

ACT 18

S.B. NO. 2851

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 Purposes 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 5-7.7, Hawaii Revised Statutes, is amended to read as follows:

“(H)§5-7.7(H) **Aloha order of merit location.** There shall be set aside within the Honolulu Daniel K. Inouye International Airport an area to exhibit com-

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memorative displays honoring members of the order. The displays may include likenesses of members and descriptions of the meritorious achievements of each member.”

SECTION 2. Section 102-11, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) All security provided under this section shall:

- (1) Be conditioned on the full and faithful performance of the contract in accordance with the terms and intent thereof;
- (2) Be in an amount not less than two months’ rental and other charges, if any, required under the contract; provided that any contract for the sale and delivery of ~~[in bond]~~ in-bond merchandise at ~~[Honolulu]~~ the Daniel K. Inouye International Airport shall require a bond in an amount not less than four months of the highest minimum annual rental guaranty required under the contract; and
- (3) By its terms inure to the benefit of the State or of the county, as the case may be.”

SECTION 3. Section 142-72, Hawaii Revised Statutes, is amended to read as follows:

“**§142-72 Procedure, if owner believes impounding illegal.** If the owner of any animal taken up for trespass[;] has reason to believe that the taking up or impounding of the animal was illegal, or if ~~[he]~~ the owner regards the claim for damages or expenses as excessive, ~~[he]~~ the owner may have ~~[his]~~ the owner’s animal returned to ~~[him]~~ the owner upon ~~[his]~~ the owner’s delivering to the landowner or to the pound keeper, if the animal has been impounded, a certificate from any district judge of the circuit, stating that ~~[he]~~ the owner has deposited with the judge the amount claimed by the landowner, together with the pound fees, if any, or a good and sufficient bond for the same and the costs of an action before ~~[him.]~~ the judge.”

SECTION 4. Section 201B-4, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) The board shall be subject to the procedural requirements of section 92-4, and this authorization shall be in addition to the exceptions listed in section 92-5, to enable the ~~[authority]~~ board to respect the proprietary requirements of enterprises with which it has business dealings.”

SECTION 5. Section 201M-5, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) The board shall consist of eleven members, who shall be appointed by the governor pursuant to section 26-34[;]; provided that:

- (1) Three members shall be appointed from a list of nominees submitted ~~[by]~~ the president of the senate;
- (2) Three members shall be appointed from a list of nominees submitted by the speaker of the house of representatives;
- (3) Two members shall be appointed from a list of nominees submitted by the board;
- (4) Two members shall be appointed by the governor;
- (5) The director of business, economic development, and tourism, or the director’s designated representative, shall serve as an ex officio, voting member of the board;

- (6) The appointments shall reflect representation of a variety of businesses in the State;
- (7) No more than two members shall be representatives from the same type of business; and
- (8) There shall be at least one representative from each county.

For the purposes of paragraphs (1) and (2), nominations shall be solicited from small business organizations, state and county chambers of commerce, and other interested business organizations.”

SECTION 6. Section 205A-22, Hawaii Revised Statutes, is amended by amending the definition of “department” to read as follows:

““Department” means the planning department in the counties of Kauai, Maui, and Hawaii[;] and the department of [~~land utilization~~] planning and permitting in the city and county of Honolulu, or other appropriate agency as designated by the county councils.”

SECTION 7. Section 206-5, Hawaii Revised Statutes, is amended to read as follows:

“§206-5 Declaration of development areas. (a) Whenever the board of land and natural resources, after due notice and public hearing, [~~the time and place of which have been duly given by public notice in the city and county of Honolulu on at least three different days, the last notice being not less than five days before the date of hearing,~~] finds that [~~in any locality on the island of Oahu~~] an acute shortage of residential fee simple property exists in any locality on the island of Oahu and that the shortage of residential fee simple holdings cannot practicably be alleviated within the reasonably near future by means other than those provided under this chapter, the board may declare a suitable area, not less than ten contiguous acres in extent, as a development area. The development area shall be reasonably accessible to persons in the locality and shall consist of lands suitable for a development project. The time and place of the public hearing shall be given by public notice in the city and county of Honolulu on at least three different days, the last notice being not less than five days before the date of the hearing. Any finding of fact[;] by the board, if supported by a preponderance of evidence, shall be conclusive in any suit, action, or proceeding.

(b) All development areas shall be compatible with any general plan for the long-range development of land in the political subdivision concerned under the terms of chapter [~~201, part H,~~] 225M and shall conform to and with all subdivision and zoning ordinances and requirements of the political subdivision.”

SECTION 8. Section 206E-123, Hawaii Revised Statutes, is amended to read as follows:

“§206E-123 Loans; default. The authority may [~~renegotiate,~~];

- (1) Renegotiate, refinance, or foreclose any loan in default[-];
- (2) [~~The authority may waive~~] Waive any default or consent to the modification of the terms of any loan or security agreement[-];
- (3) [~~The authority may commence~~] Commence any action to protect or enforce any right conferred upon it by any law, mortgage, insurance policy, contract, or other agreement[-];
- (4) [~~The authority may bid~~] Bid for and purchase the property secured by the loan at any foreclosure or other sale[;] or acquire or take possession of the property secured by the loan[-]; and

- (5) ~~[The authority may operate,]~~ Operate, manage, lease, dispose of, or otherwise deal with the property secured by the loan.”

SECTION 9. Section 235-7, Hawaii Revised Statutes, is amended by amending subsection (e) to read as follows:

“(e) There shall be disallowed as a deduction the amount of interest paid or accrued within the taxable year on indebtedness incurred or continued~~[,]~~ to purchase or carry:

- (1) ~~[to purchase or carry bonds]~~ Bonds the interest upon which is excluded from gross income by subsection (a); or
- (2) ~~[to purchase or carry property]~~ Property owned without the State, or to carry on trade or business without the State, if the taxpayer is a person taxable only upon income from sources in the State.”

SECTION 10. Section 235-110.7, Hawaii Revised Statutes, is amended to read as follows:

“§235-110.7 Capital goods excise tax credit. (a) There shall be allowed to each taxpayer subject to the tax imposed by this chapter a capital goods excise tax credit, which shall be deductible from the taxpayer’s net income tax liability, if any, imposed by this chapter for the taxable year in which the credit is properly claimed.

The amount of the tax credit shall be ~~[determined by the application of the following rates against]~~ four per cent of the cost of the eligible depreciable tangible personal property used by the taxpayer in a trade or business and placed in service within Hawaii after ~~[December 31, 1987. For calendar years beginning after:~~

- ~~(1) December 31, 1987, the applicable rate shall be three per cent;~~
- ~~(2) December 31, 1988, the applicable rate shall be four per cent;~~
- ~~(3) December 31, 2008, the applicable rate shall be zero per cent; and~~
- ~~(4) December 31, 2009], and thereafter, the applicable rate shall be four per cent.~~

~~For taxpayers with fiscal taxable years, the applicable rate shall be the rate for the calendar year in which the eligible depreciable tangible personal property used in the trade or business is placed in service within Hawaii].~~

In the case of a partnership, S corporation, estate, or trust, the tax credit allowable is for eligible depreciable tangible personal property ~~[which]~~ that is placed in service by the entity. The cost upon which the tax credit is computed shall be determined at the entity level. Distribution and share of credit shall be determined by rules.

In the case of eligible depreciable tangible personal property for which a credit for sales or use taxes paid to another state is allowable under section 238-3(i), the amount of the tax credit allowed under this section shall not exceed the amount of use tax actually paid under chapter 238 relating to ~~[such]~~ the tangible personal property.

If a deduction is taken under section 179 (with respect to election to expense certain depreciable business assets) of the Internal Revenue Code of 1954, as amended, no tax credit shall be allowed for that portion of the cost of property for which the deduction was taken.

(b) If the capital goods excise tax credit allowed under subsection (a) exceeds the taxpayer’s net income tax liability, the excess of credit over liability shall be refunded to the taxpayer; provided that no refunds or payment on account of the tax credit allowed by this section shall be made for amounts less than \$1.

