

A Bill for an Act Relating to the Judiciary.

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

**SECTION 1. Purpose.** The purpose of this Act is to implement Article VI of the Constitution of the State of Hawaii as amended by the voters of Hawaii at the general election of 1978 and pertaining to Intermediate Appellate Court.

**SECTION 2.** Chapter 602, Hawaii Revised Statutes, is amended to read as follows:

## “CHAPTER 602 COURTS OF APPEAL

### PART 1. SUPREME COURT

**Sec. 602-1 How constituted.** The supreme court, pursuant to section 2 of article V of the Constitution, shall consist of a chief justice and four associate justices.

**Sec. 602-2 Salary, supreme court justices.** Effective July 1, 1975, the compensation of the chief justice of the supreme court shall be \$45,125 a year and the compensation of the associate justices of the supreme court shall be \$41,400 a year. Effective January 1, 1976, the compensation of the chief justice of the supreme court shall be \$47,500 a year and the compensation of the associate justices of the supreme court shall be \$45,000 a year.

**Sec. 602-3 Absence, disability, etc., of chief justice.** Wherever, by the provisions of any law of the State, any act is required to be performed by the chief justice of the supreme court, the act may (unless otherwise expressly provided) be performed, in case of a vacancy in the office of chief justice, or if he is ill, absent, or otherwise unable to serve, by an associate justice of the court designated in accordance with the rules of the supreme court.

**Sec. 602-4 Superintendence of inferior courts.** The supreme court shall have the general superintendence of all courts of inferior jurisdiction to prevent and correct errors and abuses therein where no other remedy is expressly provided by law.

**Sec. 602-5 Jurisdiction and powers.** The supreme court shall have jurisdiction and powers as follows:

- (1) To hear and determine all questions of law, or of mixed law and fact, which are properly brought before it on any appeal allowed by law from any other court or agency;
- (2) To answer, in its discretion, any question of law reserved by a circuit court, the land court, or the tax appeal court, or any question or proposition of law certified to it by a federal appellate court if the supreme court shall so provide by rule;
- (3) To entertain, in its discretion, any case submitted without suit when there is a question in difference which might be the subject of a civil action or proceeding in the supreme court, circuit court, or tax appeal court, and the

- parties agree upon a case containing the facts upon which the controversy depends;
- (4) To exercise original jurisdiction in all questions arising under writs directed to courts of inferior jurisdiction and returnable before the supreme court, or if the supreme court consents to receive the case arising under writs of mandamus directed to public officers to compel them to fulfill the duties of their offices; and such other original jurisdiction as may be expressly conferred by law;
  - (5) To issue writs of habeas corpus, or orders to show cause as provided by chapter 660, returnable before the supreme court or a circuit court, and any justice may issue writs of habeas corpus or such orders to show cause, returnable as above stated;
  - (6) To make or issue any order or writ necessary or appropriate in aid of its appellate or original jurisdiction, and in such case any justice may issue a writ or an order to show cause returnable before the supreme court;
  - (7) To make and award such judgement, decrees, orders and mandates, issue such executions and other processes, and do such other acts and take such other steps as may be necessary to carry into full effect the powers which are or shall be given to it by law or for the promotion of justice in matters pending before it.
  - (8) All cases addressed to the jurisdiction of the supreme court or of the intermediate appellate court shall be filed with the supreme court as shall be provided by rule of court. The chief justice or his designee from any of the associate justices or the intermediate appellate judges, shall receive each case and shall assign the case either to the intermediate appellate court or to the supreme court within 20 days of the filing deadline for the last document permissible to be filed in the case pursuant to court rule.
  - (9) The supreme court may order the immediate reassignment of a case to itself after its assignment to the intermediate appellate court whenever the supreme court in its discretion deems that the case concerns an issue of imperative or of fundamental public importance.

**Sec. 602-6 Criteria for assignment of cases.** In assigning a case to the appropriate court of appeal under subsection 602-5(8), the chief justice or his designee may consider the following among other relevant matters and their substantiality in determining whether the case involves a question of such importance that it should be assigned to the supreme court:

- (1) Whether the case involves a question of first impression or presents a novel legal question; or
- (2) Whether the case involves a question of state or federal constitutional interpretation; or
- (3) Whether the case raises a question of law regarding the validity of a state statute, county ordinance, or agency regulation; or
- (4) Whether the case involves issues upon which there is an inconsistency in the decisions of the intermediate appellate court or of the supreme court; or
- (5) Whether the sentence in the case is life imprisonment without possibility of parole.

**Sec. 602-7 Oaths, subpoenas.** The supreme court may compel the attendance of witnesses and the production of books, papers, documents or tangible things, and any justice may administer oaths.

**Sec. 602-8 Terms.** There shall be an annual term commencing on the first Monday in October and continuing until adjourned or until the following term begins. Continued existence, adjournment or expiration of the term shall in no way affect the power of the court to do all acts or things and to take any proceeding. The court shall be deemed always open for filing papers, issuing and returning process and making motions or orders.

**Sec. 602-9 Sessions, where.** The supreme court shall sit in Honolulu; provided, that the chief justice may appoint a different place for the sitting of the court, pro tempore.

