

ACT 339

H.B. NO. 3602

A Bill for an Act Relating to Franchise Investment Law.

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

SECTION 1. Chapter 482E, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

“§482E- **Civil penalty.** (a) The director may bring an action to recover a civil penalty against any person who violates this chapter or who has knowingly violated a rule or order made pursuant to this chapter. A civil penalty of not more than \$100,000 may be assessed.

(b) No civil action may be brought under this chapter later than five years subsequent to the date of the violation or two years subsequent to the discovery of facts constituting the violation, but in no event shall any civil action be brought later than seven years subsequent to the date of the violation.”

SECTION 2. Chapter 482E, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

“§482E- **Criminal penalties.** (a) Violations of this chapter shall be as follows:

- (1) An offense in which the total value of all money and anything else of value paid by or lost by the victim pursuant to the same scheme, plan, or representation, or to the same entity, amounts to less than \$5,000, shall be a class C felony.
- (2) An offense in which the total value of all money and anything else of value paid by or lost by the victim pursuant to the same scheme, plan, or representation, or to the same entity, amounts to \$5,000 or more, shall be a class B felony.

(b) In addition to the penalties provided in subsection (a), any person who violates this chapter shall forfeit to the State any interest or property acquired or maintained in connection with the violation, and any interest, security, claim, or property or contractual right of any kind affording a source of influence over any enterprise which was established, operated, controlled, conducted, or joined in connection with the violation.

(c) The value of all money and anything else of value paid or lost by more than one victim pursuant to the same scheme, plan, or representation, or to the same entity, may be aggregated in determining the class or grade of the offense.

(d) Upon conviction of a person under this chapter, the circuit court shall authorize the county attorney or prosecutor, or the attorney general, as the case may be, to seize all property or other interest declared forfeit pursuant to subsection (b) upon such terms and conditions as the court shall specify. The State shall dispose of such property or other interest as soon as feasible making due provision for the rights of innocent persons. If a property right or other interest is not exercisable or transferable so as to be of value to the State, it shall remain in the possession of

the State and the director shall dispose of it as deemed proper by the director; provided that the violator shall not benefit from any such disposal.

(e) Notwithstanding any other law to the contrary, a person who has been convicted of a felony under this section, or has had a prior conviction for a crime which would constitute a felony under this section, shall be sentenced to a mandatory minimum period of imprisonment of one year without possibility of parole. Nothing in this subsection shall be construed to in any way limit the maximum term of imprisonment provided under chapter 706.

(f) Notwithstanding any other laws to the contrary, the following time limitations shall apply to prosecutions for felony violations of this chapter:

- (1) Prosecution for a felony under this chapter shall be commenced within five years after the offense is committed.
- (2) If the period prescribed in paragraph (1) has expired, prosecution for a felony under this chapter may be commenced within two years after the discovery of the offense by an aggrieved party who is not a party to the offense, but in no event shall prosecution commence more than seven years after the offense is committed."

SECTION 3. Chapter 482E, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

"§482E- Violation of chapter; cease and desist order. (a) Whenever it appears to the director that any person has engaged in or is about to engage in any act or practice constituting a violation of this chapter, or any order or rule issued or adopted thereunder, the director may issue a cease and desist order to enforce compliance with this chapter or any such order or rule. The director shall have the discretion to determine the disposition of any executory contracts entered into by the respondent and shall specify in the order whether existing executory contracts shall be suspended or completed.

(b) Upon the issuance of an order under subsection (a), the director shall promptly notify the respondent that the order has been issued and the reasons therefor; that the respondent shall have thirty days to request a hearing in writing; and that if a hearing is requested, the hearing shall commence within fifteen business days of the request, unless extended by the director for good cause. During the pendency of any hearing requested, the cease and desist order shall remain in effect unless vacated or modified by the director.

(c) After the hearing, the director shall issue a final order that shall affirm, vacate, or modify the order in effect during the pendency of the hearing. If no hearing is requested and none is ordered by the director, the order shall remain in effect until it is modified or vacated by the director.

(d) All hearings and rehearings shall be public.

(e) Upon a proper showing, a permanent or temporary injunction, restraining order, or writ of mandamus shall be granted and a receiver or conservator may be appointed for the respondent or the respondent's assets. The court shall not require the director to post a bond."

SECTION 4. Section 482E-10, Hawaii Revised Statutes, is repealed.

SECTION 5. Statutory material to be repealed is bracketed. New statutory material is underscored.¹

SECTION 6. This Act shall take effect upon its approval.

(Approved June 13, 1988.)

Note

1. Edited pursuant to HRS §23G-16.5.