All claims for tax credits under this section, including any amended claims, must be filed on or before the end of the twelfth month following the close of the taxable year for which the credits may be claimed. Failure to comply with the foregoing provision shall constitute a waiver of the right to claim the credit.

(c) Application for the capital goods excise tax credit shall be upon forms provided by the department of taxation.

(d) Sections 47 (with respect to dispositions of section 38 property and the recapture percentages) of the Internal Revenue Code of 1954, as amended, as of December 31, 1984, and 280F as operative for this chapter (with respect to limitation on investment tax credit and depreciation for luxury automobiles; limitation where certain property used for personal purposes) of the Internal Revenue Code of 1954, as amended, shall be operative for purposes of this section.

(e) As used in this section, the definition of section 38 property (with respect to investment in depreciable tangible personal property) as defined by section 48(a)(1)(A), (a)(1)(B), (a)(3), (a)(4), (a)(7), (a)(8), (a)(10)(A), (b), (c), (f), (l), (m), and (s) of the Internal Revenue Code of 1954, as amended as of December 31, 1984, is operative for the purposes of this section only.

(f) As used in this section:

“Cost” means the:

- (1) [~~the actual~~] Actual invoice price of the tangible personal property[;];
or
- (2) [~~the basis~~] Basis from which depreciation is taken under section 167 (with respect to depreciation) or from which a deduction may be taken under section 168 (with respect to accelerated cost recovery system) of the Internal Revenue Code of 1954, as amended,

whichever is less.

“Eligible depreciable tangible personal property” is section 38 property as defined by the operative provisions of section 48 and having a depreciable life under section 167 or for which a deduction may be taken under section 168 of the [~~federal~~] Internal Revenue Code of 1954, as amended.

“Placed in service” means the earliest of the following taxable years:

- (1) The taxable year in which, under the:
 - (A) Taxpayer’s depreciation practice, the period for depreciation;
or
 - (B) Accelerated cost recovery system, a claim for recovery allowances[;],
 with respect to [~~such~~] the property begins; or

- (2) The taxable year in which the property is placed in a condition or state of readiness and availability for a specifically assigned function.

“Purchase” means an acquisition of property.

“Tangible personal property” means tangible personal property [~~which~~] that is placed in service within Hawaii after December 31, 1987, and the purchase or importation of which resulted in a transaction [~~which~~] that was subject to the imposition and payment of tax at the rate of four per cent under chapter 237 or 238. “Tangible personal property” does not include tangible personal property [~~which~~] that is an integral part of a building or structure or tangible personal property used in a [~~foreign-trade~~] foreign-trade zone, as defined under chapter 212.”

SECTION 11. Section 237-27, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) As used in this section:

[(4)] "Petroleum products" means petroleum[;]; any distillate, fraction, or derivative of petroleum[;]; natural gas or its components[;]; gas manufactured from a petroleum product[;]; and any product derived from the gas or from the manufacture thereof, such as benzene, xylene, toluene, acetylene, tars, components of tars, and ammonia.

[(2)] "Refiner" means any person who, in the State, engages in the business of refining petroleum products and is taxable under this chapter, upon the value or gross proceeds of sales of the petroleum products resultant from the business. A person who is engaged in business as a refiner and also in other business shall be deemed a refiner only in respect of the business that produces the products included in the measure of the tax imposed by this chapter.

[(3)] "Refining" means:

[(A)] (1) Any process performed by a refiner that includes a change in the character or properties of a petroleum product through the application of heat[;]; or

[(B)] (2) The compounding by a refiner of a petroleum product with a product that has been refined by the refiner by the process stated in [clause (A)-] paragraph (1)."

SECTION 12. Section 245-16, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

"(b) This section shall not apply to the shipment of cigarettes if any of the following conditions are met:

- (1) The cigarettes are exempt from taxes as provided by section 245-3(b) or are otherwise exempt from the applicability of this chapter as provided by section 245-62;
- (2) All applicable Hawaii taxes on the cigarettes are paid in accordance with the requirements of this chapter; or
- (3) The person or entity engaged in the business of selling, advertising, or offering cigarettes for sale and transfer or shipment:
 - (A) Has fully complied with all of the requirements of chapter 10A (commencing with section 375) of title 15 of the United States Code, otherwise known as the Jenkins Act; and
 - (B) Includes on the outside of the shipping container an externally visible and easily legible notice located on the same side of the shipping container as the address to which the shipping container is delivered stating as follows:

"CIGARETTES: HAWAII LAW PROHIBITS THE SALE OF CIGARETTES TO INDIVIDUALS UNDER ~~EIGHTEEN~~ TWENTY-ONE YEARS OF AGE AND REQUIRES THE PAYMENT OF ALL APPLICABLE TAXES. YOU ARE LEGALLY RESPONSIBLE FOR ALL APPLICABLE UNPAID TAXES ON THESE CIGARETTES."

SECTION 13. Section 261-7, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

"(c) The department shall enter into a contract with no more than one person ("contractor") for the sale and delivery of in-bond merchandise at ~~Honolulu~~ the Daniel K. Inouye International Airport, in the manner provided by law. The contract shall confer the right to operate and maintain commercial facilities within the airport for the sale of in-bond merchandise and the right to deliver to the airport in-bond merchandise for sale to departing foreign-bound passengers.

The department shall grant the contract pursuant to the laws of this State and may take into consideration:

- (1) The payment to be made on in-bond merchandise sold at [~~Honolulu~~] the Daniel K. Inouye International Airport and on in-bond merchandise displayed or sold elsewhere in the State and delivered to the airport;
- (2) The ability of the applicant to comply with all federal and state rules and regulations concerning the sale and delivery of in-bond merchandise; and
- (3) The reputation, experience, and financial capability of the applicant.

The department shall actively supervise the operation of the contractor to ensure its effectiveness. The department shall develop and implement [~~such~~] guidelines as it may find necessary and proper to actively supervise the operations of the contractor, and shall include guidelines relating to the department's review of the reasonableness of the contractor's price schedules, quality of merchandise, merchandise assortment, operations, and service to customers.

Apart from the contract described in this subsection, the department shall confer no right upon nor suffer nor allow any person to offer to sell, sell, or deliver in-bond merchandise at [~~Honolulu~~] the Daniel K. Inouye International Airport; provided that this section shall not prohibit the delivery of in-bond merchandise as cargo to the [~~Honolulu~~] Daniel K. Inouye International Airport."

SECTION 14. Section 261-15.5, Hawaii Revised Statutes, is amended to read as follows:

"~~[[~~**§261-15.5**~~]]~~ **Aircraft registration.** Unless an aircraft is exempted by this section, no person shall operate or cause or authorize to be operated any aircraft at an airport owned or controlled by the department, unless the aircraft has a certificate of registration issued in accordance with rules adopted by the department. Aircraft exempt from registration required by this section include:

- (1) Aircraft operating primarily in interstate or foreign commerce;
- (2) Aircraft owned or operated by the United States;
- (3) Aircraft in transit through the State; and
- (4) Aircraft operated by any scheduled airline carrier [~~which~~] that is a lessee of the State under an airport-airline lease at the [~~Honolulu~~] Daniel K. Inouye International Airport and [~~which~~] that is commonly referred to as signatory airline."

SECTION 15. Section 261-23, Hawaii Revised Statutes, is amended to read as follows:

"**§261-23** [~~Honolulu~~] Daniel K. Inouye International Airport. All that area set aside by executive order No. 1016 for John Rodgers Airport and Keehi Lagoon Seaplane Harbor to be under the control and management of the superintendent of public works under date of April 12, 1943, is designated as [~~Honolulu~~] the "Daniel K. Inouye International Airport"."

SECTION 16. Section 286-202.6, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) In addition to the requirements in title 49 Code of Federal Regulations [~~part~~] section 390.21, every motor carrier vehicle shall be marked as specified in subsections (b), (c), and (d)."

