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## DISABILITY AND COMMUNICATION ACCESS BOARD

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February 4, 2016

### TESTIMONY TO THE HOUSE COMMITTEE ON JUDICIARY

House Bill 2448 – Relating to Statutory Revision: Amending Various Provisions of the Hawaii Revised Statutes and the Session Laws of Hawaii for the Purposes of Correcting Errors and References, Clarifying Language, and Deleting Obsolete or Unnecessary Provisions

The Disability and Communication Access Board (DCAB) supports House Bill 2448 – Relating to Statutory Revision. While DCAB appreciates the updating and amending language in used the Hawaii Revised Statutes and the Session Laws of Hawaii, we offer comments related to obsolete terminology being used for corrections made specifically related to people with disabilities and not to other corrections made.

Section 4, line 11 of the bill references people with disabilities using outdated terminology such as “handicapped.” This continues through the end of page 10. Prior to the Americans with Disabilities Act (ADA) in 1990, the disability community began to use “people first language” instead of terminology such as “the handicapped.” The change in language indicates the change in society’s perspective and the way we interact with and treat people more respectfully by acknowledging them as people and not a disabling condition.

For the revisions, the following changes are suggested related to disability:

- Delete the use of “handicapped” throughout the changes made beginning on page 3, line10 and concluding at the end of page 10;
- Replace “handicapped” with “people, person or individual with a disability,” reflecting respect and dignity by referring to people first, and the disability second, instead of “handicapped individual;”
- On page 7, line 19 the term “prosthetic appliance” is defined, change it to “prosthetic device;”
- Page 8 and page 10, use another term in place of “remunerative employment,” such as “self-support” or “self-employment” to describe a different means of earning money compared to “competitive employment;” and
- Amend language on page 10 lines 8-9 to combine “(H) Reader services for the blind, and (I) Interpreter services for the deaf” to currently acceptable terminology such as “provide auxiliary aids or services (i.e., print material in alternate format or American Sign Language interpreters, upon request).” That is more general phrasing that will include and not be limited to people who are blind or deaf that may request auxiliary aids and services to receive effective communication to obtain equal access to services.

Respectfully submitted,

BARBARA FISCHLOWITZ-LEONG  
Chairperson  
Legislative Committee

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LEGISLATIVE REFERENCE BUREAU  
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## Written Testimony

### **HB2448**

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

Testimony by the Legislative Reference Bureau  
Charlotte A. Carter-Yamauchi, Acting Director

Presented to the House Committee on Judiciary

Thursday, February 4, 2016, 2:00 p.m.  
Conference Room 325

Chair Karl Rhoads and Members of the Committee:

Thank you for the opportunity to testify in support of House Bill No. 2448. Bills such as House Bill No. 2448 have come to be known as the "statutory revision bill" and are prepared and submitted by the Legislative Reference Bureau pursuant to our statute revision functions, set forth in chapter 23G of the Hawaii Revised Statutes.

All amendments are intended to be technical in nature to correct errors, omissions, or obsolete law. They either contain no substantive change to the law, or if they do have substantive effect, they are intended to correct the types of errors noted in the memorandum attached to this testimony. Please note that the memorandum explains the rationale for each amendment proposed by this bill. Also, please note that the bill was reviewed prior to introduction by the Office of the Attorney General and no changes were recommended.

The Bureau would be pleased to assist the Committee in preparing the committee report and making any changes to the revision bill that the Committee deems appropriate. Should the Committee have any follow-up questions, please contact Velma Kaneshige, Assistant Director for Revision of Statutes, by phone at ext. 70657 or by email at [kaneshige@hawaii.capitol.gov](mailto:kaneshige@hawaii.capitol.gov).

Attachment

**MEMORANDUM CONCERNING PROPOSED  
STATUTORY REVISIONS FOR THE 2016 REGULAR LEGISLATIVE SESSION  
TO BE CONTAINED IN A BILL ENTITLED  
"A BILL FOR AN ACT RELATING TO STATUTORY REVISION:  
AMENDING VARIOUS PROVISIONS OF  
THE HAWAII REVISED STATUTES AND THE SESSION LAWS OF HAWAII  
FOR THE PURPOSES OF CORRECTING ERRORS AND REFERENCES,  
CLARIFYING LANGUAGE, AND DELETING OBSOLETE OR  
UNNECESSARY PROVISIONS"**

**Prepared by the Legislative Reference Bureau  
Pursuant to Section 23G-20, Hawaii Revised Statutes**

**COMMENT**

The definition of "assault pistol" in section 134-1, HRS, refers to "18 United States Code §921(16)" and "27 Code of Federal Regulations 178.11", respectively, in regards to the definitions of "curio" and "relic" contained in those federal laws. However, 18 United States Code section 921(a)(13), not 18 United States Code section 921(16), pertains to the terms "curio" or "relic". In addition, as part of a reorganization of Title 27 of the Code of Federal Regulations, part 178 was redesignated as part 478. Accordingly, the reference to "18 United States Code §921(16)" should be changed to "18 United States Code section 921(a)(13)" and the reference to "27 Code of Federal Regulations 178.11" should be changed to "27 Code of Federal Regulations section 478.11".

SECTION 1. Section 134-1, Hawaii Revised Statutes, is amended by amending the definition of "assault pistol" to read as follows:

"Assault pistol" means a semiautomatic pistol which accepts a detachable magazine and which has two or more of the following characteristics:

- (1) An ammunition magazine which attaches to the pistol outside of the pistol grip;
- (2) A threaded barrel capable of accepting a barrel extender, flash suppressor, forward hand grip, or silencer;
- (3) A shroud which is attached to or partially or completely encircles the barrel and which permits the shooter to hold the firearm with the second hand without being burned;
- (4) A manufactured weight of fifty ounces or more when the pistol is unloaded;
- (5) A centerfire pistol with an overall length of twelve inches or more; or
- (6) It is a semiautomatic version of an automatic firearm;

but does not include a firearm with a barrel sixteen or more inches in length, an antique pistol as defined in this section, or a curio or relic as those terms are used in 18 United States Code [~~§921(16)~~] section 921(a)(13) or 27 Code of Federal Regulations [~~178.11.~~] section 478.11."

## COMMENT

**Section 201H-37, HRS, refers to "section 3(6) of the United States Housing Act of 1937, as amended" in regards to the Housing Act's definition of "public housing agency". However, section 3(b)(6), not section (3)(6), of the United States Housing Act of 1937, as amended, defines "public housing agency". Accordingly, the reference to "section 3(6) of the United States Housing Act of 1937, as amended" should be changed to "section 3(b)(6) of the United States Housing Act of 1937, as amended".**

SECTION 2. Section 201H-37, Hawaii Revised Statutes, is amended to read as follows:

**"[~~§~~201H-37[~~§~~] Exemption from tax on income and obligations.** Income earned and obligations issued by a nonprofit entity determined to constitute a "public housing agency" pursuant to section [~~3(6)~~] 3(b)(6) of the United States Housing Act of 1937, as amended, and which income and obligations are declared by the United States Department of Housing and Urban Development to be exempt from all taxation imposed by the United States pursuant to section 11(b) of the Act, shall be exempt from all taxation now or hereafter imposed by the State."

## COMMENT

**Part VIII of chapter 329, HRS, is entitled "Electronic Prescription Accountability System". Section 329-101, HRS, which is in part VIII, is entitled "Reporting of dispensation of controlled substances; electronic prescription accountability system; requirements; penalty". However, section 329-101(a), HRS, refers to a controlled substance "electronic accountability prescription system". Accordingly, section 329-101(a), HRS, should be amended by changing the reference from "electronic accountability prescription system" to "electronic prescription accountability system" to reflect the proper name of the system.**

SECTION 3. Section 329-101, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

**"(a) A controlled substance electronic [~~accountability~~] prescription accountability system shall be established within six months of June 18, 1996."**

## COMMENT

Section 347-17, HRS, refers to persons using a "guide dog". Section 347-2.5, HRS, defines the term "service dog", which is used in a number of sections in chapter 347, HRS. Accordingly, section 347-17, HRS, should be amended by changing the reference from "guide dog" to "service dog" to conform to the other sections of chapter 347, HRS. Additional technical nonsubstantive amendments are made for purposes of style and clarity.

SECTION 4. Section 347-17, Hawaii Revised Statutes, is amended to read as follows:

"**§347-17 Driver of vehicle, caution.** Any driver of a vehicle ~~[shall]~~, on approaching a person who is blind or visually handicapped, and is carrying or using an exposed cane or walking stick which is painted white in color or painted white tipped with red, or a person who is blind or visually handicapped and using a ~~[guide]~~ service dog, shall take ~~[such]~~ reasonable precautions before proceeding as may be necessary to avoid an accident or injury to the blind or visually handicapped person."

## COMMENT

The definitions in section 348-2, HRS, are set forth as numbered paragraphs. The numbered paragraph designations should be deleted and the definitions placed in alphabetical order to conform to the customary drafting convention for purposes of clarity and consistency. Further, the subparagraph and clause designations should be changed to paragraph and subparagraph designations, respectively, to reflect the deletion of the paragraph designations. Additional technical nonsubstantive amendments are made for purposes of style, clarity, and consistency.

SECTION 5. Section 348-2, Hawaii Revised Statutes, is amended to read as follows:

"**§348-2 Definitions.** For the purposes of this chapter:  
[~~(14)~~] "Department" means the department of human services.  
[~~(15)~~] "Director" means the director of human services.  
[~~(3)~~ ~~The term "eligible"~~] "Eligible handicapped individual", when used with respect to diagnostic and related services, training, guidance, and placement, means any handicapped individual whose vocational rehabilitation is determined feasible by the department of human services, and when used with respect to other vocational rehabilitation services, means an individual meeting the ~~[above]~~ foregoing

requirements who is also found by the department to require financial assistance with respect thereto, after full consideration of the individual's financial resources, or in the instance of minors the financial resources of the parents, and eligibility for any similar benefit by way of pension, compensation, insurance, or of any other available assistance.

[~~(13)~~] "Establishment of a workshop or rehabilitation facility" means:

[~~(A)~~] (1) In the case of a workshop, the expansion, remodeling, or alteration of existing buildings, necessary to adapt the buildings to workshop purposes or to increase the employment opportunities in workshops, and the acquisition of initial equipment necessary for new workshops or to increase the employment opportunities in workshops; and

[~~(B)~~] (2) In the case of a rehabilitation facility, the expansion, remodeling, or alteration of existing buildings, and initial equipment of [~~such~~] those buildings, necessary to adapt the buildings to rehabilitation facility purposes (subject, however, to [~~such~~] limitations [~~as~~] that the director of human services may by [~~regulations~~] rules prescribe in order to prevent impairment of the objectives of, or duplication of, other federal laws providing federal assistance to states in the construction of [~~such~~] those facilities), and initial staffing thereof.

[~~(1)~~ ~~The term "handicapped"~~] "Handicapped individual" means an individual who is under a physical or mental disability which is stable or slowly progressive and constitutes a substantial handicap to employment, but which is of such a nature that appropriate vocational rehabilitation services may reasonably be expected to render the individual able to engage in a remunerative occupation.

