

**MEMORANDUM CONCERNING PROPOSED  
STATUTORY REVISIONS FOR THE 2019 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 PURPOSES 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**

**Section 171-36(b), HRS, contains two sets of numbered paragraphs with repetitive designations that create an ambiguity for references made to the same paragraph number. This was brought to the attention of the Department of the Attorney General, which agreed that section 171-36(b), HRS, should be amended by redesignating the second set of numbered paragraphs as subsection (c). Additional technical nonsubstantive amendments are made for purposes of style, clarity, and consistency.**

SECTION 1. Section 171-36, Hawaii Revised Statutes, is amended to read as follows:

**"§171-36 Lease restrictions; generally.** (a) Except as otherwise provided, the following restrictions shall apply to all leases:

- (1) Options for renewal of terms are prohibited;
- (2) No lease shall be for a longer term than sixty-five years, except in the case of a residential leasehold, which may provide for an initial term of fifty-five years with the privilege of extension to meet the requirements of the Federal Housing Administration, Federal National Mortgage Association, Federal Land

Bank of Berkeley, Federal Intermediate Credit Bank of Berkeley, Berkeley Bank for Cooperatives, or Department of Veterans Affairs requirements; provided that the aggregate of the initial term and extension shall in no event exceed seventy-five years;

- (3) No lease shall be made for any land under a lease ~~[which]~~ that has more than two years to run;
- (4) No lease shall be made to any person who is in arrears in the payment of taxes, rents, or other obligations ~~[owing]~~ owed to the State or any county;
- (5) No lease shall be transferable or assignable, except by devise, bequest, or intestate succession; provided that with the approval of the board ~~[of land and natural resources]~~, the assignment and transfer of a lease or unit thereof may be made in accordance with current industry standards, as determined by the board; provided further that prior to the approval of any assignment of lease, the board shall have the right to review and approve the consideration to be paid by the assignee and may condition its consent to the assignment of the lease on payment by the lessee of a premium based on the amount by which the consideration for the assignment, whether by cash, credit, or otherwise, exceeds the depreciated cost of

improvements and trade fixtures being transferred to the assignee; provided further that with respect to state agricultural leases, in the event of foreclosure or sale, the premium, if any, shall be assessed only after the encumbrances of record and any other advances made by the holder of a security interest are paid;

- (6) The lessee shall not sublet the whole or any part of the demised premises, except with the approval of the board; provided that prior to the approval, the board shall have the right to review and approve the rent to be charged to the sublessee; provided further that in the case where the lessee is required to pay rent based on a percentage of its gross receipts, the receipts of the sublessee shall be included as part of the lessee's gross receipts; provided further that the board shall have the right to review and, if necessary, revise the rent of the demised premises based upon the rental rate charged to the sublessee, including the percentage rent, if applicable, and provided that the rent may not be revised downward;
- (7) The lease shall be for a specific use or uses and shall not include waste lands, unless it is impractical to provide otherwise;

- (8) Mineral and metallic rights and surface and ground water shall be reserved to the State; and
- (9) No lease of public lands, including submerged lands, ~~[nor]~~ or any extension of any ~~[such]~~ lease~~[7]~~ of public lands shall be issued by the State to any person to construct, use, or maintain a sunbathing or swimming pier or to use the lands for ~~[such]~~ those purposes, unless ~~[such]~~ the lease, or any extension thereof, contains provisions permitting the general public to use the pier facilities on the public lands and requiring that a sign or signs be placed on the pier, clearly visible to the public, ~~[which]~~ that indicates the public's right to the use of the pier. The board, at the earliest practicable date, and where legally possible, shall cause all existing leases to be amended to conform to this paragraph. The term "lease", for the purposes of this paragraph, includes month-to-month rental agreements and similar tenancies.

(b) The board, from time to time, upon the issuance or during the term of any intensive agricultural, aquaculture, commercial, mariculture, special livestock, pasture, or industrial lease, may:

- (1) Modify or eliminate any of the restrictions specified in subsection (a);
- (2) Extend or modify the fixed rental period of the lease; provided that the aggregate of the initial term and any extension granted shall not exceed sixty-five years; or
- (3) Extend the term of the lease,

to the extent necessary to qualify the lease for mortgage lending or guaranty purposes with any federal mortgage lending agency, to qualify the lessee for any state or private lending institution loan, private loan guaranteed by the State, or any loan in which the State and any private lender participates, or to amortize the cost of substantial improvements to the demised premises that are paid for by the lessee without institutional financing[~~, such~~].

(c) Any extension [being] authorized pursuant to subsection (b) shall be based on the economic life of the improvements as determined by the board or an independent appraiser; provided that the approval of any extension shall be subject to the following:

- (1) The demised premises have been used substantially for the purpose for which they were originally leased;
- (2) The aggregate of the initial term and any extension granted shall not be for more than sixty-five years;

- (3) In the event of a reopening, the rental for any ensuing period shall be the fair market rental at the time of reopening;
- (4) Any federal or private lending institution shall be qualified to do business in the State;
- (5) Proceeds of any mortgage or loan shall be used solely for the operations or improvements on the demised premises;
- (6) Where improvements are financed by the lessee, the lessee shall submit receipts of expenditures within a time period specified by the board[~~7~~otherwise] or else the lease extension shall be canceled; and
- (7) The rules of the board[~~7~~] setting forth any additional terms and conditions, which shall ensure and promote the purposes of the demised lands.

[~~(e)~~] (d) The board, at any time during the term of any intensive agricultural, aquaculture, or mariculture lease and when justified by sound economic practices or other circumstances, may permit an alternative agricultural, aquaculture, or mariculture use or uses for any portion or portions of the land demised. As a condition to permitting alternative uses, the board may require [~~such~~] any other modifications, including rental adjustments or changes in the lease, as may be necessary to effect or accommodate the

alternative use or uses. An alternative use or uses may be allowed by the board upon:

- (1) The application of the lessee;
- (2) Consent of each holder of record having a security interest in the leasehold; and
- (3) A finding by the board that the alternative use or uses are in the public interest.

~~[(d)]~~ (e) The board, from time to time~~[,]~~ during the term of any agriculture, intensive agriculture, aquaculture, commercial, mariculture, special livestock, pasture, or industrial lease, may modify or eliminate any of the ~~[+]~~restrictions~~[+]~~ specified in subsection (a), extend or modify the fixed rental period of the lease, or extend the term of the lease upon a showing of significant economic hardship directly caused by:

- (1) State disaster, pursuant to chapter 209, including seismic or tidal wave, tsunami, hurricane, volcanic eruption, typhoon, earthquake, flood, or severe drought; or
- (2) A taking of a portion of the area of the lease by government action by eminent domain, withdrawal, or conservation easement; provided that the portion taken shall not be less than ten per cent of the entire leased area unless otherwise approved by the board;

and provided that the board determines that the lessee will not be adequately compensated pursuant to the lease provisions.

[~~(e)~~] (f) The approval of any extension granted pursuant to subsection [~~(d)~~] (e) shall be subject to the following:

- (1) The demised premises [~~has~~] have been used substantially for the purposes for which they were originally leased;
- (2) The aggregate of the initial term and any extension granted shall not be for more than fifty-five years;
- (3) The rental shall not be less than the rental for the preceding term;
- (4) The rules of the board[~~r~~] setting forth any additional terms and conditions, l which shall ensure and promote the purposes of the demised lands; and
- (5) The length of the extension shall not exceed a reasonable length of time for the purpose of providing relief and shall in no case exceed five years."

#### COMMENT

**Section 171-41.6(a), HRS, refers to section 171-36(b) and (d), HRS. Section 1 of this measure amends section 171-36, HRS, by, among other things, redesignating the second set of numbered paragraphs in subsection (b) as a new subsection (c) and redesignating subsection (d) as subsection (e). Accordingly, section 171-41.6(a) should be amended by changing "171-36(b) and (d)" to "171-36(b), (c), and (e)". Additional technical nonsubstantive amendments are made for purposes of style and clarity.**

SECTION 2. Section 171-41.6, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) Notwithstanding any other provision of law to the contrary, and except as otherwise provided in ~~[sections]~~ section 171-36(b), (c), and ~~[(d)]~~ (e) and section 171-193, a lessee of public land that is classified as commercial and industrial use pursuant to section 171-10~~[7]~~ and that is subject to the management, administration, or control of the board may~~[7]~~ submit, during the last ten years of the term of the original lease, ~~[submit]~~ a written request to the board to initiate a request for interest process as provided in this section."

#### COMMENT

**Section 183D-4.5(a), HRS, provides that the Game Management Advisory Commission "shall consist of nine members to be appointed by the governor". However, the nine members include the chairperson of the Board of Land and Natural Resources as an ex officio, nonappointed member of the commission. Accordingly, section 183D-4.5(a), HRS, should be amended to indicate that only eight of the nine commission members are to be appointed by the Governor. Additional technical nonsubstantive amendments are made for purposes of style and clarity.**

SECTION 3. Section 183D-4.5, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) There is established within the department a game management advisory commission, which shall serve in an advisory capacity to the board. The game management advisory commission shall consist of the following nine members ~~[to be appointed by~~

~~the governor in the manner provided in section 26-34.~~

~~Membership on the game management advisory commission shall include]:~~

- (1) One member from the county of Kauai;
- (2) Three members from the county of Maui, with one member from each of the islands of Maui, Lanai, and Molokai;
- (3) Two members from the county of Hawaii, with one member from east Hawaii and one member from west Hawaii;
- (4) One member from the city and county of Honolulu;
- (5) One at-large member; and
- (6) The chairperson of the board of land and natural resources or the chairperson's designated representative, who shall serve as an ex officio, voting member;

provided that each member, other than the chairperson of the board, shall be appointed by the governor in the manner provided in section 26-34, shall be a hunter licensed in the State under this chapter, and shall have leadership experience in working directly with local hunter or shooting organizations; provided further that at least one member shall have knowledge, experience, and expertise in the area of native Hawaiian cultural practices; and provided further that no more than three members shall represent, be employed by, or be under contract to any sector of government."

## COMMENT

**Act 49, Session Laws of Hawaii 2018, established chapter 206N, HRS. Section 206N-3, HRS, as set forth in Act 49, referred to both "the collocation of small wireless facilities" and "the collation of small wireless facilities", with the latter reference apparently due to an inadvertent clerical error. Accordingly, in the 2018 HRS Replacement Volume, the revisor changed the word "collation" to "collocation". This amendment should be ratified. An additional technical nonsubstantive amendment is made for the purpose of style.**

SECTION 4. Section 206N-3, Hawaii Revised Statutes, is amended to read as follows:

"[+]§206N-3[+] **General.** Except as provided in this chapter, the State or any county shall not prohibit or regulate the deployment of small wireless facilities or any associated modified or replaced utility poles used for the collocation of small wireless facilities. The State or a county may charge for the attachment of small wireless facilities on [~~solely-owned~~] solely owned state or county utility poles used for the [+]collocation[+] of small wireless facilities. Nothing in this chapter shall adversely impact the State's fiscal funding."

