

## ACT 60

S.B. NO. 2780

A Bill for an Act Relating to Consumer Protection.

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

SECTION 1. This Act is intended to clarify the administrative relationship between the department of commerce and consumer affairs and the office of consumer protection. It is not intended to alter the day to day activities of the office of consumer protection, nor shall anything in this Act be construed, interpreted, or applied in any way or for any reason to lessen or curtail services, hinder, deter, prevent, or mitigate any investigations begun before, on, or after the effective date of this Act, nor to jeopardize or in any way limit the ability of consumers to obtain full and satisfactory responses to inquiries or complaints or other actions requested and damages due and payable on account of any action taken by the office of consumer protection or its executive director pursuant to this Act or any other law.

SECTION 2. Section 480-14, Hawaii Revised Statutes, is amended to read as follows:

**“§480-14 Suits by the State; amount of recovery.** (a) Whenever the State, any county, or city and county is injured in its business or property by reason of anything forbidden or declared unlawful by this chapter, it may sue to recover threefold the ~~[[actual]]~~ damages sustained by it.

(b) The attorney general may bring an action on behalf of the State or any of its political subdivisions or governmental agencies to recover the damages provided for by this section, or by any comparable provisions of federal law.

(c) No person other than the attorney general of the State shall be authorized to bring a class action for indirect purchasers asserting claims under this chapter ~~[and the].~~ The attorney general or the director of the office of consumer protection may bring a class action on behalf of consumers based on unfair or deceptive acts or practices declared unlawful by section 480-2. [Such actions] Actions brought under this section shall be brought as *parens patriae* on behalf of natural persons residing in this State, to secure compensatory damages for injuries sustained by such natural persons to their property by reason of any violation of this chapter.

(d) If judgment is in favor of the State or any of its political subdivisions or governmental agencies under any provision of this chapter, the attorney general or the director of the office of consumer protection shall be awarded reasonable attorney’s fees together with the cost of suit; provided further that in any class action lawsuit brought by the attorney general in behalf of indirect purchasers, the attorney general shall in addition be awarded an amount commensurate with expenses reasonably expected to be expended in distribution of damages ~~[[to]]~~ the indirect purchasers.”

SECTION 3. Section 487-2, Hawaii Revised Statutes, is amended to read as follows:

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“**§487-2 Office of consumer protection; director.** There is created within the department of commerce and consumer affairs [for administrative purposes] an office of consumer protection. [The head of this office] The director of commerce and consumer affairs shall be the director of the office of consumer protection[.] and may appoint an executive director of the office of consumer protection. The executive director shall have been admitted to practice law before the supreme court of this State and shall be [appointed by the governor without regard to] exempt from chapters 76 and 77.”

SECTION 4. Section 487-4, Hawaii Revised Statutes, is amended to read as follows:

“**§487-4 [Salaries;] Salary and duties of executive director; benefits.** [Effective January 1, 1986, the salary of the director of the office of consumer protection shall be \$55,404 a year.] The director may define the executive director's powers and duties and fix the executive director's compensation. The executive director and attorney staff members shall be entitled to participate in any employee benefit plan.”

SECTION 5. Section 487-5, Hawaii Revised Statutes, is amended to read as follows:

“**§487-5 General functions, powers, and duties [of the office].** The director of the office of consumer protection is designated the consumer counsel for the State and shall represent and protect the State, the respective counties, and the general public as consumers. The director of the office of consumer protection shall have the following functions, powers, and duties:

- (1) Coordinate the consumer protection activities of all departments, divisions, and branches of state government, and of branches of the county government concerned with consumer protection;
- (2) Assist, advise, and cooperate with federal, state, and local agencies and officials to protect and promote the interests of the consumer public;
- (3) Conduct investigations, research, studies, and analysis of matters and take appropriate action affecting the interests of consumers;
- (4) Study the operation of laws affecting consumers and recommend to the governor and the legislature, new laws and amendments of laws in the consumers' interest;
- (5) Adopt rules pursuant to chapter 91 interpreting section 480-2; provided that in adopting rules, due consideration shall be given to the rules, regulations, and decisions of the Federal Trade Commission and the federal courts in interpreting section 5(a)(1) of the Federal Trade Commission Act (15 U.S.C. 45(a)(1)), as from time to time amended;
- (6) Investigate reported or suspected violations of laws enacted[,] and rules [and regulations promulgated] adopted for the purpose of consumer protection and shall enforce such laws[,] and and rules[, and regulations] by bringing civil actions or proceedings;
- (7) Organize and hold conferences on problems affecting consumers; and undertake activities to encourage business and industry to maintain high standards of honesty, fair business practices, and public responsibility in the production, promotion, and sale of consumer goods and services;
- (8) Provide a central clearinghouse of information by collecting and compiling all consumer complaints and inquiries and making the collections and compilations available to the general public; provided that consumer complaints may not be made available to the general public if

the office of consumer protection is conducting an investigation or review of the complaints, or if the complaints are being used in connection [with] with civil actions or proceedings initiated by the office of consumer protection, or if the complaints have been referred to another state agency;

- [(9)] Organize, promote, and conduct consumer education programs within the State;
- [(10)] (9) Appear before governmental commissions, departments, and agencies to represent and be heard on behalf of consumers' interest;
- [(11)] (10) Contract with other county, state, or federal governmental agencies, with nonprofit social services societies, or with private nonprofit trade, professional, or business organizations for the performance of any of the functions of the office not involving the enforcement of rules [and regulations] for the purpose of consumer protection under this section, or the extension of any power or authority under section 487-11, within the budget limitations for any period not exceeding a budget year, provided that the purposes and policies of this chapter are in no way diluted, abridged, misdirected, or destroyed; and
- [(12)] (11) Perform such other acts as may be incidental to the exercise of the functions, powers, and duties set forth in this section, including but not limited to, compensation of witnesses in such amounts and for such purposes as shall be prescribed by rules."

SECTION 6. Section 487-11, Hawaii Revised Statutes, is repealed.

SECTION 7. Statutory material to be repealed is bracketed. New statutory material is underscored.<sup>1</sup>

SECTION 8. This Act shall take effect upon its approval.

(Approved May 10, 1988.)

**Note**

1. Edited pursuant to HRS §23G-16.5.