[~~(8)~~ ~~The term "health"~~] "Health maintenance" means payments for medical care for acute conditions occurring in the course of vocational rehabilitation which are not expected to last thirty days.

[~~(7)~~ ~~The term "maintenance"~~] "Maintenance" means payments, not exceeding the cost of subsistence, provided an eligible handicapped individual necessary to derive the benefit of other vocational rehabilitation services being provided to achieve the individual's vocational rehabilitation objective.

[~~(12)~~ ~~The term "nonprofit"~~] "Nonprofit", when used with respect to a rehabilitation facility or a workshop, means a rehabilitation facility and a workshop, respectively, owned and operated by a corporation or association, no part of the net earnings of which inures, or may lawfully inure, to the benefit

of any private shareholder or individual and the income of which is exempt from taxation under section 501(c) of the Internal Revenue Code.

~~[(5) The term "physical"]~~ "Physical restoration" includes:

- ~~[(A)]~~ (1) Corrective surgery or therapeutic treatment necessary to correct or substantially modify a physical or mental condition which is stable or slowly progressive and constitutes a substantial handicap to employment, but is of such a nature that the correction or modification may reasonably be expected to eliminate or substantially reduce the handicap within a reasonable length of time; and includes psychiatric treatment, dentistry, physical therapy, occupational therapy, speech or hearing therapy, treatment of medical complications, and emergencies which are associated with or arise out of physical restoration services or are inherent in the condition under treatment, and other medical services related to rehabilitation;
- ~~[(B)]~~ (2) Necessary hospitalization (either in-patient or out-patient) and nursing care in connection with surgery or treatment specified in ~~[the preceding subparagraph (A)]~~ paragraph (1); and
- ~~[(C)]~~ (3) Prosthetic devices essential to obtaining or retaining employment.

~~[(6) The term "prosthetic"]~~ "Prosthetic appliance" means any appliance designed to support or take the place of a part of the body, or to increase the acuity of a sensory organ.

~~[(10) The term "rehabilitation"]~~ "Rehabilitation facility" means a facility operated for the primary purpose of assisting in the rehabilitation of handicapped individuals:

- ~~[(A)]~~ (1) Which provides one or more of the following types of services:
  - ~~[(i)]~~ (A) Testing, fitting, or training in the use of prosthetic devices;
  - ~~[(ii)]~~ (B) Prevocational or conditioning therapy;
  - ~~[(iii)]~~ (C) Physical or occupational therapy;
  - ~~[(iv)]~~ (D) Adjustment training; or
  - ~~[(v)]~~ (E) Evaluation or control of special disabilities; or
- ~~[(B)]~~ (2) Through which is provided an integrated program of medical, psychological, social, and vocational evaluation and services under competent professional supervision.

~~[(2) The term "remunerative"]~~ "Remunerative occupation" includes employment as an employee or self-employed, practice of a profession, homemaking, or farm and family work for which

payment is in kind rather than cash, sheltered employment and home industry or other homebound work of a remunerative nature.

~~[(9) The term "vocational"]~~ "Vocational rehabilitation" means making an individual able, or increasing the individual's ability to engage in, and placement in, a remunerative occupation through providing the individual needed vocational rehabilitation services.

~~[(4) The term "vocational"]~~ "Vocational rehabilitation services" means:

~~[(A)]~~ (1) Diagnostic and related services (including transportation) incidental to the determination of whether an individual is a handicapped individual, and if so, the individual's eligibility for, and the nature and scope of other vocational rehabilitation services to be provided; and

~~[(B)]~~ (2) The following services provided eligible handicapped individuals needing the services:

~~[(i)]~~ (A) Training;

~~[(ii)]~~ (B) Guidance;

~~[(iii)]~~ (C) Placement;

~~[(iv)]~~ (D) Maintenance, not exceeding the estimated costs of subsistence during vocational rehabilitation;

~~[(v)]~~ (E) Occupational licenses, tools, equipment, initial stocks, and supplies (including equipment and initial stocks and supplies for vending stands), books, and training materials;

~~[(vi)]~~ (F) Transportation (other than provided as diagnostic and related services);

~~[(vii)]~~ (G) Physical restoration;

~~[(viii)]~~ (H) Reader services for the blind;

~~[(ix)]~~ (I) Interpreter services for the deaf;

~~[(x)]~~ (J) Telecommunications, sensory, or other technological aids and devices;

~~[(xi)]~~ (K) Services to family members;

~~[(xii)]~~ (L) Post employment services; and

~~[(xiii)]~~ (M) Other goods and services which will benefit an individual's employability.

~~[(11) The term "workshop"]~~ "Workshop" means a place where any manufacture or handiwork is carried on and which is operated for the primary purpose of providing remunerative employment to severely handicapped individuals who cannot be readily absorbed in the competitive labor market."



## COMMENT

The definitions of "employee" and "secondary boycott" in section 377-1, HRS, set forth paragraph designations, but are not correctly formatted to reflect the paragraph designations. Further, the definitions use paragraph designations (A), (B), etc., which do not comport with the customary drafting convention. Accordingly, the definitions of "employee" and "secondary boycott" in section 377-1, HRS, should be amended to conform to the customary drafting convention for purposes of clarity and consistency. Additional technical nonsubstantive amendments are made for purposes of style, clarity, and consistency.

SECTION 6. Section 377-1, Hawaii Revised Statutes, is amended by amending the definitions of "employee" and "secondary boycott" to read as follows:

"Employee" includes any person, other than an independent contractor, working for another for hire in the State, and shall not be limited to the employees of a particular employer unless the context clearly indicates otherwise; and includes any individual whose work has ceased solely as a consequence of or in connection with any current labor dispute or because of any unfair labor practice on the part of an employer and [~~+(A)~~] who has not [~~refused~~]:

- (1) Refused or failed to return to work upon the final disposition of a labor dispute or a charge of an unfair labor practice by a tribunal having competent jurisdiction of the same or whose jurisdiction was accepted by the employee or the employee's representative[~~, (B) who has not been~~];
- (2) Been found to be committing or a party to any unfair labor practice hereunder[~~, (C) who has not obtained~~];
- (3) Obtained regular and substantially equivalent employment elsewhere[~~;~~]; or [~~+(D) who has not been~~]
- (4) Been absent from the individual's employment for a substantial period of time during which reasonable expectancy of settlement has ceased (except by an employer's unlawful refusal to bargain) and whose place has been filled by another engaged in the regular manner for an indefinite or protracted period and not merely for the duration of a strike or lockout;

but shall not include any individual employed in the domestic service of a family or person at the family's or person's home or any individual employed by the individual's parent or spouse, or any person employed in an executive or supervisory capacity, or any individual employed by any employer employing less than two individuals, or any individual subject to the jurisdiction of the Federal Railway Labor Act or the National Labor Relations

Act, as amended from time to time; provided that the term "employee" includes any individual subject to the jurisdiction of the National Labor Relations Act, as amended from time to time, but over whom the National Labor Relations Board has declined to exercise jurisdiction or has indicated by its decisions and policies that it will not assume jurisdiction.

"Secondary boycott" includes combining or conspiring to cause or threaten to cause injury to one with whom no labor dispute exists, whether by [~~(A) withholding~~]:

(1) Withholding patronage, labor, or other beneficial business intercourse[, ~~(B) picketing, (C) refusing~~];

(2) Picketing;

(3) Refusing to handle, install, use, or work on particular materials, equipment, or supplies[~~,~~]; or [~~(D) by any~~]

(4) Any other unlawful means, in order to bring one against one's will into a concerted plan to coerce or inflict damage upon another."

## COMMENT

**Section 379-3, HRS, refers to "him", "he", and "his". Gender-neutral terms are preferred by the customary drafting convention. Section 379-3, HRS, should be amended by making the section gender-neutral. Additionally, subsection designations may be added to the section for clarity and consistency with the customary drafting convention. An additional technical nonsubstantive amendment is made for purposes of style and clarity.**

SECTION 7. Section 379-3, Hawaii Revised Statutes, is amended to read as follows:

**"§379-3 Advertising.** (a) If any person advertises for, or seeks employees by means of newspapers, posters, letters, radio, television, or by means of any employment agency to work for [~~him~~] that person or the person for whom [~~he~~] that person is acting at any shop, plant, or establishment, while a labor dispute is still in active progress at the shop, plant, or establishment, [~~he~~] that person shall plainly and explicitly mention in the advertisement or solicitation that a labor dispute exists.

(b) The person soliciting or advertising for employees in the manner set forth [~~herein~~] in this section shall use in the advertisement or solicitation [~~his~~] that person's own name, and, if [~~he~~] that person is representing another, the name of the person [~~he~~] that person is representing and at whose direction and under whose authority the solicitation or advertisement is made. The appearance of this name in connection with the

advertisement or solicitation shall be deemed prima facie evidence as to the person responsible for the advertisement or solicitation."

## COMMENT

**Section 380-14(c), HRS, sets forth paragraph designations, but is not correctly formatted to reflect the paragraph designations. Section 380-14(c), HRS, should be amended to conform to the customary drafting convention for purposes of clarity and consistency. Additional technical nonsubstantive amendments are made for purposes of style, clarity, and consistency.**

SECTION 8. Section 380-14, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

"(c) Whenever it is charged that any person has engaged in an unfair labor practice within the meaning of section 377-7(5), (6), (7), (8), and (9), the preliminary investigation of ~~[such]~~ that charge shall be made forthwith and given priority over all other cases except cases of like character in the office where it is filed or to which it is referred. If, after the investigation, the board has reasonable cause to believe the charge is true, it shall petition any circuit court of the State within any circuit where the unfair labor practice in question has occurred, is alleged to have occurred, or wherein the person resides or transacts business, for appropriate injunctive relief pending the final adjudication of the board with respect to ~~[such]~~ that matter. Upon the filing of any such petition, the circuit court shall have jurisdiction to grant such injunctive relief or temporary restraining order as it deems just and proper, notwithstanding any other provision of law or rule of court; provided ~~[further]~~ that no temporary restraining order shall be issued without notice unless a petition alleges that substantial and irreparable injury to the charging party will be unavoidable and the temporary restraining order shall be effective for no longer than five days and will become void at the expiration of ~~[such]~~ that period; provided further that the board shall not apply for any restraining order under section 377-7(5), (6), (7), (8), and (9) if a charge against the employer under section 377-6(2) has been filed and after the preliminary investigation, ~~[it]~~ the board has reasonable cause to believe that the charge is true and that a complaint should issue. Upon the filing of any such petition, the courts shall cause notice thereof to be served upon any person involved in the charge and the person, including the charging party, shall be given an opportunity to appear by counsel and present any relevant testimony; provided ~~[further]~~ that for the purposes of

this subsection, circuit courts shall be deemed to have jurisdiction of a labor organization in:

- (1) [~~in the~~] The circuit in which the organization maintains its principal office~~[-]~~; or
- (2) [~~in any~~] Any circuit in which [~~its~~] the organization's duly authorized officers or agents are engaged in promoting or protecting the interests of employee members. The service of legal process upon [~~such~~] an officer or agent shall constitute service upon the labor organization and make the organization a party to the suit."