## COMMENT

**Section 225M-2(b), HRS, should be amended by adding subparagraph designations for clarity and consistency with the customary drafting convention. Additional technical nonsubstantive amendments are made for the purpose of consistency.**

SECTION 5. Section 225M-2, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

"(b) The office of planning shall gather, analyze, and provide information to the governor to assist in the overall analysis and formulation of state policies and strategies to provide central direction and cohesion in the allocation of resources and effectuation of state activities and programs and effectively address current or emerging issues and opportunities. More specifically, the office shall engage in the following activities:

- (1) State comprehensive planning and program coordination. Formulating and articulating comprehensive statewide goals, objectives, policies, and priorities, and coordinating their implementation through the statewide planning system established in part II of chapter 226;
- (2) Strategic planning. Identifying and analyzing significant issues, problems, and opportunities confronting the State, and formulating strategies and alternative courses of action in response to identified problems and opportunities by:
  - (A) Providing in-depth policy research, analysis, and recommendations on existing or potential areas of critical state concern;

- (B) Examining and evaluating the effectiveness of state programs in implementing state policies and priorities;
  - (C) Monitoring through surveys, environmental scanning, and other techniques--current social, economic, and physical conditions and trends; and
  - (D) Developing, in collaboration with affected public or private agencies and organizations, implementation plans and schedules and, where appropriate, assisting in the mobilization of resources to meet identified needs;
- (3) Planning coordination and cooperation. Facilitating coordinated and cooperative planning and policy development and implementation activities among state agencies and between the state, county, and federal governments, by:
- (A) Reviewing, assessing, and coordinating, as necessary, major plans, programs, projects, and regulatory activities existing or proposed by state and county agencies;
  - (B) Formulating mechanisms to simplify, streamline, or coordinate interagency development and regulatory processes; and

- (C) Recognizing the presence of federal defense and security forces and agencies in the State as important state concerns;
- (4) Statewide planning and geographic information system. Collecting, integrating, analyzing, maintaining, and disseminating various forms of data and information, including geospatial data and information, to further effective state planning, policy analysis and development, and delivery of government services by:
  - (A) Collecting, assembling, organizing, evaluating, and classifying existing geospatial and non-geospatial data and performing necessary basic research, conversions, and integration to provide a common database for governmental planning and geospatial analyses by state agencies;
  - (B) Planning, coordinating, and maintaining a comprehensive, shared statewide planning and geographic information system and associated geospatial database. The office shall be the lead agency responsible for coordinating the maintenance of the multi-agency, statewide planning and geographic information system and coordinating, collecting, integrating, and disseminating geospatial data sets that are used

to support a variety of state agency applications and other spatial data analyses to enhance decision-making. The office shall promote and encourage free and open data sharing among and between all government agencies. To ensure the maintenance of a comprehensive, accurate, up-to-date geospatial data resource that can be drawn upon for decision-making related to essential public policy issues such as land use planning, resource management, homeland security, and the overall health, safety, and well-being of Hawaii's citizens, and to avoid redundant data development efforts, state agencies shall provide to the shared system either their respective geospatial databases or, at a minimum, especially in cases of secure or confidential data sets that cannot be shared or must be restricted, metadata describing existing geospatial data. In cases where agencies provide restricted data, the office of planning shall ensure the security of that data; and

- (C) Maintaining a centralized depository of state and national planning references;

- (5) Land use planning. Developing and presenting the position of the State in all boundary change petitions and proceedings before the land use commission, assisting state agencies in the development and submittal of petitions for land use district boundary amendments, and conducting periodic reviews of the classification and districting of all lands in the State, as specified in chapter 205;
- (6) Coastal and ocean policy management. Carrying out the lead agency responsibilities for the Hawaii coastal zone management program, as specified in chapter 205A. Also [~~developing~~]:
- (A) Developing and maintaining an ocean and coastal resources information, planning, and management system [~~further~~];
  - (B) Further developing and coordinating implementation of the ocean resources management plan [~~and~~]; and [~~formulating~~]
  - (C) Formulating ocean policies with respect to the exclusive economic zone, coral reefs, and national marine sanctuaries;
- (7) Regional planning and studies. Conducting plans and studies to determine:

- (A) The capability of various regions within the State to support projected increases in both resident populations and visitors;
- (B) The potential physical, social, economic, and environmental impact on these regions resulting from increases in both resident populations and visitors;
- (C) The maximum annual visitor carrying capacity for the State by region, county, and island; and
- (D) The appropriate guidance and management of selected regions and areas of statewide critical concern.

The studies in subparagraphs (A) to (C) shall be conducted at appropriate intervals, but not less than once every five years;

- (8) Regional, national, and international planning. Participating in and ensuring that state plans, policies, and objectives are consistent, to the extent practicable, with regional, national, and international planning efforts;
- (9) Climate adaptation planning. Conducting plans and studies and preparing reports as follows:
  - (A) Develop, monitor, and evaluate strategic climate adaptation plans and actionable policy

recommendations for the State and counties addressing expected statewide climate change impacts identified under Act 286, Session Laws of Hawaii 2012, through the year 2050;

(B) Provide planning and policy guidance and assistance to state and county agencies regarding climate change; and

(C) Publish its findings, recommendations, and progress reports on actions taken no later than December 31, 2017, and its annual report to the governor and the legislature thereafter; and

(10) Smart growth and transit-oriented development. Acting as the lead agency to coordinate and advance smart growth and transit-oriented development planning within the State as follows:

(A) Identify transit-oriented development opportunities shared between state and county agencies, including relevant initiatives such as the department of health's healthy Hawaii initiative and the Hawaii clean energy initiative;

(B) Refine the definition of "transit-oriented development" in the context of Hawaii, while

- recognizing the potential for smart growth development patterns in all locations;
- (C) Clarify state goals for transit-oriented development and smart growth that support the principles of the Hawaii State Planning Act by preserving non-urbanized land, improving worker access to jobs, and reducing fuel consumption;
  - (D) Target transit-oriented development areas for significant increase in affordable housing and rental units;
  - (E) Conduct outreach to state agencies to help educate state employees about the ways they can support and benefit from transit-oriented development and the State's smart growth goals;
  - (F) Publicize coordinated state efforts that support smart growth, walkable neighborhoods, and transit-oriented development;
  - (G) Review state land use decision-making processes to identify ways to make transit-oriented development a higher priority and facilitate better and more proactive leadership in creating walkable communities and employment districts, even if transit will only be provided at a later date; and

(H) Approve all state agencies' development plans for parcels along the rail transit corridor. For the purposes of this subparagraph, "development plans" means conceptual land use plans that identify the location and planned uses within a defined area."

#### COMMENT

**Section 235-2.4(aa), HRS, refers to "section 451(j)(3) and (6)" of the Internal Revenue Code with regard to federal tax provisions on qualified electric utilities that are not operative for purposes of Hawaii income tax law. However, section 451(j) relates to qualified prizes and does not contain a paragraph (6). The appropriate reference appears to be section 451(k)(3) and (6), which relates to qualifying electric transmission transactions and qualified electric utilities. Accordingly, section 235-2.4(aa), HRS, should be amended by changing "section 451(j)(3) and (6)" to "section 451(k)(3) and (6)".**

SECTION 6. Section 235-2.4, Hawaii Revised Statutes, is amended by amending subsection (aa) to read as follows:

"(aa) Section 451 (which provides general rules for taxable year of inclusion) of the Internal Revenue Code shall be operative, except that section [~~451(j)(3) and (6)~~], 451(k)(3) and (6), as it relates to a qualified electric utility, shall not be operative for purposes of this chapter."

#### COMMENT

**Section 241-2(b), HRS, sets forth paragraph designations, but is not formatted to reflect the paragraph designations. Section 241-2(b), HRS, should be amended to conform to the customary drafting convention for purposes of**

**clarity and consistency. Additional technical nonsubstantive amendments are made for purposes of style, clarity, and consistency.**

SECTION 7. Section 241-2, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

- "(b) Nothing in this chapter shall be construed to:
- (1) [~~to exclude~~] Exclude the application of other taxes imposed by the State or any political division thereof on national banking associations[~~]~~ or their activities, property, income, shares, or dividends when [~~such~~] those taxes may be imposed in addition to those authorized by [~~the above cited~~] section 5219 [~~of the~~], Revised Statutes[~~]~~ of the United States, as amended (12 U.S.C. 548), or other similar law[~~or~~];
  - (2) [~~to exempt~~] Exempt the real property of national banking associations from taxation to the same extent, according to its value, as other real property is taxed[~~]~~; or
  - (3) [~~to preclude~~] Preclude the inclusion of the dividends from national banking associations in the income of individuals taxable under chapter 235 to the same extent as are included dividends from domestic corporations."

## COMMENT

**Section 264-101(b), HRS, refers to "airspace", as that term is defined in title 23 Code of Federal Regulations section 710.105, as amended. However, it appears that the current version of that federal regulation has replaced the definition of "airspace" with a definition for the term "real property interest". This was brought to the attention of the Department of the Attorney General, which recommended and provided new language for an amendment to section 264-101(b), HRS, that retains the same meaning of the amended provision without referencing the federal regulation.**

SECTION 8. Section 264-101, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

"(b) The director of transportation, in the case of state highways, may, upon application in writing, issue a written permit, subject to any terms and conditions imposed by the director, authorizing the applicant to vend in the airspace, [~~as that term is defined in title 23 Code of Federal Regulations section 710.105, as amended, of~~] which includes the space above or below a highway, in the State's interstate highway system."

## COMMENT

**Section 279D-1, HRS, which sets forth the statement of purpose for metropolitan planning organizations, refers to "23 Code of Federal Regulations section 450 subpart C". However, there is no section 450. The appropriate reference appears to be part 450, subpart C, which relates to metropolitan transportation planning and programming. Accordingly, section 279D-1, HRS, should be amended by changing "section 450" to "part 450". An additional technical nonsubstantive amendment is made for purposes of style and clarity.**

SECTION 9. Section 279D-1, Hawaii Revised Statutes, is amended to read as follows:

"~~[§279D-1]~~ **Statement of purpose.** The legislature finds that 23 United States Code sections 134-135 and 49 United States Code sections 5303-5304, as amended, and federal regulations adopted pursuant thereto, and other federal laws require that metropolitan planning organizations be designated based on a minimum population threshold as defined in federal law to act as a decision-making agency and to receive certain funds for the purpose of carrying out a continuing, cooperative, and comprehensive transportation planning process.

Metropolitan planning organizations have their own policy board and staff. It is the responsibility of the policy board to make decisions that are the result of the continuing, cooperative, and comprehensive transportation planning process, and the organization's staff support and provide technical resources to the policy board. The continuing, cooperative, and comprehensive planning process is designed to provide both orderly and reasoned metropolitan transportation planning within the framework of federal law, and adequate and informed representation from state and county governments, operators of public transportation receiving federal funds, the public at large, and others as identified in 23 Code of Federal Regulations ~~[section]~~ part 450, subpart C."

## COMMENT

**Section 286-28, HRS, refers to "vehicle inspection station license". However, it appears that vehicle inspection stations are issued permits pursuant to section 286-27, HRS, not licenses. Accordingly, section 286-28, HRS, should be amended to reflect the fact that vehicle inspection stations receive permits rather than licenses. Additional technical nonsubstantive amendments are made for purposes of clarity and style.**

SECTION 10. Section 286-28, Hawaii Revised Statutes, is amended to read as follows:

**"§286-28 Fines.** The department shall supervise and cause inspections to be made of official inspection stations and shall issue a fine, in an amount determined by the department by rule, to a station ~~[which]~~ that it finds is not properly conducting inspections. After three violations, the ~~[vehicle inspection]~~ permit issued to the station [license will] pursuant to section 286-27 shall be subject to suspension or revocation. The department shall maintain and post at its office lists of all stations holding permits and those whose permits have been suspended or revoked."