**Sec. 602-10 Full court; oral argument; substitute justices.** Parties shall be entitled to bring an appeal before a full court. Oral argument shall be before a full court; provided that in an appropriate case the court in its discretion may dispense with oral argument. In case of a vacancy, or if a justice of the supreme court is disqualified from sitting in any case pending before the supreme court, or is unable to attend, or is absent, or is recused or has been excused, the vacancy or the place of such justice may be temporarily filled by a circuit judge designated by the chief justice or by the appointment of a justice who has retired from the supreme court. Such retired justice chosen to serve as substitute justice shall not be actively engaged in the practice of law. A retired justice, when sitting as substitute justice, shall be compensated at a rate of pay of associate justices of the supreme court. When necessary, the court may consist of five circuit judges, so designated or five retired justices so appointed or any combination of circuit judges and retired justices. After oral argument of a case, if a vacancy arises or if for any other reason a justice is unable to continue on the case, the case may be decided or disposed of upon the concurrence of any three members of the court without filling the vacancy or the place of such justice.

**Sec. 602-11 Rules.** The supreme court shall have power to promulgate rules in all civil and criminal cases for all courts relating to process, practice, procedure and appeals, which shall have the force and effect of law. Such rules shall not abridge, enlarge, or modify the substantive rights of any litigant, nor the jurisdiction of any of the courts, nor affect any statute of limitations.

Whenever in a statute it is provided that the statute is applicable "except as otherwise provided," or words to that effect, these words shall be deemed to refer to provisions of the rules of court as well as other statutory provisions."

SECTION 3. Chapter 602, Hawaii Revised Statutes, is amended by adding a new part to read as follows:

#### **"PART 2. INTERMEDIATE APPELLATE COURT**

**Sec. 602-12 How constituted.** The intermediate appellate court shall consist of a chief judge and two associate judges. The chief judge, who shall be specifically selected, shall supervise the administrative duties of the court.

**Sec. 602-13 Salary.** The compensation of the chief judge of the intermediate appellate court shall be \$45,000 a year and the compensation of the associate judges shall be \$43,750 a year.

**Sec. 602-14 Terms.** There shall be an annual term commencing on the first Monday in October and continuing until adjourned or until the following term begins. Continued existence, adjournment, or expiration of the term shall in no way affect the power of the court to do all acts or things and to take any proceeding. The court shall be deemed always open for filing papers, issuing and returning process, and making motions or orders.

**Sec. 602-15 Session, where.** The intermediate appellate court shall sit in Honolulu; provided that the chief judge may appoint a different place for the sitting of the court, pro tempore.

**Sec. 602-16 Panels; substitute judge.** Parties shall be entitled to a hearing before a panel of not less than three intermediate appellate judges. In the event the number of available intermediate appellate judges is insufficient to make up a panel because of vacancy or disqualification, the chief justice of the supreme court may designate circuit judges or retired judges to temporarily fill such need. The assignment to a panel shall rest in the discretion of the chief judge. A judge serving temporarily shall not be actively engaged in the practice of law. Substitute judges shall be compensated per diem at a rate of pay equivalent to that of associate intermediate appellate judges.

**Sec. 602-17 Absence, disability, of the chief judge.** Whenever, by the provisions of any law of the State, any act is required to be prepared by the chief judge of the intermediate appellate court, the act may be performed, in case of a vacancy, or illness, absence or disability, by an associate judge designated in accordance with the rules of the supreme court.

**Sec. 602-18 Jurisdiction.** The intermediate appellate court shall have concurrent jurisdiction with the supreme court on all matters set out in subsections (1) through (7) of section 602-5, subject to assignment of cases set out in subsection 602-5(8).

**Sec. 602-19 Motion for certificates of reassignment to the supreme court.**

(a) The intermediate appellate court may entertain a motion at any time before its issuance of a decision, requesting reassignment of the case to the supreme court.

(b) The moving party shall state the grounds of such motion indicating how the case on appeal involves a question of such importance as to warrant a direct appeal to the supreme court.

(c) The issuance of a certificate for reassignment to the supreme court shall be discretionary upon the intermediate appellate court, and acceptance or rejection of such certification shall be discretionary upon the supreme court. Neither the failure to issue such certification by the intermediate appellate court or the rejection of such certification by the supreme court shall be subject to appeal.

**Sec. 602-20 Appeals from decision of the intermediate appellate court, certiorari.** (a) After issuance of a decision by the intermediate appellate court, a party may appeal such decision only by application to the supreme court for a writ of

certiorari, the acceptance or rejection of which shall be discretionary upon the supreme court.

(b) The application for writ of certiorari shall tersely state its grounds which must include (1) grave errors of law or of fact, or (2) obvious inconsistencies in the decision of the intermediate appellate court with that of the supreme court, federal decisions, or its own decision, and the magnitude of such errors or inconsistencies dictating the need for further appeal.

(c) An application for writ of certiorari may be filed with the supreme court no later than 10 days after the filing of the decision of the intermediate appellate court; the supreme court shall determine to accept the application within 10 days of its filing. The failure of the supreme court to accept within 10 days shall constitute a rejection of the application.

(d) Upon the acceptance of the application, the clerk of the intermediate appellate court shall forward the complete file of the case to the clerk of the supreme court. Supplemental briefs shall be accepted from the parties only upon the request of the supreme court."

