

ACT 104

H. B. NO. 2043-72

A Bill for an Act Relating to Evidence, Amending Chapters 621 and 622 of the Hawaii Revised Statutes.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Chapter 621 of the Hawaii Revised Statutes is amended as follows:

(a) Section 621-1 is amended to read as follows:

“Sec. 621-1. Subpoena, issue of. The clerks of the several courts shall issue writs of subpoena as provided by the rules of court or by statute. Except as otherwise provided, the clerks shall issue to any prosecuting officer, and to any party plaintiff or defendant, in any cause, civil or criminal, pending before such courts, or to the counsel of the party, writs of subpoena for witnesses, in blank, so that the names of the witnesses to be summoned may be inserted after the issuing of the writs.”

(b) Section 621-4 is amended to read as follows:

“Sec. 621-4. Compelling attendance. Upon nonattendance of witnesses duly summoned, the service of the writ being proved, the court shall have summary power to cause their attendance and to punish them for contempt.”

(c) Section 621-5 is amended by deleting from the first sentence the words “On the trial of any issue joined or of any matter or question or on an inquiry arising in any suit, action, or proceeding in any court or before any person having by law or by consent of parties authority” and inserting in lieu thereof: “On the trial of any issue, matter or question, or on an inquiry arising in any action or proceeding in any court or before any person having authority”.

(d) Section 621-5 is further amended by deleting the words and punctuation “, or a summons, or other process, and had received his conduct money and payment for expenses and loss of time”.

(e) Section 621-7 is amended to read as follows:

“Section 621-7. Fees; criminal cases. Every witness legally required to attend upon a court or a grand jury in any criminal case, other than a public officer or employee, shall be entitled to \$4 for each day’s attendance and 20 cents for each mile actually and necessarily traveled, each way. Every such witness, coming to attend upon court from any island other than that upon which the court is holding session, shall be entitled to \$6 for each day’s attendance in addition to the actual round trip cost of plane or ship travel and 20 cents for each mile actually and necessarily traveled on the ground each way. Any police officer or other public officer or employee (except the county attorney, prosecuting attorney, or deputy county attorney or deputy prosecuting attorney), coming to attend as a witness from a district other than that in which the court is holding session, shall be allowed his travel cost and mileage fees as provided in this section.

A public officer or employee, if not salaried, shall receive witness fees.”

(f) Section 621-8 is amended by deleting from the last line the words “from the place of his residence”.

(g) Section 621-12 is amended to read as follows:

“Sec. 621-12. Oath; affirmation. All courts and persons having authority to hear, receive, and examine evidence, may administer oaths to all witnesses legally called before them. Any person called as a witness, or required or desiring to make an affidavit or deposition, may make an affirmation in the words following:

I, _____, do solemnly, sincerely and truly affirm and declare that the evidence, etc.
Such affirmation shall be of the same force and effect as if the person had taken an oath in the usual form.”

(h) Section 621-13 is amended to read as follows:

“**Sec. 621-13. Oaths, validity of.** If an oath has been administered by a judge of a court of record, or by a clerk, notary public, or other person having authority to administer oaths by the law of the place where the oath was administered, it shall not be an objection to the validity of the oath that the judge or other person has not jurisdiction or cognizance of the matter or thing concerning which the oath was administered.”

(i) Section 621-14 is amended by amending the first sentence to read as follows: “No person offered as a witness shall be excluded by reason of incapacity from crime or interest from giving evidence on the trial of any issue, matter or question, or on any inquiry arising in any action or proceeding in any court, or before any person having authority to hear, receive, and examine evidence.”

(j) Section 621-14 is further amended by deleting from the second sentence the words “suit, action,” and inserting in lieu thereof “action”.

(k) Section 621-16 is amended to read as follows:

“**Sec. 621-16. Minors may testify, when.** On the trial of any issue, matter or question, or on any inquiry arising in any action or proceeding in any court, or before any person having authority to hear, receive, and examine evidence, it shall be lawful for the court or person to receive the evidence of any minor; provided, that the evidence of the minor is given upon his affirmation to tell the truth, the whole truth, and nothing but the truth, or in such other form as may be approved and allowed by the court or person and after he has been cautioned by the court or person, or in the case of a deposition by the person taking the deposition, that he will incur and be liable to punishment if he does not tell the truth; provided also, that no such evidence shall in any case be received unless it is proved to the satisfaction of the court or person authorized to hear, receive, and examine the evidence, that the minor perfectly understands the nature and object of the affirmation and the purpose for which his testimony is required.”

(l) Section 621-17 is amended to read as follows:

“**Sec. 621-17. Parties litigant, husbands, wives.** On the trial of any issue, matter or question, or on any inquiry arising in any action or proceeding in any court or before any person having authority to hear, receive, and examine evidence, the parties thereto, and the party on whose behalf any such action or proceeding may be brought or defended, and the husbands and wives of the parties and persons respectively shall, except as provided in section 621-18 and 621-19, be competent and compellable to give evidence on behalf of either or any of the parties to the action or proceeding.”

