

ACT 31

H. B. NO. 36

**A Bill for an Act Relating to Statutory Revision, Conforming Titles 1 to 27 of
the Hawaii Revised Statutes to the Rules of Court and Titles 28 to 37 as**

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Amended by the Sixth Legislature, 1972 Regular Session, Effective July 1, 1973; Amending Sections 1-21, 1-29, 1-32, 11-175, 28-27, 91-14, 92-12, 132-12, 157-13, 172-3, 281-17, 346-13, 353-7, 353-96, 356-13, 360-2, 371-6, 371-12, 380-10, 380-14, 383-99, 403-180, 403-184, 403-192, 409-13, 416-95, 416-125, 417-23, 418-13, 431-103, 431-244, 431-669, 431-670, 431-677, 431-683, 431-686, 434-30, 435-12, 437-6, 439-20, 443-26, 444-18, 448-18, 452-20, 457-12, 458-10, 467-15, 471-11, and 485-19, Hawaii Revised Statutes.

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

SECTION 1. Section 1-21, Hawaii Revised Statutes, is amended to read as follows:

“Sec. 1-21 “Oath.” The word “oath” includes a solemn affirmation.”

SECTION 2. Section 1-29, Hawaii Revised Statutes, is amended to read as follows:

“Sec. 1-29 Computation of time. The time in which any act provided by law is to be done is computed by excluding the first day and including the last, unless the last day is a Sunday or holiday and then it is also excluded. When so provided by the rules of court, the last day also shall be excluded if it is a Saturday.”

SECTION 3. Section 1-32, Hawaii Revised Statutes, is amended to read as follows:

“Sec. 1-32 Acts to be done on holidays. Whenever any act of a secular nature other than a work of necessity or mercy is appointed by law or contract to be performed upon a particular day, which day falls upon a Sunday or holiday, the act may be performed upon the next business day with the same effect as if it had been performed upon the appointed day. When so provided by the rules of court, the act also may be performed upon the next business day with the same effect as if it had been performed upon the appointed day if the appointed day falls on a Saturday.”

SECTION 4. Section 28-27, Hawaii Revised Statutes, is amended to read as follows:

“Sec. 28-27 Process addressed to whom. Any process of any court of record shall be addressed to the sheriff or his deputy, or to a chief of police, except as may be otherwise provided by law or rule of court, and the sheriff or his deputy, or a chief of police, or any officer serving under them shall execute the same at their peril, according to the tenor thereof, and they shall not be liable for any damages resulting from the execution of the process.”

SECTION 5. Section 91-14(d), Hawaii Revised Statutes, is amended to read as follows:

“(d) Within fifteen days after the determination of the contents of the record on appeal in the manner provided by the rules of court, or within such further time as the court may allow, the agency shall transmit to the reviewing court the record of the proceeding under review. The court may require or

permit subsequent corrections or additions to the record when deemed desirable.”

SECTION 6. Section 157-13, Hawaii Revised Statutes, is amended to read as follows:

“**Sec. 157-13 General powers.** The department of agriculture through its board is hereby vested with the following powers:

- (1) To regulate and supervise in a milk shed the production, transportation, processing, storage, distribution, and delivery of milk, the establishment of quotas and the setting of minimum prices to be paid to producers by producer-distributors and distributors; provided that nothing contained in this chapter shall be construed to abrogate or affect the status, force or operation of any provision of the laws on public utilities, public health, expenditure of public funds or any local health ordinance or health regulation.
- (2) To investigate all matters in a milk shed pertaining to the production, transportation, processing, storage, distribution, and delivery of milk, and the establishment of quotas and the setting of minimum prices to be paid to producers by producer-distributors and distributors; to subpoena producers, producer-distributors and distributors, their records, books and accounts, and any other person from whom information may be desired to carry out the purpose and intent of this chapter; and by leave of a circuit court, to order the taking of depositions of witnesses absent from the State. Any authorized employee may sign and issue subpoenas and may administer oaths to witnesses and conduct hearings and investigations. In case of failure of any person to comply with any subpoena issued under authority of this chapter, or the refusal of a witness to testify to any matter regarding which he may be lawfully interrogated, the judge of the district court of the circuit in which the person resides or of the circuit in which the person may be personally served, on application of the board or its authorized representatives, shall compel obedience, as in the case of disobedience of the requirements of a subpoena issued from such court or a refusal to testify therein.
- (3) To control the intrastate shipment of milk including shipment of milk between counties.
- (4) To make and enforce all rules and regulations and all orders necessary to carry out this chapter.