### COMMENT

**Section 381-9, HRS, sets forth paragraph designations, but is not correctly formatted to reflect the paragraph designations. Section 381-9, HRS, should be amended to conform to the customary drafting convention for purposes of clarity and consistency. Further, subsection designations may be added to the section for clarity and consistency with the customary drafting convention. Additional technical nonsubstantive amendments are made for purposes of style, clarity, and consistency.**

SECTION 9. Section 381-9, Hawaii Revised Statutes, is amended to read as follows:

**"§381-9 Strikes and lockouts prohibited, when.** (a) It shall be unlawful for any employees of a public utility to call a strike or go out on strike causing or threatening to cause an interruption of public utility service, or for any public utility to lock out its employees when the action would cause or threaten to cause an interruption of public utility service, except as the action may be taken following compliance with this chapter.

(b) It shall be unlawful for any person or persons to instigate, induce, or encourage any other person or persons to engage in any strike or lockout [~~which~~] that would cause an interruption of public utility service in violation of this chapter.

(c) During the term of any collective bargaining agreement, there shall be no lockout by the public utility and there shall be no strike on the part of any employees covered by the agreement, except where:

- (1) [~~a~~] A dispute arises under the agreement concerning the interpretation or application of the terms of the collective bargaining agreement, and the agreement contains no procedure for the settlement of the dispute; or

(2) [~~it~~] In accordance with the terms of the collective bargaining agreement, the parties undertake negotiations for a new agreement or an amendment of the existing agreement pursuant to specific designation in the agreement of a certain time or period for [~~such~~] the negotiations, and no agreement has been reached at the expiration of the time or period, and the agreement does not prohibit strikes or lockouts following [~~such~~] the negotiation and failure to arrive at agreement;  
and the provisions of this chapter for settlement of disputes have first been complied with."

### COMMENT

**Section 383-144, HRS, refers to "he". Gender-neutral terms are preferred by the customary drafting convention. Section 383-144, HRS, should be amended by making the section gender-neutral. An additional technical nonsubstantive amendment is made for the purpose of clarity.**

SECTION 10. Section 383-144, Hawaii Revised Statutes, is amended to read as follows:

**"§383-144 Unlawful disclosures.** If any employee or member of the department of labor and industrial relations, or the referee, in violation of section 383-95, makes any disclosure of information obtained from any employing unit or individual in the administration of this chapter, or if any person who has obtained any list of applicants for work, or of claimants or recipients of benefits, under this chapter, shall use or permit the use of [~~such~~] the list for any political purpose, [~~he~~] that individual shall be fined not less than \$20 nor more than \$200, or imprisoned not more than ninety days, or both."

### COMMENT

**Section 386-6, HRS, refers to "he" and "his". Gender-neutral terms are preferred by the customary drafting convention. Section 386-6, HRS, should be amended by making the section gender-neutral. Additionally, subsection designations may be added to the section for clarity and consistency with the customary drafting convention.**

SECTION 11. Section 386-6, Hawaii Revised Statutes, is amended to read as follows:

**"§386-6 Territorial applicability.** (a) The provisions of this chapter shall be applicable to all work injuries sustained by employees within the territorial boundaries of the State.

(b) If an employee who has been hired in the State suffers work injury, ~~[he]~~ the employee shall be entitled to compensation under this chapter even though the injury was sustained without the State. The right to compensation shall exclude all other liability of the employer for damages as provided in section 386-5. All contracts of hire of employees made within the State shall be deemed to include an agreement to that effect.

(c) If an employee who has been hired without the State is injured while engaged in ~~[his employer's business,]~~ the business of the employee's employer, and is entitled to compensation for the injury under the law of the state or territory where ~~[he]~~ the employee was hired, ~~[he]~~ the employee shall be entitled to enforce against ~~[his]~~ the employee's employer ~~[his]~~ the employee's rights in this State if ~~[his]~~ the employee's rights are such that they can reasonably be determined and dealt with by the director of labor and industrial relations, the appellate board, and the court in this State."

#### COMMENT

**Section 386-8, HRS, refers to "his" and "he". Gender-neutral terms are preferred by the customary drafting convention. Section 386-8, HRS, should be amended by making the section gender-neutral. Further, subsection designations are added to the section for clarity and consistency with the customary drafting convention. Additional technical nonsubstantive amendments are made for the purpose of clarity.**

SECTION 12. Section 386-8, Hawaii Revised Statutes, is amended to read as follows:

**"§386-8 Liability of third person.** (a) When a work injury for which compensation is payable under this chapter has been sustained under circumstances creating in some person other than the employer or another employee of the employer acting in the course of ~~[his]~~ employment a legal liability to pay damages on account thereof, the injured employee or ~~[his]~~ the injured employee's dependents (hereinafter referred to collectively as "the employee") may claim compensation under this chapter and recover damages from ~~[such]~~ that third person.

(b) If the employee commences an action against ~~[such]~~ a third person ~~[he]~~, the employee shall without delay give the employer written notice of the action and the name and location of the court in which the action is brought by personal service

or registered mail. The employer [~~may~~], at any time before trial on the facts, may join as party plaintiff.

(c) If within nine months after the date of the personal injury the employee has not commenced an action against [~~such~~] a third person, the employer, having paid or being liable for compensation under this chapter, shall be subrogated to the rights of the injured employee. Except as limited by chapter 657, the employee may at any time commence an action or join in any action commenced by the employer against [~~such~~] a third person.

(d) No release or settlement of any claim or action under this section is valid without the written consent of both employer and employee. The entire amount of the settlement after deductions for attorney's fees and costs as hereinafter provided[~~7~~] is subject to the employer's right of reimbursement for [~~his~~] the employer's compensation payments under this chapter and [~~his~~] the employer's expenses and costs of action.

(e) If the action is prosecuted by the employer alone, the employer shall be entitled to be paid from the proceeds received as a result of any judgment for damages, or settlement in case the action is compromised before judgment, the reasonable litigation expenses incurred in preparation and prosecution of [~~such~~] the action, together with a reasonable attorney's fee which shall be based solely upon the services rendered by the employer's attorney in effecting recovery both for the benefit of the employer and the employee. After the payment of [~~such~~] the expenses and attorney's fee, the employer shall apply out of the amount of the judgment or settlement proceeds an amount sufficient to reimburse the employer for the amount of [~~his~~] the employer's expenditure for compensation and shall pay any excess to the injured employee or other person entitled thereto.

(f) If the action is prosecuted by the employee alone, the employee shall be entitled to apply out of the amount of the judgment for damages, or settlement in case the action is compromised before judgment, the reasonable litigation expenses incurred in preparation and prosecution of [~~such~~] the action, together with a reasonable attorney's fee which shall be based solely upon the services rendered by the employee's attorney in effecting recovery both for the benefit of the employee and the employer. After the payment of [~~such~~] the expenses and attorney's fee, there shall be applied out of the amount of the judgment or settlement proceeds, the amount of the employer's expenditure for compensation, less [~~his~~] the employer's share of [~~such~~] the expenses and attorney's fee. On application of the employer, the court shall allow as a first lien against the amount of the judgment for damages or settlement proceeds, the amount of the employer's expenditure for compensation, less

~~[his]~~ the employer's share of [such] the expenses and attorney's fee.

(g) If the action is prosecuted both by the employee and the employer, in a single action or in consolidated actions, and they are represented by the same agreed attorney or by separate attorneys, there shall first be paid from any judgment for damages recovered, or settlement proceeds in case the action or actions ~~[be]~~ are settled before judgment, the reasonable litigation expenses incurred in preparation and prosecution of ~~[such]~~ the action or actions, together with reasonable attorney's fees based solely on the services rendered for the benefit of both parties where they are represented by the same attorney, and where they are represented by separate attorneys, based solely upon the service rendered in each instance by the attorney in effecting recovery for the benefit of the party represented. After the payment of ~~[such]~~ the expenses and attorneys' fees, there shall be applied out of the amount of the judgment for damages, or settlement proceeds an amount sufficient to reimburse the employer for the amount of ~~[his]~~ the employer's expenditure for compensation and any excess shall be paid to the injured employee or other person entitled thereto.

(h) ~~[In the event that]~~ If the parties are unable to agree upon the amount of reasonable litigation expenses and the amount of attorneys' fees under this section [then], the [same] expenses and attorneys' fees shall be fixed by the court.

(i) After reimbursement for ~~[his]~~ the employer's compensation payments, the employer shall be relieved from the obligation to make further compensation payments to the employee under this chapter up to the entire amount of the balance of the settlement or the judgment, if satisfied, as the case may be, after deducting the cost and expenses, including attorneys' fees.

(j) The amount of compensation paid by the employer or the amount of compensation to which the injured employee is entitled shall not be admissible in evidence in any action brought to recover damages.

(k) Another employee of the same employer shall not be relieved of ~~[his]~~ that employee's liability as a third party, if the personal injury is caused by ~~[his]~~ that employee's wilful and wanton misconduct.

(l) If the special compensation fund has paid or is liable for any compensation under this chapter, the fund shall be entitled to all the rights and remedies granted an employer under this section; provided that the employer's right to reimbursement for compensation payments and expenses under this chapter shall have priority."



## COMMENT

Section 386-8.5, HRS, defines a number of terms, which are designated as numbered paragraphs. The numbered paragraph designations should be deleted and the definitions placed in alphabetical order to conform to the customary drafting convention for purposes of clarity and consistency. Further, the portion of section 386-8.5, HRS, that defines those terms should be designated as a separate subsection for purposes of style and clarity. Additional technical nonsubstantive amendments are made for purposes of style, clarity, and consistency.

SECTION 13. Section 386-8.5, Hawaii Revised Statutes, is amended to read as follows:

**"§386-8.5 Limits of third party liability.** (a) Section 386-8 and any other law to the contrary notwithstanding, when a work injury for which compensation is payable under this chapter has been sustained, the discussion or furnishing of, or failure to discuss or furnish, or failure to enforce any safety, health, or personal conduct provision to protect employees against work injuries, in any collective bargaining agreement or in negotiations thereon, shall not subject a labor organization representing the injured employee to any civil liability for the injury.

(b) As used in this section~~[, the terms]~~:

"Health provision" includes but is not limited to health inspections and advisory services.

~~[(1)]~~ "Labor organization" means any organization which exists and is constituted for the purposes, in whole or in part, of collective bargaining or dealing with employers, concerning grievances, terms, or conditions of employment, or of other mutual aid or protection and includes both private industry and public employment labor organizations.

"Personal conduct provision" includes but is not limited to contractual language covering sexual harassment or assault and related infliction of emotional distress or invasion of privacy.

~~[(2)]~~ "Safety provision" includes~~[,]~~ but is not limited to~~[,]~~ safety inspections and advisory services~~[- "health provision" includes, but is not limited to, health inspections and advisory services; "personal conduct provision" includes, but is not limited to, contractual language covering sexual harassment or assault and related infliction of emotional distress or invasion of privacy].~~

~~[(b)]~~ (c) No construction design professional who is retained to perform professional services on a construction project or any employee of a construction design professional who is assisting or representing the construction design

professional in the performance of professional services on the site of the construction project shall be liable for any injury on the construction project resulting from the employer's failure to comply with safety standards on the construction project for which compensation is recoverable under this chapter unless the responsibility for the compliance of safety practices is specifically assumed by contract or by other conduct of the construction design professional or any employee of the construction design professional who is assisting or representing the construction design professional in the performance of professional services on the site of the construction project. The limitation of liability provided by this subsection to any construction design professional shall not apply to the negligent preparation of design plans or specifications."