## COMMENT

**Section 291E-61(b)(5), HRS, includes a portion of text under subparagraph (B) that is misaligned to the left margin, beginning with the phrase "the person shall be absolutely prohibited...." That portion of text should be reformatted as a continuation of section 291E-61(b)(5), HRS.**

SECTION 11. Section 291E-61, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

"(b) A person committing the offense of operating a vehicle under the influence of an intoxicant shall be sentenced without possibility of probation or suspension of sentence as follows:

(1) For the first offense, or any offense not preceded within a five-year period by a conviction for an offense under this section or section 291E-4(a):

(A) A fourteen-hour minimum substance abuse rehabilitation program, including education and counseling, or other comparable program deemed appropriate by the court;

(B) One-year revocation of license and privilege to operate a vehicle during the revocation period and installation during the revocation period of an ignition interlock device on any vehicle operated by the person;

(C) Any one or more of the following:

(i) Seventy-two hours of community service work;

(ii) Not less than forty-eight hours and not more than five days of imprisonment; or

(iii) A fine of not less than \$150 but not more than \$1,000;

(D) A surcharge of \$25 to be deposited into the neurotrauma special fund; and

- (E) A surcharge, if the court so orders, of up to \$25 to be deposited into the trauma system special fund;
- (2) For an offense that occurs within five years of a prior conviction for an offense under this section or section 291E-4(a):
  - (A) Revocation for not less than eighteen months nor more than two years of license and privilege to operate a vehicle during the revocation period and installation during the revocation period of an ignition interlock device on any vehicle operated by the person;
  - (B) Either one of the following:
    - (i) Not less than two hundred forty hours of community service work; or
    - (ii) Not less than five days but not more than thirty days of imprisonment, of which at least forty-eight hours shall be served consecutively;
  - (C) A fine of not less than \$500 but not more than \$1,500;
  - (D) A surcharge of \$25 to be deposited into the neurotrauma special fund; and

- (E) A surcharge of up to \$50 if the court so orders, to be deposited into the trauma system special fund;
- (3) For an offense that occurs within five years of two prior convictions for offenses under this section or section 291E-4(a):
- (A) A fine of not less than \$500 but not more than \$2,500;
  - (B) Revocation for two years of license and privilege to operate a vehicle during the revocation period and installation during the revocation period of an ignition interlock device on any vehicle operated by the person;
  - (C) Not less than ten days but not more than thirty days imprisonment, of which at least forty-eight hours shall be served consecutively;
  - (D) A surcharge of \$25 to be deposited into the neurotrauma special fund; and
  - (E) A surcharge of up to \$50 if the court so orders, to be deposited into the trauma system special fund;
- (4) In addition to a sentence imposed under paragraphs (1) through (3), any person eighteen years of age or older who is convicted under this section and who operated a

vehicle with a passenger, in or on the vehicle, who was younger than fifteen years of age, shall be sentenced to an additional mandatory fine of \$500 and an additional mandatory term of imprisonment of forty-eight hours; provided that the total term of imprisonment for a person convicted under this paragraph shall not exceed the maximum term of imprisonment provided in paragraph (1), (2), or (3), as applicable. Notwithstanding paragraphs (1) and (2), the revocation period for a person sentenced under this paragraph shall be not less than two years; and

(5) If the person demonstrates to the court that the person:

(A) Does not own or have the use of a vehicle in which the person can install an ignition interlock device during the revocation period; or

(B) Is otherwise unable to drive during the revocation period,

the person shall be absolutely prohibited from driving during the period of applicable revocation provided in paragraphs (1) to (4); provided that the court shall not issue an ignition interlock permit pursuant to subsection (i) and the person shall be subject to the

penalties provided by section 291E-62 if the person drives during the applicable revocation period."

### COMMENT

**Act 50, Session Laws of Hawaii 2018, amended section 302A-805, HRS, to add permits to the licensing requirements for public school teachers. However, Act 50 did not make conforming amendments to the title of section 302A-805, HRS, which currently references only teacher licenses. Accordingly, the title of section 302A-805, HRS, should be amended by adding a reference to teacher permits.**

SECTION 12. Section 302A-805, Hawaii Revised Statutes, is amended by amending its title to read as follows:

**"§302A-805 Teachers; license or permit required; renewals."**

### COMMENT

**The definition of "manufactured cannabis product" in section 329D-1, HRS, refers to "section 329D-10(a)(9)" regarding products specified by the Department of Health. However, Act 116, Session Laws of Hawaii 2018, amended section 329D-10(a) by, among other things, redesignating paragraph (9) as paragraph (10). Accordingly, the definition of "manufactured cannabis product" in section 329D-1, HRS, should be amended by changing "section 329D-10(a)(9)" to "section 329D-10(a)(10)".**

SECTION 13. Section 329D-1, Hawaii Revised Statutes, is amended by amending the definition of "manufactured cannabis product" to read as follows:

**"Manufactured cannabis product" means any capsule, lozenge, oil or oil extract, tincture, ointment or skin lotion, pill, transdermal patch, or pre-filled and sealed container used**

to aerosolize and deliver cannabis orally, such as an inhaler or nebulizer, that has been manufactured using cannabis, or any other products as specified by the department pursuant to section [~~329D-10(a)(9).~~] 329D-10(a)(10)."

### COMMENT

**Section 352D-4(2), HRS, refers to "youth adults at risk". However, the term "youth adults at risk" is not used anywhere else in chapter 352D, HRS. This was brought to the attention of the Department of the Attorney General, which advised that the correct reference is "youth at risk", which is defined in section 352D-3, HRS. Accordingly, section 352D-4, HRS, should be amended by changing "youth adults at risk" to "youth at risk". Additional technical nonsubstantive amendments are made for purposes of style, clarity, and consistency.**

SECTION 14. Section 352D-4, Hawaii Revised Statutes, is amended to read as follows:

**"§352D-4 Establishment; purpose.** There is established within the department of human services for administrative purposes only the office of youth services. The office of youth services is established to provide services and programs for youth at risk under one umbrella agency in order to facilitate optimum service delivery, to prevent delinquency, and to reduce the incidence of recidivism among juveniles through the provision of prevention, rehabilitation, and treatment services. The office shall also be responsible for program planning and development, intake/assessment, oversight, as well as consultation, technical assistance, and staff training relating to the delivery of services.

The office shall provide a continuum of services as follows:

- (1) An integrated intake/assessment and case management system;
- (2) The necessary educational, vocational, social counseling and mental health services; provided that the department of education shall be the only provider of standards-based education services for all youth ~~[adults]~~ at risk and young adults identified with special education needs or actively receiving special education services, in accordance with the Individuals with Disabilities Education Act (20 U.S.C. ~~[section]~~ 1400 et seq.) and all applicable federal and state educational requirements;
- (3) Community-based shelter and residential facilities;
- (4) Oversight of youth services; and
- (5) Other programs ~~[which]~~ that encourage the development of positive self-images and useful skills in ~~[such youth.]~~ youths.

The executive director of the office of youth services shall submit annual reports to the legislature no later than twenty days prior to the convening of each regular session, reporting the services or programs funded pursuant to this

section, the number of [~~youth~~] youths served by each service or program, and the results of the services or programs funded.

To this end, on July 1, 1991, this office shall assume the responsibilities for juvenile corrections functions, which were temporarily placed in the department of corrections pursuant to Act 338, Session Laws of Hawaii 1987. These functions shall include[~~7~~] but not be limited to[~~7~~] all responsibilities, under chapter 352, for the Hawaii youth correctional facilities."

## COMMENT

**Section 431:4-101, HRS, sets forth definitions as numbered paragraphs. The numbered paragraph designations should be deleted and the definitions placed in alphabetical order to conform to the customary drafting convention for purposes of clarity and consistency. Additional technical nonsubstantive amendments are made for purposes of style and consistency.**

SECTION 15. Section 431:4-101, Hawaii Revised Statutes, is amended to read as follows:

**"~~§431:4-101~~ Definitions.** As used in this article:

[~~(1) Surplus funds means the excess of the insurer's assets over its liabilities, including its capital stock as a liability.~~

~~(2) Available surplus]~~ "Available surplus" means the excess over the minimum amount of surplus required for the classes of insurance the insurer is authorized to transact.

[~~(3) Equity security]~~ "Equity security" means any stock or similar security; any security convertible, with or without

consideration, into such a security, or carrying any warrant or right to subscribe to or purchase such a security; any such warrant or right; or any security [~~which~~] that the commissioner, by [~~such~~] rules and regulations as the commissioner may prescribe in the public interest or for the protection of investors [~~designate~~], designates as an equity security.

"Surplus funds" means the excess of the insurer's assets over its liabilities, including its capital stock as a liability."

#### COMMENT

**Section 431:4-119, HRS, includes subsection (a) and (b) designations. However, the provisions of subsection (b) appear to be a direct continuation and necessary component of the criteria set forth in subsection (a)(1) and (2) for the dissolution of a proposed insurer or corporation by the Insurance Commissioner. Accordingly, section 431:4-119, HRS, should be amended by deleting its subsection designations and incorporating the contents of subsection (b) into the criteria set forth in subsection (a)(1) and (2). Additional technical nonsubstantive amendments are made for purposes of style, clarity, and consistency.**

SECTION 16. Section 431:4-119, Hawaii Revised Statutes, is amended to read as follows:

**"§431:4-119 Refund upon failure to complete or qualify or upon revocation of solicitation permit. [-a)]** The commissioner shall withdraw all funds held in escrow and refund to subscribers or applicants all sums paid in on stock subscriptions, less that part of [~~such~~] the sums paid in on subscriptions as has been allowed and used for promotion and

organization expenses, and all sums paid in on insurance applications, and shall dissolve the proposed insurer or corporation if:

(1) The proposed insurer or corporation [~~fails~~]:

(A) Fails to complete its organization and obtain full payment for subscriptions and applications; and

~~[-(2) It fails]~~ (B) Fails to secure its certificate of authority before expiration of the solicitation permit, if an insurer; or

~~[-(2)]~~ (2) The commissioner revokes the solicitation permit."

#### COMMENT

**Section 431:4-213, HRS, sets forth paragraph designations, but is not formatted to reflect the paragraph designations. Section 431:4-213, HRS, should be amended to conform to the customary drafting convention for purposes of clarity and consistency. Also, the reference in paragraph (2) to the "United States Securities and Exchange Commissioner" should be changed to "United States Securities and Exchange Commission" to correct what appears to be an inadvertent clerical error and for consistency with the same reference made in the similar provisions of paragraph (1). Furthermore, the reference to "item (3)" in paragraph (3) seems to refer to itself. If this is accurate, then the reference to "item (3)" should be changed to "this paragraph" for clarity. Additional technical nonsubstantive amendments are made for purposes of style, clarity, and consistency.**

SECTION 17. Section 431:4-213, Hawaii Revised Statutes, is amended to read as follows:

"§431:4-213 **Exempt equity securities.** Section 431:4-208 to section 431:4-210 shall not apply to equity securities of a domestic stock insurance company if:

- (1) [~~if the~~] The equity securities of [~~such~~] the company have been registered with the United States Securities and Exchange Commission under section 12 of the Securities Exchange Act of 1934, as amended[~~7~~];
- (2) [~~if the~~] The equity securities of the company are required to be registered with the United States Securities and Exchange [~~Commissioner~~] Commission under section 12 of the Securities Exchange Act of 1934, as amended[~~7~~]; or
- (3) [~~if the~~] The domestic stock insurance company [~~shall~~] does not have any class of its equity securities held of record by at least one hundred persons on the last business day of the year next preceding the year in which equity securities of the company would be subject to [~~section~~] sections 431:4-208 to [~~section~~] 431:4-210 [~~except~~] but for [~~item (3).~~] this paragraph."