SECTION 4. Chapter 606, Hawaii Revised Statutes, is amended as follows:

1. Section 606-1 is amended to read as follows:

**"Sec. 606-1 Clerks of supreme court, intermediate appellate court, circuit courts, and district courts; appointment and removal.** (a) Subject to the provisions of chapter 76, when applicable:

- (1) There shall be a clerk of the supreme court and as many deputy clerks and assistant clerks as the business of the supreme court requires, appointed and removable by the justices of the supreme court.
- (2) There shall be a clerk of the intermediate appellate court and as many deputy clerks and assistant clerks as the business of such court requires, appointed and removable by the judges of the intermediate appellate court.
- (3) There shall be as many clerks of the circuit courts as may be necessary, appointed and removable by the judge or administrative judge thereof, as the case may be. The appointment of a clerk of a particular division may be made by the judge of that division.
- (4) There shall be as many clerks of the district courts as may be necessary, appointed and removable by the judge or administrative judge thereof, as the case may be.

(b) The respective clerks of the supreme court, intermediate appellate court, circuit courts, and district courts shall be ex officio clerks of all the courts of records, and as such may issue process returnable in all such courts."

2. Section 606-4 is amended to read as follows:

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

The clerks shall have the authority and power, upon the written approval of a judge of the court given in particular actions or proceedings, to sell, destroy, or otherwise dispose of exhibits and things marked for identification, other than origi-

nal files belonging to other actions, which have come into their possession or custody under this section, when such exhibits or things have not been already returned to their owners and when more than one year has elapsed since the final termination of the action to which the exhibits or things are related; provided that the clerk shall first give notice in writing of the things that are proposed to be disposed of, stating that the same are to be disposed of if not claimed and removed from the court by a day certain, such notice to be addressed to the party or the attorney of the party who introduced the exhibits or things in evidence or left them in the custody of the court, at his last known address; and provided further that the clerk shall file an affidavit-as to such notice and a list of the exhibits or things to be destroyed or otherwise disposed of under this section and the disposition thereof, with the action or proceeding to which the same belong.

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

SECTION 5. Chapter 607, Hawaii Revised Statutes, is amended as follows:

1. By adding a new section to be appropriately designated and to read as follows:

“**Sec. 607- Intermediate appellate court costs.** Upon the institution of any proceeding in the courts of appeal, there shall be paid to the clerk of the supreme court by the person instituting proceeding, as costs of court, such sum as is specified in section 607-6, provided that the filing fee for any proceeding to be heard by the courts of appeal shall be payable only once upon the initial filing of the proceeding.

2. Section 607-6, Hawaii Revised Statutes, is amended to read as follows:

“**Sec. 607-6 Appellate court costs.** (a) All proceedings in the courts of appeal shall be filed in the supreme court. Upon the filing of any appeal, or the institution of any original suit, action, or other proceeding in the supreme court, there shall be paid to the clerk of the supreme court by the person filing such appeal, or instituting the suit, action, or other proceeding, as costs of court, the sum of . . . . . \$50.

(b) In addition to the costs of court enumerated in subsection (a), the clerk of the supreme court shall charge and collect, for miscellaneous services performed by him, the following sums:

- (1) For filing any paper not in a pending suit, action, or other proceeding . . . \$3
- (2) For issuing any subpoena, for each witness to be served . . . . . \$3
- (3) All amounts necessary to cover actual costs or disbursements for printing, publishing, or posting notice, service fees, mileage charges, or other services actually performed.”

3. Section 607-7 is amended to read as follows:

“**Sec. 607-7 Deposit and payment of costs on appeal.** All costs required to be paid upon the filing of any appeal shall be deposited with the clerk of the court from which the appeal is taken, which deposit shall be transmitted to the clerk of the supreme court together with the record of the appeal; provided that the filing fee for an appeal whether to be heard by the supreme court, intermediate appellate court, or both, shall be payable only once upon the initial filing of the appeal. The deposit shall be made at the time of filing the notice of appeal.

Where the appeal is from a governmental official or body other than a court, the

required payment of costs for filing the appeal shall be made to the clerk of the court to which the appeal is taken except as otherwise provided; provided that the filing fee for an appeal, to be heard by the supreme court, the intermediate appellate court, or both, shall be transmitted to the clerk of the supreme court, and further provided that the filing fee shall be payable only once upon the initial filing of the appeal."

4. Section 607-8 is amended to read as follows:

**"Sec. 607-8 Sheriff's or serving or levying officer's fees in circuit court, intermediate appellate court, or supreme court.** For all necessary travel in making such service, per mile for every mile more than one . . . 15 cents provided that:

- (1) No such allowance shall be made where such serving officer uses a conveyance furnished him by the State, or any political or municipal subdivision thereof;
- (2) Where the serving officer serves more than one person in the course of one trip, he shall not charge, in the aggregate for all such services more than the mileage for the entire trip; and
- (3) As far as practicable, in order to minimize the mileage fees for such service, the sheriff or other chief of the serving officers, where service of process is to be made upon an island other than that upon which is situated the court issuing such process, shall cause such process to be transmitted to a deputy, the chief of police or other serving officer upon the island of service who shall make such service upon receipt of such process; and such service shall be valid, notwithstanding that the process may not be addressed to the officer actually making such service or to his superior.

