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LEGISLATIVE REFERENCE BUREAU
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Testimony in Support

SB1327

RELATING TO STATUTORY REVISION: AMENDING OR REPEALING VARIOUS PROVISIONS OF THE HAWAII REVISED STATUTES OR THE SESSION LAWS OF HAWAII FOR THE PURPOSES OF CORRECTING ERRORS AND REFERENCES, CLARIFYING LANGUAGE, OR DELETING OBSOLETE OR UNNECESSARY PROVISIONS.

Charlotte A. Carter-Yamauchi, Director
Legislative Reference Bureau

Presented to the Senate Committee on Judiciary

Tuesday, February 16, 2021, 9:16 a.m.
Place: Via Videoconference

Chair Karl Rhoads and Members of the Committee:

Good morning Chair Rhoads and members of the Committee, my name is Charlotte Carter-Yamauchi and I am the Director of the Legislative Reference Bureau and the Revisor of Statutes. Thank you for providing the opportunity to submit testimony in support of Senate Bill No. 1327, Relating to Statutory Revision. Bills such as Senate Bill No. 1327 have come to be known as the "statutory revision bill" and are prepared and submitted by the Legislative Reference Bureau pursuant to our statute revision functions, set forth in chapter 23G of the Hawaii Revised Statutes.

All amendments are intended to be technical in nature to correct errors, omissions, or obsolete law. They either contain no substantive change to the law, or if they do have substantive effect, they are intended to correct the types of errors noted in the memorandum attached to this testimony. Please note that the memorandum explains the rationale for each amendment proposed by this bill. Also, please note that the bill was reviewed prior to introduction by the Department of the Attorney General, and we have revised the bill to address any concerns raised.

The Bureau would be pleased to assist the Committee in preparing the committee report and making any changes to the revision bill that the Committee deems appropriate. Should the Committee have any follow-up questions, please contact John Morsey, Assistant Director for Revision of Statutes, by phone at (808) 587-0670 or by e-mail at j.morsey@capitol.hawaii.gov.

Attachment

**MEMORANDUM CONCERNING PROPOSED
STATUTORY REVISIONS FOR THE 2021 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 OR THE SESSION LAWS OF HAWAII
FOR THE PURPOSES OF CORRECTING ERRORS AND REFERENCES,
CLARIFYING LANGUAGE, OR DELETING OBSOLETE OR
UNNECESSARY PROVISIONS"**

**Prepared by the Legislative Reference Bureau
Pursuant to Section 23G-20, Hawaii Revised Statutes**

COMMENT

Section 266-3(a), HRS, should be amended to make various technical nonsubstantive amendments for purposes of style, clarity, and consistency.

SECTION 1. Section 266-3, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) The director of transportation may adopt rules as necessary [~~to~~]:

- (1) [~~Regulate~~] To regulate the manner in which all vessels may enter and moor, anchor, or dock in the commercial harbors, ports, and roadsteads of the State, or move from one dock, wharf, pier, quay, bulkhead, landing, anchorage, or mooring to another within the commercial harbors, ports, or roadsteads;
- (2) [~~The~~] For the examination, guidance, and control of harbor masters and their assistants and their conduct while on duty;
- (3) [~~The~~] For the embarking or disembarking of passengers;

- (4) [~~The~~] For the expeditious and careful handling of freight, goods, wares, and merchandise of every kind [~~which~~] that may be delivered for shipment or discharged on the commercial docks, wharves, piers, quays, bulkheads, or landings belonging to or controlled by the State; and
- (5) [~~Defining~~] To define the duties and powers of carriers, shippers, and consignees respecting passengers, freight, goods, wares, and merchandise in and upon the docks, wharves, piers, quays, bulkheads, or landings within the commercial harbors, ports, and roadsteads of the State. The director may also make further rules for the safety of the docks, wharves, piers, quays, bulkheads, and landings on, in, near, or affecting a commercial harbor and waterfront improvements belonging to or controlled by the State."

COMMENT

Section 266-19(b), HRS, refers to "the harbor special fund created by paragraph (a)" of that section. However, the cited provision is a statutory subsection, not a paragraph. Accordingly, section 266-19(b) should be amended by changing "paragraph (a)" to "subsection (a)". Additional technical nonsubstantive amendments are made for purposes of clarity and style.