#### COMMENT

**Section 431:5-201, HRS, should be amended to make various technical nonsubstantive amendments for purposes of style, clarity, and consistency.**

SECTION 18. Section 431:5-201, Hawaii Revised Statutes, is amended to read as follows:

**"§431:5-201 Qualified assets.** In any determination of the financial condition of an insurer, only ~~[such]~~ the assets ~~[as are]~~ owned by the insurer~~[,]~~ and ~~[which]~~ that consist of the following may be used:

- (1) Cash in the possession of the insurer or in transit under its control, and the true positive balance of any deposit of the insurer in a solvent bank or trust company;
- (2) Investments, securities, properties, and secured loans acquired or held in accordance with article 6, and in connection therewith the following items:
  - (A) Interest due or accrued on any bond or evidence of indebtedness ~~[which]~~ that is not in default and ~~[which]~~ that is not valued on a basis including accrued interest~~[,]~~ ;
  - (B) Declared and unpaid dividends on stocks and shares unless the amount has otherwise been allowed as an asset~~[,]~~ ;
  - (C) Interest due or accrued upon a collateral loan in an amount not to exceed six months' interest thereon~~[,]~~ ;
  - (D) Interest due or accrued on:

- (i) Deposits in solvent banks, trust companies, and financial investment companies; and
  - (ii) Other assets if [~~such~~] the interest is in the judgment of the commissioner a collectible asset[~~-~~];
- (E) Interest due or accrued on a mortgage loan, in an amount not exceeding in any event the amount, if any, of the excess of the value of the property less delinquent taxes thereon over the unpaid principal; provided that interest due and unpaid for a period in excess of six months shall not be allowed as an asset[~~-~~]; or
- (F) Rent due or accrued on real property if [~~such~~] the rent is not in arrears for more than three months, unless the rent is secured by property held in the name of the tenant and conveyed to the insurer as collateral[~~-~~];
- (3) Premium notes, policy loans, and other policy assets and liens on policies of life insurance, in an amount not exceeding the legal reserve and other policy liabilities carried on each individual policy;
- (4) The net amount of uncollected and deferred premiums on an effective date item basis and annuity

- considerations in the case of a life insurer,  
corresponding to the basis on which reserves are held;
- (5) Producer balances or uncollected premiums, other than for life insurance and other receivables, not more than ninety days past due, less commissions payable thereon; provided that the foregoing limitation shall not apply to premiums and other receivables payable directly or indirectly by the United States government or any of its instrumentalities;
- (6) Installment premiums other than life insurance premiums, in accordance with rules adopted by the commissioner consistent with practice formulated or adopted by the National Association of Insurance Commissioners;
- (7) Notes and like written obligations not past due, taken for premiums other than life insurance premiums, on policies permitted to be issued on such basis, to the extent of the unearned premium reserves carried thereon and unless otherwise required by rules adopted by the commissioner;
- (8) (A) The full amount of reinsurance recoverable by a ceding insurer from a solvent reinsurer not disqualified to take [~~such~~] the reinsurance under this code; or

- (B) So much of reinsurance recoverable from [~~such~~ the reinsurer as does not exceed the liabilities carried by the ceding insurer for amounts withheld under a reinsurance treaty with [~~such~~ the reinsurer as security for the payment of obligations thereunder if [~~such~~ the funds are held subject to withdrawal by, and under the control of, the ceding insurer in the case of a reinsurer disqualified under this code;
- (9) Amounts receivable by an assuming insurer representing funds withheld by a solvent ceding insurer under a reinsurance treaty;
- (10) Deposits or equities recoverable from underwriting associations and reinsurance funds, or from any suspended banking institution, to the extent deemed by the commissioner available for the payment of losses and claims and at values to be determined by the commissioner;
- (11) Electronic data hardware;
- (12) Other assets not inconsistent with the foregoing provisions, deemed by the commissioner available for the payment of losses and claims; and
- (13) All assets, whether or not consistent with the provisions of this code, as may be allowed pursuant to

the annual statement form provided for in section  
431:3-301."

### COMMENT

**Section 431:7-203(c)(2), HRS, contains subparagraphs that are not properly formatted. Specifically, it appears that the language in subparagraph (B) that follows the phrase "A determination made by the commissioner" should be reformatted so that the language applies to both subparagraphs (A) and (B). Additional technical nonsubstantive amendments are made for purposes of style, clarity, and consistency.**

SECTION 19. Section 431:7-203, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

"(c) This subsection shall apply to a refund for an overpayment of tax.

- (1) If the tax return as filed by a taxpayer shows the amount already paid, whether or not on the basis of installments, exceeds the amount determined to be the correct amount of the tax due, and the taxpayer requests a refund of the overpayment, the amount of overpayment together with interest, if any, shall be refunded in the manner provided in subsection (a). The interest shall be allowed and paid at the rate of two-thirds of one per cent for each calendar month or fraction thereof, beginning with the first calendar day after the due date of the return or, if the return is filed after the prescribed due date, the first

month following the month the return is received, and continuing until the date that the commissioner approves the refund voucher. If the commissioner approves the refund voucher within ninety days from the due date or the date the return is received, whichever is later, and the comptroller of the State sends the taxpayer a refund warrant within forty-five days from the date of the commissioner's approval, no interest on the overpayment will be allowed or paid. However, if either the commissioner or the comptroller exceeds the time allowed herein, interest will be computed from the first calendar day after the due date of the return or from the first month following the month the return is received by the commissioner if the return is filed after the prescribed due date, until the date that the comptroller sends the refund warrant to the taxpayer.

- (2) If any overpayment of taxes results or arises from:
- (A) The taxpayer filing an amended return~~[7]~~; or  
[from]
  - (B) A determination made by the commissioner, and ~~such~~ the overpayment is not shown on the original return as filed by the taxpayer, interest on the overpayment shall be allowed and paid from the

first calendar day after the due date of the original return or, if the original return is filed after the prescribed due date, the first month following the month the return is received, to the date that the commissioner signs the refund voucher. If the comptroller does not send the refund warrant to the taxpayer within forty-five days after the commissioner's approval, interest will continue until the date that the comptroller sends the refund warrant to the taxpayer.

- (3) In the case of credit, interest shall be allowed and paid from the first calendar day after the due date of the return, the first month following the month the return is received by the commissioner, or the date of payment, whichever is later, to the date the credit is taken; provided that the commissioner may make a refund of any credit to a taxpayer where the taxpayer has no underpayment against which to apply the credit."

#### **COMMENT**

**Section 431:10D-118(a)(2) and (a)(5), HRS, set forth subparagraph designations, but are not formatted to reflect the subparagraph designations. Section 431:10D-118(a)(2) and (a)(5), HRS, should be amended to conform to the customary drafting convention for purposes of clarity and consistency.**

**Additional technical nonsubstantive amendments are made for purposes of style, clarity, and consistency.**

SECTION 20. Section 431:10D-118, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) A domestic life insurance company may~~[7]~~ establish, by or pursuant to resolution of its board of directors, ~~[establish]~~ one or more separate accounts~~[7]~~ and may allocate thereto amounts, including without limitation proceeds applied under optional modes of settlement or under dividend options, to provide for life insurance or annuities (and benefits incidental thereto), payable in fixed or variable amounts or both, subject to the following:

- (1) The income, gains, and losses, realized or unrealized, from assets allocated to a separate account shall be credited to or charged against the account, without regard to other income, gains, or losses of the company~~[7]~~;
- (2) Except as hereinafter provided, amounts allocated to any separate account and accumulations thereon may be invested and reinvested without regard to any requirements or limitations prescribed by the laws of this State governing the investments of life insurance companies; provided that to the extent that the company's reserve liability with regard to:

(A) [~~benefits~~] Benefits guaranteed as to amount and duration[~~7~~]; and

(B) [~~funds~~] Funds guaranteed as to principal amount or stated rate of interest,

is maintained in any separate account, a portion of the assets of [~~such~~] the separate account at least equal to [~~such~~] the reserve liability shall be[~~7~~] invested, except as the commissioner may otherwise approve, [~~invested~~] in accordance with the laws of this State governing the investments of life insurance companies. The investments in [~~such~~] the separate account or accounts shall not be taken into account in applying the investment limitations otherwise applicable to the investments of the company[~~7~~];

(3) Unless otherwise approved by the commissioner, assets allocated to a separate account shall be valued at their market value on the date of valuation, or if there is no readily available market, then as provided under the terms of the contract or the rules or other written agreement applicable to [~~such~~] the separate account; provided that unless otherwise approved by the commissioner, a portion of the assets of [~~such~~] the separate account equal to the company's reserve liability with regard to the guaranteed benefits and

funds referred to in [+]subparagraphs[+] (A) and (B) of subsection (a)(2), if any, shall be valued in accordance with the rules otherwise applicable to the company's assets[-];

(4) Amounts allocated to a separate account in the exercise of the power granted by this section shall be owned by the company, and the company shall not be, nor hold itself out to be, a trustee with respect to [~~such~~] those amounts. That portion of the assets of any [~~such~~] separate account equal to the reserves and other contract liabilities with respect to [~~such~~] the account shall not be chargeable with liabilities arising out of any other business the company may conduct[-];

(5) No sale, exchange, or other transfer of assets may be made by a company between any of its separate accounts or between any other investment account and one or more of its separate accounts unless, in case of a transfer into a separate account, [~~such~~] the transfer is made solely to establish the account or to support the operation of the contracts with respect to the separate account to which the transfer is made, and unless [~~such~~] the transfer, whether into or from a separate account, is made by:

- (A) [~~by a~~] A transfer of cash~~[ ]~~; or
- (B) [~~by a~~] A transfer of securities having a readily determinable market value~~[ ]~~; provided that [~~such~~] the transfer of securities is approved by the commissioner.

The commissioner may approve other transfers among [~~such~~] the accounts~~[ ]~~ if, in the commissioner's opinion, [~~such~~] the transfers would not be inequitable~~[ ]~~; and

- (6) To the extent [~~such~~] the company deems it necessary to comply with any applicable federal or state laws, [~~such~~] the company, with respect to any separate account, including without limitation any separate account [~~which~~] that is a management investment company or a unit investment trust, may provide [~~for~~] persons having an interest [~~therein~~] in the account with appropriate voting and other rights and special procedures for the conduct of the business of [~~such~~] the account, including without limitation special rights and procedures relating to investment policy, investment advisory services, selection of independent public accountants, and the selection of a committee, the members of which need not be otherwise affiliated

with ~~[such]~~ the company, to manage the business of  
~~[such]~~ the account."

## COMMENT

**Section 431:10H-205(b), (c), (d), and (k), HRS, separately set forth definitions of various terms that are used in the section. To conform to the customary drafting convention, section 431:10H-205, HRS, should be amended by incorporating the definitions in subsections (b), (c), (d), and (k) into a single subsection at the end of the section. Additional technical nonsubstantive amendments are made for purposes of style, clarity, and consistency.**

SECTION 21. Section 431:10H-205, Hawaii Revised Statutes, is amended to read as follows:

"~~[+]§431:10H-205[+]~~ **Continuation or conversion.** (a)

Group long-term care insurance issued in this State beginning July 1, 2000, shall provide covered individuals with a basis for continuation or conversion of coverage.

(b) ~~[For purposes of this section, "a basis for continuation of coverage" means a policy provision that maintains coverage under the existing group policy when the coverage would otherwise terminate and which is subject only to the continued timely payment of premium when due.]~~ Group policies that restrict provision of benefits and services to, or contain incentives to use, certain providers or facilities may provide continuation benefits that are substantially equivalent to the benefits of the existing group policy. The commissioner shall make a determination as to the substantial equivalency of

benefits, and in doing so, shall take into consideration the differences between managed care and non-managed care plans, including but not limited to [7] provider system arrangements, service availability, benefit levels, and administrative complexity.

