

ACT 205

H.B. NO. 2648

A Bill for an Act Relating to Probation.

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

SECTION 1. Chapter 353, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

“§353- Probation services fee; assessment. Any defendant received for supervision pursuant to section 353-81 shall be assessed a probation services fee pursuant to section 706-A.”

SECTION 2. Chapter 706, Hawaii Revised Statutes, is amended by adding two new sections to part III to be appropriately designated and to read as follows:

“§706-A Probation services fee. (1) The court, when sentencing a defendant to probation, shall order the defendant to pay a probation services fee. The amount of the fee shall be as follows:

- (a) \$150, when the term of probation is for more than one year; or
- (b) \$75, when the term of probation is for one year or less;

provided that no fee shall be ordered when the court determines that the defendant is unable to pay the fee.

(2) The entire fee ordered or assessed shall be payable forthwith by cash, check, or by a credit card approved by the court. When a defendant is also ordered to pay a fine, make restitution, pay a crime victim compensation fee, or pay other fees in addition to the probation services fee under subsection (a), payments by the defendant shall be made in the following order of priority:

- (a) Restitution;
- (b) Crime victim compensation fee;
- (c) Probation services fee;
- (d) Other fees; and
- (e) Fines.

(3) Any defendant received for supervision pursuant to section 353-81 shall be assessed a probation services fee pursuant to this section.

(4) The defendant shall pay the fee to the clerk of the court. The fee shall be deposited with the director of finance who shall transmit the fee to the probation services special fund pursuant to section 706-B.

§706-B Probation services special fund. (1) There is established in the state treasury a special fund to be known as the probation services special fund. All probation services fees collected under section 706-A shall be deposited into this fund.

(2) Moneys in the probation services special fund shall be used by the judiciary to monitor, enforce, and collect fees, fines, restitution, other monetary obligations owed by defendants, and other terms and conditions of probation.

(3) The probation services special fund shall be exempt from transfers for central service expenses pursuant to section 36-27, and reimbursements for departmental administration expenses pursuant to section 36-30.”

SECTION 3. Section 36-27, Hawaii Revised Statutes, is amended to read as follows:

“§36-27 Transfers from special funds for central service expenses. Except as provided in this section, and notwithstanding any other law to the contrary, from time to time,¹ the director of finance, for the purpose of defraying the prorated estimate of central service expenses of government in relation to all special funds, except the:

- (1) Special summer school and intersession fund under section 302A-1310;
- (2) School cafeteria special funds of the department of education;
- (3) Special funds of the University of Hawaii;
- (4) State educational facilities improvement special fund;
- (5) Convention center capital and operations special fund under section 206X-10.5;
- (6) Special funds established by section 206E-6;
- (7) Housing loan program revenue bond special fund;
- (8) Housing project bond special fund;
- (9) Aloha Tower fund created by section 206J-17;
- (10) Domestic violence prevention special fund under section 321-1.3;
- (11) Spouse and child abuse special account under section 346-7.5;

- (12) Spouse and child abuse special account under section 601-3.6;
- (13) Funds of the employees' retirement system created by section 88-109;
- (14) Unemployment compensation fund established under section 383-121;
- (15) Hawaii hurricane relief fund established under chapter 431P;
- (16) Hawaii health systems corporation special funds;
- (17) Boiler and elevator safety revolving fund established under section 397-5.5;
- (18) Tourism special fund established under section 201B-11;
- (19) Department of commerce and consumer affairs' special funds;
- (20) Compliance resolution fund established under section 26-9;
- (21) Universal service fund established under chapter 269;
- (22) Integrated tax information management systems special fund under section 231-3.2;
- (23) Insurance regulation fund under section 431:2-215;
- (24) Hawaii tobacco settlement special fund under section 328L-2; [and]
- (25) Emergency budget and reserve fund under section 328L-3; and
- (26) Probation services special fund under section 706-B;

shall deduct five per cent of all receipts of all other special funds, which deduction shall be transferred to the general fund of the State and become general realizations of the State. All officers of the State and other persons having power to allocate or disburse any special funds shall cooperate with the director in effecting these transfers. To determine the proper revenue base upon which the central service assessment is to be calculated, the director shall adopt rules pursuant to chapter 91 for the purpose of suspending or limiting the application of the central service assessment of any fund. No later than twenty days prior to the convening of each regular session of the legislature, the director shall report all central service assessments made during the preceding fiscal year.”

