

ACT 12

S.B. NO. 2871

A Bill for an Act Relating to Professional and Vocational Licensing Trust Funds.

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

SECTION 1. Section 444-26, Hawaii Revised Statutes, is amended to read as follows:

**“§444-26 Contractors recovery fund; use of fund; person injured; fees.** (a) The board is authorized to establish and maintain a contractors recovery fund from which any person injured by an act, representation, transaction, or conduct of a duly licensed contractor, which is in violation of this chapter or the rules adopted pursuant thereto, may recover by order of the circuit court or district court of the judicial circuit where the violation occurred, an amount of not more than \$12,500 per contract, regardless of the number of persons injured under

the contract, for damages sustained by the act, representation, transaction, or conduct. Recovery from the fund shall be limited to the actual damages suffered by the claimant, including court costs and fees as set by law, and reasonable attorney fees as determined by the court; provided that recovery from the fund shall not be awarded to persons injured by an act, representation, transaction, or conduct of a contractor whose license was suspended, revoked, forfeited, terminated, or in an inactive status at the time the claimant entered into the contract with the contractor.

(b) For purposes of this chapter, “person injured” or “injured person” means and is limited to owners or lessees of private residences, including condominium or cooperative units, who have contracted with a duly licensed contractor for the construction of improvements or alterations to the owners’ or lessees’ own private residences and owners or lessees of real property who have contracted with a duly licensed contractor for the construction of the owners’ or lessees’ own private residences on the owners’ or lessees’ real property.

(c) When any person applies for a contractors license, the person shall pay, in addition to the person’s original license fee, a fee of \$150 for deposit in the contractors recovery fund, and a fee for deposit in the contractors education fund as provided in rules adopted by the director pursuant to chapter 91. In the event that the board does not issue the license, these fees shall be returned to the applicant.

~~[(d) When the contractors recovery fund attains a funding level of \$420,893 in any fiscal year, the board shall either:~~

- ~~(1) Cease accepting payments made by renewing licensees; or~~
- ~~(2) Develop a process to refund monies in excess of the \$420,893 fund balance to licensees who paid into the fund, and refund such monies.~~

~~If acceptance of payments is ceased, it shall remain ceased until the funding level falls below \$420,893.]”~~

SECTION 2. Section 444-29, Hawaii Revised Statutes, is amended to read as follows:

**“§444-29 Management of fund.** (a) The sums received by the contractors license board for deposit in the contractors recovery fund shall be held by the contractors license board in trust for carrying out the purposes of the contractors recovery fund. The contractors license board, as trustee of the recovery fund, shall be authorized to retain private legal counsel to represent the board in any action which may result in collection from the contractors recovery fund. These funds may be invested and reinvested in the same manner as funds of the state employees’ retirement system, and the interest from these investments shall be deposited to the credit of the contractors education fund.

(b) The contractors education fund, which is hereby created, shall be available to the contractors license board for educational purposes~~]; provided that when the contractors education fund attains a funding level of \$15,315 in any fiscal year, the board shall either:~~

- ~~(1) Cease accepting payments made by renewing licensees; or~~
- ~~(2) Develop a process to refund monies in excess of the \$15,315 fund balance to licensees who paid into the fund, and refund such monies.~~

~~If acceptance of payments is ceased, it shall remain ceased until the funding level falls below \$15,315].~~

(c) Any law to the contrary notwithstanding, to maintain a reasonable relation between the fees generated and the cost of services rendered by the contractors recovery fund and the contractors education fund, the board may make a finding that a fee adjustment is appropriate and adjust the fees generated by renewals accordingly. For the purposes of finding that a fee adjustment is ap-

propriate in order to maintain a reasonable relation between the fees generated and the cost of services rendered by the funds, the board's review shall include the following:

- (1) Frequency and timing of anticipated revenue to the fund;
- (2) Identification of a reserve amount based on unanticipated revenue reductions and historical expenditures;
- (3) Anticipated expenses paid, including recovery payouts during a biennial budget cycle;
- (4) Unanticipated natural disasters or catastrophic weather events that may increase fund payments; and
- (5) Any statutory adjustments to fund payout amounts.