(m) Section 621-18 is amended by deleting the words and punctuation “or, except as hereinafter mentioned” which follow the first semicolon, and inserting in lieu thereof “or, except as otherwise provided”.

(n) Section 621-20 is amended to read as follows:

“Sec. 621-20. Communications to clergymen. No clergymen of any church or religious denomination shall, without the consent of the person making the confidential communication, divulge in any action or proceeding, whether civil or criminal, any confidential communication made to him in his professional character according to the uses of the church or religious denomination to which he belongs.”

(o) A new section 621-20.5 is added to read as follows:

“Sec. 621-20.5 Physician-patient privilege. (a) No physician shall, without the consent of his patient, divulge in any civil action or proceeding, unless the sanity of the patient be the matter in dispute, any information which he may have acquired in attending the patient, and which was necessary to enable him to prescribe or act for the patient; provided, that such consent shall be deemed to have been given to any physician (1) in every civil action which has been brought by any person for damages on account of personal injuries; and (2) in all cases in which a party to an action or proceeding offers himself or any physician or any person as a witness to testify to the physical or mental condition of the party.

(b) When the physical or mental condition (including the blood group) of a party to an action or proceeding is in controversy, he may be ordered to submit to a physical or mental examination by a physician as provided by the rules of court, and: (1) any information which may be acquired by such physician may be divulged without the consent of the person examined; (2) by requesting and obtaining a report of the examination so ordered or by taking the deposition of the examiner, the party examined waives any privilege he may have in that action or any other involving the same controversy, regarding the testimony of every other person who has examined or may thereafter examine him in respect of the same mental or physical condition.

(c) Within the meaning of this section the term “party” includes a person in the custody or under the legal control of a party.”

(p) Section 621-21 is amended to read as follows:

“Sec. 621-21. Court to decide whether testimony would incriminate. No witness shall on the trial of any issue, matter or question, or on any inquiry arising in any action or proceeding, whether civil or criminal, be permitted to refuse to answer any question which is relevant and material to the matter in issue on the ground that the answer may expose him to any penalty or forfeiture, or may disgrace or incriminate him, unless the court or person having authority to hear, receive, and examine evidence, is of the opinion that the answer will tend to subject the witness to punishment for felony or misdemeanor.”

(q) Section 621-22 is amended to read as follows:

“Sec. 621-22. Discrediting witness by proof of conviction.

Where, without the presence of the jury, it has been shown to the satisfaction of the court or person having authority to hear, receive, and examine evidence that a witness has been convicted of one or more felonies, or of misdemeanors involving moral turpitude, he may be questioned as to such con-

victions, and if, upon being so questioned, he either denies or refuses to answer, the party so questioning may prove such convictions. However, in a criminal case where the defendant takes the stand, the defendant may not be questioned or evidence introduced as to whether he has been convicted of any indictable or other offense unless the defendant has himself introduced testimony for the sole purpose of establishing his credibility as a witness.

Where such questioning or proof is permissible hereunder, the time, place and type of each offense may be elicited or proved.

(r) Section 621-25 is amended by changing the semicolon in the third line to a comma, by deleting from the fourth and fifth lines the words "by law or consent of parties,"; and by adding a new paragraph to read as follows: "A party shall not be deemed to have produced a witness within the meaning of this section if he has called the witness as an adverse witness as provided by the rules of court."

(s) Section 621-26 is amended to read as follows:

"Sec. 621-26. Confessions when admissible. No confession shall be received in evidence unless it is first made to appear to the judge before whom the case is being tried that the confession was in fact voluntarily made."

(t) Sections 621-2, 621-3, 621-6, and 621-27 are deleted.

SECTION 2. Chapter 622 of the Hawaii Revised Statutes is amended as follows:

(a) Section 622-1 is amended to read as follows:

"Sec. 622-1. Attesting witnesses not called, when. It shall not be necessary to prove an instrument by the attesting witness if attestation was not required in order for the instrument to be valid; and such instrument may be proved by admission or otherwise as if there had been no attesting witness."

(b) Section 622-2 is amended by deleting from the fifth and sixth lines the words "to the court or person and the jury or assessors (if any)".

(c) Section 622-3 is amended by deleting from the fifth line the words "by law or by consent of parties".

(d) Section 622-4 is amended by deleting from the fourteenth line the words "in any judicial or administrative proceeding".

(e) Section 622-5 is amended by deleting the comma following the word "court" in the sixth line and inserting: "or person having authority to hear, receive, and examine evidence,".

(f) Section 622-11 is amended by deleting from the seventh line the words "by law or by consent of parties".

