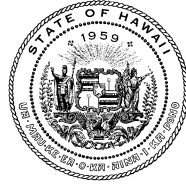


**DAVID Y. IGE**  
GOVERNOR  
**JOSH GREEN M.D.**  
LT. GOVERNOR



STATE OF HAWAII  
**DEPARTMENT OF TAXATION**  
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**RONA M. SUZUKI**  
DIRECTOR OF TAXATION  
**DAMIEN A. ELEFANTE**  
DEPUTY DIRECTOR

To: The Honorable Chris Lee, Chair;  
The Honorable Joy A. San Buenaventura, Vice Chair;  
and Members of the House Committee on Judiciary

From: Rona M. Suzuki, Director  
Department of Taxation

**Re: H.B. 2650, Relating to Statutory Revision: Amending or Repealing Various Provisions of the Hawaii Revised Statutes or the Session Laws of Hawaii for the Purposes of Correcting Errors and References, Clarifying Language, or Deleting Obsolete or Unnecessary Provisions**

Date: Wednesday, February 5, 2020

Time: 2:05 P.M.

Place: Conference Room 325, State Capitol

The Department of Taxation (Department) supports the tax related provision of H.B. 2650. H.B. 2650 makes numerous revisions to the Hawaii Revised Statutes (HRS). The only tax related provision in the measure is an amendment to section 235-2.3(b)(41), HRS.

The Department has reviewed this amendment and believes the amendment is technical and nonsubstantive.

Thank you for the opportunity to testify in support of H.B. 2650.



Charlotte A. Carter-Yamauchi  
Director

Shawn K. Nakama  
First Assistant

Research (808) 587-0666  
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LEGISLATIVE REFERENCE BUREAU  
State of Hawaii  
State Capitol, Room 446  
415 S. Beretania Street  
Honolulu, Hawaii 96813

**LATE**

Written Comments

## **HB2650**

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

Charlotte A. Carter-Yamauchi, Director  
Legislative Reference Bureau

Presented to the House Committee on Judiciary

Wednesday, February 5, 2020, 2:05 p.m.  
Conference Room 325

Chair Chris Lee and Members of the Committee:

Good afternoon Chair Lee and members of the Committee, my name is Charlotte Carter-Yamauchi and I am the Director of the Legislative Reference Bureau and the Revisor of Statutes. Thank you for providing the opportunity to submit written testimony on House Bill No. 2650, Relating to Statutory Revision. Bills such as House Bill No. 2650 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.

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 John Morsey, Assistant Director for Revision of Statutes, by phone at (808) 587-0659 or by e-mail at [j.morsey@capitol.hawaii.gov](mailto:j.morsey@capitol.hawaii.gov).

Attachment

**MEMORANDUM CONCERNING PROPOSED  
STATUTORY REVISIONS FOR THE 2020 REGULAR LEGISLATIVE SESSION  
TO BE CONTAINED IN A BILL ENTITLED  
"A BILL FOR AN ACT RELATING TO STATUTORY REVISION:  
AMENDING OR REPEALING VARIOUS PROVISIONS OF  
THE HAWAII REVISED STATUTES OR THE SESSION LAWS OF HAWAII  
FOR THE PURPOSES OF CORRECTING ERRORS AND REFERENCES,  
CLARIFYING LANGUAGE, OR DELETING OBSOLETE OR  
UNNECESSARY PROVISIONS"**

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

**COMMENT**

**Section 14-24, HRS, sets forth form language for certificates of election that are issued to persons elected as presidential electors or alternates. The form language includes outdated references to years in the 1900s that should be updated to refer to years in the 2000s. An additional technical nonsubstantive amendment is made for purposes of style and consistency.**

SECTION 1. Section 14-24, Hawaii Revised Statutes, is amended to read as follows:

**"§14-24 Certificate of election, notice of meeting.** Not later than 4:30 p.m. on the last day in the month of the election, or as soon as the returns have been received from all counties in the State, if received before that time, the chief election officer shall certify to the governor the names of the presidential electors and alternates of the same political party or group as the candidates for president and vice president receiving the highest number of votes as elected as presidential electors and alternates. Thereupon the governor shall in accordance with the laws of the United States, communicate by registered mail under the seal of the State of Hawaii to the

administrator of general services of the United States, the certificates of persons elected as presidential electors, setting forth the names of the electors and the total number of votes cast for each elector. The chief election officer shall thereupon, together with a notice of the time and place of the meeting of the electors, cause to issue and transmit to each elector and alternate a certificate of election signed by the governor in substantially the following form:

**CERTIFICATE OF ELECTION OF  
PRESIDENTIAL [~~ELECTORS~~] ELECTOR**

I,.....Governor of the State of Hawaii, do hereby certify that....., a member of the.....party or group, was on the.....day of....., [~~19.....~~] 20....., duly elected a Presidential Elector for the State of Hawaii for the presidential election of [~~19.....~~] 20.....

**CERTIFICATE OF ELECTION OF  
ALTERNATE PRESIDENTIAL ELECTOR**

I,.....Governor of the State of Hawaii, do hereby  
certify that....., a member of the.....party  
or group, was on the.....day of.....,  
[~~19.....~~] 20....., duly elected.....Alternate  
Presidential Elector for Presidential Elector.....for  
the State of Hawaii for the presidential election of [~~19.....~~]  
20....."

**COMMENT**

**Section 87A-42(a), HRS, refers to the "Government Accounting Standards Board". However, it appears that the correct name of this entity is the "Governmental Accounting Standards Board". Accordingly, section 87A-42(a), HRS, should be amended by changing "Government Accounting Standards Board" to "Governmental Accounting Standards Board".**

SECTION 2. Section 87A-42, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) Notwithstanding sections 87A-31 and 87A-31.5, the board, upon terms and conditions set by the board, shall establish and administer a separate trust fund for the purpose of receiving employer contributions that will prefund other post-employment health and other benefit plan costs for retirees

and their beneficiaries. The separate trust fund shall meet the requirements of the [~~Government~~] Governmental Accounting Standards Board regarding other post-employment benefits trusts. The board shall establish and maintain a separate account for each public employer within the separate trust fund to accept and account for each public employer's contributions. Employer contributions to the separate trust fund shall be irrevocable, all assets of the fund shall be dedicated exclusively to providing health and other benefits to retirees and their beneficiaries, and assets of the fund shall not be subject to appropriation for any other purpose and shall not be subject to claims by creditors of the employers or the board or plan administrator. The board's powers under section 87A-24 shall also apply to the fund established pursuant to this section."

### COMMENT

**Section 128B-1(c)(1), HRS, refers to the "Hawaii Fusion Center". However, it appears that the correct name of this entity is the "Hawaii State Fusion Center". Accordingly, section 128B-1(c)(1), HRS, should be amended by changing "Hawaii Fusion Center" to "Hawaii State Fusion Center".**

SECTION 3. Section 128B-1, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

"(c) The coordinator shall partner with representatives from the following entities:

- (1) The Hawaii state fusion center;



- (2) The Hawaii state cyber resiliency center;
- (3) Federal government agencies;
- (4) State government agencies;
- (5) The counties of the State;
- (6) Institutions of higher education; and
- (7) Other entities within the power, water, communications, transportation, and finance sectors, including public utilities, private telecommunications companies, airlines, financial institutions, and private information technology companies."

#### COMMENT

**Section 201-113(b), HRS, includes a stray subparagraph (A) that appears to have been inadvertently excluded from the deletion of certain language in section 201-113(b), HRS, pursuant to Act 228, Session Laws of Hawaii 2019. Accordingly, section 201-113(b), HRS, should be amended to delete subparagraph (A).**

SECTION 4. Section 201-113, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

"(b) The fund shall be used by the

~~[(A) The grant shall be used exclusively for eligible Hawaii projects;]~~

department to provide for:

- (1) A program to provide seed capital for film, media, and creative industries intellectual property development projects for export, as determined by the department;

- (2) Programs that expand the skills of the State's resident workforce in the film, media, and creative industries; and
- (3) Marketing programs that attract business opportunities within the film, media, and creative industries in the State."

### COMMENT

**Act 69, Session Laws of Hawaii 2019, made various amendments to section 235-2.3(b), HRS, that resulted in what appears to be an inadvertent clerical error in which a reference to section "1397F" in subchapter U of the federal Internal Revenue Code was changed to section "1379F". Accordingly, section 235-2.3(b)(42), HRS, should be amended by changing "1379F" to "1397F".**

SECTION 5. Section 235-2.3, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

"(b) The following Internal Revenue Code subchapters, parts of subchapters, sections, subsections, and parts of subsections shall not be operative for the purposes of this chapter, unless otherwise provided:

- (1) Subchapter A (sections 1 to 59A) (with respect to determination of tax liability), except section 1(h)(2) (relating to net capital gain reduced by the amount taken into account as investment income), except sections 2(a), 2(b), and 2(c) (with respect to the definition of "surviving spouse" and "head of

household"), except section 41 (with respect to the credit for increasing research activities), except section 42 (with respect to low-income housing credit), except sections 47 and 48, as amended, as of December 31, 1984 (with respect to certain depreciable tangible personal property), and except section 48(d)(3), as amended, as of February 17, 2009 (with respect to the treatment of United States Department of Treasury grants made under section 1603 of the American Recovery and Reinvestment Tax Act of 2009). For treatment, see sections 235-110.91, 235-110.7, and 235-110.8;

- (2) Section 78 (with respect to dividends received from certain foreign corporations by domestic corporations choosing foreign tax credit);
- (3) Section 86 (with respect to social security and tier 1 railroad retirement benefits);
- (4) Section 91 (with respect to certain foreign branch losses transferred to specified 10-percent owned foreign corporations);
- (5) Section 103 (with respect to interest on state and local bonds). For treatment, see section 235-7(b);
- (6) Section 114 (with respect to extraterritorial income). For treatment, any transaction as specified in the

- transitional rule for 2005 and 2006 as specified in the American Jobs Creation Act of 2004 section 101(d) and any transaction that has occurred pursuant to a binding contract as specified in the American Jobs Creation Act of 2004 section 101(f) are inoperative;
- (7) Section 120 (with respect to amounts received under qualified group legal services plans). For treatment, see section 235-7(a)(9) to (11);
  - (8) Section 122 (with respect to certain reduced uniformed services retirement pay). For treatment, see section 235-7(a)(3);
  - (9) Section 135 (with respect to income from United States savings bonds used to pay higher education tuition and fees). For treatment, see section 235-7(a)(1);
  - (10) Section 139C (with respect to COBRA premium assistance);
  - (11) Subchapter B (sections 141 to 150) (with respect to tax exemption requirements for state and local bonds);
  - (12) Section 151 (with respect to allowance of deductions for personal exemptions). For treatment, see section 235-54;
  - (13) Section 179B (with respect to expensing of capital costs incurred in complying with Environmental Protection Agency sulphur regulations);

- (14) Section 181 (with respect to special rules for certain film and television productions);
- (15) Section 196 (with respect to deduction for certain unused investment credits);
- (16) Section 199 (with respect to the U.S. production activities deduction);
- (17) Section 199A (with respect to qualified business income);
- (18) Section 222 (with respect to qualified tuition and related expenses);
- (19) Sections 241 to 247 (with respect to special deductions for corporations). For treatment, see section 235-7(c);
- (20) Section 250 (with respect to foreign-derived intangible income and global intangible low-taxed income);
- (21) Section 267A (with respect to certain related party amounts paid or accrued in hybrid transactions or with hybrid entities);
- (22) Section 280C (with respect to certain expenses for which credits are allowable). For treatment, see section 235-110.91;
- (23) Section 291 (with respect to special rules relating to corporate preference items);

- (24) Section 367 (with respect to foreign corporations);
- (25) Section 501(c)(12), (15), (16) (with respect to exempt organizations); except that section 501(c)(12) shall be operative for companies that provide potable water to residential communities that lack any access to public utility water services;
- (26) Section 515 (with respect to taxes of foreign countries and possessions of the United States);
- (27) Subchapter G (sections 531 to 565) (with respect to corporations used to avoid income tax on shareholders);
- (28) Subchapter H (sections 581 to 597) (with respect to banking institutions), except section 584 (with respect to common trust funds). For treatment, see chapter 241;
- (29) Section 642(a) and (b) (with respect to special rules for credits and deductions applicable to trusts). For treatment, see sections 235-54(b) and 235-55;
- (30) Section 646 (with respect to tax treatment of electing Alaska Native settlement trusts);
- (31) Section 668 (with respect to interest charge on accumulation distributions from foreign trusts);

- (32) Subchapter L (sections 801 to 848) (with respect to insurance companies). For treatment, see sections 431:7-202 and 431:7-204;
- (33) Section 853 (with respect to foreign tax credit allowed to shareholders). For treatment, see section 235-55;
- (34) Section 853A (with respect to credits from tax credit bonds allowed to shareholders);
- (35) Subchapter N (sections 861 to 999) (with respect to tax based on income from sources within or without the United States), except sections 985 to 989 (with respect to foreign currency transactions). For treatment, see sections 235-4, 235-5, and 235-7(b), and 235-55;
- (36) Section 1042(g) (with respect to sales of stock in agricultural refiners and processors to eligible farm cooperatives);
- (37) Section 1055 (with respect to redeemable ground rents);
- (38) Section 1057 (with respect to election to treat transfer to foreign trust, etc., as taxable exchange);
- (39) Sections 1291 to 1298 (with respect to treatment of passive foreign investment companies);

- (40) Subchapter Q (sections 1311 to 1351) (with respect to readjustment of tax between years and special limitations);
- (41) Subchapter R (sections 1352 to 1359) (with respect to election to determine corporate tax on certain international shipping activities using per ton rate);
- (42) Subchapter U (sections 1391 to [~~1379F~~] 1397F) (with respect to designation and treatment of empowerment zones, enterprise communities, and rural development investment areas). For treatment, see chapter 209E;
- (43) Subchapter W (sections 1400 to 1400C) (with respect to District of Columbia enterprise zone);
- (44) Section 1400O (with respect to education tax benefits);
- (45) Section 1400P (with respect to housing tax benefits);
- (46) Section 1400R (with respect to employment relief);
- (47) Section 1400T (with respect to special rules for mortgage revenue bonds);
- (48) Section 1400U-1 (with respect to allocation of recovery zone bonds);
- (49) Section 1400U-2 (with respect to recovery zone economic development bonds); and
- (50) Section 1400U-3 (with respect to recovery zone facility bonds)."



## COMMENT

**Section 261-12(c), HRS, includes two definitions of terms used in section 261-12, HRS. Section 261-12, HRS, should be amended by removing the definitions from subsection (c), redesignating the definitions as a new subsection (g), and placing the definitions in alphabetical order to conform to the customary drafting convention. Additional technical nonsubstantive amendments are made for purposes of clarity and style.**

SECTION 6. Section 261-12, Hawaii Revised Statutes, is amended to read as follows:

**"§261-12 Rules, standards.** (a) Powers to adopt. The director of transportation may perform [~~such~~] acts, issue and amend [~~such~~] orders, adopt [~~such~~] reasonable general or special rules and procedures, and establish [~~such~~] minimum standards, consistent with this chapter, as the director deems necessary to carry out this chapter and to perform the duties assigned thereunder, all commensurate with and for the purpose of protecting and [~~insuring~~] ensuring the general public interest and safety, the safety of persons operating, using, or traveling in aircraft, and the safety of persons and property on land or water, and developing and promoting aeronautics in the State.

In furtherance of the duties assigned under this chapter, the director may adopt rules relating to:

- (1) Safety measures, requirements, and practices in or about the airport premises;

- (2) The licensing and regulation of persons engaged in commercial activities in or about the airport premises;
- (3) The regulation of equipment and motor vehicles operated in or about the airport operational area;
- (4) Airport security measures or requirements, and designation of sterile passenger holding areas and operational areas;
- (5) The regulation of motor vehicles and traffic; and
- (6) Any other matter relating to the health, safety, and welfare of the general public and persons operating, using, or traveling in aircraft.

(b) [†]Tour aircraft operations.[†] Any other law to the contrary notwithstanding, no tour aircraft operation shall be permitted in any airport under the State's control without having a permit. The director shall adopt rules to regulate tour aircraft operations by permit, which shall include but not be limited to:

- (1) Identification of the types of aircraft to be utilized;
- (2) The number of operations daily for each type of aircraft used and the days and hours of operation;

- (3) Verification that the applicant is in compliance with all state statutes, including but not limited to this section;
- (4) Verification that the applicant has the Federal Aviation Administration certificate 121 or 135;
- (5) A written assessment by the department of the impact to the surrounding area and to the subject state airport;
- (6) Revocation of a permit based on the failure to comply with the information provided by the applicant and the terms and conditions set forth by the department in the permit; and any false statement or misrepresentation made by the applicant;
- (7) Establishment of penalties for revocation and suspension of a permit for failure to comply with permit conditions;
- (8) Annual renewal of permits; and
- (9) Any change of operations under the existing permit to be approved by the director.

No permit shall be authorized unless accompanied by a Hawaii sectional aeronautical chart marked to indicate routes and altitudes to be used in conducting aerial tours and noise abatement procedures to be employed in the vicinity of identified noise sensitive areas.

