

JAN 23 2009

S.B. NO. 92

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# A BILL FOR AN ACT

RELATING TO STATUTORY REVISION: AMENDING OR REPEALING VARIOUS PROVISIONS OF THE HAWAII REVISED STATUTES AND THE SESSION LAWS OF HAWAII FOR THE PURPOSE OF CORRECTING ERRORS AND REFERENCES, CLARIFYING LANGUAGE, AND DELETING OBSOLETE OR UNNECESSARY PROVISIONS.

**BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:**

PART I

SECTION 1. Section 11-228, Hawaii Revised Statutes, is amended by amending subsection (g) to read as follows:

"(g) The provisions of this section shall not apply to any person who, prior to the commencement of proceedings under this section, has paid or agreed to pay the penalties prescribed by sections ~~[11-193(a)-(5)]~~ 11-213.5 and 11-215(c)."

SECTION 2. Section 11-229, Hawaii Revised Statutes, is amended by amending subsection (e) to read as follows:

"(e) The provisions of this section shall not apply to any person who, prior to the commencement of proceedings under this section, has paid or agreed to pay the penalties prescribed by sections ~~[11-193(a)-(5)]~~ 11-213.5 and 11-215(c)."

SECTION 3. Section 237-31, Hawaii Revised Statutes, is amended to read as follows:



1       "**§237-31 Remittances.** All remittances of taxes imposed by  
2 this chapter shall be made by money, bank draft, check,  
3 cashier's check, money order, or certificate of deposit to the  
4 office of the department of taxation to which the return was  
5 transmitted. The department shall issue its receipts therefor  
6 to the taxpayer and shall pay the moneys into the state treasury  
7 as a state realization, to be kept and accounted for as provided  
8 by law; provided that:

9       (1) The sum from all general excise tax revenues realized  
10           by the State that represents the difference between  
11           \$45,000,000 and the proceeds from the sale of any  
12           general obligation bonds authorized for that fiscal  
13           year for the purposes of the state educational  
14           facilities improvement special fund shall be deposited  
15           in the state treasury in each fiscal year to the  
16           credit of the state educational facilities improvement  
17           special fund; and

18       (2) A sum, not to exceed \$5,000,000, from all general  
19           excise tax revenues realized by the State shall be  
20           deposited in the state treasury in each fiscal year to  
21           the credit of the compound interest bond reserve  
22           fund[; ~~and~~



~~(3) A sum, not to exceed the amount necessary to meet the obligations of the integrated tax information management systems performance-based contract may be retained and deposited in the state treasury to the credit of the integrated tax information management systems special fund. The sum retained by the director of taxation for deposit to the integrated tax information management systems special fund for each fiscal year shall be limited to amounts appropriated by the legislature. This paragraph shall be repealed on July 1, 2005]."~~

SECTION 4. Section 343-5, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) Except as otherwise provided, an environmental assessment shall be required for actions that:

- (1) Propose the use of state or county lands or the use of state or county funds, other than funds to be used for feasibility or planning studies for possible future programs or projects that the agency has not approved, adopted, or funded, or funds to be used for the acquisition of unimproved real property; provided that the agency shall consider environmental factors and



1 available alternatives in its feasibility or planning  
2 studies; provided further that an environmental  
3 assessment for proposed uses under section [~~205-~~  
4 ~~2(d)-(10)]~~ 205-2(d)(11) or [~~+~~205-4.5(a)(13)~~+~~] shall  
5 only be required pursuant to section 205-5(b);

6 (2) Propose any use within any land classified as a  
7 conservation district by the state land use commission  
8 under chapter 205;

9 (3) Propose any use within a shoreline area as defined in  
10 section 205A-41;

11 (4) Propose any use within any historic site as designated  
12 in the National Register or Hawaii Register, as  
13 provided for in the Historic Preservation Act of 1966,  
14 Public Law 89-665, or chapter 6E;

15 (5) Propose any use within the Waikiki area of Oahu, the  
16 boundaries of which are delineated in the land use  
17 ordinance as amended, establishing the "Waikiki  
18 Special District";

19 (6) Propose any amendments to existing county general  
20 plans where the amendment would result in designations  
21 other than agriculture, conservation, or preservation,  
22 except actions proposing any new county general plan



1 or amendments to any existing county general plan  
2 initiated by a county;

3 (7) Propose any reclassification of any land classified as  
4 a conservation district by the state land use  
5 commission under chapter 205;

6 (8) Propose the construction of new or the expansion or  
7 modification of existing helicopter facilities within  
8 the State, that by way of their activities, may  
9 affect:

10 (A) Any land classified as a conservation district by  
11 the state land use commission under chapter 205;

12 (B) A shoreline area as defined in section 205A-41;  
13 or

14 (C) Any historic site as designated in the National  
15 Register or Hawaii Register, as provided for in  
16 the Historic Preservation Act of 1966, Public Law  
17 89-665, or chapter 6E; or until the statewide  
18 historic places inventory is completed, any  
19 historic site that is found by a field  
20 reconnaissance of the area affected by the  
21 helicopter facility and is under consideration



for placement on the National Register or the  
Hawaii Register of Historic Places; and

(9) Propose any:

(A) Wastewater treatment unit, except an individual  
wastewater system or a wastewater treatment unit  
serving fewer than fifty single-family dwellings  
or the equivalent;

(B) Waste-to-energy facility;

(C) Landfill;

(D) Oil refinery; or

(E) Power-generating facility."

SECTION 5. Section 431:6-322, Hawaii Revised Statutes, is  
amended by amending its title to read as follows:

**"§431:6-322 Common trust funds; mutual funds; and  
[+]exchange[+] traded funds."**

SECTION 6. Section 431:19-204, Hawaii Revised Statutes, is  
amended by amending subsection (d) to read as follows:

"(d) The commissioner may issue a certificate of authority  
to transact insurance and reinsurance business as a special  
purpose financial captive insurance company in this State that  
shall be valid through the term of the insurance securitization  
and automatically renewed each April 1 following the date of



1 initial issuance, except as provided for in section 431:19-212,  
2 and upon the commissioner's finding that:

3 (1) The proposed plan of operation provides for a  
4 reasonable and expected successful operation;

5 (2) The terms of the special purpose financial captive  
6 insurance company contract and related transactions  
7 comply with this part; and

8 (3) The insurance regulator of the home domicile of each  
9 counterparty has notified the commissioner in writing  
10 or otherwise provided assurance satisfactory to the  
11 commissioner that it has approved or has not  
12 disapproved the transaction; provided that the  
13 commissioner shall not be precluded from issuing or  
14 renewing a certificate of authority [†]in the event  
15 that[†] the insurance regulator of the home domicile  
16 of a counterparty has not responded with respect to  
17 all or any part of the transaction."

18 SECTION 7. Section 431:19-209, Hawaii Revised Statutes, is  
19 amended by amending subsection (e) to read as follows:

20 "(e) Unless otherwise approved in advance by the  
21 commissioner, a special purpose financial captive insurance  
22 company shall not:



- 1 (1) Issue or otherwise administer primary insurance  
2 contracts;
- 3 (2) Enter into a special purpose financial captive  
4 insurance company contract with a counterparty that is  
5 not licensed or otherwise authorized to transact the  
6 business of insurance or reinsurance in at least its  
7 state or country of domicile;
- 8 (3) Enter into a special purpose financial captive  
9 insurance contract that contains any provision for  
10 payment by the special purpose financial captive  
11 insurance company in discharge of its obligations  
12 under the contract to any person other than the  
13 counterparty or receiver;
- 14 (4) Have any direct obligation to the policyholders or  
15 reinsured of the counterparty; or
- 16 (5) Lend or otherwise invest, or place in custody, trust,  
17 or under management any of its assets with, or to  
18 borrow money or receive a loan from anyone convicted  
19 of a felony, anyone convicted of a criminal offense  
20 involving the conversion or misappropriation of funds,  
21 including fiduciary funds or insurance amounts, or  
22 theft, deceit, fraud, misrepresentation, embezzlement,



1 or [f]corruption, or anyone[+] whom the commissioner  
2 has cause to believe has violated, is violating, or is  
3 about to violate any provision of this code, any order  
4 of the commissioner, or undertakes or plans to  
5 undertake any action that may cause the special  
6 purpose financial captive insurance company to be in a  
7 condition as to render the continuance of the special  
8 purpose financial captive insurance company's business  
9 hazardous to the public or to the holders of the  
10 special purpose financial captive insurance company  
11 contracts or special purpose financial captive  
12 insurance company securities."

13 SECTION 8. Section 451J-7, Hawaii Revised Statutes, is  
14 amended to read as follows:

15 "[f]\$451J-7[+] **Application for licensure.** Any person who  
16 files an application with the department after December 31,  
17 1998, shall be issued a license by the department if the  
18 applicant provides satisfactory evidence to the department that  
19 the applicant is qualified for licensure pursuant to the  
20 requirements of this chapter and meets the following  
21 qualifications:



1           (1) Has completed a master's degree or doctoral degree  
2                   from an accredited educational institution in marriage  
3                   and family therapy or in an allied field related to  
4                   the practice of mental health counseling which  
5                   includes or is supplemented by graduate level course  
6                   work comprising a minimum of thirty-three semester, or  
7                   forty-four quarter hours in the following course  
8                   areas:

9           (A) Marriage and family studies--nine semester or  
10                   twelve quarter hours;

11           (B) Marriage and family therapy studies--nine  
12                   semester or twelve quarter hours;

13           (C) Human development--nine semester or twelve  
14                   quarter hours;

15           (D) Ethical and professional studies--three semester  
16                   or four quarter hours; ~~or~~ and

17           (E) Research--three semester or four quarter hours;

18           (2) Has one year practicum with three hundred hours  
19                   supervised client contact;

20           (3) Completes one thousand hours of direct marriage and  
21                   family therapy, and two hundred hours clinical  
22                   supervision in not less than twenty-four months; and



(4) Has passed the National Marriage and Family Therapy  
Exam in accordance with section 451J-8.

