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H.B. NO. 225

A Bill for an Act Relating to Statutory Revision: Amending, Reenacting, or Repealing Various Provisions of the Hawaii Revised Statutes 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 11-204, Hawaii Revised Statutes, is amended by amending subsection (e) to read as follows:

“(e) All payments made by a person [or] whose contributions or expenditure activity is financed, maintained, or controlled by any corporation, labor organization, association, political party, or any other person or committee, including any parent, subsidiary, branch, division, department, or local unit of the corporation, labor organization, association, political party, or any other person, or by any group¹ [such] those persons shall be considered to be made by a single person.”

SECTION 2. Section 27C-2, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) [The Hawaii Revised Statutes is amended to provide for the establishment of] There is established a centralized state information service in the office of the governor, consisting of a central office at the capital and satellite offices located in each county.”

SECTION 3. Section 46-15.5, Hawaii Revised Statutes, is amended to read as follows:

“[[§46-15.5]] Cooperation by state departments. All state departments, including the departments of [social] human services [and housing] and health, shall cooperate with the counties with respect to administrative inspections conducted under section 46-15.4, by providing information:

- (1) Regarding probable violations of the conditions of a license under section 445-95;
- (2) Regarding the probable operation of a lodging or tenement house, group home, group residence, group living arrangement, hotel, boarding-house, or restaurant; or
- (3) That may be used to satisfy the probable cause requirement of section 46-15.4.”

SECTION 4. Section 103-7, Hawaii Revised Statutes, is amended to read as follows:

“§103-7 Capital improvements; authorizations for; emergency repairs or reconstruction, exception. All capital improvement projects requiring the use of general funds, special funds, general obligation bonds, and revenue bonds of the State, except projects covered by chapter [41] 41D shall require authorization by the legislature and the governor.”

SECTION 5. Section 103-22, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) In all cases of expenditures of public money that is more than \$4,000 but less than \$8,000, a call for informal bids shall be published at least once in a newspaper of general circulation printed and published within the State; provided that:

- (1) In the case of public works or repairs and maintenance of buildings, roads, and other site improvements where the expenditure is more than \$4,000 but less than \$15,000, a call for informal bids shall be published at least once in a newspaper of general circulation printed and published within the State; and
- (2) In the case of the repair of publicly owned or leased heavy equipment, automotive equipment, and sewage treatment plants where the expenditure is more than \$4,000 but less than \$10,000, the expenditure may be made without public advertisement for sealed tenders or a call for [[informal]] bids.”

SECTION 6. Section 134-8, Hawaii Revised Statutes, is amended to read as follows:

“§134-8 Ownership, etc., of machine guns, automatic rifles, silencers, etc., prohibited; penalty. (a) The manufacture, possession, sale, barter, trade, gift, transfer, or acquisition of any of the following is prohibited: machine guns; submachine guns; automatic rifles; rifles with barrel lengths less than sixteen inches; shotguns with barrel lengths less than eighteen inches; cannon; mufflers, silencers, or devices for deadening or muffling the sound of discharged firearms; hand grenades, dynamite, blasting caps, bombs, or bombshell, or other explosives; or any type of ammunition or any projectile component thereof coated with teflon or any other similar coating [or] designed primarily to enhance its capability to penetrate

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metal or pierce protective armor; and any type of ammunition or any projectile component thereof designed or intended to explode or segment upon impact with its target.

(b) Any person violating this section shall be guilty of a class C felony and shall be imprisoned for a term of five years without probation.”

SECTION 7. Section 134-32, Hawaii Revised Statutes, is amended to read as follows:

“§134-32 License to sell and manufacture firearms; conditions. Every license issued pursuant to this part shall be issued and shall be regarded as having been accepted by the licensee subject to the following conditions:

- (1) That the licensee [shall] at all times shall comply with all provisions of law relative to the sale of firearms.
- (2) That the license [may] during any time of national emergency or crisis, as defined in section 134-34, may be canceled or suspended.
- (3) That all firearms in the possession and control of any licensee [may] at any time of national emergency or crisis, as defined in section 134-34, may be seized and held in possession or purchased by or on the order of the governor until such time as the national emergency or crisis has passed, or until such time as the licensee and the government of the United States or the government of the State may agree upon some other disposition of the same.
- (4) That all firearms in the possession and control of the licensee or registered pursuant to section [134-3(e)] 134-3(c) by the licensee shall be subject to physical inspection by the chief of police of each county during normal business hours at the licensee’s place of business.”