For the purposes of this subsection, "tour aircraft operations" means any business operation ~~[which]~~ that offers aircraft for hire by passengers for the purpose of aerial observation of landmarks and other manmade or natural sites within an island of the State~~[7]~~ and for the purpose of transporting passengers for tourist-related activities.

(c) ~~[Definitions. For the purpose of this section, if not inconsistent with the context:~~

~~"Sterile passenger holding area" means any portion of a public airport designated by the director and identified by appropriate signs as an area into which access is conditioned upon the prior inspection of persons and property in accordance with the approved Federal Aviation Administration air carrier screening program.~~

~~"Operational area" means any portion of a public airport, from which access by the public is prohibited by fences or appropriate signs, and which is not leased or demised to anyone for exclusive use and includes runways, taxiways, all ramps, cargo ramps and apron areas, aircraft parking and storage areas, fuel storage areas, maintenance areas, and any other area of a public airport used or intended to be used for landing, takeoff or surface maneuvering of aircraft or used for embarkation or debarkation of passengers.]~~

Notwithstanding the restriction on access by the public into operational areas, entry may be authorized for airport operational area related purposes with the prior permission of the director or the director's duly authorized representative.

(d) Conformity to federal legislation and rules. No rules, orders, or standards prescribed by the director shall be inconsistent with, or contrary to, any act of the Congress of the United States or any regulation promulgated or standard established pursuant thereto.

(e) How made. All rules having the force and effect of law~~[7]~~ shall be adopted by the director pursuant to chapter 91.

(f) Distribution. The director shall provide for the publication and general distribution of all of ~~[its]~~ the department's rules and procedures having general effect.

(g) Definitions. For the purpose of this section, if not inconsistent with the context:

"Operational area" means any portion of a public airport from which access by the public is prohibited by fences or appropriate signs and that is not leased or demised to anyone for exclusive use. "Operational area" includes runways, taxiways, all ramps, cargo ramps and apron areas, aircraft parking and storage areas, fuel storage areas, maintenance areas, and any other area of a public airport used or intended

to be used for landing, takeoff, or surface maneuvering of aircraft or used for embarkation or debarkation of passengers.

"Sterile passenger holding area" means any portion of a public airport designated by the director and identified by appropriate signs as an area into which access is conditioned upon the prior inspection of persons and property in accordance with the approved Federal Aviation Administration air carrier screening program."

#### COMMENT

**Section 261-13(a), HRS, sets forth paragraph designations, but is not formatted to reflect the paragraph designations. Section 261-13(a), HRS, should be amended to conform to the customary drafting convention for purposes of clarity and consistency. Additional technical nonsubstantive amendments are made for the purpose of style.**

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

"(a) Every order of the director of transportation requiring performance of or desistance from certain acts or compliance with certain requirements and any denial or revocation of an approval, certificate, or license or refusal of a renewal thereof~~[7]~~ shall be:

- (1) ~~[shall be in such]~~ In the form ~~[as]~~ required by section 91-12~~[7]~~;

- (2) ~~[shall be made]~~ Made only after reasonable notice and an opportunity to be heard in conformity with chapter 91~~[7]~~i; and
- (3) ~~[shall be served]~~ Served upon the persons affected either by registered or certified mail with return receipt requested or in person."

### COMMENT

**Section 261-16(a), HRS, contains two sets of numbered paragraphs with repetitive designations that create an ambiguity for references made to the same paragraph number. In addition, section 261-16(a) and (b), HRS, sets forth paragraph designations, but is not formatted to reflect the paragraph designations. Accordingly, the second set of paragraph designations in section 261-16(a), HRS, should be deleted and section 261-16(a) and (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 clarity and style.**

SECTION 8. Section 261-16, Hawaii Revised Statutes, is amended by amending subsections (a) and (b) to read as follows:

"(a) Site approvals. Except as provided in subsection (d) ~~[of this section]~~, the department of transportation may provide for the approval of airport sites and the issuance of certificates of the approvals. No charge shall be made for any approval. Upon the ~~[promulgation]~~ department's adoption of a rule ~~[or regulation]~~ providing for ~~[such]~~ the approvals, any person desiring or planning to construct or establish an airport ~~[may]~~, before the acquisition of the site or before the

construction or establishment of the proposed airport, may make application to the department for approval of the site. The department shall issue with reasonable dispatch [~~issue~~] a certificate granting approval of a site if it is satisfied that:

- (1) [~~that the~~] The site is adequate for the proposed airport;
- (2) [~~that the~~] The proposed airport, if constructed or established, will conform to minimum standards of safety; and
- (3) [~~that safe~~] Safe air traffic patterns can be worked out for the proposed airport and for all existing airports and approved airport sites in its vicinity.

An approval of a site may be granted subject to any reasonable conditions [~~which~~] that the department may deem necessary to effectuate the purposes of this section[~~7~~] and shall remain in effect, unless sooner revoked by the department, until a license for an airport located on the approved site has been issued pursuant to subsection (b) [~~of this section~~]. The department [~~may~~], after notice and opportunity for hearing to a holder of a certificate of approval, may revoke the approval when it shall reasonably determine [~~(1)~~] that there has been an abandonment of the site as an airport site[~~7, or (2)~~]; that there has been a failure within the time prescribed, or if no time was prescribed, within a reasonable time, to develop the site as an



airport or to comply with the conditions of the approval~~[7]~~i; or ~~[(3)]~~ that because of change of physical or legal conditions or circumstances the site is no longer usable for the aeronautical purposes for which the approval was granted.

(b) Licenses. Except as provided in subsection (d), the department may provide for the licensing of airports and the annual renewal of ~~[such]~~ the licenses. ~~[(1)]~~ The department may charge license fees not exceeding \$100 for each original license, and not exceeding \$10 for each renewal thereof. Upon the ~~[promulgation]~~ adoption of a rule ~~[or regulation]~~ providing for the licensing, and upon receipt of an application for an original license and the payment of the duly required fee therefor, the department shall issue with reasonable dispatch~~[7~~ upon receipt of an application for an original license and the payment of the duly required fee therefor, issue] an appropriate license if ~~[(1)]~~ the department is satisfied that the airport conforms to minimum standards of safety and that safe air traffic patterns can be worked out for the airport and for all existing airports and approved airport sites in its vicinity. All licenses shall be renewable annually upon payment of the fees prescribed. Licenses and renewals thereof may be issued subject to any reasonable conditions that the department may deem necessary to effectuate the purposes of this section. The department ~~[may]~~, after notice and opportunity for hearing to

the licensee, may revoke any license or renewal thereof, or refuse to issue a renewal, when ~~[it shall]~~ the department reasonably ~~[determine]~~ determines that:

- (1) ~~[that there]~~ There has been an abandonment of the airport as such~~[, or]~~;
- (2) ~~[that there]~~ There has been a failure to comply with the conditions of the license or renewal thereof~~[,]~~;  
or
- (3) ~~[that because]~~ Because of change of physical or legal conditions or circumstances, the airport has become either unsafe or unusable for the aeronautical purposes for which the license or renewal was issued.

It shall be unlawful for any person to operate an airport without an appropriate license ~~[for such]~~, as may be duly required by rule ~~[or regulation issued]~~ adopted pursuant to this subsection."

## COMMENT

**Section 261-17.5, HRS, sets forth paragraph designations, but is not formatted to reflect the paragraph designations. Section 261-17.5, HRS, should be amended to conform to the customary drafting convention for purposes of clarity and consistency. Further, subparagraph designations should be added to the section for clarity and consistency with the customary drafting convention. Additional technical nonsubstantive amendments are made for purposes of clarity and style.**

SECTION 9. Section 261-17.5, Hawaii Revised Statutes, is amended to read as follows:

"~~[+]§261-17.5[+]~~ **Arrest or citation.** (a) Except when required by state law to take immediately before a district judge a person arrested for a violation of any provision of this chapter, including any rule ~~[or regulation]~~ adopted ~~[and promulgated]~~ pursuant to this chapter, any person authorized to enforce the provisions of this chapter, hereinafter referred to as ~~[enforcement officer,~~ an "enforcement officer", upon arresting a person for violation of any provision of this chapter, including any rule ~~[or regulation]~~ adopted ~~[and promulgated]~~ pursuant to this chapter, shall~~[,]~~ in the discretion of the enforcement officer~~[, either]~~:

- (1) ~~[issue]~~ Issue to the purported violator a summons or citation, printed in the form hereinafter described, warning the purported violator to appear and answer to the charge against the purported violator at a certain place and at a time within seven days after ~~[such]~~ the arrest~~[,]~~; or
- (2) ~~[take]~~ Take the purported violator without unnecessary delay before a district judge.

(b) The summons or citation shall be printed in a form comparable to the form of other summonses and citations used for arresting offenders and shall be designed to ~~[provide for]~~

~~inclusion of]~~ include all necessary information. The form and content of ~~[such]~~ the summons or citation shall be adopted or prescribed by the district courts.

Summonses and citations shall be consecutively numbered, and the carbon copy or copies of each shall bear the same number.

(c) The original of a summons or citation shall be given to the purported violator and the other copy or copies distributed in the manner prescribed by the district courts; provided that the district courts may prescribe alternative methods of distribution for the original and any other copies.

~~[Summonses and citations shall be consecutively numbered and the carbon copy or copies of each shall bear the same number.]~~

(d) Any person who fails to appear at the place and within the time specified in the summons or citation issued to the person by the enforcement officer, upon the person's arrest for violation of any provision of this chapter, including any rule ~~[or regulation promulgated]~~ adopted pursuant to this chapter, shall be guilty of a misdemeanor and, on conviction, shall be fined not more than \$1,000, or be imprisoned not more than six months, or both.

~~[In the event]~~ If any person fails to comply with a summons or citation issued to ~~[such]~~ the person, or if any person fails

or refuses to deposit bail as required, the enforcement officer shall cause a complaint to be entered against ~~[such]~~ the person and secure the issuance of a warrant for the person's arrest."

## COMMENT

**The definitions of "business" and "person" in section 261-31, HRS, set forth paragraph designations, but are not formatted to reflect the paragraph designations. The definitions should be amended to conform to the customary drafting convention for purposes of clarity and consistency. An additional technical nonsubstantive amendment is made for the purpose of style.**

SECTION 10. Section 261-31, Hawaii Revised Statutes, is amended by amending the definitions of "business" and "person" to read as follows:

"Business" means any lawful activity conducted:

- (1) ~~[primarily]~~ Primarily for the purchase and resale, manufacture, processing, or marketing of products, commodities, or any other personal property;
- (2) ~~[primarily]~~ Primarily for the sale of services to the public; or
- (3) ~~[by]~~ By a nonprofit organization.

"Person" means:

- (1) ~~[any]~~ Any individual, partnership, corporation, or association ~~[which]~~ that is the owner of a business;
- (2) ~~[any]~~ Any owner, part owner, tenant, or sharecropper operating a farm;

- (3) ~~[the]~~ The head of a family; or
- (4) ~~[an]~~ An individual not a member of a family."

## COMMENT

**Section 261-32(c), HRS, sets forth paragraph designations, but is not formatted to reflect the paragraph designations. Section 261-32(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 clarity and style.**

SECTION 11. Section 261-32, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

"(c) Any displaced person who moves or discontinues the person's business or farm operations ~~[who]~~ and elects to accept the payment authorized by this subsection in lieu of the payment authorized by subsection (a) ~~[,]~~ may receive a fixed relocation payment in an amount equal to the average annual net earnings of the business or farm operation, or \$5,000, whichever is ~~[the lesser.]~~ less. In the case of a business, no payment shall be made under this subsection unless the director is satisfied that the business:

- (1) ~~[cannot]~~ Cannot be relocated without a substantial loss of its existing patronage; and
- (2) ~~[is]~~ Is not part of a commercial enterprise having at least one other establishment ~~[, not]~~ that is:

(A) Not being acquired by the State [~~which is~~  
~~engaged~~]; and

(B) Engaged in the same or similar business."

## COMMENT

**Section 261-53, HRS, sets forth paragraph designations, but is not formatted to reflect the paragraph designations. Section 261-53, HRS, should be amended to conform to the customary drafting convention for purposes of clarity and consistency. Additional technical nonsubstantive amendments are made for the purpose of style.**

SECTION 12. Section 261-53, Hawaii Revised Statutes, is amended to read as follows:

"~~[†]~~**§261-53**~~[‡]~~ **Findings and determination for special facility leases.** The department shall not enter into any special facility lease unless the department at or prior to the entering into of [~~such~~] the special facility lease [~~shall find~~] finds and [~~determine:~~] determines that:

- (1) [~~that the~~] The building, structure, or facility [~~which~~] that is to be the subject of [~~such~~] the special facility lease will not be used to provide services, commodities, supplies, or facilities [~~which~~] that are then adequately being made available through the airports system of the State;
- (2) [~~that the~~] The result of the use or occupancy of [~~such~~] the building, structure, or facility under

~~[such]~~ the special facility lease would not result in the reduction of the revenues derived from the airports system to an amount below the amount required to be derived therefrom by section 39-61; and

- (3) ~~[that the]~~ The entering into of ~~[such]~~ the special facility lease would not be in violation of or result in a breach of any covenant contained in any resolution or certificate authorizing any bonds of the State then outstanding."

#### COMMENT

**Section 262-11, HRS, sets forth paragraph designations, but is not formatted to reflect the paragraph designations. Section 262-11, 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 clarity and style.**

SECTION 13. Section 262-11, Hawaii Revised Statutes, is amended to read as follows:

**"§262-11 Acquisition of air rights.** When:

- (1) ~~[it]~~ It is desired to remove, lower, or otherwise terminate a nonconforming structure or use; ~~[or]~~
- (2) ~~[the]~~ The approach protection necessary ~~[cannot]~~, because of constitutional limitations, cannot be provided by airport zoning regulations under this chapter; or



(3) [~~it~~] It appears advisable that the necessary approach protection be provided by acquisition of property rights rather than by airport zoning regulations, the director of transportation on behalf of the State may acquire[~~7~~] by purchase, grant, or condemnation in the manner provided by chapter 101[~~such~~] the air right, aviation easement, or other estate or interest in the property or nonconforming structure or use in question as may be necessary or proper to effectuate the purposes of this chapter, including acquisition of a fee simple estate."

#### COMMENT

**Section 263A-1(b), HRS, sets forth paragraph designations, but is not formatted to reflect the paragraph designations. Section 263A-1(b), HRS, should be amended to conform to the customary drafting convention for purposes of clarity and consistency.**

SECTION 14. Section 263A-1, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

"(b) The test or tests shall be administered at the request of a law enforcement officer having probable cause to believe the person operating or in actual physical control of an aircraft is under the influence of intoxicating liquor only after:

(1) [~~a~~] A lawful arrest; and

- (2) ~~[the]~~ The officer has informed the person of the sanctions of section 263A-5."

#### COMMENT

**Section 264-26(b), HRS, sets forth paragraph designations, but is not formatted to reflect the paragraph designations. Section 264-26(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 clarity and style.**

SECTION 15. Section 264-26, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

"(b) Any moneys appropriated for the State's share of the price or any moneys in the state highway fund created by section 248-8, in the discretion of the director, may be drawn upon to advance the federal share of payments:

- (1) ~~[earned]~~ Earned by contractors on federal-aid projects for completed portions of the work~~[7]~~; or

(2) ~~[due]~~ Due the owners for property conveyed by them, where the necessary federal-aid moneys are not immediately forthcoming~~[7]~~; provided that the appropriation or fund ~~[to]~~, as applicable, shall be reimbursed for the advances when federal-aid moneys are received."

#### COMMENT

**Section 266-21.4(a), HRS, sets forth paragraph designations, but is not formatted to reflect the paragraph designations. Section 266-21.4(a), HRS, should**

**be amended to conform to the customary drafting convention for purposes of clarity and consistency.**

SECTION 16. Section 266-21.4, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

- "(a) The department shall:
- (1) [~~develop~~] Develop a list of minimum requirements for the marine inspection of vessels seeking permits to moor in state commercial harbors~~[7]~~;
  - (2) [~~approve~~] Approve qualified marine surveyors to inspect vessels seeking permits to moor in state commercial harbors~~[7]~~; and
  - (3) [~~approve~~] Approve a fee schedule for marine surveyors' inspections."

#### **COMMENT**

**Section 266-24.1, HRS, sets forth paragraph designations, but is not formatted to reflect the paragraph designations. Section 266-24.1, HRS, should be amended to conform to the customary drafting convention for purposes of clarity and consistency. Further, subsection designations should be added to the section for clarity and consistency with the customary drafting convention. Additional technical nonsubstantive amendments are made for purposes of clarity and style.**

SECTION 17. Section 266-24.1, Hawaii Revised Statutes, is amended to read as follows:

**"§266-24.1 Arrest or citation.** (a) Except when required by state law to take immediately before a district judge a

person arrested for a violation of any provision of this part, including any rule [~~or regulation~~] adopted [~~and promulgated~~] pursuant to this part, any person authorized to enforce the provisions of this part, hereinafter referred to as [~~enforcement officer,~~] an "enforcement officer", upon arresting a person for violation of any provision of this part, including any rule [~~or regulation~~] adopted [~~and promulgated~~] pursuant to this part, shall~~[,]~~ in the discretion of the enforcement officer~~[, either]~~:

- (1) [~~issue~~] Issue to the purported violator a summons or citation, printed in the form hereinafter described, warning the purported violator to appear and answer to the charge against the purported violator at a certain place and at a time within seven days after [~~such~~] the arrest~~[,]~~; or
- (2) [~~take~~] Take the purported violator without unnecessary delay before a district judge.

