

ACT 126

H.B. NO. 3593

A Bill for an Act Relating to the Department of Commerce and Consumer Affairs.
Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 26-9, Hawaii Revised Statutes, is amended to read as follows:

“§26-9 Department of commerce and consumer affairs. (a) The department of commerce and consumer affairs shall be headed by a single executive to be known as the director of commerce and consumer affairs.

(b) The department shall protect the interests of consumers, depositors, and investors throughout the State. It shall set standards and enforce all laws[,] and rules[, and regulations] governing the licensing and operation of, and register and supervise the conduct of, trades, businesses, and professions, including banks, insurance companies, brokerage firms, and other financial institutions.

(c) The board of acupuncture, board of public accountancy, board of barbers, board of cosmetology, boxing commission, board of chiropractic examiners, contractors license board, board of dental examiners, board of electricians and plumbers, elevator mechanics licensing board, board of registration for professional engineers, architects, and surveyors, board of hearing aid dealers and fitters, board of massage, board of medical examiners, motor vehicle industry licensing board, motor vehicle repair industry board, board of examiners in naturopathy, board of nursing, board of examiners of nursing home administrators, board of dispensing opticians, board of examiners in optometry, board of osteopathic examiners, pest control board, board of pharmacy, board of physical therapy, board of psychology, board of detectives and guards, real estate commission, board of veterinary examiners, and state board of speech pathology and audiology are placed within the department of commerce and consumer affairs for administrative purposes.

(d) Except as otherwise provided by this chapter, the functions, duties, and powers, subject to the administrative control of the director of commerce and consumer affairs, and the composition of each board and commission shall be as heretofore provided by law.

(e) Notwithstanding any provision to the contrary, the employment, appointment, promotion, transfer, demotion, discharge, and job descriptions of all officers and employees under the administrative control of this department shall be determined by the director of commerce and consumer affairs subject only to applicable personnel laws.

(f) The director of commerce and consumer affairs may appoint a hearings officer or officers not subject to chapters 76 and 77 to hear and decide any case or controversy regarding licenses and the application and enforcement of rules involving any of the boards or commissions within the department of commerce and consumer affairs. The hearings officer or officers shall have power to issue subpoenas, administer oaths, hear testimony, find facts, and make conclusions of law and a recommended decision; provided that the conclusions and decisions shall be subject to review and redetermination by the officer, board, or commission which would have heard the case in the first instance in the absence of a hearings officer. The review shall be conducted in accordance with chapter 91.

(g) The director of commerce and consumer affairs may appoint an information officer not subject to chapters 76 and 77 who shall ensure the prompt and efficient handling of consumer inquiries and the development of a strong consumer education program.

[(g)] (h) The director may appoint a complaints and enforcement officer not subject to chapters 76 and 77 who shall facilitate the receipt, arbitration, investi-

gation, prosecution, and hearing of complaints regarding any person who furnishes commodities or services for which a license is required from the department or any board or commission thereunder. In representing the State in bringing any action to enjoin unlicensed activities, the department of commerce and consumer affairs' attorneys shall be empowered to exercise all authority granted to the attorney general and to the director of the office of consumer protection under sections 487-12, 487-14, 480-3.1, 480-15, 480-15.1, 480-20(c), and 480-22, as [such] these sections now exist and as they [may be] subsequently may be amended. The attorneys [shall] also shall be empowered to exercise all authority granted to the attorney general and to the responsible attorneys of the various counties under section 92-51 in all cases involving documents and records within the custody or control of the regulated industries complaints office.

[(h)] (i) The functions and authority [heretofore] previously exercised by the treasurer (except funds custody, cash management, debt management, and administering of veterans loans transferred to the department of budget and finance) as [heretofore] constituted are transferred to the department of commerce and consumer affairs established by this chapter. The director of commerce and consumer affairs [shall] also shall be the commissioner of securities.

[(i)] (j) In the course of an investigation of matters affecting the interest of consumers, depositors, or investors or of any other matter within the jurisdiction of the department, the director shall have the power to subpoena witnesses, examine them under oath, and require the production of books, papers, documents, or objects which the director deems relevant or material to the inquiry. Upon application by the director, obedience to the subpoena may be enforced by the circuit court in the county where the person subpoenaed resides or is found in the same manner as a subpoena issued by the clerk of a circuit court.

The director shall appoint and commission one or more investigators to serve subpoenas as the exigencies of the public service may require. Subpoenas served by persons appointed and commissioned by the director shall have the same force and effect as subpoenas served by police officers or deputy sheriffs. Nothing in this subsection shall be construed to entitle persons commissioned and appointed by the director to retirement benefits applicable to police officers under chapter 88.

[(j)] (k) The director may adopt, amend, or repeal rules pursuant to chapter 91 to effectuate the purposes of all laws within the jurisdiction of the department of commerce and consumer affairs. The director's authority to adopt rules shall not modify, impair, or otherwise affect the power of boards and commissions placed with the department of commerce and consumer affairs for administrative purposes from adopting, amending, or repealing rules, except as provided for in subsection [(k).] (l).² The director may establish, amend, or repeal registration, renewal, and late renewal fees by rules pursuant to chapter 91 for any regulatory program placed with the department.