An individual who is a clinical member of the association  
shall be deemed to have met the educational and clinical  
experience requirements of this section."

SECTION 9. Section 846-30.5, Hawaii Revised Statutes, is  
amended to read as follows:

**"§846-30.5 Expiration date.** Every certificate of  
identification issued under this part, whether an original or a  
renewal, shall bear an expiration date which shall be on the  
person's birthday, six years after the year of issuance;  
provided that if the person is a legal nonimmigrant, the  
certificate shall bear an expiration date that is the same as  
the expiration date on the person's [~~Immigration and~~  
~~Naturalization Service~~] U.S. Citizenship and Immigration Services  
departure card (I-94). All certificates of identification  
issued without expiration dates shall expire on December 31,  
1999. To provide for the transition to expiration dates that  
are birthdays of the persons issued certificates, any  
certificate issued to a person with an expiration date other  
than the birthday of that person in the year of expiration shall



1 expire on that person's last birthday immediately preceding the  
2 certificate's stated expiration date."

3 SECTION 10. Section 846E-1, Hawaii Revised Statutes, is  
4 amended by amending the definition of "sexual offense" to read  
5 as follows:

6 ""Sexual offense" means an offense that is:

7 (1) Set forth in section 707-730(1)(a), 707-730(1)(b),  
8 707-730(1)(c), 707-730(1)(d) or (e), 707-731(1)(a),  
9 707-731(1)(b), 707-731(1)(c), 707-732(1)(a), 707-  
10 732(1)(b), 707-732(1)(c), 707-732(1)(d), 707-  
11 732(1)(e), 707-732(1)(f), 707-733(1)(a), 707-733.6,  
12 712-1202(1)(b), or 712-1203(1)(b), but excludes  
13 conduct that is criminal only because of the age of  
14 the victim, as provided in section 707-730(1)(b), or  
15 section 707-732(1)(b) if the perpetrator is under the  
16 age of eighteen;

17 (2) An act defined in section 707-720 if the charging  
18 document for the offense for which there has been a  
19 conviction alleged intent to subject the victim to a  
20 sexual offense;

21 (3) An act that consists of:



1 (A) Criminal sexual conduct toward a minor, including  
2 but not limited to an offense set forth in  
3 section 707-759;

4 (B) Solicitation of a minor who is less than fourteen  
5 years old to engage in sexual conduct;

6 (C) Use of a minor in a sexual performance;

7 (D) Production, distribution, or possession of child  
8 pornography chargeable as a felony under section  
9 707-750, 707-751, or 707-752;

10 (E) Electronic enticement of a child chargeable under  
11 section 707-756[~~r~~] or 707-757[~~r~~ ~~or~~ ~~707-\_\_\_~~] if  
12 the offense was committed with the intent to  
13 promote or facilitate the commission of another  
14 covered offense as defined in this section [846E-  
15 ~~1~~]; or

16 (F) Solicitation of a minor to practice prostitution;

17 (4) A criminal offense that is comparable to or that  
18 exceeds a sexual offense as defined in paragraphs (1)  
19 through (3) or any federal, military, or out-of-state  
20 conviction for any offense that under the laws of this  
21 State would be a sexual offense as defined in  
22 paragraphs (1) through (3); or



(5) An act, as described in chapter 705, that is an attempt, criminal solicitation, or criminal conspiracy to commit one of the offenses designated in paragraphs (1) through (4)."

SECTION 11. Act 9, Session Laws of Hawaii 2008, is amended by amending section 5 to read as follows:

"SECTION 5. This Act shall take effect upon its approval[-]; provided that the amendments made to section 461-1, Hawaii Revised Statutes, by section 3 of this Act, shall not be repealed when section 461-1, Hawaii Revised Statutes, is reenacted on July 1, 2010, pursuant to section 11 of Act 190, Session Laws of Hawaii 2004."

SECTION 12. Act 28, Session Laws of Hawaii 2008, is amended by amending section 43 to read as follows:

"SECTION 43. Upon its approval, this Act shall take effect retroactive to July 1, 2006; provided that:

- (1) Section 3(2) shall be repealed on June 30, 2008;
- (2) Sections 3(3) and [~~23~~] 23 shall take effect on July 1, 2008; and
- (3) The amendments to section 237-24.3, Hawaii Revised Statutes, by section 26 of this Act shall not be repealed when that section is reenacted on December



1           31, 2009, by section 4 of Act 239, Session Laws of  
2           Hawaii 2007."

3           SECTION 13. Act 106, Session Laws of Hawaii 2008, is  
4 amended by amending section 3 to read as follows:

5           "SECTION 3. This Act shall take effect on July 1, 2008,  
6 and shall be repealed on June 30, 2011[-]; provided that section  
7 304A-2251, Hawaii Revised Statutes, shall be reenacted in the  
8 form in which it read on the day before the effective date of  
9 this Act."

10          SECTION 14. Act 120, Session Laws of Hawaii 2008, is  
11 amended by amending section 3 to read as follows:

12          "SECTION 3. This Act shall take effect on July 1, 2008,  
13 and shall be repealed on July 1, 2013[-]; provided that section  
14 431:2-201.5, Hawaii Revised Statutes, shall be reenacted in the  
15 form in which it read on the day before the effective date of  
16 this Act."

17          SECTION 15. Act 128, Session Laws of Hawaii 2008, is  
18 amended by amending section 7 to read as follows:

19          "SECTION 7. This Act shall take effect upon its approval  
20 and shall be repealed on July 1, 2011[-]; provided that sections  
21 711-1109.1(1), 711-1109.2(1), (3), and (5), and 711-1110.5,



1 Hawaii Revised Statutes, shall be reenacted in the form in which  
2 they read on the day before the effective date of this Act."

3 SECTION 16. Act 154, Session Laws of Hawaii 2008, is  
4 amended by amending the prefatory language in section 27 to read  
5 as follows:

6 "SECTION 27. Section [~~626:1-505.5,~~] 626-1, Hawaii Revised  
7 Statutes, is amended by amending subsection (d) of rule 505.5 to  
8 read as follows:"

9 SECTION 17. Act 171, Session Laws of Hawaii 2008, is  
10 amended by amending section 20 to read as follows:

11 "SECTION 20. This Act shall take effect on July 1, 2008;  
12 provided that sections 2 through 11 shall take effect on July 1,  
13 2010; provided further that sections 15 and 16 shall be repealed  
14 on June 30, 2010~~[-]~~; and provided further that sections 287-  
15 20(a) and 291E-61(g), Hawaii Revised Statutes, shall be  
16 reenacted in the form in which they read on the day before the  
17 effective date of this Act."

18 SECTION 18. Act 177, Session Laws of Hawaii 2008, is  
19 amended by amending section 7 to read as follows:

20 "SECTION 7. This Act shall take effect upon its approval,  
21 and shall be repealed two years from the date of its  
22 approval~~[-]~~; provided that section 431:7-101(a) and (b), Hawaii



1 Revised Statutes, shall be reenacted in the form in which it  
2 read on the day before the effective date of this Act."

3 SECTION 19. Act 180, Session Laws of Hawaii 2008, is  
4 amended by amending section 6 to read as follows:

5 "SECTION 6. This Act shall take effect on July 1, 2008 and  
6 shall be repealed on July 1, 2010[-]; provided that sections  
7 586-4(e) and 586-11(a), Hawaii Revised Statutes, shall be  
8 reenacted in the form in which they read on the day before the  
9 effective date of this Act."

10 SECTION 20. Act 212, Session Laws of Hawaii 2008, is  
11 amended by amending section 7 to read as follows:

12 "SECTION 7. This Act shall take effect upon its approval  
13 and shall be repealed on January 1, 2013[-]; provided that  
14 sections 461-1 and 461-14, Hawaii Revised Statutes, are  
15 reenacted in the form in which they read on the day before the  
16 effective date of this Act; and provided further that the  
17 amendments made to section 461-1, Hawaii Revised Statutes, by  
18 this Act, shall not be repealed when section 461-1, Hawaii  
19 Revised Statutes, is reenacted on July 1, 2010, pursuant to  
20 section 11 of Act 190, Session Laws of Hawaii 2004."

21 SECTION 21. Act 226, Session Laws of Hawaii 2008, is  
22 amended by amending section 16 to read as follows:



1       "SECTION 16. This Act shall take effect on July 1, 2008~~[-]~~;  
2       provided that the amendments made to section 437D-8.4(a), Hawaii  
3       Revised Statutes, by this Act, shall not be repealed when  
4       section 437D-8.4, Hawaii Revised Statutes, is reenacted on  
5       December 31, 2022, pursuant to Act 247, Session Laws of Hawaii  
6       2005."