SECTION 17. Section 304A-1959, Hawaii Revised Statutes, is amended to read as follows:

“~~[[§304A-1959]]~~ **Biennial report.** No later than twenty days prior to the convening of the regular session of each odd-numbered year, the University of Hawaii shall submit a report to the legislature concerning:

- (1) All funds deposited into the university innovation and commercialization initiative special fund and a detailed description of the use of those funds; and
- (2) Coordinated efforts between the innovation and commercialization initiative program and other state agencies, including the ~~[[Hawaii]]~~ technology development corporation, the Hawaii strategic development corporation, and the Hawaii state energy office, to move the State's innovation goals forward, and to more efficiently and effectively utilize resources to achieve these outcomes.”

SECTION 18. Section 321-5, Hawaii Revised Statutes, is amended to read as follows:

“**§321-5 Contract for exchange of Hawaii personnel.** (a) The department of health may contract with any state, or the health department of any state having the power to so contract, for the exchange of Hawaii personnel for personnel of the health department of ~~[any such]~~ that state. Any ~~[such]~~ exchange shall be made under rules ~~[and regulations]~~ prescribed by the department, in no case shall be for a period exceeding one year, and in all cases shall be subject to the following provisions:

- (1) That each person exchanged by the health department of any state shall possess qualifications equal to the qualifications of the person exchanged ~~[for him]~~ from Hawaii;
- (2) That the person exchanged from Hawaii shall have served for not less than three years prior to the beginning of the exchange period ~~[in the]~~ as Hawaii personnel;
- (3) That in the selection of Hawaii personnel for exchange, preference shall be given to persons born in the State;
- (4) That each person exchanged by the health department of any state shall hold in the health department of ~~[such]~~ that state a position the same as or equivalent to the position held by the person exchanged ~~[for him]~~ from Hawaii;
- (5) That the person exchanged from Hawaii shall be paid ~~[his]~~ that person's regular salary out of the funds appropriated therefor, but nothing in addition thereto;
- (6) That the State shall not pay any traveling or other expenses of the Hawaii personnel or of the personnel of the health department of any state coming to Hawaii under any contract of exchange. This prohibition shall be construed to include all travel, transportation, board, lodging, or other expenses incidental to or arising out of any exchange;
- (7) That the State shall not pay any compensation to the person coming to Hawaii under any contract of exchange; provided that in any case where the person so exchanged from Hawaii becomes incapacitated~~[-]~~ or, for any reason, leaves the exchange position permanently, the department may pay the visiting exchange person an amount not to exceed the salary rating of the person so exchanged from Hawaii, such an arrangement to continue until the end of the period

of exchange or until such time as some adjustment satisfactory to the department is made;

- (8) That any provision of law to the contrary notwithstanding, the state requirements in respect to civil service, citizenship, or residence shall not apply to any person coming to Hawaii under any ~~[such]~~ contract of exchange; and
- (9) That the appropriate collective bargaining agreement, executive order, executive directive, or rule regarding traveling expenses for state officials shall not apply to Hawaii personnel exchanged under this section.

(b) The department may ~~[make such]~~ adopt rules ~~[and regulations]~~ as it ~~[may deem]~~ deems necessary concerning the powers, rights, functions, conduct, duties, and liabilities of, exercised by or imposed upon, any person coming to Hawaii under any contract of exchange.

(c) As used in this section, unless the text clearly otherwise indicates~~[-]~~:
 “Hawaii personnel” means public health nurses, sanitary officers, and medical officers~~[-]~~.

“Health department” means the board of health, department of health, president of the board of health, or other public authority authorized by law to administer or administering the public health laws of any state.

~~[-state-]~~ “State” means any state or territory of the United States, or county or municipality of any such state or territory~~[-]~~; and “~~health department~~” means the board of health, department of health, president of the board of health, or other public authority authorized by law to administer or administering the public health laws of any state~~[-]~~.”

SECTION 19. Section 329-38, Hawaii Revised Statutes, is amended by amending subsection (h) to read as follows:

“(h) The effectiveness of a prescription for the purposes of this section shall be determined as follows:

- (1) A prescription for a controlled substance shall be issued for a legitimate medical purpose by an individual practitioner acting in the usual course of the practitioner’s professional practice. The responsibility for the proper prescribing and dispensing of controlled substances shall be upon the prescribing practitioner, but a corresponding responsibility shall rest with the pharmacist who fills the prescription. An order purporting to be a prescription issued not in the usual course of professional treatment or for legitimate and authorized research shall not be deemed a prescription within the meaning and intent of this section, and the person who knowingly fills such a purported prescription, as well as the person who issues the prescription, shall be subject to the penalties provided for violations of this chapter;
- (2) A prescription may not be issued to allow an individual practitioner to obtain controlled substances for supplying the individual practitioner for the purpose of general dispensing to patients;
- (3) A prescription may not be issued for the dispensing of narcotic drugs listed in any schedule for the purpose of “medically managed withdrawal”, also known as “detoxification treatment”, or “maintenance treatment” except as follows:
 - (A) The administering or dispensing directly (but not prescribing) of narcotic drugs listed in any schedule to a narcotic drug-dependent person for “medically managed withdrawal”, also known as “detoxification treatment”, or “maintenance treat-

ment” shall be deemed to be “in the course of a practitioner’s professional practice or research” so long as the practitioner is registered separately with the department and the federal Drug Enforcement [Agency] Administration as required by section 329-32(e) and complies with [Title] title 21 Code of Federal Regulations section 823(g) and any other federal or state regulatory standards relating to treatment qualification, security, records, and unsupervised use of drugs; and

- (B) Nothing in this section shall prohibit a physician or authorized hospital staff from administering or dispensing, but not prescribing, narcotic drugs in a hospital to maintain or detoxify a person as an incidental adjunct to medical or surgical treatment of conditions other than addiction;
- (4) An individual practitioner shall not prescribe or dispense a substance included in schedule II, III, IV, or V for that individual practitioner’s personal use, except in a medical emergency; and
- (5) A pharmacist shall not dispense a substance included in schedule II, III, IV, or V for the pharmacist’s personal use.”

SECTION 20. Section 329-125, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) A qualifying patient or the primary caregiver may assert the medical use of cannabis authorized under this part as an affirmative defense to any prosecution involving [~~cannabis or~~ marijuana] under this part [~~or~~], part IV[~~;~~], or part IV of chapter 712; provided that the qualifying patient or the primary caregiver strictly complied with the requirements of this part.”

SECTION 21. Section 329-125.6, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) An owner or employee of a medical cannabis dispensary that is licensed under chapter 329D may assert the production or distribution of medical cannabis as an affirmative defense to any prosecution involving [~~cannabis or~~ marijuana] under this part [~~or~~], part IV[~~;~~], chapter 329D[~~;~~], or part IV of chapter 712; provided that the owner or employee strictly complied with the requirements of chapter 329D and any administrative rules adopted thereunder.”

SECTION 22. Section 346G-10, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) In accordance with title 42 Code of Federal Regulations [~~section~~] part 438, the department shall use revenues from the hospital sustainability fee and federal matching funds to enhance the capitated rates paid to medicaid managed care health plans for [~~the~~] state fiscal years 2017-2018 and 2018-2019, consistent with the following objectives:

- (1) The rate enhancement shall be used exclusively for increasing reimbursements to private hospitals to support the availability of services and to ensure access to care to the medicaid managed care health plan enrollees;
- (2) The rate enhancement shall be made part of the monthly capitated rates by the department to medicaid managed care health plans, which shall provide documentation to the department and the hospital trade association located in Hawaii certifying that the revenues received under paragraph (1) are used in accordance with this section;

- (3) The rate enhancement shall be actuarially sound and approved by the federal government for federal fund participation;
- (4) The rate enhancements shall be retroactive to July 1, 2012, or the effective date approved by the federal government, whichever is later. Retroactive rate enhancements shall be paid within thirty days of notification by the Centers for Medicare and Medicaid Services to the department of all necessary approvals; and
- (5) Payments made by the medicaid managed care health plans shall be made within thirty business days upon receipt of monthly capitation rates from the department.”

