

ACT 283

S.B. NO. 431

A Bill for an Act Relating to Statutory Revision: Amending or Repealing Various Provisions of the Hawaii Revised Statutes and the Session Laws of Hawaii for the Purpose of Correcting Errors, Clarifying Language, Correcting References, and Deleting Obsolete or Unnecessary Provisions.

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

SECTION 1. Section 214, Hawaiian Homes Commission Act of 1920, as amended, is amended by amending subsection (b) to read as follows:

“(b) In addition the department may:

- (1) Use moneys in the Hawaiian home operating fund, with the prior approval of the governor, to match federal, state, or county funds available for the same purposes and to that end, enter into such undertaking, agree to such conditions, transfer funds therein available for such expenditure, and do and perform such other acts and things, as may be necessary or required, as a condition to securing matching funds for such projects or works;
- (2) Loan or guarantee the repayment of or otherwise underwrite any authorized loan or portion thereof, up to a maximum of \$50,000 to lessees in accordance with section 215;
- (3) Loan or guarantee the repayment of or otherwise underwrite any authorized loan or portion thereof to a cooperative association in accordance with section 215;

- (4) Permit and approve loans made to lessees by government agencies or private lending institutions, where the department assures the payment of such loans; provided that upon receipt of notice of default in the payment of such assured loans, the department may, upon failure of the lessee to cure the default within sixty days, cancel the lease and pay the outstanding balance in full or may permit the new lessee to assume the outstanding debt; and provided further that the department shall reserve the following rights: the right of succession to the lessee's interest and assumption of the contract of loan; the right to require that written notice be given to the department immediately upon default or delinquency of the lessee; and any other rights enumerated at the time of assurance necessary to protect the monetary and other interests of the department;
- (5) Secure, pledge, or otherwise guarantee the repayment of moneys borrowed by the department from government agencies or private lending institutions and pay the interim interest or advances required for loans; provided that the State's liability, contingent or otherwise, either on moneys borrowed by the department or on departmental guarantees of loans made to lessees under this paragraph and paragraphs (2), (3), and (4) of this [section,] subsection, shall at no time exceed \$21,000,000; the department's guarantee of repayment shall be adequate security for a loan under any state law prescribing the nature, amount, or form of security or requiring security upon which loans may be made;
- (6) Use available loan fund moneys or other funds specifically available for such purposes as cash guarantees when required by lending agencies;
- (7) Exercise the functions and reserved rights of a lender of money or mortgagee of residential property in all direct loans made by government agencies or by private lending institutions to lessees the repayment of which is assured by the department. The functions and reserved rights shall include but not be limited to, the purchasing, repurchasing, servicing, selling, foreclosing, buying upon foreclosure, guaranteeing the repayment, or otherwise underwriting, of any loan, the protecting of security interest, and after foreclosures, the repairing, renovating, or modernization and sale of property covered by the loan and mortgage;
- (8) Pledge receivables of loan accounts outstanding as collateral to secure loans made by government agencies or private lending institutions to the department, the proceeds of which shall be used by the department to make new loans to lessees or to finance the development of available lands for purposes permitted by this Act; provided that any loan agreement entered into under this paragraph by the department shall include a provision that the money borrowed by the department is not secured directly or indirectly by the full faith and credit or the general credit of the State or by any revenues or taxes of the State other than the receivables specifically pledged to repay the loan; provided further that in making loans or developing available lands out of money borrowed under this paragraph, the department may establish, revise, charge, and collect fees, premiums, and charges as necessary, reasonable, or convenient, to assure repayment of the funds borrowed, and the fees, premiums, and

- charges shall be deposited into the Hawaiian home trust fund; and provided further that no moneys of the Hawaiian home loan fund may be pledged as security under this paragraph; and
- (9) Notwithstanding any other provisions of this Act to the contrary, transfer into the Hawaiian home trust fund any available and unpledged moneys from any loan funds, the Hawaiian loan guarantee fund, or any fund or account succeeding thereto, except the Hawaiian home loan fund, for use as cash guarantees or reserves when required by a federal agency authorized to insure or guarantee loans to lessees.”

SECTION 2. Section 26-35.5, Hawaii Revised Statutes, is amended by amending subsection (j) to read as follows:

“(j) Any moneys which the State is required to pay to a member under this section shall be paid from an appropriation made by the legislature at the next session after the requirement to pay inures to the member. The appropriation shall be sufficient to include any postjudgment interest which the member was required to pay if the member has personally satisfied the judgment, or at the rate specified in section [478-2] 478-3 for the period from the entry of judgment for which indemnification is available until the appropriation is enacted if the judgment was not satisfied. Any bill necessary to effect a payment required by subsections (h) and (i) shall be submitted by the member to a legislator; all other bills necessary to effect payments required by this section shall be initiated by the attorney general.”

SECTION 3. Section 39-34, Hawaii Revised Statutes, is amended to read as follows:

“§39-34 **Disputed ownership.** If there are two or more claimants claiming adversely, each to the other or others, to be the holder in due course of the bonds or coupons alleged to have been lost, destroyed, defaced, or stolen, the director of finance may, in the director’s discretion, require the claimants, if not within the State, to appoint agents within the State to accept service of process, or otherwise to submit to the jurisdiction of the courts of the State, and may bring suit on behalf of the State in the circuit court of the first judicial circuit, against the claimants, by interpleader, for the determination of the claimant or claimants entitled to the payment of the bonds or coupons. Jurisdiction is hereby conferred upon the court to hear and determine, without a jury, the suits and to determine whether any of the claimants is entitled to the payment, and, if so, which of the claimants is so entitled; provided that the determination shall not dispense with the conditions prescribed by section 39-33 requiring [six months to elapse, and] the giving of a bond[,] before the payment of the claims. The costs of the suit shall be borne by the claimants, and the court may decree the payment of such costs by any of the unsuccessful claimants, or the apportionments thereof, as may be deemed just. The decision of the court shall be appealable to the supreme court.”

SECTION 4. Section 46-4, Hawaii Revised Statutes, is amended by amending subsection (d) to read as follows:

“(d) Neither this section nor any other law, county ordinance, or rule shall prohibit group living in facilities licensed by the State as provided for under section 321-15.6 for persons, including the mentally ill, the elderly, the handicapped, the developmentally disabled, or the totally disabled persons, who are not related to the home operator or facility staff; provided that such group living facilities meet all applicable county requirements, not

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inconsistent with the intent of this subsection and including building height, setback, maximum lot coverage, parking, and floor area requirements. For purposes of this section, "mentally ill person" means a mentally ill person as defined under section 334-1; "elderly person" means an elderly person as defined under section 359-52; "handicapped person" means [a handicapped] an individual with a physical handicap as defined under section 515-2; "developmentally disabled person" means a person suffering from developmental disabilities as defined under section 333E-2; and "totally disabled person" means a person totally disabled as defined under section 235-1."

SECTION 5. Section 53-7, Hawaii Revised Statutes, is amended to read as follows:

**"§53-7 Urban renewal projects in disaster areas.** Notwithstanding any other provisions of this chapter, where the council of a county certifies that an area within the county is in need of renewal, redevelopment, or rehabilitation as a result of a seismic wave, flood, fire, hurricane, earthquake, storm, volcanic activity, explosion, or other catastrophe, natural or [manmade] of human origin (herein called "disaster area") respecting which the governor of the State has certified the need for disaster assistance under Public Law 875, Eighty-first Congress (64 Stat. 1109), or other federal law, the council of a county may approve an urban renewal plan and an urban renewal project with respect to the area without regard to:

- (1) The provisions of this chapter as follows: paragraphs (10) and (16) of section 53-1; the proviso of the first sentence of paragraph (4) of section 53-5; the requirements for housing of displaced families, approval of the plan by planning commission, public hearings and findings required by the county council prior to the approval of the plan as contained in section 53-6, provided that the limitation of time in which to contest validity of the proceedings or of the renewal plan provided in section 53-6 in the case of an urban renewal project for disaster areas shall be twenty days instead of thirty days; the exceptions set forth in the second sentence of section 53-20; the proviso [in clause (1)] of the second sentence of section 53-21; and
- (2) Any of the provisions of this chapter requiring public hearings or requiring that the urban renewal plan conform to the master plan for the development of the county or locality as a whole, or that the urban renewal area be a slum area, or a blighted, deteriorated, or deteriorating area, or that the urban renewal area be predominantly residential in character or be developed or redeveloped for residential use.

In the preparation, planning, financing, acquisition, and disposal of real property, and the execution generally of an urban renewal project for disaster areas, a redevelopment agency shall have all of the rights, powers, privileges, and immunities conferred upon the agency by this chapter including any amendment thereof or addition thereto, or by any other law, in the same manner as though all provisions of law relating to urban renewal projects were applicable to the redevelopment and renewal of the disaster areas as in this section provided, subject to the exceptions hereinabove set forth."

SECTION 6. Section 53-84, Hawaii Revised Statutes, is amended to read as follows:

“~~[[§53-84]]~~ **Incurring of indebtedness by the county.** For the purpose of carrying out its powers, duties, and functions under this part, including for the payment of principal and interest upon any advances for moneys and plans for redevelopment projects, the county may:

- (1) Borrow and apply for and accept advances and loans; provided that unless the obligation of the county to repay such advances or satisfy such loans is limited to the revenues derived by the county from an undertaking as defined in section 53-85, the incurring by the county of any such indebtedness shall be carried out under and pursuant to [the provisions of] chapter 47 [hereof];
- (2) Issue its bonds under and pursuant to [the provisions of] chapter 47 [hereof], including, without limiting the foregoing, for the refunding of bonds issued by an agency of the county abolished as provided in section 53-81 and the refunding of bonds issued by the county under [the next following subparagraph;] paragraph (3); and
- (3) Issue its bonds under and pursuant to [the provisions of] section 53-16, all of the provisions of which shall be applicable to such bonds and to the county in the issuance thereof except as follows:
  - (A) Such bonds shall be issued only for the purpose of carrying out the powers, duties, and functions of the county under this part, including, without limiting the foregoing, the refunding of bonds issued by the county under this [subparagraph] paragraph (3) or the preceding [subparagraphs] paragraphs (1) and (2) of this section or the refunding of bonds issued by an agency of the county abolished as provided in section 53-81;
  - (B) The principal of and interest on such bonds shall be payable and secured solely as provided in [subparagraphs (1) and (2) of paragraph (a) of] section 53-16[.], (a)(1) and (2), and in no event shall be payable from the general fund of the county or from taxes or from any other funds or properties of the county other than those referred to in [said] such paragraphs (1) and (2), nor shall such bonds be secured by the full faith and credit of the county or the general fund or the taxing power of the county;
  - (C) Neither the council nor any officer or employee of the county nor any person executing the bonds shall be liable personally on the bonds by reason of the issuance thereof;
  - (D) The bonds shall be limited obligations of the county payable and secured solely as provided in [item (B) above of this] subparagraph (B) of this section and shall so state on their face;
  - (E) The words “council”<sup>1</sup> or “officers” where used in [paragraph (e) of] section 53-16~~(e)~~ shall mean members of the council and officers of the county; and
  - (F) The words “rents”, “fees”, and “revenues” where used in [paragraph (g) of] section 53-16~~(g)~~ shall mean and include only those rents, fees, and revenues derived by the county from its activities under this part; the words “real [and] or personal property” and “property” where used in [said paragraph] section 53-16(g) shall mean only the real [and] or personal property held by the county for the purposes of this chapter and shall not include real [and] or personal

property held for other public uses and purposes, such as streets, parks, public buildings, publicly-owned utilities, and the like; and the word "bonds" where used in [said paragraph] section 53-16(g) shall mean bonds of the county issued under [said] section 53-16(g) as incorporated into this part and the bonds of any agency of the county abolished as provided in section 53-81."

