
A BILL FOR AN ACT

RELATING TO PROFESSIONAL AND VOCATIONAL LICENSING TRUST FUNDS.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. Section 444-26, Hawaii Revised Statutes, is
2 amended to read as follows:
3 "**§444-26 Contractors recovery fund; use of fund; person**
4 **injured; fees.** (a) The board is authorized to establish and
5 maintain a contractors recovery fund from which any person
6 injured by an act, representation, transaction, or conduct of a
7 duly licensed contractor, which is in violation of this chapter
8 or the rules adopted pursuant thereto, may recover by order of
9 the circuit court or district court of the judicial circuit
10 where the violation occurred, an amount of not more than \$12,500
11 per contract, regardless of the number of persons injured under
12 the contract, for damages sustained by the act, representation,
13 transaction, or conduct. Recovery from the fund shall be
14 limited to the actual damages suffered by the claimant,
15 including court costs and fees as set by law, and reasonable
16 attorney fees as determined by the court; provided that recovery
17 from the fund shall not be awarded to persons injured by an act,



1 representation, transaction, or conduct of a contractor whose
2 license was suspended, revoked, forfeited, terminated, or in an
3 inactive status at the time the claimant entered into the
4 contract with the contractor.

5 (b) For purposes of this chapter, "person injured" or
6 "injured person" means and is limited to owners or lessees of
7 private residences, including condominium or cooperative units,
8 who have contracted with a duly licensed contractor for the
9 construction of improvements or alterations to the owners' or
10 lessees' own private residences and owners or lessees of real
11 property who have contracted with a duly licensed contractor for
12 the construction of the owners' or lessees' own private
13 residences on the owners' or lessees' real property.

14 (c) When any person applies for a contractors license, the
15 person shall pay, in addition to the person's original license
16 fee, a fee of \$150 for deposit in the contractors recovery fund,
17 and a fee for deposit in the contractors education fund as
18 provided in rules adopted by the director pursuant to chapter
19 91. In the event that the board does not issue the license,
20 these fees shall be returned to the applicant.



1 ~~[(d) When the contractors recovery fund attains a funding~~
2 ~~level of \$420,893 in any fiscal year, the board shall either:~~
3 ~~(1) Cease accepting payments made by renewing licensees;~~
4 ~~or~~
5 ~~(2) Develop a process to refund monies in excess of the~~
6 ~~\$420,893 fund balance to licensees who paid into the~~
7 ~~fund, and refund such monies.~~
8 ~~If acceptance of payments is ceased, it shall remain ceased~~
9 ~~until the funding level falls below \$420,893.] "~~

10 SECTION 2. Section 444-29, Hawaii Revised Statutes, is
11 amended to read as follows:

12 "~~[†]~~ §444-29 ~~[†]~~ **Management of fund.** (a) The sums received
13 by the contractors license board for deposit in the contractors
14 recovery fund shall be held by the contractors license board in
15 trust for carrying out the purposes of the contractors recovery
16 fund. The contractors license board, as trustee of the recovery
17 fund, shall be authorized to retain private legal counsel to
18 represent the board in any action which may result in collection
19 from the contractors recovery fund. These funds may be invested
20 and reinvested in the same manner as funds of the state
21 employees' retirement system, and the interest from these



1 investments shall be deposited to the credit of the contractors
2 education fund.

3 (b) The contractors education fund, which is hereby
4 created, shall be available to the contractors license board for
5 educational purposes [~~; provided that when the contractors
6 education fund attains a funding level of \$15,315 in any fiscal
7 year, the board shall either:~~

8 ~~(1) Cease accepting payments made by renewing licensees;~~

9 ~~or~~

10 ~~(2) Develop a process to refund monies in excess of the
11 \$15,315 fund balance to licensees who paid into the
12 fund, and refund such monies.~~

13 ~~If acceptance of payments is ceased, it shall remain ceased
14 until the funding level falls below \$15,315].~~

15 (c) Any law to the contrary notwithstanding, to maintain a
16 reasonable relation between the fees generated and the cost of
17 services rendered by the contractors recovery fund and the
18 contractors education fund, the board may make a finding that a
19 fee adjustment is appropriate and adjust the fees generated by
20 renewals accordingly."