SECTION 4. Section 36-30, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

- “(a) Each special fund, except the:
- (1) Transportation use special fund established by section 261D-1;
 - (2) Special summer school and intersession fund under section 302A-1310;
 - (3) School cafeteria special funds of the department of education;
 - (4) Special funds of the University of Hawaii;
 - (5) State educational facilities improvement special fund;
 - (6) Special funds established by section 206E-6;
 - (7) Aloha Tower fund created by section 206J-17;
 - (8) Domestic violence prevention special fund under section 321-1.3;
 - (9) Spouse and child abuse special account under section 346-7.5;
 - (10) Spouse and child abuse special account under section 601-3.6;
 - (11) Funds of the employees' retirement system created by section 88-109;
 - (12) Unemployment compensation fund established under section 383-121;
 - (13) Hawaii hurricane relief fund established under chapter 431P;
 - (14) Convention center capital and operations special fund established under section 206X-10.5;
 - (15) Hawaii health systems corporation special funds;
 - (16) Tourism special fund established under section 201B-11;
 - (17) Compliance resolution fund established under section 26-9;
 - (18) Universal service fund established under chapter 269;
 - (19) Integrated tax information management systems special fund;
 - (20) Insurance regulation fund under section 431:2-215;
 - (21) Hawaii tobacco settlement special fund under section 328L-2; [and]
 - (22) Emergency and budget reserve fund under section 328L-3; and

(23) Probation services special fund under section 706-B; shall be responsible for its pro rata share of the administrative expenses incurred by the department responsible for the operations supported by the special fund concerned.”

SECTION 5. Chapter 706, Hawaii Revised Statutes, is amended by amending the title of part III to read as follows:

“PART III. FEES, FINES, AND RESTITUTION”

SECTION 6. Section 706-644, Hawaii Revised Statutes, is amended to read as follows:

“§706-644 Consequences of nonpayment; imprisonment for contumacious nonpayment; summary collection. (1) When a defendant is sentenced pursuant to section 706-605, granted a conditional discharge pursuant to section 712-1255, or granted a deferred plea pursuant to chapter 853, and the defendant is ordered to pay a fee, fine, or restitution, whether as an independent order, as part of a judgment and sentence, or as a condition of probation or deferred plea, and the defendant defaults in the payment thereof or of any installment, the court, upon the motion of the prosecuting attorney or upon its own motion, may require the defendant to show cause why the defendant’s default should not be treated as contumacious and may issue a summons or a warrant of arrest for the defendant’s appearance. Unless the defendant shows that the defendant’s default was not attributable to an intentional refusal to obey the order of the court, or to a failure on the defendant’s part to make a good faith effort to obtain the funds required for the payment, the court shall find that the defendant’s default was contumacious and may order the defendant committed until the fee, fine, restitution, or a specified part thereof is paid.

(2) When a fee, fine, or restitution is imposed on a corporation or unincorporated association, it is the duty of the person or persons authorized to make disbursement from the assets of the corporation or association to pay it from those assets, and their failure to do so may be held contumacious unless they make the showing required in subsection (1).

(3) The term of imprisonment for nonpayment of fee, fine, or restitution shall be specified in the order of commitment, and shall not exceed one day for each \$25 of the fee or fine, thirty days if the fee or fine was imposed upon conviction of a violation or a petty misdemeanor, or one year in any other case, whichever is the shorter period. A person committed for nonpayment of a fee or fine shall be given credit toward payment of the fee or fine for each day of imprisonment, at the rate of \$25 per day.

(4) If it appears that the defendant’s default in the payment of a fee, fine, or restitution is not contumacious, the court may make an order allowing the defendant additional time for payment, reducing the amount of each installment, or revoking the fee, fine, or the unpaid portion thereof in whole or in part, or converting the unpaid portion of the fee or fine to community service. A defendant shall not be discharged from an order to pay restitution until the full amount of the restitution has actually been collected or accounted for.

(5) Unless discharged by payment or, in the case of a fee or fine, service of imprisonment pursuant to subsection (3), an order to pay a fee, fine, or restitution, whether as an independent order, as a part of a judgment and sentence, or as a condition of probation or deferred plea pursuant to chapter 853, may be collected in the same manner as a judgment in a civil action. The State or the victim named in the order may collect the restitution, including costs, interest, and attorney’s fees,

pursuant to section 706-646. The State may collect the fee or fine, including costs, interest, and attorney's fees pursuant to section 706-647.

(6) Attorney's fees, costs, and interest shall not be deemed part of the penalty, and no person shall be imprisoned under this section in default of payment of attorney's fees, costs, and interest."

SECTION 7. There is appropriated from the probation services special fund, the sum of \$300,000, or so much thereof as may be necessary for fiscal year 2000-2001, to carry out the purposes of this Act. The sum appropriated shall be expended by the judiciary.

SECTION 8. In codifying the new sections added to chapter 706, Hawaii Revised Statutes, by section 2 of this Act, the revisor of statutes shall substitute appropriate section numbers for the letters used in designating the new sections in this Act.

SECTION 9. This Act shall not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun, before its effective date.

SECTION 10. Statutory material to be repealed is bracketed. New statutory material is underscored.²

SECTION 11. This Act shall take effect on July 1, 2000; provided that amendments made to section 36-27 by this Act shall not be repealed when that section is reenacted on July 31, 2003, pursuant to section 9 of Act 142, Session Laws of Hawaii 1998.

(Approved June 14, 2000.)

Notes

1. Comma should be underscored.
2. Edited pursuant to HRS §23G-16.5.