### COMMENT

**Section 386-42, HRS, enumerates the persons who shall be deemed dependents and entitled to income and indemnity benefits under chapter 386, HRS. Section 386-42(a), HRS, presently has two sets of numbered paragraphs, which creates ambiguity as to which paragraph may be intended in any cross reference to any of the paragraphs. The list of enumerated persons should be reformatted as designated paragraphs, and the existing paragraphs changed to subparagraphs, to conform to the customary drafting convention for purposes of clarity and consistency. Further, section 386-42(b), HRS, refers to "he or she". Gender-neutral terms are preferred by the customary drafting convention. Section 386-42(b), HRS, should be amended by making the subsection gender-neutral. Additional technical nonsubstantive amendments are made for purposes of style, clarity, and consistency.**

SECTION 14. Section 386-42, Hawaii Revised Statutes, is amended by amending subsections (a) and (b) to read as follows:

"(a) The following persons, and no others, shall be deemed dependents and entitled to income, and indemnity benefits under this chapter:

- (1) A child who is [~~(1) unmarried~~]:
  - (A) Unmarried and under eighteen years [~~, or (2) unmarried~~];
  - (B) Unmarried and under twenty years if the child is a full-time student at a high school, business school, or technical school, or unmarried and under twenty-two years if the child is a full-time undergraduate student at a college [~~, or (3) unmarried~~];

- (C) Unmarried and incapable of self-support[~~7~~]; or [~~(4) married~~]
    - (D) Married and under eighteen years, if actually dependent upon the deceased;
  - (2) The surviving spouse or reciprocal beneficiary, if either living with the deceased at the time of the injury or actually dependent upon the deceased;
  - (3) A parent or grandparent, if actually dependent upon the deceased; and
  - (4) A grandchild, brother, or sister, if [~~(1) under~~]:
    - (A) Under eighteen years or incapable of self-support[~~7~~]; and [~~(2) actually~~]
    - (B) Actually and wholly dependent upon the deceased.
- (b) A person shall be deemed to be actually dependent upon the deceased, if [~~he or she~~] the deceased contributed all or a substantial portion of the living expenses of [~~such~~] that person at the time of the injury."

#### COMMENT

**Section 386-43(a), HRS, establishes the duration of dependents' weekly benefits. The second paragraph contains numbered items, which are not formatted as subparagraphs. Section 386-43(a), HRS, should be reformatted as designated paragraphs, and the numbered items changed to subparagraphs, to conform to the customary drafting convention and for purposes of clarity and consistency. Further, section 386-43(a) and (b), HRS, refers to "he or she". Gender-neutral terms are preferred by the customary drafting convention. Section 386-43(a) and (b), HRS, should be amended by making the subsections gender-neutral. Additional technical nonsubstantive amendments are made for purposes of style, clarity, and consistency.**

SECTION 15. Section 386-43, Hawaii Revised Statutes, is amended by amending subsections (a) and (b) to read as follows:

- "(a) The weekly benefits to dependents shall continue:
- (1) To a surviving spouse or reciprocal beneficiary, until death, remarriage, marriage, or entry into a new reciprocal beneficiary relationship with two years' compensation in one sum upon remarriage, marriage, or entry into a new reciprocal beneficiary relationship[~~7~~];
  - (2) To or for a child[~~, (1) so~~]:
    - (A) So long as unmarried, until attainment of the age of eighteen[~~, or (2) so~~];
    - (B) So long as unmarried, until attainment of the age of twenty if the child is a full-time student at a high school, business school, technical school,

or unmarried and under twenty-two years if the child is a full-time undergraduate student at a college~~[, or (3) so]~~;

(C) So long as unmarried, until termination of the child's incapability of self-support~~[,]~~; or ~~[(4) until]~~

(D) Until marriage, except that in the case of a married child under eighteen, weekly benefits shall continue during the period of actual dependency until attainment of the age of eighteen~~[,]~~;

(3) To a parent or grandparent, for the duration, whether continuous or not, of ~~[such]~~ the actual dependency, provided that the amount of the weekly benefits shall at no time exceed the amount payable at the time of death~~[,]~~; and

(4) To or for a grandchild, brother, or sister, for the period in which ~~[he or she]~~ that grandchild, brother, or sister remains actually and wholly dependent until attainment of the age of eighteen or termination of the incapability of self-support.

(b) The aggregate weekly benefits payable on account of any one death shall not exceed the product of ~~[312]~~ three hundred twelve times the effective maximum weekly benefit rate prescribed in section 386-31, but this limitation shall not apply with respect to benefits to a surviving spouse or reciprocal beneficiary who is physically or mentally incapable of self-support and unmarried as long as ~~[he or she]~~ that surviving spouse or reciprocal beneficiary remains in that condition and to benefits to a child and to benefits to an unmarried child over eighteen incapable of self-support as long as ~~[he or she]~~ that unmarried child is otherwise entitled to ~~[such]~~ compensation."

## COMMENT

The definition of "benefit year" in section 392-3, HRS, sets forth paragraph designations, but is not correctly formatted to reflect the paragraph designations. The definition of "benefit year" should be amended to conform to the customary drafting convention for purposes of clarity and consistency. Additional technical nonsubstantive amendments are made for purposes of style, clarity, and consistency.

SECTION 16. Section 392-3, Hawaii Revised Statutes, is amended by amending the definition of "benefit year" to read as follows:

"Benefit year" with respect to any individual means the one-year period beginning with the first day of the first week of disability with respect to which the individual first files a valid claim for temporary disability benefits. A subsequent benefit year is the one-year period following a preceding benefit year, beginning either [~~A~~] with the first [~~day~~];

- (1) Day of the first week of disability with respect to which the individual files a subsequent claim for temporary disability benefits[~~7~~]; or [~~B~~] ~~with the first workday~~
- (2) Workday following the expiration of the preceding benefit year if a disability for which temporary disability benefits are payable during the last week of the preceding benefit year continues and the individual is eligible for further benefit payments."

## COMMENT

**Section 460J-2(a), HRS, refers to "the chairperson of the department of entomology of the college of tropical agriculture and human resources of the University of Hawaii". As part of the reorganization of the college of tropical agriculture and human resources of the University of Hawaii, the departments of entomology and plant pathology merged to form the department of plant and environmental protection services. Accordingly, section 460J-2(a), HRS, should be amended by changing "department of entomology" to "department of plant and environmental protection sciences". An additional technical nonsubstantive amendment is made for purposes of style and clarity.**

SECTION 17. Section 460J-2, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) There shall be a pest control board of nine members. Six members of the board shall be appointed by the governor; of which four shall have been for a period of not less than five years preceding the date of their appointment, licensed pest control operators actively engaged in the business of pest control; and two shall be public members. Three members of the board shall serve on an ex officio, voting basis: the chairperson of the board of agriculture or the chairperson's representative, the director of health or the director's representative, and the chairperson of the department of [~~entomology~~] plant and environmental protection sciences of the college of tropical agriculture and human resources of the University of Hawaii or the chairperson's representative. No two members of the board shall be employed by or associated with the same business firm engaged in pest control."

## COMMENT

**Section 601-2(b)(2), HRS, sets forth subparagraph designations, but is not correctly formatted to reflect the subparagraph designations. Section 601-2(b)(2), HRS, should be amended to conform to the customary drafting convention for purposes of clarity and consistency. Additional technical nonsubstantive amendments are made for purposes of style, clarity, and consistency.**

SECTION 18. Section 601-2, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

"(b) The chief justice shall possess the following powers, subject to rules as may be adopted by the supreme court:

- (1) To assign circuit judges from one circuit to another;
- (2) In a circuit court with more than one judge, [~~(A)~~] to make:
  - (A) Make assignments of calendars among the circuit judges for a period as the chief justice may determine and, as deemed advisable from time to time, to change assignments of calendars or portions thereof (but not individual cases) from one judge to another~~[,]~~; and [~~(B) to appoint~~]
  - (B) Appoint one of the judges, for a period as the chief justice may determine, as the administrative judge to manage the business of the court, subject to the rules of the supreme court and the direction of the chief justice;
- (3) To prescribe for all of the courts a uniform system of keeping and periodically reporting statistics of their business;
- (4) To procure from all of the courts estimates for their appropriations; with the cooperation of the representatives of the court concerned, to review and revise them as the chief justice deems necessary for equitable provisions for the various courts according to their needs and to present the estimates, as reviewed and revised by the chief justice, to the legislature as collectively constituting a unified budget for all of the courts;
- (5) To exercise exclusive authority over the preparation, explanation, and administration of the judiciary budget, programs, plans, and expenditures, including without limitation policies and practices of financial administration and the establishment of guidelines as to permissible expenditures, provided that all expenditures of the judiciary shall be in conformance with program appropriations and provisions of the

- legislature, and all powers of administration over judiciary personnel that are specified in title 7; and
- (6) To do all other acts that may be necessary or appropriate for the administration of the judiciary."

## COMMENT

**Section 603-21.7, HRS, sets forth paragraph designations, but is not correctly formatted to reflect the paragraph designations. Further, section 603-21.7, HRS, uses paragraph designations (A), (B), etc., which do not comport with the customary drafting convention. Accordingly, section 603-21.7, HRS, should be amended to conform to the customary drafting convention for purposes of clarity and consistency. Additional technical nonsubstantive amendments are made for purposes of style, clarity, and consistency.**

SECTION 19. Section 603-21.7, Hawaii Revised Statutes, is amended to read as follows:

"**§603-21.7 Nonjury cases.** The several circuit courts shall have jurisdiction, without the intervention of a jury except as provided by statute, as follows:

- ~~[(+a)]~~ (1) Of actions or proceedings:
- ~~[(+1)]~~ (A) For the determination and declaration of heirs of deceased persons, which jurisdiction shall be in addition to the probate jurisdiction of the court;
- ~~[(+2)]~~ (B) For the admeasurement of dower and curtesy, or the partition of real estate; and
- ~~[(+3)]~~ (C) For enforcing and regulating the execution of trusts, whether the trusts relate to real or personal estate, for the foreclosure of mortgages, for the specific performance of contracts, and except when a different provision is made, they shall have original and exclusive jurisdiction of all other cases in the nature of suits in equity, according to the usages and principles of courts of equity; and
- ~~[(+b)]~~ (2) Of actions or proceedings in or in the nature of habeas corpus, prohibition, mandamus, quo warranto, and all other proceedings in or in the nature of applications for writs directed to courts of inferior jurisdiction, to corporations and individuals, as may be necessary to the furtherance of justice and the regular execution of the law."

## COMMENT

Section 603-36(1), HRS, refers to "section 603-21.5(2)", HRS, in regards to jurisdiction of actions involving penalties and forfeitures. However, section 603-21.5, HRS, is divided into subsections, and subsection (a)(2) relates to actions for penalties and forfeitures. Accordingly, the reference to "section 603-21.5(2)" should be changed to "section 603-21.5(a)(2)". Additional technical nonsubstantive amendments are made for the purpose of clarity.