7       SECTION 22. Act 227, Session Laws of Hawaii 2008, is  
8       amended by amending section 5 to read as follows:

9       "SECTION 5. This Act shall take effect upon its approval,  
10       and shall be repealed on June 30, 2011~~[-]~~; provided that section  
11       431:13-103(a), Hawaii Revised Statutes, shall be reenacted in  
12       the form in which it read on the day before the effective date  
13       of this Act."

14       SECTION 23. Act 11, First Special Session Laws of Hawaii  
15       2008, is amended by amending section 15 to read as follows:

16       "SECTION 15. This Act shall take effect on July 1,  
17       2008~~[-]~~; provided that section 2 shall take effect on June 29,  
18       2008."

19       SECTION 24. Chapter 235D, Hawaii Revised Statutes, is  
20       repealed.

21       SECTION 25. Section 237-27.1, Hawaii Revised Statutes, is  
22       repealed.



1       ~~["§237-27.1 Exemption of sale of alcohol fuels. (a)~~

2       ~~There shall be exempted from and excluded from the measure of~~  
3       ~~the taxes imposed by this chapter all of the gross proceeds~~  
4       ~~arising from the sale of alcohol fuels for consumption or use by~~  
5       ~~the purchaser and not for resale.~~

6       ~~(b) As used in this section, "alcohol fuels" means neat~~  
7       ~~biomass-derived alcohol liquid fuel or a petroleum-derived fuel~~  
8       ~~and alcohol liquid fuel mixture consisting of at least ten~~  
9       ~~volume per cent denatured biomass-derived alcohol commercially~~  
10      ~~usable as a fuel to power aircraft, seacraft, spacecraft,~~  
11      ~~automobiles, or other motorized vehicles.~~

12      ~~(c) The director of taxation shall adopt rules pursuant to~~  
13      ~~chapter 91 necessary to administer this section.~~

14      ~~(d) This section shall be repealed on December 31, 2006."]~~

15                               PART II

16       SECTION 26. Section 92-28, Hawaii Revised Statutes, is  
17       amended to read as follows:

18       "**§92-28 State service fees; increase or decrease of.** Any  
19       law to the contrary notwithstanding, the fees or other nontax  
20       revenues assessed or charged by any board, commission, or other  
21       governmental agency may be increased or decreased by the body in  
22       an amount not to exceed fifty per cent of the statutorily



1 assessed fee or nontax revenue, to maintain a reasonable  
2 relation between the revenues derived from such fee or nontax  
3 revenue and the cost or value of services rendered,  
4 comparability among fees imposed by the State, or any other  
5 purpose which it may deem necessary and reasonable; provided  
6 that:

7 (1) The authority to increase or decrease fees or nontax  
8 revenues shall be subject to the approval of the  
9 governor and extend only to the following: chapters  
10 36, 92, 94, 142, 144, 145, 147, 150, 171, 188, 189,  
11 231, 269, 271, 321, 338, 373, 412, 414, 414D, 415A,  
12 417E, 419, 421, 421C, 421H, 421I, 425, 425E, 428, 431,  
13 436E, 437, 437B, 438, 439, 440, 441, 442, 443B, 444,  
14 447, 448, 448E, 448F, 448H, 451A, 451J, 452, 453,  
15 453D, 454, 455, 456, 457, 457A, 457B, 457G, 458, 459,  
16 [460,] 460J, 461, 461J, 462A, 463, 463E, 464, 465,  
17 466, 466K, 467, 467E, 468E, 468L, 468M, 469, 471, 482,  
18 482E, 484, 485A, 501, 502, 505, 514A, 514B, 514E, 572,  
19 574, and 846 (part II);

20 (2) The authority to increase or decrease fees or nontax  
21 revenues under the chapters listed in paragraph (1)  
22 that are established by the department of commerce and



1 consumer affairs shall apply to fees or nontax

2 revenues established by statute or rule;

3 (3) The authority to increase or decrease fees or nontax  
4 revenues established by the University of Hawaii under  
5 chapter 304A shall be subject to the approval of the  
6 board of regents; provided that the board's approval  
7 of any increase or decrease in tuition for regular  
8 credit courses shall be preceded by an open public  
9 meeting held during or prior to the semester preceding  
10 the semester to which the tuition applies;

11 (4) This section shall not apply to judicial fees as may  
12 be set by any chapter cited in this section;

13 (5) The authority to increase or decrease fees or nontax  
14 revenues pursuant to this section shall be exempt from  
15 the public notice and public hearing requirements of  
16 chapter 91; and

17 (6) Fees for copies of proposed and final rules and public  
18 notices of proposed rulemaking actions under chapter  
19 91 shall not exceed 10 cents a page, as required by  
20 section 91-2.5."



1       SECTION 27. Section 235-1, Hawaii Revised Statutes, is  
2 amended by amending the definition of "person totally disabled"  
3 to read as follows:

4       ""Person totally disabled" means a person who is totally  
5 and permanently disabled, either physically or mentally, which  
6 results in the person's inability to engage in any substantial  
7 gainful business or occupation.

8       The disability shall be certified to by (1) a physician or  
9 osteopathic physician licensed under chapter 453 [~~or 460, or~~  
10 ~~both~~], (2) a qualified out-of-state physician who is currently  
11 licensed to practice in the state in which the physician  
12 resides, or (3) a commissioned medical officer in the United  
13 States Army, Navy, Marine Corps, or Public Health Service,  
14 engaged in the discharge of one's official duty. Certification  
15 shall be on forms prescribed by the department of taxation."

16       SECTION 28. Section 246-31, Hawaii Revised Statutes, is  
17 amended by amending subsection (b) to read as follows:

18       "(b) Any person who is totally disabled, as defined in  
19 section 235-1, so long as the person is totally disabled, shall  
20 be exempt from real property taxes on all real property owned by  
21 the person up to, but not exceeding, a taxable value of \$15,000.  
22 The disability shall be certified to by a physician or



1 osteopathic physician licensed under chapter 453 [~~or 460, or~~  
2 ~~both~~], on forms prescribed by the department of taxation."

3 SECTION 29. Section 304A-1752, Hawaii Revised Statutes, is  
4 amended to read as follows:

5 "[+]§304A-1752[+] **Qualifications for residency program.**

6 The school of medicine of the University of Hawaii shall  
7 recommend that two positions within the University of Hawaii  
8 medical residency program be filled each year, in accordance  
9 with this subpart, by persons who have the necessary  
10 qualifications, other than the qualification of residency  
11 training, to take the examination for licensure as physicians or  
12 osteopathic physicians under chapter 453 [~~or osteopathic~~  
13 ~~physicians under chapter 460~~] and who volunteer to enter into  
14 contracts under section [+]304A-1753[+], regardless of whether  
15 they are graduates of the school of medicine of the University  
16 of Hawaii. The department of public safety and the department  
17 of health shall notify the school of medicine of the type of  
18 physicians or osteopathic physicians needed by the correctional  
19 facilities and by rural communities. The school of medicine  
20 shall establish procedures to provide for applications by, and  
21 selection of, persons who are qualified and interested to fill  
22 the positions."



1 SECTION 30. Section 304A-1753, Hawaii Revised Statutes, is  
2 amended to read as follows:

3 "[+]§304A-1753[+] **Contract necessary for filling of**  
4 **positions.** In order to fill a position under this subpart, a  
5 person shall enter into a contract with the school of medicine  
6 of the University of Hawaii stating that the person:

7 (1) Agrees to participate in the residency program for the  
8 minimum period required to qualify for the licensure  
9 examination under chapter 453 [~~er 460~~];

10 (2) Agrees to obtain a permanent license to practice  
11 medicine and surgery or osteopathy under chapter 453  
12 [~~er osteopathy under chapter 460,~~] as soon as possible  
13 following termination of participation in the  
14 residency program;

15 (3) Agrees to serve for two years as:

16 (A) An officer or employee of the department of  
17 public safety who is based in a correctional  
18 facility and whose normal course of duty requires  
19 medical treatment of inmates of the facility,  
20 another correctional facility, or both; or

21 (B) An officer or employee of the department of  
22 health who is employed to provide primary medical



1                   care to residents of and to be based in a rural  
2                   community with a shortage of physicians; and

3           (4)   Agrees to commence fulfilling the requirement under  
4               paragraph (3) immediately following the termination of  
5               participation in the residency program and licensure."

6           SECTION 31. Section 304A-1754, Hawaii Revised Statutes, is  
7 amended to read as follows:

8           "~~[+]§304A-1754[+]~~ **Penalty for breach of contract.** A  
9 person who is placed in the residency program under this  
10 subpart, but who breaches any term of the contract under section  
11 ~~[+]304A-1753[+]~~, shall pay to the State damages of \$10,000;  
12 provided that a contract shall not be deemed breached if the  
13 person has obtained a permanent license to practice medicine and  
14 surgery or osteopathy under chapter 453 ~~[or osteopathy under~~  
15 ~~chapter 460]~~, but could not fulfill the requirements of section  
16 ~~[+]304A-1753(3) and (4)[+]~~ because no employment vacancy existed  
17 in the correctional facilities of the department of public  
18 safety or no shortage of physicians or osteopathic physicians  
19 existed in any rural community and the department of public  
20 safety or the department of health, as applicable, certifies  
21 that no employment vacancy or shortage existed."