~~[(c) For purposes of this section, "a basis for conversion of coverage" means a policy provision that entitles an individual, whose coverage under the group policy would otherwise terminate or has been terminated for any reason including discontinuance of the group policy in its entirety or with respect to an insured class, and who has been continuously insured under the group policy or any group policy that it replaced for at least six months immediately prior to termination shall be entitled to the issuance of a converted policy by the insurer under whose group policy the individual is covered, without evidence of insurability.]~~

~~(d) For purposes of this section, "converted policy" means an individual policy of long term care insurance providing benefits identical to or benefits determined by the commissioner to be substantially equivalent to or in excess of those provided under the group policy from which conversion is made.]~~

(c) Where the group policy from which conversion is made restricts provision of benefits and services to, or contains incentives to use, certain providers or facilities, the

commissioner, in making a determination as to substantial equivalency of benefits, shall take into consideration the differences between managed care and non-managed care plans, including but not limited to~~[7]~~ provider system arrangements, service availability, benefit levels, and administrative complexity.

~~[(e)]~~ (d) Written application for the converted policy shall be made and the first premium, if any, shall be paid as directed by the insurer no later than thirty-one days after termination of coverage under the group policy. The converted policy shall be issued effective on the day following the termination of coverage under the group policy~~[7]~~ and shall be renewable annually.

~~[(f)]~~ (e) Unless the group policy from which conversion is made replaced previous group policy coverage, the premium for the converted policy shall be calculated on the basis of the insured's age at inception of coverage under the group policy from which conversion is made. Where the group policy from which conversion is made replaced a previous group coverage, the premium for the converted policy shall be calculated on the basis of the insured's age at inception of coverage under the group policy replaced.

~~[(g)]~~ (f) Continuation of coverage or issuance of a converted policy shall be mandatory, except where:

(1) Termination of group coverage resulted from an individual's failure to make any required payment of premium or contribution when due; or

(2) The terminating coverage is replaced not later than thirty-one days after termination by another group coverage [~~effective on the day following the termination of coverage~~]:

(A) Effective on the day following the termination of coverage;

~~[(A)]~~ (B) Providing benefits, or benefits determined by the commissioner to be, identical or substantially equivalent to, or in excess of, those provided by the terminating coverage; and

~~[(B)]~~ (C) The premium for which is calculated in a manner consistent with the requirements of subsection ~~[(f)].~~ (e).

~~[(h)]~~ (g) Notwithstanding any other provision of this section, a converted policy issued to an individual who at the time of conversion is covered by another long-term care insurance policy that provides benefits on the basis of incurred expenses~~[(r)]~~ may contain a provision that results in a reduction of benefits payable if the benefits provided under the additional coverage, together with the full benefits provided by the converted policy, would result in payment of more than one

hundred per cent of incurred expenses. The provision shall only be included in the converted policy if the converted policy also provides for a premium decrease or refund [~~which~~] that reflects the reduction in benefits payable.

[~~(i)~~] (h) The converted policy may provide that the benefits payable under the converted policy, together with the benefits payable under the group policy from which conversion is made, shall not exceed those that would have been payable had the individual's coverage under the group policy remained in force and effect.

[~~(j)~~] (i) Notwithstanding any other provision of this section, an insured individual whose eligibility for group long-term care coverage is based upon the individual's relationship to another person shall be entitled to continuation of coverage under the group policy upon termination of the qualifying relationship by death or dissolution of marriage or reciprocal beneficiary relationship.

[~~(k)~~] (j) For purposes of this section [~~"managed care plan" is a health care or assisted living arrangement designed to coordinate patient care or control costs through utilization review, case management, or use of specific provider networks.~~]:

"A basis for continuation of coverage" means a policy provision that maintains coverage under the existing group policy when the coverage would otherwise terminate and that is

subject only to the continued timely payment of premium when due.

"A basis for conversion of coverage" means a policy provision that entitles an individual:

- (1) Whose coverage under the group policy would otherwise terminate or has been terminated for any reason, including discontinuance of the group policy in its entirety or with respect to an insured class; and
- (2) Who has been continuously insured under the group policy or any group policy that it replaced for at least six months immediately prior to termination,

to the issuance of a converted policy by the insurer under whose group policy the individual is covered, without evidence of insurability.

"Converted policy" means an individual policy of long-term care insurance providing benefits identical to, or benefits determined by the commissioner to be substantially equivalent to or in excess of, those provided under the group policy from which conversion is made.

"Managed care plan" means a health care or assisted living arrangement designed to coordinate patient care or control costs through utilization review, case management, or use of specific provider networks."

## COMMENT

**Section 431:14-116.6(d)(2), HRS, sets forth a list of three separate items for insurer credit amounts based upon the number of years involved. Section 431:14-116.6(d)(2), HRS, should be amended by adding subparagraph designations for clarity and consistency with the customary drafting convention. Additional technical nonsubstantive amendments are made for purposes of style, clarity, and consistency.**

SECTION 22. Section 431:14-116.6, Hawaii Revised Statutes, is amended by amending subsection (d) to read as follows:

"(d) The plan shall provide a formula allowing an insurer who voluntarily removes an insured risk from the residual market to be eligible for a take-out credit applicable against that insurer's residual market assessment base levied by the plan. The terms and conditions of the take-out credit shall be as follows:

- (1) An insurer shall receive a credit against its assessment base for the amount of the annual premium reflected in [~~its~~] the insurer's financial statements for the respective calendar year. This reported premium shall be stated on the same financial basis as the premiums that are reported for use in determining each insurer's residual market assessment base and shall be subject to subsequent adjustments and audits;
- (2) The credit applicable to the residual market assessment base shall be as follows:

- (A) First year: \$2 credit for every \$1 of premium removed;
- (B) Second year: \$1 credit for every \$1 of premium removed; and
- (C) Third year: \$1 credit for every \$1 of premium removed;
- (3) If the insurer keeps the insured risk out of the residual market for three years, that insurer shall receive credit for each of three years. If the insurer does not write the business for three years, ~~[it]~~ the insurer shall receive credit only for the period of time that ~~[it]~~ the insurer covered the risk in the voluntary market. Under no circumstances shall an insurer receive credit for risks returned to the residual market within one policy year;
- (4) An insurer shall not return an insured taken from the residual market to the residual market after one year of coverage to subsequently reissue insurance to the insured to obtain the higher credit established for the first year of residual market removal in paragraph ~~[-(2)-]~~ (2) (A);
- (5) There shall be no maximum limit on credits received; provided that the credits shall not reduce the insurer's assessment base below zero;

- (6) The kind and amount of coverage to be offered to voluntary risks shall not be less than those afforded by the policy being replaced, unless the kinds and amounts are refused by the insureds;
- (7) The commissioner may approve loss sensitive rating plans for larger companies that generate more than \$150,000 in insurance premiums; and
- (8) The commissioner may adjust or terminate the credit program depending on market conditions~~[7]~~; provided that any adjustment or termination shall not affect any credit earned prior to the adjustment or termination."

### COMMENT

**Section 431:15-106(a), HRS, includes two definitions of terms used in section 431:15-106, HRS. Section 431:15-106, HRS, should be amended by removing the definitions from subsection (a) and redesignating the definitions as a new subsection (e) to conform to the customary drafting convention. Additional technical nonsubstantive amendments are made for purposes of style and clarity.**

SECTION 23. Section 431:15-106, Hawaii Revised Statutes, is amended to read as follows:

**"§431:15-106 Cooperation of officers and employees.** (a) Any officer, manager, director, trustee, owner, employee, or agent of any insurer, or any other persons with authority over~~[7]~~ or in charge of any segment of the insurer's affairs,

shall cooperate with the commissioner or the receiver in any proceeding under this article or any investigation preliminary to the proceeding. ~~[The term person as used in this section, shall include any person who exercises control directly or indirectly over activities of an insurer through any holding company or other affiliate of the insurer. To cooperate shall include, but shall not be limited to the following:~~

- ~~(1) To reply promptly in writing to any inquiry from the commissioner or the receiver requesting such a reply, and~~
- ~~(2) To make available and deliver to the commissioner or receiver any books, accounts, documents, or other records, or information or property of or pertaining to the insurer and in its possession, custody or control.]~~

(b) No person shall obstruct or interfere with the commissioner in the conduct of any delinquency proceeding or any investigation preliminary or incidental ~~[thereto.]~~ to the proceeding.

(c) This section does not make it illegal to resist by legal proceedings the petition for liquidation or other delinquency proceedings, or other orders.

(d) Any person included within subsection (a) who fails to cooperate with the commissioner, or any person who obstructs or

interferes with the commissioner in the conduct of any delinquency proceeding or any investigation preliminary or incidental [~~thereto,~~] to the proceeding, or who violates any order the commissioner issued validly under this article may:

- (1) Be sentenced to pay a fine not exceeding \$10,000 or to be imprisoned for a term of not more than one year, or both; or
- (2) After a hearing, be subject to the imposition by the commissioner, of a civil penalty not to exceed \$10,000 and shall be subject [~~further~~] to the revocation or suspension of any insurance licenses issued by the commissioner.

(e) As used in this section:

"Cooperate" includes but is not limited to the following:

- (1) To reply promptly in writing to any inquiry from the commissioner or the receiver requesting a reply; and
- (2) To make available and deliver to the commissioner or receiver any books, accounts, documents, or other records, or information or property of or pertaining to the insurer and in its possession, custody, or control.

"Person" includes any person who exercises control directly or indirectly over activities of an insurer through any holding company or other affiliate of the insurer."

## COMMENT

**Section 431:20-102, HRS, sets forth definitions as numbered paragraphs. The numbered paragraph designations should be deleted to conform to the customary drafting convention for purposes of clarity and consistency. Further, subparagraph and clause designations within the definitions should be changed to paragraphs and subparagraphs to reflect the deletion of the paragraph designations. Additional technical nonsubstantive amendments are made for the purpose of style.**

SECTION 24. Section 431:20-102, Hawaii Revised Statutes, is amended to read as follows:

**"§431:20-102 Definitions.** For the purposes of this article:

~~[(1) Controlled escrow company]~~ "Controlled escrow company" means each person engaged in the business of handling escrows of real property transactions in connection with which title policies are issued by a title insurer, which person:

~~[(A)]~~ (1) If an artificial person, directly or indirectly, is controlled by or controls, or is under common control with, a title insurer~~[-]~~ or is controlled by or controls, or is under common control with, an underwritten title company; or

~~[(B)]~~ (2) If a natural person, is employed by or controlled by a title insurer~~[-]~~ or by an underwritten title company.

~~[(2) Title insurance business or business of title insurance]~~ "Title insurance business" or "business of title insurance" means:

~~[(A)]~~ (1) Issuing as insurer or offering to issue as insurer a title insurance policy; or

~~[(B)]~~ (2) Transacting or proposing to transact by a title insurer any of the following activities when conducted or performed in contemplation of the issuance of a title insurance policy:

~~[(i)]~~ (A) Soliciting or negotiating the issuance of a title insurance policy;

~~[(ii)]~~ (B) Guaranteeing, warranting, or otherwise insuring the correctness of title searches;

~~[(iii)]~~ (C) Handling of escrows, settlements, or closings;

~~[(iv)]~~ (D) Execution of title insurance policies;

~~[(v)]~~ (E) Effecting contracts of reinsurance;

~~[(vi)]~~ (F) Abstracting, searching, or examining titles; or

~~[(vii)]~~ (G) Doing or proposing to do any business in substance equivalent to any of the foregoing in a manner designed to evade the provisions of this article.