The balance in each fund shall not exceed sums determined by the board. The sums shall be determined by the board biennially.”

SECTION 3. Section 467-11, Hawaii Revised Statutes, is amended to read as follows:

**“§467-11 Fees; original license and biennial renewals.** (a) All fees for applications, registrations, certificates, and any license prescribed by this chapter shall be deposited to the credit of the compliance resolution fund established pursuant to section 26-9(o), and all fees allocated to the real estate education fund shall be as provided in rules adopted by the director of commerce and consumer affairs pursuant to chapter 91.

(b) The biennial renewal fee and completed renewal application shall be submitted to the department of commerce and consumer affairs on or before the commission-prescribed deadline and prior to the expiration date of the license. All real estate licenses expire on December 31 of an even-numbered year. Failure, neglect, or refusal of any duly licensed real estate broker or real estate salesperson to pay the biennial renewal fee and to submit a completed renewal application shall constitute a forfeiture of the license as of January 1 of the subsequent odd-numbered year.

(c) The forfeited license of an individual real estate broker or real estate salesperson may be restored upon compliance with the licensing renewal requirements provided by law; submission of a complete written application; payment of all applicable renewal fees, penalty fees, compliance resolution fund fees, and, if applicable, recovery fund assessments; satisfaction of the applicable requirements in sections 467-8 and 467-9; submission of written documentation demonstrating compliance with section 467-11.5; and, for individual licensees, satisfaction of one of the following as applicable:

- (1) For a license forfeited for more than one year but less than four years, the successful completion of the commission-approved course or courses or passage of the commission-approved examination; or
- (2) For a license forfeited for more than four years but less than five years, the successful passage of the commission-approved examination.

(d) The license of any individual licensed as a real estate broker or a real estate salesperson who fails to apply for restoration of a forfeited license within five years from the date of forfeiture shall be automatically terminated. Once a license has been terminated pursuant to this section, the individual may apply for a new salesperson license pursuant to and subject to all applicable laws and rules in effect at the time of application.

(e) The license of any real estate broker other than a natural person that fails to apply for restoration of a forfeited license within one year from the date of forfeiture, shall be automatically terminated. Once a license has been terminated pursuant to this section, the entity may apply for a new license pursuant to and subject to all applicable laws and rules in effect at the time of application.

(f) A real estate broker or real estate salesperson may place that person's license on an inactive status by filing an application and setting forth information prescribed or required by the commission; the license shall be renewed on or before the commission-prescribed deadline prior to the expiration date of the license by payment of the biennial renewal fee and submission of a completed renewal application. A real estate broker or real estate salesperson may reactivate that person's inactive license by satisfying section 467-11.5, filing an application setting forth any information as may be prescribed or required by the commission, and paying the proper fee.

(g) The commission may refund any fee erroneously paid to it under this section when the commission deems it just and equitable.

~~[(h) If the education fund balance attains a funding level of \$1,713,510 in any fiscal year, the commission shall either:~~

- ~~(1) Cease accepting payments made by renewing licensees; or~~
- ~~(2) Develop a process to refund monies in excess of the \$1,713,510 fund balance to licensees who paid into the fund, and refund such monies.~~

~~If acceptance of payments is ceased, it shall remain ceased until the funding level falls below \$1,713,510.]”~~

SECTION 4. Section 467-16, Hawaii Revised Statutes, is amended to read as follows:

**“§467-16 Real estate recovery fund; use of fund; fees.** (a) The commission shall establish and maintain a trust fund which shall be known as the real estate recovery fund from which any person aggrieved by an act, representation, transaction, or conduct of a duly licensed real estate broker, or real estate salesperson, upon the grounds of fraud, misrepresentation, or deceit, may recover upon the commission's settlement of a claim or by order of the circuit court or district court of the county where the violation occurred, an amount of not more than \$25,000 per transaction for damages sustained by the fraud, misrepresentation, or deceit, including court costs and fees as set by law, and reasonable attorney fees as determined by the court.

