

A Bill for an Act Relating to Statutory Revision; Amending Various Provisions of the Hawaii Revised Statutes for the Purpose of Correcting Errors, Clarifying Language, and Correcting References.

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

SECTION 1. Chapter 11, subpart XII.B., Hawaii Revised Statutes, is amended by substituting the words “this subpart” for the words “this chapter”.

SECTION 2. Section 11-200, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) A candidate, campaign treasurer, or committee shall not receive any contributions or receive or make any transfer of money or anything of value:

- (1) For any purpose other than those directly related:
  - (A) In the case of the candidate, to his own campaign; or
  - (B) In the case of a campaign treasurer or committee, to the campaign of the candidate, question, or issue with which they are directly associated; or
- (2) To support the campaigns of candidates other than the candidate[,] for whom the funds were collected or with whom the campaign treasurer or committee is directly associated; or
- (3) To campaign against any other candidate not directly opposing the candidate for whom the funds were collected or with whom the campaign treasurer or committee is directly associated.

Any provision of law to the contrary notwithstanding, a candidate, campaign treasurer, or committee, as a contribution, may purchase from its campaign fund not more than two tickets for each fund raiser as defined in section 11-203, held by another candidate, committee, or party.”

SECTION 3. Section 11-209, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) From January 1 of the year of a primary, special primary, or general election through the day of the general election, the total expenditures for candidates who voluntarily agree to limit their campaign expenditures, inclusive of all expenditures made or authorized by the candidate himself and all campaign treasurers and committees in his behalf, shall not exceed the following amounts expressed respectively [as the product of] multiplied by the number of [[]voters[]] in the last preceding general election registered to vote for the respective class of offices:

- (1) For the office of governor—\$1.25;
- (2) For the office of lieutenant governor—70 cents;
- (3) For the office of mayor—[\$1.00;]\$1;
- (4) For the offices of state senator, state representative, county council member, and prosecuting attorney—70 cents; and
- (5) For the offices of the board of education and all other offices—10 cents.”

SECTION 4. Section 91-12, Hawaii Revised Statutes, is amended to read:

“**Sec. 91-12 Decisions and orders.** Every decision and order adverse to a party

to the proceeding, rendered by an agency in a contested case, shall be in writing or stated in the record and shall be accompanied by separate findings of fact and conclusions of law. If any party to the proceeding has filed proposed findings of fact, the agency shall incorporate in its decision a ruling upon each proposed finding so presented. [Parties to the proceeding shall be notified] The agency shall notify the parties to the proceeding by delivering or mailing a certified copy of the decision and order and accompanying findings and conclusions within a reasonable time to each party or to his attorney of record."

SECTION 5. Section 142-14, Hawaii Revised Statutes, is amended to read as follows:

**"Sec. 142-14 Sale of diseased animals; penalty.** Any person who sells or offers for sale, or uses, or exposes, or who causes or procures to be sold, or offered for sale, or used, or to be exposed, any horse or any other animal having the disease known as glanders, or farcy, or any other contagious or infectious disease, known by the person to be dangerous to human life, or which are diseased past recovery, shall be [punished as provided in section 722-12.] guilty of a petty misdemeanor."

SECTION 6. Section 144-10, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) For the purpose of enforcement of this chapter, and in order to determine whether its provisions have been complied with, including whether or not any operation may be subject to such provisions, officers or employees duly designated by the department, upon presenting appropriate credentials, are authorized:

- (1) To enter, during normal business hours, any factory, warehouse, or establishment within the State in which commercial feeds are manufactured, processed, packed, or held for distribution, or to enter any vehicle being used to transport or hold such feeds; and
- (2) To inspect at reasonable times and within reasonable limits and in a reasonable manner, such factory, warehouse, establishment, or vehicle and all pertinent equipment, finished and unfinished materials, containers, and labeling therein. The inspection may include the verification of only such records, and production and control procedures as may be necessary to determine compliance with the good manufacturing practice rules established under section [144-7(d).] 144-7(8)."

SECTION 7. Section 149A-11, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) Except as otherwise exempted in section 149A-12, it shall be unlawful for any person to distribute, solicit, sell, offer for sale, hold for sale, transport, deliver for transportation, or receive and having so received, deliver or offer to deliver to any person in intrastate commerce or between points within this State through any point outside this State any of the following:

- (1) Any pesticide which is not licensed pursuant to section 149A-13, or any pesticide if any of the claims made for it or any of the directions for its use differ in substance from the representations made in connection with its licensing, or if the composition of a pesticide differs from its composition