~~[(3) Title insurance policy or policy]~~ "Title insurance policy" or "policy" means a contract issuing or indemnifying against loss or damage arising from any or all of the following existing on or before the policy date:

~~[(A)]~~ (1) Defects in, liens against, or encumbrances on the insured title;

~~[(B)]~~ (2) Unmarketability of the insured title; or

~~[(C)]~~ (3) Invalidity or unenforceability of liens or encumbrances on the stated property. Title insurance policy does not include a preliminary report, binder, commitment, or abstract.

~~[(4) Title insurer or insurer]~~ "Title insurer" or "insurer" means a company organized under laws of this State for the purpose of transacting as insurer the business of title insurance, and any foreign or alien title insurer engaged in this State in the business of title insurance as insurer.

~~[(5) Underwritten title company]~~ "Underwritten title company" means each person engaged in the business of preparing lien or title searches, title examinations, certificates of searches of title, or abstracts of title upon the basis of which a title insurer regularly writes title policies."

## COMMENT

**Section 432:1-601, HRS, sets forth paragraph designations, but is not formatted to reflect the paragraph designations. Section 432:1-601, HRS, should be amended to conform to the customary drafting convention for purposes of clarity and consistency. Additional technical nonsubstantive amendments are made for purposes of style and clarity.**

SECTION 25. Section 432:1-601, Hawaii Revised Statutes, is amended to read as follows:

**"§432:1-601 Contract limitations for handicapped children and children with intellectual disabilities.** All individual and group hospital or medical service plan contracts, delivered or issued for delivery in this State after May 8, 1968, [~~which~~] that provide that coverage of a dependent child shall terminate upon attainment of the limiting age for dependent children specified in the contract shall also provide in substance that attainment of [~~such~~] the limiting age shall not operate to terminate the coverage of [~~such~~] the child while the child is and continues to be both:

- (1) [~~incapable~~] Incapable of self-sustaining employment by reason of intellectual disability or physical handicap[~~τ~~]; and
- (2) [~~chiefly~~] Chiefly dependent upon the policyholder, subscriber,l or employee,l as the case may be, for support and maintenance[~~τ~~];

provided that proof of [~~such~~] the child's incapacity and dependency is furnished to the hospital service or medical indemnity association by the policyholder, subscriber, or employee within thirty-one days of the child's attainment of the limiting age and subsequently as may be required by [~~such~~] the association."

### COMMENT

**Section 432:2-103, HRS, sets forth definitions as numbered paragraphs. The numbered paragraph designations should be deleted to conform to the customary drafting convention for purposes of clarity and consistency. Additional technical nonsubstantive amendments are made for purposes of style, clarity, and consistency.**

SECTION 26. Section 432:2-103, Hawaii Revised Statutes, is amended to read as follows:

**"§432:2-103 Definitions.** For the purposes of this article:

~~[(1) Benefit contract shall mean]~~ "Benefit contract" means the agreement for provision of benefits authorized by section 432:2-401, as that agreement is described in section 432:2-404(a).

~~[(2) Benefit member shall mean]~~ "Benefit member" means an adult member who is designated by the laws or rules of the society to be a benefit member under a benefit contract.

~~[(3) Certificate shall mean]~~ "Certificate" means the document issued as written evidence of the benefit contract.

~~[(4) Commissioner]~~ "Commissioner" means the insurance commissioner of this State.

~~[(5) Laws shall mean]~~ "Laws" means the society's articles of incorporation, constitution, and bylaws, however designated.

~~[(6) Lodge shall mean]~~ "Lodge" means subordinate member units of the society, known as camps, courts, councils, branches, or by any other designation.

~~[(7) Premiums shall mean]~~ "Premiums" means premiums, rates, dues, or other required contributions by whatever name known, which are payable under the certificate.

~~[(8) Rules shall mean]~~ "Rules" means all rules, regulations, or resolutions adopted by the supreme governing body or board of directors ~~[which]~~ that are intended to have general application to the members of the society.

~~[(9) Society shall mean]~~ "Society" means a fraternal benefit society, unless otherwise indicated."

## COMMENT

**Section 480E-10(a)(18), HRS, sets forth the following notice language: "IMPORTANT INFORMATION FROM YOUR [name of lender or servicer] ABOUT THIS OFFER." The inclusion of the term "your" in the notice language appears to be extraneous and grammatically incorrect. Accordingly, the term "your" should be deleted from the notice language. An additional technical nonsubstantive amendment is made to section 480E-10(a)(2)(B), HRS, for the purpose of style.**

SECTION 27. Section 480E-10, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

- "(a) A distressed property consultant shall not:
- (1) Represent, expressly or by implication, in connection with the advertising, marketing, promotion, offering for sale, or performance of any mortgage assistance relief service, that a distressed property owner cannot or should not contact or communicate with the distressed property owner's lender or servicer;
  - (2) Misrepresent, expressly or by implication, any material aspect of any mortgage assistance relief service, including but not limited to:
    - (A) The likelihood of negotiating, obtaining, or arranging any represented service or result, such as those set forth in the definition of mortgage assistance relief service;
    - (B) The amount of time it will take the distressed property consultant to accomplish any represented service or result, such as those set forth in the definition of [~~mortgage assistance relief service;~~] "mortgage assistance relief service";
    - (C) That a mortgage assistance relief service is affiliated with, endorsed or approved by, or otherwise associated with:
      - (i) The United States government;
      - (ii) Any governmental homeowner assistance plan;

- (iii) Any federal, state, or local government agency, unit, or department;
  - (iv) Any nonprofit housing counselor agency or program;
  - (v) The maker, holder, or servicer of the consumer's residential loan; or
  - (vi) Any other individual, entity, or program;
- (D) The distressed property owner's obligation to make scheduled periodic payments or any other payments pursuant to the terms of the distressed property owner's residential loan;
- (E) The terms or conditions of the distressed property owner's residential loan, including but not limited to the amount of the debt owed;
- (F) The terms or conditions of any refund, cancellation, exchange, or repurchase policy for any mortgage assistance relief service, including but not limited to the likelihood of obtaining a full or partial refund, or the circumstances in which a full or partial refund will be granted, for a mortgage assistance relief service;
- (G) That the distressed property consultant has completed the represented services or has a right

to claim, demand, charge, collect, or receive payment or other consideration;

- (H) That the distressed property owner will receive legal representation;
- (I) The availability, performance, cost, or characteristics of any alternative to for-profit mortgage assistance relief services through which the distressed property owner can obtain mortgage assistance relief, including negotiating directly with the residential loan holder or servicer, or using any nonprofit housing counselor agency or program;
- (J) The amount of money or the percentage of the debt amount that a distressed property owner may save by using any mortgage assistance relief service;
- (K) The total cost to purchase any mortgage assistance relief service; or
- (L) The terms, conditions, or limitation of any offer of mortgage assistance relief the distressed property consultant obtains from the distressed property owner's residential loan holder or servicer, including the time period in which the distressed property owner must decide to accept the offer;

- (3) Make any representation, expressly or by implication, about the benefits, performance, or efficacy of any mortgage assistance relief service unless, at the time such representation is made, the provider possesses and relies upon competent and reliable evidence that substantiates that the representation is true. For the purposes of this paragraph, "competent and reliable evidence" means tests, analyses, research, studies, or other evidence based on the expertise of professionals in the relevant area, that have been conducted and evaluated in an objective manner by individuals qualified to do so, using procedures generally accepted in the profession to yield accurate and reliable results;
- (4) Conceal any material fact;
- (5) Induce or attempt to induce a distressed property owner to waive any provision of this chapter;
- (6) Make any promise or guarantee not fully disclosed in the distressed property consultant contract;
- (7) Engage or attempt to engage in any activity or act concerning the distressed property not fully disclosed in the distressed property consultant contract;
- (8) Induce or attempt to induce a distressed property owner to engage in any activity or act not fully

disclosed in the distressed property consultant contract;

- (9) Take, ask for, claim, demand, charge, collect, or receive any compensation until after the distressed property consultant has fully performed each service the distressed property consultant contracted to perform or represented would be performed;
- (10) Take, ask for, claim, demand, charge, collect, or receive for any reason, any fee, interest, or any other compensation that exceeds the two most recent monthly mortgage installments of principal and interest due on the loan first secured by the distressed property or the most recent annual real property tax charged against the distressed property, whichever is less;
- (11) Take or ask for a wage assignment, a lien of any type on real or personal property, or other security to secure the payment of compensation. This type of security is void and not enforceable;
- (12) Receive any consideration from any third party in connection with services rendered to a distressed property owner unless the consideration is fully disclosed in the distressed property consultant contract;

- (13) Acquire any interest, directly or indirectly, or by means of a subsidiary or affiliate, in a distressed property from a distressed property owner with whom the distressed property consultant has contracted;
- (14) Require or ask a distressed property owner to sign any lien, encumbrance, mortgage, assignment, or deed unless the lien, encumbrance, mortgage, assignment, or deed is fully described in the distressed property consultant contract, including all disclosures required by this chapter;
- (15) Take any power of attorney from a distressed property owner for any purpose, except to inspect documents concerning the distressed property as allowed by law;
- (16) Advise or instruct a distressed property owner to stop making payments to any lending party if that property owner is not in receipt of a written notice that the property owner's residential loan has been accelerated;
- (17) Fail to disclose, at the time the distressed property consultant furnishes the distressed property owner with the lending party's written offer for mortgage assistance relief, the following information:

"This is an offer of mortgage assistance we obtained from your lender [or servicer]. You may

accept or reject the offer. If you reject the offer, you do not have to pay us. If you accept the offer, you will have to pay us [same amount as disclosed in the distressed property consultant contract] for our services."

The disclosure required by this paragraph shall be made in a clear and prominent manner, on a separate written page, and preceded by the heading:

"IMPORTANT NOTICE: Before buying this service, consider the following information."

The heading shall be in boldface type that is two-point type larger than the type size of the required disclosure;

- (18) Fail to provide, at the time the distressed property consultant furnishes the distressed property owner with the written agreement specified in paragraph (17), a notice from the lending party that describes all material differences between the terms, conditions, and limitations associated with the distressed property owner's current residential loan and the terms, conditions, and limitations associated with the distressed property owner's residential loan if the owner accepts the lending party's offer,

including but not limited to differences in the loan's:

- (A) Principal balance;
- (B) Contract interest rate, including the maximum rate and any adjustable rates, if applicable;
- (C) Amount and number of the owner's scheduled periodic payments on the loan;
- (D) Monthly amounts owed for principal, interest, taxes, and any mortgage insurance on the loan;
- (E) Amount of any delinquent payments owing or outstanding;
- (F) Assessed fees or penalties; and
- (G) Term[+].[+]

The notice required by this paragraph shall be made in a clear and prominent manner, on a separate written page, and preceded by the heading: "IMPORTANT INFORMATION FROM [~~YOUR~~] [name of lender or servicer] ABOUT THIS OFFER." The heading shall be in boldface type that is two-point type larger than the type size of the required disclosure;

- (19) Fail to disclose in the notice specified in paragraph (18), in cases where the offer of mortgage assistance relief obtained by the distressed property consultant from the lending party is a trial residential loan

modification, the terms, conditions, and limitations of the offer, including but not limited to:

- (A) The fact that the distressed property owner may not qualify for a permanent loan modification; and
  - (B) The likely amount of the scheduled periodic payments and any arrears, payments, or fees that the distressed property owner would owe in failing to qualify; or
- (20) File any document in the bureau of conveyances of the State of Hawaii that purports to modify, reduce, eliminate, discharge, contest, or otherwise affect any mortgage, lien, or encumbrance of record without either the express written consent of the lending party or lienholder or a court order permitting or directing the document to be filed, with the exception of a notice of pendency of action or lis pendens."