[(k)] (l) Any law to the contrary notwithstanding, the fees assessed or charged by any board or commission placed within the department of commerce and consumer affairs for administrative purposes or by the department for services provided to the public may be increased or decreased by the director of commerce and consumer affairs by rules adopted pursuant to chapter 91 to maintain a reasonable relation between the revenue derived from the fee and the cost or value of services rendered; provided that with regard to the fees assessed or charged by any board or commission, the director may establish the fees as separate application, examination, and license fees.

[(l)] (m) Notwithstanding section 92-17 or any other law to the contrary, all boards and commissions placed within the department of commerce and consumer affairs for administrative purposes shall delegate their authority to receive, arbitrate,

investigate, and prosecute complaints to the department. No board or commission shall delegate its authority to take disciplinary action against a licensee.

(m) (n) Every [licensed] person licensed under any chapter subject to section 26H-4 and every [licensed] person licensed subject to chapter 485 shall pay upon issuance of a license, permit, certificate, or registration a fee of \$10 and a subsequent annual fee of \$10, which may be collected biennially or pursuant to rules adopted under chapter 91 and which shall be deposited into the special fund established under this subsection. Every filing pursuant to chapter 514E or section 485-6(15) shall be assessed, upon initial filing and at each renewal period, where [such] a renewal is required, a fee which shall be prescribed by rules adopted under chapter 91 and which shall be deposited into the special fund established under this subsection. Any unpaid fee shall accrue and shall be paid by the licensed person, upon application for renewal of a license, and by the person responsible for the renewal of any filing, upon the application for renewal of the filing. If the accrued fees are not paid, the director may deny renewal of the license or filing. The director may increase or decrease the fees when necessary pursuant to rules adopted under chapter 91.

There is created in the state treasury a special fund to be expended by the director's designated representative for compliance resolution as provided by this subsection. Notwithstanding any law to the contrary, the moneys in the fund shall consist of annual fees collected under this subsection and section 514A-95 and penalties or fines assessed as a result of action brought by the personnel hired under this subsection. The director may use the moneys in the fund to employ, without regard to chapters 76 and 77, hearings officers, investigators, attorneys, accountants, and other necessary personnel. The moneys in the fund may be used to train such personnel as the director finds necessary and for any other activity related to compliance resolution.

As used in this subsection, unless otherwise required by the context, "compliance resolution" means a determination of whether:

- (1) [any] Any licensee or applicant under any chapter subject to section 26H-4, has complied with that chapter[,];
- (2) [any licensee] Any person subject to chapter 485 has complied with that chapter[,]; or
- (3) [any] Any person submitting any filing required by chapter 514E or section 485-6(15) has complied with chapter 514E or section 485-6(15).

The director shall prepare and submit an annual report to the governor and the legislature on the use of the compliance resolution fund. This subsection shall be repealed effective July 1, [1991.] 2001.

(n) (o) Any law to the contrary notwithstanding, the department of commerce and consumer affairs, or any board or commission placed within it for administrative purposes, may contract with professional testing services to prepare, administer, and grade examinations and tests for license applicants. For these purposes, the department may require applicants to pay the examination fee directly to the testing agency.

(o) (p) Any law to the contrary notwithstanding, when any type of bond or insurance required to be maintained by any licensee under a regulatory program of the department of commerce and consumer affairs, or of any board or commission assigned to the department of commerce and consumer affairs, cannot reasonably be secured, the department, board, or commission may provide by rule [provide] for alternative forms of security to the consumer so long as that alternate security is no less than that provided by the type of bond or insurance initially required."

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SECTION 2. Section 514A-95, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

“(c) All managing agents doing business in this State on July 1, 1984, shall register with the real estate commission before January 1, 1985. Any person who becomes a managing agent after July 1, 1984, shall register with the commission by January 1, 1985, or not later than one week after becoming a managing agent, whichever is later. Every managing agent shall pay an initial registration fee of \$25 and a reregistration fee of \$15. Reregistration shall be on a biennial basis. Registration fees shall be placed in the special fund established under section [26-9(m)] 26-9(n) for compliance resolution.”

SECTION 3. For the period ending November 30 of each year, the director shall prepare and submit a report to the governor, the president of the senate, and the speaker of the house of representatives on the use of the compliance resolution. The report shall be submitted by December 20 immediately following the period covered by the report. The first annual report under this section shall be due on December 20, 1988.

Each report on the use of the compliance resolution fund shall include:

- (1) A general overview of the compliance resolution program, including:
 - (A) A statement of its objectives;
 - (B) A description of its major activities; and
 - (C) A discussion of important external developments affecting the compliance resolution program or fund.
- (2) A budgetary overview of the compliance resolution program, including:
 - (A) A summary of the balance of the compliance resolution fund, actual for the last completed period and estimated for the period in progress; and
 - (B) As defined by section 37-62, the full cost implications of the compliance resolution fund, by cost categories and cost elements, actually experienced in the last completed period and estimated for the period in progress. The means of financing shall be identified specifically.

The personal services cost element shall be shown separately; the cost elements of other current expenses, equipment, and motor vehicles may be combined. The number of positions included in the program shall be identified appropriately by means of financing.

- (3) Appendices as needed to include appropriate issue papers, special analytic studies, other reports, and crucial source data.

SECTION 4. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 5. This Act shall take effect upon its approval.

(Approved May 27, 1988.)

Notes

1. Prior to amendment, “the” appeared here.
2. Period should be underscored.