SECTION 7. Section 54-11, Hawaii Revised Statutes, is amended by amending the definitions of "council" and "mayor" to read as follows:

"Council" means the [board of supervisors or] council of each county;"

"Mayor" means the [chairman of the board of supervisors or] executive officer of a county."

SECTION 8. Section 77-5, Hawaii Revised Statutes, is amended to read as follows:

**§77-5 Compensation plan for blue-collar positions.** The salary structures and schedules prescribed in section 77-13 shall not apply to positions in recognized trades or crafts or other skilled mechanical crafts, or unskilled, semiskilled, or skilled manual labor occupations, including positions of foremen, inspectors, and supervisors in positions having trades, crafts, or laboring experience and knowledge as the paramount requirement, commonly known as blue-collar positions.

- (1) The provisions of section 77-4 where it is not inconsistent with the provisions of this section shall be applicable.
- (2) Salary structures and schedules.
  - (A) The salary structures applicable to blue-collar positions shall be comprised of fifteen salary grades [with each grade consisting of such number of steps determined under section 77-13.5].
  - (B) Pay schedules for nonsupervisory blue-collar positions, hereafter to be referred to as the wage board schedules, shall be established as provided under subparagraph (D).
  - (C) Pay schedules for supervisory blue-collar positions, hereafter to be referred to as wage board supervisory schedules, shall be established as provided under subparagraph (D) for each of the following levels:
    - (i) Working foreman;
    - (ii) Foreman I;
    - (iii) Foreman II;
    - (iv) Foreman III; and[,]
    - (v) General foreman.
  - (D) The pay schedules applicable to employees in blue-collar positions, who are included in collective bargaining units under section 89-6(a), shall be subject to negotiations. The pay schedules applicable to employees in blue-collar positions, who are excluded from coverage under chapter 89, shall be subject to chapter 89C.
- (3) Wherever payment is made on the basis of an annual, weekly, hourly, or daily rate, the rate shall be computed as provided for under section 77-13(c).
- (4) Implementation of compensation plan.

- (A) The conference of personnel directors shall compile and recommend to the public employees compensation appeals board a tentative compensation plan based upon such factors as the kind and subject matter of work, level of difficulty and responsibility, and qualification requirements for classes deemed covered by this section by October 15 of every odd-numbered year.

Full opportunity for consultation with the persons and organizations including employee organizations shall be afforded.

- (B) The appeals board referred to in section 77-4 shall provide for the publication of the tentative compensation plan. All petitions for appeal against the compensation plan, including the pricing of classes or whether the class should be included or excluded from the blue-collar plan, shall be filed with the appeals board within twenty days from the date of publication of the tentative plan.

The board shall meet biennially to hear appeals from affected persons and parties concerning the tentative compensation plan and may hold public hearings as well. At least one appeal hearing shall be held in each jurisdiction.

Final adjustment by the board to the compensation plan shall be in accordance with its established policies and standards relative to compensation. The board shall complete its final adjustments by the third Wednesday in January of every even-numbered year.

Following the final adjustment, the conference of personnel directors shall submit to the state legislature, through the office of the governor, a report setting forth the final compensation plan and the cost thereof for its information and approval. The effective date of the approved plans shall be July 1 of every even-numbered year.

- (5) Subsequent implementation of the compensation plan. The compensation plan for positions covered under this section shall be reviewed and adjusted biennially in accordance with paragraph (4).”

SECTION 9. Section 77-10, Hawaii Revised Statutes, is amended to read as follows:

**“§77-10 Compensation adjustments; rules.** The state director or the county commissions shall adopt rules to provide for adjustments and changes in compensation in the event of promotions, temporary promotions and assignments, demotions, and for the purpose of implementing [sections] section 77-4 [and 77-12]. The rules shall be adopted only after joint conference of the state director and all county commissions and shall be uniformly applied and interpreted throughout the State and the several counties.

The rules shall give proper consideration to merit principles of employment, requirements of model conversion plans [authorized under section 77-13.5], and due recognition to length of service in the event of demotions resulting from physical conditions. The rules shall provide for methods of pay adjustment which may, in the event of nondisciplinary, involuntary movements or reassignments to lower pay ranges, include the payment of a temporary differential which is not to be considered as an adjustment to an employee’s base pay. In no event may an employee’s base

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pay exceed the maximum step of a lower pay range, or be increased to an amount which will exceed the maximum step of a higher pay range, when the employee moves or is reassigned to a different pay range. The employee's service anniversary date shall not change. No rule shall be applied in any way in violation of sound merit principles."

SECTION 10. Section 77-13, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) The salary structures for white-collar positions covered under this chapter shall be comprised of thirty-one salary ranges, designated SR 4 to SR 31, SC-1, SC-2, and SC-3. In the publication of pay schedules, however, salary ranges may be redesignated and salary ranges which are not being used may be excluded from the respective pay schedules; provided that if SC ranges are being used, they shall be identified as such so that subsection (d) remains applicable. [Unless otherwise determined under section 77-13.5, each] Each salary range shall consist of ten steps, designated B to G and L-1 to L-4; provided that range SC-2 shall consist of nine steps, designated B to G, L-1, L-2, and L-3, and range SC-3 shall consist of eight steps, designated B to G, L-1, and L-2."

SECTION 11. Section 80-4, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

"(b) Except as otherwise provided in this section the normal workweek of all government personnel shall be forty hours with not more than eight hours of work in any day. The normal workweek shall be applicable to all personnel, irrespective of whether their work is performed during the hours specified in section 80-1.

For pay and leave purposes, if a legal holiday falls on a:

(1) Saturday and the preceding Friday is observed as a holiday pursuant to section 8-2:

[(1)] (A) For employees whose regular workweek does not include Saturday the workday preceding Saturday shall be held and considered to be a legal holiday in lieu of the holiday which so occurs on the Saturday[.];

[(2)] (B) For employees whose regular workweek includes Saturday, the holiday shall be observed on Saturday, but not on Friday[.];

[For pay and leave purposes, if a legal holiday falls on a]

(2) Saturday and the preceding Friday is not observed as a holiday, employees whose regular workweek includes Saturday shall be entitled to observe the holiday[.];

[For pay and leave purposes, if a legal holiday falls on a]

(3) Sunday and the following Monday is observed as a holiday pursuant to section 8-2:

[(1)] (A) For employees whose regular workweek does not include Sunday, the next regular workday following Sunday shall be held and considered a legal holiday, in lieu of the holiday which so occurs on Sunday[.];

[(2)] (B) For employees whose regular workweek includes Sunday, the holiday shall be observed on Sunday, but not on Monday[.];

[For pay and leave purposes if a legal holiday falls on a regular]

- (4) Regular weekly nonworkday of any employee whose regular workweek is other than Monday-Friday, the next workday following the regular weekly nonworkday shall be held and considered to be a legal holiday for the employee in lieu of the holiday which so occurs on the regular weekly nonworkday.”

SECTION 12. Section 85-45, Hawaii Revised Statutes, is amended to read as follows:

“§85-45 False oath; penalty. Whoever wilfully and falsely takes or subscribes the oath or affirmation by this part prescribed, when required or authorized to take the same, shall be subject to the punishment for perjury.

Section [756-2] 710-1060 shall apply to any indictment for the crime prescribed by this section.

Any person convicted under this part shall be forever barred from holding office or employment under the government of the State or any county thereof, and the person shall not be eligible for suspension of imposition or execution of sentence or probation.”

SECTION 13. Section 88-77, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) Upon application of a member, or of the head of the member’s department, any member who has been permanently incapacitated as the natural and proximate result of an accident occurring while in the actual performance of duty at some definite time and place, or as the cumulative result of some occupational hazard, through no wilful negligence on the member’s part, may be retired by the board of trustees for service-connected total disability provided that:

- (1) In the case of an accident occurring after July 1, 1963, the employer shall file with the board a copy of the employer’s report of the accident submitted to the [bureau of workers’ compensation;] director of labor and industrial relations;
- (2) An application for retirement is filed with the board within two years of the date of the accident or the date upon which workers’ compensation benefits cease, whichever is later;
- (3) Certification is made by the head of the agency in which the member is employed, stating the time, place, and conditions of the service performed by the member resulting in the member’s disability and that the disability was not the result of wilful negligence on the part of the member;
- (4) The medical board certifies that the member is incapacitated for gainful employment and that the member’s incapacity is likely to be permanent.”

SECTION 14. Section 88-79, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) Upon application of a member, or of the head of the member’s department, any member who has been permanently incapacitated for duty as the natural and proximate result of an accident occurring while in the actual performance of duty at some definite time and place, or as the cumulative result of some occupational hazard, through no wilful negligence on the member’s part, may be retired by the board of trustees for service-connected occupational disability provided that:

- (1) In the case of accident occurring after July 1, 1963, the employer shall file with the board a copy of the employer’s report of the

- accident submitted to the [bureau of workers' compensation;] director of labor and industrial relations;
- (2) An application for retirement is filed with the board within two years of the date of the accident, or the date upon which workers' compensation benefits cease, whichever is later;
  - (3) Certification is made by the head of the agency in which the member is employed, stating the time, place, and conditions of the service performed by the member resulting in the member's disability and that the disability was not the result of wilful negligence on the part of the member; and
  - (4) The medical board certifies that the member is incapacitated for the further performance of duty, that the member's incapacity is likely to be permanent."