The operation and effect of any provision of this chapter conferring a general power shall not be impaired or qualified by the granting of a specific power or powers.”

SECTION 7. Section 356-13, Hawaii Revised Statutes, is amended to read as follows:

“**Sec. 356-13 Hearings, witnesses, etc.** The Hawaii housing authority shall also have power to conduct examinations and investigations and to hear testimony and take proof under oath at public or private hearings on any matter material for its information; to issue subpoenas requiring the attendance of

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witnesses or the production of books and papers, and to order the examination of witnesses who are unable to attend before the authority, or excused from attendance, or by leave of court as provided by chapter 624, who are out of the State; and to make available to such agencies, boards, or commissions as are charged with the duty of abating or requiring the correction of nuisances or like conditions, or of demolishing unsafe or unsanitary structures within its territorial limits, its findings and recommendations with regard to any building or property where conditions exist which are dangerous to the public health, morals, safety, or welfare. Any of the investigations or examinations provided for in this chapter may be conducted by the authority or by a committee appointed by it, consisting of one or more commissioners, or by counsel, or by an officer or employee specially authorized by the authority to conduct it. Any commissioner, counsel for the authority, or any person designated by it to conduct an investigation or examination shall have power to administer oaths, take affidavits, and issue subpoenas or orders for the taking of depositions.”

SECTION 8. Section 380-10, Hawaii Revised Statutes, is amended to read as follows:

“**Sec. 380-10 Appeal.** Whenever any court of the State issues or denies any temporary injunction in a case involving or growing out of a labor dispute, an appeal shall lie as of right notwithstanding any provision of section 641-2. The appeal shall be heard and the temporary injunction order affirmed, modified, or set aside with the greatest possible expedition, giving the proceedings precedence over all other matters of the same character.”

SECTION 9. Section 380-14(c), Hawaii Revised Statutes, is amended to read as follows:

“(c) Whenever it is charged that any person has engaged in an unfair labor practice within the meaning of section 377-7(5), (6), (7), (8), and (9), the preliminary investigation of such charge shall be made forthwith and given priority over all other cases except cases of like character in the office where it is filed or to which it is referred. If, after the investigation, the board has reasonable cause to believe the charge is true, it shall petition any circuit court of the State within any circuit where the unfair labor practice in question has occurred, is alleged to have occurred, or wherein the person resides or transacts business, for appropriate injunctive relief pending the final adjudication of the board with respect to such matter. Upon the filing of any such petition the circuit court shall have jurisdiction to grant such injunctive relief or temporary restraining order as it deems just and proper, notwithstanding any other provision of law or rule of court; provided further, that no temporary restraining order shall be issued without notice unless a petition alleges that substantial and irreparable injury to the charging party will be unavoidable and the temporary restraining order shall be effective for no longer than five days and will become void at the expiration of such period; provided further, that the board shall not apply for any restraining order under section 377-7(5), (6), (7), (8), and (9) if a charge against the employer under section 377-6(2) has been filed and after the preliminary investigation, it has reason-

able cause to believe that the charge is true and that a complaint should issue. Upon filing of any such petition the courts shall cause notice thereof to be served upon any person involved in the charge and the person, including the charging party, shall be given an opportunity to appear by counsel and present any relevant testimony; provided further, that for the purposes of this subsection circuit courts shall be deemed to have jurisdiction of a labor organization (1) in the circuit in which the organization maintains its principal office, or (2) in any circuit in which its duly authorized officers or agents are engaged in promoting or protecting the interests of employee members. The service of legal process upon such officer or agent shall constitute service upon the labor organization and make the organization a party to the suit.”

SECTION 10. Section 431-103(a), Hawaii Revised Statutes, is amended to read as follows:

“(a) Triplicate copies of legal process against an insurer for whom the insurance commissioner is attorney shall be served upon him by a person competent to serve a summons. At the time of service the plaintiff shall pay to the commissioner \$5, taxable as costs in the action. In the absence of the commissioner the process may be served upon the chief deputy, or the deputy in charge of the insurance function.”