(b) The summons or citation shall be printed in a form comparable to the form of other summonses and citations used for arresting offenders and shall be designed to [~~provide for inclusion of~~] include all necessary information. The form and content of [~~such~~] the summons or citation shall be adopted or prescribed by the district courts.

Summonses and citations shall be consecutively numbered, and the carbon copy or copies of each shall bear the same number.

(c) The original of a summons or citation shall be given to the purported violator and the other copy or copies distributed in the manner prescribed by the district courts; provided that the district courts may prescribe alternative methods of distribution for the original and any other copies.

~~[Summonses and citations shall be consecutively numbered and the carbon copy or copies of each shall bear the same number.]~~

(d) Any person who fails to appear at the place and within the time specified in the summons or citation issued to the person by the enforcement officer, upon the person's arrest for violation of any provision of this part, including any rule ~~[or regulation promulgated]~~ adopted pursuant to this part, shall be guilty of a misdemeanor and, on conviction, shall be fined not more than \$1,000, or be imprisoned not more than six months, or both.

In the event any person fails to comply with a summons or citation issued to ~~[such]~~ the person, or if any person fails or refuses to deposit bail as required, the enforcement officer shall cause a complaint to be entered against ~~[such]~~ the person and secure the issuance of a warrant for the person's arrest.

(e) When a complaint is made to any prosecuting officer of the violation of any provision of this part, including any rule ~~[or regulation promulgated]~~ adopted thereunder, the enforcement officer who issued the summons or citation shall subscribe to it under oath administered by another official of the department of transportation whose ~~[names have]~~ name has been submitted to the prosecuting officer and who ~~[have]~~ has been designated by the director of transportation to administer the ~~[same.]~~ oath."

#### COMMENT

**Section 266-51, HRS, sets forth definitions 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. An additional technical nonsubstantive amendment is made for the purpose of style.**

SECTION 18. Section 266-51, Hawaii Revised Statutes, is amended to read as follows:

**"§266-51 Definitions.** For the purpose of this part, if not inconsistent with the context:

"Remodeling" includes reconstruction, renovation, rehabilitation, improvement, betterment, or extension of a special facility.

~~[-(1)-]~~ "Special facility" means one or more buildings, structures, or facilities on land owned by the State for maritime and marine operations, including cargo handling and

control; storage, repair, maintenance, and servicing of marine and marine-related equipment; processing and canning of fish and fish products; and offices and accommodations for the personnel and employees of persons engaged in maritime and maritime-related operations [~~which~~] that are the subject of a special facility lease.

[~~(2)~~] "Special facility lease" includes a contract, lease, or other agreement, or any combination thereof, the subject matter of which is the special facility.

[~~(3)~~ ~~"Remodeling" includes reconstruction, renovation, rehabilitation, improvement, betterment, or extension of a special facility.~~]"

## COMMENT

**Section 266-55(4), HRS, refers to the definition of "special facility" in section 266-51(1), HRS. Section 18 of this measure amends section 266-51, HRS, by, among other things, deleting the numbered paragraph designations for definitions in that section. Accordingly, section 266-55(4), HRS, should be amended by changing "266-51(1)" to "266-51". Additional technical nonsubstantive amendments are made for purposes of clarity and style.**

SECTION 19. Section 266-55, Hawaii Revised Statutes, is amended to read as follows:

**"§266-55 Special facility revenue bonds.** All special facility revenue bonds, including special facility revenue refunding bonds, authorized to be issued shall be issued pursuant to part III of chapter 39, except as follows:

- (1) No ~~[such]~~ special facility revenue bonds shall be issued unless at the time of issuance the department shall have entered into a special facility lease with respect to the special facility for which ~~[such]~~ the revenue bonds are to be issued~~[-]~~;
- (2) ~~[Such]~~ Special facility revenue bonds shall be issued in the name of the department, and not in the name of the State~~[-]~~;
- (3) No further authorization of the legislature shall be required for the issuance of the special facility revenue bonds, but the approval of the governor shall be required for ~~[such]~~ the issuance~~[-]~~;
- (4) ~~[Such]~~ Special facility revenue bonds shall be payable solely from and secured solely by the revenues derived by the department from the special facility for which they are issued, as defined in section ~~[266-51(1)-]~~ 266-51;
- (5) The final maturity date of ~~[such]~~ the special facility revenue bonds shall not be later than either the estimated life of the special facility for which they are issued or the initial term of the special facility lease~~[-]~~;
- (6) If deemed necessary or advisable by the department, or to permit the obligations of the other person to the



special facility lease to be registered under the United States Securities Act of 1933, the department with the approval of the state director of finance may appoint a national or state bank within or without the State to serve as trustee for the holders of the special facility revenue bonds and may enter into a trust indenture or trust agreement with ~~[such]~~ the trustee. The trustee may be authorized by the department to collect, hold, and administer the revenues derived from the special facility for which the special facility revenue bonds are issued and to apply ~~[such]~~ the revenues to the payment of the principal and interest on ~~[such]~~ the special facility revenue bonds. ~~[In the event that]~~ If any ~~[such]~~ trustee shall be appointed, any trust indenture or agreement entered into by the department with the trustee may contain the covenants and provisions authorized by part III of chapter 39 to be inserted in a resolution adopted or certificate issued, as though the words "resolution" or "certificate" as used in that part read "trust indenture or agreement". ~~[Such]~~ Those covenants and provisions shall not be required to be included in the resolution or certificate authorizing the issuance of the special facility

revenue bonds if included in the trust indenture or agreement. Any resolution or certificate, trust indenture, or trust agreement adopted, issued, or entered into by the department pursuant to this part may also contain any provisions required for the qualification thereof under the United States Trust Indenture Act of 1939. The department may pledge and assign to the trustee the special facility lease and the rights of the department including the revenues thereunder~~[.]~~;

- (7) If the department with the approval of the state director of finance shall have appointed or shall appoint a trustee for the holders of the special facility revenue bonds, then notwithstanding the second sentence of section 39-68~~,~~ the director of finance may elect not to serve as fiscal agent for the payment of the principal and interest, and for the purchase, registration, transfer, exchange, and redemption, of the special facility revenue bonds, or may elect to limit the functions the director shall perform as ~~[such]~~ fiscal agent. The department~~,~~ with the approval of the director of finance~~,~~ may appoint the trustee to serve as ~~[such]~~ fiscal agent~~[.]~~ and may authorize and empower the trustee to perform ~~[such]~~

any functions with respect to ~~[such]~~ the payment~~[7]~~ of  
the principal and interest and the purchase,  
registration, transfer, exchange, and redemption~~[7]~~ of  
the special facility revenue bonds, as the department  
may deem necessary, advisable, or expedient,  
including, without limitation, the holding of the  
special facility revenue bonds and coupons ~~[which]~~  
that have been paid, and the supervision and  
destruction thereof in accordance with sections 40-10  
and 40-11. Nothing in this paragraph shall be a  
limitation upon or be construed as a limitation upon  
the powers granted in the preceding paragraph to the  
department with the approval of the director of  
finance to appoint the trustee, or granted in sections  
36-3 and 39-13 and the third sentence of section 39-68  
to the director of finance to appoint the trustee or  
others, as fiscal agents, paying agents, and  
registrars for the special facility revenue bonds or  
to authorize and empower ~~[such]~~ fiscal agents, paying  
agents, and registrars to perform the functions  
referred to in ~~[such]~~ the preceding paragraph and  
sections~~[7]~~ 36-3 and 39-13 and the third sentence of  
section 39-68, it being the intent of this paragraph  
to confirm that the director of finance as aforesaid

may elect not to serve as fiscal agent for the special facility revenue bonds or may elect to limit the functions the director shall perform as [~~such~~] fiscal agent, as the director of finance may deem necessary, advisable, or expedient[~~-~~];

- (8) The department may sell [~~such~~] special facility revenue bonds either at public or private sale[~~-~~];
- (9) If no trustee shall be appointed to collect, hold, and administer the revenues derived from the special facility for which [~~such~~] the special facility revenue bonds are issued, [~~such~~] the revenues shall be held in a separate account in the treasury of the State, separate and apart from the harbor special fund, to be applied solely to the carrying out of the resolution, certificate, trust indenture, or trust agreement authorizing or securing [~~such~~] the special facility revenue bonds[~~-~~];
- (10) If the resolution, certificate, trust indenture, or trust agreement shall provide that no special facility revenue bonds issued thereunder shall be valid or obligatory for any purpose unless certified or authenticated by the trustee for the holders of [~~such~~] the special facility revenue bonds, signatures of the officers of the State upon [~~such~~] the bonds and the

coupons thereof as required by section 39-56 may be evidenced by their facsimile signatures~~[ ]~~;

(11) The proceeds of ~~[such]~~ special facility revenue bonds may be used and applied by the department to reimburse the other person to the special facility lease for all preliminary costs and expenses, including architectural and legal costs~~[ ]~~; and

(12) If the special facility lease shall require the other person to operate, maintain, and repair the special facility ~~[which]~~ that is the subject of ~~[such]~~ the lease, at the other person's expense, ~~[such]~~ the requirement shall constitute compliance by the department with section 39-61(a)(2), and none of the revenues derived by the department from ~~[such]~~ the special facility shall be required to be applied to the purposes of section 39-62(2). Sections 39-62(4), 39-62(5), and 39-62(6) shall not be applicable to the revenues derived from a special facility lease."

#### COMMENT

**Section 269-54(d), HRS, sets forth paragraph designations, but is not formatted to reflect the paragraph designations. Section 269-54(d), HRS, should be amended to conform to the customary drafting convention for purposes of clarity and consistency.**

SECTION 20. Section 269-54, Hawaii Revised Statutes, is amended by amending subsection (d) to read as follows:

"(d) Whenever it appears to the consumer advocate that:

- (1) [~~any~~] Any public utility has violated or failed to comply with any provision of this part or of any state or federal law;
- (2) [~~any~~] Any public utility has failed to comply with any rule, regulation, or other requirement of the public utilities commission or of any other state or federal agency;
- (3) [~~any~~] Any public utility has failed to comply with any provision of its charter or franchise;
- (4) [~~changes,~~] Changes, additions, extensions, or repairs to the plant or service of any public utility are necessary to meet the reasonable convenience or necessity of the public; or
- (5) [~~the~~] The rates, fares, classifications, charges, or rules of any public utility are unreasonable or unreasonably discriminatory,

the consumer advocate may institute proceedings for appropriate relief before the public utilities commission. The consumer advocate may appeal any final decision and order in any proceeding to which the consumer advocate is a party in the manner provided by law."

## COMMENT

**Section 271-4, HRS, sets forth definitions 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. Additional technical nonsubstantive amendments are made for purposes of clarity and style.**

SECTION 21. Section 271-4, Hawaii Revised Statutes, is amended to read as follows:

**"§271-4 Definitions.** As used in this chapter:

"Certificate" means a certificate of public convenience and necessity issued under this chapter to common carriers by motor vehicle.

~~[(1)]~~ "Chapter" means the Motor Carrier Law.

~~[(2)]~~ "Commission" means the public utilities commission.

"Common carrier by motor vehicle" means any person that holds itself out to the general public to engage in the transportation by motor vehicle of passengers or property or any class or classes thereof for compensation.

"Contract carrier by motor vehicle" means any person that engages in transportation by motor vehicle of passengers or property for compensation (other than transportation referred to in the definition of "common carrier by motor vehicle") under continuing contracts with one person or a limited number of persons for the furnishing of transportation services:

- (1) Through the assignment of motor vehicles for a continuing period of time to the exclusive use of each person served; or
- (2) Designed to meet the distinct need of each individual customer.

"Enforcement officer" means any person employed and authorized by the commission to investigate any matter on behalf of the commission. The term also means a motor vehicle safety officer employed and assigned, pursuant to section 271-38, by the department of transportation to enforce sections 271-8, 271-12, 271-13, 271-19, and 271-29 through the assessment of civil penalties as provided in section 271-27(h), (i), and (j).

"Highway" means the public roads, highways, streets, and ways in this State.

"Motor carrier" includes both a common carrier by motor vehicle and a contract carrier by motor vehicle.

"Motor vehicle" means any vehicle, machine, tractor, trailer, or semitrailer propelled or drawn by mechanical power and used upon the highways in the transportation of passengers or property, or any combination thereof determined by the commission, but does not include any vehicle, locomotive, or car operated exclusively on a rail or rails or a trolley bus operated by electric power derived from a fixed overhead wire,



furnishing local passenger transportation similar to street-railway service.

"Permit" means a permit issued under this chapter to contract carriers by motor vehicle.

[~~(3)~~] "Person" or "persons" means any individual, firm, copartnership, corporation, company, association, or joint stock association; and includes any trustee, receiver, assignee, or personal representative thereof.

[~~(4)~~ ~~"Certificate" means a certificate of public convenience and necessity issued under this chapter to common carriers by motor vehicle.~~

~~(5) "Permit" means a permit issued under this chapter to contract carriers by motor vehicle.]~~

"Private carrier of property by motor vehicle" means any person not included in the terms "common carrier by motor vehicle" or "contract carrier by motor vehicle", who or that transports by motor vehicle property of which the person is the owner, lessee, or bailee, when the transportation is for the purpose of sale, lease, rent, or bailment or in the furtherance of any commercial enterprise.

"Rates" includes rates, fares, tolls, rentals, and charges of whatever kind and nature unless the context indicates otherwise; provided that for transportation by motor vehicle of passengers, where the provision of transportation is part of a

package that may include air fare, meals, attractions, and other services, "rates" shall only include the charges for the provision of transportation by motor vehicle.

[~~(6)~~] "Transportation of persons" includes every service in connection with or incidental to the safety, comfort, or convenience of persons transported and the receipt, carriage, and delivery of these persons and their baggage.

[~~(7)~~] "Transportation of property" includes every service in connection with or incidental to the transportation of property, including in particular its receipt, delivery, elevation, transfer, carriage, ventilation, refrigeration, icing, dunnage, storage in transit, handling, and [~~its~~] consolidation for the purposes of forwarding within the State.

[~~(8)~~] ~~"Motor vehicle" means any vehicle, machine, tractor, trailer, or semitrailer propelled or drawn by mechanical power and used upon the highways in the transportation of passengers or property, or any combination thereof determined by the commission, but does not include any vehicle, locomotive, or car operated exclusively on a rail or rails or a trolley bus operated by electric power derived from a fixed overhead wire, furnishing local passenger transportation similar to street-railway service.~~

- ~~(9) "Highway" means the public roads, highways, streets, and ways in this State.~~
- ~~(10) "Rates" includes rates, fares, tolls, rentals, and charges of whatever kind and nature unless the context indicates otherwise; provided that for transportation by motor vehicle of passengers, where the provision of transportation is part of a package that may include air fare, meals, attractions, and other services, "rates" shall only include the charges for the provision of transportation by motor vehicle.~~
- ~~(11) "Common carrier by motor vehicle" means any person that holds itself out to the general public to engage in the transportation by motor vehicle of passengers or property or any class or classes thereof for compensation.~~
- ~~(12) "Contract carrier by motor vehicle" means any person that engages in transportation by motor vehicle of passengers or property for compensation (other than transportation referred to in paragraph (11)) under continuing contracts with one person or a limited number of persons either: for the furnishing of transportation services through the assignment of motor vehicles for a continuing period of time to the exclusive use of each person served; or for the~~

~~furnishing of transportation services designed to meet the distinct need of each individual customer.~~

~~(13) "Motor carrier" includes both a common carrier by motor vehicle and a contract carrier by motor vehicle.~~

~~(14) "Private carrier of property by motor vehicle" means any person not included in the terms "common carrier by motor vehicle" or "contract carrier by motor vehicle", who or that transports by motor vehicle property of which the person is the owner, lessee, or bailee, when such transportation is for the purpose of sale, lease, rent, or bailment, or in the furtherance of any commercial enterprise.~~

~~(15) "Enforcement officer" means any person employed and authorized by the commission to investigate any matter on behalf of the commission. The term also means a motor vehicle safety officer employed and assigned, pursuant to section 271-38, by the department of transportation to enforce sections 271-8, 271-12, 271-13, 271-19, and 271-29 through the assessment of civil penalties as provided in section 271-27(h), (i), and (j).]~~ "

## COMMENT

**Section 271G-5, HRS, sets forth definitions 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. An additional technical nonsubstantive amendment is made for the purpose of style.**

SECTION 22. Section 271G-5, Hawaii Revised Statutes, is amended to read as follows:

**"§271G-5 Definitions.** As used in this chapter:

"Certificate" means a certificate of public convenience and necessity issued under this chapter to common carriers by water.

[~~(1)~~] "Chapter" means this Water Carrier Law.

[~~(2)~~] "Commission" means the public utilities commission.

"Enforcement officer" means any person employed and authorized by the commission to investigate any matter on behalf of the commission.

[~~(3)~~] "Person" or "persons" means any individual, firm, copartnership, corporation, company, association, or joint stock association; and includes any trustee, receiver, assignee, or personal representative thereof.