1       SECTION 32. Section 304A-1755, Hawaii Revised Statutes, is  
2 amended to read as follows:

3       "[+]§304A-1755[+]   **Residency program; defined.** For the  
4 purpose of this subpart, "residency program" means a graduate  
5 medical education program in a hospital in this State that is  
6 accredited as a medical school residency program by the school  
7 of medicine of the University of Hawaii. The school of medicine  
8 may develop a special residency program for the purpose of this  
9 subpart; provided that the program, upon completion by the  
10 person, qualifies the person to take the licensure examination  
11 under chapter 453 [~~or 460~~]."

12       SECTION 33. Section 321-32, Hawaii Revised Statutes, is  
13 amended to read as follows:

14       "[+]§321-32[+]   **Epidemiological specialists.**  
15 Notwithstanding any other law to the contrary, epidemiological  
16 specialists may perform blood collection by venipuncture or  
17 capillary puncture and other methods of specimen collection,  
18 excluding catheterization, when employed by or acting as an  
19 agent of the department and when done under the direct or  
20 indirect supervision of a physician or osteopathic physician  
21 licensed pursuant to chapter 453 [~~or chapter 460~~]."



SECTION 34. Section 321-313, Hawaii Revised Statutes, is amended to read as follows:

"[f]§321-313[f] **Definition of health care professional.** A health care professional means a physician or osteopathic physician as licensed under chapter 453 [~~and an osteopath as licensed under chapter 460~~]."

SECTION 35. Section 321-373, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) The department shall adopt rules under chapter 91 to implement this part. The rules shall include but not be limited to:

(1) Prohibiting the use of injections, unless administered by a physician or osteopathic physician licensed under chapter 453 [~~or 460~~], or by a registered nurse licensed under chapter 457;

(2) Appropriate restrictions on topical anesthetics;

(3) Prescribing procedures and conditions for sterilization, storage of sterilized equipment, resterilization, and disposal of discarded needles and other equipment;

(4) Creating examination standards; and



(5) Fixing penalties and fines for violations of this part or any of the rules adopted by the department."

SECTION 36. Section 321-374, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

"(b) Physicians or osteopathic physicians holding a valid unrevoked license under chapter 453 [~~er 460~~] are exempt from the requirements of this part."

SECTION 37. Section 321-376, Hawaii Revised Statutes, is amended to read as follows:

"§321-376 **Facial tattoos.** Application of facial tattoos shall be prohibited except by a physician or osteopathic physician licensed under chapter 453 [~~er 460~~], or by a tattoo artist who is under the general supervision of such a physician[~~-~~] or osteopathic physician."

SECTION 38. Section 325-101, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) The records of any person that indicate that a person has a human immunodeficiency virus (HIV) infection, AIDS related complex (ARC), or acquired immune deficiency syndrome (AIDS), which are held or maintained by any state agency, health care provider or facility, physician, osteopathic physician, laboratory, clinic, blood bank, third party payor, or any other



1 agency, individual, or organization in the State shall be  
2 strictly confidential. For the purposes of this part, the term  
3 "records" shall be broadly construed to include all  
4 communication that identifies any individual who has HIV  
5 infection, ARC, or AIDS. This information shall not be released  
6 or made public upon subpoena or any other method of discovery.  
7 Notwithstanding any other provision to the contrary, release of  
8 the records protected under this part shall be permitted under  
9 the following circumstances:

10 (1) Release is made to the department of health in order  
11 that it may comply with federal reporting requirements  
12 imposed on the State. The department shall ensure  
13 that personal identifying information from these  
14 records is protected from public disclosure;

15 (2) Release is made of the records, or of specific medical  
16 or epidemiological information contained therein, with  
17 the prior written consent of the person or persons to  
18 whom the records pertain;

19 (3) Release is made to medical personnel in a medical  
20 emergency only to the extent necessary to protect the  
21 health, life, or well-being of the named party;



1 (4) Release is made from a physician or osteopathic  
2 physician licensed pursuant to chapter 453 [~~er 460~~] to  
3 the department of health to inform the sexual or  
4 needle sharing contact of an HIV seropositive patient  
5 where:

6 (A) There is reason for the physician or osteopathic  
7 physician to believe that the contact is or has  
8 been at risk of HIV transmission as a result of  
9 the index patient having engaged in conduct which  
10 is likely to transmit HIV; and

11 (B) The index patient has first been counseled by the  
12 physician or osteopathic physician of the need  
13 for disclosure and the patient is unwilling to  
14 inform the contact directly or is unwilling to  
15 consent to the disclosure of the index patient's  
16 HIV status by the physician, the osteopathic  
17 physician, or the department of health; provided  
18 that the identity of the index patient is not  
19 disclosed; and provided further that there is no  
20 obligation to identify or locate any contact.

21 Any determination by a physician or osteopathic  
22 physician to disclose or withhold disclosure of



1           an index patient's sexual contacts to the  
2           department of health pursuant to this subsection  
3           which is made in good faith shall not be subject  
4           to penalties under this part or otherwise subject  
5           to civil or criminal liability for damages under  
6           the laws of the State;

- 7       (5) Release is made by the department of health of medical  
8       or epidemiological information from the records to  
9       medical personnel, appropriate county and state  
10      agencies, blood banks, plasma centers, organ and  
11      tissue banks, schools, preschools, day care centers,  
12      or county or district courts to enforce this part and  
13      to enforce rules adopted by the department concerning  
14      the control and treatment of HIV infection, ARC, and  
15      AIDS, or to the sexual or needle sharing contacts of  
16      an HIV seropositive index patient for purposes of  
17      contact notification as provided in paragraph (4);  
18      provided that the identity of the index patient, if  
19      known, shall not be disclosed; provided further that  
20      release of information under this paragraph shall only  
21      be made by confidential communication to a designated  
22      individual charged with compliance with this part;



1 (6) Release of a child's records is made to the department  
2 of human services for the purpose of enforcing  
3 chapters 350 and 587;

4 (7) Release of a child's records is made within the  
5 department of human services and to child protective  
6 services team consultants under contract to the  
7 department of human services for the purpose of  
8 enforcing and administering chapters 350 and 587 on a  
9 need to know basis pursuant to a written protocol to  
10 be established and implemented, in consultation with  
11 the director of health, by the director of human  
12 services;

13 (8) Release of a child's records is made by employees of  
14 the department of human services authorized to do so  
15 by the protocol established in paragraph (7) to a  
16 natural parent of a child who is the subject of the  
17 case when the natural parent is a client in the case,  
18 the guardian ad litem of the child, the court, each  
19 party to the court proceedings, and also to an  
20 adoptive or a prospective adoptive parent, an  
21 individual or an agency with whom the child is placed  
22 for twenty-four hour residential care, and medical



1 personnel responsible for the care or treatment of the  
2 child. When a release is made to a natural parent of  
3 the child, it shall be with appropriate counseling as  
4 required by section 325-16. In no event shall  
5 proceedings be initiated against a child's natural  
6 parents for claims of child abuse under chapter 350 or  
7 harm to a child or to affect parental rights under  
8 chapter 587 solely on the basis of the HIV  
9 seropositivity of a child or the child's natural  
10 parents;

11 (9) Release is made to the patient's health care insurer  
12 to obtain reimbursement for services rendered to the  
13 patient; provided that release shall not be made if,  
14 after being informed that a claim will be made to an  
15 insurer, the patient is afforded the opportunity to  
16 make the reimbursement directly and actually makes the  
17 reimbursement;

18 (10) Release is made by the patient's health care provider  
19 to another health care provider for the purpose of  
20 continued care or treatment of the patient;



1 (11) Release is made pursuant to a court order, after an in  
2 camera review of the records, upon a showing of good  
3 cause by the party seeking release of the records;

4 (12) Disclosure by a physician[~~r~~] or osteopathic physician,  
5 on a confidential basis, of the identity of a person  
6 who is HIV seropositive and who also shows evidence of  
7 tuberculosis infection, to a person within the  
8 department of health as designated by the director of  
9 health for purposes of evaluating the need for or the  
10 monitoring of tuberculosis chemotherapy for the person  
11 and the person's contacts who are at risk of  
12 developing tuberculosis; or

13 (13) Release is made for the purpose of complying with  
14 sections 325-16.5 and 801D-4(b). Nothing in this  
15 section shall be construed to prohibit a victim to  
16 whom information is released pursuant to section 325-  
17 16.5 from requesting the release of information by a  
18 physician, osteopathic physician, or HIV counselor to  
19 a person with whom the victim shares a privileged  
20 relationship recognized by chapter 626; provided that  
21 prior to such release, the person to whom the  
22 information is to be released shall be required to



1 sign a notice of HIV status disclosure advising them  
2 of the confidentiality provisions regarding HIV test  
3 results and the penalties for unlawful disclosure to  
4 any person other than a designated physician,  
5 osteopathic physician, or HIV counselor.

6 As used in this part, unless the context requires  
7 otherwise:

8 "Medical emergency" means any disease-related situation  
9 that threatens life or limb.

10 "Medical personnel" means any health care provider in the  
11 State, as provided in section 323D-2, who deals directly or  
12 indirectly with the identified patient or the patient's  
13 contacts, and includes hospital emergency room personnel, the  
14 staff of the communicable disease division of the department of  
15 health, and any other department personnel as designated by the  
16 director."

