

ACT 5

H.B. NO. 2784

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

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

SECTION 1. Section 46-17, Hawaii Revised Statutes, is amended to read as follows:

“§46-17 Regulation of certain public nuisances. Any provision of law to the contrary notwithstanding, the council of any county may adopt and provide for the enforcement of ordinances regulating or prohibiting noise, smoke, dust, vibration, or odors which constitute a public nuisance. No such ordinance shall be held invalid on the ground that it covers any subject or matter embraced within any statute or rule of the State; provided that in any case of conflict between the statute or rule and ordinance, the law which affords the most protection to the public shall apply; provided further that such ordinance shall not be effective to the extent that it is inconsistent with any permit for agricultural burning granted by the state department of health under authority of chapter [342,] 342B, or to the extent that it prohibits, subjects to fine or injunction, or declares to be a public nuisance any agricultural burning which is conducted in accordance with such a permit.”

SECTION 2. Section 342D-32, Hawaii Revised Statutes, is amended to read as follows:

“[§342D-32] Negligent violations. Any person who:

- (1) Negligently violates this chapter or any rule adopted by the department pursuant to this chapter, or any condition [or] in a permit issued under this chapter or any requirement imposed in a pretreatment program under this chapter; or
- (2) Negligently introduces into a sewerage system or into a publicly owned treatment works any water pollutant or hazardous substance which such person knew or reasonably should have known could cause personal injury or property damage or, other than in compliance with all applicable federal, state, or local requirements or permits, which causes such treatment works to violate any effluent limitation or condition in any permit issued to the treatment works under this chapter;

shall be punished by a fine of not less than \$2,500 nor more than \$25,000 per day of violation, or by imprisonment for not more than one year, or by both. If a conviction of a person is for a violation committed after a first conviction of such person under this section, punishment shall be by a fine of not more than \$50,000 per day of violation, or by imprisonment of not more than two years, or by both.”

SECTION 3. Section 359A-3, Hawaii Revised Statutes, is amended to read as follows:

“**[§359A-3] Annual statements.** The Hawaii housing authority shall annually forward to the director of [social] human services and the director of finance a full, detailed description and financial statement of the planning, construction, repair, maintenance, and operation of teacher housing.”

SECTION 4. Section 452-4, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) There is established within the department of commerce and consumer affairs for administrative purposes a state board of massage therapy consisting of five members.”

SECTION 5. Section 452-23, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

“(c) Upon entry of either a final order of the board of massage therapy pursuant to chapter 91, or a judgment by a court of competent jurisdiction, finding that a massage therapist or massage therapy establishment has advertised in violation of section 452-2 or this section, the public utility furnishing telephone service to the massage therapist or massage therapy establishment shall disconnect the telephone number contained in the advertisement or listing.”

SECTION 6. Section 706-625, Hawaii Revised Statutes, is amended to read as follows:

“**§706-625 Revocation, modification of probation conditions.** [(a)] (1) The court, on application of a probation officer, the prosecuting attorney, the defendant, or on its own motion, after a hearing, may revoke probation, reduce or enlarge the conditions of a sentence of probation, pursuant to the provisions applicable to the initial setting of the conditions and the provisions of section 706-627.

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[(b)] (2) The prosecuting attorney, the defendant's probation officer, and the defendant shall be notified by the movant in writing of the time, place, and date of any such hearing, and of the grounds upon which action under this section is proposed. The prosecuting attorney, the defendant's probation officer, and the defendant may appear in the hearing to oppose or support the application, and may submit evidence for the court's consideration. The defendant shall have the right to be represented by counsel. For purposes of this section the court shall not be bound by the Hawaii Rules of Evidence, except for the rules pertaining to privileges.

[(c)] (3) The court shall revoke probation if the defendant has inexcusably failed to comply with a substantial requirement imposed as a condition of the order or has been convicted of a felony. The court may revoke the suspension of sentence or probation if the defendant has been convicted of another crime other than a felony.

[(d)] (4) The court may modify the requirements imposed on the defendant or impose further requirements, if it finds that such action will assist the defendant in leading a law-abiding life.

[(e)] (5) When the court revokes probation, it may impose on the defendant any sentence that might have been imposed originally for the crime of which he was convicted.

[(f)] (6) As used in this section, "conviction" means that a judgment has been pronounced upon the verdict."

SECTION 7. Act 195, Session Laws of Hawaii 1992, is amended by amending the prefatory language in section 3 to read as follows:

"SECTION 3. [Chapter] Section 431:10A-304, Hawaii Revised Statutes, is amended to read as follows:"

SECTION 8. This Act shall be amended to conform to all other acts passed by the legislature during this regular session of 1994, whether enacted before or after the effective date of this Act, unless the other acts specifically provided otherwise.

SECTION 9. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 10. This Act shall take effect upon its approval; provided that section 7 shall take effect retroactive to June 12, 1992.

(Approved April 12, 1994.)