SECTION 20. Section 603-36, Hawaii Revised Statutes, is amended to read as follows:

**"§603-36 Actions and proceedings, where to be brought.**

Actions and proceedings of a civil nature within the jurisdiction of the circuit courts shall be brought as follows:

- (1) Actions described in section [~~603-21.5(2)~~] 603-21.5(a)(2) shall be brought in the circuit where it is alleged the penalty or forfeiture was incurred;
- (2) Actions in the nature of ejectment or trespass quare clausum fregit or to quiet title to or partition real property shall be brought in the circuit in which the real property in question is situated; provided that if the real property, partition of which is sought, lies in more than one circuit, the action may be brought in any circuit in which the [~~same~~] real property or any part thereof is situated;
- (3) Proceedings concerning trusts and the estates of decedents, missing persons, protected persons, minors, and incapacitated persons[~~7~~] shall be brought as prescribed by chapter 560;
- (4) Applications for writs directed to courts of inferior jurisdiction or for writs of quo warranto[~~7~~] shall be made in the circuit in which the alleged occasion for relief by any such writ arises; provided that in case any such writ is necessary in the prosecution or furtherance of any action or proceeding already begun or pending before any circuit court, the court before which the action or proceeding has been begun or is pending may issue the writ even though the alleged occasion for relief arose in another circuit; and
- (5) Actions other than those specified [~~above~~] in paragraphs (1) to (4) shall be brought in the circuit where the claim for relief arose or where the defendant is domiciled; provided if there is more than one defendant, then the action shall be brought in the circuit in which the claim for relief arose unless a majority of the defendants are domiciled in another circuit, whereupon the action may be brought in the



circuit where the majority of the defendants are domiciled."

## COMMENT

**Section 606-4, HRS, consists of three paragraphs, which are not designated as subsections. Section 606-4, HRS, may be amended by adding subsection designations for clarity and consistency with the customary drafting convention. Additional technical nonsubstantive amendments are made for the purpose of clarity.**

SECTION 21. Section 606-4, Hawaii Revised Statutes, is amended to read as follows:

"**§606-4 Custody; disposition of exhibits.** (a) The clerks of the supreme[7] court, intermediate appellate court, circuit[7] courts, and district courts shall have the custody of all records, books, papers, moneys, exhibits, and other things pertaining to their respective courts.

(b) The attorney of the party who introduced the exhibits or things in evidence or left them in the custody of the court, or the party, if not represented by any attorney, shall remove them from the court within six months after the final termination of the action to which the exhibits or things are related. The clerks shall have the authority and power, upon the written approval of a judge of the court given in particular actions or proceedings, to sell, destroy, or otherwise dispose of exhibits and things marked for identification, other than original files belonging to other actions, which have come into their possession or custody under this section, when [~~such~~] those exhibits or things have not been already removed by their owners or by the attorneys representing the owners and when more than six months has elapsed since the final termination of the action to which the exhibits or things are related.

(c) All moneys received from sales under this section shall be forthwith deposited with the state director of finance as government realizations."

## COMMENT

**Section 607-8(b), HRS, sets forth paragraph designations, but is not correctly formatted to reflect the paragraph designations. Section 607-8(b), HRS, should be amended to conform to the customary drafting convention for purposes of clarity and consistency. Additional technical nonsubstantive amendments are made for purposes of style, clarity, and consistency.**

SECTION 22. Section 607-8, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

"(b) Anything in this section or any other law to the contrary notwithstanding, when any process or subpoena is served by a subordinate of the sheriff or chief of police, it shall be illegal for the sheriff or chief of police:

- (1) [~~if~~] If and so long as the sheriff or chief of police is being paid a salary by the State or the county, to receive or collect from the subordinate any portion of the fees, mileage, or other expenses collected by the subordinate~~[-]~~; or
- (2) [~~if~~] If and so long as the sheriff or chief of police is not being paid any salary, to collect or receive from the subordinate more than ten per cent of the fees accruing from the service, or any portion of the mileage or other expenses collected by the subordinate.

Where a subpoena is served in behalf of the State or any county by a nonsalaried subordinate of the sheriff or chief of police, the regular fee for the service shall be payable to the subordinate. Nothing in this section shall be deemed to prohibit the police commission of any county from requiring that all fees, mileage, and expenses be paid into a police benefit fund."

## COMMENT

**Section 607-14.7, HRS, sets forth a schedule for attorney's fees consisting of a series of unnumbered paragraphs. Section 607-14.7, HRS, may be amended by adding paragraph designations to the fee schedule for the purpose of clarity. Additional technical nonsubstantive amendments are made for purposes of style, clarity, and consistency.**

SECTION 23. Section 607-14.7, Hawaii Revised Statutes, is amended to read as follows:

"[~~§~~]**§607-14.7[~~1~~]** **Attorney's fees, costs, and expenses; judgment creditors.** In addition to any other attorney's fees, costs, and expenses which may or are required to be awarded, and notwithstanding any law to the contrary, the court in any civil action may award to a judgment creditor, from a judgment debtor, reasonable attorney's fees, costs, and expenses incurred by the judgment creditor in obtaining or attempting to obtain satisfaction of a money judgment, whether by execution, examination of judgment debtor, garnishment, or otherwise. The court may award attorney's fees [~~which~~] that it determines [~~is~~]

are reasonable, but shall not award fees in excess of the following schedule:

- (1) [~~25~~] Twenty-five per cent on the first \$1,000 or fraction thereof[~~-~~];
- (2) [~~20~~] Twenty per cent on the second \$1,000 or fraction thereof[~~-~~];
- (3) [~~15~~] Fifteen per cent on the third \$1,000 or fraction thereof[~~-~~];
- (4) [~~10~~] Ten per cent on the fourth \$1,000 or fraction thereof[~~-~~];
- (5) [~~5~~] Five per cent on the fifth \$1,000 or fraction thereof[~~-~~]; and
- (6) 2.5 per cent on any amount in excess of \$5,000.

The [~~above~~] fees shall be assessed on the amount of judgment, exclusive of costs and all other attorney's fees."

### COMMENT

**Section 607-21, HRS, refers to "his" and "he". Gender-neutral terms are preferred by the customary drafting convention. Section 607-21, HRS, should be amended by making the section gender-neutral. Additional technical nonsubstantive amendments are made for the purpose of clarity.**

SECTION 24. Section 607-21, Hawaii Revised Statutes, is amended to read as follows:

**"§607-21 Expense of bond.** Any receiver, assignee, guardian, trustee, committee, personal representative, commissioner, or other fiduciary required by law or the order of any court to give a bond, or other obligation as such, may include as a part of the lawful and chargeable expense of executing [~~his~~] the individual's trust [~~such~~] a reasonable sum, to be paid a company authorized under the laws of the State to become surety on [~~such~~] the bond or obligation[~~-~~] for becoming [~~his~~] the individual's surety thereon, as may be allowed by the court in which [~~he~~] the individual is required to account, not exceeding one per cent a year on the amount of the bond."

### COMMENT

**Section 624-41, HRS, sets forth paragraph designations, but is not correctly formatted to reflect the paragraph designations. Moreover, subsection designations may be added to the section for clarity. Section 624-41, HRS, should be amended to conform to the customary drafting convention for purposes of clarity and consistency. Further, section 624-41, HRS, refers to "his" and "he". Gender-neutral terms are preferred by the customary drafting**

convention. Section 624-41, HRS, should be amended by making the section gender-neutral. Additional technical nonsubstantive amendments are made for purposes of style, clarity, and consistency.

SECTION 25. Section 624-41, Hawaii Revised Statutes, is amended to read as follows:

"**§624-41 Action for.** (a) A person who, before action, ~~[is desirous of perpetuating his]~~ desires to perpetuate the person's own testimony or the testimony of any other person, may proceed in accordance with the rules of court or may bring a civil action in the circuit court of any circuit in which it is fair and equitable to the parties that the matter be heard, setting forth:

- (1) ~~[that]~~ That the plaintiff expects to be a party to an action cognizable in a court of this State but is presently unable to bring it or cause it to be brought~~[.]~~;
  - (2) ~~[the]~~ The subject matter of the expected action and ~~[his]~~ the plaintiff's interest therein~~[.]~~;
  - (3) ~~[the]~~ The facts which ~~[he]~~ the plaintiff desires to establish by the proposed testimony and ~~[his]~~ the plaintiff's reasons for desiring to perpetuate it~~[.]~~;
  - (4) ~~[the]~~ The names of the persons ~~[he]~~ the plaintiff expects will be adverse parties and their addresses~~[.]~~; and
  - (5) ~~[the]~~ The names and addresses of the persons to be examined and the substance of the testimony ~~[which he]~~ that the plaintiff expects to elicit from each; and
- praying for an order authorizing the plaintiff to take the depositions of the persons to be examined named in the action, for the purpose of perpetuating their testimony.

(b) Personal service shall be made on the expected adverse parties as in other civil actions. In case service cannot be made in the State, service may be made as provided by sections 634-24 and 634-25, but if an action is brought under this section, service shall not be made by publication."

## COMMENT

Section 633-34, HRS, refers to section 607-17, HRS. However, Act 200, Session Laws of Hawaii 1993, repealed section 607-17, HRS. Accordingly, section 633-34, HRS, should be amended by deleting the reference to section 607-17, HRS. An additional technical nonsubstantive amendment is made for the purpose of clarity.

SECTION 26. Section 633-34, Hawaii Revised Statutes, is amended to read as follows:

**"§633-34 Award of costs.** In any action pursuant to this chapter, the award of costs is in the discretion of the court, which may include therein the reasonable cost of bonds and undertakings, and other reasonable expenses incident to the action, incurred by either party. No attorneys' fees or commissions shall be allowed or awarded under ~~[sections]~~ section 607-14 ~~[and 607-17]~~ by any judgment of the small claims division."

### COMMENT

**Section 634-23(4), HRS, sets forth subparagraph designations, but is not correctly formatted to reflect the subparagraph designations. Section 634-23(4), HRS, should be amended to conform to the customary drafting convention for purposes of clarity and consistency. Additional technical nonsubstantive amendments are made to section 634-23, HRS, for purposes of style, clarity, and consistency.**

SECTION 27. Section 634-23, Hawaii Revised Statutes, is amended to read as follows:

**"§634-23 Joinder of unknown persons; service when defendant unknown or absent.** Where an action or proceeding involves or concerns any property, tangible or intangible, within the jurisdiction of a circuit court, or any legal or equitable estate, right or interest, vested or contingent, in any such property, or any status or res within the jurisdiction of a circuit court:

- (1) Any person having a claim, interest, or concern so as to be a necessary or proper party, who cannot be identified or whose name is unknown to the plaintiff, may be made party to the action or proceeding as provided by the rules of court~~[-]~~;
- (2) If a defendant is unknown or does not reside within the State or if, after due diligence, the defendant cannot be served with process within the State, and the facts shall appear by affidavit to the satisfaction of the court, it may order that service be made as provided by section 634-24 or by publication, as may be appropriate; provided that service by publication shall not be valid unless~~[-]~~ it is shown to the satisfaction of the court that service cannot be made as provided by section 634-24. The affidavit required by this paragraph shall set forth facts based upon the personal knowledge of the affiant

- concerning the methods, means, and attempts made to locate and effect personal service on the defendant and any other pertinent facts~~[-]~~;
- (3) Service by publication shall be made in at least one newspaper published in the State and having a general circulation in the circuit in which the action or proceeding has been instituted, in ~~[such]~~ a manner and for ~~[such]~~ a time as the court may order, but not less than once in each of four successive weeks, the last publication to be not less than twenty-one days prior to the return date stated therein unless a different time is prescribed by order of the court. If the action or proceeding concerns real property, the court shall order additional notice by posting a copy of the summons upon the property~~[-]~~;
- (4) Any adjudication ~~[shall]~~, as regards a defendant served by publication pursuant to this section, or served as provided by section 634-24, shall affect only the property, status or res which is the subject of the action, unless the:
- (A) ~~[the defendant]~~ Defendant appears in the action and defends on the merits, in which case the defendant shall be liable to a personal judgment with respect to the claim so defended, including in the case of a foreclosure action a deficiency judgment~~[-]~~; or
- (B) ~~[the service]~~ Service is authorized by section 634-25 or other provision of law, in which case the defendant shall be liable to any judgment authorized by ~~[such]~~ that law~~[-]~~; and
- (5) Nothing ~~[herein contained]~~ in this section limits or affects the right to serve any process in any other manner now or hereafter provided by law or rule of court."