For serving criminal summons or any other criminal process except a subpoena, for each person served therewith . . . . . \$10.

For serving civil summons or any other civil process, except a subpoena or a garnishee summons, for each person served therewith . . . . . \$6 effective July 1, 1978 and \$7 effective July 1, 1979.

For serving subpoena or garnishee summons, for each person . . . . . \$5.

For returning as unserved after due and diligent search any process when it has been found that the person to be served has left the State . . . . . \$2.

For serving any execution or other process for the collection of money, for every dollar collected up to \$500 . . . . . 5 cents.

And for every dollar over \$500 . . . . . 2-½ cents.

All fees paid to any printer for publishing an advertisement of the sale of any property;

For every bill of sale . . . . . \$1.

For executing and acknowledging a deed pursuant to a sale of real estate to be paid by the grantee in such deed . . . . . \$5.

For drawing any bond required by law . . . . . \$1.

For serving writ of possession or restitution, putting any person entitled into the possession of premises, and removing a tenant pursuant to order of court . . . . . \$1.

Together with all necessary expenses incurred by the officer serving the writ, incident to the eviction.

For selling any property on an order from the court other than an execution, the same allowance as for service and sales by execution.

The fees for service of executions, attachments, and collection of judgments, together with all costs incurred after judgment rendered, not included in the judgment, shall, in all the courts of the State, be collected in addition to the sum directed to be levied and collected in the writ.

Anything in this section or any other law to the contrary notwithstanding, when any process or subpoena is served by a subordinate of the sheriff or chief of police, it shall be illegal for the sheriff or chief of police (1) if and so long as he is being paid a salary by the State or the county to receive or collect from such subordinate any portion of the fees, mileage, or other expenses collected by such subordinate, or (2) if and so long as such sheriff or chief of police is not being paid any such salary, to collect or receive from such subordinate more than ten per cent of the fees accruing from such service, or any portion of the mileage or other expenses collected by such subordinate. Where a subpoena is served in behalf of the State or any county a nonsalaried subordinate of the sheriff or chief of police, the regular fee for such service shall be payable to such subordinate. Nothing herein contained shall be deemed to prohibit the police commission of any county from requiring all such fees, mileage, and expenses be paid into a police benefit fund."

SECTION 6. Chapter 641, Hawaii Revised Statutes, is amended as follows:

1. Section 641-1 is amended by amending subsection (a) to read as follows:

"(a) Appeals shall be allowed in civil matters from all final judgments, orders, or decrees of circuit and district courts and the land court, to the supreme court or to the intermediate appellate court, except as otherwise provided by law and subject to the authority of the intermediate appellate court to certify reassignment of a matter directly to the supreme court and subject to the authority of the supreme court to reassign a matter to itself from the intermediate appellate court."

2. Section 641-11 is amended to read as follows:

"**Sec. 641-11 From circuit courts.** Any party deeming himself aggrieved by the judgment of a circuit court in a criminal matter, may appeal to the supreme court, subject to chapter 602 in the manner and within the time provided by the Hawaii Rules of Criminal Procedure. The sentence of the court in a criminal case shall be the judgment. All appeals, whether heard by the intermediate appellate court or the supreme court, shall be filed with the clerk of the supreme court and shall be subject to one filing fee."

3. Section 641-12 is amended to read as follows:

"**Sec. 641-12 From district courts.** Appeals upon the record shall be allowed from all final decisions and final judgments of district courts in all criminal matters. Such appeals may be made to the supreme court, subject to chapter 602 whenever the party appealing shall file notice of his appeal within thirty days, or such other time as may be provided by the rules of the court.

Within a reasonable time after an appeal has been perfected from a decision of a district court to the appellate court in a criminal matter, it shall be incumbent upon the district court to make a return thereof, together with all papers and exhibits filed in such case.

It shall be the duty of the respective clerk of the supreme or the intermediate appellate court whichever has heard the appeal, to transmit within a reasonable time



to the district court from whose decision the appeal was made, a statement showing the disposition of the case.

All appeals, whether heard by the intermediate appellate court or the supreme court, shall be filed with the clerk of the supreme court and shall be subject to one filing fee.”

4. Section 641-13 is amended to read as follows:

“**Sec. 641-13 By State in criminal cases.** An appeal may be taken by and on behalf of the State from the district or circuit courts to the supreme court, subject to chapter 602, in all criminal cases, in the following instances:

- (1) From an order or judgment quashing, setting aside, or sustaining a motion to dismiss, any indictment or information or any count thereof;
- (2) From an order or judgment, sustaining a special plea in bar, or dismissing the case where the defendant has not been put in jeopardy;
- (3) From an order granting a new trial;
- (4) From an order arresting judgment;
- (5) From a ruling on a question of law adverse to the State where the defendant was convicted and appeals from the judgment;
- (6) From the sentence, on the ground that it is illegal;
- (7) From a pre-trial order granting a motion for the suppression of evidence, including a confession or admission, or the return of property in which case the intermediate appellate court or the supreme court, as the case may be, shall give priority to such an appeal and the order shall be stayed pending the outcome of the appeal;
- (8) From an order denying a request by the State for protective order for nondisclosure of witness for their personal safety under Rule 16(e)(4) of the Hawaii Rules of Penal Procedure, in which case the intermediate appellate court or the supreme court, as the case may be, shall give priority to such appeal and the order shall be stayed pending outcome of such appeal;

provided that no appeal shall be taken by or allowed the State in any case where there has been a verdict in favor of the defendant.”