SECTION 8. Section 155-6, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

“(c) Interest charged on the private lender’s share of the loan shall not be more than the sum of two per cent above the lowest rate of interest charged by all banks, either commercial banks within the meaning of section [403-3,] 403-2, or national banks excepted under section 403-10, doing business in the State of Hawaii, on unsecured short term loans made to borrowers who have the highest credit rating with [such] those banks.”

SECTION 9. Section 199-7, Hawaii Revised Statutes, is amended to read as follows:

“§199-7 Seizure and forfeiture of certain property. Any equipment, article, instrument, aircraft, vehicle, or vessel, used or possessed in violation of title 12 and rules adopted thereunder, is declared to be a public nuisance and subject to seizure by any enforcement officer of the department of land and natural resources or by any police officer; and upon conviction of the person having possession or control of [such] that equipment, article, instrument, aircraft, vehicle, or vessel, for a violation of any provision of the laws or rules, the equipment, article, instrument, aircraft, vehicle, or vessel, may be declared by the court to be forfeited to the State in accordance with the procedure set forth in [section 701-119.] chapter 712A. Any equipment, article, instrument, aircraft, vehicle, or vessel so forfeited shall be turned over to the department of land and natural resources and destroyed, if illegal, or may be kept and retained and utilized by the department of land and natural resources or any other state agency, or if not needed or required by the

department or other state agency, shall be sold at public auction in the judicial circuit in which it was seized, the auction to be held once annually at a place and time to be designated by the department and notice thereof to be published in a newspaper of general circulation within the judicial circuit at least once before the auction, the first publication to be not less than twenty days prior to the auction. The auction shall be conducted by a person other than an employee of the department but designated by the department.

The department of land and natural resources shall compile a list of all equipment, articles, instruments, aircraft, vehicles, or vessels forfeited as provided in this section and shall publish the list in its annual report."

SECTION 10. Section 205-4, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) Any department or agency of the State, any department or agency of the county in which the land is situated, or any person with a property interest in the land sought to be reclassified, may petition the land use commission for a change in the boundary of a district. This section [is applicable] applies to all petitions for changes in district boundaries of lands within conservation districts and all petitions for changes in district boundaries involving lands greater than fifteen acres in the agricultural, rural, and urban districts, except as provided in section [359G-4.1.] 201E-210. The land use commission shall adopt rules pursuant to chapter 91 to implement section [359G-4.1.] 201E-210."

SECTION 11. Section 219-8, Hawaii Revised Statutes, is amended to read as follows:

"§219-8 Participation in loans by the department.

- (1) The department of agriculture may provide funds for a share, not to exceed ninety per cent, of the principal amount of a loan made to a qualified aquaculturalist by a private lender who is unable otherwise to lend the applicant sufficient funds at reasonable rates where the qualified farmer is unable to obtain sufficient funds for the same purpose from the Farmers Home Administration.
- (2) Participation loans under this section shall be limited by the provisions of section 219-6 and the department of agriculture's share shall not exceed the maximum amounts specified therefor.
- (3) Interest charged on the private lender's share of the loan shall not be more than the sum of two per cent above the lowest rate of interest charged by all banks, either commercial banks within the meaning of section [403-3,] 403-2, or national banks excepted under section 403-10, doing business in the State, on secured short term loans made to borrowers who have the highest credit rating with [such] those banks.
- (4) The private lender's share of the loan may be insured by the department up to ninety per cent of the principal balance of the loan, under [the provisions of] section 219-7.
- (5) When a participation loan has been approved by the department, its share shall be paid to the participating private lender for disbursement to the borrower. The private lender shall collect all payments from the borrower and otherwise service the loan.
- (6) Out of interest collected, the private lender may be paid a service fee to be determined by the department which fee shall not exceed one per cent of the unpaid principal balance of the loan, provided that this fee shall not be added to any amount which the borrower is obligated to pay.

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- (7) The participating private lender may take over a larger percentage or the full principal balance of the loan at any time that it has determined, to the satisfaction of the department, that the borrower is able to pay any increased interest charges resulting.
- (8) Security for participation loans shall be limited by [the provisions of] section 219-5(6). All collateral documents shall be held by the private lender. Division of interest in collateral received shall be in proportion to participation by the department and the private lender.”