SECTION 15. Section 92-28, Hawaii Revised Statutes, is amended to read as follows:

**"§92-28 State service fees, increase or decrease of.** Any law to the contrary notwithstanding, the fees or other nontax revenues assessed or charged by any board, commission, or other governmental agency, may, with the approval of the governor, be increased or decreased by the body in an amount not to exceed fifty per cent of the statutorily assessed fee or nontax revenue, in order to maintain a reasonable relation between the revenues derived from such fee or nontax revenue and the cost or value of services rendered, comparability among fees imposed by the State, or any other purpose which it may deem necessary and reasonable; provided that the authority to increase or decrease fees or nontax revenues shall extend only to the following: chapters 6, 28 (pt III), 36, 92, 94, 142, 144, 145, 147, 150, 171, 188, 189, [191, 192,] 231, 269, 271, 321, 338, 373, 403, 407, 408, 409, 415, 421, 422, 425, 431, 434, 438, 439, 440, 442, 443A, 447, 448, 450, 452, 453, 455, 456, 457, 458, 459, 460, 461, 463, 464, 466, 467, 469, 471, 482, 485, 501, 502, 505, 514A, 572, and 574; and provided further that this section shall not apply to fees charged by the University of Hawaii or to judicial fees as may be set by any chapter mentioned above."

SECTION 16. Section 150A-4, Hawaii Revised Statutes, is amended to read as follows:

**"[[§150A-4]] Effect on department of land and natural resources and the department of health.** Nothing in this chapter shall be construed to amend or alter the functions, duties, and powers of the department of land and natural resources and the department of health relative to chapters 171, [187, 191,] 187A, 183D, 321, and 328."

SECTION 17. Section 183D-11, Hawaii Revised Statutes, is amended to read as follows:

**"§183D-11 Informer's fee.** One-half of the fine imposed and collected in all cases where the defendant has been convicted for a violation of any of the provisions of this chapter[, chapter 187,] or chapter 195D shall be paid to the person giving the information leading to the arrest of the person so convicted; provided that this section shall not apply, if the informer is a regular salaried sheriff, deputy sheriff, police officer, warden or constable, or officer or agent of the department."

SECTION 18. Section 294-39, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) Any person subject to this chapter in the capacity of the operator, owner, or registrant of a motor vehicle in this State, or registered in this State, who violates any applicable provision of this chapter, shall be subject to citation for the violation by any county police department in a form and manner approved by the violations bureau of the district court of the first circuit. Notwithstanding any provision of the Hawaii Penal Code, each violation shall be deemed a separate offense and shall be subject to a fine not less than \$100 nor more than \$1,000 and the fine shall not be suspended; provided if the person is convicted of not having had a no-fault policy in effect at the time the citation was issued, the fine for the first offense shall be \$100, with a minimum of \$400 for each additional offense.

The general penalty provision of this section shall not apply to[:

- (1) Any] any operator of a motor vehicle owned by another person if the operator’s own insurance covers such driving; nor
- [(2) Any] to any operator of a motor vehicle owned by that person’s employer during the normal scope of that person’s employment.

In the case of multiple violations the court shall, in addition to any other penalty, impose the following penalties:

- (1) Imprisonment of not more than thirty days;
- (2) Suspension or revocation of driver’s license of the driver and of the registered owner;
- (3) Suspension or revocation of the motor vehicle registration plates of the vehicle involved;
- (4) Impoundment, or impoundment and sale, of the motor vehicle for the costs of storage and other charges incident to seizure of the vehicle; or any other cost involved pursuant to section 294-10; or
- (5) Any combination of such penalties.”

SECTION 19. Section 304-8.5, Hawaii Revised Statutes, is amended to read as follows:

“~~[[§304-8.5]]~~ **Animal research farm, Waialeale, Oahu revolving fund.** There is established a revolving fund for the animal research farm, Waialeale, Oahu, operated by the college of tropical agriculture[,] and human resources, University of Hawaii, into which shall be deposited the receipts from fees realized from the sale of livestock, services, and supplies. Funds deposited in this account shall be expended for animal research, and services and supplies related thereto.”

SECTION 20. Section 307-2, Hawaii Revised Statutes, is amended to read as follows:

“**§307-2 Board of directors; composition.** The affairs of the research corporation shall be under the general management and control of the board of directors, hereinafter referred to as the “board”. The board shall consist of nine members. The president and director of research of the University of Hawaii, and the director of planning and economic development of the State shall serve as ex officio voting members. The remaining six members shall be appointed by the governor pursuant to section 26-34. All the members appointed by the governor, other than the ex officio members, shall serve for a term of four years, ~~except that the governor may reduce the terms of those initially appointed so as to provide, as nearly as can be, for the expiration of an equal number of terms at intervals of one year, each term commencing on July 1 and expiring on June 30.~~ All members of the board shall serve without pay, but shall be entitled to reimbursement for necessary expenses while attending meetings and while in the discharge of duties and responsibilities.

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The members of the board shall elect the [chairman] chairperson of the board.

If for any reason whatsoever[,] any of the ex officio positions [are] is eliminated or changed in any way, the officer performing the basic functions of such ex officio position shall qualify to serve as the ex officio voting member on the board.”

SECTION 21. Section 321-15.6, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) The director shall adopt rules regarding adult residential care homes in accordance with chapter 91 which shall be designed to:

- (1) Protect the health, safety, and civil rights of persons residing in facilities regulated;
- (2) Provide for the licensing of facilities providing domiciliary care; provided that the rules shall allow group living in an adult residential care home of up to five persons, including the mentally ill, the elderly, the handicapped, the developmentally disabled, or the totally disabled persons who are not related to the home operator or facility staff. For purposes of this section, “mentally ill person” means a mentally ill person as defined under section 334-1; “elderly person” means an elderly person as defined under section 359-52; “handicapped person” means [a handicapped individual] an individual with a physical handicap as defined under section 515-2; “developmentally disabled person” means a person suffering from developmental disabilities as defined under section 333E-2; and “totally disabled person” means a person totally disabled as defined under section 235-1;
- (3) Comply with applicable federal laws and regulations of Title XVI of the Social Security Act, as amended; and
- (4) Provide penalties for the failure to comply with any rule.”

SECTION 22. Section 328-99, Hawaii Revised Statutes, is amended to read as follows:

“~~[[§328-99]]~~ Exceptions. Out-of-state prescriptions filled pursuant to section ~~[330-7]~~ 328-101 shall be exempt from this part.”

SECTION 23. Section 343-5, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) Except as otherwise provided, an environmental assessment shall be required for actions which:

- (1) Propose the use of state or county lands or the use of state or county funds, other than funds to be used for feasibility or planning studies for possible future programs or projects which the agency has not approved, adopted, or funded, or funds to be used for the acquisition of unimproved real property; provided that the agency shall consider environmental factors and available alternatives in its feasibility or planning studies.
- (2) Propose any use within any land classified as conservation district by the state land use commission under chapter 205.
- (3) Propose any use within the shoreline area as defined in section ~~[205-31.]~~ 205A-41.
- (4) Propose any use within any historic site as designated in the National Register or Hawaii Register as provided for in the Historic Preservation Act of 1966, Public Law 89-665, or chapter 6E.

- (5) Propose any use within the Waikiki-Diamond Head area of Oahu, the boundaries of which are delineated on the development plan for the Kalia, Waikiki, and Diamond Head areas (map designated as portion of 1967 city and county of Honolulu General Plan Development Plan Waikiki-Diamond Head Section A).
- (6) Propose any amendments to existing county general plans where such amendment would result in designations other than agriculture, conservation, or preservation, except actions proposing any new county general plan or amendments to any existing county general plan initiated by a county."

SECTION 24. Section 407-61.5, Hawaii Revised Statutes, is amended to read as follows:

**"[§407-61.5] Basis for disapproval.** [(a)] The commissioner may disapprove any proposed acquisition of an association, foreign association, savings and loan holding company, or foreign holding company upon a determination that:

- (1) The experience, character, general fitness, financial responsibility, and resources and managerial resources of the acquiring person and of the officers, directors, and controlling shareholders of a corporation or the partners, members, or principals of an entity other than a corporation are not such as to command the confidence of the community and do not warrant belief that the business of the affected association will be operated honestly, fairly, and efficiently within the purposes of this chapter; [or]
- (2) The convenience, needs, and advantage of the locality or community in which the affected association or foreign association conducts its business will not be promoted by allowing the acquiring person to acquire control, directly or indirectly, of the affected association or foreign association; [or]
- (3) The proposed acquisition of control by the acquiring persons will substantially lessen competition or tend to create a monopoly or in any other manner tend to be a restraint of trade or have any other anticompetitive effect in the savings and loan industry in the State, provided that the anticompetitive effects are not clearly outweighed by the public interest in meeting the convenience and needs of the community to be served; [or]
- (4) The financial condition of the acquiring person is such as might jeopardize the financial stability of the association, foreign association, savings and loan holding company, or foreign holding company or prejudice the interests of the depositors of the association; [or]
- (5) The competence, experience, or integrity of the acquiring person or any of the proposed management personnel indicates that it would not be in the best interests of the depositors of the association or foreign association involved or the public to permit the acquiring person to control the association, foreign association, savings and loan holding company, or foreign holding company; or
- (6) The acquiring person has failed or refused to furnish information requested by the commissioner."

SECTION 25. Section 408-16, Hawaii Revised Statutes, is amended to read as follows:

**“§408-16 Other provisions inapplicable; effect of excessive interest.** Sections [478-4] 478-5 and 478-6 shall not apply to loans made by industrial loan companies under the authority of this chapter.

If a greater rate of interest than that permitted by this chapter is contracted for in any contract within the purview of this chapter, the contract shall not, by reason thereof, be void. But if, in any action on the contract, proof is made that a greater rate of interest than that permitted by this chapter has been directly or indirectly contracted for, the plaintiff shall only recover upon the contract the amount actually received by the borrower on the contract in cash, credit, or the equivalent thereof, or any combination of cash, credit, or the equivalent thereof, or any combination of cash, credit, or the equivalent, plus the charges (if any) which were properly charged to the borrower and which have not been deducted from the principal amount of the contract or otherwise paid by the borrower; and, if interest has been paid, judgment shall be for the aforesaid recoverable amount less the amount of interest so paid up to one year after the date of the contract; and the defendant shall recover the defendant's costs. The provisions of chapter 476 shall not apply to any loan made in compliance with this chapter.”