SECTION 2. Section 266-19, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

"(b) At any time, the director of transportation may transfer, from the harbor special fund created by [paragraph] subsection (a) [~~of this section~~], all or any portion of available moneys on deposit in the harbor special fund that is determined by the director of transportation to be in excess of one hundred fifty per cent of the requirements for the ensuing twelve months for the harbor special fund, as permitted by and in accordance with section 37-53. For purposes of [~~such~~] this determination, the director of transportation shall take into consideration the amount of federal funds and bond funds on deposit in, and budgeted to be expended from, the harbor special fund during [~~such period,~~] the ensuing twelve months; amounts on deposit in the harbor special fund [~~which~~] that are encumbered or otherwise obligated[~~7~~]; budgeted amounts payable from the harbor special fund during [~~such period, and~~] the ensuing twelve months; revenues anticipated to be received by and expenditures to be made from the harbor special fund during [~~such period~~] the ensuing twelve months based on existing agreements and other information for [~~the ensuing twelve months,~~] that period; and [~~such~~] any other factors as the director of transportation shall deem appropriate."

COMMENT

Section 268-9, HRS, refers to section "688" of title 46 of the United States Code. However, that section has been renumbered to "30104". Accordingly, section 268-9, HRS, should be amended by changing "688" to "30104". Additional technical nonsubstantive amendments are made for purposes of consistency and style.

SECTION 3. Section 268-9, Hawaii Revised Statutes, is amended to read as follows:

"§268-9 Seamen may sue for injuries; venue. The State consents to suits against the department of transportation by seamen for injuries occurring upon vessels under the authority of the Hawaii state ferries system in accordance with [~~section 688, Title~~] title 46 [~~, of the~~] United States Code [~~-~~] section 30104. The venue of the actions may be in the first circuit court or the circuit wherein the injury occurred."

COMMENT

Section 291E-19, HRS, refers to the definition of "rule" in "section 91-1(4)". However, Act 110, Session Laws of Hawaii 2017, amended section 91-1, HRS, by, among other things, deleting the numbered paragraph designations for definitions in that section. Accordingly, section 291E-19, HRS, should be amended by changing "91-1(4)" to "91-1". An additional technical nonsubstantive amendment is made for the purpose of style.

SECTION 4. Section 291E-19, Hawaii Revised Statutes, is amended to read as follows:

"[+]§291E-19[+] Authorization to establish intoxicant control roadblock programs. The police departments of the

respective counties may establish and implement intoxicant control roadblock programs in accordance with the minimum standards and guidelines provided in section 291E-20. The chief of police in any county establishing an intoxicant control roadblock program pursuant to this section shall specify the procedures to be followed in carrying out the program in rules adopted under chapter 91; provided that the procedures shall be in conformity with and not more intrusive than the standards and guidelines described in section 291E-20. In the case of internal police standards that do not fall within the definition of "rule" under section [~~91-1(4),~~] 91-1, failure to comply scrupulously with [~~such~~] the internal police procedures shall not invalidate a roadblock that otherwise meets the minimum statutory criteria provided in section 291E-20."

COMMENT

Section 302A-1165(c), HRS, refers to the "public charter school commission". However, it appears that the correct name of this entity is the "state public charter school commission" pursuant to section 302D-3(a), HRS. Accordingly, section 302A-1165(c), HRS, should be amended by changing "public charter school commission" to "state public charter school commission".

SECTION 5. Section 302A-1165, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

"(c) The department shall share the information gathered pursuant to this section with the department of human services,

executive office on early learning, and state public charter school commission to the extent not otherwise prohibited by administrative rule or law."

COMMENT

Section 302A-1166(c), HRS, refers to the "public charter school commission". However, it appears that the correct name of this entity is the "state public charter school commission" pursuant to section 302D-3(a), HRS. Accordingly, section 302A-1166(c), HRS, should be amended by changing "public charter school commission" to "state public charter school commission".

SECTION 6. Section 302A-1166, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

"(c) The department shall share the information gathered pursuant to this section with the department of human services, executive office on early learning, and state public charter school commission to the extent not otherwise prohibited by administrative rule or law."

COMMENT

Section 328G-2(j), HRS, refers to "section 328H-F", HRS, in relation to certain procedures for the removal of persons from the hemp processor registry. However, there is no "section 328H-F" in either the HRS or in Act 14, Session Laws of Hawaii 2020, which established chapter 328G, HRS. The appropriate reference appears to be section 328G-6, HRS, which specifies procedures for the enforcement of penalties against violators of chapter 328G, HRS, including removal from the hemp processor registry. Accordingly, section 328G-2(j), HRS, should be amended by changing "328H-F" to "328G-6".

SECTION 7. Section 328G-2, Hawaii Revised Statutes, is amended by amending subsection (j) to read as follows:

"(j) The department may remove any person from the registry for failure to comply with any law or regulation under this chapter. It is the responsibility of the hemp processor to make sure it is registered and legally allowed to process hemp and in compliance with any and all laws and regulations. The removal of a hemp processor from the registry shall be in accordance with the procedures set forth in section [~~328H-F.~~] 328G-6."

COMMENT

Section 346-186(b), HRS, refers to the "public charter school commission". However, it appears that the correct name of this entity is the "state public charter school commission" pursuant to section 302D-3(a), HRS. Accordingly, section 346-186(b), HRS, should be amended by changing "public charter school commission" to "state public charter school commission".