SECTION 23. Section 431:2-203, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

- “(b)(1) A person who intentionally or knowingly violates, intentionally or knowingly permits any person over whom the person has authority to violate, or intentionally or knowingly aids any person in violating any insurance rule or statute of this State or any effective order issued by the commissioner[;] shall be subject to any penalty or fine as provided by this code or by the Hawaii Penal Code [~~of the Hawaii Revised Statutes~~].
- (2) If the commissioner has cause to believe that any person has violated any penal provision of this code or of other laws relating to insurance, the commissioner shall proceed against that person or certify the facts of the violation to the public prosecutor of the jurisdiction in which the offense was committed.
- (3) Violation of any provision of this code is punishable by a fine of not less than \$100 nor more than \$10,000 per violation, or by imprisonment for not more than one year, or both, in addition to any other penalty or forfeiture provided herein or otherwise by law.
- (4) The terms “intentionally” and “knowingly” shall have the same meanings as defined in section 702-206(1) and (2).”

SECTION 24. Section 431:3-205, Hawaii Revised Statutes, is amended to read as follows:

“§431:3-205 **Funds required of new insurers.** Subject to section 431:3-203(a)(2), to qualify to transact any one class of insurance, an insurer, not existing and authorized in this State on July 1, 1988, shall:

- (1) Deposit in a federally insured financial institution within the State, paid-up capital stock in the case of a stock insurer, or unimpaired surplus if:
 - (A) [a] ~~A~~ reciprocal insurer[;]; or
 - (B) [a] ~~A~~ mutual insurer [~~which~~] that does not seek to qualify upon the basis of applications and premiums collected as provided in sections 431:4-303 to 431:4-307,
 in an amount not less than shown in the applicable Schedule “A”;
- (2) Maintain this deposit at all times while the insurer is licensed and transacting insurance in this State; and
- (3) Secure the approval of the commissioner before making withdrawals from the depository.

Class of Insurance	Schedule “A”	Amount Required
Life		\$ 600,000
Accident and Health or Sickness		450,000

Property	750,000
Marine and Transportation	1,000,000
Vehicle	1,000,000
General Casualty	1,500,000
Surety	1,000,000
Title	400,000.”

SECTION 25. Section 431:4-210, Hawaii Revised Statutes, is amended to read as follows:

“**§431:4-210 Unlawful sales of equity security.** It shall be unlawful for any beneficial owner, director, or officer, directly or indirectly, to sell any equity security of ~~[such] the~~ company if the person selling the security or the person’s principal:

- (1) ~~[does] Does~~ not own the security sold~~];~~; or
- (2) ~~[if] If~~ owning the security, does not deliver it against ~~[such] the~~ sale within twenty days thereafter, or does not within five days after ~~[such] the~~ sale deposit it in the mails or other usual channels of transportation.

No person shall be deemed to have violated this section if the person proves that notwithstanding the exercise of good faith the person was unable to make ~~[such] delivery or deposit within the required time, or that to do so would cause undue inconvenience or expense.”~~

SECTION 26. Section 431:10B-103, Hawaii Revised Statutes, is amended to read as follows:

“**§431:10B-103 Definitions.** For the purpose of this article:

~~[(1) Credit life insurance means insurance on the life of a debtor pursuant to or in connection with a specific loan or other credit transaction;~~

~~[(2)] “Credit disability insurance” means insurance on a debtor to provide indemnity for payments becoming due on a specific loan or other credit transaction while the debtor is disabled as defined in the policy~~];~~.~~

~~“Credit life insurance” means insurance on the life of a debtor pursuant to or in connection with a specific loan or other credit transaction.~~

~~[(3)] “Creditor” means the lender of money, or seller or lessor of goods, services, ~~[or] property, rights, or privileges, for which payment is arranged through a credit transaction, or any successor to the right, title, or interest of any [such] lender, seller, or lessor, and an affiliate, associate, or subsidiary of any of them or any director, officer, or employee of any of them, or any other person in any way associated with any of them~~];~~~~~~

~~[(4)] “Debtor” means a borrower of money or a purchaser or lessee of goods, services, property, rights, or privileges for which payment is arranged through a credit transaction~~];~~~~

~~[(5)] “Indebtedness” means the total amount payable by a debtor to a creditor in connection with a loan or other credit transaction.”~~

SECTION 27. Section 431:26-108, Hawaii Revised Statutes, is amended by amending its title to read as follows:

“~~[[§431:26-108]]—Regulations.] Rules.~~”

SECTION 28. Section 432:1-104, Hawaii Revised Statutes, is amended to read as follows:

“§432:1-104 Definitions. For the purposes of this article:

~~[(1)]~~ “Commissioner” means the insurance commissioner of the State ~~of Hawaii~~.

~~[(2)]~~ “Mutual benefit society” ~~is~~ means any corporation, unincorporated association, society, or entity:

~~[(A)]~~ (1) Organized and carried on for the primary benefit of its members and their beneficiaries and not for profit, and:

~~[(i)]~~ (A) Making provision for the payment of benefits in case of sickness, disability, or death of its members, or disability, or death of its members’ spouses or reciprocal beneficiaries or children~~;~~ or

~~[(ii)]~~ (B) Making provision for the payment of any other benefits to or for its members,

whether or not the amount of the benefits is fixed or rests in the discretion of the society, its officers, or any other person or persons; and the fund from which the payment of the benefits shall be defrayed is derived from assessments or dues collected from its members, and the payment of death benefits is made to the families, including reciprocal beneficiaries, heirs, blood relatives, or persons named by its members as their beneficiaries; or

~~[(B)]~~ (2) Organized and carried on for any purpose~~;~~ ~~which~~ that:

~~[(i)]~~ (A) Regularly requires money to be paid to it by its members, whether the money be in the form of dues, subscriptions, receipts, contributions, assessments, or otherwise~~;~~ and

~~[(ii)]~~ (B) Provides for the payment of any benefit or benefits or the payment of any money or the delivery of anything of value to its members or their relatives, including reciprocal beneficiaries, or to any person or persons named by its members as their beneficiaries, or to any class of persons ~~which~~ that includes or may include its members,

whether or not the amount or value of the benefit, benefits, money, or thing of value is fixed, or rests in the discretion of the society, its officers, or any other person or persons; or

~~[(C)]~~ (3) Organized and carried on for any purpose~~;~~ whose requirements and provisions, although not identical with, are determined by the commissioner to be substantially similar to~~;~~ those enumerated in ~~subparagraphs (A)] paragraphs (1) and [(B)] (2).~~

Participating in a legal service plan subject to chapter 488 shall not in itself make a corporation, unincorporated association, society, or entity a mutual benefit society and subject to this article.”

SECTION 29. Section 432:1-301, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) Before doing business or engaging in any act, any mutual benefit society as defined in section ~~[432:1-104(2)] 432:1-104~~ shall file with the commissioner:

(1) Copies of its constitution or organic instrument under which it purports to operate, ~~and~~ the bylaws, and rules and regulations, if any;

(2) If a society promising or offering to pay death, sick, disability, or other benefits in an amount equal to or in excess of \$25:

(A) Copies of all proposed forms of benefit certificates, applications, and circulars to be issued by the society; and

(B) A bond in the sum of \$25,000 with sureties approved by the commissioner. The bond shall be conditioned upon the return

of the advance payments referred to in section 432:1-304, if the organization is not completed within one year; and

- (3) Any additional information as the commissioner may require.”