SECTION 26. Section 410-15, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) Loans may be made to members of the board of directors, credit committee, and audit committee under the same general terms and conditions as to other members of the credit union, but all such loans shall be reported to the commissioner at least annually, and such a loan may be made only if:

- (1) The loan complies with all lawful requirements under this chapter with respect to loans to other borrowers and is not on terms more favorable than those extended to other borrowers;
- (2) Upon application for the loan, if the aggregate amount of the credit union official's outstanding loans and amount being applied for exceed \$5,000 or a lesser amount prescribed by the board of directors of the credit union, the loan must be approved by the credit committee or credit manager and board of directors after the submission to them of a detailed current financial statement by the loan applicant. However, loans that are fully secured by shares and deposits in the credit union need not be approved by the board of directors and the authority to approve these loans may be delegated to the loan officer by the credit committee or credit manager;
- (3) The loan applicant takes no part in the consideration of the application and is not present during the taking of the vote by the credit committee or credit manager, and board of directors meeting while the application is under consideration;
- (4) Upon the making of the loan, the aggregate amount of loans outstanding under authority of this section shall not exceed ten per cent of the unimpaired capital and surplus of the credit union; and
- (5) A credit union may permit its officers, directors, employees, loan officers, credit manager, and members of the audit and credit committees to act as coborrowers, guarantors, or endorsers of loans to other credit union members; provided that the approval of the board of directors is required when any loan, by itself, or when added to any outstanding loans or such loans made as a coborrower, [grantor,] guarantor, or endorser, exceeds \$5,000.”

SECTION 27. Section 437-28, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) The board may, after notice and hearing as provided in chapter 91, and subject to appeal to the circuit court of the circuit in which the board has jurisdiction under the procedure and rules prescribed from time to time by the laws of the State or the applicable rules of the courts pertaining to appeals to circuit courts, suspend, revoke, fine, or deny the renewal of any license, or prior to notice and hearing deny the issuance of any license if [it] the board finds that the applicant or holder, or any officer, director, general manager, trustee, partner, or stockholder owning more than ten per cent interest of the applicant or holder:

- (1) Has intentionally made a false statement of a material fact in the application for a license or in any other statement required by this chapter or has obtained or attempted to obtain a license by fraud or misrepresentation; [or]
- (2) Has failed to comply, observe, or adhere to any provision of this chapter or any other law relating to the sale, taxing, or licensing of motor vehicles or any rule or order made pursuant to this chapter; [or]
- (3) Has committed a fraudulent act in selling, purchasing, or otherwise dealing in motor vehicles or has misrepresented the terms and conditions of a sale, purchase, or contract for sale or purchase of a motor vehicle or any interest therein including an option to purchase motor vehicles; [or]
- (4) Has engaged in business under a past or present license issued pursuant to this chapter, in a manner as to cause injury to the public or to those with whom one is dealing; [or]
- (5) Has failed to comply, observe, or adhere to any law in any other respect on account whereof the board may deem the applicant or holder to be an unfit or improper person to hold a license; [or]
- (6) Has failed to meet or maintain the conditions and requirements necessary to qualify for the issuance of a license; [or]
- (7) Is insolvent or has filed or is the subject of petition for bankruptcy, wage earner's plan, or financial reorganization plan; or has made or proposes to make an assignment for benefit of creditors; [or]
- (8) In the case of an individual applicant or holder of a license, is not at least eighteen years of age; in the case of a partnership applicant or holder of a license, if any general or limited partner thereof is not at least eighteen years of age; [or]
- (9) Has charged more than the legal rate of interest on the sale or purchase or attempted sale or purchase or in arranging the sale or purchase of a motor vehicle or any interest therein including an option to purchase; [or]
- (10) Has violated any of the laws pertaining to false advertising or to [retail installment] credit sales in the offering, soliciting, selling, or purchasing, or arranging to sell or purchase a motor vehicle or any interest therein; [or]
- (11) Has wilfully failed or refused to perform any unequivocal and indisputable obligation under any written agreement involving the sale or purchase of a motor vehicle or any interest therein including an option to purchase; [or]
- (12) Has been denied the issuance of a license under this chapter for substantial culpable cause or for having had a license issued

- under this chapter suspended, revoked, or the renewal thereof denied for substantial culpable cause; [or]
- (13) Has entered or has attempted to enter or proposes to enter into any contract or agreement contrary to this chapter or any rule adopted thereunder; [or]
  - (14) Has been or is engaged or proposes to engage in the business of selling new motor vehicles as a dealer or auction without a proper franchise therefor; [or]
  - (15) Has at any time employed or utilized or attempted or proposed to employ or utilize any person not licensed under this chapter who is required to be so licensed; [or]
  - (16) Has entered or attempted to enter any one-payment contract, where the contract is required to be signed by the purchaser prior to removal of the motor vehicle for test driving from the seller's premises; [or]
  - (17) Being a salesperson or dealer:
    - (A) Has required a purchaser of motor vehicles as a condition of sale and delivery thereof to purchase special features, appliances, accessories, or equipment not desired or requested by the purchaser; provided that this prohibition shall not apply as to special features, appliances, accessories, or equipment which are ordinarily installed on the vehicle when received or acquired by the dealer; [or]
    - (B) Has represented and sold as an unused motor vehicle any motor vehicle which has been operated as a demonstrator, leased, or U-drive motor vehicle; [or]
    - (C) Has sold a new motor vehicle without providing or securing for the purchaser the standard factory new car warranty for the vehicle, unless the dealer or salesperson clearly notes in writing on the sales contract that the new motor vehicle is sold without the standard factory warranty; or
    - (D) Has engaged in any improper business conduct; [or]
  - (18) Being an applicant or holder of a dealer's license:
    - (A) Has sold or proposed to sell new motor vehicles without providing for the maintenance of a reasonable inventory of parts for new vehicles or without providing and maintaining adequate repair facilities and personnel for new vehicles at either the main licensed premises or at any branch location; [or]
    - (B) Has employed or proposed to employ any salesperson who is not duly licensed under this chapter; or
    - (C) Has sold or proposed to sell new motor vehicles without being franchised therefor; [or]
  - (19) Being an applicant or holder of an auction's license:
    - (A) Has employed or proposed to employ any auctioneer who is not licensed under this chapter; or
    - (B) Has sold or proposed to sell new motor vehicles without being franchised therefor; [or]
  - (20) Being an applicant for a salesperson's license:
    - (A) Does not intend to be employed as a salesperson for a licensed motor vehicle dealer; [or]
    - (B) Does not intend to be employed as a salesperson as the principal occupation; or
    - (C) Intends to be employed as a salesperson for more than one dealer; [or]

- (21) Being a motor vehicle auctioneer, does not intend to be employed as such by a licensed auction under this chapter; or
- (22) Being a manufacturer, factory branch, factory representative, distributor, distributor branch, or distributor representative:
- (A) Has attempted to coerce or has coerced any dealer in this State to enter into any agreement with such manufacturer, factory branch, factory representative, distributor, distributor branch, or distributor representative, or any other party, to perform any act not required by or to refrain from performing any act not contrary to the reasonable requirements of the franchise agreement with the dealer, by threatening to cancel the franchise agreement or by threatening to refuse, at the expiration of the current franchise agreement, to enter a new franchise agreement with the dealer; [or]
  - (B) Has attempted to coerce or coerced any dealer in this State to enter into any agreement with such manufacturer, factory branch, factory representative, distributor, distributor branch, or distributor representative, or any other party, to perform any act not required by or to refrain from performing any act not contrary to the reasonable requirements of the franchise agreement with the dealer, by awarding or threatening to award a franchise to another person for the sale of the same make of any motor vehicle in the same sales area of responsibility covered by the existing franchise agreement of the dealer; [or]
  - (C) Has attempted to or has canceled or failed to renew the franchise agreement of any dealer in this State without good faith, as defined herein. Upon the cancellation or failure to renew the franchise agreement, the party canceling or failing to renew the franchise agreement shall, at the dealer's option, either compensate the dealer at the fair market going business value for the dealer's capital investment, which shall include but not be limited to the going business value of the business, goodwill, property, and improvement owned or leased by the dealer for the purpose of the franchise, inventory of parts, and motor vehicles possessed by the dealer in connection with the franchise, plus reasonable attorney's fees incurred in collecting compensation; provided that the investment shall have been made with reasonable and prudent judgment for the purpose of the franchise agreement; or compensate the dealer for damages including attorney's fees as aforesaid, resulting from the cancellation or failure to renew the franchise agreement. As used herein, "good faith" means the duty of each party to any franchise agreement fully to comply with that agreement, or to act in a fair and equitable manner towards each other; [or]
  - (D) Has delayed delivery of or refused to deliver without cause, any new motor vehicle to a dealer, franchised to sell the new motor vehicle, within a reasonable time after receipt of a written order for the vehicle from the dealer. The delivery to another dealer of a motor vehicle of the same model and similarly equipped as the vehicle ordered by a dealer who has not received delivery thereof, but who

had placed the written order for the vehicle prior to the order of the dealer receiving the vehicle, shall be prima facie evidence of a delayed delivery of, or refusal to deliver, a new motor vehicle without cause. The nondelivery of a new motor vehicle to a dealer within sixty days after receipt of a written order for the vehicle from a dealer shall also be prima facie evidence of delayed delivery of, or refusal to deliver, a new motor vehicle without cause; provided that the delayed delivery of, or refusal to deliver, a motor vehicle shall be deemed with cause if the manufacturer establishes that the delay or refusal to deliver is due to a shortage or curtailment of material, labor, transportation, utility service, labor[,] or production difficulty, or other similar cause beyond the reasonable control of the manufacturer; [or]