SECTION 11. Section 431-244, Hawaii Revised Statutes, is amended to read as follows:

“**Sec. 431-244 Time limit for assessment.** Every subscriber of a domestic reciprocal insurer having contingent liability shall be liable for, and shall pay his share of any assessment, as computed and limited in accordance with sections 431-221 to 431-250 if:

(a) While his policy is in force or within one year after its termination, he is notified by either the attorney or the insurance commissioner of his intentions to levy such assessment, or

(b) If an action to have a receiver, conservator, rehabilitator, or liquidator of the insurer appointed is commenced pursuant to section 431-669 while his policy is in force or within one year after its termination.”

SECTION 12. Section 431-669(b), Hawaii Revised Statutes, is amended to read as follows:

“(b) The insurance commissioner shall commence any such proceeding, the attorney general representing him, by a complaint setting forth the relief prayed for. The court shall either dismiss the complaint or grant the relief prayed for, in whole or in part, together with such other relief as the nature of the case and the interests of policyholders, creditors, stockholders, members, subscribers, or the public may require.”

SECTION 13. Section 431-670(a), Hawaii Revised Statutes, is amended to read as follows:

“(a) Upon application by the insurance commissioner at the commencement of the action or at any time thereafter, the court may with or without notice issue an injunction restraining the insurer, its officers, directors, stock-

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holders, members, subscribers, agents, and all other persons from the transaction of its business or the waste or disposition of its property until the further order of the court.”

SECTION 14. Section 431-677(a), Hawaii Revised Statutes, is amended to read as follows:

“(a) Any transfer, or lien upon, the property of an insurer which is made or created within four months prior to the commencement of an action under sections 431-651 to 431-686, with the intent of giving to any creditor or of enabling him to obtain a greater percentage of his debt than any other creditor of the same class and which is accepted by the creditor having reasonable cause to believe that such a preference will occur, shall be voidable.”

SECTION 15. Section 431-683(a), Hawaii Revised Statutes, is amended to read as follows:

“(a) Upon the basis of the report provided for in section 431-682 including any amendments thereof, the court, ex parte, may levy one or more assessments against all members of the insurer who, as shown by the records of the insurer, were members (if a mutual insurer) or subscribers (if a reciprocal insurer) at any time within one year prior to the date of commencement of the action under section 431-669.”

SECTION 16. Section 431-686, Hawaii Revised Statutes, is amended to read as follows:

“**Sec. 431-686 Liability upon the assessment.** (a) On the return day of the order to show cause provided for in section 431-684 if the member or subscriber does not appear and serve verified objections upon the insurance commissioner, the court shall make an order adjudging that the member or subscriber is liable for the amount of the assessment against him together with \$10 costs, and that the commissioner may have judgment against the member or subscriber therefor.

(b) If on such return day the member or subscriber appears and serves verified objections upon the commissioner there shall be a full hearing before the court or a referee to hear and determine, who, after the hearing, shall make an order either negating the liability of the member or subscriber to pay the assessment or affirming his liability to pay the whole or some part thereof together with \$25 costs and the necessary disbursements incurred at the hearing, and directing that the commissioner in the latter case may have judgment therefor.

(c) The commissioner shall take such further proceedings as may be required in order to collect from each member or subscriber the amount for which he has been held liable.”

SECTION 17. Section 434-30(b), Hawaii Revised Statutes, is amended to read as follows:

“(b) Service shall only be made upon the commissioner, or if absent, upon the person in charge of his office. It shall be made in duplicate and shall constitute sufficient service upon the society. When legal process against a

society is served upon the commissioner, he shall forthwith forward one of the duplicate copies by registered mail, prepaid, directed to the secretary or corresponding officer. No such service shall require a society to file its answer, pleading or defense in less than thirty days from the date of mailing the copy of the service to a society. At the time of serving any process upon the commissioner, the plaintiff or complainant in the action shall pay to the commissioner a fee of \$2."

SECTION 18. Section 437-6(5)(C), Hawaii Revised Statutes, is amended to read as follows:

"(C) Depositions of witnesses residing within or without the State may be taken by the board as provided in chapter 624. In any case of disobedience to, or neglect of any such subpoena served on any person, or the refusal of any witness to testify to any matter regarding which he may lawfully be interrogated by the board, any circuit judge of any judicial circuit wherein such disobedience, neglect, or refusal occurs, on application of the executive secretary or any person so authorized by the board may compel obedience by proceedings for contempt as in the case of disobedience of the requirements of a subpoena issued from the court or a refusal to testify therein."