- as represented in connection with its licensing; provided that in the discretion of the department, a change in the labeling or formula of a pesticide may be made within a licensing period without requiring an additional licensing of the product.
- (2) Any pesticide unless it is in the licensee's or the manufacturer's unbroken immediate container, and there is affixed to the container, and to the outside container or wrapper of the retail package, if any, through which the required information on the immediate container cannot be clearly read, a label bearing such information pursuant to section 149A-15.
  - (3) Any pesticide which contains any substance or substances in quantities highly toxic to man, determined as provided in section 149A-19, unless the label bears, in addition to any other matter required by this chapter:
    - (A) A symbol of the skull and crossbones;
    - (B) The word "POISON" prominently, in red, on a background of distinctly contrasting color; and
    - (C) A statement of emergency medical treatment or an antidote when appropriate for the pesticide.
  - (4) The pesticides containing any of the ingredients commonly known as standard lead arsenate, basic lead arsenate, calcium arsenate, magnesium arsenate, zinc arsenate, zinc arsenite, sodium fluoride, sodium fluosilicate, or barium fluosilicate, unless they have been distinctly colored or discolored or any other white powder pesticide which the board, after investigation of and after public hearing on the necessity for such action for the protection of the public health and the feasibility of such coloration or discoloration, requires to be distinctly colored or discolored, unless it has been so colored or discolored pursuant to section 149A-16.
  - (5) Any pesticide which is adulterated or misbranded as defined in section 149A-2.
  - (6) Any pesticide or device that is an imitation of another pesticide or device.
  - (7) Any restricted pesticide unless the person has a [license] permit issued in accordance with section 149A-17.
  - (8) Any restricted pesticide to persons other than a certified pesticide applicator or any uncertified personnel under his supervision, or a licensed dealer, wholesaler, or retailer."

SECTION 8. Section 271-32, Hawaii Revised Statutes, is amended by amending subsection (e) to read as follows:

"(e) An appeal shall lie to the supreme court subject to chapter 602 from every order made by the commission which is final, or if preliminary is of the nature defined by section 91-14(a); provided such order is made after reconsideration or rehearing or is the subject of a motion for reconsideration or rehearing which the commission has denied or with respect to which the commission has not issued a final determination within twenty days from the filing date of the motion. An appeal shall lie to the supreme court subject to chapter 602 only by a person aggrieved in the contested case hearing provided for in this section in the manner and within the time provided by chapter 602 and by the rules of court [for an appeal from a judgment of a circuit court]."

SECTION 9. Section 271G-23, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) Complaints may be made, in writing, by the commission on its own motion or by any person or body politic setting forth any act or thing done, or omitted to be done by any water carrier, including any rule, regulation, rate, or charge, heretofore established or fixed by or for any water carrier, in violation or claimed to be in violation, of any law or of any order or rule of the commission [agreement if approval thereof is not prohibited by subsection (c) if it finds that, by reason of furtherance of the transportation policy declared in this chapter, the relief provided in subsection (e) should apply with respect to the making and carrying out of the agreement; otherwise, the application shall be denied].”

SECTION 10. Section 271G-25, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) Any carrier party to an agreement between or among two or more carriers relating to rates, fares, classifications, divisions, allowances, or charges (including charges between carriers and compensation paid or received for the use of facilities and equipment), or rules and regulations pertaining thereto, or procedures for the joint consideration, initiation, or establishment thereof, may, under such rules and regulations as the public utilities commission may prescribe, apply to the commission for approval of the agreement, and the commission shall by order approve any agreement, if approval thereof is not prohibited by subsection [(d) or (e),] (c), if it finds that, by reason of furtherance of the transportation policy declared in this chapter, the relief provided in subsection (e) should apply with respect to the making and carrying out of the agreement; otherwise, the application shall be denied.”

SECTION 11. Section 281-92, Hawaii Revised Statutes, is amended to read as follows:

“**Sec. 281-92 Appeals.** Any licensee aggrieved by any order assessing, or providing for the collection of, a penalty or by any order suspending or revoking any license may appeal therefrom in the manner provided in chapter 91 to the circuit court of the circuit in which the liquor commission making the order has jurisdiction and the judgment of the court shall be subject to review by the supreme court[.] subject to chapter 602.”

SECTION 12. Section 286-56.5, Hawaii Revised Statutes, is amended to read as follows:

“**Sec. 286-56.5 Special license plates for consul or official representative of territorial government.** Notwithstanding any other law to the contrary, any consul or official representative of a foreign government or territory of the United States of America, duly licensed and holding an exequatur issued by the Department of State of the United States of America, may be furnished at no cost special license plates by the director of finance on such conditions as may be necessary on a vehicle used on official consular business, provided that upon application for special license plates a consul or official representative shall be given the option of using license plates issued by his government. Before such plates shall be considered as special license plates, they shall be registered and the appropriate fees paid to the county for the issuance.

The special license plates shall be securely fastened to the vehicle in lieu of the regulation number plates; provided that the tag or emblem, issued each year, shall be affixed to the special license plates in the manner provided for [on] in section 249-7. Whenever the consul or official representative transfers or assigns his interest in or title in the vehicle to which the special license plates were issued, he shall immediately surrender the special license plates to the director of finance.”

SECTION 13. Section 286-201, Hawaii Revised Statutes, is amended by amending the definition of “motor carrier” to read:

“(4)“Motor carrier” as used in this part means [a common carrier by motor vehicle, or a private carrier by motor vehicle, all as defined in section 271-4.] any person who owns a motor vehicle used in, or engages in the transportation of persons or property by motor vehicle on the public highways in the furtherance of any commercial, industrial or educational enterprise.”

