
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 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
10 chapter 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



1 fee and to submit a completed renewal application shall
2 constitute a forfeiture of the license as of January 1 of the
3 subsequent odd-numbered year.

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

- 14 (1) For a license forfeited for more than one year but
15 less than four years, the successful completion of the
16 commission-approved course or courses or passage of
17 the commission-approved examination; or
18 (2) For a license forfeited for more than four years but
19 less than five years, the successful passage of the
20 commission-approved examination.



1 (d) The license of any individual licensed as a real
2 estate broker or a real estate salesperson who fails to apply
3 for restoration of a forfeited license within five years from
4 the date of forfeiture shall be automatically terminated. Once
5 a license has been terminated pursuant to this section, the
6 individual may apply for a new salesperson license pursuant to
7 and subject to all applicable laws and rules in effect at the
8 time of application.

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

16 (f) A real estate broker or real estate salesperson may
17 place that person's license on an inactive status by filing an
18 application and setting forth information prescribed or required
19 by the commission; the license shall be renewed on or before the
20 commission-prescribed deadline prior to the expiration date of
21 the license by payment of the biennial renewal fee and



1 submission of a completed renewal application. A real estate
2 broker or real estate salesperson may reactivate that person's
3 inactive license by satisfying section 467-11.5, filing an
4 application setting forth any information as may be prescribed
5 or required by the commission, and paying the proper fee.

6 (g) The commission may refund any fee erroneously paid to
7 it under this section when the commission deems it just and
8 equitable.

9 ~~[(h) If beginning on July 1, 1987, the education fund
10 balance at the end of any fiscal biennium exceeds \$1,200,000,
11 there shall be a moratorium on renewal contributions and the
12 commission shall review and consider a reduction in the amount
13 of license fees.]"~~

14 SECTION 2. Section 467-19, Hawaii Revised Statutes, is
15 amended by amending subsection (a) to read as follows:

16 "(a) The sums received by the real estate commission for
17 deposit in the real estate recovery fund shall be held by the
18 commission in trust for carrying out the purpose of the real
19 estate recovery fund. The real estate commission, as the
20 trustee of the recovery fund, shall be authorized to expend the
21 funds to retain private legal counsel to represent the



1 commission in any action involving the real estate recovery
2 fund. These funds may be invested and reinvested in the same
3 manner as funds of the state employees' retirement system, and
4 the interest from these investments shall be deposited to the
5 credit of the real estate education fund, and which shall be
6 available to the commission for educational purposes, which is
7 hereby created. The real estate commission, as trustee of the
8 real estate education fund, may invest and reinvest the real
9 estate education fund in the same manner as funds of the state
10 employees' retirement system. Any law to the contrary
11 notwithstanding, the commission may make one or more findings
12 that a fee adjustment is appropriate and may adjust the fees
13 generated to regulate the fund balances of the real estate
14 recovery fund and the real estate education fund to appropriate
15 levels. The commission for investment purposes, may combine the
16 real estate education and recovery funds and invest and reinvest
17 the combined funds in the same manner as funds of the state
18 employees' retirement system. The commission shall keep
19 separate accounting records for the two funds."

20 SECTION 3. Section 514B-71, Hawaii Revised Statutes, is
21 amended by amending subsection (b) to read as follows:



1 "(b) The commission shall use all moneys in the
2 condominium education trust fund for purposes consistent with
3 subsection (a). Any law to the contrary notwithstanding, the
4 commission may make a finding that a fee adjustment is
5 appropriate and adjust the fees paid by associations to regulate
6 the fund balance to an appropriate level."

7 SECTION 4. Act 29, Session Laws of Hawaii 2019, is amended
8 as follows:

9 1. By amending section 8 to read:

10 "SECTION 8. Section 444-29, Hawaii Revised Statutes, is
11 amended to read as follows:

12 "**§444-29 Management of fund.** (a) The sums received by
13 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."

21 2. By amending section 11 to read:



1 "SECTION 11. Section 467-16, Hawaii Revised Statutes, is
2 amended to read as follows:

3 "**§467-16 Real estate recovery fund; use of fund; fees.**

4 (a) The commission shall establish and maintain a trust fund
5 which shall be known as the real estate recovery fund from which
6 any person aggrieved by an act, representation, transaction, or
7 conduct of a duly licensed real estate broker, or real estate
8 salesperson, upon the grounds of fraud, misrepresentation, or
9 deceit, may recover upon the commission's settlement of a claim
10 or by order of the circuit court or district court of the county
11 where the violation occurred, an amount of not more than \$25,000
12 per transaction for damages sustained by the fraud,
13 misrepresentation, or deceit, including court costs and fees as
14 set by law, and reasonable attorney fees as determined by the
15 court.

16 (b) When any person makes application for an original
17 license to practice as a real estate broker or salesperson the
18 person shall pay, in addition to the person's original license
19 fee, a real estate recovery fund fee as provided in rules
20 adopted by the director of commerce and consumer affairs
21 pursuant to chapter 91 for deposit in the real estate recovery



1 fund. If the commission does not issue the license, this fee
2 shall be returned to the applicant.

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

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

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

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

14 (4) Retain a consultant to recover and collect any
15 payments from the real estate recovery fund plus
16 interest from the judgment debtor.