SECTION 19. Section 443-26, Hawaii Revised Statutes, is amended to read as follows:

"Sec. 443-26 Denial, suspension, or revocation of license; procedure; appeal. The board shall not deny any application for an original or renewal license or initiate any disciplinary action against any licensee except for probable cause. Before denying, suspending, or revoking any license, the charges against the licensee shall be investigated by the board. If action for denial, suspension, or revocation is determined upon, a hearing shall be held in accordance with chapter 91. The hearing on the charges shall be held at such time and place as the board prescribes. The board may issue subpoenas and bring before it any person or relevant book or writing in this State, swear witnesses and take the testimony of any person by deposition as provided by chapter 624, with the same fees and mileage as prescribed by law in judicial proceedings in courts of record of the State in civil cases. All evidence shall be under oath. Any party to any hearing shall have the right of subpoena to compel the attendance of witnesses and to cause the production of any books and writings in his behalf. If the board determines that any applicant is not qualified to receive a license, a license shall not be granted, and if the board determines that any licensee is guilty of a violation of any of the provisions of this chapter, his license may be suspended or revoked by the board; provided that four members of the board concur in such determination. Any order denying a license, or suspending or revoking a license shall be rendered no later than fifteen days after the conclusion of the hearings. Any person aggrieved thereby may appeal to the circuit court of the county in which the applicant resides, or where the licensee has his principal place of business in the manner provided in chapter 91."

SECTION 20. Section 457-12(c), Hawaii Revised Statutes, is amended to read as follows:

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“(c) When publication of the notice is necessary, the date of the hearing shall not be less than ten days after the last date of the notice. The attendance of witnesses and the production of books, papers, and documents at the hearing may be compelled by subpoenas issued by the board, which shall be served in the same manner as subpoenas of circuit courts. At the hearing the board shall administer oaths as may be necessary for the proper conduct of the hearing. The board shall not be bound by strict rules of procedure or by the laws of evidence in the conduct of its proceedings, but the determination shall be based upon sufficient legal evidence to sustain it. At the hearing the accused shall have the right to appear either personally or by counsel, or both, in his or her own behalf, to cross-examine witnesses, and to have subpoenas issued by the board. If the accused is found guilty of the charges, the board may refuse to issue a license to the applicant or may revoke, suspend a license or otherwise discipline a licensee. A revoked or suspended license may be reissued after one year in the discretion of the board.”

SECTION 21. Sections 11-175, 92-12, 132-12, 172-3, 281-17, 346-13, 353-7, 353-96, 360-2, 371-6, 371-12, 383-99, 403-180, 403-184, 403-192, 409-13, 416-95, 416-125, 417-23, 418-13, 435-12, 437-6, 439-20, 444-18, 448-18, 452-20, 458-10, 467-15, 471-11, and 485-19, Hawaii Revised Statutes, are amended by deleting the words shown in the second column below, opposite the section number or numbers, wherever the same appear in the designated section or sections, and inserting in lieu thereof the words shown in the third column, if any are shown:

SECTION NUMBERS	WORDS TO BE DELETED	WORDS TO BE INSERTED
11-175	circuit courts at chambers	circuit courts
92-12, 281-17, 346-13, 353-7, 371-6, 383-99, 403-180, 403-192, 416-95, 418-13, 437-6, 452-20	circuit judge at chambers	circuit court
132-12, 353-7, 353-96, 360-2, 371-12, 403-180, 435-12, 439-20, 444-18, 448-18, 458-10, 467-15, 471-11	circuit judges at chambers	circuit courts
172-3	circuit judges in chambers	circuit courts
172-3 (form of notice)	AT CHAMBERS	—
172-3 (form of notice)	sitting at chambers	—

SECTION NUMBERS	WORDS TO BE DELETED	WORDS TO BE INSERTED
403-180, 403-184, 403-192	the circuit judge presiding at chambers in	—
403-192	section 634-59	sections 634-59(3) and 634-63
409-13	circuit judge, sitting at chambers	circuit court, sitting without a jury
416-125, 417-23	circuit court at chambers	circuit court
417-23	power at chambers	power
485-19	equity courts	circuit courts sitting without a jury

SECTION 22. In sections 1 to 20, statutory material to be repealed is bracketed, and new material is underscored. In printing this Act, the revisor of statutes need not include the brackets, the bracketed material, or the underscoring.*

SECTION 23. This Act shall take effect on July 1, 1973.

(Approved May 4, 1973.)

*Edited accordingly.