(g) Section 622-12 is amended by deleting from the next to the last line the words "in the courts of the State".

(h) Section 622-13 is amended to read as follows:

Sec. 622-13. Proof of ordinances, rules, regulations, and other official acts.

(a) Whenever, in any proceedings before a court or person having authority to hear, receive and examine evidence, it is necessary to prove any ordinance of any county of the State, or any law, rule, regulation, or other official act or thing promulgated or enacted by or under authority of the Con-

stitution and laws of the United States or the State, a copy of such ordinance, bearing the certificate, as to its correctness, of the county clerk and under the seal of the county, or a copy of the law, rule, regulation, or other official act or thing, printed by authority, or bearing the certificate, as to its correctness, of the official in whose custody the original is kept, shall be admitted in evidence as prima facie proof of the contents thereof.

(b) A certified copy or copies of an ordinance or ordinances of any county may be filed by the clerk of the county with any court and thereafter the court may take judicial notice of the ordinance or ordinances and the contents thereof in any cause, without requiring a certified copy or copies to be filed or introduced as exhibits in such cause.

(c) Judicial notice shall be taken of an ordinance or ordinances of any county if a party requests it and (1) furnishes the court sufficient information to enable it properly to comply with the request, and (2) has given each adverse party such notice as the court may require to enable the adverse party to meet the request. The court shall afford the adverse party reasonable opportunity to present information relevant to the tenor of the ordinance to be noticed. If the court has insufficient information to enable it to notice the matter judicially, it shall decline to take judicial notice thereof."

(i) Section 622-14 is amended by deleting from the first line the word "legal", and by deleting from the next to the last line the words "in any court".

(j) Section 622-15 is amended by deleting from the sixth line the words "by law or by consent of parties".

(k) Section 622-16 is amended by deleting from the first line the word "legal" and by deleting from the sixth and seventh lines the words "in any court".

(l) Section 622-18 is amended by deleting from the fourth line the words "by law or by consent of parties".

(m) Section 622-20 is amended to read as follows:

"Sec. 622-20. Transcript of judgment, execution, return. A transcript from the docket of any district magistrate, sitting as the judge of a court not of record, of any judgment had before him, of the execution issued thereon, if any, and of the return to such execution, if any, when subscribed by the clerk or judge having the custody of the docket shall be evidence to prove the facts stated in the transcript in any court."

(n) Section 622-21 is amended by deleting from the first and second lines the word "legal".

(o) Section 622-22 is amended by deleting from the seventh line the words "by law or by consent of parties".

(p) Section 622-23 is amended by deleting from the second line the words "by law or by consent of parties", and by changing the word "masters" in the seventh line to read "master".

(q) Section 622-42 is amended by deleting from the second line the word "legal".

(r) Sections 622-44 and 622-45 are deleted.

(s) Section 622-51 is amended by adding a new paragraph (3) to read as follows:

“(3) “Officer” means a public officer, but does not include a person before whom a deposition is being taken.”

(t) Section 622-52 is amended by amending subsection (a) to read as follows:

“Sec. 622-52. Subpoena duces tecum for medical records, compliance.

(a) Except as provided in section 622-55, whenever a subpoena duces tecum is served upon the custodian of medical records or other qualified witness from a medical facility, in an action or other proceeding on a claim for personal injuries in which the custodian or his employer is neither a party to the action or proceeding nor is it alleged that the claim arose at the medical facility, and such subpoena requires the production in court, or before an officer, board, commission, or tribunal, of all or any part of the medical records of a patient who is or has been cared for or treated at the medical facility, it shall be sufficient compliance therewith if the custodian or other qualified witness within five days after receipt of such subpoena, delivers by registered or certified mail or by messenger a true and correct copy (which may be by any method described in section 622-3) of all the medical records described in such subpoena to the clerk of the court or his deputy authorized to issue it, together with the affidavit described in section 622-53.”

(u) Section 622-52 is further amended by deleting from subsection (b) the two numbered paragraphs, and inserting in lieu thereof the following:

“(1) If the subpoena directs attendance in court, to the clerk of such court or his deputy authorized to issue it, at the courthouse.

(2) In other cases, to the officer, board, commission, or tribunal conducting the hearing, at the place designated in the subpoena.”

(v) Section 622-53 is amended by inserting a comma after the word “available”, in the second line of subsection (c).

(w) Section 622-56 is amended by deleting from subsection (b) the words “required by section 621-3”.

SECTION 3. The amendments made by this Act shall not affect or repeal any other act passed at the same session of the legislature, and all such acts shall have full effect. So far as such acts conflict with any provision contained in this Act, they shall have the effect of subsequent acts.

SECTION 4. This Act upon its approval shall take effect on July 1, 1973.

(Approved May 23, 1972.)