SECTION 12. Section 222-2, Hawaii Revised Statutes, is amended to read as follows:

“**§222-2 Duties of the center.** The center shall:

- (1) Serve as a research arm of [the commission on the year 2000,] the advisory commission on employment and human resources, and such other public agencies as may properly require its services and assistance in locating research experts for particular studies and in working out the dimensions and contractual arrangements for such studies, the costs and final decisions of which shall be the responsibility of the requesting agencies[.];
- (2) Encourage and promote invention and experimentation in futures study, planning, and design[.];
- (3) Maintain an inventory of studies, research, and other information, including groups or persons concerned with futures study, planning, and design applicable to the State[.]; and
- (4) Engage in the development and acquisition of models, techniques, and other tools, and capability for the effective monitoring, measuring, and forecasting of crucial aspects of Hawaii’s socio-economic environmental system over the immediate, intermediate, and long range future, including the design of systems to assist and stabilize the State’s construction industry.”

SECTION 13. Section 329C-3, Hawaii Revised Statutes, is amended to read as follows:

“**[§329C-3] Forfeiture.** All imitation controlled substances are subject to forfeiture according to the procedures set forth in [section 701-119.] chapter 712A.”

SECTION 14. Section 359-141, Hawaii Revised Statutes, is amended to read as follows:

“**§359-141 State sales housing.** Notwithstanding sections 359-8, 359-9, 359-39, 359-66, or any other law to the contrary, but subject to any resolution of issuance under part IV [of this chapter], the authority may permit any member of a tenant family of a housing project administered under this chapter, or chapter 356, or any individual meeting the income standards under section 221(d)(3) of the National Housing Act to enter into a contract, including but not limited to contracts entered under and conforming to part V [of this chapter or under chapter 361, the community home mortgage program, (either individually or as a member of a group)], for the acquisition of a dwelling unit and lot or the acquisition of a dwelling unit and the lease of its lot, the lease to conform to chapter 171 with the exception that the lease shall not require bid, auction, or negotiation, in any project under chapters 356 and 359 which is suitable for sale and for occupancy by such purchaser or a member or members of the purchaser’s family, upon the following terms:

- (1) The purchaser shall pay at least (A) a pro rata share cost of any services furnished the purchaser by the authority, including but not limited to, administration, maintenance, repairs, utilities, insurance, provision of reserves, and other expenses, (B) taxes on the purchaser's dwelling unit, and (C) monthly payments of interest and principal sufficient to amortize a sales price, equal to the greater of the unamortized debt or the appraised value (at the time such purchase contract is entered into) of the dwelling unit, in not more than forty years; provided that the authority [may], under terms and conditions to be prescribed by it, may permit a purchaser to apply toward the purchase price of [such] the unit amounts provided for under part V;
- (2) [Except in the case of financing under the community home mortgage program the] The interest rate shall be fixed at not less than the average interest cost of loans outstanding on the project, except that in the case of a project on which bonds are not outstanding the interest rate shall be fixed at not less than the going rate applicable to [such] that project;
- (3) The principal payments shall be not less than one-half of one per cent a year of the sales price during the first five years after purchase, one per cent a year during the next five years, one and one-half per cent a year during the third five years, and thereafter not less than the principal payments resulting from a level debt service of interest and principal over the balance of the payment period; and
- (4) If at any time (A) a purchaser fails to carry out the purchaser's contract with the authority and if no member of the purchaser's family who resides in the dwelling assumes such contract, or (B) the purchaser or a member of the purchaser's family who assumes the contract does not reside in the dwelling, the authority shall have an option to acquire the purchaser's interest under the contract upon payment to the purchaser or the purchaser's estate of an amount equal to the purchaser's aggregate principal payments plus the value to the authority of any improvements made by the purchaser, less an amount equal to two and one-half per cent of the sales price."