SECTION 14. Section 290-11, Hawaii Revised Statutes, is amended to read as follows:

“**Sec. 290-11 Vehicles left unattended on private property.** Notwithstanding any other provision of this chapter, any vehicle left unattended without authorization of the owner or occupant of the property, may be towed away at the expense of the owner of the vehicle, by order of the owner, occupant, or person in charge of the property; provided that there is posted a notice prohibiting vehicles to park on the property without authorization. The notice shall be of such size and be placed in a location reasonably calculated to call the sign to the attention of potential parkers. Towing companies engaged by the owner, occupant, or person in charge of the property shall charge no more than \$25 a tow, \$37.50 for a tow using a dolly and \$2 for each [24] twenty-four hour period of storage or fraction thereof. Such vehicle may be disposed of in accordance with this chapter for the disposition of abandoned vehicles.

Each county by ordinance may enact additional restrictions to this section or may enact criminal sanctions in this area as required.”

SECTION 15. Section 296-10, Hawaii Revised Statutes, is amended to read as follows:

“**Sec. 296-10 Educational districts not applicable.** The educational districts established by section 4-1 shall not be applicable to nor alter the school board districts or the departmental school districts, established by section [296-3.] 13-1.”

SECTION 16. Section 329-14, Hawaii Revised Statutes, is amended by amending subsection (d) to read as follows:

“(d) Any material, compound, mixture, or preparation which contains any quantity of the following hallucinogenic substances, 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) 2, 5 dimethoxyamphetamine (2, 5-DMA);
- (2) 3, 4-methylenedioxy amphetamine;
- (3) 5-methoxy-3, 4-methylenedioxy amphetamine;

- (4) 4-bromo-2, 5 dimethoxyamphetamine (4-bromo-2, 5-DMA);
- (5) 3, 4, 5-trimethoxy amphetamine;
- (6) Bufotenine;
- (7) 4-methoxyamphetamine (PMA);
- (8) Diethyltryptamine;
- (9) Dimethyltryptamine;
- (10) 4-methyl-2, [5-dimethoxylamphetamine;] 5-dimethoxyamphetamine;
- (11) Ibogaine;
- (12) Lysergic acid diethylamide;
- (13) Marijuana;
- (14) Mescaline;
- (15) Peyote;
- (16) N-ethyl-3-piperidyl benzilate;
- (17) N-methyl-3-piperidyl benzilate;
- (18) Psilocybin;
- (19) Psilocyn;
- (20) Tetrahydrocannabinols;
- (21) Ethylamine analog of phencyclidine (PCE);
- (22) Pyrrolidine analog of phencyclidine (PcPy, PHP);
- (23) [Tiophene] Tiophene analog of phencyclidine (TPCP; TCP)."

SECTION 17. Section 333E-3, Hawaii Revised Statutes, is amended to read as follows:

**“Sec. 333E-3 State planning council on developmental disabilities.** The state planning council on developmental disabilities (hereinafter referred to as the state council or the council) shall be placed in the department of health for administrative purposes only and assigned the following responsibilities:

(1) Planning. The state council shall:

- (A) Develop, prepare, adopt, and periodically review and revise, as necessary, the state plan for developmentally disabled (hereinafter called the state plan) in conformance with federal substantive and procedural requirements therefor. The state council shall transmit the state plan to the governor for approval, and upon approval shall be submitted to the federal government for appropriate approval. The state plan and revisions thereto shall be effective upon the governor's approval thereof. The state plan shall include establishment of goals and priorities of the State in meeting the needs of the developmentally disabled, including the establishment of priorities for the distribution of public funds for comprehensive services to the developmentally disabled within the State and other matters deemed necessary to achieve normalization of lives of the developmentally disabled. The state plan shall in addition provide for coordinated delivery and establishment of comprehensive services, facilities, and programs for the developmentally disabled.
- (B) Review and comment upon implementation plans prepared and carried out by the various departments of the State in carrying out the state plan for the developmentally disabled.
- (C) Review and comment upon any other state plans which affect services

to the developmentally disabled.

- (2) Coordination of departments and private agencies. The council shall:
  - (A) Identify services duplicated by departments and private agencies and coordinate and assist in the elimination of unnecessary duplication.
  - (B) Encourage efficient and coordinated use of federal, state, and private resources in the provision of services.
  - (C) Designate areas of responsibility for services to both public and private agencies serving developmentally disabled clients, reviewing such designations as necessary. Identify gaps in services to the developmentally disabled and coordinate responsibilities of various public or private agencies for such missing services.
  - (D) Insure that implementation planning by the various departments is effectively coordinated and that interdepartmental programs receive the full support of all departments involved.
- (3) Evaluation. The council shall:
  - (A) Monitor, evaluate, and comment upon implementation plans of the various public and private agencies for the developmentally disabled.
  - (B) Monitor all ongoing projects relating to developmental disabilities of the various public and private agencies.
  - (C) Monitor deinstitutionalization of Waimano training school and hospital and insure that individualized habilitation plans are being implemented for each resident transferred from Waimano.
- (4) Advocacy. The council shall:
  - (A) Advocate for the needs of the developmentally disabled before the legislature and the public and to the governor.
  - (B) Act in an advisory capacity to the governor, the legislature, and all concerned department heads on all issues affecting the developmentally disabled.
  - (C) Serve as a channel for complaints by consumers of services for the developmentally disabled, following up on such complaints and taking such action as may be warranted.
- (5) Report. The council shall:
  - (A) Prepare and submit annual reports to the governor, the legislature, and all concerned department heads on the implementation of the state plan. The report presented to the legislature shall be submitted ten days prior to the convening of the legislature.
  - (B) Prepare and submit to the United States Secretary of Health, Education and Welfare, through the governor, any periodic reports the Secretary may reasonably request.
  - (C) Prepare other reports necessary to accomplish its duties under this chapter.
- (6) Rules. The council shall adopt, amend, and repeal rules under chapter 91, necessary for the implementation of this chapter."