5. Section 641-16 is amended to read as follows:

“**Sec. 641-16 Judgment; no reversal when.** The supreme court, or the intermediate appellate court, as the case may be, may affirm, reverse, or modify the order, judgment, or sentence of the trial court in a criminal matter. It may enter such order, judgment, or sentence, or may remand the case to the trial court for the entry of the same or for such other or further proceedings, as in its opinion the facts and law warrant. It may correct any error appearing on the record.

In case of a conviction and sentence in a criminal case, if in its opinion the sentence is illegal or excessive it may correct the sentence to correspond with the verdict or finding or reduce the same, as the case may be. In case of a sentence to imprisonment for life not subject to parole, the court shall review the evidence to determine if the interests of justice require a new trial, whether the insufficiency of the evidence is alleged as error or not. Any order, judgment, or sentence entered by the court may be enforced by it or remitted for enforcement by the trial court.

No order, judgment, or sentence shall be reversed or modified unless the court is of the opinion that error was committed which injuriously affected the substantial

rights of the appellant. Nor shall there be a reversal in any criminal case for any defect of form merely in any indictment or information or for any matter held for the benefit of the appellant or for any finding depending on the credibility of witnesses or the weight of the evidence. Except as otherwise provided by the rules of court, there shall be no reversal for any alleged error in the admission or rejection of evidence or the giving of or refusing to give an instruction to the jury unless such alleged error was made the subject of an objection noted at the time it was committed or brought to the attention of the court in another appropriate manner.”

6. Section 641-17 is amended to read as follows:

**“Sec. 641-17 Interlocutory appeals from circuit courts, criminal matters.**

Upon application made within the time provided by the rules of the supreme court, an appeal in a criminal matter may be allowed to a defendant from the circuit court to the supreme court, subject to chapter 602, from a decision denying a motion to dismiss or from other interlocutory orders, decisions, or judgments, whenever the judge in his discretion may think the same advisable for a more speedy termination of the case. The refusal of the judge to allow an interlocutory appeal to the appellate court shall not be reviewable by any other court.”

SECTION 7. Section 76-16, Hawaii Revised Statutes, is amended by amending paragraph (9) to read as follows:

“(9) One secretary or clerk for each justice of the supreme court, each judge of the intermediate appellate court, and each judge of the circuit court; three law clerks for the chief justice of the supreme court, two law clerks for each associate justice of the supreme court, and one law clerk for each judge of the intermediate appellate court and of the circuit court (provided that the law clerk for a judge of the circuit court shall be employed in lieu of and shall have the powers and duties of a court officer and bailiff under section 606-14); and one private secretary for each department head, each deputy or first assistant, and each additional deputy, or assistant deputy, or assistant defined in paragraph (17);”

SECTION 8. Section 88-21, Hawaii Revised Statutes, is amended by amending the definition of “Judge” to read as follows:

“ “Judge”: a justice of the supreme court, a judge of the intermediate appellate court, or a judge of the circuit court of this State.”

SECTION 9. Section 91-14, Hawaii Revised Statutes, is amended to read as follows:

**“Sec. 91-14 Judicial review of contested cases.** (a) Any person aggrieved by a final decision and order in a contested case or by a preliminary ruling of the nature that deferral of review pending entry of a subsequent final decision would deprive appellant of adequate relief is entitled to judicial review thereof under this chapter; but nothing in this section shall be deemed to prevent resort to other means of review, redress, relief, or trial de novo, including the right of trial by jury, provided by law.

(b) Except as otherwise provided herein, proceedings for review shall be instituted in the circuit court within thirty days after the preliminary ruling or within thirty days after service of the certified copy of the final decision and order of the agency

pursuant to rule of court except where a statute provides for a direct appeal to the supreme court, which appeal shall be subject to chapter 602, and in such cases the appeal shall be in like manner as an appeal from the circuit court to the supreme court, including payment of the fee prescribed by section 607-5 for filing the notice of appeal (except in cases appealed under sections 11-51 and 40-91). The court in its discretion may permit other interested persons to intervene.

(c) The proceedings for review shall not stay enforcement of the agency decisions; but the agency or the reviewing court may order a stay upon such terms as it deems proper.

(d) Within fifteen days after the determination of the contents of the record on appeal in the manner provided by the rules of court, or within such further time as the court may allow, the agency shall transmit to the reviewing court the record of the proceeding under review. The court may require or permit subsequent corrections or additions to the record when deemed desirable.

(e) If, before the date set for hearing, application is made to the court for leave to present additional evidence material to the issue in the case, and it is shown to the satisfaction of the court that the additional evidence is material and that there were good reasons for failure to present it in the proceeding before the agency, the court may order that the additional evidence be taken before the agency upon such conditions as the court deems proper. The agency may modify its findings, decision, and order by reason of the additional evidence and shall file with the reviewing court, to become a part of the record, the additional evidence, together with any modifications or new findings or decision.