17 SECTION 39. Section 327C-1, Hawaii Revised Statutes, is  
18 amended by amending subsections (a), (b), and (c) to read as  
19 follows:

20 "(a) Except as provided in subsection (b), a person shall  
21 be considered dead if, in the announced opinion of a physician  
22 or osteopathic physician licensed under part I of chapter 453,



1 ~~[physician and surgeon licensed under chapter 460,]~~ physician or  
2 osteopathic physician excepted from licensure by section 453-  
3 2(b)(3), or registered nurse licensed under chapter 457, based  
4 on ordinary standards of current medical practice, the person  
5 has experienced irreversible cessation of spontaneous  
6 respiratory and circulatory functions. Death will have occurred  
7 at the time when the irreversible cessation of the functions  
8 first coincided.

9 (b) In the event that artificial means of support preclude  
10 a determination that respiratory and circulatory functions have  
11 ceased, a person shall be considered dead if, in the opinion of  
12 an attending physician or osteopathic physician licensed under  
13 part I of chapter 453, ~~[attending physician and surgeon licensed~~  
14 ~~under chapter 460,]~~ or attending physician or osteopathic  
15 physician excepted from licensure by section 453-2(b)(3), and of  
16 a consulting physician or osteopathic physician licensed under  
17 part I of chapter 453, ~~[consulting physician and surgeon~~  
18 ~~licensed under chapter 460,]~~ or consulting physician or  
19 osteopathic physician excepted from licensure by section 453-  
20 2(b)(3), based on ordinary standards of current medical  
21 practice, the person has experienced irreversible cessation of  
22 all functions of the entire brain, including the brain stem. The



1 opinions of the physicians or osteopathic physicians shall be  
2 evidenced by signed statements. Death will have occurred at the  
3 time when the irreversible cessation of all functions of the  
4 entire brain, including the brain stem, first occurred. Death  
5 shall be pronounced before artificial means of support are  
6 withdrawn and before any vital organ is removed for purposes of  
7 transplantation.

8 (c) When a part of a donor is used for direct organ  
9 transplantation under chapter 327, and the donor's death is  
10 established by determining that the donor experienced  
11 irreversible cessation of all functions of the entire brain,  
12 including the brain stem, the determination shall only be made  
13 under subsection (b). The determination of death in all other  
14 cases shall be made under subsection (a). The physicians or  
15 osteopathic physicians making the determination of death shall  
16 not participate in the procedures for removing or transplanting  
17 a part, or in the care of any recipient."

18 SECTION 40. Section 327E-2, Hawaii Revised Statutes, is  
19 amended by amending the definition of "physician" to read as  
20 follows:

21 ""Physician" means an individual authorized to practice  
22 medicine or osteopathy under chapter 453 [~~or 460~~]."



1       SECTION 41. Section 327G-2, Hawaii Revised Statutes, is  
2 amended by amending the definition of "physician" to read as  
3 follows:

4       ""Physician" means an individual authorized to practice  
5 medicine or osteopathy under chapter 453 [~~or osteopathy under~~  
6 ~~chapter 460~~]."

7       SECTION 42. Section 329-104, Hawaii Revised Statutes, is  
8 amended by amending subsection (c) to read as follows:

9       "(c) This section shall not prevent the disclosure, at the  
10 discretion of the administrator, of investigative information  
11 to:

12       (1) Law enforcement officers, investigative agents of  
13 federal, state, or county law enforcement agencies,  
14 prosecuting attorneys, or the attorney general;  
15 provided that the administrator has reasonable grounds  
16 to believe that the disclosure of any information  
17 collected under this part is in furtherance of an  
18 ongoing criminal investigation or prosecution;

19       (2) Registrants authorized under chapters 448, 453, [460,  
20 and 463E who are registered to administer, prescribe,  
21 or dispense controlled substances; provided that the



1 information disclosed relates only to the registrant's  
2 own patient;

3 (3) Pharmacists, employed by a pharmacy registered under  
4 section 329-32, who request prescription information  
5 about a customer relating to a violation or possible  
6 violation of this chapter; or

7 (4) Other state-authorized governmental prescription-  
8 monitoring programs.

9 Information disclosed to a registrant, pharmacist, or authorized  
10 government agency under this section shall be transmitted by a  
11 secure means determined by the designated agency."

12 SECTION 43. Section 329-121, Hawaii Revised Statutes, is  
13 amended by amending the definition of "physician" to read as  
14 follows:

15 ""Physician" means a person who is licensed to practice  
16 medicine or osteopathic medicine under [~~chapters~~] chapter 453  
17 [~~and 460,~~] and is licensed with authority to prescribe drugs and  
18 is registered under section 329-32. "Physician" does not  
19 include physician's assistant as described in section 453-5.3."

20 SECTION 44. Section 338-1, Hawaii Revised Statutes, is  
21 amended by amending the definition of "physician" to read as  
22 follows:



1        ""Physician" means a person licensed to practice medicine  
2   or osteopathic medicine under part I of chapter 453 or a  
3   practitioner of medicine, osteopathic medicine, or surgery  
4   excepted from licensure by section 453-2(b)(3) [~~or a person~~  
5   ~~licensed to practice osteopathy under chapter 460~~]."

6        SECTION 45. Section 346-67, Hawaii Revised Statutes, is  
7   amended as follows:

8        1. By amending subsection (a) to read:

9        "(a) Public assistance recipients in this State who  
10   receive medical assistance pursuant to this chapter shall be  
11   allowed coverage for medical foods and low-protein modified food  
12   products for the treatment of an inborn error of metabolism;  
13   provided that the medical food or low-protein modified food  
14   product is:

15        (1) Prescribed as medically necessary for the therapeutic  
16        treatment of an inborn error of metabolism; and

17        (2) Consumed or administered enterally under the  
18        supervision of a physician or osteopathic physician  
19        licensed under chapter 453 [~~or 460~~].

20        The department shall adopt rules pursuant to chapter 91 to  
21   effectuate this subsection."

22        2. By amending subsection (c) to read:



1       "(c) For the purposes of this section:

2       "Inborn error of metabolism" means a disease caused by an  
3       inherited abnormality of the body chemistry of a person that is  
4       characterized by deficient metabolism, originating from  
5       congenital defects or defects arising shortly after birth, of  
6       amino acid, organic acid, carbohydrate, or fat.

7       "Low-protein modified food product" means a food product  
8       that:

9       (1) Is specially formulated to have less than one gram of  
10       protein per serving;

11       (2) Is prescribed or ordered by a physician or osteopathic  
12       physician as medically necessary for the dietary  
13       treatment of an inborn error of metabolism; and

14       (3) Does not include a food that is naturally low in  
15       protein.

16       "Medical food" means a food that is formulated to be  
17       consumed or administered enterally under the supervision of a  
18       physician or osteopathic physician and is intended for the  
19       specific dietary management of a disease or condition for which  
20       distinctive nutritional requirements, based on recognized  
21       scientific principles, are established by medical evaluation."



SECTION 46. Section 346C-8, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

"(b) An individual qualifying for long-term care services under the program shall have written certification from a physician or osteopathic physician licensed under chapter 453 [~~or 460,~~] or an advanced practice registered nurse recognized under section 457-8.5, assigned by the board of trustees certifying that the individual requires one or more long-term care services for the period of time during which the individual receives the benefits under the program. The written certification shall specify that the individual:

- (1) Is unable to perform, without substantial assistance from another individual, at least two of six activities of daily living for a period of at least ninety days due to a loss of functional capacity; or
- (2) Requires substantial supervision to protect the individual from threats to health and safety to self or others due to severe cognitive impairment."

SECTION 47. Section 386-1, Hawaii Revised Statutes, is amended by amending the definition of "health care provider" to read as follows:



1        ""Health care provider" means a person qualified by the  
2 director to render health care and service and who has a license  
3 for the practice of:

4        (1)    Medicine or osteopathy under chapter 453;

5        (2)    Dentistry under chapter 448;

6        (3)    Chiropractic under chapter 442;

7        ~~[(4)    Osteopathy under chapter 460;~~

8        ~~+(5)]~~ (4)    Naturopathy under chapter 455;

9        ~~+(6)]~~ (5)    Optometry under chapter 459;

10       ~~+(7)]~~ (6)    Podiatry under chapter 463E; and

11       ~~+(8)]~~ (7)    Psychology under chapter 465."

12       SECTION 48.   Section 386-27, Hawaii Revised Statutes, is  
13 amended by amending subsection (a) to read as follows:

14        "(a)   All health care providers rendering health care and  
15 services under this chapter shall be qualified by the director  
16 and shall remain qualified by satisfying the requirements  
17 established in this section.   The director shall qualify any  
18 person initially who has a license for the practice of:

19        (1)    Medicine or osteopathy under chapter 453;

20        (2)    Dentistry under chapter 448;

21        (3)    Chiropractic under chapter 442;

22        ~~[(4)    Osteopathy under chapter 460;~~



1       ~~(5)~~] (4) Naturopathy under chapter 455;  
2       ~~[(6)]~~ (5) Optometry under chapter 459;  
3       ~~[(7)]~~ (6) Podiatry under chapter 463E; and  
4       ~~[(8)]~~ (7) Psychology under chapter 465."

5       SECTION 49. Section 415A-2, Hawaii Revised Statutes, is  
6       amended by amending the definition of "professional service" to  
7       read as follows:

8       ""Professional service" means any service which lawfully  
9       may be rendered only by persons licensed under chapters 442,  
10      448, 453, 455, 457, 459, ~~[460,]~~ 461, 463E, 465, 466, 471, and  
11      605, and section 554-2."