SECTION 30. Section 435E-25, Hawaii Revised Statutes, is amended to read as follows:

“**§435E-25 Voluntary termination of a member.** A participating member who is then in full compliance with the trust agreement may elect voluntarily to terminate ~~his or her~~ the participating member's membership in the interindemnity arrangement. Upon voluntary termination, ~~such~~ the person may further elect to cease being responsible for future assessments, or to continue to pay ~~such~~ the assessments until ~~such time as such~~ the person's initial contribution is repaid. ~~In the event such~~ If the person elects to cease being responsible for future assessments, the indemnity coverage shall thereupon terminate and ~~such~~ the person shall either be responsible for ~~his or her~~ the person's own exposure for acts committed while a participating member in the interindemnity arrangement, or ~~he or she~~ the person may request the interindemnity arrangement to purchase or provide, at the cost of ~~such~~ the person, coverage for ~~such~~ the person's exposure. The initial contribution of ~~such~~ the person shall be repaid on the tenth anniversary of the date ~~such~~ the contribution was made. ~~In the event such~~ If the person elects to continue to be responsible for assessments, the indemnity coverage shall continue in respect of occurrences prior to the date of the voluntary termination, and the initial contribution of ~~such~~ the person shall be repaid ~~at such time as~~ when the board of trustees is satisfied that:

- (1) ~~there~~ There are no claims pending against the person in respect of occurrences during the time the person was a participating member~~;~~; and
- (2) ~~the~~ The statute of limitations has run on all claims ~~which~~ that might be asserted against the person in respect of occurrences during ~~such~~ that time.

In no event shall ~~such~~ repayment be made earlier than the tenth anniversary of the date ~~such~~ the contribution was made.”

SECTION 31. Section 435E-43, Hawaii Revised Statutes, is amended to read as follows:

“**§435E-43 Investigation, publication.** The commissioner ~~may~~, in the commissioner's discretion, may:

- (1) ~~make such~~ Make public or private investigations within or outside of this State as the commissioner deems necessary to determine whether any person has violated or is about to violate this chapter, or to aid in the enforcement of this chapter~~;~~; and
- (2) ~~publish~~ Publish information concerning the violation of this chapter.”

SECTION 32. Section 508D-15, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) When residential real property lies:

- (1) Within the boundaries of a special flood hazard area as officially designated on Flood Insurance Administration maps promulgated by the United States Department of Housing and Urban Development for the purposes of determining eligibility for emergency flood insurance programs;

- (2) Within the boundaries of the noise exposure area shown on maps prepared by the department of transportation in accordance with Federal Aviation Regulation [~~Part 150-Airport~~] part 150, Airport Noise Compatibility Planning (14 [~~Code of Federal Regulations Part~~] C.F.R. part 150), for any public airport;
- (3) Within the boundaries of the Air Installation [~~Compatibility~~] Compatible Use Zone of any Air Force, Army, Navy, or Marine Corps airport as officially designated by military authorities; or
- (4) Within the anticipated inundation areas designated on the department of defense's emergency management tsunami inundation maps[;].

subject to the availability of maps that designate the four areas by tax map key (zone, section, parcel), the seller shall include [~~sueh~~] the material fact information in the disclosure statement provided to the buyer subject to this chapter. Each county shall provide, where available, maps of its jurisdiction detailing the four designated areas specified in this subsection. The maps shall identify the properties situated within the four designated areas by tax map key number (zone, section, parcel) and shall be of a size sufficient to provide information necessary to serve the purposes of this section. Each county shall provide legible copies of the maps and may charge a reasonable copying fee.”

SECTION 33. Section 514B-43, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) For purposes of this section:

- (1) ~~“Visible commencement of operations” shall have the meaning it has in section 507-41; and~~
- (2) ~~“Lien” means a lien created pursuant to chapter 507, part II.~~
“Visible commencement of operations” shall have the meaning it has in section 507-41.”

SECTION 34. Section 514E-19, Hawaii Revised Statutes, is amended by amending subsections (a) and (b) to read as follows:

“(a) An escrow for the sale of a time share interest in a time share ownership plan may close only if the requirements of any one of the following alternatives for protecting the purchaser have been satisfied:

- (1) The time share interest is conveyed to the purchaser free and clear of any blanket liens[;].
- (2) The time share unit is conveyed to a trustee:
 - (A) Free and clear of any blanket liens under a trust meeting the requirements of sections 514E-22 and [~~23;~~] 514E-23; or
 - (B) Under a lien payment trust meeting the requirements of sections 514E-22, [~~23, 24, and 25.~~] 514E-23, 514E-24, and 514E-25;
- (3) (A) The time share interest is conveyed to the purchaser subject only to blanket liens:
 - (i) Where every person holding an interest in the blanket lien has executed and recorded a nondisturbance agreement; or
 - (ii) For which the director's acceptance of a surety bond or an irrevocable letter of credit meeting the requirements of section 514E-28 has been recorded with respect to that time share unit; and
- (B) If legal or equitable title will be held by anyone other than the purchaser, a notice of time share plan is recorded[;]. or

- (4) The requirements of any alternative arrangements accepted by the director have been met.
- (b) An escrow for the sale of a time share interest in a time share use plan may close only if the requirements of any one of the following alternatives for protecting purchasers have been satisfied:
 - (1) The time share unit is conveyed to a trustee:
 - (A) Free and clear of any blanket liens under a trust meeting the requirements of sections 514E-22 and ~~[23;]~~ 514E-23; or
 - (B) Under a lien payment trust meeting the requirements of sections 514E-22, ~~[23, 24, and 25.]~~ 514E-23, 514E-24, and 514E-25;
 - (2) A notice of time share plan is recorded and either:
 - (A) Every person holding an interest in a recorded blanket lien against any time share interests in that time share unit executes and records a nondisturbance agreement; or
 - (B) The director's acceptance of a surety bond or an irrevocable letter of credit meeting the requirements of section 514E-28 is recorded~~[-];~~ or
 - (3) The requirements of any alternative arrangements accepted by the director have been met."

SECTION 35. Section 514E-25, Hawaii Revised Statutes, is amended by amending subsections (a), (b), and (c) to read as follows:

- "(a) The lien payment deposit shall consist of either ~~[(i) nondelinquent];~~
- (1) Nondelinquent purchase money contracts from purchasers of time share interests in the time share plan; or ~~[(ii) other]~~
 - (2) Other assets deposited into trust by the developer and approved by the director.
- (b)(1) The purchase money contracts ~~[must]~~ shall have an aggregate remaining principal balance of not less than, and any other assets deposited ~~[must]~~ shall have a liquidated value of not less than, one hundred ten per cent of the difference between ~~[(i) the];~~
- (A) The aggregate remaining principal balance owing under blanket liens against the time share unit or time share interests in it, including any prepayment penalties, release prices, and similar charges~~[-; (ii) the];~~ and
 - (B) The amount of money, or its equivalent, in the trust and available at any time to be applied to the reduction of the principal balance of the blanket lien.

The developer shall have the burden of establishing, to the satisfaction of the director, the liquidated value of assets other than purchase money contracts from purchasers in the time share plan.

- (2) If the blanket lien payment deposit consists of purchase money contracts, the payments required to be made by purchasers under the contracts shall:
 - (A) Be due on or before the dates on which payments become due on the blanket liens;
 - (B) If paid when due, be equal to at least one hundred ten per cent of the amount required to be paid on the blanket liens on ~~[such]~~ that date; and
 - (C) Be sufficient to pay, in full, during the term of ~~[such]~~ those contracts:
 - (i) ~~[all]~~ All amounts secured by the blanket liens, including prepayment penalties and release prices, if any; and