SECTION 8. Section 346-186, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

"(b) To the extent not prohibited by administrative rule or law, the department, department of education, state public charter school commission, and executive office on early learning shall share any information gathered pursuant to sections 302A-1165, 302A-1166, 302D-37, and 302D-38 with each other, along with any other information the department,

department of education, or state public charter school commission may collect on all children in the State who are three to four years old and children who will not be at least five years of age on or before July 31 of the current school year."

COMMENT

Section 436M-8, HRS, sets forth paragraph designations, but is not formatted to reflect the paragraph designations. Section 436M-8, 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 consistency and style.

SECTION 9. Section 436M-8, Hawaii Revised Statutes, is amended to read as follows:

"~~[+]~~§436M-8~~[+]~~ **Activation.** No alarm system shall be activated intentionally except~~[+]~~ to:

- (1) ~~[to-report]~~ Report an unauthorized intrusion or the commission of an unlawful act; ~~[or]~~
- (2) ~~[to-test]~~ Test an installed system with the prior knowledge and consent of the police; or
- (3) ~~[to-permit]~~ Permit an alarm business to demonstrate a system to a prospective buyer or user."

COMMENT

The definition of "new motor vehicle" in section 437-1.1, HRS, sets forth paragraph designations, but is not formatted to reflect the paragraph

designations. The definition 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 consistency and style.

SECTION 10. Section 437-1.1, Hawaii Revised Statutes, is amended by amending the definition of "new motor vehicle" to read as follows:

"New motor vehicle" means a motor vehicle ~~[which]~~ that:

- (1) ~~[has]~~ Has not previously been sold to any person except a distributor, wholesaler, or dealer for resale, except where the vehicle has not left the dealer's possession after the sale to a consumer~~[]~~;
- (2) ~~[has]~~ Has not previously been registered or titled in the name of a consumer except where the vehicle has not left the dealer's possession after the sale to a consumer~~[]~~; and
- (3) ~~[has]~~ Has not been driven more than five hundred miles;

provided that where a sale, registration, entitlement, or transfer of title of a motor vehicle, or the accrual of mileage thereon, is primarily for the purpose of evading this provision, the motor vehicle shall be deemed a new motor vehicle for the purposes of this chapter."

COMMENT

It appears that the language in section 437B-12(e)(3), HRS, that follows the phrase "Violation of chapter 342C;" should be reformatted as a continuation of subsection (e), rather than as part of paragraph (3), so that the language applies to the contents of paragraphs (1), (2), and (3). An additional technical nonsubstantive amendment is made for the purpose of style.

SECTION 11. Section 437B-12, Hawaii Revised Statutes, is amended by amending subsection (e) to read as follows:

"(e) Each:

- (1) Mobile air conditioner serviced without using refrigerant recovery and recycling equipment;
- (2) Motor vehicle or mobile air conditioner serviced after January 1, 1994, without successful completion of an appropriate training course dealing with the recovery and recycling of CFC and HCFC refrigerants; and
- (3) Violation of chapter 342C[~~+~~],

constitutes a separate offense for which fines may be imposed under subsection (b)."

COMMENT

The definitions of "cable operator", "cable service", "cable system", and "public, educational, or governmental access facilities" in section 440G-3, HRS, set forth paragraph designations, but are not formatted to reflect the paragraph designations. The definitions should be amended to conform to the customary drafting convention for purposes of clarity and consistency. Additional technical nonsubstantive amendments are made for the purpose of style.

SECTION 12. Section 440G-3, Hawaii Revised Statutes, is amended by amending the definitions of "cable operator", "cable service", "cable system", and "public, educational, or governmental access facilities" to read as follows:

"Cable operator" means any person or group of persons who:

- (1) [~~who provides~~] Provides cable service over a cable system and directly or through one or more affiliates owns a significant interest in the cable system; or
- (2) [~~who otherwise~~] Otherwise controls or is responsible for, through any arrangement, the management and operation of a cable system.

"Cable service" means:

- (1) [~~the~~] The one-way transmission to subscribers of video programming or other programming service; and
- (2) [~~subscriber~~] Subscriber interaction, if any, [~~which~~] that is required for the selection of video programming or other programming service.

"Cable system" means any facility within this State consisting of a set of closed transmission paths and associated signal generation, reception, and control equipment that is designed to provide cable service [~~which~~] that includes video programming and [~~which~~] is provided to multiple subscribers within a community, but does not include:

- (1) [a] A facility that serves only to retransmit the television signals of one or more television broadcast stations;
- (2) [a] A facility that serves only subscribers in one or more multiple unit dwellings under common ownership, control, or management, unless that facility or facilities uses any public right-of-way; or
- (3) [a] A facility of a public utility subject in whole or in part to the provisions of chapter 269, except to the extent that those facilities provide video programming directly to subscribers.