12      SECTION 50. Section 431:10A-120, Hawaii Revised Statutes,  
13      is amended as follows:

14      1. By amending subsection (a) to read:

15      "(a) Each policy of accident and health or sickness  
16      insurance, other than life insurance, disability income  
17      insurance, and long-term care insurance, issued or renewed in  
18      this State, each employer group health policy, contract, plan,  
19      or agreement issued or renewed in this State, all accident and  
20      health or sickness insurance policies issued or renewed in this  
21      State, all policies providing family coverages as defined in  
22      section 431:10A-103, and all policies providing reciprocal



1 beneficiary family coverage as defined in section 431:10A-601,  
2 shall contain a provision for coverage for medical foods and  
3 low-protein modified food products for the treatment of an  
4 inborn error of metabolism for its policyholders or dependents  
5 of the policyholder in this State; provided that the medical  
6 food or low-protein modified food product is:

7 (1) Prescribed as medically necessary for the therapeutic  
8 treatment of an inborn error of metabolism; and

9 (2) Consumed or administered enterally under the  
10 supervision of a physician or osteopathic physician  
11 licensed under chapter 453 [~~or 460~~].

12 Coverage shall be for at least eighty per cent of the cost of  
13 the medical food or low-protein modified food product prescribed  
14 and administered pursuant to this subsection."

15 2. By amending subsection (c) to read:

16 "(c) For the purposes of this section:

17 "Inborn error of metabolism" means a disease caused by an  
18 inherited abnormality of the body chemistry of a person that is  
19 characterized by deficient metabolism, originating from  
20 congenital defects or defects arising shortly after birth, of  
21 amino acid, organic acid, carbohydrate, or fat.



1 "Low-protein modified food product" means a food product  
2 that:

3 (1) Is specially formulated to have less than one gram of  
4 protein per serving;

5 (2) Is prescribed or ordered by a physician or osteopathic  
6 physician as medically necessary for the dietary  
7 treatment of an inborn error of metabolism; and

8 (3) Does not include a food that is naturally low in  
9 protein.

10 "Medical food" means a food that is formulated to be  
11 consumed or administered enterally under the supervision of a  
12 physician or osteopathic physician and is intended for the  
13 specific dietary management of a disease or condition for which  
14 distinctive nutritional requirements, based on recognized  
15 scientific principles, are established by medical evaluation."

16 SECTION 51. Section 431:10C-308.7, Hawaii Revised  
17 Statutes, is amended by amending subsection (g) to read as  
18 follows:

19 "(g) For the purposes of this section, the term "health  
20 care provider" means any person who is licensed to provide  
21 health care services pursuant to chapters 436E, 442, 448, 452,  
22 453, 455, 457G, 459, [460,] 461J, 463E, and 465."



SECTION 52. Section 431M-1, Hawaii Revised Statutes, is amended by amending the definition of "physician" to read as follows:

"Physician" means a person licensed in the practice of medicine or osteopathy pursuant to chapter 453 [~~er 460,~~ respectively]."

SECTION 53. Section 432:1-609, Hawaii Revised Statutes, is amended as follows:

1. By amending subsection (a) to read:

"(a) All individual and group hospital and medical service plan contracts and medical service corporation contracts under this chapter shall provide coverage for medical foods and low-protein modified food products for the treatment of an inborn error of metabolism for its members or dependents of the member in this State; provided that the medical food or low-protein modified food product is:

(1) Prescribed as medically necessary for the therapeutic treatment of an inborn error of metabolism; and

(2) Consumed or administered enterally under the supervision of a physician or osteopathic physician licensed under chapter 453 [~~er 460~~].



1 Coverage shall be for at least eighty per cent of the cost of  
2 the medical food or low-protein modified food product prescribed  
3 and administered pursuant to this subsection."

4 2. By amending subsection (c) to read:

5 "(c) For the purposes of this section:

6 "Inborn error of metabolism" means a disease caused by an  
7 inherited abnormality of the body chemistry of a person that is  
8 characterized by deficient metabolism, originating from  
9 congenital defects or defects arising shortly after birth, of  
10 amino acid, organic acid, carbohydrate, or fat.

11 "Low-protein modified food product" means a food product  
12 that:

- 13 (1) Is specially formulated to have less than one gram of  
14 protein per serving;
- 15 (2) Is prescribed or ordered by a physician or osteopathic  
16 physician as medically necessary for the dietary  
17 treatment of an inherited metabolic disease; and
- 18 (3) Does not include a food that is naturally low in  
19 protein.

20 "Medical food" means a food that is formulated to be  
21 consumed or administered enterally under the supervision of a  
22 physician or osteopathic physician and is intended for the



1 specific dietary management of a disease or condition for which  
2 distinctive nutritional requirements, based on recognized  
3 scientific principles, are established by medical evaluation."

4 SECTION 54. Section 432D-19, Hawaii Revised Statutes, is  
5 amended by amending subsection (c) to read as follows:

6 "(c) Any health maintenance organization granted a  
7 certificate of authority under this chapter shall not be deemed  
8 to be practicing medicine or osteopathic medicine and shall be  
9 exempt from the provision of chapter 453 relating to the  
10 practice of medicine or osteopathic medicine [~~or chapter 460~~  
11 ~~relating to the practice of osteopathic medicine~~]."

12 SECTION 55. Section 432E-1.5, Hawaii Revised Statutes, is  
13 amended to read as follows:

14 "[~~+~~]**\$432E-1.5**[~~+~~] **Licensure of managed care plan medical**  
15 **directors.** The medical director of any managed care plan  
16 providing services in the State shall hold an unlimited license  
17 to practice medicine or osteopathic medicine in the State  
18 pursuant to chapter 453 [~~or 460~~]."

19 SECTION 56. Section 435E-1, Hawaii Revised Statutes, is  
20 amended by amending the definition of "physician" to read as  
21 follows:



1        "'Physician" or "surgeon" means any person licensed to  
2        practice medicine or osteopathic medicine under chapter 453 [~~or~~  
3        460]; or any professional corporation, partnership, or other  
4        entity whose stockholders or partners are comprised solely of  
5        persons licensed under chapter 453 [~~or 460~~]."

6        SECTION 57. Section 436E-3.5, Hawaii Revised Statutes, is  
7        amended to read as follows:

8        "**§436E-3.5 Physicians and osteopaths not exempt.** Persons  
9        licensed under [~~chapters~~] chapter 453 [~~and 460~~] who desire to  
10       practice acupuncture shall be subject to licensing under this  
11       chapter."

12       SECTION 58. Section 440E-5, Hawaii Revised Statutes, is  
13       amended by amending subsection (b) to read as follows:

14       "(b) No mixed martial arts event shall take place unless  
15       the director has granted a permit for the proposed event. In  
16       addition, the director shall not allow any mixed martial arts  
17       contest unless:

- 18       (1) The contest consists of not more than five rounds of a  
19           duration of not more than five minutes each with an  
20           interval of at least one minute between each round and  
21           the succeeding round;



(2) Each contestant is at least eighteen years of age, is not disqualified from competing in a similar mixed martial arts contest in another jurisdiction at the time of the contest, and does not use stimulants or banned substances before or during the contest;

(3) Each mixed martial arts contestant is examined one hour prior to the contest by at least one physician or osteopathic physician licensed under chapter 453 [~~or 460~~] who shall certify in writing to the referee of the contest that the contestant is physically fit to engage therein;

(4) Each contestant furnishes to the director:

(A) A medical report of a medical examination completed not less than six months before the contest, at the sole expense of the promoter, including the results of HIV and hepatitis testing; and

(B) Previous fight records that establish the contestant's fitness to compete in the contest;

(5) The contest is under the control of a licensed referee in the ring who has at least one year of experience in refereeing a match or exhibition involving mixed



1 martial arts and who has passed a physical examination  
2 by a physician or osteopathic physician licensed under  
3 chapter 453 [~~or 460~~], including an eye examination,  
4 within two years prior to the contest;

5 (6) The promoter has complied with sections 440E-6 and  
6 440E-7; and

7 (7) All licensees have complied with the requirements of  
8 this chapter and rules adopted in accordance with  
9 chapter 91, including any rules or requirements that  
10 protect the safety of the contestants to the extent  
11 feasible."

12 SECTION 59. Section 440E-16, Hawaii Revised Statutes, is  
13 amended to read as follows:

14 "[+]§440E-16[+] Physician[+] or osteopathic physician;  
15 **duties.** Every promoter holding a license to conduct, hold, or  
16 give mixed martial arts contests shall have in attendance at  
17 every contest at least two physicians licensed to practice  
18 medicine or osteopathic medicine in the State under chapter 453  
19 [~~or 460,~~] who shall observe the physical condition of the mixed  
20 martial arts contestants and advise the referee with regard  
21 thereto and, one hour before each contestant enters the ring,  
22 certify in writing as to the physical condition of the



1 contestant to engage in the contest. A report of the medical  
2 examination shall be filed with the director not later than  
3 forty-eight hours after the conclusion of the contest. If a  
4 contestant is knocked down or severely injured during a contest,  
5 or for any other [†]reason[†] as provided in rules adopted by  
6 the director pursuant to chapter 91, at least one physician  
7 shall immediately examine the contestant and file a written  
8 medical opinion with the director within forty-eight hours of  
9 the contest."