### **COMMENT**

**Section 501-23, HRS, sets forth form language that states, in part, "and made oath before me, that the statements made therein, so far as made of the signer (or signers) own knowledge are true". The reference in the form language to "signer (or signers) own knowledge" should be changed to "signer's (or signers') own knowledge". Additional technical nonsubstantive amendments are made for the purpose of clarity.**

SECTION 28. Section 501-23, Hawaii Revised Statutes, is amended to read as follows:

**"§501-23 Application, form, and contents.** The application shall be in writing, signed, and sworn to by the applicant or by some person duly authorized in the applicant's behalf. If there is more than one applicant, the application shall be signed and sworn to by, or in behalf of, each. [~~It~~] The application shall contain a description of the land, with a statement of the estate or interest of the applicant in the land. [~~It~~] The application shall state whether the applicant is married, and if married, the name in full of the wife or husband, the time and place of marriage, and the name and office of the officer performing the marriage ceremony; and if unmarried, whether the applicant has been married, and if so, when and how the marriage relation terminated; and if by divorce, when, where, and by what court the divorce was granted. [~~It~~] The application shall also state the name in full and the address of the applicant and also the names and addresses of the adjoining owners and occupants, if known; and if not known, [~~it~~] the application shall state what search has been made to find them. If the applicant has been known by more than one name, the applicant shall state all of the applicant's names in full. [~~It~~] The application may be in form as follows:

State of Hawaii.

To the Honorable Judge of the Land Court:

I (or we), the undersigned, hereby apply to have the land herein described brought under the operation and provisions of chapter 501 of the Hawaii Revised Statutes and to have my (or our) title therein registered and confirmed as an absolute (qualified or possessory) title. And I (or we) declare:

- (1) That I am (or we are) the owner (or owners) in fee simple of a certain parcel of land, with the buildings (if any, and if not, strike out the clause), situate in (here insert accurate description).
- (2) That the land at the last assessment for taxation was assessed at....dollars; and the buildings (if any) at....dollars.
- (3) That I (or we) do not know of any mortgage or encumbrance affecting the land, or that any other person has any estate or interest therein, legal or equitable, in possession, remainder, reversion, or expectancy. (If any, add "other than as follows," and set forth each clearly.)
- (4) That I (or we) obtained title (if by deed, state name of grantor, date, and place of record, and file the deed, or state reason for not filing. If in any other way, state it).

- (5) That the land is....occupied (state name in full, residence and post office address of occupant and the nature of the occupancy. If unoccupied, insert "not").
- (6) That the names in full and addresses as far as known to me (or us) of the occupants of all lands adjoining the land are as follows: (give post office address, street, and number wherever possible. If names not known, state whether inquiry has been made, and what inquiry.)
- (7) That the names and addresses so far as known to me (or us) of the owners of all lands adjoining above land are as follows: (same directions as above.)
- (8) That I am (or we are) married (follow literally the directions given in section 501-23.)
- (9) That my (or our) full name (or names), residence and post office address are as follows:

Dated: .....

(Schedule of documents.)

.....

(Signature).

State of Hawaii } ss.

Dated: .....

Then personally appeared the above named.....known to me to be the signer (or signers) of the foregoing application, and made oath before me[7] that the statements made therein, so far as made of the [~~signer (or signers)~~] signer's (or signers') own knowledge, are true[7] and, so far as made upon information and belief, that the signer (or signers) believes them to be true.

....., Notary Public."

**COMMENT**

**Section 502-95, HRS, refers to "certificate or authority". However, the correct reference appears to be "certificate of authority", which is used elsewhere in the section. Accordingly, section 502-95, HRS, should be amended by changing "certificate or authority" to certificate of authority". Additional technical nonsubstantive amendments are made for purposes of style and clarity.**

SECTION 29. Section 502-95, Hawaii Revised Statutes, is amended to read as follows:

**"§502-95 Validation of defective certificates.** The record made prior to May 14, 1943, in the bureau of conveyances at Honolulu of any instrument otherwise authorized to be recorded therein, notwithstanding any defect in the form of the

certificate of acknowledgment or proof, or the failure to make the notations required by section 502-61, or the failure to append thereto the certificate of authority required by section 502-46, or any defect in the form of the certificate, shall be in all respects as valid and effectual as though the certificate of acknowledgment or proof or certificate of authority had been in proper form or the certificate ~~[or]~~ of authority had been appended to the instrument, or such notations had been made; provided that ~~[in]~~ :

(1) In any case of a defect in the certification of the authority of the officer to take the acknowledgment or proof, at the time of taking and in the place where the same was taken (whether because of a defect in the officer's certificate or because of a defect in or failure to append the certificate of the officer's authority, when required), the burden shall be on the party relying on ~~[such]~~ the record to prove ~~[such]~~ the authority, in any proceeding where ~~[such]~~ the fact is in dispute; ~~[provided further that with]~~ and

(2) With respect to any interlineation, erasure, or other change, not initialed and noted as required by section 502-61, the burden shall be on the party relying on ~~[such]~~ the record~~[r]~~ to prove that the change was made before acknowledgment of the instrument, in any

proceeding where [~~such~~] the fact is asserted by [~~such~~]  
the party and is in dispute."

#### COMMENT

**Section 505-4, HRS, sets forth a list of two separate items for fees payable under chapter 505, HRS. Section 505-4, HRS, should be amended by adding paragraph designations for clarity and consistency with the customary drafting convention. An additional technical nonsubstantive amendment is made for purposes of style and clarity.**

SECTION 30. Section 505-4, Hawaii Revised Statutes, is amended to read as follows:

**"§505-4 Fees.** Unless otherwise provided by rules established by the department of land and natural resources, pursuant to chapter 91, the fees payable under this chapter are as follows:

- (1) For each notice of federal tax lien in the bureau of conveyances, \$10; and
- (2) For each certificate of release, partial release, or discharge of a federal tax lien in the bureau of conveyances, \$10."

#### COMMENT

**Section 506-10(c), HRS, sets forth two sets of numbered paragraphs with repetitive designations, which creates ambiguity as to which paragraph may be intended in any cross reference to any of the paragraphs. Section 506-10(c), HRS, should be amended to eliminate the repetitive designations by reformatting the two sets of numbered paragraphs into separate sets of subparagraphs under new paragraph designations. Additional technical nonsubstantive amendments are made for purposes of style, clarity, and consistency.**

SECTION 31. Section 506-10, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

"(c) As used in this section, "reverse mortgage loan"  
[means]:

(1) Means a loan that:

[+1] (A) Is a nonrecourse loan wherein the committed principal amount is secured by a mortgage on residential property owned by the borrower;

[+2] (B) Is due upon [~~sale~~]:

(i) Sale of the property securing the loan[ ~~or upon the~~];

(ii) The death of the last surviving borrower[ ~~or upon the~~];

(iii) The borrower terminating use of the real property as a principal residence[ ~~or upon the~~];

(iv) The borrower's default;

[+3] (C) Provides cash advances to the borrower based upon the equity or the value in the borrower's owner-occupied principal residence;

[+4] (D) Requires no payment of principal or interest until the entire loan becomes due and payable;  
and

[~~(5)~~] (E) Is made by a lender licensed or chartered under state or federal law~~[.]~~; and

(2) [~~For purposes of this section, "reverse mortgage loan" shall~~] Shall not include a loan:

[~~(1)~~] (A) Insured by the United States Department of Housing and Urban Development;

[~~(2)~~] (B) Intended for sale to the Federal National Mortgage Association (also known as "Fannie Mae") or to the Federal Home Loan Mortgage Corporation (also known as "Freddie Mac"); or

[~~(3)~~] (C) For which mortgage counseling is required under other state or federal laws."

## COMMENT

**Section 507-43(d), HRS, sets forth paragraph designations, but is not formatted to reflect the paragraph designations. Section 507-43(d), HRS, should be amended to conform to the customary drafting convention for purposes of clarity and consistency. Additional technical nonsubstantive amendments are made for purposes of style, clarity, and consistency.**

SECTION 32. Section 507-43, Hawaii Revised Statutes, is amended by amending subsection (d) to read as follows:

"(d) Owner acting through attorney-in-fact. In cases where materials have been furnished or labor was performed at the request, or upon the order, of a person acting under a duly executed and acknowledged power of attorney from the owner and:

(1) [~~the~~] The power of attorney has not been revoked[~~r~~];  
or

(2) [~~the~~] The power of attorney has been revoked  
subsequent to the furnishing of materials and labor  
upon request or order and the owner cannot be found  
within the State,

service of the Application and Notice upon the person acting  
under the power of attorney shall be deemed service upon the  
owner."

#### COMMENT

**In the definition of "occupant" in section 507-61, HRS, the third "or" appears to be extraneous and grammatically incorrect. Accordingly, section 507-61, HRS, should be amended by deleting the third "or".**

SECTION 33. Section 507-61, Hawaii Revised Statutes, is amended by amending the definition of "occupant" to read as follows:

"Occupant" means a person, or the person's sublessee, successor, or assign, [~~or~~] who is entitled to the use of designated or individual storage space at a self-service storage facility under a rental agreement, to the exclusion of others."

#### COMMENT

**Section 514B-143(e), HRS, refers to the "Federal Insurance Administration". It appears that this agency is now known as the "Federal Insurance and Mitigation Administration". Accordingly, section 514B-143(e), HRS, should be amended by**

**changing "Federal Insurance Administration" to "Federal Insurance and Mitigation Administration".**

SECTION 34. Section 514B-143, Hawaii Revised Statutes, is amended by amending subsection (e) to read as follows:

"(e) The declaration, bylaws, or the board may require the association to carry any other insurance, including workers' compensation, employment practices, environmental hazards, and equipment breakdown, that the board considers appropriate to protect the association, the unit owners, or officers, directors, or agents of the association. Flood insurance shall also be maintained if the property is located in a special flood hazard area as delineated on flood maps issued by the Federal Emergency Management Agency. The flood insurance policy shall comply with the requirements of the National Flood Insurance Program and the Federal Insurance and Mitigation Administration."

**COMMENT**

**Section 514E-5, HRS, sets forth paragraph designations that do not comport with the customary drafting convention. It appears that the paragraphs should more appropriately be designated as subsections. Accordingly, section 514E-5, HRS, should be amended by adding subsection designations, changing the existing paragraph designations to subsections (b) and (c), and changing the existing subparagraph designations to paragraphs. An additional technical nonsubstantive amendment is made for the purpose of style.**

SECTION 35. Section 514E-5, Hawaii Revised Statutes, is amended to read as follows:

"§514E-5 **Geographic limitations.** (a) Except as provided in this section, time share units, time share plans, and transient vacation rentals are prohibited.

~~[(1)]~~ (b) Existing time share units, time share plans, and transient vacation rentals are not impaired by the provisions of this section.

~~[(2)]~~ (c) Time share units, time share plans, and transient vacation rentals are allowed:

~~[(A)]~~ (1) In areas designated for hotel use, resort use, or transient vacation rentals, pursuant to county authority under section 46-4, or where the county, by its legislative process, designates hotel, transient vacation rental, or resort use;

~~[(B)]~~ (2) In a hotel where the county explicitly approves such use, in advance, as a nonconforming use; or

~~[(C)]~~ (3) In a county with a population in excess of five hundred thousand, in an existing hotel ~~[which]~~ that is a valid nonconforming use under county ordinance."