"Public, educational, or governmental access facilities"

means:

- (1) [~~channel~~] Channel capacity designated for public, educational, or governmental uses; and
- (2) [~~facilities~~] Facilities and equipment for the use of that channel capacity."

COMMENT

Section 443B-3.5(b) and (n), HRS, includes definitions of terms used in section 443B-3.5, HRS. Section 443B-3.5, HRS, should be amended by removing the definition of "business presence" from subsection (b), placing that definition into subsection (n), and placing the definitions in alphabetical order to conform to the customary drafting convention. Additional technical nonsubstantive amendments are made for the purpose of clarity.

SECTION 13. Section 443B-3.5, Hawaii Revised Statutes, is amended as follows:

1. By amending subsection (b) to read:

"(b) To be designated as an exempt out-of-state collection agency, a collection agency shall:

- (1) Not have any employees or agents located in the State who engage in the collection of debts for another person;
- (2) Not have any business location or office in the State that engages in collection agency activities;
- (3) Hold a current, unrestricted, and unconditional license, permit, or registration as a collection agency in the reciprocal state identified in its application;
- (4) Limit its collection activity in the State to the collection of debts from residents of the State on behalf of out-of-state clients through interstate communication by telephone, mail, facsimile, or electronic mail; and
- (5) Not collect debts on behalf of creditors who have a business presence in the State.

~~[For purposes of this section, a creditor has a "business presence" in the State if either the creditor or an affiliate or subsidiary of the creditor has an office in the State.]"~~

2. By amending subsection (n) to read:

"(n) For purposes of this section[, ~~a "reciprocal state" is one~~]:

"Business presence in the State" means the creditor or an affiliate or subsidiary of the creditor has an office in the State.

"Reciprocal state" means a state:

- (1) Whose requirements to be licensed, permitted, or registered as a collection agency in that state are at a minimum substantially equivalent to the requirements to be registered as a collection agency in this State, including but not limited to the bonding requirements in section 443B-5; and
- (2) That does not require a Hawaii collection agency to obtain a license, permit, or registration to collect debts in that state if the activities of the Hawaii collection agency are limited to collecting debts on behalf of an out-of-state creditor using interstate communication methods, including telephone, facsimile, mail, or electronic mail, and the Hawaii collection agency does not solicit or engage in collection activities for clients in that state."

COMMENT

Section 444-26(b), HRS, defines "person injured" or "injured person" for purposes of chapter 444, HRS. Because the term is used in multiple sections of chapter 444, HRS, the definition is more appropriately placed in section 444-1, HRS, which sets forth general definitions for terms used throughout the chapter. Accordingly, the definition of "person injured" or "injured person" should be added to section 444-1, HRS, and repealed from section 444-26(b), HRS. (See SECTION 16 for amendment to section 444-26(b), HRS.)

SECTION 14. Section 444-1, Hawaii Revised Statutes, is amended by adding a new definition to be appropriately inserted and to read as follows:

"Person injured" or "injured person" means and is limited to owners or lessees of private residences, including condominium or cooperative units, who have contracted with a duly licensed contractor for the construction of improvements or alterations to the owners' or lessees' own private residences and owners or lessees of real property who have contracted with a duly licensed contractor for the construction of the owners' or lessees' own private residences on the owners' or lessees' real property."

COMMENT

Section 444-16, HRS, sets forth paragraph designations, but is not formatted to reflect the paragraph designations. Section 444-16, 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 clarity and style.

SECTION 15. Section 444-16, Hawaii Revised Statutes, is amended to read as follows:

"§444-16 Action on applications. Within one hundred and twenty days after the filing of a proper application for a license and the payment of the required fees, the board shall:

- (1) [~~conduct~~] Conduct an investigation of the applicant, and in that investigation may post pertinent information, including [~~but not limited to,~~] the name and address of the applicant[~~,~~] and [~~if the applicant is associated in any partnership, corporation, or other entity,~~] the names, addresses, and official capacities of [~~the applicant's associates;~~] any partnership, corporation, or other entity that the applicant is associated with; and
- (2) [~~either~~] Either issue a license to the applicant or notify the applicant in writing by registered mail of the board's decision not to grant the license and specifically notify the applicant of the applicant's right to submit a request for a contested case hearing pursuant to chapter 91 within sixty days of the board's decision. The hearing shall be conducted in accordance with chapter 91."

COMMENT

Section 444-26(b), HRS, defines "person injured" or "injured person" for purposes of chapter 444, HRS. Because the term is used in multiple sections of chapter 444, HRS, the definition is more appropriately placed in section 444-1, HRS, which sets forth general definitions for terms used throughout the chapter. Accordingly, the definition of "person injured" or "injured person" should be repealed from section 444-26(b), HRS, and added to section 444-1, HRS. (See SECTION 14 for amendment to section 444-1, HRS.) Additional technical nonsubstantive amendments are made for purposes of consistency and style.