SECTION 18. Section 338-20, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

"(b) Any certified copy of final decree of adoption, or abstract thereof, of

persons born in the State, rendered by courts of other states and territories subject to the jurisdiction of the United States or courts of a foreign country, shall be considered properly certified when attested by the clerk of the court in which it was rendered with the seal of the court annexed, if there be a seal, together with a certificate of the presiding judge, chancellor, or magistrate that the attestation is in due form.”

SECTION 19. Section 351-31, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) In the event any [person] private citizen is injured or killed by any act or omission of any other person coming within the criminal jurisdiction of the State after June 6, 1967, which act or omission is within the description of the crimes enumerated in section 351-32, the criminal injuries compensation commission may, in its discretion, upon an application, order the payment of compensation in accordance with this chapter:

- (1) To or for the benefit of the victim; or
- (2) To any person responsible for the maintenance of the victim, where that person has suffered pecuniary loss or incurred expenses as a result of the victim’s injury or death; or
- (3) In the case of the death of the victim, to or for the benefit of any one or more of the dependents of the deceased victim; or
- (4) To a parent of an adult deceased victim, or to an adult son or daughter of a deceased victim, where the parent, or adult son or daughter, has incurred expenses on account of hospital, medical, funeral, and burial expenses as a result of the victim’s injury and death.”

SECTION 20. Section 383-62, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) In lieu of contributions required of employers under this chapter, the State and its political subdivisions and instrumentalities (hereinafter referred to as “governmental employers” or “governmental employer” as the case may be) shall pay in advance to the director of labor and industrial relations for the fund an amount equivalent to:

- (1) The amount of regular benefits plus one-half the amount of extended benefits payable in each calendar quarter beginning prior to January 1, 1979 to individuals based on wages paid by governmental employers; and
- (2) The amount of regular benefits plus the amount of extended benefits payable in each calendar quarter beginning after December 31, 1978 to individuals based on wages paid by governmental employers.

The director shall notify each governmental employer of the amount of money required to be paid to him. Such amounts shall be paid to the director prior to the commencement of the calendar quarter in which benefits are payable.

If benefits paid an individual are based on wages paid by one or more governmental employers and one or more other employers, [or on wages paid by two or more employers,] or on wages paid by two or more governmental employers, the amount payable by a governmental employer to the director for the fund shall be in accordance with the provisions of paragraphs (1) and (2) of subsection (e) of this section, governing the allocation of benefit costs among employers liable for payments in lieu



of contributions and between such employers and employers liable for contributions.

For the purposes of paragraphs (1) and (2) of subsection (e), governmental employers are employers liable for payments in lieu of contributions. The amount of payment required from governmental employers shall be ascertained by the department of labor and industrial relations and shall be paid from the general funds of such governmental employers upon approval by the comptroller of the State or the director of finance of the respective counties, except that to the extent that benefits are paid on the basis of wages paid by governmental employers from special administrative funds, the payment into the unemployment compensation fund shall be made from such special funds.”

SECTION 21. Section 386-23.6, Hawaii Revised Statutes, is amended to read as follows:

**“Sec. 386-23.6 Weekly benefit adjustments for recipients of services of attendants.** Any permanently and totally disabled employee awarded and receiving compensation under section 386-23 or 386-23.5, but:

- (1) Who is no longer receiving weekly benefits shall, without application, be entitled to a resumption of weekly benefits from the special compensation fund in an amount equal to a percentage of the current maximum weekly benefit determined by multiplying the current maximum weekly benefit rate by a fraction, the numerator of which is the weekly benefit amount he had been receiving and the denominator of which is the maximum weekly benefit rate applicable at the time the weekly benefit award was made.
- (2) Who is receiving one-half of weekly benefits from the special compensation fund shall be entitled to weekly benefits in an amount equal to a percentage of the current maximum weekly benefit rate determined by multiplying the current maximum weekly benefit rate by a fraction, the numerator of which is twice the amount he had been receiving and the denominator of which is the maximum weekly benefit rate applicable at the time the weekly benefit award was made.”

SECTION 22. Section 387-15, Hawaii Revised Statutes, is amended to read as follows:

**“Sec. 387-15 Relation to child labor law.** Nothing in this chapter shall in any way repeal or affect the validity of [section 371-14.] chapter 390.”