- (E) Has discriminated against any of their franchised dealers in this State by directly or indirectly charging the dealer more for a new motor vehicle or services, parts, or accessories or a higher rate of transportation for transporting the vehicle from the manufacturing or assembly plant to the dealer or any portion of the distance, than is charged to any other of their franchised dealers in other states for the same make, model, and year of a new motor vehicle or for the same services, parts, or accessories or for similar transportation for the vehicle during the same period. A manufacturer, factory branch, factory representative, distributor, distributor branch, or distributor representative who provides or causes to be provided greater transportation benefits for a new motor vehicle as aforesaid to any of their franchised dealers in other states than is provided to any of their franchised dealers in this State for the same or lesser price or charge than that imposed upon the franchised dealer in this State during the same period is deemed to have so discriminated against the franchised dealer in this State. Evidence of similar discriminatory practice against franchised dealers in other states shall not constitute a defense to or justification of the commission of the discriminatory act against the franchised dealer in this State. The intent and purpose of this subparagraph is to eliminate inequitable pricing policies set by manufacturers, factory branches, factory representatives, distributors, distributor branches, or distributor representatives which result in higher prices of new motor vehicles to the consumer in this State. This subparagraph shall be liberally interpreted to effect [the] its intent and purpose and in the application thereof, the substance and effect and not the form of the acts and transactions shall be primarily considered in determining whether a discriminatory act has been committed. Nothing contained in this subparagraph [(E)] shall prohibit establishing delivered prices or destination charges to dealers in this State which reasonably reflect the seller's total transportation costs incurred in the manufacture or delivery of products to the dealers, including costs which are related to the geographical distances and modes of transportation involved in shipments to this State, or

- which meet those lower prices established by competitors;  
[or]
- (F) Has required a dealer of new motor vehicles in this State as a condition of sale and delivery of new motor vehicles to purchase special features, appliances, accessories, or equipment not desired or requested by the dealer; provided that this prohibition shall not apply to special features, appliances, accessories, or equipment, except heaters, which are regularly installed on that particular model of new motor vehicles as "standard" equipment or to special features, appliances, accessories, or equipment which are an integral part of the new motor vehicles and cannot be removed therefrom without substantial expense; or
- (G) Has failed to adequately and fairly compensate its dealers for labor, parts, and other expenses incurred by the dealer to perform under and comply with manufacturer's warranty agreements. In no event shall any manufacturer, factory branch, factory representative, distributor, distributor branch, or distributor representative pay its dealers a labor rate per hour for warranty work that is less than that charged by the dealer to the retail customers of the dealer nor shall the rates be more than the retail rates. All claims made by dealers for compensation for delivery, preparation, and warranty work shall be paid within thirty days after approval and shall be approved or disapproved within thirty days after receipt. When any claim is disapproved, the dealer shall be notified in writing of the grounds for disapproval."

SECTION 28. Section 437-32, Hawaii Revised Statutes, is amended to read as follows:

**"§437-32 [Retail installment] Credit sale<sup>1</sup> contracts; agreements concerning, unlawful.** No person who is engaged in, or about to engage in, the business of selling motor vehicles at retail shall enter into any contract, agreement, or understanding, express or implied, with any manufacturer or distributor of motor vehicles that the person will sell only to a designated person, or class of persons, all or any part of the [retail installment] credit sale contracts arising out of the sale by the person of motor vehicles, or that the person will refuse to sell such [retail installment] credit sale contracts to any designated person, or class of persons. Any such contract, agreement, or understanding is declared to be against the public policy of this State and to be unlawful and void."

SECTION 29. Section 437-34, Hawaii Revised Statutes, is amended to read as follows:

**"§437-34 [Retail installment] Credit sale<sup>1</sup> contracts, when purchase of unlawful.** No person engaged in the business of buying [retail installment] credit sale contracts from motor vehicle dealers in this State, and no officer, agent, or representative of such person, shall purchase or attempt to purchase any such [retail installment] credit sale contract from any motor vehicle dealer in this State:

- (1) When the dealer in consequence of any contract, agreement, or arrangement between such person and a manufacturer or distributor supplying motor vehicles to the dealer has been induced or coerced to sell such [retail installment] credit sale contract by

means of any statement, suggestion, promise, or threat, made, directly or indirectly, that the manufacturer[,] or distributor supplying motor vehicles to the dealer would in any manner injure or benefit the dealer, or by means of any act of the manufacturer or distributor that has benefited or injured the dealer, or by means of any statement or representation, made, directly or indirectly, that the dealer is under any obligation whatsoever to make such sale;

- (2) When such person has received or has contracted to receive from any manufacturer or distributor supplying motor vehicles to the dealer, or has given or contracted to give to the manufacturer or distributor, any subsidy or thing of service or value, where the effect of the giving or receiving of such subsidy or thing of service or value may be to lessen or eliminate competition in the business of purchasing [retail installment] credit sale contracts from motor vehicle dealers or tend to grant an unfair trade advantage or to create a monopoly in such person.”

SECTION 30. Section 437-37, Hawaii Revised Statutes, is amended to read as follows:

“**§437-37 [Installment] Credit sale<sup>1</sup> contract violations; penalty.** Whoever violates any of the provisions of sections 437-32 to 437-34 relating to sales or purchase of [retail installment] credit sale contracts shall be fined not less than \$25 nor more than \$1,000.”

SECTION 31. Section 445-166, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) No mechanically or electrically operated device considered as a major ride and used as an amusement ride shall be permitted to be used or operated at a carnival, circus, fair, or amusement park unless:

- (1) A safety belt or other safety device of similar purpose is installed and used so as to minimize or prevent injury to persons riding on the device and other persons on the premises;
- (2) An attendant is present at all times during the operation of the device; and
- (3) The device has been inspected by the department of labor and industrial relations as required by [section 396-4(b)(4).] section 397-4(b)(5).

This section shall not apply to any coin operated ride and mechanically or electrically operated devices considered or known in the amusement trade as kiddie rides.”

SECTION 32. Section 459-7, Hawaii Revised Statutes, is amended as follows:

1. Subsection (a) is amended to read:

“(a) Except as otherwise provided in this chapter, every person desiring to begin or to continue the practice of optometry, before beginning or continuing practice, upon presentation of satisfactory evidence, verified by oath, that the applicant is a graduate of an American optometric college, school, or university approved by the board of examiners in optometry and accredited by a regional or professional accreditation organization and recognized by the council on post-secondary accreditation or by the United States [Office] Department of Education, shall take an examination before the board upon complying with the following requirements:

- (1) Applications for examination shall be made out and filed in writing with the executive secretary of the board; and
- (2) Each application shall be accompanied by an application fee, which shall be retained by the board, and an examination fee.”

2. Subsection (f) is amended to read:

“(f) Certificates of registration shall be endorsed authorizing licensed optometrists to use pharmaceutical agents for examination purposes. A certificate shall certify that an optometrist has complied with the following requirements:

- (1) Successful completion of instruction in general and clinical pharmacology as it relates to the practice of optometry, with particular emphasis on ocular pharmacology. The systemic effects and reactions to topical pharmaceutical agents used for examinations shall be studied, as well as the emergency management and referral of any adverse reactions that may occur. Instruction shall also include review of systemic and ocular diseases and clinical techniques and instruments used with these pharmaceutical agents for examination purposes. The course of study shall be approved by the board, and shall be offered by an institution which is accredited by a regional or professional accreditation organization and is recognized by the council on post-secondary accreditation or by the United States [Office] Department of Education; and
- (2) Successful completion of an examination approved by the board which tests for those subjects outlined in the course of instruction in paragraph (1) [above].”

SECTION 33. Section 462A-8, Hawaii Revised Statutes, is amended to read as follows:

“§462A-8 Denial, suspension, or revocation. The director may deny the issuance of a license to any applicant, and may suspend or revoke the license of any pilot for any of the following reasons:

- (1) Violation of this chapter or any rule adopted by the [board;] director;
- (2) Loss, damage, or injury due to negligent pilotage;
- (3) Habitual use of any substance rendering a pilot unfit to be entrusted with the charge of a vessel;
- (4) Inability to physically or mentally perform the duties of a pilot;
- (5) Failure to maintain active service as a pilot in the State;
- (6) Procurement of a license through fraudulent misrepresentation or deceit;
- (7) Participation in any unfair or deceptive act or practice as prohibited by section 480-2;
- (8) Violation of any law or regulation intended to promote marine safety or protect navigational waters;
- (9) Failure to report marine accidents in accordance with the rules of this chapter;
- (10) Failure to maintain a current and valid federal pilots license issued in accordance with title 46, United States Code, chapter 71.”

SECTION 34. Section 462A-11, Hawaii Revised Statutes, is amended to read as follows:

“§462A-11 Rates of pilotage. The director shall establish the rates of pilotage for vessels subject to this chapter as follows:

- (1) The rates of pilotage in effect [upon passage of this bill] on July 1, 1978, shall remain in effect until changed by the director pursuant to this chapter.
- (2) No rate shall be increased, lowered, or altered without a public hearing in accordance with chapter 91. Due notice of hearing shall be mailed at least thirty days prior to the date of hearing to the individual licensed pilots, the pilot's association, and all owners, charterers, operators, and agents of vessels who have registered with the [board.] department.
- (3) The director, in setting rates of pilotage, shall fix such amounts as will be a fair charge for the services rendered with due regard to necessary operating expenses, maintenance of, depreciation on, and return on investment for property used in the business of pilotage, and the rates and charges of pilotage at comparable ports of the United States.
- (4) Persons aggrieved by the director's decision setting the rates of pilotage may appeal to circuit court as provided in chapter 91.”

SECTION 35. Section 467-9, Hawaii Revised Statutes, is amended by amending the title to read:

“§467-9 License[;] and<sup>1</sup> applications [and fees].”

SECTION 36. Section 467-11, Hawaii Revised Statutes, is amended to read as follows:

“§467-11 Fees; original license and biennial renewals. (a) The fee for any license prescribed by this chapter shall be as follows:

- (1) To act as a real estate broker, \$50, \$20 of which shall be deposited in the real estate education fund;
- (2) To act as a real estate [salesman,] salesperson, \$50, \$20 of which shall be deposited in the real estate education fund;
- (3) Biennial renewal for broker, \$100, \$20 of which shall be deposited in the real estate education fund;
- (4) Biennial renewal for [salesman,] salesperson, \$50, \$20 of which shall be deposited in the real estate education fund;
- (5) To obtain a branch office license, \$50;
- (6) To reinstate a suspended license, \$25;
- (7) Biennial renewal of inactive broker license, \$100, \$20 of which shall be deposited in the real estate education fund;
- (8) Biennial renewal of inactive [salesman] salesperson license, \$50, \$20 of which shall be deposited in the real estate education fund.