(f) The review shall be conducted by the appropriate court without a jury and shall be confined to the record, except that in the cases where a trial de novo, including trial by jury, is provided by law and also in cases of alleged irregularities in procedure before the agency not shown in the record, testimony thereon may be taken in court. The court shall, upon request by any party, hear oral arguments and receive written briefs.

(g) Upon review of the record the court may affirm the decision of the agency or remand the case with instructions for further proceedings; or it may reverse or modify the decision and order if the substantial rights of the petitioners may have been prejudiced because the administrative findings, conclusions, decisions, or orders are:

- (1) In violation of constitutional or statutory provisions; or
- (2) In excess of the statutory authority or jurisdiction of the agency; or
- (3) Made upon unlawful procedure; or
- (4) Affected by other error of law; or
- (5) Clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record; or
- (6) Arbitrary, or capricious, or characterized by abuse of discretion or clearly unwarranted exercise of discretion.

(h) Upon a trial de novo, including a trial by jury as provided by law, the court shall transmit to the agency its decision and order with instructions to comply with the order."

SECTION 10. Section 91-15, Hawaii Revised Statutes, is amended to read as follows:

**“Sec. 91-15 Appeals.** Review of any final judgment of the circuit court under this chapter shall be governed by chapter 602.”

SECTION 11. Section 269-16, Hawaii Revised Statutes, is amended by amending subsection (f) to read as follows:

“(f) From every order made by the commission under the provisions of this chapter which is final, or if preliminary is of the nature defined by section 91-14(a), an appeal shall lie to the supreme court subject to chapter 602 only by a person aggrieved in the contested case hearing provided for under this section in the manner and within the time provided by chapter 602, and by the rules of court. The appeal shall not of itself stay the operation of the order appealed from, but the court may stay the order after a hearing upon a motion therefor, and may impose such conditions as it may deem proper as to giving a bond and keeping the necessary accounts or otherwise in order to secure a restitution of the excess charges, if any, made during the pendency of the appeal in case the order appealed from should be sustained, reversed, or modified in whole or in part.”

SECTION 12. Section 271-31, Hawaii Revised Statutes, is amended by amending subsection (f) to read as follows:

“(f) A complete record of all proceedings and testimony before the commission on any formal hearing shall be taken down by a reporter appointed by the commission, and the parties shall be entitled to be heard in person or by attorney. In case of an action to review an order or decision of the commission, a transcript of the testimony, together with all exhibits or copies thereof introduced, and of the pleadings, records, and proceedings in the cause, shall constitute the record of the commission, but the party or parties to the proceeding and the commission may stipulate that designated parts of the record need not be transmitted to the appellate court, as provided by the rules of the court.”

SECTION 13. Section 271-33, Hawaii Revised Statutes, is amended to read as follows:

**“Sec. 271-33 Appeals.** From the order made on an application for reconsideration or rehearing by the public utilities commission under this chapter, an appeal shall lie to the supreme court subject to chapter 602 in the manner and within the time provided by chapter 602, and by the rules of court, provided the order is final, or if preliminary is of the nature defined by section 91-14(a). The appeal shall not of itself stay the operation of the order appealed from, but the court may stay the same after a hearing upon a motion therefor, and may impose such conditions as it may deem proper as to giving a bond and keeping the necessary accounts or otherwise to secure a restitution of the excess charges, if any, made during the pendency of the appeal in case the order appealed from should be sustained, reversed, or modified in whole or in part.”

SECTION 14. Section 271G-24, Hawaii Revised Statutes, is amended to read as follows:

**“Sec. 271G-24 Appeals.** From an order of the public utilities commission under this chapter, an appeal shall lie to the supreme court subject to chapter 602 in the manner and within the time provided by chapter 602, and by the rules of court,

provided the order is final, or if preliminary is of the nature defined by section 91-14(a). The appeal shall not of itself stay the operation of the order appealed from, but the court may stay the same after a hearing upon a motion therefor, and may impose such conditions as it may deem proper as to giving a bond and keeping the necessary accounts or otherwise to secure a restitution of the excess charges, if any, made during the pendency of the appeal in case the order appealed from should be sustained, revised, or modified in whole or in part.”

SECTION 15. Section 351-17, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) Any person aggrieved by an order or decision of the criminal injuries compensation commission on the sole ground that the order or decision was in excess of the commission’s authority or jurisdiction, shall have a right of appeal to the supreme court subject to chapter 602, provided the appeal is filed within thirty days after service of an original or a certified copy of such order or decision. Except as otherwise provided in this section, orders and decisions of the commission shall be conclusive and not subject to judicial review.”

SECTION 16. Section 377-9, Hawaii Revised Statutes, is amended by amending subsection (j) to read as follows:

“(j) Any party may appeal from the judgment of a circuit court entered under this chapter to the supreme court subject to chapter 602.”

SECTION 17. Section 380-10, Hawaii Revised Statutes, is amended to read as follows:

“**Sec. 380-10 Appeal.** Whenever any court of the State issues or denies any temporary injunction in a case involving or growing out of a labor dispute, an appeal shall lie as of right to the supreme court subject to chapter 602, notwithstanding any provision of section 641-1. The appeal shall be heard and the temporary injunctive order affirmed, modified, or set aside with the greatest possible expedition, giving the proceedings precedence over all other matters of the same character.”