(b) When any person makes application for an original license to practice as a real estate broker or salesperson the person shall pay, in addition to the person's original license fee, a real estate recovery fund fee as provided in rules adopted by the director of commerce and consumer affairs pursuant to chapter 91 for deposit in the real estate recovery fund. If the commission does not issue the license, this fee shall be returned to the applicant.

(c) The commission, as the trustee of the real estate recovery fund, shall be authorized to expend the funds to:

- (1) Retain private legal counsel to represent the commission in any action involving or which may result in payment from the real estate recovery fund;
- (2) Retain a certified public accountant for accounting and auditing of the real estate recovery fund;
- (3) Employ necessary personnel, not subject to chapter 76, to assist the commission in exercising its powers and duties with respect to the real estate recovery fund; and
- (4) Retain a consultant to recover and collect any payments from the real estate recovery fund plus interest from the judgment debtor.

~~[(d) When the real estate recovery fund attains a funding level of \$481,799 in any fiscal year, the commission shall either:~~

- ~~(1) Cease accepting payments made by renewing licensees; or~~

- (2) ~~Develop a process to refund monies in excess of the \$481,799 fund balance to licensees who paid into the fund, and refund such monies.~~

~~If acceptance of payments is ceased, it shall remain ceased until the funding level falls below \$481,799.]”~~

SECTION 5. Section 467-19, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) The sums received by the real estate commission for deposit in the real estate recovery fund shall be held by the commission in trust for carrying out the purpose of the real estate recovery fund. The real estate commission, as the trustee of the recovery fund, shall be authorized to expend the funds to retain private legal counsel to represent the commission in any action involving the real estate recovery fund. These funds may be invested and reinvested in the same manner as funds of the state employees’ retirement system, and the interest from these investments shall be deposited to the credit of the real estate education fund, and which shall be available to the commission for educational purposes, which is hereby created. The real estate commission, as trustee of the real estate education fund, may invest and reinvest the real estate education fund in the same manner as funds of the state employees’ retirement system. Any law to the contrary notwithstanding, the commission may make a finding that a fee adjustment is appropriate and may adjust the fees generated to regulate the fund balances of the real estate recovery fund and the real estate education fund to appropriate levels to maintain a reasonable relation between the fees generated and the cost of services rendered by the real estate recovery fund and real estate education fund. The commission for investment purposes, may combine the real estate education and recovery funds and invest and reinvest the combined funds in the same manner as funds of the state employees’ retirement system. The commission shall keep separate accounting records for the two funds. For the purposes of finding that a fee adjustment is appropriate in order to maintain a reasonable relation between the fees generated and the cost of services rendered by the funds, the commission’s review shall include the following:

- (1) Frequency and timing of anticipated revenue to the fund;
- (2) Identification of a reserve amount based on unanticipated revenue reductions and historical expenditures;
- (3) Anticipated expenses paid, including recovery payouts during a biennial budget cycle;
- (4) Unanticipated natural disasters or catastrophic weather events that may increase fund payments; and
- (5) Any statutory adjustments to fund payout amounts.

The balance in each fund shall not exceed sums determined by the commission. The sums shall be determined by the commission biennially.”

SECTION 6. Section 514B-71, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) The commission shall use all moneys in the condominium education trust fund for purposes consistent with subsection (a). Any law to the contrary notwithstanding, the commission may make a finding that a fee adjustment is appropriate and adjust the fees paid by associations to regulate the fund balance to an appropriate level to maintain a reasonable relation between the fees generated and the cost of services rendered by the condominium education trust fund. For the purposes of finding that a fee adjustment is appropriate in order to maintain a reasonable relation between the fees generated and the cost of services rendered by the fund, the commission’s review shall include the following:

- (1) Frequency and timing of anticipated revenue to the fund;

- (2) Identification of a reserve amount based on unanticipated revenue reductions and historical expenditures;
- (3) Anticipated expenses paid, including recovery payouts during a biennial budget cycle;
- (4) Unanticipated natural disasters or catastrophic weather events that may increase fund payments; and
- (5) Any statutory adjustments to fund payout amounts.