(b) A fee of \$10 shall be charged for the reissuance of a lost license, or for the reissuance of a license when there has been a change in the licensee's name or for the reissuance of a license when there has been a change in the business address, or, in the case of a [salesman,] salesperson, when the [salesman] salesperson is either employed by or associated with a different broker.

(c) The biennial renewal fee shall be paid to the real estate commission on or before December 31 of each even-numbered year. Failure, neglect, or refusal of any duly licensed real estate broker or real estate [salesman] salesperson to pay the biennial renewal fee shall constitute a forfeiture of the license of the broker or [salesman,] salesperson. The license of the broker or [salesman] salesperson may be restored upon written application therefor, the payment to the commission of the delinquent fee and a penalty fee of

\$10, and satisfaction of such other requirements as the commission may impose as a condition to restoration.

(d) A broker or [salesman] salesperson may place the broker's or [salesman's] salesperson's license on an inactive status upon payment of the proper fee, and such license may be renewed biennially on or before December 31 of each even-numbered year.

(e) All fees and other moneys collected or received under this chapter shall be deposited by the director of commerce and consumer affairs with the director of finance to the credit of the general fund.

(f) The commission may refund any fee erroneously paid to it under [the provisions of] this section [and section 467-9] when the commission deems it just and equitable.

(g) [Education fund balance.] If beginning on July 1, 1987, the education fund balance at the end of any fiscal biennium exceeds \$1,200,000, there shall be a moratorium on such renewal contributions and the commission shall review and consider a reduction in the same amount in licensee fees."

SECTION 37. Section 467-18, Hawaii Revised Statutes, is amended by amending subsection (e) to read as follows:

"(e) Should the commission pay from the real estate recovery fund any amount in settlement of a claim or toward satisfaction of a judgment against a licensed real estate broker or real estate salesman, the license of the broker or salesman shall be automatically terminated upon the issuance of a court order authorizing payment from the real estate recovery fund. No such broker or salesman shall be eligible to receive a new license until the broker or salesman has repaid in full, plus interest at the rate provided for in section [478-2,] 478-3, the amount paid from the real estate recovery fund on the broker's or salesman's account. A discharge in bankruptcy shall not relieve a person from the penalties and disabilities provided in this subsection."

SECTION 38. Section 468E-6, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

"(c) Members shall serve for a term of three years[, provided that of the initial appointees, two shall serve for terms of one year; two shall serve for terms of two years; and three shall serve for terms of three years]. Terms shall begin on the first day of the fiscal year and end on the last day of the fiscal year[, except for the first appointed members, who shall serve through the last calendar year of the year in which they are appointed before commencing the terms for which they are appointed as prescribed by this section]."

SECTION 39. Section 477E-2, Hawaii Revised Statutes, is amended by amending the definition of "creditor" to read as follows:

"'Creditor' means any bank; savings and loan association; trust company; industrial loan company or small loan company; credit union; mortgage banker, broker, or solicitor; [pawn broker;] pawnbroker; mutual or fraternal benefit society; debt adjuster; the issuer of a credit card as defined in section [851-1;] 708-800; any person who initiates, extends, renews, or continues loans of money or credit; any person who regularly arranges for the initiation, extension, renewal, or continuation of a loan of money or credit; or any assignee of an original creditor who participates in the decision to grant, extend, renew, or to continue such loan or credit."

**SECTION 40.** Section 484-16, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) In addition to any other remedies, the purchaser, under the preceding subsection, may recover the consideration paid for the lot, parcel, unit, or interest in subdivided lands together with interest at the rate provided for in section [478-2,] 478-3, from the date of payment, property taxes paid, costs, and reasonable attorneys fees less the amount of any income received from the subdivided lands upon tender of appropriate instruments of reconveyance. If the purchaser no longer owns the lot, parcel, unit, or interest in subdivided lands, [he] the purchaser may recover the amount that would be recoverable upon a tender of a reconveyance less the value of the land when disposed of and less interest at the rate provided for in section [478-2,] 478-3, on that amount from the date of disposition.”

**SECTION 41.** Section 485-14, Hawaii Revised Statutes, is amended by amending subsection (e) to read as follows:

“(e) Registration of investment advisers. An application for registration, duly verified by oath by the applicant, shall be filed in the office of the commissioner accompanied by [(1)] an irrevocable written consent to the service of process upon the commissioner in actions against the investment adviser in manner and form provided in section 485-12[, (2)]; the applicant’s photograph[,]; and [(3)] a form of the disclosure statement described in section 485-25(c)(4). Information on the registration statement shall include:

- (1) The name and form of organization under which the investment adviser engages or intends to engage in business; the name of the state or other sovereign power under which the investment adviser is organized; the location of the investment adviser’s principal business office and branch offices, if any; the names and addresses of the investment adviser’s partners, officers, directors, and persons performing similar functions or, if the investment adviser is an individual, of such individual; and the number of the investment adviser’s employees;
- (2) The education, the business affiliations for the past five years, and the present business affiliations of the investment adviser and of the investment adviser’s partners, officers, directors, and persons performing similar functions and of any controlling person thereof;
- (3) The nature of the business of the investment adviser, including the manner of giving advice and rendering analyses or reports;
- (4) A balance sheet certified by an independent public accountant and other certified financial statements if the investment adviser has custody of or discretionary authority over client money, securities, or other assets, or an unaudited, verified balance sheet and financial statements if the investment adviser has no custody of or discretionary authority over client money, securities, or other assets;
- (5) The nature and scope of the authority of the investment adviser with respect to clients’ funds and accounts;
- (6) The basis or bases upon which the investment adviser is compensated;
- (7) Whether the investment adviser, or any person employed by or associated in business with the investment adviser, is subject to

- any disqualification which would be a basis for denial, suspension, or revocation of registration of the investment adviser under section 485-15;
- (8) A statement as to whether the principal business of the investment adviser consists or is to consist of acting as investment adviser; and
  - (9) Other information as to the applicant's previous history, record, and association as the commissioner deems necessary including:
    - (A) Disclosure of any injunction or administrative order or conviction of a misdemeanor involving a security or any aspect of the securities business and any conviction of a felony;
    - (B) The applicant's financial history; and
    - (C) Any additional information as the commissioner deems necessary to establish the applicant's qualifications.

The commissioner may use a uniform registration form adopted by the North American Securities Administrators Association, the Securities and Exchange Commission, or any national securities exchange or national securities association registered under the Securities Exchange Act of 1934; provided such form encompasses the information required under this section.

If an applicant is currently registered by the United States Securities and Exchange Commission or any national securities exchange or national securities association registered under the Securities Exchange Act of 1934, the commissioner may accept a certified copy of the registration application the applicant submitted to obtain such registration in lieu of the application required by this section."

SECTION 42. Section 490:1-201, Hawaii Revised Statutes, is amended by amending the definition of "holder" to read as follows:

"(20) "Holder" means a person who is in possession of a document of title or an instrument or [in] a certificated investment security drawn, issued, or indorsed to the person or to the person's order or to bearer or in blank."

SECTION 43. Section 490:9-304, Hawaii Revised Statutes, is amended by amending subsection (2) to read as follows:

"(2) During the period that goods are in the possession of the issuer of a negotiable document therefor, a security interest in the goods is perfected by [perfecting a security interest in the document, and any security interest in the] goods otherwise perfected during such period is subject thereto."

SECTION 44. Section 490:9-304, Hawaii Revised Statutes, is amended by amending subsection (5) to read as follows:

"(5) A security interest remains perfected for a period of twenty-one days without filing where a secured party having a perfected security interest in an instrument (other than a certificated security), a negotiable document or goods in possession of a bailee other than one who has issued a negotiable document therefor:

- (a) Makes available to the debtor the goods or documents representing the goods for the purpose of ultimate sale or exchange or for the purpose of loading, unloading, storing, shipping, transshipping, manufacturing, processing, or otherwise dealing with them in a manner preliminary to their sale or exchange, but priority

between conflicting security interests in the goods is subject to [subsection (3) of] section [490:9-312;] 490:9-312(3); or

- (b) Delivers the instrument to the debtor for the purpose of ultimate sale or exchange or of presentation, collection, renewal, [[or]] registration of transfer.”

SECTION 45. Section 490:9-402, Hawaii Revised Statutes, is amended by amending subsection (2) to read as follows:

“(2) A financing statement which otherwise complies with subsection (1) is sufficient when it is signed by the secured party instead of the debtor when it is filed to perfect a security interest in:

- (a) Collateral already subject to a security interest in another jurisdiction when it is brought into this State, or when the debtor’s location is changed to this State. Such a financing statement must state that the collateral was brought into this State or that the debtor’s location was changed to this State under such circumstances; [or]
- (b) Proceeds under section 490:9-306 if the security interest in the original collateral was perfected. Such a financing statement must describe the original collateral; [or]
- (c) Collateral as to which the filing has lapsed; or
- (d) Collateral acquired after a change of name, identity, or corporate structure of the debtor (subsection [(7)].) (6).”

SECTION 46. Section 501-171, Hawaii Revised Statutes, is amended to read as follows:

“**§501-171 Registration upon transfer by descent and devise.** (a) When the owner of registered land, or of any estate or interest therein, dies, having devised the same by will, the person or persons entitled thereto may file or record with the assistant registrar of the land court the duplicate certificate issued to the testator, a correct statement of the full names of the devisees, the residence or post office address of each and their marital status and a reference to the number of the certificate of title of the land affected, a certified copy of the will, either a certified copy of the order of the circuit court admitting it to probate or a certified copy of the written statement of the registrar of the circuit court admitting it to informal probate, and a certified copy of an order of the circuit court determining the persons entitled to distribution of the registered land and directing or approving distribution, and thereupon the assistant registrar shall cancel the duplicate certificate issued to the testator, and issue a new duplicate certificate or certificates to the devisee or devisees. When the owner of registered land or of any estate or interest therein dies, not having devised the same, the persons entitled thereto by law may file or record with the assistant registrar the duplicate certificate issued to the intestate, a correct statement of the full names of the heirs, the residence [and] or post office address of each, and their marital status, a certified copy of the judgment of the circuit court in an action determining the heirs, or a certified copy of an order of the circuit court in probate proceedings determining the persons entitled to distribution of the registered land and directing or approving distribution, and thereupon the assistant registrar shall cancel the duplicate certificate issued to the intestate, and issue a new duplicate certificate or certificates to the heir or heirs entitled thereto.