SECTION 16. Section 444-26, Hawaii Revised Statutes, is amended to read as follows:

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

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

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

~~(e)]~~ (b) When any person applies for a contractors license, the person shall pay, in addition to the person's original license fee, a fee of \$150 for deposit in the contractors recovery fund~~[7]~~ and a fee for deposit in the contractors education fund as provided in rules adopted by the director pursuant to chapter 91. ~~[In the event that]~~ If the board does not issue the license, these fees shall be returned to the applicant."

COMMENT

Section 456-17, HRS, sets out a list of notary public fees, but the list is not formatted as numbered paragraphs. Section 456-17, HRS, should be amended by adding paragraph designations and formatting the paragraphs for clarity and

consistency with the customary drafting convention. Additional technical nonsubstantive amendments are made for the purpose of style.

SECTION 17. Section 456-17, Hawaii Revised Statutes, is amended to read as follows:

"§456-17 Fees. Subject to section 456-18, every notary public is entitled to demand and receive the following fees:

- (1) For noting the protest of mercantile paper, \$5;
- (2) For each notice and certified copy of protest, \$5;
- (3) For noting any other protest, \$5;
- (4) For every notice thereof[~~r~~] and certified copy of protest, \$5;
- (5) For every deposition[~~r~~] or official certificate, \$5;
- (6) For the administration of oath, including the certificate of the oath, \$5; for affixing the certificate of the oath to every duplicate original instrument beyond four, \$2.50;
- (7) For taking any acknowledgment, \$5 for each party signing; for affixing to every duplicate original beyond one of any instrument acknowledged before the notary public, the notary public's certificate of the acknowledgment, \$2.50 for each person making the acknowledgment; and
- (8) For any of the foregoing notarial acts performed for a remotely located individual under section 456-23,

other than affixing a notary public's certificate to a duplicate original, \$25."

COMMENT

Section 458-13(5), HRS, sets forth subparagraph designations, but is not formatted to reflect the subparagraph designations. Section 458-13(5), HRS, should be amended to conform to the customary drafting convention for purposes of clarity and consistency. Further, section 458-13(4), HRS, refers to section 458-12.5, HRS, which was repealed by Act 301, Session Laws of Hawaii 1997. Accordingly, the reference to section 458-12.5, HRS, should be deleted. Additional technical nonsubstantive amendments are made for the purpose of clarity.

SECTION 18. Section 458-13, Hawaii Revised Statutes, is amended to read as follows:

"§458-13 **Acts prohibited.** It shall be unlawful to do any of the following:

- (1) To engage in the occupation of dispensing optician without first having been issued a dispensing optician license under this chapter;
- (2) To advertise in any manner that would tend to mislead or deceive the public;
- (3) To dispense, furnish, or supply the services and appliances to the intended wearer or user thereof, except upon a prescription issued by a licensed physician[7] or optometrist; provided that duplications, replacements, reproductions, and repetitions[7] without change in the refractive value

may be done without prescription by individuals holding a license of dispensing optician issued under this chapter;

- (4) To fit or duplicate, or offer, undertake, or attempt to fit or duplicate, hard and soft contact lenses or artificial eyes except under the written orders and personal supervision of an ophthalmologist or optometrist [~~or fail to provide notice as required by section 458-12.5~~];
- (5) For a dispensing optician to grant, allow, credit, or pay, directly or indirectly, openly or secretly, any price differential, rebate, refund, discount, commission, credit, kickback, or other allowance, whether in the form of money or otherwise, to any oculist, optometrist, physician, or practitioner of any other profession for or on account of:
 - (A) [~~for or on account of the~~] The referring or sending by any oculist, optometrist, physician, or practitioner to the dispensing optician of any person for the rendition of any of the services performed or articles or appliances furnished by a dispensing optician as described in section 458-1[~~7~~]; or

(B) [~~for or on account of the~~] The rendition of any services or the furnishing of any articles or appliances to a person so referred or sent by any oculist, optometrist, physician, or practitioner.

Every scheme, agreement, undertaking, arrangement, or device shall also be deemed in violation of section 481-7. The license of every dispensing optician who violates this paragraph shall be revoked; or

(6) For a dispensing optician to permit any unlicensed person to take facial measurements~~[7]~~ or to fit or adjust lenses or frames or duplicate frames unless the unlicensed person is acting under the direct personal supervision of a licensed dispensing optician.

"Direct personal supervision" means the licensed optician is present on the premises of the optical dispensing establishment and is available for consultation by the unlicensed person."