- (ii) ~~[all]~~ All service charges payable to the trustee, any collection agent, and any other servicing agent pursuant to the trust instrument.
- (3) If the developer proposes to deposit into trust assets other than purchase money contracts, ~~[such]~~ those assets ~~[must]~~ shall be sufficient to pay debt service installments on the blanket lien as they become due and to create a sinking fund or other arrangement adequate to extinguish the debt secured by the blanket lien at its maturity.
- (c)(1) In lieu of the requirements of subsection (b), the developer may elect to follow the requirements of paragraphs (2), (3), (4), and (5) ~~[of this subsection]~~ if the following requirements are met:
 - (A) The developer owns or leases under a lease for a term of not less than thirty years all the noncommercial portions of a hotel, condominium, cooperative, or other project;
 - (B) No more than seventy-five per cent of the appraised value of the project is subject to a mortgage or other lien. The appraised value shall be based on the use of the project prior to the creation of the time share plan;
 - (C) ~~(i)~~ As security for the obligations of the developer to the owners~~[, the]~~:
 - (i) The developer executes and records a mortgage in favor of the trustee under the lien payment trust or the association, in either case as trustee on behalf of the owners, twenty-five per cent of the appraised value of the project; or
 - (ii) ~~[the]~~ The developer conveys or transfers the project to a trust meeting the requirements of sections 514E-22 and ~~[23,]~~ 514E-23, and under the terms of the trust instrument the twenty-five per cent of the beneficial interest in the trust is held for the benefit of, or conveyed or transferred to, the association, acting as trustee for the owners~~[, as security for the obligations of the developer to owners];~~ and
 - (D) The developer files a verified statement of the program of financing, acceptable to the director, containing a cash flow analysis showing that the developer has adequate funds to pay the debt service installments on the blanket liens on the project during the sales period and to extinguish the debt secured by the blanket lien at its maturity, whether from sales proceeds, loan commitments, income from operations of the project, or other sources.
- (2) The purchase money contracts ~~[must]~~ shall have an aggregate remaining principal balance of not less than, and any other assets deposited ~~[must]~~ shall have a liquidated value of not less than, one hundred ten per cent of the difference between ~~[(i)-a];~~:
 - (A) A pro rata share of the aggregate remaining principal balance owing under blanket liens against the time share unit or time share interests in it, including any prepayment penalties, release prices, and similar charges~~[, (ii)-a];~~ and
 - (B) A pro rata share of the amount of money, or its equivalent, in the trust and available at any time to be applied to the reduction of the principal balance of the blanket lien.

The developer shall have the burden of establishing, to the satisfaction of the director, the liquidated value of assets other than purchase money contracts from purchasers in the time share plan.

- (3) If the blanket lien payment deposit consists of purchase money contracts, the payments required to be made by purchasers under the contracts ~~[must:] shall:~~
 - (A) Be due on or before the dates on which payments become due on the blanket liens;
 - (B) If paid when due, be equal to at least one hundred ten per cent of a pro rata share of the amount required to be paid on the blanket liens on ~~[such] that~~ date; and
 - (C) Be sufficient to pay, in full, during the term of ~~[such] those~~ contracts:
 - (i) ~~[a] A~~ pro rata share of all amounts secured by the blanket liens, including prepayment penalties and release prices, if any; and
 - (ii) ~~[all] All~~ service charges payable to the trustee, any collection agent, and any other servicing agent pursuant to the trust instrument.
- (4) If the developer proposes to deposit into trust assets other than purchase money contracts, ~~[such] those~~ assets ~~[must] shall~~ be sufficient to pay a pro rata share of the debt service installments on the blanket lien as they become due and to create a sinking fund or other arrangement adequate to extinguish the debt secured by the blanket lien at its maturity.
- (5) For purposes of this subsection, the term “pro rata share” means a share proportionate to the ratio that the number of time share units in which the sale of time share interests have been closed bears to the total number of time share units in the project. No more than fifty-one weeks of use annually may be attributed to each time share unit in determining the pro rata share.
- (6) The developer may elect to terminate the use of the provisions of this subsection upon satisfying all of the requirements of either subsection (b) or section 514E-26(c).”

SECTION 36. Section 516-1, Hawaii Revised Statutes, is amended by amending the definition of “owner’s basis” to read as follows:

““Owner’s basis” means the value of the lessor’s leased fee interest in the lot that would apply if ~~[such] the~~ interests were normally traded on an open market. The fair market value of the owner’s basis shall be established to provide the lessor with just compensation for the lessor’s interests in the lot and shall take into consideration every interest and equity of the lessee in establishing that market value. The value may be determined by either of the following methods, or any other method ~~[which] that~~ is normally used by qualified appraisers in establishing the fair market value of a lessor’s leased fee interest in land:

- (1) The sum of: ~~[(i) the]~~
 - (A) ~~The~~ future rental income stream for the lot for the term of the lease discounted to present worth from the expiration date of the lease; and ~~[(ii) the]~~
 - (B) ~~The~~ value of the lessor’s reversionary interest in the lot discounted to present worth from the expiration date of the lease. The discount rate shall be based on the maximum rate of return for insured passbook demand ~~[saving] savings~~ account paid by the savings and loan institutions in Hawaii plus three and three-fourths per

- cent; provided~~[-however,]~~ that the discount rate may be modified by mutual agreement of the lessor, lessee, and the corporation; or
- (2) The current fair market value of the lot, valued as if it were a fee simple lot and as if the fee title were unencumbered, and excluding onsite improvements, established by a market data approach utilizing comparable sales, less the following:
- (A) The value of the lease, including any rights therein, if any, ~~[which]~~ that accrues to the lessee;
 - (B) That percentage of the general enhancement of the neighborhood ~~[which]~~ that has been paid for or contributed directly or indirectly by the lessee;
 - (C) The current replacement cost of that portion of existing off-site improvements, including overhead and profit at prevailing rates, ~~[which]~~ that were paid for or otherwise contributed, directly or indirectly, by the lessee;
 - (D) That percentage of the general enhancement of the development tract and the lot caused by the onsite improvements on the lot paid for, or contributed, directly or indirectly, by the lessee;
 - (E) That amount, not otherwise deducted herein, allocated to the lot~~[-which]~~ that was paid for or otherwise contributed, directly or indirectly, by the original lessee, computed at prevailing rates for overhead and profit in developing the development tract established by existing practice in the community; and
 - (F) That amount for fees and costs ~~[which]~~ that would ordinarily be borne by the lessor in transferring ~~[such]~~ interest to the lessee, including~~[-]~~ but not limited to~~[-]~~ attorneys' or realtors' commissions, other costs of sale, and similar fee;
- provided~~[-however,]~~ that the values established by any one of the ~~[foregoing]~~ provisions in subparagraphs (A) to (F) shall not be duplicated in any one of the other provisions."

SECTION 37. Section 516-32, Hawaii Revised Statutes, is amended to read as follows:

"§516-32 Not for profit. It is declared to be the policy of the State that the Hawaii housing finance and development corporation shall carry out its responsibilities under this part in an efficient manner so as to enable it to fix the sales prices and rentals for residential lots at the lowest possible rates consistent with the purpose of this part; and that the corporation shall not administer this part for profit~~[-]~~ or as a source of revenue to the State. To this end, the corporation shall fix the sales prices for residential lots or rentals for lots at no higher rates or prices than it shall find to be necessary in order to produce revenues ~~[which]~~ that (together with all other available moneys, revenues, income, and receipts of the corporation from whatever sources derived under the administration of this part) will be sufficient~~[-]~~ to:

- (1) ~~[to pay,]~~ Pay, as the same becomes due, the principal and interest on the bonds of the corporation;
- (2) ~~[to meet]~~ Meet the cost of~~[-]~~ and ~~[to]~~ provide for the administration of this part; and
- (3) ~~[to create]~~ Create a reserve sufficient to meet the largest principal and interest payments ~~[which]~~ that will be due on ~~[such]~~ the bonds in any one year thereafter and to maintain ~~[such]~~ the reserve."

SECTION 38. Section 516-43, Hawaii Revised Statutes, is amended to read as follows:

“§516-43 Security for funds deposited. The Hawaii housing finance and development corporation ~~may~~, by resolution, may provide that all moneys deposited by it shall be secured~~;~~ by:

- (1) ~~[by any]~~ An securities by which funds deposited by the state director of finance may be legally secured as provided in section 38-3~~;~~; or
- (2) ~~[by an]~~ An undertaking with ~~[such]~~ sureties as are approved by the corporation faithfully to keep and pay over upon the order of the corporation any ~~[such]~~ deposits and agreed interest thereon, and all banks and trust companies may give any ~~[such]~~ security for ~~[such]~~ those deposits.”

