

ACT 93

S.B. NO. 2607

A Bill for an Act Relating to Transfer of Appeals.

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

SECTION 1. Section 602-58, Hawaii Revised Statutes, is amended to read as follows:

“§602-58 Application for transfer to the supreme court. (a) The [intermediate appellate] supreme court, in the manner and within the time provided by the rules of court, [may entertain] shall grant an application [at any time before its issuance of a decision requesting] to transfer [of an appeal] any case within the jurisdiction of the intermediate appellate court to the supreme court[-] upon the grounds that the case involves:

- (1) A question of imperative or fundamental public importance;
- (2) An appeal from a decision of any court or agency when appeals are allowed by law:
 - (A) Invalidating an amendment to the state constitution; or
 - (B) Determining a state statute, county ordinance, or agency rule to be invalid on the grounds that it was invalidly enacted or is unconstitutional, on its face or as applied, under either the constitution of the State or the United States; or

- (3) A sentence of life imprisonment without the possibility of parole.

~~[(b) The moving party shall state the grounds of the application, indicating how the case on appeal involves a question of such imperative or fundamental public importance as to warrant a direct appeal to the supreme court.~~

~~(e)] (b) The supreme court, in a manner and within the time provided by the rules of court, may grant an application to transfer any case within the jurisdiction of the intermediate appellate court to the supreme court upon the grounds that the case involves:~~

- ~~(1) A question of first impression or a novel legal question; or~~
- ~~(2) Issues upon which there is an inconsistency in the decisions of the intermediate appellate court or of the supreme court.~~

~~(c) The [issuance] grant or denial of [a certificate] an application for transfer [to the supreme court] under subsection (b) shall be discretionary [upon the intermediate appellate court, and acceptance or rejection of such certification shall be discretionary upon the supreme court. Neither the failure to issue such certification by the intermediate appellate court nor the rejection of such certification by the supreme court] and shall not be subject to further review [and shall reinstate the appeal to the intermediate appellate court]. Denial of an application for transfer under subsection (b) shall not prejudice a later application for a writ of certiorari.”~~

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

SECTION 3. This Act shall take effect on the effective date of sections 1 through 82 of Act 202, Session Laws of Hawaii 2004.

(Approved May 11, 2006.)