10 SECTION 60. Section 451D-2, Hawaii Revised Statutes, is  
11 amended by amending the definitions of "board" and "health care  
12 professional" to read as follows:

13 ""Board" means the board of dental examiners, the Hawaii  
14 medical board, the board of psychology, the board of nursing,  
15 [~~the board of osteopathic examiners,~~] the board of veterinary  
16 examiners, the board of acupuncture, the board of massage  
17 therapy, the board of examiners in naturopathy, the board of  
18 chiropractic examiners, and the board of pharmacy.

19 "Health care professional" includes physicians and surgeons  
20 and others licensed pursuant to [~~chapters~~] chapter 453 [~~and~~  
21 ~~460~~], podiatrists licensed pursuant to chapter 463E, dentists  
22 licensed pursuant to chapter 448, psychologists licensed



1 pursuant to chapter 465, nurses licensed pursuant to chapter  
2 457, veterinarians licensed pursuant to chapter 471,  
3 acupuncturists licensed pursuant to chapter 436E, massage  
4 therapists licensed pursuant to chapter 452, naturopathic  
5 physicians licensed pursuant to chapter 455, chiropractors  
6 licensed pursuant to chapter 442, and pharmacists licensed  
7 pursuant to chapter 461."

8 SECTION 61. Section 457-2, Hawaii Revised Statutes, is  
9 amended by amending the definitions of "the practice of nursing  
10 as a licensed practical nurse" and "the practice of nursing as a  
11 registered nurse" to read as follows:

12 ""The practice of nursing as a licensed practical nurse"  
13 means the performance of those acts commensurate with the  
14 required educational preparation and demonstrated competency of  
15 the individual, whereby the individual shall be accountable and  
16 responsible to the consumer for the quality of nursing care  
17 rendered. The foregoing may include, but not be limited to,  
18 implementation of basic nursing procedures in the plan of care;  
19 or observing and caring for individuals at all levels of the  
20 health spectrum, giving counsel and acting to safeguard life and  
21 health and functioning as a part of the health care team, under  
22 the direction of a dentist, medical doctor[7] or osteopath,



1 registered nurse, [~~osteopath~~,] or podiatrist licensed in  
2 accordance with chapter 448, 453, 457, [~~460~~,] or 463E; or  
3 administration of treatment and medication as prescribed; or  
4 promotion of health maintenance of individuals, families, or  
5 groups; or teaching and supervision of auxiliary personnel.

6 "The practice of nursing as a registered nurse" means the  
7 performance of professional services commensurate with the  
8 educational preparation and demonstrated competency of the  
9 individual having specialized knowledge, judgment, and skill  
10 based on the principles of the biological, physical, behavioral,  
11 and sociological sciences and nursing theory, whereby the  
12 individual shall be accountable and responsible to the consumer  
13 for the quality of nursing care rendered. The foregoing may  
14 include, but not be limited to, observation, assessment,  
15 development, implementation, and evaluation of a plan of care,  
16 health counseling, supervision and teaching of other personnel,  
17 and teaching of individuals, families, and groups in any stage  
18 of health or illness; or administration, supervision,  
19 coordination, delegation, and evaluation of nursing practice; or  
20 provisions of health care to the patient in collaboration with  
21 other members of the health care team as autonomous health care  
22 professionals providing the nursing component of health care; or



1 utilization of reasonable judgment in carrying out prescribed  
2 medical orders of a licensed dentist, medical doctor~~[7]~~ or  
3 osteopath, or podiatrist licensed in accordance with chapter  
4 448, 453, ~~[4607]~~ or 463E or the orders of an advanced practice  
5 registered nurse recognized in accordance with this chapter."

6 SECTION 62. Section 461-1, Hawaii Revised Statutes, is  
7 amended by amending the definition of "licensed physician" to  
8 read as follows:

9 ""Licensed physician" means a physician or osteopathic  
10 physician licensed by the Hawaii medical board pursuant to  
11 chapter 453 ~~[or 460]~~."

12 SECTION 63. Section 461-8, Hawaii Revised Statutes, is  
13 amended by amending subsection (d) to read as follows:

14 "(d) Beginning with the renewal for the licensing biennium  
15 commencing on January 1, 2008, and every biennial renewal  
16 thereafter, each licensee shall have completed thirty credit  
17 hours in continuing education courses within the two-year period  
18 preceding the renewal date, regardless of the licensee's initial  
19 date of licensure; provided that a licensee who has graduated  
20 from an accredited pharmacy school within one year of the  
21 licensee's first license renewal period shall not be subject to  
22 the continuing education requirement for the first license



1 renewal. The board may extend the deadline for compliance with  
2 the continuing education requirement based on any of the  
3 following:

- 4 (1) Illness, as certified by a physician or osteopathic  
5 physician licensed under chapter 453 [~~or 460,~~] or  
6 licensed in the jurisdiction in which the licensee was  
7 treated;
- 8 (2) Military service under extended active duty with the  
9 armed forces of the United States;
- 10 (3) Lack of access to continuing education courses due to  
11 the practice of pharmacy in geographically isolated  
12 areas; and
- 13 (4) Inability to undertake continuing education due to  
14 incapacity, undue hardship, or other extenuating  
15 circumstances."

16 SECTION 64. Section 461J-4, Hawaii Revised Statutes, is  
17 amended by amending subsection (a) to read as follows:

18 "(a) There is established within the department of  
19 commerce and consumer affairs for administrative purposes the  
20 board of physical therapy. The board shall consist of seven  
21 members. Four members shall be physical therapists, one member  
22 shall be a physician, osteopathic physician, or surgeon with a



1 permanent license under chapter 453 [~~or 460~~], or a dentist with  
2 a permanent license under chapter 448, and two members shall be  
3 consumers. All members shall be at least eighteen years of age  
4 and residents of the State."

5 SECTION 65. Section 466J-2, Hawaii Revised Statutes, is  
6 amended by amending subsection (b) to read as follows:

7 "(b) The board shall consist of ten members. The  
8 membership shall be composed of:

- 9 (1) Two persons licensed to practice medicine or  
10 osteopathic medicine pursuant to chapter 453 [~~or 460~~]  
11 and certified by the American Board of Radiology;  
12 (2) Four persons, each with at least five years'  
13 experience and certified in the practice of  
14 radiography, two of whom shall be persons engaged in  
15 the hospital practice of radiography;  
16 (3) One person with at least five years' experience who is  
17 certified and engaged in the practice of radiation  
18 therapy technology;  
19 (4) One person with at least five years' experience, who  
20 is certified and engaged in the practice of nuclear  
21 medicine technology;  
22 (5) One person from the general public; and



(6) The director or the director's designated representative shall be the tenth, ex officio voting member of the board."

SECTION 66. Section 560:5-601, Hawaii Revised Statutes, is amended by amending the definition of "licensed physician" to read as follows:

"Licensed physician" means any person who is licensed to practice medicine or osteopathic medicine in Hawaii under chapter 453 [~~or 460~~]."

SECTION 67. Section 671-1, Hawaii Revised Statutes, is amended to read as follows:

**"§671-1 Definitions.** As used in this chapter:

[~~(1)~~] "Health care provider" means a physician, osteopathic physician, or surgeon licensed under chapter 453, [~~a physician and surgeon licensed under chapter 460,~~] a podiatrist licensed under chapter 463E, a health care facility as defined in section 323D-2, and the employees of any of them. Health care provider shall not mean any nursing institution or nursing service conducted by and for those who rely upon treatment by spiritual means through prayer alone, or employees of such institution or service.



1        [+2+] "Medical tort" means professional negligence, the  
2            rendering of professional service without informed  
3            consent, or an error or omission in professional  
4            practice, by a health care provider, which proximately  
5            causes death, injury, or other damage to a patient."

6        SECTION 68. Section 671-5, Hawaii Revised Statutes, is  
7        amended by amending subsections (b) and (c) to read as follows:

8        "(b) The insurance commissioner shall forward the name of  
9        every health care provider, except a hospital and physician or  
10       an osteopathic physician or surgeon licensed under chapter 453  
11       [~~or an osteopathic physician or surgeon licensed under chapter~~  
12       460] or a podiatrist licensed under chapter 463E, against whom a  
13       settlement is made, an arbitration award is made, or judgment is  
14       rendered to the appropriate board of professional registration  
15       and examination for review of the fitness of the health care  
16       provider to practice the health care provider's profession. The  
17       insurance commissioner shall forward the entire report under  
18       subsection (a) to the department of commerce and consumer  
19       affairs if the person against whom settlement or arbitration  
20       award is made or judgment rendered is a physician or osteopathic  
21       physician or surgeon licensed under chapter 453 [~~or an~~



1 ~~osteopathic physician and surgeon licensed under chapter 460~~ or  
2 a podiatrist licensed under chapter 463E.

3 (c) A failure on the part of any self-insured health care  
4 provider to report as requested by this section shall be grounds  
5 for disciplinary action by the Hawaii medical board[, ~~board of~~  
6 ~~osteopathic examiners,~~] or the state health planning agency, as  
7 applicable. A violation by an insurer shall be grounds for  
8 suspension of its certificate of authority."