SECTION 15. Section 403-74, Hawaii Revised Statutes, is amended to read as follows:

"§403-74 Deposit in approved bank of funds. No bank mentioned or defined in [sections] section 403-2 [to 403-5] shall deposit any of its funds with another bank, except in a federal reserve bank, unless the other bank has been designated a depository for the bank's funds by a vote of a majority of the directors of the depositing bank, in which case the bank shall not deposit therewith funds in an amount in excess of twenty-five per cent of its paid-up and unimpaired capital and surplus or allocated aggregate paid-up capital and surplus; provided that if the receiving bank, so designated, has been approved by the commissioner as a reserve bank for the purpose of receiving the depositing bank's reserve funds the depositing bank may deposit with the receiving bank funds in an amount equal to but not to exceed three hundred per cent of its paid-up and unimpaired capital and surplus or allocated aggregate paid-up capital and surplus; provided further that the aggregate of all deposits in banks not chartered under the laws of the United States, or any state or territory in the United States, shall at no time exceed twenty-five per cent of the aggregate paid-up and unimpaired capital and surplus or allocated aggregate paid-up capital and surplus. The commissioner may waive the foregoing restrictions to such an extent as the commissioner may consider advisable upon an affirmative showing having been made to the commissioner that the interest of all concerned will be better served by the waiver."

SECTION 16. Section 514A-70, Hawaii Revised Statutes, is amended to read as follows:

“§514A-70 Warranty against structural and appliance defects; notice of expiration required. The developer of a [horizontal] condominium property regime subject to this chapter shall give notice by certified mail at the appropriate time to all members of the association of apartment owners and all members of the board of directors that the normal one-year warranty period will expire in ninety days. The notice shall set forth specific methods which apartment owners may pursue in seeking remedies for defects, if any, prior to expiration.”

SECTION 17. Section 514C-1, Hawaii Revised Statutes, is amended by amending the definition of “condominium project” to read as follows:

““Condominium project” means a real estate condominium project; a plan or project whereby a condominium of two or more units located within the [horizontal] condominium property regime have been sold or leased or are offered or proposed to be offered for sale or lease.”

SECTION 18. Section 571-51.5, Hawaii Revised Statutes, is amended to read as follows:

“[§571-51.5] Modification of support and visitation decrees. (a) The special court trustee may assist any parent, guardian, or custodian materially affected by a court order or decree with the modification of any provision of the order or decree pertaining to support payments or with the enforcement of visitation rights; provided the special court trustee may assist in modifying support payments only upon finding, after investigation, reasonable cause to believe that the relative financial condition between the obligor and the person who receives the child support payments has substantially changed. For purposes of this section, such a substantial change has occurred if:

- (1) The obligor has involuntarily suffered a material reduction in financial resources; or
- (2) The person who receives child support payments has enjoyed a material increase in financial resources.

(b) The special court trustee may conduct an investigation for the purposes of subsection (a) where a person notifies the special court trustee that the relative financial condition between the obligor and the person who receives the child support payments has substantially changed.

(c) The special court trustee may utilize the services of public or private social agencies in conducting investigations under this section and in making the written findings to the court. Such written findings shall be received in evidence under the same conditions as would those of the special court trustee.

(d) The special court trustee shall submit findings and recommendations pertaining to the modification of support payments or enforcement of visitation rights in writing to the court after investigation under subsection (b). The special court trustee shall provide copies of the findings and recommendations to all persons materially affected by the proposed modification or enforcement. Any person materially affected by the proposed modification or enforcement who opposes the findings and recommendations shall file a written objection with the court or the clerk of the court no later than fifteen days after receipt of the findings and recommendations.

(e) When warranted, the court shall hold a hearing on the recommendations of the special court trustee no later than thirty days after the expiration of the fifteen day period under subsection (d).

(f) Whenever the court, in accordance with this section, approves in full or in part the recommendations of the special court trustee, the court, within a period of not more than ten days after the hearing, shall modify the decree or order to reflect the approved recommendations.

(g) Court costs, service fees, and the expenses of any investigation conducted by the special court trustee, in the discretion of the court, may be assessed wholly or partially against any parent, guardian, or custodian.

[(h) For purposes of this section, support includes those amounts included as support under section 571-52.1.

(i)] (h) Nothing in this section shall be construed to the effect that child support and visitation compliance be conditioned upon each other. Each shall be treated as an independent right of the child as well as of a parent.”