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

20 ~~(1) Cease accepting payments made by renewing licensees,~~
21 ~~or~~



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

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

6 3. By amending section 12 to read:

7 "SECTION 12. Section 514B-72, Hawaii Revised Statutes, is
8 amended to read as follows:

9 "**§514B-72 Condominium education trust fund; payments by**
10 **associations and developers.** (a) Each project or association
11 with more than five units shall pay to the department of
12 commerce and consumer affairs:

13 (1) A condominium education trust fund fee within one year
14 after the recordation of the purchase of the first
15 unit or within thirty days of the association's first
16 meeting, and thereafter, on or before June 30 of every
17 odd-numbered year, as prescribed by rules adopted
18 pursuant to chapter 91; and

19 (2) Beginning with the July 1, 2015, biennium
20 registration, an additional annual condominium
21 education trust fund fee in an amount equal to the



1 product of \$1.50 times the number of condominium units
2 included in the registered project or association to
3 be dedicated to supporting mediation or voluntary
4 binding arbitration of condominium related disputes.
5 The additional condominium education trust fund fee
6 shall total \$3 per unit until the commission adopts
7 rules pursuant to chapter 91. On June 30 of every
8 odd-numbered year, any unexpended additional amounts
9 paid into the condominium education trust fund and
10 initially dedicated to supporting mediation or
11 voluntary binding arbitration of condominium related
12 disputes, as required by this paragraph, shall be used
13 for educational purposes as provided in section
14 514B-71(a)(1), (2), and (3).

15 (b) Each developer shall pay to the department of commerce
16 and consumer affairs the condominium education trust fund fee
17 for each unit in the project, as prescribed by rules adopted by
18 the director of commerce and consumer affairs pursuant to
19 chapter 91. The project shall not be registered and no
20 effective date for a developer's public report shall be issued
21 until the payment has been made.



1 (c) Payments of any fees required under this section shall
2 be due on or before the registration due date and shall be
3 nonrefundable [~~except as specified in subsection (e). Unless~~
4 ~~acceptance of payments is ceased pursuant to subsection (e),~~
5 ~~failure]~~. Failure to pay the required fee by the due date shall
6 result in a penalty assessment of ten per cent of the amount due
7 and the association shall not have standing to bring any action
8 to collect or to foreclose any lien for common expenses or other
9 assessments in any court of this State until the amount due,
10 including any penalty, is paid. Failure of an association to
11 pay a fee required under this section shall not impair the
12 validity of any claim of the association for common expenses or
13 other assessments, or prevent the association from defending any
14 action in any court of this State.

15 (d) The department of commerce and consumer affairs shall
16 allocate the fees collected under this section to the
17 condominium education trust fund established pursuant to section
18 514B-71. The fees collected pursuant to this section shall be
19 administratively and fiscally managed together as one
20 condominium education trust fund established by section 514B-71.



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

4 ~~(1) Cease accepting payments made by projects and~~
5 ~~associations at each biennial registration; or~~

6 ~~(2) Develop a process to refund monies in excess of the~~
7 ~~\$1,819,971 fund balance to projects and associations~~
8 ~~that paid into the fund at applicable biennial~~
9 ~~registrations, and refund such monies.~~

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

12 4. By amending section 18 to read:

13 "SECTION 18. This Act shall take effect on July 1, 2019;
14 provided that[+

15 ~~(1) Section]~~ section 3 shall take effect on June 28,
16 2019[; and

17 ~~(2) Sections 7, 8, 10, 11, and 12 of this Act shall take~~
18 ~~effect on July 1, 2020, and shall be repealed on June~~
19 ~~30, 2022; provided further that sections 444-26,~~
20 ~~444-29, 467-11, 467-16, and 514B-72, Hawaii Revised~~



1 ~~Statutes, shall be reenacted in the form in which it~~
2 ~~read prior to the effective date of this Act]."~~

3 5. By repealing section 7.

4 ~~["SECTION 7. Section 444-26, Hawaii Revised Statutes, is~~
5 ~~amended to read as follows:~~

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



1 ~~license was suspended, revoked, forfeited, terminated, or in an~~
2 ~~inactive status at the time the claimant entered into the~~
3 ~~contract with the contractor.~~

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

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

20 ~~(d) When the contractors recovery fund attains a funding~~
21 ~~level of \$420,893 in any fiscal year, the board shall either:~~



- 1 ~~(1) Cease accepting payments made by renewing licenses;~~
2 ~~or~~
3 ~~(2) Develop a process to refund monies in excess of the~~
4 ~~\$420,893 fund balance to licensees who paid into the~~
5 ~~fund, and refund such monies.~~

6 ~~If acceptance of payments is ceased, it shall remain ceased~~
7 ~~until the funding level falls below \$420,893."] "~~

8 6. By repealing section 10.

9 ~~["SECTION 10. Section 467 11, Hawaii Revised Statutes, is~~
10 ~~amended by amending subsection (h) to read as follows:~~

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

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

15 ~~(2) Develop a process to refund monies in excess of the~~
16 ~~\$1,713,510 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 \$1,713,510."] "~~

20 SECTION 5. Statutory material to be repealed is bracketed
21 and stricken. New statutory material is underscored.



1 SECTION 6. 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; Professional and Vocational Licensing; Department of Commerce and Consumer Affairs; Chapter 444; Chapter 467; Chapter 514B

Description:

Allows the Contractors License Board and the Real Estate Commission to make findings and make adjustments of recovery fund and education fund fees when fund levels are adequate to carry out the statutory mandates for which the funds were created. Effective 7/1/2050. (SD2)

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