#### COMMENT

**Section 515-4(b), HRS, refers to "Title IX of the Higher Education Act of 1972". However, there is no Higher Education Act of 1972. It appears that the appropriate reference is to the Education Amendments of 1972, P.L. 92-318, which established Title IX. Accordingly, section 515-4(b), HRS, should be amended by changing "Title IX of the Higher Education Act of 1972" to "Title IX of the Education Amendments of 1972, P.L. 92-318". Additional technical nonsubstantive amendments are made for purposes of style and clarity.**

SECTION 36. Section 515-4, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

"(b) Nothing in section 515-3 shall be deemed to prohibit refusal~~[7]~~ because of sex, including gender identity or expression, sexual orientation, or marital status, to rent or lease housing accommodations:

- (1) Owned or operated by a religious institution and used for church purposes as that term is used in applying exemptions for real property taxes; or
- (2) ~~[which]~~ That are part of a religiously affiliated institution of higher education housing program ~~[which]~~ that is operated on property that the institution owns or controls~~[7]~~ or ~~[which]~~ that is operated for its students pursuant to Title IX of the ~~[Higher Education Act]~~ Education Amendments of 1972~~[7]~~, P.L. 92-318."

#### COMMENT

**Section 526-6(a), HRS, sets forth definitions as numbered paragraphs. The numbered paragraph designations should be deleted and the definitions placed in alphabetical order to conform to the customary drafting convention for purposes of clarity and consistency.**

SECTION 37. Section 526-6, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) In this section:

~~[(1) "Time of distribution" means the time when a disclaimed interest would have taken effect in possession or enjoyment.~~

~~-(2)] "Future interest" means an interest that takes effect in possession or enjoyment, if at all, later than the time of its creation.~~

"Time of distribution" means the time when a disclaimed interest would have taken effect in possession or enjoyment."

#### COMMENT

**Section 560:3-906(a)(1), HRS, relating to distribution of assets in the probate of wills, refers to "section 560:2-402", HRS, in relation to the selection of assets. However, section 560:2-402, HRS, pertains to homestead allowances. This was brought to the attention of the Department of the Attorney General, which advised that the correct reference is "section 560:2-403", HRS, which relates to certain exempt property. Accordingly, section 560:3-906(a), HRS, should be amended by changing "section 560:2-402" to "section 560:2-403". Additional technical nonsubstantive amendments are made for purposes of style and clarity.**

SECTION 38. Section 560:3-906, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) Unless a contrary intention is indicated by the will, the distributable assets of a decedent's estate shall be distributed in kind to the extent possible through application of the following provisions:

- (1) A specific devisee is entitled to distribution of the thing devised to that person, and a spouse, reciprocal

beneficiary, or child who has selected particular assets of an estate as provided in section [~~560:2-402~~] 560:2-403 shall receive the items selected;

(2) Any homestead or family allowance or devise of a stated sum of money may be satisfied in kind; provided[÷] that:

(A) The person entitled to the payment has not demanded payment in cash;

(B) The property distributed in kind is valued at fair market value as of the date of its distribution; and

(C) No residuary devisee has requested that the asset in question remain a part of the residue of the estate;

(3) For the purpose of valuation under paragraph (2), securities regularly traded on recognized exchanges, if distributed in kind, are valued at the price for the last sale of like securities traded on the business day prior to distribution, or if there was no sale on that day, at the median between amounts bid and offered at the close of that day. Assets consisting of sums owed the decedent or the estate by solvent debtors as to which there is no known dispute or defense are valued at the sum due with accrued

interest or discounted to the date of distribution. For assets [~~which~~] that do not have readily ascertainable values, a valuation as of a date not more than thirty days prior to the date of distribution, if otherwise reasonable, controls. For purposes of facilitating distribution, the personal representative may ascertain the value of the assets as of the time of the proposed distribution in any reasonable way, including the employment of qualified appraisers, even if the assets may have been previously appraised; and

- (4) The residuary estate shall be distributed in any equitable manner."

### COMMENT

**Section 571-52.6, HRS, refers to "accident and sickness insurance coverage" in the section title and in paragraph (2). However, Act 155, Session Laws of Hawaii 2002, replaced the term "accident and sickness insurance" with "accident and health or sickness insurance". Accordingly, section 571-52.6, HRS, should be amended by changing "accident and sickness insurance" to "accident and health or sickness insurance".**

SECTION 39. Section 571-52.6, Hawaii Revised Statutes, is amended to read as follows:

**"§571-52.6 Child support order, judgment, or decree; accident and health or sickness insurance coverage.** Each order, judgment, or decree under this chapter or chapter 576B, 580, or

584 ordering a person to pay child support shall include the following provisions:

- (1) Both the obligor and the obligee are required to file with the state case registry, through the child support enforcement agency, upon entry of the child support order and to update as appropriate, information on the identity and location of the party, including social security number, residential and mailing addresses, telephone number, driver's license number if different from social security number, and name, address, and telephone number of the party's employer; and
- (2) The liability of that person for accident and health or sickness insurance coverage when available at reasonable cost."

#### COMMENT

**Section 572-22, HRS, refers to "her or his" and "she or he". Gender-neutral terms are preferred by the customary drafting convention. Section 572-22, HRS, should be amended by making the section gender-neutral. Further, subsection designations should be added to the section for clarity and consistency with the customary drafting convention. Additional technical nonsubstantive amendments are made for purposes of style, clarity, and consistency.**

SECTION 40. Section 572-22, Hawaii Revised Statutes, is amended to read as follows:

"§572-22 **Contracts.** (a) A married person may make contracts, oral and written, sealed and unsealed, with [~~her or his~~] the married person's spouse, or any other person, in the same manner as if [~~she or he~~] the married person were sole.

(b) An agreement between spouses providing for periodic payments for the support and maintenance of one spouse by the other, or for the support, maintenance, and education of children of the parties, when the agreement is made in contemplation of divorce or judicial separation, is valid; provided that [~~the~~]:

(1) The agreement shall be subject to approval by the court in any subsequent proceeding for divorce or judicial separation; and [~~that future~~]

(2) Future payments under an approved agreement shall nevertheless be subject to increase, decrease, or termination from time to time upon application and a showing of circumstances justifying a modification thereof.

(c) All contracts made between spouses, whenever made, whether before or after June 6, 1987, and not otherwise invalid because of any other law, shall be valid."

## COMMENT

**Section 577-28(e), HRS, refers to "29 U.S.C. section 791" in relation to section 504 of the Rehabilitation Act of 1973. However, it appears that section 504 of that Act is codified as title 29 United States Code section 794. Accordingly, section 577-28(e), HRS, should be amended by changing "29 U.S.C. section 791" to "29 U.S.C. 794". An additional technical nonsubstantive amendment is made for the purpose of consistency.**

SECTION 41. Section 577-28, Hawaii Revised Statutes, is amended by amending subsection (e) to read as follows:

"(e) The consent authorized by this section shall not be applicable for purposes of the Individuals with Disabilities Education Act (20 U.S.C. [~~section~~] 1400 et seq.) or section 504 of the Rehabilitation Act of 1973 [~~(29 U.S.C. section 791).~~] (29 U.S.C. 794)."

## COMMENT

**Section 578-8(a), HRS, sets forth paragraph designations, but is not formatted to reflect the paragraph designations. Section 578-8(a), HRS, should be amended to conform to the customary drafting convention for purposes of clarity and consistency. Additional technical nonsubstantive amendments are made for purposes of style, clarity, and consistency.**

SECTION 42. Section 578-8, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) No decree of adoption shall be entered unless a hearing has been held at which the petitioner or petitioners, and any legal parent married to a petitioner, and any subject of the adoption whose consent is required, have personally appeared before the court, unless expressly excused by the court. After

considering the petition and [~~such~~] any evidence as the petitioners and any other properly interested person may wish to present, the court may enter a decree of adoption if it is satisfied that:

- (1) [~~that the~~] The individual is adoptable under sections 578-1 and 578-2[~~τ~~];
- (2) [~~that the~~] The individual is physically, mentally, and otherwise suitable for adoption by the petitioners[~~τ~~];
- (3) [~~that the~~] The petitioners are fit and proper persons and financially able to give the individual a proper home and education, if the individual is a child[~~τ~~];  
and
- (4) [~~that the~~] The adoption will be for the best interests of the individual,

which decree shall take effect [~~upon such~~] on the date [~~as may be~~] fixed therein by the court, [~~such date~~] to be not earlier than the date of the filing of the petition and not later than six months after the date of the entry of the decree."

## COMMENT

**Act 105, Session Laws of Hawaii 2014, temporarily established a pesticide subsidy program manager position until June 30, 2021. Section 2 of Act 32, Session Laws of Hawaii 2018, amended section 3(g) of Act 105 to extend the expiration date for the pesticide subsidy program manager position to June 30, 2022. However, Act 32 did not make a conforming amendment to extend the actual repeal date of June 30, 2021, for section 3(g) of Act 105, which is set forth in section 6 of Act 105, as amended by section 2 of Act 65, Session Laws of**

**Hawaii 2017. As a result, the position will repeal on June 30, 2021, notwithstanding the extension in Act 32, unless the actual repeal date of section 3(g) of Act 105 is extended via an amendment to section 6 of Act 105. Accordingly, section 6 of Act 105, Session Laws of Hawaii 2014, should be amended by extending the repeal date for section 3(g) to June 30, 2022. Additional technical nonsubstantive amendments are made for the purpose of clarity.**

SECTION 43. Act 105, Session Laws of Hawaii 2014, as amended by section 1 of Act 152, Session Laws of Hawaii 2015, as amended by section 2 of Act 65, Session Laws of Hawaii 2017, as amended by section 2 of Act 32, Session Laws of Hawaii 2018, is amended by amending section 6 to read as follows:

"SECTION 6. This Act shall take effect on July 1, 2014; provided that [section]:

- (1) Section 3 shall be repealed on June 30, 2021~~[- provided further that the]~~, except that section 3(g) shall be repealed on June 30, 2022; and
- (2) The amendment made to section 149A-13.5(b), Hawaii Revised Statutes, under section 2 of this Act shall not be repealed when section 149A-13.5(b), Hawaii Revised Statutes, is repealed and reenacted on June 30, 2015, by section 4 of Act 168, Session Laws of Hawaii 2010."

# TAX FOUNDATION OF HAWAII

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SUBJECT: INCOME, FRANCHISE, Revisor's Bill

BILL NUMBER: HB 1268; SB 618 (Identical)

INTRODUCED BY: HB by SAIKI; SB by KOUCHI by request

EXECUTIVE SUMMARY: This is the revisor's bill that is submitted to correct errors and references, clarify language, and delete obsolete or unnecessary provisions.

SYNOPSIS: Among the provisions revised are tax provisions, including:

Section 235-2.4, HRS, relating to conformity of the Income Tax Law to the Internal Revenue Code. Section 6 of the bill corrects a reference to an IRC section that has been renumbered.

Section 241-2, relating to the Franchise Tax Law. The law as originally enacted referenced section 5219 of the Revised Statutes of the United States, because that law imposed restrictions on the ability of States to tax banks and other financial institutions. That law was completely changed effective Jan. 1, 1972, by section 2 of Pub. L. No. 91-157, 83 Stat. 434 (1969), and now only provides that for tax purposes a national bank shall be treated the same as one organized and existing under the laws of the State or other jurisdiction within which its principal office is located. Section 7 of the bill changes the references in the law so that they make more sense given the current language of the referenced provision.

EFFECTIVE DATE: Upon approval.

STAFF COMMENTS: This bill was submitted by the revisor of statutes pursuant to section 23G-20, HRS, for the purposes of correcting errors and references, clarifying language, and deleting obsolete or unnecessary provisions.

Digested 2/2/2019