## COMMENT

**Section 634-30, HRS, sets forth paragraph designations, but is not correctly formatted to reflect the paragraph designations. Section 634-30, HRS, should be amended to conform to the customary drafting convention for purposes of clarity and consistency. Further, section 634-30, HRS, refers to "he" and "his". Gender-neutral terms are preferred by the customary drafting convention. Section 634-30, HRS, should be amended by making the section gender-neutral. Additional technical nonsubstantive amendments are made for purposes of style, clarity, and consistency.**

SECTION 28. Section 634-30, Hawaii Revised Statutes, is amended to read as follows:

"[~~§~~§634-30[~~§~~] **Organizations and associations, service of process on; judgment.** When two or more persons associate and act, whether for profit or not, under a common name, including associating and acting as a labor organization or employer organization, whether the common name comprises the names of the persons or not, they may sue in or be sued by the common name, and the process shall be served on any officer, trustee, or agent of the association if [~~he~~] an officer, trustee, or agent can be found, or if no [~~such~~] officer, trustee, or agent can be found as shown by the return of the serving officer, then upon any one or more members of the association, or as otherwise provided by rule of court. Any such service constitutes service upon the association. The judgment in [~~such~~] those cases shall accrue to the joint or common benefit of and bind the joint or common property of the association, the same as though all members had been named as parties to the action. No judgment shall be enforceable against any [~~individual~~] person or [~~his~~] the person's individual assets unless the:

- (1) [~~he~~] Person has been joined and served as an individual party to the action[~~7~~]; or
- (2) [~~the judgment~~] Judgment is so enforceable pursuant to section 634-3[~~7~~] or any other law."

#### COMMENT

Section 634-32, HRS, refers to chapter 433, HRS. Chapter 433, HRS, was entitled "Mutual and Fraternal Benefit Societies". Act 347, Session Laws of Hawaii 1987, repealed chapter 433, HRS. The provisions of former chapter 433, HRS, correspond to the current chapter 432, article 1, HRS, which pertains to mutual benefit societies. Accordingly, section 634-32, HRS, should be amended by deleting the reference to chapter 433, HRS, and replacing the reference with chapter "432, article 1."

SECTION 29. Section 634-32, Hawaii Revised Statutes, is amended to read as follows:

"[~~§~~§634-32[~~§~~] **Other laws not affected.** Nothing contained in sections 634-30 and 634-31 shall be construed to amend or repeal chapter 425 or [~~433~~] 432, article 1, or section 634-3."

#### COMMENT

Section 635-12(c), HRS, sets forth paragraph designations, but is not correctly formatted to reflect the paragraph designations. Section 635-12(c),

**HRS, should be amended to conform to the customary drafting convention for purposes of clarity and consistency. Additional technical nonsubstantive amendments are made for purposes of style, clarity, and consistency.**

SECTION 30. Section 635-12, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

"(c) Whenever provision is made by statute for waiver of a jury, the same shall not be deemed to preclude trial by jury when, in accordance with the rules of court[~~7~~]:

- (1) [~~an~~] An order of the court relieves a party from the party's waiver[~~7~~]; or
- (2) [~~approval~~] Approval of or consent to the waiver is required in a criminal case and has not been given."

#### **COMMENT**

**Section 651-2, HRS, sets forth paragraph designations, but is not correctly formatted to reflect the paragraph designations. Section 651-2, HRS, should be amended to conform to the customary drafting convention for purposes of clarity and consistency. Additional technical nonsubstantive amendments are made for purposes of style, clarity, and consistency.**

SECTION 31. Section 651-2, Hawaii Revised Statutes, is amended to read as follows:

"**§651-2 Writ; issued when.** The plaintiff, in any action upon a contract, express or implied, [~~may~~], at the time of commencing the action, or at any time afterward before judgment, may have the property of the defendant, or that of any one or more of several defendants, which is not exempt from execution, attached in the manner hereinafter prescribed, as security for the satisfaction of [~~such~~] any judgment [~~as~~] that the plaintiff may recover, but no writ of attachment shall be issued:

- (1) [~~against~~] Against the State, or any political municipal corporation, or subdivision thereof[~~7~~]; or
- (2) [~~in~~] In circumstances where garnishment is authorized under chapter 652."

#### **COMMENT**

**The definitions in section 651-91, HRS, are designated as numbered paragraphs. The numbered paragraph designations should be deleted to conform to the customary drafting convention for purposes of clarity and consistency. Further, the subparagraph and clause designations should be changed to paragraph and subparagraph designations, respectively, to reflect the deletion of current paragraph designations. Moreover, section 651-91, HRS,**



refers to "his or her". Gender-neutral terms are preferred by the customary drafting convention. Section 651-91, HRS, should be amended by making the section gender-neutral. Additional technical nonsubstantive amendments are made for purposes of style, clarity, and consistency.

SECTION 32. Section 651-91, Hawaii Revised Statutes, is amended to read as follows:

"§651-91 Definitions. As used in this subpart:

[~~(1)~~] "Head of a family" includes within its meaning:

[~~(A)~~] (1) A man and woman when married, except as provided in section 651-93[~~-~~];

[~~(B)~~] (2) Every individual who is residing on the real property and who has under [~~his or her~~] that individual's care or maintenance, either:

[~~(i)~~] (A) [~~His or her~~] That individual's minor child, or minor grandchild, or the minor child of [~~his or her~~] that individual's deceased wife or husband;

[~~(ii)~~] (B) A minor brother or sister, or the minor child of a deceased brother or sister;

[~~(iii)~~] (C) A father, mother, grandfather, or grandmother;

[~~(iv)~~] (D) The father, mother, grandfather, or grandmother of a deceased husband or wife; or

[~~(v)~~] (E) An unmarried brother, sister, or any other of the relatives mentioned in this [~~subparagraph,~~] paragraph who have attained the age of majority[~~-~~]; and

[~~(C)~~] (3) Head of household as defined in section 2(b) of the Internal Revenue Code of 1954, as amended.

[~~(2)~~] "Long-term lease" means a lease for twenty years or more.

[~~(3)~~] "Owner" means an individual who has an interest in real property.

[~~(4)~~] "Person" means any individual under sixty-five years of age other than the head of a family.

[~~(5)~~] "Real property" consists of the dwelling house in which the owner resides and one parcel of land not to exceed one acre, upon which it is situated together with other buildings thereon. This parcel may be in fee simple or any other interest in real property which vests the immediate right of possession, even though [~~such~~] the immediate right of possession is not exclusive, and includes land held under long-term lease, ownership rights in a condominium or stock cooperative unit."

## COMMENT

**Section 651-124, HRS, refers to the "Employee Retirement Security Act of 1974". The correct name of the Act is the "Employee Retirement Income Security Act of 1974". Section 651-124, HRS, should be amended by changing the reference from "Employee Retirement Security Act of 1974" to "Employee Retirement Income Security Act of 1974" to accurately reflect the name of the federal Act.**

SECTION 33. Section 651-124, Hawaii Revised Statutes, is amended to read as follows:

**"§651-124 Pension money exempt.** The right of a debtor to a pension, annuity, retirement or disability allowance, death benefit, any optional benefit, or any other right accrued or accruing under any retirement plan or arrangement described in section 401(a), 401(k), 403(a), 403(b), 408, 408A, 409 (as in effect prior to January 1, 1984), 414(d), or 414(e) of the Internal Revenue Code of 1986, as amended, or any fund created by the plan or arrangement, or any ABLE savings account established pursuant to chapter 256B, shall be exempt from attachment, execution, seizure, the operation of bankruptcy or insolvency laws under 11 United States Code section 522(b), or under any legal process whatever. However, this section shall not apply to:

- (1) A "qualified domestic relations order" as defined in section 206(d) of the Employee Retirement Income Security Act of 1974, as amended, or in section 414(p) of the Internal Revenue Code of 1986, as amended; and
- (2) Contributions made to a plan or arrangement within the three years before the date a debtor files for bankruptcy, whether voluntary or involuntary, or within three years before the date a civil action is initiated against the debtor, except for contributions to a retirement plan established by state statute if the effect would be to eliminate a state employee's retirement service credit."

## COMMENT

**Section 652-8, HRS, refers to "he", "his", and "him". Gender-neutral terms are preferred by the customary drafting convention. Section 652-8, HRS, should be amended by making the section gender-neutral. Additional technical nonsubstantive amendments are made for the purpose of clarity.**

SECTION 34. Section 652-8, Hawaii Revised Statutes, is amended to read as follows:

"§652-8 **Execution, when.** If the garnishee fails to appear upon the day and hour of hearing named in the summons or writ above mentioned, or if having appeared, [he] the garnishee refuses to disclose upon oath whether [he] the garnishee has goods or effects of the defendant debtor in [his] the garnishee's hands, and their nature and value, or whether a debt is due from [him] the garnishee to the defendant debtor and its amount, or whether [he] the garnishee has any moneys of the defendant debtor in [his] the garnishee's possession for safekeeping, and the amount thereof, the case shall proceed to trial. If the plaintiff recovers a judgment, execution shall issue at [his] the plaintiff's request, against the estate of the contumacious garnishee for the amount of judgment as [his] the garnishee's own proper debt, and the lawful costs; provided that if it appears that the goods and effects are of less value, the debt of less amount and the moneys in safekeeping of less amount than the judgment recovered against the defendant debtor, judgment shall be rendered against the garnishee to the value of the goods or the amount of the debt or the amount of the moneys in safekeeping, and if it appears that the garnishee has no goods or effects of the defendant debtor in [his] the garnishee's hands, or is not indebted to [him,] the defendant debtor, or has no moneys in [his] the garnishee's possession for safekeeping, then [he] the garnishee shall recover [his] the garnishee's lawful costs. However, if [he] the garnishee appears and on oath discloses fully whether [he] the garnishee has in [his] the garnishee's hands the goods or effects of the defendant debtor, or is indebted to the defendant debtor, or has in [his] the garnishee's possession moneys of the defendant debtor for safekeeping, and it appears to the court that [he] the garnishee has no [such] goods or effects[.] of the defendant debtor, or is not so indebted, or has no [such] moneys of the defendant debtor for safekeeping, then judgment shall be given for [him,] the garnishee, and [he] the garnishee shall recover [his] the garnishee's lawful costs."