[~~(4)~~ "Certificate" means a certificate of public convenience and necessity issued under this chapter to common carriers by water.]

"Rates" includes rates, fares, tolls, rentals, and charges of whatever kind and nature unless the context indicates otherwise.

"Related companies" means companies or persons that directly, or indirectly through one or more intermediaries, control, or are controlled by, or are under common control with, the water carrier. The term "control", in reference to a relationship between any person or persons and another person or persons, includes actual as well as legal control, and indirect as well as direct control.

[~~5~~] "Transportation of persons" includes every service in connection with or incidental to the safety, comfort, or convenience of persons transported and the receipt, carriage, and delivery of these persons and their baggage.

[~~6~~] "Transportation of property" includes every service in connection with or incidental to the transportation of property, including in particular its receipt, and delivery, carriage, preservation, and all incidental services affecting these activities.

"Vessel" means any watercraft or other artificial contrivance of whatever description that is used, or capable of being used, or intended to be used, as a means of transportation by water.

[~~(7)~~] "Water carrier" or "common carrier by water" means any person who holds oneself out to the general public as engaging in the transportation by water of passengers or property for compensation within the State or between points within the State.

~~[(8) "Vessel" means any watercraft or other artificial contrivance of whatever description which is used, or capable of being used, or intended to be used, as a means of transportation by water.]~~

~~(9) "Rates" includes rates, fares, tolls, rentals, and charges of whatever kind and nature unless the context indicates otherwise.~~

~~(10) "Related companies" means companies or persons that directly, or indirectly through one or more intermediaries, control, or are controlled by, or are under common control with, the water carrier. The term "control", in reference to a relationship between any person or persons and another person or persons, includes actual as well as legal control, and indirect as well as direct control.~~

~~(11) "Enforcement officer" means any person employed and authorized by the commission to investigate any matter on behalf of the commission.] "~~

## COMMENT

**Section 271G-6(3), HRS, sets forth subparagraph designations, but is not formatted to reflect the subparagraph designations. Section 271G-6(3), HRS, should be amended to conform to the customary drafting convention for purposes of clarity and consistency. Additional technical nonsubstantive amendments are made for the purposes of clarity and consistency.**

SECTION 23. Section 271G-6, Hawaii Revised Statutes, is amended to read as follows:

"~~[+]§271G-6[+]~~ **Exemptions, generally.** Notwithstanding any other provisions of this chapter, its contents shall not apply to:

- (1) Persons transporting their own property where the transportation is in furtherance of a primary business purpose or enterprise of that person except where the transportation is undertaken by a water carrier to evade the regulatory purposes of this chapter;
- (2) Nonprofit agricultural cooperative associations to the extent that they engage in the transportation of their own property or the property of their members;
- (3) Persons engaged in the transportation over water of passengers or property for compensation, other than transportation referred to in the definition of "water carrier" or "common carrier by water" in section ~~[271G-5(7)]~~ 271G-5 under continuing contracts with one



person or a limited number of persons [~~either (A)~~] for the furnishing of transportation services [~~through~~]:

(A) Through the assignment of vessels for a continuing period of time to the exclusive use of each person served[~~7~~]; or

~~(B) [for the furnishing of transportation services designed]~~ Designed to meet the distinct need of each individual customer;

- (4) Persons transporting their own property or employees where the transportation is in furtherance of a business or enterprise of fishing or taking of fish for profit or gain as a means of livelihood; or
- (5) Persons engaged in the business of transporting persons for sightseeing and other recreational activities."

## COMMENT

**Section 273-3, HRS, sets out a list of corporation powers, but the list is not formatted as paragraphs. Section 273-3, HRS, should be amended by adding paragraph designations and formatting the paragraphs for clarity and consistency with the customary drafting convention. Additional technical nonsubstantive amendments are made for purposes of clarity and style.**

SECTION 24. Section 273-3, Hawaii Revised Statutes, is amended to read as follows:

**"§273-3 Special powers.** For the purposes and subject to the provisions and restrictions of this chapter, the corporation [~~may~~], from time to time, may exercise any of the following powers:

- (1) It may enter upon any lands [~~which~~] that may adjoin upon the line of any railway [~~which~~] that may be authorized by charter to be made, and may bore, dig, cut, trench, embank, and drain, and may remove or lay, take, carry away, and use any earth, gravel, stone, timber, or other things dug or obtained therein or otherwise in the execution of any powers hereafter in this chapter given, and [~~which~~] that may be proper for the making, maintaining, altering, repairing, or using of any railway lawfully authorized, or [~~which~~] that may obstruct the making, maintaining, altering, repairing, or using of the same;
- (2) It may make, in, upon, across, under, or over any such lands, or any street, roads, ways, railroads, tramways, hills, valleys, rivers, canals, watercourses, or waters, [~~such~~] any temporary or permanent inclined planes, tunnels, cuttings, embankments, aqueducts, bridges, roads, ways, passages, conduits, drains, piers, arches, fences, and

other work and conveniences as [~~it~~] the corporation thinks proper;

- (3) It may alter the course of any rivers not navigable, canals, brooks, streams, or watercourses during [~~such~~] any times as is necessary for constructing or maintaining tunnels, bridges, or other works over, under, or affecting the same; and may temporarily or permanently alter the course of any rivers or streams, or raise or sink the level of any rivers or streams, streets, roads, or ways, to carry more conveniently the same over or under or by the side of any railway;
- (4) It may make drains or conduits into, through, or under any lands adjoining the railway for the purpose of conveying water from or to the railway, and upon the railway, or any lands adjoining or near thereto;
- (5) It may make [~~such~~] piers, jetties, stations, sidings, wharves, warehouses, tollhouses, and other houses, yards, engines, machinery, signal posts, and other apparatus, works, and conveniences whatsoever connected with the railway as the corporation may think proper, and may from time to time alter, repair, or discontinue any [~~such~~] apparatus, works, and conveniences, and substitute others in their stead;

- (6) It may fell or remove any timber or other trees being within two hundred feet from either side of the railway ~~[which,~~ that, by their liability to fall or otherwise, might obstruct or injure the railway;
- (7) It may also fell or cut down and remove any trees or wood, whether timber or other trees, or scrub or underwood, ~~[which,~~ that, by reason of the line making a curve or otherwise, may obstruct or impede a view of any signal post from any portion of the line ~~[which shall be]~~ within one mile in a right line from any ~~[such]~~ signal post;
- (8) It may enter upon and use any existing private road, being a road graveled or formed with stones or other hard material, and not being an avenue or approach to any dwelling house;
- (9) It may enter upon and take, purchase, and hold all ~~[such]~~ lands, tenements, and hereditaments as may be required for the purposes of the railway and works connected therewith; and
- (10) It may do all other things necessary or convenient for making, maintaining, altering, or repairing and using the railway.

~~[But nothing]~~ Nothing in this chapter shall be construed to authorize any corporation to enter upon or take any tidewaters,

nor in any way to hinder, obstruct, or interfere with navigation in or upon any public navigable waters, nor to erect, build, or maintain any pier, jetty, or wharf in, upon, or over any harbor, bay, or river beyond high watermark."

## COMMENT

**Section 281-42(a)(8), HRS, sets forth subparagraph designations, but is not formatted to reflect the subparagraph designations. Section 281-42(a)(8), 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 281-42(a), HRS, for purposes of clarity and style.**

SECTION 25. Section 281-42, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) It shall be unlawful for any person holding a manufacturer's license or a wholesale dealer's license to induce the purchases of a retail licensee by:

- (1) Acquiring or holding any interest in any license of a retail licensee;
- (2) Acquiring any interest in the real or personal property owned, occupied, or used by a retail licensee in the conduct of its business, unless the holding of ~~[such]~~ the interest is permitted under the regulations of the liquor commission or a statement thereof has been filed with the commission and has not been disapproved by ~~[it+]~~ the commission;

- (3) Furnishing, giving, renting, lending, or selling to a retail licensee any equipment, fixtures, signs, supplies, money, services, or other thing of value, subject to the exceptions contained in [~~Subpart~~ subpart D of the "tied house" regulations of the Bureau of Alcohol, Tobacco and Firearms of the United States Treasury Department, 27 Code of Federal Regulations [~~Part~~ part 6 (1988)], as [the same] may [change from time to time,] be amended;
- (4) Paying or crediting a retail licensee for any advertising, display, or distribution service, whether or not the advertising, display, or distribution service received is commensurate with the amount paid by the retail licensee; provided that this paragraph shall not prohibit representatives of manufacturers and wholesalers from creating and maintaining displays and point of purchase sales materials, or from stocking shelves and cold boxes;
- (5) Guaranteeing any loan or the repayment of any financial obligation of a retail licensee;
- (6) Extending credit to the retail licensee for a period of time in excess of thirty days from the date of invoice;

- (7) Requiring a retail licensee to take and dispose of any quota of liquor; or
- (8) Requiring a retail licensee to purchase one product in order to purchase another product. This includes combination sales if one or more products may be purchased only in combination with other products and not individually~~[7]~~; provided that a manufacturer or wholesale dealer ~~[is]~~ shall not be prohibited from selling at a special combination price, two or more kinds or brands of products to a retail licensee~~[7]~~ if:
- (A) ~~[the]~~ The retail licensee has an option of purchasing either product at the usual price~~[7]~~; and
- (B) ~~[the]~~ The retail licensee is not required to purchase any product it does not want."

### COMMENT

**Section 281-104, HRS, sets forth paragraph designations, but is not formatted to reflect the paragraph designations. Section 281-104, 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 clarity and style.**

SECTION 26. Section 281-104, Hawaii Revised Statutes, is amended to read as follows:

**"§281-104 Investigators, employees, counsel for.** Whenever any investigator or other employee of the liquor commission shall be prosecuted for any crime or sued in any civil cause for acts done in the performance of the investigator's or employee's duty as ~~[such]~~ an investigator or employee, the investigator or employee shall be represented and defended in:

- (1) ~~[in any such]~~ The criminal proceeding by an attorney to be employed and paid by the commission; and
- (2) ~~[in any such]~~ The civil cause by the corporation counsel or county attorney~~[,]~~ of the county in which the investigator or employee is serving or, if permitted under the appropriate county charter, by an outside attorney to be employed and paid for by the commission."

#### **COMMENT**

**Section 281-111, HRS, sets forth paragraph designations, but is not formatted to reflect the paragraph designations. Section 281-111, 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 clarity and style.**

SECTION 27. Section 281-111, Hawaii Revised Statutes, is amended to read as follows:

**"§281-111 Condemnation of property or liquor; disposition.**  
Any still, plant, or other equipment shown to have been used for



the manufacture of liquor in violation of this chapter and any liquor manufactured or sold in violation of this chapter shall be subject to summary seizure as herein provided or to subsequent seizure, and may be condemned and adjudged forfeited to the State, in addition to any penalty separately provided for the violation, the same to be enforced by appropriate legal proceedings in the name of the State. All ~~[such]~~ property and liquor ~~[se]~~ condemned and forfeited pursuant to this section may be ordered by the court having jurisdiction ~~[(1)]~~ to be wholly or partially ~~[destroyed,]~~:

(1) Destroyed; or

(2) ~~[to be sold, wholly or partially,]~~ Sold for the

account of the county wherein the same were seized; provided that the court may order any ~~[such]~~ of the liquor, if suitable, to be delivered to the department of health for distribution to any public institution for use therein for medicinal purposes. The order of the court with respect to ~~[such]~~ property or liquor condemned and forfeited pursuant to this section shall be effectively executed by the sheriff or the sheriff's deputy, or by the chief of police or the chief of police's deputy, or by any police officer, or by the commission's administrator, or by any investigator, within ~~[such]~~ the time as may be fixed in the order but not exceeding sixty days. If any person, whether or not an officer or

employee of the State or any county, takes, disposes of, or uses, in any manner or to any extent, any of ~~[such]~~ the property or liquor otherwise than as ~~[herein]~~ provided~~[7]~~ in this section, the person shall be guilty of a misdemeanor and upon conviction thereof shall be punished as provided in section 281-102."

### COMMENT

**The definition of "alcohol concentration" in section 286-2, HRS, sets forth paragraph designations, but is not formatted to reflect the paragraph designations. The definition should be amended to conform to the customary drafting convention for purposes of clarity and consistency. An additional technical nonsubstantive amendment is made for the purpose of clarity.**

SECTION 28. Section 286-2, Hawaii Revised Statutes, is amended by amending the definition of "alcohol concentration" to read as follows:

"Alcohol concentration" means the concentration of alcohol in a person's blood or breath. When expressed as a percentage, ~~[it]~~ the term means:

- (1) ~~[the]~~ The number of grams of alcohol per 100 milliliters of blood; or
- (2) ~~[the]~~ The number of grams of alcohol per 210 liters of breath."

## COMMENT

**Section 286-47.5(c), HRS, sets forth definitions 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.**

SECTION 29. Section 286-47.5, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

"(c) For the purposes of this section, the following terms shall have the following meanings:

"Individual owners" excludes corporate owners of motor vehicles.

[~~(1)~~] "Registered owner" includes an applicant for registration of a motor vehicle the processing of whose application has not been completed by the issuance of a certificate of registration and a certificate of ownership.

[~~(2)~~ ~~"Individual owners" excludes corporate owners of motor vehicles.~~] "

## COMMENT

**Section 286-53(i), HRS, sets forth definitions 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. Additional technical nonsubstantive amendments are made for the purpose of style.**

SECTION 30. Section 286-53, Hawaii Revised Statutes, is amended by amending subsection (i) to read as follows:

"(i) For the purposes of this section:

"New motor vehicle dealer" means a dealer licensed under chapter 437 to engage in the business of selling new motor vehicles or used motor vehicles at wholesale or retail or both.

[~~(1)~~] "New motor vehicles" means motor vehicles of the current model year, immediate past model year, or the next model year [~~which~~] that have not been sold or registered by the manufacturer or dealer[~~+~~].

[~~(2)~~] ~~"New motor vehicle dealer" means a dealer licensed under chapter 437 to engage in the business of selling at wholesale or retail or both, new motor vehicles or used motor vehicles;~~

[~~(3)~~] "Permanent number plate" means a number plate furnished to a manufacturer or dealer under subsection (c) (1) for a motor vehicle [~~which~~] that is similar to the number plate issued under section 249-7 and [~~which~~] that allows the motor vehicle to be operated on the public highways[~~+~~and].

[~~(4)~~] "Temporary number plate" means the number plate furnished to a new motor vehicle dealer under subsection (c) (2) ."

## COMMENT

**Section 286-203, HRS, sets forth paragraph designations, but is not formatted to reflect the paragraph designations. Section 286-203, 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 clarity and style.**

SECTION 31. Section 286-203, Hawaii Revised Statutes, is amended to read as follows:

**"§286-203 Enforcement.** For purposes of the enforcement of this part, the director of transportation shall have [~~such~~] any powers of enforcement as may be necessary to implement this part. The director may delegate the enforcement of this part to county executive officers. For the purpose of the safety, welfare, and health of the general public, and the safe transportation of hazardous materials and waste on any public highway, and the enforcement of this part and of all rules adopted pursuant to this part, the director, persons appointed by the director, and the county executive officers to whom powers of enforcement are delegated[~~7~~] may:

- (1) [~~inspect~~] Inspect lands, buildings, freight, and equipment of motor carriers[~~7~~];
- (2) [~~stop~~] Stop and inspect freight and equipment of motor carriers and the military on any public highway[~~7~~];  
and
- (3) [~~inspect~~] Inspect shipping papers and hazardous waste manifests of motor carriers and persons subject to this part.

Every state and county officer charged with enforcement of laws and ordinances shall assist in the enforcement of this part and of all rules adopted pursuant to this part and issue citations for violations as appropriate."

## COMMENT

**Section 286-236(a), HRS, refers to "title 49 Code of Federal Regulations section 383.71(a)(1)(ii)(A)" and "title 49 Code of Federal Regulations section 383.73(a)(5)". These cited regulations do not appear to exist. Further, section 286-236(a), HRS, refers to "title 49 Code of Federal Regulations section 383.73(j)" with regards to posting information to the commercial driver's license information system. However, that cited regulation pertains to penalties for false information. These issues were brought to the attention of the Department of the Attorney General, which recommended correcting the foregoing citations to "title 49 Code of Federal Regulations section 383.71(b)(1)(i)", "title 49 Code of Federal Regulations section 383.73(b)(5)", and "title 49 Code of Federal Regulations section 383.73(o)", respectively. Additional technical nonsubstantive amendments are made for purposes of clarity and style.**

SECTION 32. Section 286-236, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) No person shall be issued a commercial driver's license unless that person [meets]:

(1) Meets the qualification standards of title 49 Code of Federal Regulations, part 391, subparts B and E[~~7~~  
~~has~~];

(2) Has passed a knowledge and driving skills test for driving a commercial motor vehicle that complies with minimum federal standards established by federal

regulation enumerated in title 49 Code of Federal Regulations, part 383, subparts G and H~~[is]~~;

(3) Is domiciled in this State as defined in title 49 Code of Federal Regulations, part 383.5~~[r]~~; and ~~[has]~~

(4) Has satisfied all other requirements of the Commercial Motor Vehicle Safety Act of 1986, Public Law 99-570, title XII, in addition to other requirements imposed by state law or federal regulation.