COMMENT

Section 459-2, HRS, defines "ophthalmic lens" for purposes of chapter 459, HRS. Because the term is used in multiple sections of chapter 459, HRS, the definition is more appropriately placed in section 459-1.5, HRS, which sets forth general definitions for terms used throughout the chapter. Accordingly, the definition of "ophthalmic lens" should be added to section 459-1.5, HRS, and repealed from section 459-2, HRS. (See SECTION 20 for amendment to section 459-2, HRS.) Additional technical nonsubstantive amendments are made to the definition of "ophthalmic lens" for purposes of consistency and style.

SECTION 19. Section 459-1.5, Hawaii Revised Statutes, is amended by adding a new definition to be appropriately inserted and to read as follows:

"Ophthalmic lens" means any spectacle lens that has a spherical, cylindrical, or prismatic power or value and is ground pursuant to a prescription."

COMMENT

Section 459-2, HRS, defines "ophthalmic lens" for purposes of chapter 459, HRS. Because the term is used in multiple sections of chapter 459, HRS, the definition is more appropriately placed in section 459-1.5, HRS, which sets forth general definitions for terms used throughout the chapter. Accordingly, the definition of "ophthalmic lens" should be repealed from section 459-2, HRS, and added to section 459-1.5, HRS. (See SECTION 19 for amendment to section 459-1.5, HRS.) Additional technical nonsubstantive amendments are made for purposes of clarity, consistency, and style.

SECTION 20. Section 459-2, Hawaii Revised Statutes, is amended to read as follows:

"§459-2 Optometry; unauthorized practice, unlawful. It shall be unlawful for any person to practice optometry or to append the letters "O.D." or any other optometric degree to a person's name with the intent thereby to imply that the individual is a practitioner of optometry, without first securing and holding an unrevoked and unsuspended license under and as provided in this chapter. This chapter shall not [apply]:

- (1) Apply to, or prohibit, a duly licensed physician from practicing optometry as defined in this chapter [~~defined, nor shall it prohibit~~];
- (2) Prohibit a duly licensed physician or optometrist from filling prescriptions or orders [~~, nor shall it prohibit~~];
- (3) Prohibit the replacement, duplication, or repair of ophthalmic lenses, contact lenses, or frames, or fittings thereof, by persons qualified to write or fill prescriptions or orders under this chapter [~~, nor shall it prohibit~~];
- (4) Prohibit or prevent any dispensing optician licensed under chapter 458 from performing the activities authorized by the license [~~, nor shall it apply~~]; or
- (5) Apply to optometric service corporations formed for the primary purpose of contracting with individuals, groups of individuals, and corporations for defraying or assuming the cost of services of optometrists and of contracting on behalf of optometrists to furnish services as provided in chapter 424.

[~~An "ophthalmic lens" within the meaning of this chapter means any spectacle lens which has a spherical, cylindrical, or prismatic power or value, and is ground pursuant to a prescription.~~]"

COMMENT

Section 467-30(a) and (e), HRS, includes definitions of terms used in section 467-30, HRS. Section 467-30, HRS, should be amended by removing the definition of "operating a condominium hotel" from subsection (e), placing that definition into subsection (a), and placing the definitions in alphabetical order to conform to the customary drafting convention. Additional technical nonsubstantive amendments are made for purposes of clarity, consistency, and style.

SECTION 21. Section 467-30, Hawaii Revised Statutes, is amended as follows:

1. By amending subsection (a) to read:

"(a) As used in this section[~~7~~]:

~~["condominium"]~~ "Condominium hotel" includes those units in a project as defined in section 514B-3 and subject to chapter 514B[~~7-which~~] that are used to provide transient lodging for periods of less than thirty days.

"Operating a condominium hotel" includes the:

- (1) Management of the apartments or units in a condominium project for purposes of providing transient lodging;
and
- (2) Renting or leasing of condominium apartments or units directly or indirectly from the apartment or unit owners for purposes of providing transient lodging."

2. By amending subsection (e) to read:

"(e) [~~As used in this section, "operating a condominium hotel" includes the management of the apartments or units in a condominium project for purposes of providing transient lodging, and includes the renting or leasing of condominium apartments or units directly or indirectly from the apartment or unit owners for purposes of providing transient lodging.~~] The condominium hotel operator shall provide [~~a written contract~~] to the owner or owners of each apartment or unit under the condominium hotel operation[~~7~~] a written contract expressing the exact agreements of each party, including all financial and accounting obligations, and the notification requirements of subsection (g)."

COMMENT

Section 652-2, HRS, uses gender-specific terms. Gender-neutral terms are preferred by the customary drafting convention. Section 652-2, HRS, should be amended by making the section gender neutral. Additional technical nonsubstantive amendments are made for purposes of clarity and style.