1 SECTION 3. Section 467-11, Hawaii Revised Statutes, is
2 amended to read as follows:

3 **"§467-11 Fees; original license and biennial renewals.**

4 (a) All fees for applications, registrations, certificates, and
5 any license prescribed by this chapter shall be deposited to the
6 credit of the compliance resolution fund established pursuant to
7 section 26-9(o), and all fees allocated to the real estate
8 education fund shall be as provided in rules adopted by the
9 director of commerce and consumer affairs pursuant to chapter
10 91.

11 (b) The biennial renewal fee and completed renewal
12 application shall be submitted to the department of commerce and
13 consumer affairs on or before the commission-prescribed deadline
14 and prior to the expiration date of the license. All real
15 estate licenses expire on December 31 of an even-numbered year.
16 Failure, neglect, or refusal of any duly licensed real estate
17 broker or real estate salesperson to pay the biennial renewal
18 fee and to submit a completed renewal application shall
19 constitute a forfeiture of the license as of January 1 of the
20 subsequent odd-numbered year.



1 (c) The forfeited license of an individual real estate
2 broker or real estate salesperson may be restored upon
3 compliance with the licensing renewal requirements provided by
4 law; submission of a complete written application; payment of
5 all applicable renewal fees, penalty fees, compliance resolution
6 fund fees, and, if applicable, recovery fund assessments;
7 satisfaction of the applicable requirements in sections 467-8
8 and 467-9; submission of written documentation demonstrating
9 compliance with section 467-11.5; and, for individual licensees,
10 satisfaction of one of the following as applicable:

11 (1) For a license forfeited for more than one year but
12 less than four years, the successful completion of the
13 commission-approved course or courses or passage of
14 the commission-approved examination; or

15 (2) For a license forfeited for more than four years but
16 less than five years, the successful passage of the
17 commission-approved examination.

18 (d) The license of any individual licensed as a real
19 estate broker or a real estate salesperson who fails to apply
20 for restoration of a forfeited license within five years from
21 the date of forfeiture shall be automatically terminated. Once



1 a license has been terminated pursuant to this section, the
2 individual may apply for a new salesperson license pursuant to
3 and subject to all applicable laws and rules in effect at the
4 time of application.

5 (e) The license of any real estate broker other than a
6 natural person that fails to apply for restoration of a
7 forfeited license within one year from the date of forfeiture,
8 shall be automatically terminated. Once a license has been
9 terminated pursuant to this section, the entity may apply for a
10 new license pursuant to and subject to all applicable laws and
11 rules in effect at the time of application.

12 (f) A real estate broker or real estate salesperson may
13 place that person's license on an inactive status by filing an
14 application and setting forth information prescribed or required
15 by the commission; the license shall be renewed on or before the
16 commission-prescribed deadline prior to the expiration date of
17 the license by payment of the biennial renewal fee and
18 submission of a completed renewal application. A real estate
19 broker or real estate salesperson may reactivate that person's
20 inactive license by satisfying section 467-11.5, filing an



1 application setting forth any information as may be prescribed
2 or required by the commission, and paying the proper fee.

3 (g) The commission may refund any fee erroneously paid to
4 it under this section when the commission deems it just and
5 equitable.

6 ~~[(h) If the education fund balance attains a funding level
7 of \$1,713,510 in any fiscal year, the commission shall either:~~

8 ~~(1) Cease accepting payments made by renewing licensees;~~

9 ~~or~~

10 ~~(2) Develop a process to refund monies in excess of the
11 \$1,713,510 fund balance to licensees who paid into the
12 fund, and refund such monies.~~

13 ~~If acceptance of payments is ceased, it shall remain ceased
14 until the funding level falls below \$1,713,510.] "~~