SECTION 39. Section 516-63, Hawaii Revised Statutes, is amended to read as follows:

“§516-63 Free assignability. Except as otherwise provided in section 516-35 and restrictions placed in leases by state or county agencies, a lessee may assign the lessee’s lease at any time without the approval or consent of the lessor, and the assignee shall have the same rights and obligations under the lease as the original lessee; provided that no ~~[such]~~ assignment shall be effective to transfer any interest in the lease unless the lessor has received:

- (1) ~~[either]~~ Either a true executed copy of ~~[such]~~ the assignment or written notice thereof~~;~~;
- (2) ~~[a]~~ A reasonable service charge, except in case of an assignment by way of mortgage or assignment to or by the Federal Housing Administration ~~[or]~~, Department of Veterans Affairs, or ~~[the]~~ Federal National Mortgage Association or a foreclosure of mortgage or assignment in lieu of foreclosure~~;~~; and
- (3) ~~[the]~~ The written undertaking of the assignee to perform all obligations of the lessee under the lease, which undertaking may be incorporated in ~~[such]~~ the assignment.

No ~~[such]~~ assignment shall release the assignor from liability under the lease unless the lessor consents in writing to the assignment. A consent to the assignment shall be deemed a consent to the release of the assignor from liability under the lease. The lessor shall not require payment of any money for the lessor’s consent except the service charge, nor withhold ~~[such]~~ consent unreasonably. Any person acquiring the leasehold estate in consideration of the extinguishment of a debt secured by mortgage of the lease or through foreclosure sale, judicial or otherwise, shall be liable to perform the obligations imposed on the lessee by the lease only during the period ~~[such]~~ the person has possession or ownership of the leasehold estate.”

SECTION 40. Section 516-66, Hawaii Revised Statutes, is amended to read as follows:

“§516-66 Lease rental. (a) In every case of an extension under section 516-65, the annual lease rental during the first thirty years shall not exceed an amount determined as follows:

- (1) Compute to the nearest whole year, one hundred per cent of the unexpired period of fixed rent at the commencement of the extended term;

- (2) Multiply the number of years computed in paragraph (1) by the fixed annual rent in effect immediately prior to the extension;
- (3) Deduct from thirty years the number of years computed in paragraph (1) and multiply that difference by the annual rent determined by mutual agreement of lessor and lessee within thirty days after ~~[such]~~ the extension or by arbitration in ~~[accord]~~ accordance with chapter 658A; and
- (4) Add the amounts computed in paragraphs (2) and (3) and divide that sum by thirty. This sum rounded to the nearest dollar shall be the annual rent for the first thirty years of the extended term; provided that ~~[such]~~ the rent shall not ~~[without the consent of the lessor]~~ be less than the annual rent in effect immediately prior to ~~[such]~~ the extension~~[-]~~, unless otherwise consented to by the lessor.

(b) The annual rent payable ~~[hereunder]~~ under subsection (a) for and during the remaining period of the extended term shall be determined by mutual agreement of the lessor and the lessee~~[-]~~ or, if they fail to reach ~~[such]~~ an agreement at least ninety days before the commencement of the period, by arbitration in accordance with chapter 658A.”

SECTION 41. Section 519-3, Hawaii Revised Statutes, is amended by amending subsection (d) to read as follows:

“(d) For purposes of this section:

- [(+) “Cooperative housing corporation” means a corporation:
- [(A)] (1) Having ~~[one and]~~ only one class of stock outstanding;
 - [(B)] (2) Each of the stockholders of which is entitled, solely by reason of the shareholder’s ownership of stock in the corporation, to occupy for dwelling purposes the dwelling unit in a building~~[-]~~ owned or leased by the corporation~~[-]~~ and situated on land leased by the corporation;
 - [(C)] (3) No stockholder of which is entitled ~~[(either), either]~~ either conditionally or unconditionally~~[-]~~, to receive any distribution not out of earnings and profits of the corporation, except in a complete or partial liquidation of the corporation; and
 - [(D)] (4) Eighty per cent or more of the gross income for the taxable year in which the taxes and interest described in title 26 United States Code section 216(a) are paid or incurred is derived from tenant stockholders.

[(2)] “Offsite improvements” means all physical improvements ~~[such as]~~, including but not limited to~~[-]~~ roads, sewer lines, sewage treatment plants, and underground utility cables, constructed or placed in a subdivision or development off the land intended for occupancy, which improvements are to be used in common by occupants of all lands adjoining ~~[such]~~ the improvements or by occupants of all lands for whose benefit the improvements have been constructed or placed.

[(3)] “Onsite improvements” means all physical improvements placed on a residential lot intended for occupancy, which improvements are for the benefit of occupants of that lot, including~~[-]~~ but not limited to~~[-]~~ dwelling units, garages, service buildings, stairs, walkways, driveways, walls, trees, shrubs, landscaping, and pools.

[(4)] “Owner’s basis” means the value of the lessor’s leased fee interest in the property that would apply if such interest were normally traded on an open market. The fair market value of the owner’s basis shall be established to provide the lessor with just compensation for the lessor’s interests in the lot and shall take into consideration every interest and equity of the lessee in establishing that

market value. The value may be determined by any method which is normally used by qualified appraisers in establishing the fair market value of a lessor's leased fee interest in land.

(5) "Original percentage rate" means the percentage derived by dividing the annual lease rent established for the first fixed rent period under the lease by the fair market value of the land as of the first day of the first fixed rent period.

"Owner's basis" means the value of the lessor's leased fee interest in the property that would apply if the interest were normally traded on an open market. The fair market value of the owner's basis shall be established to provide the lessor with just compensation for the lessor's interests in the lot and shall take into consideration every interest and equity of the lessee in establishing that market value. The value may be determined by any method that is normally used by qualified appraisers in establishing the fair market value of a lessor's leased fee interest in land."

SECTION 42. Section 554-10, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) In the administration of any trust [~~which~~] that is a "private foundation", as defined in section 509 of the Code or to which section 4947 of the Code applies, the following shall be prohibited:

- [(i)] (1) Engaging in any act of "self-dealing" [~~as~~, as defined in section 4941(d) of the Code];
- [(ii)] (2) Retaining any "excess business holdings" [~~as~~, as defined in section 4943(c) of the Code];
- [(iii)] (3) Making any investments in [~~such~~] a manner as to subject it to tax under section 4944 of the Code; and
- [(iv)] (4) Making any "taxable expenditures" [~~as~~, as defined in section 4945(d) of the Code];

provided that this subsection [(a)] shall not apply to [~~such~~] amounts of any trust to which section 4947(a)(2) of the Code applies, as [~~are~~] described in the second sentence of [~~said~~] section 4947(a)(2) of the Code, and [~~items (ii) and (iii) of this subsection (a) paragraphs (2) and (3)~~] shall not apply to any trust to which [~~said~~] section 4947(a)(2) of the Code applies [~~which is~~, as described in section 4947(b)(3) of the Code."

SECTION 43. Section 557A-104, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

"(c) A trustee may not make an adjustment:

- (1) That diminishes the income interest in a trust that requires all of the income to be paid at least annually to a surviving spouse and for which an estate tax or gift tax marital deduction would be allowed, in whole or in part, if the trustee did not have the power to make the adjustment;
- (2) That reduces the actuarial value of the income interest in a trust to which a person transfers property with the intent to qualify for a gift tax exclusion;
- (3) That changes the amount payable to a beneficiary as a fixed annuity or a fixed fraction of the value of the trust's assets;
- (4) From any amount that is permanently set aside for charitable purposes under a will or the terms of a trust, unless both income and principal are so set aside; provided that a trustee may transfer income to principal only upon a court order (unless the trustee is holding institutional funds as defined in section [~~517D-3~~] 517E-2)

- exclusively for the benefit of a community foundation and section ~~[517D-4]~~ 517E-4 applies);
- (5) If possessing or exercising the power to make an adjustment may cause an individual to be treated as the owner of all or part of the trust for income tax purposes, and the individual would not be treated as the owner if the trustee did not possess the power to make an adjustment;
 - (6) If possessing or exercising the power to make an adjustment causes all or part of the trust assets to be included for estate tax purposes in the estate of an individual who has the power to remove a trustee or appoint a trustee, or both, and the assets would not be included in the estate of the individual if the trustee did not have the power to make an adjustment; or
 - (7) If the trustee is a beneficiary of the trust.”