[Instruments which must be registered.] (b) No voluntary instrument or deed of a personal representative, assignee for the benefit of creditors, sheriff, master, commissioner, or other officer purporting to transfer or

create a lien or charge upon any estate or interest of any devisee or heir in registered land or to authorize the same to be done, shall have any effect to accomplish that purpose until the title of the heir or devisee is registered as herein provided. An involuntary lien, charge, or lis pendens against the interest of a relict, heir, or devisee in the lands of a deceased registered owner, prior to the registration of the title of such relict, heir, or devisee, only can be obtained by filing or recording the proper papers with the assistant registrar as in other cases, and the assistant registrar making entry thereof as a memorial on the registered certificate of title of the deceased owner, giving the name[,] and residence[,] or post office address of the relict, heir, or devisee against whom the lien, charge, or lis pendens is to operate.”

SECTION 47. Section 510-26, Hawaii Revised Statutes, is amended to read as follows:

“**§510-26 Purchaser for value or lender.** (a) If a surviving spouse has apparent title to property to which this part applies, a purchaser for value or a lender taking a security interest in the property takes the purchaser’s or lender’s interest in the property free of any rights of the personal representative or an heir or devisee of the decedent.

(b) If a personal representative or an heir or devisee of the decedent has apparent title to property to which this part applies, a purchaser for value or a lender taking a security interest in the property takes the purchaser’s or lender’s interest in the property free of any rights of the surviving spouse.

A purchaser for value or a lender need not inquire whether a vendor or borrower acted properly with respect to property to which this part applies.

[(d)] (c) The proceeds of a sale of or creation of a security interest in property to which this part applies shall be treated in the same manner as the property transferred to the purchaser for value or a lender.”

SECTION 48. Section 514A-47, Hawaii Revised Statutes, is amended to read as follows:

“**§514A-47 Cease and desist orders.** In addition to its authority under section 514A-48, whenever the real estate commission has reason to believe that any person is violating or has violated sections 514A-2, 514A-31 to 514A-39, 514A-41, 514A-42, 514A-44 to 514A-49, 514A-62 to [514A-66,] 514A-65, 514A-68, 514A-69, 514A-84, and 514A-85 or the rules of the commission adopted pursuant thereto, it shall issue and serve upon such person a complaint stating its charges in that respect, containing a notice of a hearing upon a day and at a place therein fixed at least thirty days after the service of the complaint. The person so complained of has the right to appear at the place and time so fixed and show cause why an order should not be entered by the commission requiring the person to cease and desist from the violation of the law charged in the complaint. If upon the hearing the commission is of the opinion that this chapter has been or is being violated, it shall make a report in writing, in which it shall state its findings as to the facts, and shall issue and cause to be served on the person an order requiring the person to cease and desist from such violations. The person complained of may, within thirty days after service upon the person of the report or order, obtain a review thereof in the appropriate circuit court.”

SECTION 49. Section 514A-89, Hawaii Revised Statutes, is amended to read as follows:

**“§514A-89 Certain work prohibited.** No apartment owner shall do any work which could jeopardize the soundness or safety of the property, reduce the value thereof, or impair any easement or hereditament, nor may any apartment owner add any material structure or excavate any additional basement or cellar, without in every such case the consent of seventy-five per cent of the apartment owners, together with the consent of all apartment owners whose apartments or limited common elements appurtenant thereto are directly affected, being first obtained; provided that nonmaterial structural additions to the common elements, including, without limitation, the installation of solar energy devices [as defined by section 468B-1], or additions to or alterations of an apartment made within such apartment or within a limited common element appurtenant to and for the exclusive use of the apartment shall require approval only by the board of directors of the association of apartment owners and such percentage, number, or group of apartment owners as may be required by the declaration or bylaws. “Non-material structural additions to the common elements”, as used [herein, shall mean] in this section, means a structural addition to the common elements which does not jeopardize the soundness or safety of the property, reduce the value thereof, impair any easement or hereditament, detract from the appearance of the project, interfere with or deprive any non-consenting owner of the use or enjoyment of any part of property, or directly affect any non-consenting owner. For purposes of this section, “solar energy device” means any new identifiable facility, equipment, apparatus, or the like which makes use of solar energy for heating, cooling, or reducing the use of other types of energy dependent upon fossil fuel for its generation; provided that if the equipment sold cannot be used as a solar device without its incorporation with other equipment, it must be installed in place and ready to be made operational in order to qualify as a “solar energy device”.”

SECTION 50. Section 533-16, Hawaii Revised Statutes, is amended to read as follows:

**“§533-16 Curtesy; election between curtesy and will.** In case the wife dies first and intestate, then except as in this section provided, her property shall immediately descend to her heirs, but shall be in all cases, whether she die testate or intestate, subject to a life interest in the husband in one-third of the wife’s lands owned by her in fee simple, in freehold, or in leasehold, at the date of her death. The husband shall also, whether the wife die testate or intestate, be entitled, by way of curtesy to an absolute property in the one-third part of it all the wife’s remaining property owned by her at the date of her death, after the payment of all her just debts. During the life of the wife the husband shall have no curtesy right inchoate or otherwise in the wife’s property. If any provisions are made for the widower in the will of his wife, he shall be subject to the same requirements with respect to election between his curtesy and the provisions of the will, or taking under both, as is a widow in similar circumstances under sections [533-14 and 533-15.] 560:2-205 to 560:2-207.

No husband who has, for one year or upwards, previous to the death of his wife, wilfully and utterly deserted his wife, or wilfully neglected or refused to provide suitable maintenance for his wife, shall be entitled to any right or interest in his wife’s property by way of curtesy.

The interests to which the husband is entitled in accordance with this section in the wife’s real and personal property shall not apply to, and nothing in this section shall be deemed to give the husband any interest in, the wife’s interest in community property, real or personal.”

SECTION 51. Section 554A-5, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) If the duty of the trustee and the trustee’s individual interest or the trustee’s interest as trustee of another trust, conflict in the exercise of a trust power, the power may be exercised only by court authorization (except as provided in section 554A-3(c)(1), [(4), (6), (18),] (5), (17), and [(24)]] (23)) upon petition of the trustee. Under this section, personal profit or advantage to an affiliated or subsidiary company or association is personal profit to any corporate trustee.”

SECTION 52. Section 560:1-201, Hawaii Revised Statutes, is amended by amending the definition of “trust” to read:

- “(50) “Trust” includes any express trust, private or charitable, with additions thereto, wherever and however created. It also includes a trust created or determined by judgment or decree under which the trust is to be administered in the manner of an express trust. “Trust” excludes other constructive trusts, and it excludes resulting trusts, guardianships, personal representatives, trust accounts as defined in Article VI, custodial arrangements pursuant to chapter [553,] 553A, business trusts providing for certificates to be issued to beneficiaries, common trust funds, voting trusts, security arrangements, liquidation trusts, and trusts for the primary purpose of paying debts, dividends, interest, salaries, wages, profits, pensions, or employee benefits of any kind, and any arrangement under which a person is nominee or escrowee for another.”

SECTION 53. Section 560:3-301, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) Applications for informal probate or informal appointment shall be directed to the registrar, and shall be verified by the applicant to be accurate and complete to the best of the applicant’s knowledge and belief as follows:

- (1) Every application for informal probate of a will and appointment of a personal representative or for informal appointment of a personal representative in the case of intestacy, other than a special or successor representative, shall contain the following:
  - (i) A statement of the interest of the applicant;
  - (ii) The name, and date of death of the decedent, the decedent’s date of birth, and the county and state of the decedent’s domicile at the time of death, and, so far as known or ascertainable with reasonable diligence by the applicant, the names and addresses of the spouse, children, heirs, and devisees and the dates of birth of any who are minors;
  - (iii) If the decedent was not domiciled in the State at the time of the decedent’s death, a statement showing venue;
  - (iv) A statement identifying and indicating the address and state in which appointed of any personal representative of the decedent whose appointment has not been terminated;
  - (v) A statement indicating whether the applicant has received a demand for notice, or is aware of any demand for notice of any probate or appointment proceeding concerning the

- decedent that may have been filed in this State or elsewhere, and, as to any such demand the names and addresses of the demandants;
- (vi) A statement indicating that the time limit for informal probate proceedings as provided in section 560:3-108 has not expired;
  - (vii) A statement of the nature and value of the estate of the decedent subject to probate proceedings in this State;
  - (viii) A statement setting forth any request known to the applicant for homestead allowance, exempt property (in which case the specific items of property and their value shall be itemized) and family allowance under Article II, Part 4;
  - (ix) The name, address, and priority of appointment of the person whose appointment as personal representative is sought, a statement that the nominee is qualified to serve as such under section 560:3-601, and the names of any other persons having a prior or equal right to appointment under section 560:3-203; and
  - (x) If there are any persons listed under subparagraph (ix) [above] who have a prior or equal right to appointment, a statement in which they renounce their priority or concur in the nomination of the person seeking appointment.
- (2) An application for informal probate of a will and appointment of a personal representative shall state the following in addition to the statements required by paragraph (1):
- (i) That the original of the decedent's last will is in the possession of the court, or accompanies the application, or that an authenticated copy of a will probated in another jurisdiction accompanies the application;
  - (ii) That the applicant, to the best of the applicant's knowledge, believes the will to have been validly executed;
  - (iii) That after the exercise of reasonable diligence, the applicant is unaware of any instrument revoking the will; and
  - (iv) That the applicant believes that the instrument which is the subject of the application is the decedent's last will and is not one of a series of testamentary instruments, the latest of which does not expressly revoke the earlier.
- (3) An application for informal appointment of a personal representative in the case of intestacy shall state in addition to the statements required by paragraph (1) that, after exercise of reasonable diligence, the applicant is unaware of any unrevoked testamentary instrument relating to property having a situs in this State under section 560:1-301, or, a statement why any such instrument of which the applicant may be aware is not being probated.
- (4) An application for appointment of a personal representative to succeed a personal representative who has tendered a resignation as provided in section [560:3-610(c),] 560:3-610(b), or whose appointment has been terminated by death or removal, shall adopt the statements in the application which led to the appointment of the person being succeeded except as specifically changed or corrected, state the name and address of the person who seeks appointment as successor, and describe the priority of the nominee."