SECTION 23. Section 437-1.1, Hawaii Revised Statutes, is amended to read as follows:

**“Sec. 437-1.1 Definitions.** As used in this chapter:

- (1) “Auction” means any person engaged in the business of selling motor vehicles by means of bidding at a public or private sale, but excludes an auctioneer and any person referred to in paragraph (6)(A), (B), (D), or (E) when the auctioneer or person acts in his respective capacity described in this section.
- (2) “Auctioneer” means a person who for gain or compensation of any kind, sells or offers for sale or exchange, motor vehicles or any interest therein by means of soliciting bids on behalf of an auction.

- (3) “Board” means the motor vehicle industry licensing board created by this chapter.
- (4) “Business” includes any activities regularly engaged in by any person or regularly caused to be engaged in by him for the object of gain, benefit, or advantage, either direct or indirect.
- (5) “Consumer” means a person who intends to or actually drives or physically utilizes a motor vehicle for his personal, family, or business use, including the business of renting or leasing motor vehicles.
- (6) “Dealer” includes any person not expressly excluded by this chapter engaged in the business of selling, soliciting, offering, or attempting to negotiate sales, purchases, or exchanges of motor vehicles or any interest therein, including options to purchase motor vehicles. “New motor vehicle dealer” means a dealer who engages in the business of selling at wholesale or retail, or both, new motor vehicles or new and used motor vehicles. “Used motor vehicle dealer” means a dealer who engages in the business of selling at wholesale or retail, or both, only used motor vehicles.  
The term “dealer” excludes a person who sells or purchases motor vehicles in the capacity of:
  - (A) A receiver, trustee, personal representative, guardian, or any other person appointed by or acting under a judgment or order of any court;  
or
  - (B) A public officer while performing his official duties; or
  - (C) A holder of a license issued under this chapter, other than a dealer, when acting within the scope of the license; or
  - (D) An insurance company, finance company, bank or other financial institution selling or offering for sale motor vehicles repossessed or foreclosed by it under the terms of a retail installment sales contract or security agreement; or
  - (E) A person not engaged in the business of selling or purchasing motor vehicles when acquiring or disposing of motor vehicles for their own personal, family, or business use; provided such vehicles are acquired or disposed of for such use in good faith and not for the purpose of evading any provisions of this chapter.
- (7) “Distributor” means any person, resident or nonresident, including a manufacturer, who in whole or in part offers for sale, sells, or distributes new motor vehicles to dealers.
- (8) “Distributor branch” means any office or establishment maintained by a distributor which is not at the same address as the distributor and is used, either directly or indirectly, for the purpose of selling, offering for sale, promoting the sale of, or distributing new motor vehicles to dealers, or for the purpose of directing or supervising, in whole or in part, factory or distributor representatives.
- (9) “Distributor representative” means any representative, employee, agent, contractor, or any person, other than an independent advertising agency, employed by or under a contract with a distributor, directly or indirectly, for the purpose of selling, promoting the sale of, or distributing new motor

- vehicles or for the purpose of supervising or regulating the business affairs of motor vehicle dealers or prospective dealers.
- (10) “Factory branch” means any office or establishment maintained by a manufacturer, directly or indirectly, for the purpose of selling, offering for sale, or promoting the sale of new motor vehicles to a distributor or dealer, or for directing or supervising, in whole or in part, factory or distributor representatives.
- (11) “Factory representative” means a representative, employee, agent, contractor, or any person, other than an independent advertising agency, employed by a manufacturer or factory branch for the purpose of selling or promoting the sale of new motor vehicles of such manufacturer or for supervising the franchised dealers or prospective dealers of such manufacturer.
- (12) “Franchise” means any contract or agreement between a dealer and a manufacturer or distributor or branches or representatives thereof, which authorizes the dealer to engage in the business of selling or purchasing any particular make or makes of new motor vehicles or parts therefor manufactured or distributed by such manufacturer or distributor.
- (13) “Manufacturer” means any person, resident or nonresident, who is engaged in the business of manufacturing or assembling new motor vehicles.
- (14) “Motor vehicle” includes any vehicle, motor vehicle, or truck, as defined in sections 249-1 and 249-2, except for tractors, trailers, and amphibious vehicles.
- (15) “New motor vehicle” means a motor vehicle which (A) has not previously been sold to any person except a distributor, wholesaler, or dealer for resale, except where the vehicle has not left the dealer’s possession after the sale to a consumer, and (B) has not previously been registered or titled in the name of a consumer except where the vehicle has not left the dealer’s possession after the sale to the consumer, and (C) has not been driven more than five hundred miles; provided that where a sale, registration, entitlement, or transfer of title of a motor vehicle or the accrual of mileage thereon is primarily for the purpose of evading this provision, the motor vehicle shall be deemed a new motor vehicle for the purposes of this chapter.
- (16) “Person” is defined as provided for in section 1-19.
- (17) “Premises” or “licensed premises” means the premises in connection with which a license has been, or is proposed to be, issued, including branch locations. The term “premises” or “licensed premises” is substituted for the term “place of business” wherever found in this chapter.
- (18) “Retail”, “sale at retail”, “retail sale”, and equivalent expressions, mean the act or attempted act of selling a motor vehicle to a person for use as a consumer.
- (19) “Retail installment contract” is defined as provided for in section 476-1.
- (20) “Sale”, “selling”, and equivalent expressions, mean the act or attempted act, either as principal or an agent or in any capacity whatsoever, of selling, bartering, exchanging, or otherwise disposing of, or negotiating, or offering, or attempting to negotiate the sale, purchase, or exchange of,

or interest in, a motor vehicle, including an option to purchase a motor vehicle.

