§445-232 License.** Any person who engages in the business as a scrap dealer shall be licensed with the treasurer. The treasurer shall have the power to grant license and to revoke such license upon reasonable cause. The annual license fee shall be \$10.

Every license granted under this section shall designate the place where business is carried on and sufficient identifying information including the licensee's name, address, general excise tax license number, and other information which may be prescribed by the treasurer. [L 1976, c 230, pt of §2]

" **§445-233 Statement required.** (a) Every scrap dealer, when the dealer purchases scrap within the State, shall obtain a written statement signed by the seller certifying that the seller has the lawful right to sell and dispose of the scrap. This statement shall also contain the seller's name; the seller's business or residence address; the seller's occupation; a description, including serial numbers and other identifying marks, when practical, of every scrap; the amount received by the seller; the date, time, and place of the sale; and the license number of any vehicle used to deliver the property to the place of purchase.

(b) If the scrap presented for purchase is copper, a beer keg, or an urn, in whole or in part, the seller shall provide a copy of a receipt that describes, with particularity:

- (1) The exact item that is being offered for sale;
- (2) Who issued the receipt;
- (3) The date of sale of the item prior to the item's being offered to the scrap dealer; and
- (4) The price, if any, of the item when obtained by the seller.

(c) If a receipt is not available, the seller shall provide to the scrap dealer a notarized declaration, describing with particularity:

- (1) The exact item that is being offered for sale;
- (2) Who sold or otherwise transferred the item to the seller;
- (3) The date of sale of the item; and
- (4) The price, if any, of the item when obtained by the seller.

(d) If the seller does not provide a copy of the receipt or the notarized declaration as required by subsections (b) and (c), the scrap dealer shall not purchase the copper, beer keg, or urn, in whole or in part, and shall report the attempted sale to the police.

(e) If the scrap dealer purchases any copper, beer keg, or urn, in whole or in part, the scrap dealer shall take a photograph or photographs of all of the copper, beer keg, or urn, offered for sale.

(f) The scrap dealer shall also require the seller to verify the seller's identity by presenting a valid photo identification card or license issued by a federal or state government agency authorized to issue valid identification. If the scrap being offered for sale is copper, a beer keg, or an urn, in whole or in part, the scrap dealer shall:

- (1) Take a photograph of the seller; or
- (2) Make a photocopy of the identification card or license of the seller.

(g) The scrap dealer shall keep at the dealer's place of business the signed written statement, the receipt or notarized declaration required by subsections (b) and (c), the photographs required by subsection (e), and the photocopy of the identification card or license and photograph of the seller required by subsection (f), if applicable, from the seller for a period of two years after the date of purchase and the statement, the receipt or notarized declaration required by subsections (b) and (c), the photographs required by subsection (e), and the photocopy and photograph required by subsection (f), if applicable, may be examined at any time by the treasurer, the chief of police, the attorney general, the prosecuting attorney, or their designees.

(h) Public utilities, as defined in section 269-1, shall be exempt from the requirements of subsections (b) and (c). When the seller is a public utility, the scrap dealer shall not be required to obtain the statement required by subsection (a), and the scrap dealer shall not be prohibited by subsection (d) from purchasing the copper from the public utility. [L 1976, c 230, pt of §2; gen ch 1985; am L 2007, c 197, §§3, 7; am L 2008, c 53, §§3, 6; am L 2009, c 44, §§1, 2; am L 2016, c 199, §3]

" **[§445-233.5] Payment of copper purchased by scrap dealer or recycler; check; mailing.** (a) If the scrap dealer or recycler, as applicable, purchases any copper, payment for the copper shall be made by check payable to the seller. At the time of sale of the copper, the seller shall present to the scrap dealer or recycler a valid photo identification card or license of the seller issued by a federal or state government agency authorized to issue valid identification. The check may be mailed to the address shown on the identification, or the scrap dealer or recycler may arrange for the check to be picked up personally by the seller at the place of business of the scrap dealer or recycler.

(b) As used in this section, "recycler" means a person who is engaged in the business of recycling, as defined in section 342G-1. [L 2008, c 91, §2]

" **§445-234 Applicability.** Any person required to be licensed under chapter 289 or under section 445-171 shall not be required to pay an additional fee under section 445-232; provided that such person shall obtain the license required by section 445-232 and shall follow the requirements of sections 445-232 and 445-233 when acting as a scrap dealer. [L 1976, c 230, pt of §2]

" **§445-235 Prohibitions; penalty.** Any person who violates section 445-232, 445-233, or 445-233.5, or any person who falsifies a statement required by section 445-233, shall be guilty of a misdemeanor and shall be sentenced in accordance with chapter 706, except that the court shall impose a minimum sentence of:

- (1) A fine of \$1,000 for the first offense;
- (2) A fine of \$3,000 for the second offense; and
- (3) A fine of \$5,000 and the suspension of the scrap dealer's license for a period of six months for the third or subsequent offense; provided that if the third or subsequent offense occurs within a five-year period from the occurrence of two prior offenses, the scrap dealer shall be subject to license revocation. [L 1976, c 230, pt of §2; am L 2007, c 197, §§4, 7; am L 2008, c 32, §§2, 4 and c 91, §§3, 5; am L 2009, c 44, §1]