SECTION 54. Section 560:3-302, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) Upon receipt of an application requesting informal probate of a will, the registrar, upon making the findings required by section 560:3-303, shall issue a written statement admitting the will to informal probate, granting any request for statutory allowances and exempt property, and appointing a personal representative subject to acceptance if at least fourteen days have passed after the last mailing or other delivery of notice, if proof that notice has been given is filed with the registrar and if no petition for formal testacy proceedings has been filed; provided, however, if published notice is required by section [560:1-401(a)(3),] 560:1-401(a)(2), the registrar shall delay any action hereunder until the later of fourteen days after the last mailing or other delivery of notice or forty days after the first publication of notice.”

SECTION 55. Section 560:3-308, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) Unless section 560:3-612 controls, the application shall be denied if it indicates that a personal representative who has not filed a written statement of resignation as provided in section [560:3-610(c)] 560:3-610(b) has been appointed in this or another judicial circuit of this State, that (unless the applicant is the domiciliary personal representative or the domiciliary personal representative’s nominee) the decedent was not domiciled in this State, and that a personal representative whose appointment has not been terminated has been appointed by a court in the [State] state of domicile, or that other requirements of this section have not been met.”

SECTION 56. Section 560:3-414, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) A formal proceeding for adjudication regarding the priority or qualification of one who is an applicant for appointment as personal representative, or of one who previously has been appointed personal representative in informal proceedings, if an issue concerning the testacy of the decedent is or may be involved, is governed by section 560:3-402, as well as by this section. In other cases, the petition shall contain or adopt the statements required by section [560:3-301(1)] 560:3-301(b)(1) and describe the question relating to priority or qualification of the personal representative which is to be resolved. If the proceeding precedes any appointment of a personal representative, it shall stay any pending informal appointment proceedings as well as any commenced thereafter. If the proceeding is commenced after appointment, the previously appointed personal representative, after receipt of notice thereof, shall refrain from exercising any power of administration except as necessary to preserve the estate or unless the court orders otherwise.”

SECTION 57. Section 571-2, Hawaii Revised Statutes, is amended by amending the definition of “status offender” to read:

““Status offender” means any child coming within the family court’s jurisdiction under section [571-11(2)(D), (E), or (F).] 571-11(2)(B), (C), or (D). Such child is distinguished from (A) a law violator under section 571-11(1) who comes into the family court upon allegations such person has committed an act which would constitute a crime if committed by an adult, and (B) a neglected [or abused] child under section [571-11(2)(A), (B) or (C).] 571-11(2)(A).”

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The singular includes the plural, the plural the singular, and the masculine the feminine, when consistent with the intent of this chapter.”

**SECTION 58.** Section 571D-1, Hawaii Revised Statutes, is amended to read as follows:

“**§571D-1 Juvenile justice interagency board.** There is established within the department of the attorney general for administrative purposes the juvenile justice interagency board, consisting of nine members which shall include a police chief of one of the counties, the prosecuting attorney of a county, a representative from a private social service agency, and two additional members, all appointed by the governor as provided in section 26-34, and the superintendent of education, the public defender, the director of social services, and the senior judge of the first circuit family court as ex officio members. The composition of the board shall include a resident member from each county in the State.

The attorney general shall designate the executive secretary of the board.”

**SECTION 59.** Section 573-8, Hawaii Revised Statutes, is amended to read as follows:

“**§573-8 Marriage settlement not invalidated.** Nothing contained in sections 572-22 to 572-24, 573-1 [to 573-7] or 573-3 to 573-5 shall invalidate any marriage settlement or contract.”

**SECTION 60.** Section 622-52, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) [Except as provided in section 622-55, whenever] 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 the custodian’s 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]) rule 1001(4), Hawaii Rules of Evidence of all the medical records described in such subpoena to the clerk of the court or the clerk’s deputy authorized to issue it, together with the affidavit described in section 622-53.”

**SECTION 61.** Section 622-56, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

“(c) If more than one subpoena duces tecum is served upon the custodian or other qualified witness from a medical facility and the personal attendance of that person is required [pursuant to section 622-55], the witness shall be deemed to be the witness of the party serving the first subpoena.”

**SECTION 62.** Section 634-36, Hawaii Revised Statutes, is amended to read as follows:

“**§634-36 Manner of service under sections 634-33 to 35.** When service of summons is provided for by section 634-33, 634-34, or 634-35, service shall be made by service upon the defendant personally by any person

authorized to serve process in the place in which the [person] defendant may be found or appointed by the court for the purpose, or sent by certified or registered mail, postage prepaid, with return receipt requested, by the plaintiff or the plaintiff's attorney to the defendant. The plaintiff or the plaintiff's attorney shall file the return of the serving officer or an affidavit showing that the copy of summons and complaint were served as aforesaid or sent by certified or registered mail as aforesaid, and in the latter case the return receipt signed by the defendant shall be filed with the affidavit. The service shall be deemed complete upon delivery of the required papers to the defendant outside the State, personally or by mail as provided.

If the defendant cannot be found to serve or mail the summons and the facts shall appear by affidavit or otherwise to the satisfaction of the court, it may order that service be made by publication of summons in at least one newspaper published in the State and having a general circulation in the circuit in which the action has been instituted, in such manner and for such time as the court may order, but not less than once each week in four successive weeks, the last publication to be not less than twenty-one days prior to the return date stated therein unless a different time is prescribed by order of the court."

SECTION 63. Section 669-2, Hawaii Revised Statutes, is amended by amending subsection (d) to read as follows:

"(d) In any action brought under section 669-1, the State may be joined as a defendant only when:

- (1) It is an adjoining property owner and the same is alleged by the plaintiff, or
- (2) The party asserting the claim can demonstrate, by a title search prepared at the party's own expense by an abstractor [licensed in the State], that the State has a clear and specific interest in the subject matter of the suit which is adverse to the plaintiff's claim, and a copy of [said] the title search is furnished to the State without cost, together with the complaint."

SECTION 64. Section 671-1, Hawaii Revised Statutes, is amended by amending the definition of "health care provider" to read as follows:

- "(1) "Health care provider" means a physician or surgeon licensed under chapter 453, [a physician or] a physician and surgeon licensed under chapter 460, a health care facility as defined in section 323D-2, and the employees of any of them. Health care provider shall not mean any nursing institution or nursing service conducted by and for those who rely upon treatment by spiritual means through prayer alone, or employees of such institution or service."

SECTION 65. Section 671-11, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

"(b) A medical claim conciliation panel shall be formed for each claim filed pursuant to section 671-12 and after each panel renders its decision or the claim is otherwise disposed of it shall be disbanded. Each medical claim conciliation panel shall consist of one chairperson selected from among persons who are familiar with and experienced in the personal injury claims settlement process, one attorney licensed to practice in the courts of the State and experienced in trial practice, and one physician or surgeon licensed to practice under chapter 453 or chapter 460. The chairperson shall be appointed by the chief justice of the supreme court of Hawaii. The

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attorney shall be appointed by the chairperson from a list of not less than thirty-five attorneys experienced in trial practice submitted annually by the supreme court. The physician or surgeon shall be appointed by the chairperson from a list of not less than thirty-five physicians or surgeons licensed under chapter 453 submitted annually by the board of medical examiners or from a list of not less than eight [physicians or] physicians and surgeons licensed under chapter 460 submitted annually by the board of osteopathic examiners.

The chairperson shall preside at the meetings of the panel. The chairperson and all panel members shall be compensated at the rate of \$100 per claim handled which will become payable when the decision of the panel is submitted and shall be paid allowances for travel and living expenses which may be incurred as a result of the performance of their duties on the panel. Such costs shall be paid by the department of commerce and consumer affairs.

The office and meeting space, secretarial and clerical assistance, office equipment, and office supplies for the panel shall be furnished by the department.

The board of medical examiners and board of osteopathic examiners shall each prepare a list of physicians, surgeons, or physicians and surgeons, as the case may be, along with their respective specialties who shall then be considered consultants to the panel in their respective fields. Panel members may consult with other legal, medical, and insurance specialists. Any consultant called by the panel to appear before the panel shall be paid an allowance for travel and living expenses which may be incurred as a result of such person's appearance before the panel. Such costs shall be paid by the department."

SECTION 66. Section 802-10, Hawaii Revised Statutes, is repealed.

SECTION 67. Section 806-56, Hawaii Revised Statutes, is amended to read as follows:

**"§806-56 Nolle prosequi.** No nolle prosequi shall be entered in a criminal case in a court of record except by consent of the court upon written motion of the prosecuting attorney stating the reasons [therefore.] therefor. The court may deny the motion if it deems the reasons insufficient and if, upon further investigation, it decides that the prosecution should continue, it may, if in its opinion the interests of justice require it, appoint a special prosecutor to conduct the case and allow the special prosecutor a fee. [The proviso of section 801-5] Section 802-5(b) relative to fees allowed counsel assigned by the court for a defendant is made applicable to fees of special prosecutors appointed hereunder."

SECTION 68. Act 320, Session Laws of Hawaii 1986, is amended by amending section 8 to read as follows:

**"SECTION 8.** This Act shall take effect on July 1, 1986, and be repealed as of June 30, 1989[.]; provided that on repeal sections 37-34, 37-35, 37-36, 37-37, and 37-74, Hawaii Revised Statutes, are reenacted in the form in which they read on June 30, 1986."

SECTION 69. Act 321, Session Laws of Hawaii 1986, is amended by amending section 12 to read as follows:

**"SECTION 12.** This Act shall take effect on July 1, 1986, and be repealed as of June 30, 1989[.]; provided that on repeal sections 40-1, 40-2,

40-4, 40-6, 40-81, and 103-23, Hawaii Revised Statutes, are reenacted in the form in which they read on June 30, 1986.”

SECTION 70. Act 342, Session Laws of Hawaii 1986, is amended by amending section 9 to read as follows:

“SECTION 9. This Act shall take effect on October 1, 1986, and shall be repealed as of September 30, 1991[.]; provided that on repeal sections 281-1, 281-78, 294-13, 712-1250.5, and 712-1252, Hawaii Revised Statutes, are reenacted in the form in which they read on September 30, 1986.”

SECTION 71. This Act shall be amended to conform to all other acts passed by the legislature during this Regular Session of 1987, whether enacted before or after the effective date of this Act, unless such other acts specifically provided otherwise.

SECTION 72. Statutory material to be repealed is bracketed. New statutory material is underscored.<sup>2</sup>

SECTION 73. This Act shall take effect upon its approval.

(Approved June 25, 1987.)

**Notes**

1. So in original.
2. Edited pursuant to HRS §23G-16.5.