SECTION 19. Section 708-8200, Hawaii Revised Statutes, is amended to read as follows:

“§708-8200 Cable television service fraud in the first degree. (1) A person commits cable television service fraud in the first degree if the person knowingly:

- (a) Distributes written instructions or plans to make or assemble a cable television service device and knows that the written plans or instructions are intended to be used to make or assemble a device to obtain cable television service without payment of applicable charges; or
- (b) Distributes a cable television service device and knows that the device is intended to be used to obtain cable television service without payment of applicable charges.

(2) Cable television service fraud in the first degree is a class C felony.”

SECTION 20. Section 708-8204, Hawaii Revised Statutes, is amended to read as follows:

“[[§708-8204]] Forfeiture of telecommunication service device and cable television service device. Any telecommunication service device, cable television service device, or instructions or plans therefor, possessed or used in violation of [section] sections¹ 708-8200 to 708-8203 may be ordered forfeited to the State for destruction or other disposition, subject to the requirements of [section 701-119.] chapter 712A.”

SECTION 21. Section 710-1001, Hawaii Revised Statutes, is amended to read as follows:

“§710-1001 Forfeiture of property used as benefit or pecuniary benefit in the commission of an offense defined in this chapter. Any property offered, conferred, agreed to be conferred, or accepted as a benefit, pecuniary benefit, or compensation in the commission of an offense defined in this chapter is forfeited, subject to the requirements of [section 701-119,] chapter 712A, to the State.”

SECTION 22. Section 712-1230, Hawaii Revised Statutes, is amended to read as follows:

“§712-1230 Forfeiture of property used in illegal gambling. Any gambling device, paraphernalia used on fighting animals, or birds, implements, furniture, personal property, vehicles, vessels, aircraft, or gambling record possessed or used in violation of a section in this part, or any money or personal property used as a bet or stake in gambling activity in violation of a section in this part,

may be ordered forfeited to the State, subject to the requirements of [section 701-119,] chapter 712A, where the evidence satisfies the court by its preponderance that the owner allowed the illegal use of [his] the owner's property."

SECTION 23. Section 804-4, Hawaii Revised Statutes, is amended to read as follows:

"§804-4 When a matter of right. If the charge is for an offense for which bail is allowable under section 804-3, the defendant may be admitted to bail before conviction as a matter of right. The right to bail shall continue after conviction of a misdemeanor¹ or violation, and release on bail may continue, in the discretion of the court after conviction of a felony until the final determination of any motion for a new trial, appeal, habeas corpus, or other proceedings which are made, taken, issued, or allowed for the purpose of securing a review of the rulings, verdict, judgment, sentence, or other proceedings of any court or jury in or by which the defendant has been arraigned, tried, convicted, or sentenced; except that no bail shall be allowed [after conviction and prior to sentencing in cases where bail was not available] after conviction and prior to sentencing in cases where bail was not available under section 804-3, or where bail was denied or revoked before conviction; and provided further that no bail shall be allowed pending appeal of a felony conviction where a sentence of imprisonment has been imposed. The court shall order that a person who has been found guilty of an offense and sentenced to a term of imprisonment, and who has filed an appeal or a petition for a writ of certiorari, be detained, unless the court finds:

- (1) By clear and convincing evidence that the person is not likely to flee or pose a danger to the safety of any other person or the community if released; and
- (2) That the appeal is not for purpose of delay and raises a substantial question of law or fact likely to result in reversal or an order for a new trial.

If the court makes such findings, he shall order the release of the person in accordance with the provisions of section 804-7.1. No defendant entitled to bail, whether bailed or not, shall, without the defendant's written consent, be subject to the operation of any sentence passed upon the defendant while any proceedings to procure a review of any action of the trial court or jury in the premises are pending and undetermined, except as provided in section 641-14(a)."

SECTION 24. Act 209, Session Laws of Hawaii 1987, is amended by amending Section 3 to read as follows:

"SECTION 3. This Act shall take effect upon its approval [and shall be repealed on December 31, 1989.]; provided that section 11-72 is reenacted in the form in which it read on June 11, 1987."

SECTION 25. If any other Act enacted by the legislature during the Regular Session of 1989 amends Section 3 of Act 209, Session Laws of Hawaii 1987, that Act shall prevail over Section 24 of this Act.

SECTION 26. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 27. This Act shall take effect upon its approval.

(Approved June 8, 1989.)

Note

1. So in original.