

ACT 4

S.B. NO. 2246

A Bill for an Act Relating to Statutory Revision: Amending 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 188-34, Hawaii Revised Statutes, is amended to read as follows:

“§188-34 Fishing in Honolulu harbor, Hilo harbor, [~~Kahului harbor,~~] restricted. (a) It is unlawful to take or kill fish by means of any draw, drag, or seine net in the waters of the harbor of Honolulu; provided that commercial marine licensees as defined in chapter 187A may take bait fish by means of any draw, drag, or seine net during periods scheduled by the harbor master.

(b) It is unlawful to take or kill fish by means of any net in the waters of that portion of the bay of Hilo bounded by the breakwater, a line from the outer end of the breakwater to Alealea Point, and the shoreline from Alealea Point to the inshore end of the breakwater; provided that commercial marine and pond operators with appropriate licenses issued by the department of land and natural resources may take bait fish or pua, or persons may use throw net, opae net, crab net, or nehu net not longer than fifty feet to take nehu for family consumption or bait purposes.

~~[(c) It is unlawful to take or kill fish by means of any net in the waters of Kahului harbor; provided that persons may use throw net, opae net, crab net, or nehu net not longer than fifty feet to take nehu for family consumption or bait purposes.].”~~

SECTION 2. Chapter 205A, Hawaii Revised Statutes, is amended as follows:

1. By amending subsection (b) of section 205A-30.5, Hawaii Revised Statutes, to read:

“(b) Subsection (a) shall not apply to special management area use permits for structures with:

(1) An outdoor lighting fixture that is located on the grounds of a [~~hotel/hotel-condo~~] hotel, hotel-condominium, or condominium-hotel as defined in section 486K-1; provided that:

(A) The outdoor lighting fixture is located underwater or is directed downward and illuminates a limited area of no more than thirty feet into the shoreline and ocean waters; or

(B) The outdoor lighting fixture is the only practicable means of ensuring the safety and security of guests, visitors, and employees; and

(2) Artificial lighting provided by a government agency or its authorized users for government operations, security, public safety, or navigational needs; provided that a government agency or its authorized users shall make reasonable efforts to properly position or shield lights to minimize adverse impacts.”

2. By amending subsection (b) of section 205A-71, Hawaii Revised Statutes, to read:

“(b) Subsection (a) shall not apply to:

- (1) An outdoor lighting fixture that is located on the grounds of a ~~hotel/hotel-condo~~ hotel, hotel-condominium, or condominium-hotel as defined in section 486K-1; provided that:
 - (A) The outdoor lighting fixture is located underwater or is directed downward and illuminates a limited area of no more than thirty feet into the shoreline and ocean waters; or
 - (B) The outdoor lighting fixture is the only practicable means of ensuring the safety and security of guests, visitors, and employees; and
- (2) Artificial lighting provided by a government agency or its authorized users for government operations, security, public safety, or navigational needs; provided that a government agency or its authorized users shall make reasonable efforts to properly position or shield lights to minimize adverse impacts."

SECTION 3. Section 291E-6, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

"(c) The program shall include standards and procedures for the certification of the vendor selected to install and maintain ignition interlock devices pursuant to chapter 291E. At a minimum, the standards shall require that the vendor:

- (1) Install only an ignition interlock device that is certified pursuant to this section;
- (2) Offer or contract for ignition interlock device installation and maintenance statewide;
- (3) Train drivers who are required to install an ignition interlock device, pursuant to chapter 291E ~~or 804~~, in how to use the device;
- (4) Schedule the driver for all necessary readings and maintenance of the device; and
- (5) Provide periodic reports regarding the use of each ignition interlock device installed pursuant to chapter 291E, including incidents of test failure, attempts to circumvent the device, and dates, times, and distances the vehicle was driven."

SECTION 4. Section 302A-462, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) The superintendent of education ~~[and the advisory commission on gender equity in sports]~~ shall consider:

- (1) Whether the selection of sports and levels of competition effectively accommodate the interests and abilities of members of both sexes;
- (2) The provision of equipment, uniforms, and supplies;
- (3) Equal access to practice and game times;
- (4) Travel and per diem allowances;
- (5) Opportunities to receive coaching and academic tutoring;
- (6) Assignment and compensation of coaches and tutors;
- (7) Access to locker room, weight room, and practice, competitive, and training facilities;
- (8) Access to medical services;
- (9) The provision of housing and dining facilities and services;
- (10) Publicity; and
- (11) Any other relevant factors."

SECTION 5. Section 348-8, Hawaii Revised Statutes, is amended as follows:

1. By amending subsection (a) to read:

“(a) There is established within the department a state rehabilitation council. The council shall consist of twenty-one members appointed by the governor as provided in section 26-34 and without regard to section 78-4. The members shall include:

- (1) ~~[At least one representative of the statewide council on independent living;~~
- (2) At least one representative of a parent training and information center;
- ~~[(3)]~~ (2) At least one representative of the client assistance program;
- ~~[(4)]~~ (3) At least one qualified vocational rehabilitation counselor with knowledge of and experience with vocational rehabilitation programs, who shall serve as an ex officio, nonvoting member if employed by the vocational rehabilitation division of the department;
- ~~[(5)]~~ (4) At least one representative of community rehabilitation program service providers;
- ~~[(6)]~~ (5) Four representatives of business, industry, and labor;
- ~~[(7)]~~ (6) Representatives of disability advocacy groups representing a cross section of individuals with physical, cognitive, sensory, and mental disabilities, and parents, family members, guardians, advocates, or authorized representatives of individuals with disabilities who have difficulty in representing themselves or are unable due to their disabilities to represent themselves;
- ~~[(8)]~~ (7) Current or former applicants for or recipients of vocational rehabilitation services;
- ~~[(9)]~~ (8) At least one representative of the state educational agency responsible for the public education of students with disabilities;
- ~~[(10)]~~ (9) At least one representative of the state workforce development council; and
- ~~[(11)]~~ (10) The administrator of the vocational rehabilitation division of the department, who shall be an ex officio, nonvoting member;

provided that the council shall include at least one member from each county; and provided further that a majority of the council members shall be persons who have disabilities and are not employed by the vocational rehabilitation division of the department. The council members shall elect a chairperson from the membership. Each member of the council shall serve a three-year term but may not serve more than two consecutive full terms. Any vacancy occurring in the council membership shall be filled in the same manner as the original appointment, except that the governor may delegate the authority to fill such a vacancy to the remaining members of the council after making the original appointment.”

2. By amending subsection (d) to read:

“(d) The council shall coordinate with other councils within the State including ~~[the statewide independent living council,]~~ the state council on developmental disabilities, the state council on mental health, the advisory panel of individuals with disabilities in education, and the state workforce development council. The council shall establish working relationships between the vocational rehabilitation division of the department and other councils and coordinate other functions as deemed appropriate under federal law.”

SECTION 6. Section 386-1, Hawaii Revised Statutes, is amended by amending the definition of “physician” to read as follows:

““Physician” includes a doctor of medicine, a dentist, a chiropractor, an osteopath, a ~~[naturopath,]~~ naturopathic physician, a psychologist, an optometrist, and a podiatrist.”

SECTION 7. Section 431:3-401, Hawaii Revised Statutes, is amended by amending the definition of “negative trend” to read as follows:

““Negative trend” means, with respect to a ~~[life or health insurer,]~~ life or accident and health or sickness insurer, ~~[[a]]~~ negative trend over a period of time, as determined in accordance with the “trend test calculation” included in the risk-based capital instructions.”

SECTION 8. Section 431:9A-107, Hawaii Revised Statutes, is amended by amending subsection (f) to read as follows:

“(f) A licensee shall:

- (1) Inform the commissioner by any means acceptable to the commissioner of any change of status within thirty days of the change; and
- (2) Report any change of status to the business registration division if the licensee is a business entity registered with the department of commerce and consumer affairs pursuant to title 23 or title 23A, or if the licensee has registered a trade name pursuant to ~~[part I]~~ part II of chapter 482.

Failure to timely inform the commissioner or the business registration division of a change of status may result in a penalty pursuant to section 431:2-203.

As used in this subsection, “change of status” includes but shall not be limited to change of legal name, assumed name, trade name, business address, home address, business phone number, business fax number, business electronic mail address, or business website address.”

SECTION 9. Section 657-7.3, Hawaii Revised Statutes, is amended to read as follows:

“§657-7.3 Medical torts; limitation of actions; time. No action for injury or death against a chiropractor, clinical laboratory technologist or technician, dentist, ~~[naturopath,]~~ naturopathic physician, nurse, nursing home administrator, dispensing optician, optometrist, osteopath, physician or surgeon, physical therapist, podiatrist, psychologist, or veterinarian duly licensed or registered under the laws of the State, or a licensed hospital as the employer of any such person, based upon such person’s alleged professional negligence, or for rendering professional services without consent, or for error or omission in such person’s practice, shall be brought more than two years after the plaintiff discovers, or through the use of reasonable diligence should have discovered, the injury, but in any event not more than six years after the date of the alleged act or omission causing the injury or death. This six-year time limitation shall be tolled for any period during which the person has failed to disclose any act, error, or omission upon which the action is based and which is known to the person.

Actions by a minor shall be commenced within six years from the date of the alleged wrongful act except the actions by a minor under the age of ten years shall be commenced within six years or by the minor’s tenth birthday, whichever provides a longer period. Such time limitation shall be tolled for any minor for any period during which the parent, guardian, insurer, or health care provider has committed fraud or gross negligence, or has been a party to a collusion in the failure to bring action on behalf of the injured minor for a medical tort. The

time limitation shall also be tolled for any period during which the minor's injury or illness alleged to have arisen, in whole or in part, from the alleged wrongful act or omission could not have been discovered through the use of reasonable diligence."

SECTION 10. Section 302A-463, Hawaii Revised Statutes, is repealed.

SECTION 11. Chapter 353H, Part II, Hawaii Revised Statutes, is repealed.

SECTION 12. Act 169, Session Laws of Hawaii 2009, is amended by amending the prefatory language in section 8 to read as follows:

"SECTION 8. Section [~~423D-23;~~ 432D-23, Hawaii Revised Statutes, is amended to read as follows:"

SECTION 13. Statutory material to be repealed is bracketed and stricken.¹ New statutory material is underscored.

SECTION 14. This Act shall take effect upon its approval; provided that:

- (1) Section 3 shall take effect on January 1, 2011; and
- (2) Sections 6 and 9 shall take effect on January 1, 2010.

(Approved March 15, 2010.)

Note

1. Edited pursuant to HRS 23G-16.5.