The tests shall be prescribed by the director and administered by the respective county examiner of drivers. The test examiners shall communicate with the applicant only in English during the skills test. As of January 30, 2012, the examiner of drivers shall verify that the medical certification status of a driver who self-certified according to title 49 Code of Federal Regulations section ~~[383.71(a)(1)(ii)(A),]~~ 383.71(b)(1)(i), non-excepted interstate, is certified. If a driver submits a current medical examiner's certificate, the examiner of drivers shall date-stamp the certificate and post all required information to the commercial driver's license information system pursuant to title 49 Code of Federal Regulations section ~~[383.73(a)(5)]~~ 383.73(b)(5) and in accordance with title 49 Code of Federal Regulations section ~~[383.73(j).]~~ 383.73(o). A person who is not physically qualified to drive under title 49 Code of Federal Regulations section 391.41(b)(1), (2), or (3) and who is

otherwise qualified to drive a motor vehicle may be granted an intrastate waiver by the director. The process for granting intrastate waivers shall be the same as that for interstate waivers in title 49 Code of Federal Regulations section 391.49, except that the intrastate waiver requests shall be submitted to the director; provided that the director shall adopt rules under chapter 91 to establish a screening process, including approval by a licensed physician, for granting an intrastate waiver to persons who are not physically qualified under title 49 Code of Federal Regulations section 391.41(b)(3)."

## COMMENT

**Section 286-240(k), HRS, refers to "title 49 Code of Federal Regulations section 383.71(a)(1)(ii)(A)". However, that cited regulation does not appear to exist. This was brought to the attention of the Department of the Attorney General, which recommended correcting the foregoing citation to "title 49 Code of Federal Regulations section 383.71(b)(1)(i)" and further recommended replacing the citation to "title 49 Code of Federal Regulations section 383.71(a)(1)(ii)" with "title 49 Code of Federal Regulations section 383.71(b)(1)".**

SECTION 33. Section 286-240, Hawaii Revised Statutes, is amended by amending subsection (k) to read as follows:

"(k) Beginning January 30, 2014, if a driver fails to provide the examiner of drivers with the certification required under title 49 Code of Federal Regulations section ~~[383.71(a)(1)(ii)]~~ 383.71(b)(1) or a current medical examiner's certificate if the driver self-certifies according to title 49



Code of Federal Regulations section [~~383.71(a)(1)(ii)(A)~~]  
383.71(b)(1)(i) that the driver is operating in non-excepted  
interstate commerce as required by title 49 Code of Federal  
Regulations section 383.71(h), the examiner of drivers shall  
mark the commercial driver's license information system driver  
record as not-certified and initiate a commercial driver's  
license downgrade."

### COMMENT

**Section 286-241(e), HRS, refers to "title 49 Code of Federal Regulations section 383.71(a)(1)(ii)(A)". However, that cited regulation does not appear to exist. This was brought to the attention of the Department of the Attorney General, which recommended correcting the foregoing citation to "title 49 Code of Federal Regulations section 383.71(b)(1)(i)" and further recommended replacing the citation to "title 49 Code of Federal Regulations section 383.71(a)(1)(ii)" with "title 49 Code of Federal Regulations section 383.71(b)(1)". An additional technical nonsubstantive amendment is made for the purpose of style.**

SECTION 34. Section 286-241, Hawaii Revised Statutes, is amended by amending subsection (e) to read as follows:

"(e) Beginning January 30, 2014, if a driver fails to provide the examiner of drivers with the certification required by title 49 Code of Federal Regulations section [~~383.71(a)(1)(ii)~~] 383.71(b)(1) or a current medical examiner's certificate if the driver self-certifies according to title 49 Code of Federal Regulations section [~~383.71(a)(1)(ii)(A)~~] 383.71(b)(1)(i) that the driver is operating in non-excepted

interstate commerce as required by title 49 Code of Federal Regulations section 383.71(h), the examiner of drivers shall mark the commercial driver's license information system driver record as not-certified and initiate a commercial driver's license downgrade."

### COMMENT

**Section 287-9(3), HRS, sets forth subparagraph designations, but is not formatted to reflect the subparagraph designations. Section 287-9(3), 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 287-9, HRS, for purposes of clarity and style.**

SECTION 35. Section 287-9, Hawaii Revised Statutes, is amended to read as follows:

**"§287-9 Duration of suspension.** The license and permit suspended as provided in section 287-6 shall remain ~~[se]~~ suspended and shall not be renewed nor shall any new license or permit be issued to ~~[any of such persons]~~ the person whose license or permit is suspended until:

- (1) The person whose license or permit is suspended deposits or there is deposited on the person's behalf the security required under section 287-6; ~~[or]~~
- (2) Two years have elapsed following the date of the suspension and evidence satisfactory to the administrator has been filed with the administrator

that during [~~such~~] that period no action for damages arising out of the accident has been commenced; or

- (3) [~~Evidence~~] Pursuant to section 287-8(5), evidence satisfactory to the administrator has been filed with the administrator of a release of the driver from liability, or a final adjudication of nonliability of the driver, or a duly acknowledged written agreement[~~7~~ ~~in accordance with section 287-8(5)~~]; provided[~~7~~ ~~in the event~~] that if there is any default in the payment of any installment under any duly acknowledged written agreement, then upon notice of the default, the administrator shall [~~forthwith~~] immediately suspend the license of the person defaulting [~~thereunder~~ ~~which~~] on the agreement, and the license shall not be restored [~~unless and~~] until:

- (A) [~~the~~] The person deposits and thereafter maintains security as required under section 287-6 in [~~such~~] an amount as the administrator may then determine[~~7~~]; or

- (B) [~~two~~] Two years have elapsed following the date when [~~such~~] the security was required and during [~~such~~] that period no action [~~upon the agreement~~] has been instituted for enforcement [~~thereof.~~] of the agreement."

## COMMENT

**Section 287-12, HRS, refers to "evidence satisfactory to the administrator...that there has been a release from liability, or a final adjudication of nonliability, or a duly acknowledged agreement, in accordance with [paragraph] (4) of section 287-8", HRS. However, section 287-8(4), HRS, does not pertain to the foregoing language. The appropriate reference appears to be section 287-8(5), HRS. Accordingly, section 287-12, HRS, should be amended by changing "paragraph (4) of section 287-8" to "section 287-8(5)". Additional technical nonsubstantive amendments are made for purposes of clarity, consistency, and style.**

SECTION 36. Section 287-12, Hawaii Revised Statutes, is amended to read as follows:

**"§287-12 Custody, disposition, and return of security.**

Security deposited in compliance with the requirements of this chapter shall be placed by the administrator in the custody of the county treasurer or director of finance and shall be applicable only to the payment of a judgment or judgments rendered against the person or persons on whose behalf the deposit was made, for damages arising out of the accident in question in an action, begun not later than one year after the date of the accident or within one year after the date of deposit of any security under ~~[paragraph] (3) of~~ section ~~[287-9]~~ 287-9(3), and ~~[such]~~ the deposit or any balance thereof shall be returned to the depositor or the depositor's personal representative when ~~[evidence]~~ :

- (1) Pursuant to section 287-8(5), evidence satisfactory to the administrator has been filed with the administrator that there has been a release from liability, or a final adjudication of nonliability, or the execution of a duly acknowledged written agreement~~[, in accordance with [paragraph] (4) of section 287-8 has been filed,]~~; or ~~[whenever after]~~
- (2) After the expiration of one year ~~[(1)]~~ from the date of the accident~~[,]~~ or ~~[(2)]~~ from the date of deposit of any security under ~~[paragraph] (3) of]~~ section ~~[287-9,]~~ 287-9(3), the administrator is given reasonable evidence that there is no pending action and no judgment rendered in the action left unpaid.

The security deposited shall not be subject to any attachment or execution unless the attachment or execution arises out of a suit for damages as ~~[aforesaid.]~~ described in this section."

### COMMENT

**Section 287-40, HRS, includes a proviso that is erroneously indented as an individual paragraph. Section 287-40, HRS, should be amended by adding subsection designations and designating the proviso as subsection (b) for clarity and consistency with the customary drafting convention. Additional technical nonsubstantive amendments are made for purposes of clarity and style.**

SECTION 37. Section 287-40, Hawaii Revised Statutes, is amended to read as follows:

**"§287-40 Duration of proof; when proof may be canceled or returned.** (a) ~~[The]~~ Upon request, the administrator shall ~~[upon request]~~ consent to the immediate cancellation of any bond or certificate of insurance, ~~[or the administrator shall]~~ return to the person entitled thereto any money or bonds deposited pursuant to this chapter as proof of financial responsibility, or ~~[the administrator shall]~~ waive the requirement of filing proof, in any of the following events:

- (1) At any time after three years from the date the proof was required when, during the three-year period preceding the request, the administrator has not received record of a conviction ~~[which]~~ that would require or permit the suspension or revocation of the license or nonresident's operating privilege of the person by or for whom the proof was furnished;
- (2) In the event of the death of the person on whose behalf the proof was filed or the permanent incapacity of the person to operate a motor vehicle; and
- (3) ~~[In the event]~~ If the person who has given proof surrenders the person's license to the administrator~~[+]~~.

~~[Provided, that]~~ (b) Notwithstanding subsection (a), the administrator shall not consent to the cancellation of any bond or the return of any money or bonds ~~[in the event]~~ if any action

for damages upon a liability covered by the proof is then pending or any judgment upon any such liability is then unsatisfied, or ~~[in the event]~~ if within one year immediately preceding the request the person who has filed the bond or deposited the money or bonds~~[7]~~ has~~[7, within one year immediately preceding the request]~~ been involved as a driver or owner in any motor vehicle accident resulting in injury or damage to the person or property of others. An affidavit of the applicant as to the nonexistence of such facts, or that the applicant has been released from all of the applicant's liability, or has been finally adjudicated not to be liable, for such injury or damage, shall be sufficient evidence thereof in the absence of evidence to the contrary in the records of the administrator.

(c) Whenever any person whose proof has been canceled or returned under ~~[paragraph (3) of this section]~~ subsection (a) (3) applies for a license or registration within a period of three years from the date proof was originally required, ~~[any such]~~ the application shall be refused unless the applicant reestablishes the proof for the remainder of the three-year period."

## COMMENT

**The definitions set forth in section 291-11.5(f), HRS, should be placed in alphabetical order to conform to the customary drafting convention for purposes of clarity and consistency. An additional technical nonsubstantive amendment is made for purposes of style and consistency.**

SECTION 38. Section 291-11.5, Hawaii Revised Statutes, is amended by amending subsection (f) to read as follows:

"(f) As used in this section:

"Commercial vehicle" means any motor vehicle that is being used for the transportation of persons for hire, compensation, or profit.

"Emergency vehicle", "mass transit vehicle", "restrained", and "seat belt assembly" shall have the same meaning as provided in section 291-11.6.

~~["Commercial vehicle" shall be defined as any motor vehicle that is being used for the transportation of persons for hire, compensation, or profit.] "~~

## COMMENT

**Section 291-11.6(a) and (b), HRS, includes definitions of terms used in section 291-11.6, HRS. Section 291-11.6, HRS, should be amended by removing the definitions from subsections (a) and (b), redesignating the definitions as a new subsection (f), and placing the definitions in alphabetical order to conform to the customary drafting convention. Additional technical nonsubstantive amendments are made for purposes of clarity and style.**

SECTION 39. Section 291-11.6, Hawaii Revised Statutes, is amended to read as follows:



**"§291-11.6 Mandatory use of seat belts, when, penalty.**

(a) Except as otherwise provided by law, no person shall operate a motor vehicle upon any public highway unless the person is restrained by a seat belt assembly and all passengers in the front or back seat of the motor vehicle are restrained by a seat belt assembly or are restrained pursuant to section 291-11.5 if they are under eight years of age.

~~[As used in this section:~~

~~"Restrained" means that the seat belt assembly is worn as it was designed and intended to be worn.~~

~~"Seat belt assembly" means the seat belt assembly that is required to be in the motor vehicle under any federal motor vehicle safety standard issued pursuant to Public Law 89-563, the National Traffic and Motor Vehicle Safety Act of 1966, as amended, unless original replacement seat belt assemblies are not readily available. If replacement assemblies are not readily available, seat belts of federally approved materials with similar protective characteristics may be used. Such replacement seat belt assemblies shall be permanently marked by the belt manufacturer indicating compliance with all applicable federal standards.]~~

(b) The passengers of the following motor vehicles shall be exempt from the requirements of this section: emergency and mass transit vehicles. Further exemptions from this section may

be established by rules adopted by the department of transportation pursuant to chapter 91.

~~[As used in this section, unless the context otherwise requires:~~

~~"Emergency vehicle" means an ambulance, a firefighting or rescue vehicle, or a police vehicle while on duty.~~

~~"Mass transit vehicle" means a bus, including a school bus (but excluding a charter or sightseeing service bus) with a gross vehicle weight rating that is over 10,000 pounds, whether publicly or privately owned, which provides service to the general public or provides special service on a regular or continuing basis.]~~

(c) No person shall be guilty of violating this section if:

- (1) The person is in a motor vehicle that is not required to be equipped with a seat belt assembly under any federal motor vehicle safety standard unless the vehicle is in fact equipped with a seat belt assembly;
- (2) The person not restrained by a seat belt assembly is in a vehicle in which the number of persons exceeds the number of seat belt assemblies available in the vehicle or the number of seat belt assemblies originally installed in the vehicle, whichever is

greater; provided that all available seat belt assemblies are being used to restrain passengers;

- (3) The person not restrained by a seat belt assembly has a condition that prevents appropriate restraint by the seat belt assembly; provided that the condition is duly certified by a physician, a physician assistant, or an advanced practice registered nurse who shall state the nature of the condition~~[, as well as]~~ and the reason the restraint is inappropriate;
- (4) The person not restrained by a seat belt assembly is operating a taxicab or other motor vehicle used in performing a bona fide metered taxicab service ~~[which]~~ that is regulated under chapter 269 or by county ordinance and is carrying passengers in the vehicle in the course of performing taxicab services; or
- (5) Otherwise exempted by rules adopted by the department of transportation pursuant to chapter 91.

(d) This section shall not be deemed to change existing laws, rules, or procedures pertaining to a trial of a civil action for damages for personal injuries or death sustained in a motor vehicle accident.

(e) A person who fails to comply with the requirements of this section ~~[shall]~~ :

- (1) Shall be subject to ~~[a]~~ :

(A) A fine of \$45 for each violation[~~7-a~~]; and

(B) A surcharge of \$10 [~~which~~] that shall be  
deposited into the neurotrauma special fund[~~7~~];  
and [~~may~~]

(2) May be subject to a surcharge of up to \$10 [~~which~~]  
that shall be deposited into the trauma system special  
fund.

(f) As used in this section:

"Emergency vehicle" means an ambulance, a firefighting or  
rescue vehicle, or a police vehicle while on duty.

"Mass transit vehicle" means a bus, including a school bus  
(but excluding a charter or sightseeing service bus) with a  
gross vehicle weight rating that is over 10,000 pounds, whether  
publicly or privately owned, that provides service to the  
general public or provides special service on a regular or  
continuing basis.

"Restrained" means that the seat belt assembly is worn as  
it was designed and intended to be worn.

"Seat belt assembly" means the seat belt assembly that is  
required to be in the motor vehicle under any federal motor  
vehicle safety standard issued pursuant to Public Law 89-563,  
the National Traffic and Motor Vehicle Safety Act of 1966, as  
amended, unless original replacement seat belt assemblies are  
not readily available. If replacement assemblies are not

readily available, seat belts of federally approved materials with similar protective characteristics may be used. Such replacement seat belt assemblies shall be permanently marked by the belt manufacturer indicating compliance with all applicable federal standards."

### COMMENT

**Section 291-33, HRS, sets forth paragraph designations, but is not formatted to reflect the paragraph designations. Section 291-33, HRS, should be amended to conform to the customary drafting convention for purposes of clarity and consistency. In addition, section 291-33, HRS, should be amended by adding subsection designations for clarity and consistency with the customary drafting convention. Additional technical nonsubstantive amendments are made for purposes of clarity and style.**

SECTION 40. Section 291-33, Hawaii Revised Statutes, is amended to read as follows:

**"§291-33 Projections on face of wheels prohibited. (a)**

There shall not be operated or moved upon any public road, street, or highway within the State, any vehicle, motor vehicle, or other power vehicle the face of the wheels of which are fitted or equipped with flanges, ribs, clamps, cleats, lugs, chains, spikes or other projections, other than rubber blocks, destructive to the road surfaces. This provision applies to all rings or flanges upon guiding or steering wheels of such vehicles[7] but [it] shall not be [so] construed [as] to prevent [(1)] the use of [ordinary]:

- (1) Ordinary detachable tire or skid chains~~[7]~~; or
- (2) ~~[the use of studded]~~ Studded snow tires on either the Mauna Kea access road above Hale Pohaku or on any other road within the Mauna Kea Science Reserve leased to the University of Hawaii.

(b) This section shall not apply to traction engines, tractors, or other vehicles of the tracklaying type when the portions of the movable tracks in contact with the roadway surface present plane surfaces of sufficient area to prevent damage thereto."