15 SECTION 4. Section 467-16, Hawaii Revised Statutes, is
16 amended to read as follows:

17 "**§467-16 Real estate recovery fund; use of fund; fees.**

18 (a) The commission shall establish and maintain a trust fund
19 which shall be known as the real estate recovery fund from which
20 any person aggrieved by an act, representation, transaction, or
21 conduct of a duly licensed real estate broker, or real estate



1 salesperson, upon the grounds of fraud, misrepresentation, or
2 deceit, may recover upon the commission's settlement of a claim
3 or by order of the circuit court or district court of the county
4 where the violation occurred, an amount of not more than \$25,000
5 per transaction for damages sustained by the fraud,
6 misrepresentation, or deceit, including court costs and fees as
7 set by law, and reasonable attorney fees as determined by the
8 court.

9 (b) When any person makes application for an original
10 license to practice as a real estate broker or salesperson the
11 person shall pay, in addition to the person's original license
12 fee, a real estate recovery fund fee as provided in rules
13 adopted by the director of commerce and consumer affairs
14 pursuant to chapter 91 for deposit in the real estate recovery
15 fund. If the commission does not issue the license, this fee
16 shall be returned to the applicant.

17 (c) The commission, as the trustee of the real estate
18 recovery fund, shall be authorized to expend the funds to:

19 (1) Retain private legal counsel to represent the
20 commission in any action involving or which may result
21 in payment from the real estate recovery fund;



1 (2) Retain a certified public accountant for accounting
2 and auditing of the real estate recovery fund;

3 (3) Employ necessary personnel, not subject to chapter 76,
4 to assist the commission in exercising its powers and
5 duties with respect to the real estate recovery fund;
6 and

7 (4) Retain a consultant to recover and collect any
8 payments from the real estate recovery fund plus
9 interest from the judgment debtor.

10 ~~[(d) When the real estate recovery fund attains a funding
11 level of \$481,799 in any fiscal year, the commission shall
12 either:~~

13 ~~(1) Cease accepting payments made by renewing licensees;
14 or~~

15 ~~(2) Develop a process to refund monies in excess of the
16 \$481,799 fund balance to licensees who paid into the
17 fund, and refund such monies.~~

18 ~~If acceptance of payments is ceased, it shall remain ceased
19 until the funding level falls below \$481,799.] "~~

20 SECTION 5. Section 467-19, Hawaii Revised Statutes, is
21 amended by amending subsection (a) to read as follows:



1 "(a) The sums received by the real estate commission for
2 deposit in the real estate recovery fund shall be held by the
3 commission in trust for carrying out the purpose of the real
4 estate recovery fund. The real estate commission, as the
5 trustee of the recovery fund, shall be authorized to expend the
6 funds to retain private legal counsel to represent the
7 commission in any action involving the real estate recovery
8 fund. These funds may be invested and reinvested in the same
9 manner as funds of the state employees retirement system, and
10 the interest from these investments shall be deposited to the
11 credit of the real estate education fund, and which shall be
12 available to the commission for educational purposes, which is
13 hereby created. The real estate commission, as trustee of the
14 real estate education fund, may invest and reinvest the real
15 estate education fund in the same manner as funds of the state
16 employees retirement system. Any law to the contrary
17 notwithstanding, the commission may make one or more findings
18 that a fee adjustment is appropriate and may adjust the fees
19 generated to regulate the fund balances of the real estate
20 recovery fund and the real estate education fund to appropriate
21 levels to maintain a reasonable relation between the fees



1 generated and the cost of services rendered by the real estate
2 recovery fund and real estate education fund. The commission
3 for investment purposes, may combine the real estate education
4 and recovery funds and invest and reinvest the combined funds in
5 the same manner as funds of the state employees retirement
6 system. The commission shall keep separate accounting records
7 for the two funds."

8 SECTION 6. Section 514B-71, Hawaii Revised Statutes, is
9 amended by amending subsection (b) to read as follows:

10 "(b) The commission shall use all moneys in the
11 condominium education trust fund for purposes consistent with
12 subsection (a). Any law to the contrary notwithstanding, the
13 commission may make a finding that a fee adjustment is
14 appropriate and adjust the fees paid by associations to regulate
15 the fund balance to an appropriate level to maintain a
16 reasonable relation between the fees generated and the cost of
17 services rendered by the condominium education trust fund."