SECTION 22. Section 652-2, Hawaii Revised Statutes, is amended to read as follows:

"§652-2 Garnishee, rights, duties; collection by levying officer. The garnishee [~~shall~~], when summoned before judgment rendered against [~~his~~] the garnishee's principal, if [~~he~~] the garnishee desires, shall be admitted to defend [~~his~~] the garnishee's principal in the action.

If judgment is rendered in favor of the plaintiff, and likewise in all cases in which the garnishee is summoned after judgment, the garnishee fund, or [~~such~~] any part thereof as may be sufficient for that purpose, shall be liable to pay the same. The plaintiff on praying out execution shall be entitled to have included in the execution an order directing the officer serving the same to make demand of the garnishee for the goods and effects of the defendant secured in [~~his~~] the garnishee's hands, whose duty it will be to expose the same to be taken on execution, and also to make demand of the garnishee for the debt or wages secured in [~~his~~] the garnishee's hands or the moneys held by [~~him~~] the garnishee for safekeeping, or [~~such~~] any part thereof as may satisfy the judgment. It shall be the duty of the garnishee to pay the same. If the garnishee has in any manner disposed of the goods and effects or does not expose and subject the same to be taken on execution, or if the garnishee does not pay to the officer, when demanded, the debt [~~or~~], wages, or moneys held for safekeeping, the garnishee shall be liable to satisfy the judgment out of [~~his~~] the garnishee's own estate, as [~~his~~] the garnishee's own proper debt, if the goods [~~or~~], effects [~~or~~], debt [~~or~~], wages, or moneys held for safekeeping[7] be of sufficient value or amount and, if not, then to the value of the same; provided that every garnishee, whether summoned before or after judgment, shall be allowed to

retain or deduct from the goods, effects, and credits of the defendant in [~~his~~] the garnishee's hands at the time of service all demands against the defendant of which [~~he~~] the garnishee could have availed [~~himself~~] the garnishee's self if [~~he~~] the garnishee had not been [~~garnished,~~] garnished, whether the same are at the time due or not, and whether by setoff on a trial or by setoff of judgments or executions between [~~himself~~] the garnishee and the defendant, and shall be liable only for the balance after adjustment of all mutual demands between [~~himself~~] the garnishee and the defendant; provided that in [~~such~~] the adjustment no demands for unliquidated damages for wrongs or injuries shall be included[~~7~~]; and provided further that the judgment shall show the amount of any setoff.

No garnishee shall be liable to anyone for the nonpayment of any sum or for the nondelivery of any goods or effects when the garnishee in good faith believes, or has reason to believe, that garnishment or other process affects the same, though such be not the case, but this paragraph shall not supersede section 652-9 where the same are applicable."

COMMENT

Section 36-35, HRS, establishes the state educational facilities repair and maintenance account. Section 36-35(h), HRS, provides that "[t]his section shall be repealed on July 1, 2020". Section 36-35, HRS, has not been amended to delete or extend this repeal provision. Therefore, by operation of law, section 36-35, HRS, is repealed. Section 36-35, HRS, should be formally repealed.

SECTION 23. Section 36-35, Hawaii Revised Statutes, is repealed.

~~["§36-35 State educational facilities repair and maintenance account. (a) There is created in the state general fund under EDN 400 (school support) the state educational facilities repair and maintenance account, into which shall be deposited legislative appropriations to the account designated for use solely to eliminate the backlog of school repair and maintenance projects, including the repair or replacement of fixtures, furnishings, and equipment, existing on June 30, 2000. Expenditures from the account shall be subject to sections 37-31 and 37-33 to 37-40. Based on the prioritization approved by the department of education, appropriations or authorizations from the account shall be expended by the superintendent of education.~~

~~(b) The department of education shall review the existing condition of school facilities and establish specific vision plans for each school complex based on current repair and maintenance requirements and overall repair and maintenance priorities.~~

~~(c) Criteria used to establish current repair and maintenance requirements may include:~~

- ~~(1) The remaining useful life of the school facility and its major components;~~
- ~~(2) The adjusted life of the school facility and its major components after repair or maintenance; and~~
- ~~(3) The current and future repair and maintenance requirements of the school facility and its components based on established industry standards or product manufacturer recommendations;~~

~~provided that demolition of a facility or any of its components may be recommended if the cost of the repairs do not justify the adjusted life or remaining life of the facility.~~

~~(d) Criteria used to establish overall repair and maintenance requirements may include:~~

- ~~(1) Whether a school facility will continue to be used for the next twenty-five years; and~~
- ~~(2) Whether a repair or maintenance project is required:
 - ~~(A) For health or safety reasons;~~
 - ~~(B) To comply with legal mandates;~~
 - ~~(C) To comply with current building codes; or~~
 - ~~(D) For preventive maintenance reasons;~~~~

~~provided that in developing criteria, consideration shall be given to school facilities that were more than twenty-five years of age on July 1, 2000.~~