## COMMENT

**Section 657-32, HRS, refers to "he". Gender-neutral terms are preferred by the customary drafting convention. Section 657-32, HRS, should be amended by making the section gender-neutral.**

SECTION 35. Section 657-32, Hawaii Revised Statutes, is amended to read as follows:

"§657-32 **How computed.** If the right first accrued to any ancestor or predecessor of the person bringing the action or

making the entry, or to any persons from, by, or under whom [~~he~~] the person bringing the action or making the entry claims, the twenty years shall be computed from the time when the right first accrued to the ancestor, predecessor, or other persons."

## COMMENT

**Section 657-33, HRS, refers to "his" and "he". Gender-neutral terms are preferred by the customary drafting convention. Section 657-33, HRS, should be amended by making the section gender-neutral. Additional technical nonsubstantive amendments are made for the purpose of clarity.**

SECTION 36. Section 657-33, Hawaii Revised Statutes, is amended to read as follows:

**"§657-33 Action accrues when.** In the construction of this part, the right to make an entry or commence an action[~~7~~] shall be deemed to have first accrued at the following times:

- (1) When any person is disseised, [~~his~~] that person's right of entry or action shall be deemed to have accrued at the time of the disseisin[~~7~~];
- (2) When [~~he~~] any person claims as heir or devisee of one who died seised, [~~his~~] that person's right shall be deemed to have accrued at the time of the death, unless there is an estate by the curtesy or in dower, or some other estate intervening after the death of [~~such~~] the ancestor or devisor, in which case [~~his~~] that person's right shall be deemed to have accrued when the intermediate estate shall expire, or when it would have expired by its own limitation[~~7~~];
- (3) Where there is [~~such~~] an intermediate estate, and in all other cases, where a party claims in remainder, or reversion, [~~his~~] that party's right so far as it is affected by the limitation herein prescribed, shall be deemed to accrue when the intermediate or precedent estate would have expired by its own limitation, notwithstanding any forfeiture thereof, for which [~~he~~] that party might have entered at an earlier time[~~7~~];
- (4) Paragraph (3) shall not prevent any person from entering, when entitled to do so, by reason of any forfeiture or breach of condition, but if [~~he~~] a person claims under such a title, [~~his~~] that person's right shall be deemed to have accrued when the forfeiture was incurred or condition broken[~~7~~]; and
- (5) In the cases not otherwise specially provided for, the right shall be deemed to have accrued when the claimant, or the person under whom [~~he~~] the claimant

claims, first became entitled to the possession of the premises under the title upon which the entry or action is founded."

## COMMENT

**Section 657-35, HRS, refers to "his" and "him". Gender-neutral terms are preferred by the customary drafting convention. Section 657-35, HRS, should be amended by making the section gender-neutral.**

SECTION 37. Section 657-35, Hawaii Revised Statutes, is amended to read as follows:

**"§657-35 Extension of time by death.** If the person first entitled to make the entry or bring the action dies during the continuance of any of the disabilities mentioned in section 657-34, the entry may be made or the action brought by [his] that person's heirs, or any other person claiming from, by, or under [him,] the person first entitled to make the entry or bring the action, at any time within five years after [his] that person's death, notwithstanding the twenty years have expired."

## COMMENT

**Section 658D-4(a)(2), HRS, sets forth subparagraph designations, using the numerals (i), (ii), etc., to designate the subparagraphs. Subparagraph designations are generally indicated by the letters (A), (B), etc., pursuant to the customary drafting convention. Section 658D-4(a)(2), HRS, should be amended to conform to the customary drafting convention for purposes of clarity and consistency. Also, technical nonsubstantive amendments are made to section 658D-4(d) for purposes of style and clarity.**

SECTION 38. Section 658D-4, Hawaii Revised Statutes, is amended as follows:

1. By amending subsection (a) to read:

"(a) This chapter shall apply only to the arbitration, mediation, or conciliation of disputes between:

- (1) Two or more persons at least one of whom is a nonresident of the United States; or
- (2) Two or more persons all of whom are residents of the United States if the dispute:

[~~(i)~~] (A) Involves property located outside the United States;

[~~(ii)~~] (B) Relates to a contract which envisages enforcement or performance in whole or in part outside the United States; or

[~~(iii)~~] (C) Bears some other relation to one or more foreign countries."

2. By amending subsection (d) to read:

"(d) This chapter shall apply to any arbitration within the scope of this chapter, without regard to whether the place of arbitration is within or without this State:

- (1) If the written undertaking to arbitrate expressly provides that the law of this State shall apply; [~~or~~]
- (2) In the absence of a choice of law provision applicable to the written undertaking to arbitrate, if that undertaking forms part of a contract the interpretation of which is to be governed by the laws of this State; or
- (3) In any other case, if any arbitral tribunal or other panel established pursuant to section 658D-7 [~~below~~] decides under applicable conflict of laws principles that the arbitration shall be conducted in accordance with the laws of this State."

#### COMMENT

**Section 660-20, HRS, refers to "his". Gender-neutral terms are preferred by the customary drafting convention. Section 660-20, HRS, should be amended by making the section gender-neutral.**

SECTION 39. Section 660-20, Hawaii Revised Statutes, is amended to read as follows:

**"§660-20 Body to be produced, except when.** The person making the return to a writ of habeas corpus shall bring the body of the person, if in [~~his~~] the custody or power[~~7~~] of the person making the return, or under [~~his~~] the restraint or control[~~7~~] of the person making the return, according to the command in the writ, unless prevented by the sickness or infirmity of the person. This shall not prevent the person making the return, if a private person, from demanding in advance actual necessary expenses of travel and transportation."

#### COMMENT

**Section 660-23, HRS, refers to "his" and "him". Gender-neutral terms are preferred by the customary drafting convention. Section 660-23, HRS, should be amended by making the section gender-neutral. An additional technical nonsubstantive amendment is made for the purpose of clarity.**

SECTION 40. Section 660-23, Hawaii Revised Statutes, is amended to read as follows:

**"§660-23 Evading service, penalties.** The liabilities and penalties of section 660-22 shall also be imposed upon any person who, having in [~~his~~] that person's custody or under [~~his~~] that person's power any person entitled to a writ of habeas corpus, with intent to elude the service of the writ or to avoid the effect thereof, transfers [~~such~~] the person to the custody or places [~~him~~] the person under the control or power of any other person, or conceals [~~him~~] the person or changes [~~his~~] the person's place of confinement."

### COMMENT

**Section 660-25, HRS, refers to "his". Gender-neutral terms are preferred by the customary drafting convention. Section 660-25, HRS, should be amended by making the section gender-neutral.**

SECTION 41. Section 660-25, Hawaii Revised Statutes, is amended to read as follows:

**"§660-25 Notice to other parties, when.** If the person is detained on any process under which any other person has an interest in [~~his~~] the person's detention, and the other person or [~~his~~] the other person's attorney is within the State and can be notified without unreasonable delay, the person detained shall not be discharged until the other person or [~~his~~] the other person's attorney has had an opportunity to be heard."

### COMMENT

**Act 126, Session Laws of Hawaii 2000, established part II of chapter 661, HRS, entitled "Qui Tam Actions or Recovery of False Claims to the State". Section 661-1, HRS, which is in part I of chapter 661, HRS, references "any person making claim against the State under this chapter". These claims against the State pertain only to part I of chapter 661, HRS, as part II relates to actions by or on behalf of the State. Accordingly, section 661-1, HRS, should be amended by changing "this chapter" to "this part". Additional technical nonsubstantive amendments are made for purposes of style, clarity, and consistency.**

SECTION 42. Section 661-1, Hawaii Revised Statutes, is amended to read as follows:

**"§661-1 Jurisdiction.** The several circuit courts of the State and, except as otherwise provided by statute or rule, the several state district courts [~~shall~~], subject to appeal as provided by law, shall have original jurisdiction to hear and

determine the following matters, and, unless otherwise provided by law, shall determine all questions of fact involved without the intervention of a jury[-]:

- (1) All claims against the State founded upon any statute of the State; ~~[ex]~~ upon any ~~[regulation]~~ rule of an executive department; or upon any contract, expressed or implied, with the State, and all claims which may be referred to any such court by the legislature; provided that no action shall be maintained, nor shall any process issue against the State, based on any contract or any act of any state officer which the officer is not authorized to make or do by the laws of the State, nor upon any other cause of action than as herein set forth[-]; and
- (2) All counterclaims, whether liquidated or unliquidated, or other demands whatsoever on the part of the State against any person making claim against the State under this ~~[chapter-]~~ part."

#### COMMENT

**Act 126, Session Laws of Hawaii 2000, established part II of chapter 661, HRS, entitled "Qui Tam Actions or Recovery of False Claims to the State". Section 661-3, HRS, which is in part I of chapter 661, HRS, provides that "[n]o person shall file or prosecute under this chapter" any claim for or in respect to which the person has pending an action against another person who was acting or professing to act under the authority of the State at the time the alleged claim arose. However, only part I of chapter 661, HRS, pertains to claims against the State, as part II relates to actions by or on behalf of the State. Accordingly, section 661-3, HRS, should be amended by changing "this chapter" to "this part". Further, section 661-3, HRS, refers to "he" and "his". Gender-neutral terms are preferred by the customary drafting convention. Section 661-3, HRS, should also be amended by making the section gender-neutral.**

SECTION 43. Section 661-3, Hawaii Revised Statutes, is amended to read as follows:

**"§661-3 No jurisdiction, when.** No person shall file or prosecute under this ~~[chapter]~~ part any claim for or in respect to which ~~[he]~~ that person or any assignee of ~~[his]~~ that person has pending an action against a person who, at the time when the claim alleged in the action arose, was, in respect thereto, acting or professing to act, directly or indirectly, under the authority of the State."



## COMMENT

Act 126, Session Laws of Hawaii 2000, established part II of chapter 661, HRS, entitled "Qui Tam Actions or Recovery of False Claims to the State". Section 661-4, HRS, which is in part I of chapter 661, HRS, provides that certain persons may prosecute "claims against the State under this chapter". These claims pertain only to part I of chapter 661, HRS, as part II relates to actions by or on behalf of the State. Accordingly, section 661-4, HRS, should be amended by changing "this chapter" to "this part". An additional technical nonsubstantive amendment is made for the purpose of clarity.

SECTION 44. Section 661-4, Hawaii Revised Statutes, is amended to read as follows:

"§661-4 **Action by alien, when.** Aliens who are citizens or subjects of a government which accords to citizens of this State the right to prosecute claims against ~~[such]~~ that government in its courts shall have the privilege of prosecuting claims against the State under this ~~[chapter.]~~ part."