- (21) “Salesman” means any person who for gain or compensation of any kind, directly or indirectly, by any form of agreement or arrangement, sells, solicits, offers for sale, exchanges, or otherwise deals in, motor vehicles or any interest therein on behalf of any motor vehicle dealer.
- (22) “Treasurer” means the director of finance of each county.
- (23) “Used motor vehicle” means a motor vehicle other than a new motor vehicle.
- (24) “Wholesale” or “sale at wholesale” or “wholesale sale” and equivalent expressions, mean any sale other than a retail sale.”

SECTION 24. Section 490:9-403, Hawaii Revised Statutes, is amended by amending subsection (6) to read as follows:

“(6) If the debtor is a transmitting utility [(subsection (5) of section 490:9-401)] and a filed financing statement so states, it is effective until a termination statement is filed. A real estate mortgage which is effective as a fixture filing under section 490:9-408 remains effective as a fixture filing until the mortgage is released or satisfied of record or its effectiveness otherwise terminates as to the real estate.”

SECTION 25. Section 490:11-105, Hawaii Revised Statutes, is amended by amending subsection (4) to read as follows:

“(4) If the record of a mortgage of real estate would have been effective as a fixture filing of goods described therein if the new U.C.C. had been in effect on the date of recording the mortgage, the mortgage shall be deemed effective as a fixture filing as to such goods under [subsection (6) of section 490:9-402] section 490:9-408 of the new U.C.C. on the effective date of July 1, 1979.”

SECTION 26. Section 558-6, Hawaii Revised Statutes, is amended to read as follows:

**“Sec. 558-6 Conveyance by trustee.** Any person dealing with the trustee under the recorded instrument shall take any interest transferred by the trustee free and clear of the claims of all the beneficiaries of the trust, and of any unrecorded separate declarations or agreements collateral to the [unrecorded] recorded instrument whether referred to in the recorded instrument or not, and of anyone claiming by, through or under such beneficiaries including, and without limiting the foregoing to, any claim arising out of any dower or curtesy interest of the spouse of any beneficiary thereof; provided that nothing herein contained shall prevent the beneficiary of any unrecorded collateral declarations or agreements from enforcing the terms of the unrecorded collateral declarations or agreements against the trustee.”

SECTION 27. Section 571-14, Hawaii Revised Statutes, is amended to read as follows:

**“Sec. 571-14 Jurisdiction; adults.** The court shall have exclusive original jurisdiction:

- (1) To try any offense committed against a child by his parent or guardian or by any other person having his legal or physical custody, and any violation of [sections] section 707-723, 709-902, 709-903, 709-904, or 709-905,

whether or not included in other provisions of this paragraph or paragraph (2).

- (2) To try any adult charged with:
  - (A) Deserting, abandoning, or failing to provide support for any person in violation of law; or
  - (B) An offense, other than a felony, against the person of the defendant's husband or wife. In any case within [paragraphs] paragraph(1) or (2) of this section the court may, in its discretion, waive its jurisdiction over the offense charged.
- (3) In all proceedings under chapter 580, and in all proceedings under chapter [579.] 584.
- (4) In proceedings under chapter 575, the Uniform Desertion and Nonsupport Act, and under chapter 576, the Uniform Reciprocal Enforcement of Support Act.
- (5) For commitment of an adult alleged to be mentally defective or mentally ill.
- (6) In all proceedings for support between parent and child or between husband and wife, and in all proceedings to appoint a guardian of the person of an adult.
- (7) In all proceedings for waiver of jurisdiction over an adult who was a child at the time of an alleged criminal act as provided in section 571-22."

SECTION 28. Section 571-50, Hawaii Revised Statutes, is amended to read as follows:

**“Sec. 571-50 Modification of decree, rehearing.** Except as otherwise provided by this chapter, any decree or order of the court may be modified at any time.

At any time during supervision of a child the court may issue notice or other appropriate process to the child if he is of sufficient age to understand the nature of the process, to the parents, and to any other necessary parties to appear at a hearing on a charge of violation of the terms of supervision, for any change in or modification of the decree or for discharge. The provisions of this chapter relating to process, custody, and detention at other stages of the proceeding shall be applicable.

A parent, guardian, custodian, or next friend of any child whose status has been adjudicated by the court, or any adult affected by a decree of the court, may at any time petition the court for a rehearing on the ground that new evidence, which was not known or not available through the exercise of due diligence at the time of the original hearing and which might affect the decree, has been discovered. Upon a satisfactory showing of such evidence, the court shall order a new hearing and make such disposition of the case as the facts and the best interests of the child warrant.

A parent, guardian, or next friend of a child whose legal custody has been transferred by the court to an institution, facility, agency, or person may petition the court for modification or revocation of the decree, on the ground that such legal custodian has wrongfully denied application for the release of the child or has failed to act upon it within a reasonable time, or has acted in an arbitrary manner not consistent with the welfare of the child or the public interest. An institution, facility, agency, or person vested with legal custody of a child may petition the court for a renewal, modification, or revocation of the custody order on the ground that such change is necessary for the welfare of the child or in the public interest. The court may dismiss

the petition if on preliminary investigation it finds it without substance. If the court is of the opinion that the decree should be reviewed, it shall conduct a hearing on notice to all parties concerned, and may enter an order continuing, modifying, or terminating the decree.