~~(c) The expenditure of funds for any project with an estimated total cost of less than \$100,000 shall be exempt from section 464-4; provided that:~~

- ~~(1) The superintendent of education shall develop internal policies and procedures for the procurement of goods, services, and construction, consistent with the goals of public accountability and public procurement practices;~~
- ~~(2) Insofar as is practical, and based on specifications developed, adequate and reasonable competition of no fewer than three proposals shall be solicited for each project, based on rules adopted by the superintendent of education;~~
- ~~(3) Considering all factors, including quality, warranty, and delivery, the award shall be made to the vendor with the most advantageous proposal;~~
- ~~(4) The procurement requirements shall not be artificially divided or parceled so as to avoid competitive bidding or competitive proposals; and~~
- ~~(5) Formal design for projects shall be done when there is a clear need to preserve structural integrity, health and safety, or to clearly communicate construction requirements.~~

~~For all projects, the superintendent of education shall develop a strategy for the efficient and cost-effective use of government and private sector workforces and consider increased flexibility through public-private partnering, design-build options, cost plus, job order contracts, performance-based contracts, request for proposals, and any other means to improve communications and accelerate repairs while preserving the quality of the repairs.~~

~~(f) The superintendent of education shall ensure that all repair and maintenance projects achieve maximum cost-efficiency by emphasizing functional or performance criteria, uniformity of design, and commonality of products, and by avoiding unique or custom requirements that increase costs. The superintendent of education shall develop project specifications based on generic specifications or prescriptive specifications using standard commercial products. Prescriptive specifications may include a qualified product list.~~

~~For the purposes of this subsection:~~

~~"Generic specification" means a technical specification that is written in a clear, unambiguous, and nonrestrictive manner establishing:~~

- ~~(1) Design, performance, or functional requirements to identify the work to be performed; and~~
- ~~(2) Material standards to be used on a project.~~

~~"Prescriptive specification" means a technical specification:~~

- ~~(1) Establishing that the required work to be performed is written in a clear, unambiguous, and nonrestrictive manner; and~~
- ~~(2) Listing manufacturers or products that are acceptable for use on the project.~~

~~"Standard commercial product" means a product or material that in the normal course of business is customarily maintained in stock by, or readily available for marketing from a manufacturer, distributor, or dealer.~~

~~This subsection shall not apply to any school facility designated a historic property pursuant to section 6E-5.5.~~

~~(g) The superintendent of education shall submit an annual report to the legislature, which shall include a financial statement of the account and the status of repair and maintenance projects undertaken pursuant to this section, no later than twenty days prior to the convening of each regular session. Expenditures for repair and maintenance projects undertaken pursuant to this section shall be posted electronically on the Internet by the department of education within thirty days of each project's completion.~~

~~(h) This section shall be repealed on July 1, 2020."]~~

Testimony of the Contractors License Board

Before the
Senate Committee on Judiciary
Tuesday, February 16, 2021
9:16 a.m.
Via Videoconference

On the following measure:
**S.B. 1327, RELATING TO STATUTORY REVISION: AMENDING OR REPEALING
VARIOUS PROVISIONS OF THE HAWAII REVISED STATUTES
OR THE SESSION LAWS OF HAWAII FOR THE PURPOSES OF CORRECTING
ERRORS AND REFERENCES, CLARIFYING LANGUAGE,
OR DELETING OBSOLETE OR UNNECESSARY PROVISIONS.**

Chair Rhoads and Members of the Committee:

My name is Candace Ito, and I am the Executive Officer of the Contractors License Board (Board). The Board offers comments on sections 14 and 16 of this bill.

The purpose of this bill is to amend or repeal various provisions of the Hawaii Revised Statutes (HRS) or the Session Laws of Hawaii for the purposes of correcting errors and references, clarifying language, or deleting obsolete or unnecessary provisions. The bill, in sections 14 and 16, amends the contractors licensing law by relocating the definition of “person injured” or “injured person” from HRS section 444-26 (Contractors Recovery Fund; Use of Fund; Person Injured; Fees) to HRS section 444-1 (Definitions).

The Board prefers that this definition remain in section 444-26 and that erroneous language currently in section 444-26, which made the definition applicable to the entire chapter, be revised to limit its application to only contractor recovery fund claims. Specifically, the Board respectfully requests that the Committee:

- (1) Delete section 14 of the bill;
- (2) Not delete the language on page 15, line 18 to page 16, line 5 of the bill;
and
- (3) Amend the phrase on page 15, line 18 so that it reads: “For purposes of the provisions in this chapter relating to the contractors recovery fund[,]” to make clear that this definition applies only to contractor recovery fund claims.

The Board believes these revisions would provide greater clarity as to the application of this phrase in chapter 444.

Thank you for the opportunity to testify on this bill.