SECTION 18. Section 386-73, Hawaii Revised Statutes, is amended to read as follows:

“**Sec. 386-73 Original jurisdiction over controversies.** Unless otherwise provided, the director of labor and industrial relations shall have original jurisdiction over all controversies and disputes arising under this chapter. The decisions of the director shall be enforceable by the circuit court as provided in section 386-91. There shall be a right of appeal from the decisions of the director to the appellate board and thence to the supreme court subject to chapter 602 as provided in sections 386-87 and 386-88, but in no case shall an appeal operate as a supersedeas or stay unless the appellate board or the supreme court so orders.”

SECTION 19. Section 386-88, Hawaii Revised Statutes, is amended to read as follows:

“**Sec. 386-88 Judicial review.** The decision or order of the appellate board shall be final and conclusive, except as provided in section 386-89, unless within thirty days after mailing of a certified copy of the decision or order, the director or any

other party appeals to the supreme court subject to chapter 602 by filing a written notice of appeal with the appellate board. A fee in the amount prescribed by section 607-5 for filing a notice of appeal from a circuit court shall be paid to the appellate board for filing the notice of appeal from the board, which together with the appellate court costs shall be deemed costs of the appellate court proceeding. The appeal shall be on the record and the court shall review the appellate board's decision on matters of law only. No new evidence shall be introduced in the appellate court, except that the court may, if evidence is offered which is clearly newly discovered evidence and material to the just decision of the appeal, admit the same."

SECTION 20. Section 571-3, Hawaii Revised Statutes, is amended to read as follows:

**"Sec. 571-3 Family courts, divisions of circuit courts.** The family courts shall be divisions of the circuit courts of the State and shall not be deemed to be other courts as that term is used in the State Constitution. A family court shall be held at the courthouse in each circuit, or other duly designated place, by the judge or judges of the respective family courts as herein defined. The chief justice of the supreme court may temporarily assign a family court judge to preside in another circuit when the urgency of one or more cases requires him to do so. In any case in which it has jurisdiction the court shall exercise general equity powers as authorized by law."

SECTION 21. Section 571-54, Hawaii Revised Statutes, is amended to read as follows:

**"Sec. 571-54 Appeal.** An interested party aggrieved by any order or decree of the court may appeal to the supreme court for review of questions of law and fact upon the same terms and conditions as in other cases in the circuit court and review shall be governed by chapter 602, except as hereinafter provided. Where the decree or order affects the custody of a child or minor the appeal shall be heard at the earliest practicable time. In cases under section 571-11 the record on appeal shall be given a fictitious title, to safeguard against publication of the names of the children or minors involved.

The stay of enforcement of an order or decree, or the pendency of an appeal, shall not suspend the order or decree of the court regarding a child or minor or discharge the child or minor from the custody of the court or of the person, institution, or agency to whose care he has been committed, unless otherwise ordered by the family court, or by the supreme or intermediate appellate court after an appeal is taken. Pending final disposition of the case the family court, or the supreme or the intermediate appellate court after an appeal is taken, may make such order for temporary custody as is appropriate in the circumstances. If the supreme or the intermediate appellate court does not dismiss the proceedings and discharge the child or minor, it shall affirm or modify the order of the family court and remand the child or minor to the jurisdiction of the court for disposition not inconsistent with the supreme or the intermediate appellate court's finding on the appeal.

An order or decree entered in a proceeding based upon section 571-11(1), (2), or (6) shall be subject to appeal to the supreme court only as follows:

Within ten days from the date of the entry of any such order or decree, any party directly affected thereby, including a parent or legal custodian of any child or minor

involved, may petition the judge for a rehearing and reconsideration of the facts involved. The petition shall set forth the grounds on which a rehearing is requested and shall be sworn to by the petitioner. A copy thereof shall be served upon the attorney general, who shall represent the interests of the State at the rehearing and in connection with any subsequent appeal. As soon thereafter as may be practicable, the judge shall proceed with the rehearing of the case, affording to all parties concerned the full right of representation by counsel and presentation of relevant evidence. The findings of the judge upon the rehearing and his determination and disposition of the case thereafter, and any decision, judgment, order, or decree affecting the child and entered as a result of the rehearing shall be set forth in writing and signed by the judge. Any party deeming himself aggrieved by any such judgment, order, or decree, entered following a rehearing as in this section provided, shall have the right to appeal therefrom to the supreme court upon the same terms and conditions as in other cases in the circuit court and review shall be governed by chapter 602; provided that no such petition for rehearing shall operate as a stay of any such judgment, order, or decree unless the judge of the family court so orders; provided further that no informality or technical irregularity in the proceedings prior to the rehearing hereinabove provided for shall constitute grounds for the reversal of any such judgment, order, or decree by the appellate court.”

SECTION 22. Section 601-6, Hawaii Revised Statutes, is repealed.

SECTION 23. Section 601-8, Hawaii Revised Statutes, is amended to read as follows:

“**Sec. 601-8 Practice of law forbidden.** Justices of the supreme court, judges of the intermediate appellate court, judges of the circuit court, and full-time judges of the district court and of the district family court shall not engage in the practice of law during their terms of office.”