18 SECTION 7. Section 514B-72, Hawaii Revised Statutes, is
19 amended to read as follows:

20 "**§514B-72 Condominium education trust fund; payments by**
21 **associations and developers.** (a) Each project or association



1 with more than five units shall pay to the department of
2 commerce and consumer affairs:

3 (1) A condominium education trust fund fee within one year
4 after the recordation of the purchase of the first
5 unit or within thirty days of the association's first
6 meeting, and thereafter, on or before June 30 of every
7 odd-numbered year, as prescribed by rules adopted
8 pursuant to chapter 91; and

9 (2) Beginning with the July 1, 2015, biennium
10 registration, an additional annual condominium
11 education trust fund fee in an amount equal to the
12 product of \$1.50 times the number of condominium units
13 included in the registered project or association to
14 be dedicated to supporting mediation or voluntary
15 binding arbitration of condominium related disputes.
16 The additional condominium education trust fund fee
17 shall total \$3 per unit until the commission adopts
18 rules pursuant to chapter 91. On June 30 of every
19 odd-numbered year, any unexpended additional amounts
20 paid into the condominium education trust fund and
21 initially dedicated to supporting mediation or



1 voluntary binding arbitration of condominium related
2 disputes, as required by this paragraph, shall be used
3 for educational purposes as provided in section 514B-
4 71(a)(1), (2), and (3).

5 (b) Each developer shall pay to the department of commerce
6 and consumer affairs the condominium education trust fund fee
7 for each unit in the project, as prescribed by rules adopted by
8 the director of commerce and consumer affairs pursuant to
9 chapter 91. The project shall not be registered and no
10 effective date for a developer's public report shall be issued
11 until the payment has been made.

12 (c) Payments of any fees required under this section shall
13 be due on or before the registration due date and shall be
14 nonrefundable [~~except as specified in subsection (e). Unless~~
15 ~~acceptance of payments is ceased pursuant to subsection (e),~~
16 failure]. Failure to pay the required fee by the due date shall
17 result in a penalty assessment of ten per cent of the amount due
18 and the association shall not have standing to bring any action
19 to collect or to foreclose any lien for common expenses or other
20 assessments in any court of this State until the amount due,
21 including any penalty, is paid. Failure of an association to



1 pay a fee required under this section shall not impair the
2 validity of any claim of the association for common expenses or
3 other assessments, or prevent the association from defending any
4 action in any court of this State.

5 (d) The department of commerce and consumer affairs shall
6 allocate the fees collected under this section to the
7 condominium education trust fund established pursuant to section
8 514B-71. The fees collected pursuant to this section shall be
9 administratively and fiscally managed together as one
10 condominium education trust fund established by section 514B-71.

11 ~~[(e) When the condominium education trust fund attains a
12 funding level of \$1,819,971 in any fiscal year, the commission
13 shall either:~~

14 ~~(1) Cease accepting payments made by projects and
15 associations at each biennial registration; or
16 (2) Develop a process to refund monies in excess of the
17 \$1,819,971 fund balance to projects and associations
18 that paid into the fund at applicable biennial
19 registrations, and refund such monies.~~

20 ~~If acceptance of payments is ceased, it shall remain ceased
21 until the funding level falls below \$1,819,971.] "~~



1 SECTION 8. Statutory material to be repealed is bracketed
2 and stricken. New statutory material is underscored.

3 SECTION 9. This Act shall take effect on July 1, 2050.



Report Title:

Contractors Recovery Fund; Contractors Education Trust Fund;
Real Estate Recovery Fund; Real Estate Education Trust Fund;
Condominium Education Trust Fund; Department of Commerce and
Consumer Affairs

Description:

Allows the Contractors License Board and Real Estate Commission
to adjust, reduce, suspend, or cease collection of recovery fund
and education fund fees to maintain a reasonable relation
between the fees generated and the cost of services rendered by
the funds. Effective 7/1/2050. (HD1)

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