SECTION 44. Section 571-21, Hawaii Revised Statutes, is amended by amending subsection (d) to read as follows:

“(d) In children’s cases~~;~~ under section 571-11(1) and (2), the petition and all subsequent court documents shall be suitably entitled so as to indicate that the proceeding is in the interest of rather than against the child or minor involved. The petition shall be verified and statements may be made upon information and belief. ~~[It]~~ The petition shall set forth plainly~~;~~ the:

- (1) ~~[the facts which]~~ Facts that bring the child within the purview of this chapter;
- (2) ~~[the name,]~~ Name, age, and residence of the child;
- (3) ~~[the names]~~ Names and residences of the child’s parents; and
- (4) ~~[the name]~~ Name and residence of the child’s legal guardian if there ~~[be]~~ is one, of the person or persons having custody or control of the child, or of the nearest known relative if no parent or guardian can be found.

If any of the facts required are not known by the petitioner, the petition shall so state. In cases brought pursuant to section 571-11(2)(A) and (C), a certified copy of the child’s school attendance records shall constitute prima facie evidence of the child’s nonattendance at school or nonreceipt of educational services. ~~[A certified copy is defined as]~~ “Certified copy” means a copy signed by the principal and educator of the child ~~[from]~~ whose class the child did not attend.”

SECTION 45. Section 571-31, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) When an officer or other person takes a child into custody, the parents, guardian, or legal custodian shall be notified immediately. The child shall be:

- (1) ~~[released]~~ Released to the care of the child’s parent or other responsible adult;
- (2) ~~[referred]~~ Referred or delivered to the court or other designated agency with or without simultaneous release to parent or other responsible adult; or
- (3) ~~[taken]~~ Taken directly to a detention facility~~;~~ if the child’s immediate welfare or the protection of the community requires it~~;~~ or if the child is subject to detention for violation of a court order of probation or protective supervision.”

SECTION 46. Section 577-15, Hawaii Revised Statutes, is amended to read as follows:

“§577-15 Children deemed to be orphans. For the purpose of taking, or determining eligibility to take, any benefit under any law or under any private instrument by the terms of which orphans are eligible to receive benefits, a child born ~~[ef]~~ to parents not married to each other and not adopted shall be deemed an orphan; provided that nothing in this section shall be construed to:

- (1) ~~[to deprive]~~ Deprive any ~~[sueh]~~ child of any rights of inheritance, ~~[or]~~ any rights to support, or any other rights~~[-]~~ to which the child would be entitled~~[-]~~; or
- (2) ~~[to affect]~~ Affect the liabilities of any other person with respect to any ~~[sueh]~~ child to which the person would be subject~~[-]~~ if this section had not been enacted.”

SECTION 47. Section 578-7, Hawaii Revised Statutes, is amended to read as follows:

“§578-7 Substituted or constructive service. Upon the filing of the affidavit referred to in section 578-6, the court may order service of the notice prescribed in sections 578-2 and 578-4 to be made as follows:

- (1) Personal service or service by registered mail without the State. If the residence of a nonresident legal parent is known or is ascertained at any stage of the proceeding prior to the filing of a return of service pursuant to section 578-5, the court may order that service of notice of the time and place of hearing of the petition and of a copy thereof and of a copy of the court’s order be made upon ~~[sueh]~~ the parent by:
 - (A) ~~[by personal]~~ Personal service thereof, without the State, by ~~[sueh]~~ a person and in ~~[sueh]~~ a manner as the court may direct~~[-]~~; or
 - (B) ~~[by sending]~~ Sending certified copies of the petition and of the notice of the time and place of the hearing thereof and of the court’s order, by registered mail, addressed to ~~[sueh]~~ the parent, with request for return receipt, which service, evidenced by ~~[sueh]~~ the receipt signed by the parent and returned to the clerk of the court, shall be regarded as equivalent to service by publication or in lieu thereof.

When service is made pursuant to this paragraph, the time appointed for the hearing of the petition shall be not less than twenty-one days subsequent to the date of service as ~~[herein]~~ provided[-] in this paragraph.

- (2) Service by publication. If the residence of ~~[sueh]~~ a parent is not known and cannot be ascertained, or if an attempt to effect service by either of the methods authorized in paragraph (1) ~~[hereof]~~ is unsuccessful, the court may order that service shall be made by publication. The order shall direct that publication of notice of the pendency of the petition and of the time and place of the hearing thereof be made in a newspaper or newspapers suitable for the advertisement of notices of judicial proceedings once in each week for not less than four successive weeks as the court may prescribe, the last publication to be not less than twenty-one days prior to the time appointed for the hearing of the petition. The court ~~[may]~~, in addition to ordering publication, may direct that a copy of the petition and notice be forthwith deposited in the post office, addressed to ~~[sueh]~~ the parent at the parent’s last known place of residence. The service of the notice required by section 578-2 shall be deemed

complete at the expiration of the time prescribed by the order of publication.”

SECTION 48. Section 580-3.5, Hawaii Revised Statutes, is amended to read as follows:

“~~[[~~**§580-3.5]** **Personal judgment against absent defendant.** In any proceeding in the family court, the court ~~[shall have the power to]~~ may render a personal judgment against a party who is outside of this State and over whom jurisdiction is acquired by service of process in the manner set forth in section 580-3(b) or (c), if the party was personally served with a copy of the summons or order to show cause and complaint or other pleading upon which the judgment is based and if the party was a domiciliary of this State at the time:

- (1) ~~[at the time that the]~~ The cause of action ~~[which]~~ that is the subject of the proceeding arose~~[, or]~~;
- (2) ~~[at the time of]~~ Of the commencement of the proceeding~~[;]~~; or
- (3) ~~[at the time of]~~ Of service.”

SECTION 49. Section 831-3.1, Hawaii Revised Statutes, is amended by amending subsection (f) to read as follows:

“(f) Notwithstanding any law to the contrary, this section shall not apply to:

- (1) Denials by the department of human services, the department of health, or any other branch, political subdivision, or agency of any certificate of approval, license, or permit to any organization, institution, home, or facility subject to licensure under chapters 321, 333F, and 346;
- (2) Denials of employment as a staff member of a youth correctional facility operated under chapter 352;
- (3) Denials of employment as an employee of a detention or shelter facility established or designated pursuant to section 571-33;
- (4) Denials of employment as a staff member of a correctional facility pursuant to chapter 353, or as a staff member that requires the exercise of police powers, including the power to arrest, in the performance of the staff member’s duties pursuant to chapter 353C;
- (5) Denials of employment of applicants or employees pursuant to section 78-2.7;
- (6) Denials or termination of employment as an employee, employee applicant, or employee or agent of a contractor of the department of taxation with access to federal tax information pursuant to section 231-1.6;
- (7) Denials or termination of employment as an employee, employee applicant, or employee or agent of a contractor of the department of human services with access to federal tax information pursuant to section 346-2.5;
- (8) Denials or termination of employment as an employee, employee applicant, or employee or agent of a contractor of the department of labor and industrial relations with access to federal tax information pursuant to section 383-110; and
- (9) Denials or termination of employment as an employee, employee applicant, or employee or agent of a contractor of the child support enforcement agency with access to federal tax information pursuant to section 576D-11.5.”

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SECTION 50. Section 235-12, Hawaii Revised Statutes, is repealed.

SECTION 51. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun before its effective date.

SECTION 52. Statutory material to be repealed is bracketed and stricken.¹ New statutory material is underscored.

SECTION 53. This Act shall take effect upon approval; provided that the amendments made to section 329-38(h), Hawaii Revised Statutes, by section 19 of this Act shall not be repealed when that section is reenacted on June 30, 2023, pursuant to section 6 of Act 66, Session Laws of Hawaii 2017.

(Approved June 4, 2018.)

Note

1. Edited pursuant to HRS §23G-16.5.