SECTION 24. Section 607-4, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) The fees referred to in subsection (a) are:

- (1) For the institution of each action or proceeding, to include all charges except as provided by paragraphs (2) to (13) . . . . . \$10
- (2) Intervention; answer containing one or more cross-claims or counter-claims; third-party complaint, for each such matter . . . . . \$5
- (3) Motion or other application for: change of venue; involuntary dismissal, or preliminary hearing of a defense which may lead to involuntary dismissal; judgment on the pleadings; summary judgment; new trial; vacating, altering, or amending judgment, for each such matter, provided that an application in the alternative shall be treated as one matter . . . . . \$3
- (4) For the issuance of garnishee summons; writ of possession, attachment, or execution; or any other writ, for each such matter . . . . . \$3
- (5) Issuance of a subpoena, for each witness to be served . . . . . \$1
- (6) Deposition upon oral examination or written questions, or physical or mental examination, or examination of judgment debtor or other person under section 636-4, to be paid by the party filing the first paper in the matter, for each person whom the party seeks to question or examine . . . \$3

- (7) Demand for jury trial . . . . . Fee prescribed by section 607-5
- (8) Filing of notice of appeal to the supreme court, to be paid in addition to the deposit of appellate court costs . . . . . \$30
- (9) Search of records by the clerk. . . . . \$2
- (10) Making of a copy; comparing of copy with original . . . . . Fees prescribed by section 92-21
- (11) Certification under seal of copy of pleading or other paper subsequent to the initial filing of the pleading or paper, except record on appeal . . . . . \$1
- (12) Exemplification, instead of item (1). . . . . \$1
- (13) Posting notice; service fees; garnishee fees; mileage charges; or other services actually performed. . . . . Amounts necessary to cover actual costs or disbursements."

SECTION 25. Section 11-51, Hawaii Revised Statutes, is amended to read as follows:

**"Sec. 11-51 Appeal from board to supreme court.** Any affected person, political party, or any of the county clerks, may, not later than 4:30 p.m. on the tenth day after the decision of the board of registration, appeal to the supreme court subject to chapter 602, in the manner provided for civil appeals to such court from the circuit court."

SECTION 26. Section 40-91, Hawaii Revised Statutes, is amended to read as follows:

**"Sec. 40-91 Appeal from comptroller to supreme court.** In case of any question or difference of opinion arising between the comptroller and any officer of the State regarding the proper appropriation to which any item or amount of expense is charged, or any other matter regarding the construction of this chapter or the authority vested in either of them by this chapter, and in all cases where a claim is disallowed by the comptroller in consequence of the absence of an original warrant voucher, or upon an imperfect warrant voucher or an incorrect certificate, or if any person feels aggrieved by any decision of the comptroller, in the rejection or the surcharge of the returns or refusal to approve or allow any demand presented by the person, any of the persons concerned may appeal from the decision to the supreme court subject to chapter 602. After such investigation as the supreme court or the intermediate appellate court, as the case may be, considers equitable, it may make such order directing the relief of the appellant in whole or in part as appears to the court to be just and reasonable. If the demand of the officer, bill, claim of any person, or the return of any public accountant is approved, in whole or in part by the court, the court shall so indorse its findings on the same and it shall thereafter be presented to the comptroller, who shall enter it in the proper book in like manner as other demands and indorsement shall be made by the comptroller of its having been so entered before it can be paid."

SECTION 27. Chapter 664, Hawaii Revised Statutes, is amended to read as follows:

1. Section 664-8 is amended to read:

**"Sec. 664-8 Appeal.** Any party deeming himself aggrieved by the decision of the commissioner of boundaries may appeal therefrom to the supreme court subject to



chapter 602, within thirty days from the rendition of the decision and within the period shall pay all costs accrued and shall pay or deposit costs for appeal as provided in sections 607-5, 607-6, and 607-7; provided that any land owner absent from the State and not represented by an authorized agent within the State, shall [have]†the right of appeal for one year from the rendition of the decision.”

2. Section 664-25 is amended to read:

“**Sec. 664-25 Appeal.** Any party aggrieved by the decree of the court may appeal therefrom to the supreme court subject to chapter 602, in the manner and within the time provided by chapter 602 and by the rules of court.”

SECTION 28. Act takes precedence. This Act shall take precedence over all conflicting statutes concerning this subject matter, provided that this chapter shall not be construed to limit the original equity jurisdiction of the several circuit courts.

SECTION 29. Statutory material to be repealed is bracketed. New material is underscored.\*

SECTION 30. This Act shall take effect upon its approval, and judicial review of all affected appeals including those previously filed shall be allocated as follows: (1) all affected appeals filed on and after the effective date of this Act shall, until appropriate appointment of the intermediate appellate judges, be subject to review pursuant to the law and procedures in effect prior to enactment of this Act, conditioned however, upon their subsequent assignment where applicable to the intermediate appellate court by the supreme court; and (2) all affected appeals previously filed shall also be similarly subject to assignment to the intermediate appellate court by the supreme court, except cases involving questions of state or federal constitutional interpretation or involving criminal sentences of life imprisonment without possibility of parole which shall be reviewed by the supreme court.

(Approved May 25, 1979.)

†Bracketed word inserted.

\*The text has been edited pursuant to HRS §23G-16.5, authorizing omission of the brackets, bracketed material, and underscoring.