#### COMMENT

**Section 291-35(4), HRS, sets forth subparagraph designations, but is not formatted to reflect the subparagraph designations. Section 291-35(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 291-35 for purposes of clarity and style.**

SECTION 41. Section 291-35, Hawaii Revised Statutes, is amended to read as follows:

**"§291-35 Gross weight, axle, and wheel loads.** No motor vehicle or other power vehicle or combination of ~~[such]~~ those vehicles equipped wholly with pneumatic tires~~[, which]~~ shall be operated or moved upon any public road, street, or highway within the State if the vehicle or combination of vehicles has a total gross weight~~[7]~~ (including vehicle and load~~[7]~~), an axle

load, or a wheel load in excess of the limits set forth in this section ~~[shall be operated or moved upon any public road, street, or highway within the State]~~; provided that the maximum gross weight, axle loads, and wheel loads allowed under this section shall be inapplicable when its application would adversely affect the receipt of federal funds for highway purposes; and provided further that no vehicle or combination of vehicles shall be operated on or moved over any bridge or other highway structure if the total gross weight, including vehicle and load, exceeds the posted maximum gross load limitation for the bridge or other highway structure.

- (1) The total gross weight, in pounds, imposed on any public road, street, or highway within the State by any group of two or more consecutive axles, on a vehicle or combination of vehicles shall not exceed the following when the distance between the first and last axles of the group under consideration is:

- (A) Forty inches or less, the weight imposed shall not exceed twenty-two thousand five hundred pounds.
- (B) More than forty inches but not more than eight feet, the weight imposed shall not exceed thirty-four thousand pounds. This grouping of two consecutive axles shall be known as tandem axle.

- (2) The total gross weight, in pounds, imposed on interstate highways within the State by any group of two or more consecutive axles, on a vehicle or combination of vehicles shall not exceed that resulting from application of the formula:

$$W = 500 (LN / (N-1) + 12N + 36)$$

when the distance between the first and last axles of the group under consideration is over eight feet and where W = maximum weight in pounds carried on any group of two or more axles computed to the nearest 500 pounds,

L = Distance in feet between the extremes of any group of two or more consecutive axles, to the nearest foot, and

N = Number of axles in group under consideration; provided that two consecutive sets of tandem axles may carry a gross load of 34,000 pounds each providing the overall distance between the first and last axles of such consecutive sets of tandem axles is thirty-six feet or more and provided also that the overall gross weight does not exceed 80,000 pounds.

- (3) The total gross weight, in pounds, imposed on any public road, street, or highway, other than interstate highways, within the State by a vehicle or combination



of vehicles shall not exceed that determined by the formula:

$$W = 900(L + 40)$$

when the distance between the first and last axles of the group under consideration is over eight feet and where W = maximum weight in pounds carried on any group of two or more axles computed to the nearest 500 pounds and

L = Distance in feet between the extremes of any group of two or more consecutive axles, to the nearest foot;

provided also that the overall gross weight does not exceed 88,000 pounds.

- (4) No vehicle or combination of vehicles shall be used or operated on any public road, street, or highway within the State:

(A) ~~[with]~~ With a load upon any single or tandem axle or combination of axles ~~[which]~~ that exceeds the carrying capacity of the axles specified by the manufacturer~~[r]~~i or

(B) ~~[with]~~ With a total weight in excess of its designed capacity as indicated by its designed gross vehicle weights or gross combination weights.

- (5) The total gross weight imposed upon the public road, street, or highway by any single axle shall not exceed twenty-two thousand five hundred pounds. For the purpose of this section, axles placed in the same transverse plane and ~~[are]~~ spaced forty inches or less apart~~[,]~~ shall be considered as one axle.
- (6) The total gross weight imposed upon the public road, street, or highway by any one wheel, either single or dual mounting, shall not exceed eleven thousand two hundred and fifty pounds.
- (7) The director of transportation, in the case of state highways, or the county engineer, in the case of county roads and streets, may place and maintain signs to limit the gross weight of a vehicle or combination of vehicles traveling over a bridge or other highway structure in the interest of public safety when it is determined through engineering investigation and analysis that the theoretical load carrying capacity of the bridge or structure is less than the maximum gross vehicular weight allowed by this chapter. In determining the weight limits and in posting the weight limit signs, the director or the county engineer need not comply with rulemaking provisions of chapter 91; provided that if any person objects to the

weight limits, the person may object to the rule as provided in chapter 91."

### COMMENT

**The definition of "substantial bodily injury" in section 291C-1, HRS, sets forth paragraph designations, but is not formatted to reflect the paragraph designations. The definition should be amended to conform to the customary drafting convention for purposes of clarity and consistency. An additional technical nonsubstantive amendment is made for the purpose of style.**

SECTION 42. Section 291C-1, Hawaii Revised Statutes, is amended by amending the definition of "substantial bodily injury" to read as follows:

"Substantial bodily injury" means bodily injury ~~[which]~~ that causes:

- (1) [a] A major avulsion, laceration, or penetration of the skin;
- (2) [a] A chemical, electrical, friction, or scalding burn of second degree severity;
- (3) [a] A bone fracture;
- (4) [a] A serious concussion; or
- (5) [a] A tearing, rupture, or corrosive damage to the esophagus, viscera, or other internal organs."

### COMMENT

**Section 291C-103(b), (c), and (d), HRS, consist of definitions of terms used in section 291C-103, HRS. Section 291C-103, HRS, should be amended by**

**repealing subsections (b), (c), and (d); redesignating the definitions as a new subsection (d); and placing the definitions in alphabetical order to conform to the customary drafting convention. Additional technical nonsubstantive amendments are made for purposes of clarity, consistency, and style.**

SECTION 43. Section 291C-103, Hawaii Revised Statutes, is amended to read as follows:

**"§291C-103 Racing on highways.** (a) Except as provided in section 291C-149, no person shall drive any vehicle in any race, speed competition or contest, drag race or acceleration contest, test of physical endurance, exhibition of speed or acceleration, or for the purpose of making a speed record, and no person shall in any manner participate in any race, competition, contest, test, or exhibition prohibited by this section.

~~[(b) "Drag race" means the operation of two or more vehicles from a point side by side at accelerating speeds in a competitive attempt to outdistance each other, or the operation of one or more vehicles over a common selected course, from the same point to the same point, for the purpose of comparing the relative speeds or power of acceleration of the vehicle or vehicles within a certain distance or time limit.]~~

~~[(c) "Racing" means the use of one or more vehicles in an attempt to outgain, outdistance, or prevent another vehicle from passing, to arrive at a given destination ahead of another vehicle or vehicles, or to test the physical stamina or endurance of drivers over long distance driving routes.]~~

~~(d) "Exhibition of speed or acceleration" means the sudden acceleration of a vehicle resulting in the screeching of the vehicle's tires which is done to intentionally draw the attention of persons present toward the vehicle.~~

~~(e)]~~ (b) Any person who violates this section, except ~~[subsection (d),]~~ in the case of an exhibition of speed or acceleration, shall be fined not more than \$500 or imprisoned not more than six months, or both. Any person who violates ~~[subsection (d)]~~ this section by way of an exhibition of speed or acceleration shall be fined not more than \$500 or be sentenced to perform community service, or both.

~~[(f)]~~ (c) Any person who violates this section while operating a vehicle at a speed exceeding the posted speed limit by thirty miles per hour or more shall be subject to a fine of not more than \$2,000, a term of imprisonment of not more than one year, or both; provided that the following additional penalties shall also apply:

- (1) For an offense that occurs within five years of a prior conviction, a one-year license suspension;
- (2) For an offense that occurs within five years of two prior convictions:
  - (A) A three-year license suspension; and
  - (B) A vehicle ~~[owned]~~:
    - (i) Owned by the defendant ~~[and used]~~;

(ii) Used in the commission of the offense [~~which~~  
~~has been used~~]; and

(iii) Used in at least two prior offenses that  
resulted in convictions,

may be ordered by the court to be subject to  
forfeiture under chapter 712A; and

(3) For all offenses under this section, a surcharge of up  
to \$100 may be deposited in the trauma system special  
fund if the court so orders.

(d) As used in this section:

"Drag race" means the operation of two or more vehicles  
from a point side by side at accelerating speeds in a  
competitive attempt to outdistance each other, or the operation  
of one or more vehicles over a common selected course, from the  
same point to the same point, for the purpose of comparing the  
relative speeds or power of acceleration of the vehicle or  
vehicles within a certain distance or time limit.

"Exhibition of speed or acceleration" means the sudden  
acceleration of a vehicle resulting in the screeching of the  
vehicle's tires that is done to intentionally draw the attention  
of persons present toward the vehicle.

"Racing" means the use of one or more vehicles in an  
attempt to outgain, outdistance, or prevent another vehicle from  
passing, to arrive at a given destination ahead of another

vehicle or vehicles, or to test the physical stamina or  
endurance of drivers over long distance driving routes."

#### COMMENT

Section 291E-61.5(d)(2)(D), HRS, refers to "section 291E-61(d)", HRS, with regard to the referral of probationers to a certified substance abuse counselor. However, section 291E-61(d) relates to the ability of courts to issue permits authorizing an offender to operate a vehicle owned by the offender's employer during the period of driver's license revocation without requiring the installation of an ignition interlock device. The appropriate reference appears to be section 291E-61(h). Accordingly, section 291E-61.5(d)(2)(D), HRS, should be amended by changing "section 291E-61(d)" to "section 291E-61(h)". In addition, section 291E-61.5(b), HRS, includes three definitions of terms used in section 291E-61.5, HRS. Section 291E-61.5, HRS, should be amended by removing the definitions from subsection (b), inserting the definitions into subsection (h), and placing the definitions in alphabetical order to conform to the customary drafting convention. Additional technical nonsubstantive amendments are made for purposes of consistency and style.

SECTION 44. Section 291E-61.5, Hawaii Revised Statutes, is amended to read as follows:

**"§291E-61.5 Habitually operating a vehicle under the influence of an intoxicant.** (a) A person commits the offense of habitually operating a vehicle under the influence of an intoxicant if:

- (1) The person is a habitual operator of a vehicle while under the influence of an intoxicant; and
- (2) The person operates or assumes actual physical control of a vehicle:
  - (A) While under the influence of alcohol in an amount sufficient to impair the person's normal mental

faculties or ability to care for the person and guard against casualty;

- (B) While under the influence of any drug that impairs the person's ability to operate the vehicle in a careful and prudent manner;
- (C) With .08 or more grams of alcohol per two hundred ten liters of breath; or
- (D) With .08 or more grams of alcohol per one hundred milliliters or cubic centimeters of blood.

~~[(b) For the purposes of this section:~~

~~(1) "Convicted two or more times for offenses of operating a vehicle under the influence" means that, at the time of the behavior for which the person is charged under this section, the person had two or more times within ten years of the instant offense:~~

~~(A) A judgment on a verdict or a finding of guilty, or a plea of guilty or nolo contendere, for a violation of section 291-4, 291-4.4, or 291-7 as those sections were in effect on December 31, 2001, or section 291E-61 or 707-702.5;~~

~~(B) A judgment on a verdict or a finding of guilty, or a plea of guilty or nolo contendere, for an offense that is comparable to section 291-4, 291-4.4, or 291-7 as those sections were in~~



~~effect on December 31, 2001, or section 291E-61  
or 707-702.5; or~~

~~(C) An adjudication of a minor for a law or probation  
violation that, if committed by an adult, would  
constitute a violation of section 291-4, 291-4.4,  
or 291-7 as those sections were in effect on  
December 31, 2001, or section 291E-61 or  
707-702.5,~~

~~that, at the time of the instant offense, had not been  
expunged by pardon, reversed, or set aside. All  
convictions that have been expunged by pardon,  
reversed, or set aside before the instant offense  
shall not be deemed prior convictions for the purposes  
of proving that the person is a habitual operator of a  
vehicle while under the influence of an intoxicant.~~

~~(2) "Convicted one or more times for offenses of  
habitually operating a vehicle under the influence"  
means that, at the time of the behavior for which the  
person is charged under this section, the person had  
one or more times within ten years of the instant  
offense:~~

~~(A) A judgment on a verdict or a finding of guilty,  
or a plea of guilty or nolo contendere, for a~~

~~violation of this section or section 291-4.4 as  
that section was in effect on December 31, 2001;~~

~~(B) A judgment on a verdict or a finding of guilty,  
or a plea of guilty or nolo contendere, for an  
offense that is comparable to this section or  
section 291-4.4 as that section was in effect on  
December 31, 2001; or~~

~~(C) An adjudication of a minor for a law or probation  
violation that, if committed by an adult, would  
constitute a violation of this section or section  
291-4.4 as that section was in effect on December  
31, 2001,~~

~~that, at the time of the instant offense, had not been  
expunged by pardon, reversed, or set aside. All  
convictions that have been expunged by pardon,  
reversed, or set aside before the instant offense  
shall not be deemed prior convictions for the purposes  
of proving the person's status as a habitual operator  
of a vehicle while under the influence of an  
intoxicant.~~

~~(3) "Habitual operator of a vehicle while under the  
influence of an intoxicant" means that the person:~~

~~(A) Was convicted two or more times for offenses of  
operating a vehicle under the influence; or~~

~~(B) Was convicted one or more times for offenses of habitually operating a vehicle under the influence.~~

~~(e)]~~ (b) Habitually operating a vehicle while under the influence of an intoxicant is a class C felony.

~~[(d)]~~ (c) For a conviction under this section, the sentence shall be either:

(1) An indeterminate term of imprisonment of five years;

or

(2) A term of probation of five years, with conditions to include:

(A) Mandatory revocation of license and privilege to operate a vehicle for a period no less than three years but no more than five years;

(B) No less than ten days imprisonment, of which at least forty-eight hours shall be served consecutively;

(C) A fine of no less than \$2,000 but no more than \$5,000;

(D) Referral to a certified substance abuse counselor as provided in section ~~[291E-61(d);]~~ 291E-61(h);

(E) A surcharge of \$25 to be deposited into the neurotrauma special fund; and

(F) May be charged a surcharge of up to \$50 to be deposited into the trauma system special fund if the court so orders.

In addition to the foregoing, any vehicle owned and operated by the person committing the offense shall be subject to forfeiture pursuant to chapter 712A; provided that the department of transportation shall provide storage for vehicles forfeited under this subsection.

~~[(e)]~~ (d) Whenever a court sentences a person under this section, it shall also require that the offender be referred to the driver's education program for an assessment, by a certified substance abuse counselor, of the offender's substance abuse or dependence and the need for appropriate treatment. The counselor shall submit a report with recommendations to the court. The court shall require the offender to obtain appropriate treatment if the counselor's assessment establishes the offender's substance abuse or dependence. All costs for assessment and treatment shall be borne by the offender.

~~[(f)]~~ (e) Notwithstanding any other law to the contrary, whenever a court revokes a person's driver's license pursuant to this section, the examiner of drivers shall not grant to the person a new driver's license until expiration of the period of revocation determined by the court. After the period of revocation is complete, the person may apply for and the

examiner of drivers may grant to the person a new driver's license.

~~[(g)]~~ (f) Any person sentenced under this section may be ordered to reimburse the county for the cost of any blood or urine tests conducted pursuant to section 291E-11. The court shall order the person to make restitution in a lump sum, or in a series of prorated installments, to the police department or other agency incurring the expense of the blood or urine test.

~~[(h)]~~ (g) As used in this section~~[, the term "examiner of drivers" has the same meaning as provided in section 286-2.]~~:

"Convicted one or more times for offenses of habitually operating a vehicle under the influence" means that, at the time of the behavior for which the person is charged under this section, the person had one or more times within ten years of the instant offense:

- (1) A judgment on a verdict or a finding of guilty, or a plea of guilty or nolo contendere, for a violation of this section or section 291-4.4 as that section was in effect on December 31, 2001;
- (2) A judgment on a verdict or a finding of guilty, or a plea of guilty or nolo contendere, for an offense that is comparable to this section or section 291-4.4 as that section was in effect on December 31, 2001; or

(3) An adjudication of a minor for a law or probation violation that, if committed by an adult, would constitute a violation of this section or section 291-4.4 as that section was in effect on December 31, 2001,

that, at the time of the instant offense, had not been expunged by pardon, reversed, or set aside. All convictions that have been expunged by pardon, reversed, or set aside before the instant offense shall not be deemed prior convictions for the purposes of proving the person's status as a habitual operator of a vehicle while under the influence of an intoxicant.

"Convicted two or more times for offenses of operating a vehicle under the influence" means that, at the time of the behavior for which the person is charged under this section, the person had two or more times within ten years of the instant offense:

(1) A judgment on a verdict or a finding of guilty, or a plea of guilty or nolo contendere, for a violation of section 291-4, 291-4.4, or 291-7 as those sections were in effect on December 31, 2001, or section 291E-61 or 707-702.5;

(2) A judgment on a verdict or a finding of guilty, or a plea of guilty or nolo contendere, for an offense that is comparable to section 291-4, 291-4.4, or 291-7 as

those sections were in effect on December 31, 2001, or  
section 291E-61 or 707-702.5; or

- (3) An adjudication of a minor for a law or probation  
violation that, if committed by an adult, would  
constitute a violation of section 291-4, 291-4.4, or  
291-7 as those sections were in effect on December 31,  
2001, or section 291E-61 or 707-702.5,

that, at the time of the instant offense, had not been expunged  
by pardon, reversed, or set aside. All convictions that have  
been expunged by pardon, reversed, or set aside before the  
instant offense shall not be deemed prior convictions for the  
purposes of proving that the person is a habitual operator of a  
vehicle while under the influence of an intoxicant.