## COMMENT

Act 126, Session Laws of Hawaii 2000, established part II of chapter 661, HRS, entitled "Qui Tam Actions or Recovery of False Claims to the State". Section 661-5, HRS, which is in part I of chapter 661, HRS, relates to "[e]very claim against the State, cognizable under this chapter". These claims pertain only to part I of chapter 661, HRS, as part II relates to actions by or on behalf of the State. Accordingly, section 661-5, HRS, should be amended by changing "this chapter" to "this part".

SECTION 45. Section 661-5, Hawaii Revised Statutes, is amended to read as follows:

"§661-5 **Limitations on action.** Every claim against the State, cognizable under this ~~[chapter,]~~ part, shall be forever barred unless the action is commenced within two years after the claim first accrues; provided that the claims of persons under legal disability shall not be barred if the action is commenced within one year after the disability has ceased."

## COMMENT

Section 661-11, HRS, sets forth paragraph designations, but is not correctly formatted to reflect the paragraph designations. Section 661-11, HRS, should be amended to conform to the customary drafting convention for purposes of clarity and consistency. Further, subsection designations may be added to the section for clarity and consistency with the customary drafting convention. Additional

**technical nonsubstantive amendments are made for purposes of style, clarity, and consistency.**

SECTION 46. Section 661-11, Hawaii Revised Statutes, is amended to read as follows:

**"§661-11 Tort claims against State where covered by insurance.** (a) This section applies to an action where:

- (1) ~~[the]~~ The State is a party defendant;
- (2) ~~[the]~~ The subject matter of the claim is covered by a primary insurance policy entered into by the State or any of its agencies; and
- (3) ~~[chapter]~~ Chapter 662 does not apply.

No defense of sovereign immunity shall be raised in an action under this section. However, the State's liability under this section shall not exceed the amount of, and shall be defrayed exclusively by, the primary insurance policy.

(b) An action under this section shall not be subject to sections 661-1 to 661-10."

#### **COMMENT**

**Section 663-8, HRS, refers to "his or her". Gender-neutral terms are preferred by the customary drafting convention. Section 663-8, HRS, should be amended by making the section gender-neutral. Additional technical nonsubstantive amendments are made for purposes of style and clarity.**

SECTION 47. Section 663-8, Hawaii Revised Statutes, is amended to read as follows:

**"§663-8 Damages, future earnings.** Together with other damages which may be recovered by law, the legal representative of the deceased person may recover where applicable under section 663-7 the future earnings of the decedent in excess of the probable cost of the decedent's own maintenance and the provision the decedent would have made for ~~[his or her]~~ the decedent's actual or probable family and dependents during the period of time the decedent would have likely lived but for the accident."

#### **COMMENT**

**Section 663-17(b), HRS, sets forth paragraph designations, but is not correctly formatted to reflect the paragraph designations. Section 663-17(b), HRS, should be amended to conform to the customary drafting convention for purposes of clarity and consistency. Further, subsection (b) provides that "[i]f relief can be obtained as provided in this *paragraph* no independent action shall**

be maintained to enforce the claim for contribution" (emphasis added). This provision appears to apply to subsection (b) generally, as opposed to a particular paragraph. Accordingly, the term "paragraph" should be changed to "subsection". Additional technical nonsubstantive amendments are made for purposes of style, clarity, and consistency.

SECTION 48. Section 663-17, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

"(b) A pleader may either:

- (1) [~~state~~] State as a cross-claim against a coparty any claim that the coparty is or may be liable to the cross-claimant for all or part of a claim asserted in the action against the cross-claimant; or
- (2) [~~move~~] Move for judgment for contribution against any other joint judgment debtor, where in a single action a judgment has been entered against joint tortfeasors, one of whom has discharged the judgment by payment or has paid more than the joint tortfeasor's pro rata share thereof.

If relief can be obtained as provided in this [~~paragraph~~] subsection, no independent action shall be maintained to enforce the claim for contribution."

## COMMENT

**Section 668-8.5, HRS, refers to "his" and "he". Gender-neutral terms are preferred by the customary drafting convention. Section 668-8.5, HRS, should be amended by making the section gender-neutral. An additional technical nonsubstantive amendment is made for the purpose of clarity.**

SECTION 49. Section 668-8.5, Hawaii Revised Statutes, is amended to read as follows:

**"§668-8.5 Adverse claimants.** Unless the action is combined with an action under chapter 669, a person who has not appeared and who claims to hold by title paramount to that under which the plaintiff claims as a cotenant shall not be concluded by the judgment, but may maintain an action asserting [~~his~~] that person's title against any or all of the parties, or persons holding under them, within the time in which [~~he~~] that person might have brought [~~such~~] the action if the action for partition had not been filed."

## COMMENT

Section 835-1, HRS, sets forth paragraph designations, but is not correctly formatted to reflect the paragraph designations. Section 835-1, HRS, should be amended to conform to the customary drafting convention for purposes of clarity and consistency. Additional technical nonsubstantive amendments are made for purposes of style, clarity, and consistency.

SECTION 50. Section 835-1, Hawaii Revised Statutes, is amended to read as follows:

"**§835-1 Material witness order; defined.** A material witness order is a court order:

- (1) [~~adjudging~~] Adjudging a person a material witness in a pending criminal action; and
- (2) [~~fixing~~] Fixing bail to secure the person's future attendance thereat."

## COMMENT

Section 3 of Act 98, Session Laws of Hawaii 2012, as amended by section 4 of Act 102, Session Laws of Hawaii 2015, provides that section 46-15.1, HRS, "shall be reenacted pursuant to ... section 11 of Act 96, Session Laws of Hawaii 2014". Section 11 of Act 96, Session Laws of Hawaii 2014, amends section 46-15.1; however, section 23 of Act 96 establishes the reenactment provision. Accordingly, section 3 of Act 98, Session Laws of Hawaii 2012, as amended by section 4 of Act 102, Session Laws of Hawaii 2015, should be amended by changing "section 11 of Act 96" to "section 23 of Act 96". An additional technical nonsubstantive amendment is made for the purpose of style and consistency.

SECTION 51. Act 98, Session Laws of Hawaii 2012, section 3, as amended by Act 102, Session Laws of Hawaii 2015, section 4, is amended to read as follows:

"SECTION 3. This Act shall take effect upon its approval, and shall be repealed on July 1, 2019; provided that section 46-15.1, Hawaii Revised Statutes, shall be reenacted pursuant to section 3 of Act 141, Session Laws of Hawaii 2009, and section [~~11~~] 23 of Act 96, Session Laws of Hawaii 2014."

## COMMENT

Section 4 of Act 221, Session Laws of Hawaii 2013, amended section 334-59, HRS. Section 24 of Act 221, Session Laws of Hawaii 2013, further provided for the repeal and reenactment of section 334-59, HRS, on July 1, 2020. Section 334-59, HRS, was also amended by section 3 of Act 232, Session Laws of Hawaii 2013. Section 6 of Act 232, Session Laws of Hawaii 2013, should be

**amended to exempt the amendment made by section 3 of that Act from the repeal and reenactment provision of section 24 of Act 221, Session Laws of Hawaii 2013.**

SECTION 52. Act 232, Session Laws of Hawaii 2013, is amended by amending section 6 to read as follows:

"SECTION 6. This Act shall take effect upon its approval[-]; provided that the amendments made to section 334-59(a), Hawaii Revised Statutes, by this Act shall not be repealed when that section is reenacted on July 1, 2020, pursuant to section 24 of Act 221, Session Laws of Hawaii 2013."

### COMMENT

**Section 1 of Act 52, Session Laws of Hawaii 2014, amended section 205-4.5, HRS. Section 3 of Act 52, Session Laws of Hawaii 2014, further provided for the repeal and reenactment of section 205-4.5, HRS, on June 30, 2019. Section 205-4.5, HRS, was also amended by section 3 of Act 55, Session Laws of Hawaii 2014. Section 5 of Act 55, Session Laws of Hawaii 2014, should be amended to exempt the amendment made by section 3 of Act 55 from the repeal and reenactment provision of section 3 of Act 52, Session Laws of Hawaii 2014.**

SECTION 53. Act 55, Session Laws of Hawaii 2014, 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 205-4.5(a), Hawaii Revised Statutes, by this Act shall not be repealed when that section is reenacted on June 30, 2019, pursuant to section 3 of Act 52, Session Laws of Hawaii 2014."

### COMMENT

**Section 1 of Act 111, Session Laws of Hawaii 2015, amended section 302D-34, HRS, by adding a new subsection (d). Section 5 of Act 111, Session Laws of Hawaii 2015, further provided that Act 111 shall be repealed on July 1, 2020, but did not provide for the reenactment of section 302D-34, HRS. To avoid the complete repeal of section 302D-34, HRS on July 1, 2020, section 5 of Act 111, Session Laws of Hawaii 2015, should be amended to provide for the reenactment of section 302D-34, HRS.**

SECTION 54. Act 111, Session Laws of Hawaii 2015, is amended by amending section 5 to read as follows:

"SECTION 5. This Act shall take effect on July 1, 2015[÷ ~~provided that this Act~~] and shall be repealed on July 1, 2020[-]; provided that section 302D-34, Hawaii Revised Statutes,

shall be reenacted in the form in which it read on June 30, 2015."

#### COMMENT

**Section 1 of Act 111, Session Laws of Hawaii 2015, amended section 302D-34, HRS, by adding a new subsection (d). Section 5 of Act 111, Session Laws of Hawaii 2015, further provided that Act 111 shall be repealed on July 1, 2020. Section 302D-34, HRS, was also amended by section 11 of Act 114, Session Laws of Hawaii 2015. Assuming the intent is to reenact section 302D-34, Hawaii Revised Statutes, as recommended in section 54 to avoid its complete repeal, section 14 of Act 114, Session Laws of Hawaii 2015, should be amended to exempt the amendment made by section 11 of Act 114 from the repeal provision of section 5 of Act 111, Session Laws of Hawaii 2015.**

SECTION 55. Act 114, Session Laws of Hawaii 2015, is amended by amending section 14 to read as follows:

"SECTION 14. This Act shall take effect upon its approval[-]; provided that the amendments made to section 302D-34, Hawaii Revised Statutes, by this Act shall not be repealed when that section is reenacted on July 1, 2020, pursuant to section 5 of Act 111, Session Laws of Hawaii 2015, as amended."

#### COMMENT

**Section 6 of Act 235, Session Laws of Hawaii 2015, refers to "the coverage and benefit for autism to be provided by a health maintenance organization under section 4 of this Act". Section 4 of Act 235 added a new section to article I of chapter 432, HRS, which relates to mutual benefit societies, not health maintenance organizations. Section 5 of Act 235 amended section 432D-23, HRS, by requiring that each policy, contract, plan, or agreement issued by health maintenance organizations shall include autism benefits. Accordingly, section 6 of Act 235, Session Laws of Hawaii 2015, should be amended by changing "section 4 of this Act" to "section 5 of this Act".**

SECTION 56. Act 235, Session Laws of Hawaii 2015, is amended by amending section 6 to read as follows:

"SECTION 6. Notwithstanding section 432D-23, Hawaii Revised Statutes, the coverage and benefit for autism to be provided by a health maintenance organization under section [4] 5 of this Act shall apply to all policies, contracts, plans, or agreements issued or renewed in this State by a health maintenance organization after January 1, 2016."