The balance of the fund shall not exceed a sum determined by the commission. The sum shall be determined by the commission biennially.”

SECTION 7. Section 514B-72, Hawaii Revised Statutes, is amended to read as follows:

**“§514B-72 Condominium education trust fund; payments by associations and developers.** (a) Each project or association with more than five units shall pay to the department of commerce and consumer affairs:

- (1) A condominium education trust fund fee within one year after the recordation of the purchase of the first unit or within thirty days of the association’s first meeting, and thereafter, on or before June 30 of every odd-numbered year, as prescribed by rules adopted pursuant to chapter 91; and
- (2) Beginning with the July 1, 2015, biennium registration, an additional annual condominium education trust fund fee in an amount equal to the product of \$1.50 times the number of condominium units included in the registered project or association to be dedicated to supporting mediation or voluntary binding arbitration of condominium related disputes. The additional condominium education trust fund fee shall total \$3 per unit until the commission adopts rules pursuant to chapter 91. On June 30 of every odd-numbered year, any unexpended additional amounts paid into the condominium education trust fund and initially dedicated to supporting mediation or voluntary binding arbitration of condominium related disputes, as required by this paragraph, shall be used for educational purposes as provided in section 514B-71(a)(1), (2), and (3).

(b) Each developer shall pay to the department of commerce and consumer affairs the condominium education trust fund fee for each unit in the project, as prescribed by rules adopted by the director of commerce and consumer affairs pursuant to chapter 91. The project shall not be registered and no effective date for a developer’s public report shall be issued until the payment has been made.

(c) Payments of any fees required under this section shall be due on or before the registration due date and shall be nonrefundable ~~[except as specified in subsection (e). Unless acceptance of payments is ceased pursuant to subsection (e), failure].~~ Failure to pay the required fee by the due date shall result in a penalty assessment of ten per cent of the amount due and the association shall not have standing to bring any action to collect or to foreclose any lien for common expenses or other assessments in any court of this State until the amount due, including any penalty, is paid. Failure of an association to pay a fee required under this section shall not impair the validity of any claim of the association for common expenses or other assessments, or prevent the association from defending any action in any court of this State.

(d) The department of commerce and consumer affairs shall allocate the fees collected under this section to the condominium education trust fund established pursuant to section 514B-71. The fees collected pursuant to this sec-

tion shall be administratively and fiscally managed together as one condominium education trust fund established by section 514B-71.

~~[(e) When the condominium education trust fund attains a funding level of \$1,819,971 in any fiscal year, the commission shall either:~~

- ~~(1) Cease accepting payments made by projects and associations at each biennial registration; or~~
- ~~(2) Develop a process to refund monies in excess of the \$1,819,971 fund balance to projects and associations that paid into the fund at applicable biennial registrations, and refund such monies.~~

~~If acceptance of payments is ceased, it shall remain ceased until the funding level falls below \$1,819,971.]”~~

SECTION 8. Act 29, Session Laws of Hawaii 2019, is amended by amending section 18 to read as follows:

“SECTION 18. This Act shall take effect on July 1, 2019; provided that:

- (1) Section 3 shall take effect on June 28, 2019; and
- (2) Sections 7, 8, 10, 11, and 12 of this Act shall take effect on July 1, 2020~~], and shall be repealed on June 30, 2022; provided further that sections 444-26, 444-29, 467-11, 467-16, and 514B-72, Hawaii Revised Statutes, shall be reenacted in the form in which it read prior to the effective date of this Act].”~~

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

SECTION 10. This Act, upon its approval, shall take effect retroactive to July 1, 2020, and shall supersede any contrary amendments made by Act 29, Session Laws of Hawaii 2019.

(Approved August 12, 2020.)