"Examiner of drivers" has the same meaning as provided in  
section 286-2.

"Habitual operator of a vehicle while under the influence  
of an intoxicant" means that the person was convicted:

- (1) Two or more times for offenses of operating a vehicle  
under the influence; or
- (2) One or more times for offenses of habitually operating  
a vehicle under the influence."

## COMMENT

The prefatory language in section 12 of Act 276, Session Laws of Hawaii 2019, purported to add a new statutory section to chapter 302A, HRS. However, the section number of that new statutory section was printed as "§302L- ", apparently due to an inadvertent clerical error. Accordingly, in the 2019 HRS Replacement Volume, the Revisor designated the new statutory section as "§302A-450" to reflect the placement of the new statutory section in chapter 302A, HRS, as intended. This amendment should be ratified.

SECTION 45. Section 302A-450, Hawaii Revised Statutes, is amended by amending its title to read as follows:

"[+]§302A-450[+] Public prekindergarten classrooms; annual report to the legislature."

## COMMENT

Section 302L-7(n)(1), HRS, refers to "section 302L-2(A)(2)", HRS, in relation to certain programs and services. However, there is no section 302L-2(A)(2), HRS. The appropriate reference appears to be section 302L-2(2)(A), HRS, which specifies certain early learning programs and services. Accordingly, in the 2019 HRS Replacement Volume, the Revisor amended section 302L-7(n)(1), HRS, by changing "section 302L-2(A)(2)" to "section 302L-2(2)(A)". This amendment should be ratified.

SECTION 46. Section 302L-7, Hawaii Revised Statutes, is amended by amending subsection (n) to read as follows:

"(n) To promote the development of a cohesive, comprehensive, and sustainable early learning system, the office shall partner with the schools participating in the program to collaborate with:

- (1) Other early learning providers, including those providing the programs and services specified in



section [†]302L-2(2)(A) [†], to promote alignment between prekindergarten and elementary school programs and to support children and their families in making successful transitions from prekindergarten into kindergarten; and

(2) Early intervention programs."

### COMMENT

**Section 321-14.5(c) and (e), HRS, refers to the "joint commission on accreditation of healthcare organizations". However, it appears that this entity is now known as "The Joint Commission". Accordingly, section 321-14.5(c) and (e), HRS, should be amended by changing "Joint Commission on Accreditation of Healthcare Organizations" to "The Joint Commission". Additional technical nonsubstantive amendments are made for the purpose of clarity.**

SECTION 47. Section 321-14.5, Hawaii Revised Statutes, is amended as follows:

1. By amending subsection (c) to read:

"(c) The rules may provide that accreditation by [~~the joint commission on accreditation of healthcare organizations~~]  
The Joint Commission demonstrates a hospital's compliance with all licensing inspections required by the State. The rules may exempt a hospital from a licensing inspection on a continuing basis throughout the term of the accreditation under the following conditions:

- (1) The hospital provides the department with a certified copy of the hospital's official [~~joint commission on accreditation of healthcare organizations~~] accreditation report [~~to~~] from [~~the department;~~] The Joint Commission;
- (2) The hospital continuously holds full accreditation by [~~the joint commission on accreditation of healthcare organizations;~~] The Joint Commission; and
- (3) The hospital holds a current and valid state license."

2. By amending subsection (e) to read:

"(e) Information contained in reports of survey and official accreditation letters made by [~~the joint commission on accreditation of healthcare organizations~~] The Joint Commission used in determining compliance with licensing requirements shall be public information."

## COMMENT

**Section 329-14(g)(9), HRS, contains a closing bracket after "4-benzoxazin-6-yl" but no corresponding opening bracket. This was brought to the attention of the Department of the Attorney General, which recommended inserting an opening bracket at the beginning of the paragraph. In addition, with regard to the same paragraph, the Department of the Attorney General recommended correcting the spelling of "naphthalenylmethanone" to "naphthalenylmethanone", for consistency with the spelling of that term in publications of the National Institutes of Health.**

SECTION 48. Section 329-14, Hawaii Revised Statutes, is amended by amending subsection (g) to read as follows:

"(g) Any of the following cannabinoids, their salts, isomers, and salts of isomers, unless specifically excepted, whenever the existence of these salts, isomers, and salts of isomers is possible within the specific chemical designation:

- (1) Tetrahydrocannabinols; meaning tetrahydrocannabinols naturally contained in a plant of the genus Cannabis (cannabis plant), as well as synthetic equivalents of the substances contained in the plant, or in the resinous extractives of Cannabis, sp. or synthetic substances, derivatives, and their isomers with similar chemical structure and pharmacological activity to those substances contained in the plant, such as the following: Delta 1 cis or trans tetrahydrocannabinol, and their optical isomers; Delta 6 cis or trans tetrahydrocannabinol, and their optical isomers; and Delta 3,4 cis or trans-tetrahydrocannabinol, and its optical isomers (since nomenclature of these substances is not internationally standardized, compounds of these structures, regardless of numerical designation of atomic positions, are covered);

- (2) Naphthoylindoles; meaning any compound containing a 3-(1-naphthoyl)indole structure with substitution at the nitrogen atom of the indole ring by a alkyl, haloalkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl, 1-(N-methyl-2-piperidinyl)methyl or 2-(4-morpholinyl)ethyl group, whether or not further substituted in the indole ring to any extent and whether or not substituted in the naphthyl ring to any extent;
- (3) Naphthylmethylinindoles; meaning any compound containing a 1H-indol-3-yl-(1-naphthyl) methane structure with substitution at the nitrogen atom of the indole ring by a alkyl, haloalkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl, 1-(N-methyl-2-piperidinyl) methyl or 2-(4-morpholinyl) ethyl group whether or not further substituted in the indole ring to any extent and whether or not substituted in the naphthyl ring to any extent;
- (4) Naphthoylpyrroles; meaning any compound containing a 3-(1-naphthoyl)pyrrole structure with substitution at the nitrogen atom of the pyrrole ring by a alkyl, haloalkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl, 1-(N-methyl-2-piperidinyl)methyl or 2-(4-morpholinyl) ethyl group whether or not further substituted in the

pyrrole ring to any extent, whether or not substituted in the naphthyl ring to any extent;

- (5) Naphthylmethylindenes; meaning any compound containing a naphthylideneindene structure with substitution at the 3-position of the indene ring by a alkyl, haloalkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl, 1-(N-methyl-2-piperidinyl) methyl or 2-(4-morpholinyl) ethyl group whether or not further substituted in the indene ring to any extent, whether or not substituted in the naphthyl ring to any extent;
- (6) Phenylacetylindoles; meaning any compound containing a 3-phenylacetylindole structure with substitution at the nitrogen atom of the indole ring by a alkyl, haloalkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl, 1-(N-methyl-2-piperidinyl) methyl or 2-(4-morpholinyl) ethyl group whether or not further substituted in the indole ring to any extent, whether or not substituted in the phenyl ring to any extent;
- (7) Cyclohexylphenols; meaning any compound containing a 2-(3-hydroxycyclohexyl) phenol structure with substitution at the 5-position of the phenolic ring by a alkyl, haloalkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl, 1-(N-methyl-2-piperidinyl) methyl or

- 2-(4-morpholinyl) ethyl group whether or not substituted in the cyclohexyl ring to any extent;
- (8) Benzoylindoles; meaning any compound containing a 3-(benzoyl) indole structure with substitution at the nitrogen atom of the indole ring by a alkyl, haloalkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl, 1-(N-methyl-2-piperidinyl) methyl, or 2-(4-morpholinyl) ethyl group whether or not further substituted in the indole ring to any extent and whether or not substituted in the phenyl ring to any extent;
- (9) [2,3-Dihydro-5-methyl-3-(4-morpholinylmethyl) pyrrolo[1,2,3-de]-1, [4-benzoxazin-6-yl]-1-naphthalenylmethanone] 4-benzoxazin-6-yl]-1-naphthalenylmethanone (another trade name is WIN 55,212-2);
- (10) (6a,10a)-9-(hydroxymethyl)-6, 6-dimethyl-3-(2-methyloctan-2-yl)-6a,7,10,10a-tetrahydrobenzo[c]chromen-1-ol (Other trade names are: HU-210/HU-211);
- (11) Tetramethylcyclopropanoylindoles; meaning any compound containing a 3-tetramethylcyclopropanoylindole structure with substitution at the nitrogen atom of the indole ring by an alkyl, haloalkyl, cyanoalkyl,

- alkenyl, cycloalkylmethyl, cycloalkylethyl, 1-(N-methyl-2-piperidinyl)methyl, 2-(4-morpholinyl)ethyl, 1-(N-methyl-2-pyrrolidinyl)methyl, 1-(N-methyl-3-morpholinyl)methyl, or tetrahydropyranylmethyl group, whether or not further substituted in the indole ring to any extent and whether or not substituted in the tetramethylcyclopropyl ring to any extent;
- (12) N-(1-adamantyl)-1-pentyl-1H-indazole-3-carboxamide, its optical, positional, and geometric isomers, salts, and salts of isomers (Other names: APINACA, AKB48);
- (13) Quinolin-8-yl 1-pentyl-1H-indole-3-carboxylate, its optical, positional, and geometric isomers, salts, and salts of isomers (Other names: PB-22; QUPIC);
- (14) Quinolin-8-yl 1-(5fluoropentyl)-1H-indole-3-carboxylate, its optical, positional, and geometric isomers, salts, and salts of isomers (Other names: 5-fluoro-PB-22; 5F-PB-22);
- (15) N-(1-amino-3-methyl-1-oxobutan-2-yl)-1-(4-fluorobenzyl)-1H-indazole-3-carboxamide, its optical, positional, and geometric isomers, salts, and salts of isomers (Other names: AB-FUBINACA);
- (16) N-(1-amino-3,3-dimethyl-1-oxobutan-2-yl)-1-pentyl-1H-indazole-3-carboxamide, its optical, positional, and

- geometric isomers, salts, and salts of isomers (Other names: ADB-PINACA);
- (17) N-(1-amino-3-methyl-1-oxobutan-2-yl)-1-(cyclohexylmethyl)-1H-indazole-3-carboxamide, its optical, positional, and geometric isomers, salts, and salts of isomers (Other names: AB-CHMINACA);
- (18) N-(1-amino-3-methyl-1-oxobutan-2-yl)-1-pentyl-1H-indazole-3-carboxamide, and geometric isomers, salts, and salts of isomers (Other names: AB-PINACA);
- (19) [1-(5-fluoropentyl)-1H-indazol-3-yl](naphthalen-1-yl)methanone, and geometric isomers, salts, and salts of isomers (Other names: THJ-2201);
- (20) Methyl (1-(4-fluorobenzyl)-1 H-indazole-3-carbonyl)-L-valinate, and geometric isomers, salts, and salts of isomers (Other names: FUB-AMB);
- (21) (S)-methyl 2-(1-(5-fluoropentyl)-1H-indazole-3-carboxamido)-3-methylbutanoate, and geometric isomers, salts, and salts of isomers (Other names: 5-fluoro-AMB, 5-fluoro-AMP);
- (22) N-((3s,5s,7s)-adamantan-1-yl)-1-(5-fluoropentyl)-1H-indazole-3-carboxamide, and geometric isomers, salts, and salts of isomers (Other names: AKB48 N-(5-fluoropentyl) analog, 5F-AKB48, APINACA 5-fluoropentyl analog, 5F-APINACA);



- (23) N-adamantyl-1-fluoropentylindole-3-Carboxamide, and geometric isomers, salts, and salts of isomers (Other names: STS-135, 5F-APICA; 5-fluoro-APICA);
- (24) Naphthalen-1-yl 1-(5-fluoropentyl)-1H-indole-3-carboxylate, and geometric isomers, salts, and salts of isomers (Other names: NM2201);
- (25) N-(1-amino-3,3-dimethyl-1-oxobutan-2-yl)-1-(cyclohexylmethyl)-1H-indazole-3-carboxamide, and geometric isomers, salts, and salts of isomers (Other names: MAB-CHMINACA and ADB-CHMINACA);
- (26) Methyl 2-[1-(5-fluoropentyl)-1H-indazole-3-carboxamido]-3,3-dimethylbutanoate (Other names: 5F-ADB, 5-flouro-ADB, and 5F-MDMB-PINACA), its optical, positional, and geometric isomers, salts, and salts of isomers; and
- (27) 1-(4-cyanobutyl)-N-(2-phenylpropan-2-yl)indazole-3-carboxamide (CUMYL-4CN-BINACA), its optical, positional, and geometric isomers, salts, and salts of isomers; also known as SGT-78, 4-CN-CUMYL-BINACA; CUMYL-CB-PINACA; CUMYL-CYBINACA; 4-cyano CUMYL-BUTINACA."

## COMMENT

**Act 240, Session Laws of Hawaii 2019, amended section 329D-22(a)(2), HRS, by deleting the reference to "public housing project or complex" but did not make a conforming amendment to delete the definition of that term in section 329D-22(b), HRS. Accordingly, section 329D-22(b), HRS, should be amended by deleting the definition of "public housing project or complex".**

SECTION 49. Section 329D-22, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

"(b) As used in this section:

"Playground" means any public outdoor facility, including any parking lot appurtenant thereto, that is intended for recreation, with any portion thereof containing three or more separate apparatus intended for the recreation of children, including but not limited to sliding boards, swing sets, and teeterboards.

~~["Public housing project or complex" means a housing project directly controlled, owned, developed, or managed by the Hawaii public housing authority pursuant to the federal or state low-rent public housing program.]~~

"School" means any public or private preschool, kindergarten, elementary, intermediate, middle, secondary, or high school."

## COMMENT

**Section 393-7(c)(6)(C), HRS, refers to the "Joint Commission on Accreditation of Hospitals". However, it appears that this entity is now known as "The Joint Commission". Accordingly, section 393-7(c)(6)(C), HRS, should be amended by changing "Joint Commission on Accreditation of Hospitals" to "The Joint Commission". Additional technical nonsubstantive amendments are made for the purpose of style.**

SECTION 50. Section 393-7, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

"(c) Subject to the provisions of subsections (a) and (b) without limiting the development of medically more desirable combinations and the inclusion of new types of benefits, a prepaid health care plan qualifying under this chapter shall include at least the following benefit types:

(1) Hospital benefits:

(A) In-patient care for a period of at least one hundred twenty days of confinement in each calendar year covering:

- (i) Room accommodations;
- (ii) Regular and special diets;
- (iii) General nursing services;
- (iv) Use of operating room, surgical supplies, anesthesia services, and supplies; and
- (v) Drugs, dressings, oxygen, antibiotics, and blood transfusion services; and

- (B) Out-patient care:
  - (i) Covering use of out-patient hospital; and
  - (ii) Facilities for surgical procedures or medical care of an emergency and urgent nature~~[-]~~;
- (2) Surgical benefits:
  - (A) Surgical services performed by a licensed physician, as determined by plans meeting the standards of subsections (a) and (b);
  - (B) After-care visits for a reasonable period; and
  - (C) Anesthesiologist services~~[-]~~;
- (3) Medical benefits:
  - (A) Necessary home, office, and hospital visits by a licensed physician;
  - (B) Intensive medical care while hospitalized; and
  - (C) Medical or surgical consultations while confined~~[-]~~;
- (4) Diagnostic laboratory services, x-ray films, and radio-therapeutic services, necessary for diagnosis or treatment of injuries or diseases~~[-]~~;
- (5) Maternity benefits, at least if the employee has been covered by the prepaid health care plan for nine consecutive months prior to the delivery~~[-]~~; and
- (6) Substance abuse benefits:

- (A) Alcoholism and drug addiction are illnesses and shall receive benefits as such. In-patient and out-patient benefits for the diagnosis and treatment of substance abuse, including but not limited to alcoholism and drug addiction, shall be specifically stated and shall not be less than the benefits for any other illness, except as provided in this subsection. Medical treatment of substance abuse shall not be limited or reduced by restricting coverage to the mental health or psychiatric benefits of a plan. However, any psychiatric services received as a result of the treatment of substance abuse may be limited to the psychiatric benefits of the plan;
- (B) Out-patient benefits provided by a physician, psychiatrist, or psychologist, without restriction as to place of service; provided that health plans of the type specified in section 393-12(a) shall retain for the contractor the option of:
- (i) Providing the benefits in its own facility and utilizing its own staff;
  - (ii) Contracting for the provision of these benefits; or

- (iii) Authorizing the patient to utilize outside services and defraying or reimbursing the expenses at a rate not to exceed that for provision of services utilizing the health contractor's own facilities and staff;
- (C) Detoxification and acute care benefits in a hospital or any other public or private treatment facility, or portion thereof, providing services especially for the detoxification of intoxicated persons or drug addicts, which is appropriately licensed, certified, or approved by the department of health in accordance with the standards prescribed by ~~[the]~~ The Joint Commission ~~[on Accreditation of Hospitals]~~. In-patient benefits for detoxification and acute care shall be limited in the case of alcohol abuse to three admissions per calendar year, not to exceed seven days per admission, and shall be limited in the case of other substance abuse to three admissions per calendar year, not to exceed twenty-one days per admission; and
- (D) Prepaid health plans shall not be required to make reimbursements for care furnished by government agencies and available at no cost to a

patient, or for which no charge would have been made if there were no health plan coverage."