Notwithstanding the foregoing provisions of this section the court's authority with respect to the review, rehearing, renewal, modification, or revocation of decrees, judgments, or orders entered in the hereinbelow listed classes of proceedings shall be limited by any specific limitations set forth in the statutes governing such proceedings or in any other specifically applicable statutes or rules. Such proceedings are as follows:

- (1) Annulment, divorce, separation, and other proceedings under chapter 580;
- (2) Adoption proceedings under chapter 578;
- (3) Paternity proceedings under chapter [579;] 584;
- (4) Termination of parental rights proceedings under this chapter;
- (5) Waimano training school and hospital commitment proceedings under chapter 333;
- (6) State hospital commitment proceedings under chapter 334.

A decree, judgment, or order committing a child to the care of the director of social services shall be reviewable under this section at the instance of others than duly authorized representatives of such department only after a lapse of thirty days following the date of the decree, judgment, or order, and thereafter only at intervals of not less than one year.

Notwithstanding this section the court shall not conduct a rehearing of any petition, filed under section 571-11(1), which, following a hearing, has been denied or dismissed."

SECTION 29. Section 571-52.1, Hawaii Revised Statutes, is amended to read as follows:

**"Sec. 571-52.1 Determination and enforcement of support orders.** During the course of any proceeding in which the court is considering making or modifying an order for spouse support or child support, the court on its own motion or on motion of any interested person may refer the problem to the court trustee for investigation.

At any time when a support order payable through the court appears or is alleged to be inequitable or unsuitable, the court trustee on his own motion may, and when directed by the court shall, institute an investigation into the situation.

In connection with any such referral or inquiry, the court trustee shall investigate all matters pertinent to the determination of just and suitable allowances for the spouse and children, and shall submit his findings and recommendations in writing to the court.

The written reports of the court trustee shall be available to interested parties and may be received in evidence if no objection is made, or, if objection is made, may be received in evidence; provided the person or persons responsible for the reports are available for cross-examination as to any matter which has been investigated. When a report is received in evidence, any party may introduce other evidence supplementing, supporting, modifying, or rebutting the whole or any part of the report.

Every order for spouse support or child support which provides for payments to be made through the court may be enforced pursuant to this section.

The court trustee shall maintain files of the support orders and papers referred to him, shall maintain follow-up records to determine whether the payments ordered therein are being made, may make oral or written demand for overdue payments, and, in the event of a default and after such time as the court trustee may deem reasonable, may, and when directed by the court shall, institute contempt of court proceedings for the purpose of enforcing support orders.

The court trustee may utilize the services of public or private social agencies in conducting the investigations and making the reports and recommendations occasioned by this section. Reports of such agencies may be received in evidence under the same conditions as reports of the court trustee.

Court costs, service fees, and the expenses of any investigation conducted by the court trustee may, in the discretion of the court, be assessed wholly or partially against the party ordered to make the support payments.

As used in this section, support includes amounts ordered to be paid as reimbursement or advancement for expenses incurred or to be incurred by or on behalf of a spouse or child, including attorney's fees, court costs, and other expenses in connection with relevant litigation, unpaid amounts due under existing or prior support orders, and payments required by a valid sentence, order, judgment, or decree under chapters 575, 576, [579,] 580, and [580] 584 or section 571-51."

SECTION 30. Section 571-84, Hawaii Revised Statutes, is amended to read as follows:

**"Sec. 571-84 Records.** The court shall maintain records of all cases brought before it. In proceedings under section 571-11, and in paternity proceedings under chapter [579,] 584, the following records shall be withheld from public inspection: the court docket, petitions, complaints, motions, and other papers filed in any case; transcripts of testimony taken by the court; and findings, judgments, orders, decrees, and other papers other than social records filed in proceedings before the court. The records other than social records shall be open to inspection by the parties and their attorneys, by an institution or agency to which custody of a minor has been transferred, by an individual who has been appointed guardian; with consent of the judge, by persons having a legitimate interest in the proceedings from the standpoint of the welfare of the minor; and, pursuant to order of the court or the rules of court, by persons conducting pertinent research studies, and by persons, institutions, and agencies having a legitimate interest in the protection, welfare, or treatment of the minor.

Reports of social and clinical studies or examinations made pursuant to this chapter shall be withheld from public inspection, except that information from such reports may be furnished, in a manner determined by the judge, to persons and governmental and private agencies and institutions conducting pertinent research studies or having a legitimate interest in the protection, welfare, and treatment of the minor.

No information obtained or social records prepared in the discharge of official duty by an employee of the court shall be disclosed directly or indirectly to anyone other than the judge or others entitled under this chapter to receive such information, unless and until otherwise ordered by the judge.

Except for the immediate use in a criminal case, any photograph or fingerprint taken of any child shall not be used or circulated for any other purpose and shall be

subject to all rules and standards provided for in section 571-74.