9 SECTION 69. Section 671-11, Hawaii Revised Statutes, is  
10 amended as follows:

11 1. By amending subsection (b) to read:

12 "(b) A medical claim conciliation panel shall be formed  
13 for each claim filed pursuant to section 671-12 and after each  
14 panel renders its decision or the claim is otherwise disposed of  
15 it shall be disbanded. Each medical claim conciliation panel  
16 shall consist of one chairperson selected from among persons who  
17 are familiar with and experienced in the personal injury claims  
18 settlement process, one attorney licensed to practice in the  
19 courts of the State and experienced in trial practice, and one  
20 physician, osteopathic physician, or surgeon licensed to  
21 practice under chapter 453 [~~or chapter 460~~]. The chairperson  
22 shall be appointed by the director of the department of commerce



1 and consumer affairs from a list of eligible persons approved by  
2 the chief justice of the supreme court of Hawaii. The attorney  
3 shall be appointed by the chairperson from a list of not less  
4 than thirty-five attorneys experienced in trial practice  
5 submitted annually by the supreme court. The physician,  
6 osteopathic physician, or surgeon shall be appointed by the  
7 chairperson and shall be currently licensed and in good standing  
8 under chapter 453 [~~or under chapter 460~~]."

9 2. By amending subsection (g) to read:

10 "(g) The Hawaii medical board [~~and board of osteopathic~~  
11 ~~examiners~~] shall [~~each~~] prepare a list of physicians,  
12 osteopathic physicians, surgeons, and podiatrists, as the case  
13 may be, along with their respective specialties. These  
14 physicians, osteopathic physicians, and surgeons shall be  
15 eligible to serve as consultants to the panel in their  
16 respective fields. Panel members may consult with other legal,  
17 medical, and insurance specialists."

18 SECTION 70. Section 671-15, Hawaii Revised Statutes, is  
19 amended by amending subsection (a) to read as follows:

20 "(a) Within thirty days after the completion of a hearing,  
21 the medical claim conciliation panel shall file a written  
22 advisory decision with the insurance commissioner who shall



1 thereupon mail copies to all parties concerned, their counsel,  
2 and the representative of each health care provider's liability  
3 insurance carrier authorized to act for such carrier, ~~[and the~~  
4 ~~board of osteopathic examiners,]~~ as appropriate. The insurance  
5 commissioner also shall mail copies of the advisory decision to  
6 the department of commerce and consumer affairs, if the claim is  
7 against a physician, osteopathic physician, or surgeon licensed  
8 under chapter 453 ~~[or an osteopathic physician and surgeon~~  
9 ~~licensed under chapter 460]~~ or a podiatrist licensed under  
10 chapter 463E. The panel shall decide the issue of liability and  
11 shall state its conclusions in substantially the following  
12 language: "We find the health care provider was actionably  
13 negligent in his or her care and treatment of the patient and  
14 we, therefore, find for the claimant"; or "We find the health  
15 care provider was not actionably negligent in his or her care  
16 and treatment of the patient and we, therefore, find for the  
17 health care provider".

18 SECTION 71. Section 671D-4, Hawaii Revised Statutes, is  
19 amended by amending the definition of "physician" to read as  
20 follows:

21 ""Physician" means an individual licensed under chapter 453  
22 ~~[or 460, or both,]~~ or section 463E-1, to practice medicine or



1 surgery or osteopathy or podiatric medicine; an individual  
2 licensed under chapter 448 to practice dentistry or dental  
3 surgery; or any individual who, without authority, holds oneself  
4 out to be so authorized."

5 SECTION 72. Section 707-730, Hawaii Revised Statutes, is  
6 amended by amending subsection (1) to read as follows:

7 "(1) A person commits the offense of sexual assault in the  
8 first degree if:

9 (a) The person knowingly subjects another person to an act  
10 of sexual penetration by strong compulsion;

11 (b) The person knowingly engages in sexual penetration  
12 with another person who is less than fourteen years  
13 old;

14 (c) The person knowingly engages in sexual penetration  
15 with a person who is at least fourteen years old but  
16 less than sixteen years old; provided that:

17 (i) The person is not less than five years older than  
18 the minor; and

19 (ii) The person is not legally married to the minor;

20 (d) The person knowingly subjects to sexual penetration  
21 another person who is mentally defective; or



1 (e) The person knowingly subjects to sexual penetration  
2 another person who is mentally incapacitated or  
3 physically helpless as a result of the influence of a  
4 substance that the actor knowingly caused to be  
5 administered to the other person without the other  
6 person's consent.

7 Paragraphs (b) and (c) shall not be construed to prohibit  
8 practitioners licensed under chapter 453[, ] or 455[, ~~or 460,~~]  
9 from performing any act within their respective practices."

10 SECTION 73. Section 707-731, Hawaii Revised Statutes, is  
11 amended by amending subsection (1) to read as follows:

12 "(1) A person commits the offense of sexual assault in the  
13 second degree if:

14 (a) The person knowingly subjects another person to an act  
15 of sexual penetration by compulsion;

16 (b) The person knowingly subjects to sexual penetration  
17 another person who is mentally incapacitated or  
18 physically helpless; or

19 (c) The person, while employed:

20 (i) In a state correctional facility;

21 (ii) By a private company providing services at a  
22 correctional facility;



1 (iii) By a private company providing community-based  
2 residential services to persons committed to the  
3 director of public safety and having received  
4 notice of this statute;

5 (iv) By a private correctional facility operating in  
6 the State of Hawaii; or

7 (v) As a law enforcement officer as defined in  
8 section 710-1000(13),  
9 knowingly subjects to sexual penetration an imprisoned  
10 person, a person confined to a detention facility, a  
11 person committed to the director of public safety, a  
12 person residing in a private correctional facility  
13 operating in the State of Hawaii, or a person in  
14 custody; provided that paragraph (b) and this  
15 paragraph shall not be construed to prohibit  
16 practitioners licensed under chapter 453[7] or 455[7  
17 ~~or 460~~7] from performing any act within their  
18 respective practices; and further provided that this  
19 paragraph shall not be construed to prohibit a law  
20 enforcement officer from performing a lawful search  
21 pursuant to a warrant or exception to the warrant  
22 clause."



SECTION 74. Section 707-732, Hawaii Revised Statutes, is amended by amending subsection (1) to read as follows:

"(1) A person commits the offense of sexual assault in the third degree if:

(a) The person recklessly subjects another person to an act of sexual penetration by compulsion;

(b) The person knowingly subjects to sexual contact another person who is less than fourteen years old or causes such a person to have sexual contact with the person;

(c) The person knowingly engages in sexual contact with a person who is at least fourteen years old but less than sixteen years old or causes the minor to have sexual contact with the person; provided that:

(i) The person is not less than five years older than the minor; and

(ii) The person is not legally married to the minor;

(d) The person knowingly subjects to sexual contact another person who is mentally defective, mentally incapacitated, or physically helpless, or causes such a person to have sexual contact with the actor;

(e) The person, while employed:



- 1           (i) In a state correctional facility;
- 2           (ii) By a private company providing services at a
- 3                 correctional facility;
- 4           (iii) By a private company providing community-based
- 5                 residential services to persons committed to the
- 6                 director of public safety and having received
- 7                 notice of this statute;
- 8           (iv) By a private correctional facility operating in
- 9                 the State of Hawaii; or
- 10          (v) As a law enforcement officer as defined in
- 11                 section 710-1000(13),
- 12                 knowingly subjects to sexual contact an imprisoned
- 13                 person, a person confined to a detention facility, a
- 14                 person committed to the director of public safety, a
- 15                 person residing in a private correctional facility
- 16                 operating in the State of Hawaii, or a person in
- 17                 custody, or causes the person to have sexual contact
- 18                 with the actor; or
- 19          (f) The person knowingly, by strong compulsion, has sexual
- 20                 contact with another person or causes another person
- 21                 to have sexual contact with the actor.



1 Paragraphs (b), (c), (d), and (e) shall not be construed to  
2 prohibit practitioners licensed under chapter 453[~~r~~] or 455[~~r~~~~or~~  
3 460~~r~~] from performing any act within their respective practices;  
4 provided further that paragraph (e)(v) shall not be construed to  
5 prohibit a law enforcement officer from performing a lawful  
6 search pursuant to a warrant or an exception to the warrant  
7 clause."

8 PART III

9 SECTION 75. Statutory material to be repealed is bracketed  
10 and stricken. New statutory material is underscored.

11 SECTION 76. This Act shall take effect upon approval,  
12 provided that:

13 (1) Section 23 shall take effect retroactive to June 29,  
14 2008;

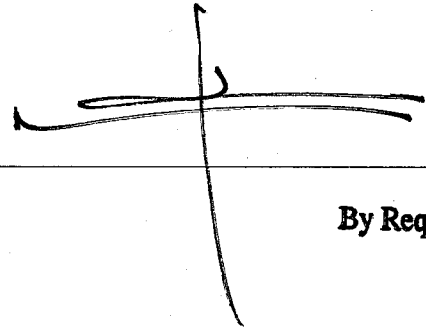
15 (2) Part II shall take effect retroactive to April 3,  
16 2008; provided that sections 58 and 59, amending  
17 sections 440E-5 and 440E-16, Hawaii Revised Statutes,  
18 shall take effect on July 1, 2009; and

19 (3) Section 62, amending section 461-1, Hawaii Revised  
20 Statutes, shall not be repealed when section 461-1,  
21 Hawaii Revised Statutes, is reenacted on July 1, 2010,



1 pursuant to section 11 of Act 190, Session Laws of  
2 Hawaii 2004.  
3

INTRODUCED BY:

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**By Request**



**Report Title:**

Revision Bill

**Description:**

Amends or repeals various provisions of the Hawaii Revised Statutes and the Session Laws of Hawaii for the purpose of correcting errors and references, clarifying language, and deleting obsolete or unnecessary provisions.