### COMMENT

**The definition of "group health issuer" in section 431:2-201.5(b), HRS, refers to section "2747" of the federal Public Health Service Act. However, that section has been renumbered to "2763". Accordingly, the definition should be amended to change "2747" to "2763".**

SECTION 51. Section 431:2-201.5, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

"(b) The following definitions shall be used when applying title 42 United States Code section 300gg, et seq.:

"Employee" means an employee who works on a full-time basis with a normal workweek of twenty hours or more.

"Group health issuer" means all persons offering health insurance coverage to any group or association, but shall not include those persons offering benefits exempted from title I of the Health Insurance Portability and Accountability Act of 1996, P.L. 104-191, under sections 732(c) and 733(c) of title I of the Employee Retirement Income Security Act of 1974 and sections [~~2747~~] 2763 and 2791(c) of the Public Health Service Act.

"Small employer" means, in connection with a group health plan with respect to a calendar year and a plan year, an employer who employed an average of at least one but no more than fifty employees on business days during the preceding

calendar year and who employs at least one employee on the first day of the plan year."

#### COMMENT

The definition of "adjusted risk-based capital report" in section 431:3-401, HRS, refers to "a risk-based capital report which has been adjusted by the commissioner in accordance with section 431:3-402(e)", HRS. However, section 431:3-402(e), HRS, does not pertain to the ability of the Insurance Commissioner to adjust insurer risk-based capital reports. The appropriate reference appears to be section 431:3-402(f), HRS, consistent with the amendment in Act 80, Session Laws of Hawaii 2011, that changed the designation of former section 431:3-402(e), HRS, to the present section 431:3-402(f), HRS. Accordingly, the definition of "adjusted risk-based capital report" in section 431:3-401, HRS, should be amended by changing "section 431:3-402(e)" to "section 431:3-402(f)". An additional technical nonsubstantive amendment is made for the purpose of style.

SECTION 52. Section 431:3-401, Hawaii Revised Statutes, is amended by amending the definition of "adjusted risk-based capital report" to read as follows:

"Adjusted risk-based capital report" means a risk-based capital report ~~[which]~~ that has been adjusted by the commissioner in accordance with section ~~[431:3-402(e)]~~ 431:3-402(f)."

#### COMMENT

Section 431:6-602(f), HRS, refers to the "Participants Trust Company". However, it appears that the Participants Trust Company has merged into the Depository Trust Company, which is also referenced in this subsection. Accordingly, the reference to the "Participants Trust Company" should be deleted. An additional technical nonsubstantive amendment is made for the purpose of style.



SECTION 53. Section 431:6-602, Hawaii Revised Statutes, is amended by amending subsection (f) to read as follows:

"(f) Cash received in a transaction under this section shall be invested in accordance with section 431:6-601[7] and in a manner that recognizes the liquidity needs of the transaction or used by the insurer for its general corporate purposes. For so long as the transaction remains outstanding, the insurer, its agent, or custodian shall maintain acceptable collateral received in a transaction under this section, either physically or through the book entry systems of the Federal Reserve, Depository Trust Company, [~~Participants Trust Company~~], or other securities depositories approved by the commissioner."

#### COMMENT

**Section 431:10A-115.5(b) and (c), HRS, refers to the "Immunizations Practices Advisory Committee" of the United States Department of Health and Human Services. However, it appears that the correct name of this entity is the "Advisory Committee on Immunization Practices". Accordingly, section 431:10A-115.5(b) and (c), HRS, should be amended by changing "Immunizations Practices Advisory Committee" to "Advisory Committee on Immunization Practices". Additional technical nonsubstantive amendments are made for the purpose of style.**

SECTION 54. Section 431:10A-115.5, Hawaii Revised Statutes, is amended by amending subsections (b) and (c) to read as follows:

"(b) Child health supervision services shall include twelve visits at approximately the following intervals: birth; two months; four months; six months; nine months; twelve months; fifteen months; eighteen months; two years; three years; four years; and five years. Services to be covered at each visit shall include a history, physical examination, developmental assessment, anticipatory guidance, immunizations, and laboratory tests, in keeping with prevailing medical standards. For purposes of this subsection, the term "prevailing medical standards" means the recommendations of the ~~[Immunizations]~~ Advisory Committee on Immunization Practices ~~[Advisory Committee]~~ of the United States Department of Health and Human Services and the American Academy of Pediatrics; provided that ~~[in the event that]~~ if the recommendations of the committee and the academy differ, the department of health shall determine which recommendations shall apply.

(c) Minimum benefits may be limited to one visit payable to one provider for all of the services provided at each visit cited in this section, except that the limitations authorized by this subsection shall not apply to immunizations recommended by the ~~[Immunizations]~~ Advisory Committee on Immunization Practices ~~[Advisory Committee]~~ of the United States Department of Health and Human Services and the American Academy of Pediatrics; provided that ~~[in the event]~~ if that the recommendations of the

committee and the academy differ, the department of health shall determine which recommendations shall apply."

## COMMENT

**Section 431:10A-206.5(b) and (c), HRS, refers to the "Immunizations Practices Advisory Committee" of the United States Department of Health and Human Services. However, it appears that the correct name of this entity is the "Advisory Committee on Immunization Practices". Accordingly, section 431:10A-206.5(b) and (c), HRS, should be amended by changing "Immunizations Practices Advisory Committee" to "Advisory Committee on Immunization Practices". Additional technical nonsubstantive amendments are made for the purpose of style.**

SECTION 55. Section 431:10A-206.5, Hawaii Revised Statutes, is amended by amending subsections (b) and (c) to read as follows:

"(b) Child health supervision services shall include twelve visits at approximately the following intervals: birth; two months; four months; six months; nine months; twelve months; fifteen months; eighteen months; two years; three years; four years; and five years. Services to be covered at each visit shall include a history, physical examination, developmental assessment, anticipatory guidance, immunizations, and laboratory tests, in keeping with prevailing medical standards. For purposes of this subsection, the term "prevailing medical standards" means the recommendations of the ~~[Immunizations]~~ Advisory Committee on Immunization Practices ~~[Advisory~~

~~Committee~~] of the United States Department of Health and Human Services and the American Academy of Pediatrics; provided that ~~[in the event that]~~ if the recommendations of the committee and the academy differ, the department of health shall determine which recommendations shall apply.

(c) Minimum benefits may be limited to one visit payable to one provider for all of the services provided at each visit cited in this section, except that the limitations authorized by this subsection shall not apply to immunizations recommended by the ~~[Immunizations]~~ Advisory Committee on Immunization Practices ~~[Advisory Committee]~~ of the United States Department of Health and Human Services and the American Academy of Pediatrics; provided that ~~[in the event that]~~ if the recommendations of the committee and the academy differ, the department of health shall determine which recommendations shall apply."

## COMMENT

**Section 431:10B-108(j), HRS, sets forth subparagraph designations that do not comport with the customary drafting convention. In addition, it appears that the language in paragraph (2) that follows the phrase "Has been or is delivered in another state before or after July 1, 1969," should be reformatted as a continuation of subsection (j) so that the language applies to the contents of both paragraphs (1) and (2). Accordingly, section 431:10B-108(j), HRS, should be amended by deleting the existing paragraph designations and changing the existing subparagraph designations to paragraphs (1), (2), and (3). Additional technical nonsubstantive amendments are made for the purpose of style.**

SECTION 56. Section 431:10B-108, Hawaii Revised Statutes, is amended by amending subsection (j) to read as follows:

"(j) If a group policy of credit life insurance or credit disability insurance[~~:(1) Has~~] has been delivered in this State before July 1, 1969, or [~~(2) Has~~] has been or is delivered in another state before or after July 1, 1969, the insurer shall be required to file only the group certificate and notice of proposed insurance delivered or issued for delivery in this State as specified in [~~subsections (b) and (c) of~~] section [~~431:10B-107.~~] 431:10B-107(b) and (e). The forms shall be approved by the commissioner if:

- [~~(i)~~] (1) They conform with the requirements specified in those subsections;
  - [~~(ii)~~] (2) They are accompanied by a certification in a form satisfactory to the commissioner that the substance of the forms are in substantial conformity with the master policy; and
  - [~~(iii)~~] (3) The schedules of premium rates applicable to the insurance evidenced by the certificate or notice are not in excess of the insurer's schedules of premium rates filed with and approved by the commissioner;
- provided that the premium rate in effect on existing group policies may be continued until the first policy anniversary date following July 1, 1969."

## COMMENT

**The definitions of "hospital", "mental health outpatient facility", and "nonhospital facility" in section 431M-1, HRS, refer to the "Joint Commission on Accreditation of Healthcare Organizations" or "Joint Commission on Accreditation of Health Care Organizations". However, it appears that this entity is now known as "The Joint Commission". Accordingly, the definitions should be amended by changing "Joint Commission on Accreditation of Healthcare Organizations" or "Joint Commission on Accreditation of Health Care Organizations" to "The Joint Commission". Additional technical nonsubstantive amendments are made for purposes of clarity and style.**

SECTION 57. Section 431M-1, Hawaii Revised Statutes, is amended by amending the definitions of "hospital", "mental health outpatient facility", and "nonhospital facility" to read as follows:

"Hospital" means a facility licensed as a hospital by the department of health and accredited by ~~[the]~~ The Joint Commission ~~[on Accreditation of Health Care Organizations]~~.

"Mental health outpatient facility" means a mental health establishment, clinic, institution, center, or community mental health center~~[,]~~ that provides for the diagnosis, treatment, care, or rehabilitation of mentally ill persons~~[, that]~~ and has been accredited by ~~[the]~~ The Joint Commission ~~[on Accreditation of Healthcare Organizations]~~ or the Commission on Accreditation of Rehabilitation Facilities or certified by the department of health.

"Nonhospital facility" means a facility for the care or treatment of alcohol dependent, drug dependent, or mentally ill persons~~[, which]~~ that has been accredited by ~~[the]~~ The Joint Commission ~~[on Accreditation of Health Care Organizations]~~ or the Commission on Accreditation of Rehabilitation Facilities or certified by the department of health and, if residential, has been licensed as a special treatment facility by the department of health."

## COMMENT

**Section 432:1-602.5(b) and (c), HRS, refers to the "Immunizations Practices Advisory Committee" of the United States Department of Health and Human Services. However, it appears that the correct name of this entity is the "Advisory Committee on Immunization Practices". Accordingly, section 432:1-602.5(b) and (c), HRS, should be amended by changing "Immunizations Practices Advisory Committee" to "Advisory Committee on Immunization Practices". Additional technical nonsubstantive amendments are made for the purpose of style.**

SECTION 58. Section 432:1-602.5, Hawaii Revised Statutes, is amended by amending subsections (b) and (c) to read as follows:

"(b) Child health supervision services shall include twelve visits at approximately the following intervals: birth; two months; four months; six months; nine months; twelve months; fifteen months; eighteen months; two years; three years; four years; and five years. Services to be covered at each visit shall include a history, physical examination, developmental

assessment, anticipatory guidance, immunizations, and laboratory tests, in keeping with prevailing medical standards. For purposes of this subsection, the term "prevailing medical standards" means the recommendations of the ~~[Immunizations]~~ Advisory Committee on Immunization Practices ~~[Advisory Committee]~~ of the United States Department of Health and Human Services and the American Academy of Pediatrics; provided that ~~[in the event that]~~ if the recommendations of the committee and the academy differ, the department of health shall determine which recommendations shall apply.

(c) Minimum benefits may be limited to one visit payable to one provider for all of the services provided at each visit cited in this section, except that the limitations authorized by this subsection shall not apply to immunizations recommended by the ~~[Immunizations]~~ Advisory Committee on Immunization Practices ~~[Advisory Committee]~~ of the United States Department of Health and Human Services and the American Academy of Pediatrics; provided that ~~[in the event that]~~ if the recommendations of the committee and the academy differ, the department of health shall determine which recommendations shall apply."

## COMMENT

**Section 467B-11.5(3)(I), HRS, refers to the organization "AdvancED". However, it appears that this organization is now known as "Cognia".**



**Accordingly, section 467B-11.5(3)(I), HRS, should be amended by changing "AdvancED" to "Cognia". Additional technical nonsubstantive amendments are made for purposes of style and clarity.**

SECTION 59. Section 467B-11.5, Hawaii Revised Statutes, is amended to read as follows:

**"§467B-11.5 Charitable organizations exempted from registration and financial disclosure requirements.** The following charitable organizations shall not be subject to sections 467B-2.1 and 467B-6.5[7] if the organization submits an application for an exemption to the department and the department approves the organization's application:

- (1) Any duly organized religious corporation, institution, or society that is exempt from filing Form 990 with the Internal Revenue Service pursuant to section 6033(a)(3)(A)(i) and (iii) and (C)(i) of the Internal Revenue Code, as amended;
- (2) Parent-teacher associations;
- (3) Any educational institution that is licensed or accredited by any of the following licensing or accrediting organizations or their successor organizations:
  - (A) Hawaii Association of Independent Schools;
  - (B) Western Association of Schools and Colleges;

- (C) Middle States Association of Colleges and Schools;
  - (D) New England Association of Schools and Colleges;
  - (E) Higher Learning Commission;
  - (F) Northwest Commission on Colleges and Universities;
  - (G) Southern Association of Colleges and Schools;
  - (H) The National Association for the Education of Young Children; or
  - (I) ~~[Advanced]~~ Cognia;
- (4) Any organization exempt from taxation under section 501(c)(3) of the Internal Revenue Code expressly authorized by, and having an established identity with, an education institution accredited by one of the accrediting agencies as provided in paragraph (3); provided that the organization's solicitation of contributions is primarily directed to the students, alumni, faculty, and trustees of the institutions and their respective families;
- (5) Any nonprofit hospital licensed by the State or any similar provision of the laws of any other state;
- (6) Any corporation established by an act of the United States Congress that is required by federal law to submit to Congress annual reports, fully audited by

the United States Department of Defense, of its activities, including itemized accounts of all receipts and expenditures;

- (7) Any agency of this State, another state, or the federal government; and
- (8) Any charitable organization that normally receives less than \$25,000 in contributions annually, if the organization does not employ or compensate a professional solicitor or professional fundraising counsel. For purposes of this paragraph, an organization normally receives less than \$25,000 in contributions annually if, during the immediately preceding three fiscal years, it received, on average, less than \$25,000 in contributions.

The attorney general may require the application for exemption to be filed electronically with the department and may require the use of electronic signatures."

#### **COMMENT**

**Section 514B-146.5(c)(2), HRS, states in part, "this subsection shall not apply if the lien of the association has been outstanding for a period of one year or longer". The reference in the foregoing language to "this subsection" appears to be erroneous. The placement of the reference in paragraph (2), as well as the structure of the language, suggest that the reference should be to "this paragraph". Accordingly section 514B-146.5(c)(2), HRS, should be amended by changing the reference to "this subsection" to "this paragraph". Additional technical nonsubstantive amendments are made for purposes of clarity and consistency.**

SECTION 60. Section 514B-146.5, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

"(c) The association's power of sale provided in section 514B-146(a) may not be exercised against:

- (1) Any lien that arises solely from fines, penalties, legal fees, or late fees, and the foreclosure of any such lien shall be filed in court pursuant to part IA of chapter 667;
- (2) Any unit owned by a person who is on military deployment outside of the State of Hawaii as a result of active duty military status with any branch of the United States military[~~-. The~~], and the foreclosure of any such lien shall be filed in court pursuant to part IA of chapter 667[~~, this subsection~~]; provided that this paragraph shall not apply if the lien of the association has been outstanding for a period of one year or longer; or
- (3) Any unit while the nonjudicial or power of sale foreclosure has been stayed pursuant to section 667-92(c) ."

## COMMENT

**The definition of "hospital" in section 587D-1, HRS, refers to the "Joint Commission on Accreditation of Healthcare Organizations". However, it appears that this entity is now known as "The Joint Commission". Accordingly, the definition should be amended by changing "Joint Commission on Accreditation of Healthcare Organizations" to "The Joint Commission".**

SECTION 61. Section 587D-1, Hawaii Revised Statutes, is amended by amending the definition of "hospital" to read as follows:

"Hospital" means a facility licensed as a hospital by the department of health and accredited by ~~[the]~~ The Joint Commission ~~[on Accreditation of Healthcare Organizations]~~."

# TAX FOUNDATION OF HAWAII

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126 Queen Street, Suite 304

Honolulu, Hawaii 96813 Tel. 536-4587

SUBJECT: INCOME, Revisor's Bill

BILL NUMBER: HB 2650; SB 3119

INTRODUCED BY: HB by SAIKI; SB by KOUCHI by request

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

SYNOPSIS: Amends section 235-2.3(b)(42), HRS, to change the ending IRC section of subchapter U from 1379F to 1397F.

EFFECTIVE DATE: Upon approval.

STAFF COMMENTS: As it relates to taxation, this bill corrects an apparent typographical error in section 235-2.3(b)(42).

Digested 2/3/2020