The records of any police department, and of any juvenile crime prevention bureau thereof, relating to any proceedings authorized under section 571-11 shall be confidential and shall be open to inspection only by persons whose official duties are concerned with the provisions of this chapter, except as otherwise ordered by the court. Any such police records concerning traffic accidents in which a child or minor coming within section 571-11(1) is involved shall, after the termination of any proceeding under section 571-11(1) arising out of any such accident, or in any event after six months from the date of the accident, be available for inspection by the parties directly concerned in the accident, or their duly licensed attorneys acting under written authority signed by either party. Any person who may sue because of death resulting from any such accident shall be deemed a party concerned.

Evidence given in proceedings under section 571-11(1) or (2) shall not in any civil, criminal, or other cause be lawful or proper evidence against the child or minor therein involved for any purpose whatever, except in subsequent proceedings involving the same child under section 571-11(1) or (2)."

SECTION 31. Section 633-27, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

"(c) The small claims division of the district court may grant monetary relief and equitable relief [as provided for in subsection 2(c)(2) below], except that:

- (1) Monetary relief shall not include punitive damages; and
- (2) Equitable relief shall be granted only as between parties to a landlord-tenant disagreement pursuant to chapter 521, and shall be limited to orders to repair, replace, refund, reform, and rescind."

SECTION 32. Section 634-11, Hawaii Revised Statutes, is amended to read as follows:

"**Sec. 634-11 Interpleader; sheriff's application for order.** When, in the execution of process against goods and chattels issued by or under the authority of the courts of the State, by reason of claims made to such goods and chattels by assignees of bankrupts and other persons not being the parties against whom such process had issued, whereby the sheriffs and other officers are exposed to the hazard and expense of actions, any such claim shall be made to any goods or chattels taken or intended to be taken in execution under any such process or to the proceeds or value thereof, it shall be lawful for the court, out of which the execution shall have issued, or any judge thereof, upon application of the sheriff or other officer made before or after the return of such process, and as well before as after any action brought against the sheriff or other officer, to call before it or him by rule, order, or summons, as well the party issuing such process as the party making the claim. Thereupon the court or judge shall [exercise], for the adjustment of the claims and the relief and protection of the sheriff or other officer, [all or any of the powers and authorities in sections 634-41 and 634-42, and] make such rules, orders, and decisions as shall appear to be just according to the circumstances of the case. The costs of all such proceedings shall be in the discretion of the court or judge."

SECTION 33. Section 652-9, Hawaii Revised Statutes, is amended to read as follows:



**“Sec. 652-9 Garnishee may be heard on notice to plaintiff.** Whenever any person summoned as a garnishee may be desirous of so doing, he may apply to the district judge or any judge of the court from which the summons may have issued, and the judge having caused reasonable notice to be given to the plaintiff in the action, shall proceed to take the deposition of the person thus summoned, and make such order as may be proper in the premises, at any time previous to the date appointed for hearing the cause, and the person summoned as garnishee, shall be taken to have obeyed the summons. If it appears that there are conflicting claims to any moneys held for safekeeping, debt, goods, or effects in the garnishee’s hands, any time after the summons is served the garnishee may be permitted upon order of the judge to pay into the court any moneys held for safekeeping, debts, goods, or effects in his hands, less any reasonable costs and attorney’s fees allowed by the judge and the garnishee will thereupon be discharged. With or without payment into court, any garnishee may, where there are conflicting claims to any moneys held for safekeeping, debt, goods, or effects in his hands of any amount, make application for an interpleader order [in the manner provided by section 634-41 for defendants,] and the judge shall thereupon make all orders as appear to be just and reasonable.”

SECTION 34. Section 657-8, Hawaii Revised Statutes, is amended to read as follows:

**“Sec. 657-8 Limitation of action for damages based on construction to improve real property.** No action to recover damages for any injury to property, real or personal, or for bodily injury or wrongful death, arising out of any condition of an improvement to real property, nor any action for contribution or indemnity for damages sustained on account of such injury, shall be brought against the owner of the real property or any other person having an interest therein or in the improvement or against any person constructing, altering, or repairing the improvement, or manufacturing or furnishing materials incorporated in the improvement, or performing or furnishing services in the design, planning, supervision, observation of construction or administration of construction contracts for any construction, alteration, or repair of the improvement to real property more than two years after the cause of action has accrued, but in any event not more than six years after the date of completion of the improvement. This section shall not apply to actions for damages against the owner or any other person having an interest in the real property or improvement based on their negligent conduct [or in the improvement] in the repair or maintenance of the improvement or to actions for damages against surveyors for their own errors in boundary surveys. The term “improvement” as used in this section shall have the same meaning as in section 507-41 and the phrase “date of completion” as used in this section shall mean the time when there has been substantial completion of the improvement or the improvement has been abandoned. The filing of an affidavit of publication and notice of completion with the circuit court where the property is situated in compliance with section 507-43(f) shall be prima facie evidence of the date of completion.”

SECTION 35. Section 663-1.5, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) Any person who in good faith renders emergency care, without

remuneration[,] or expectation of remuneration, at the scene of an accident or emergency to a victim of the accident or emergency shall not be liable for any civil damages resulting from his acts or omissions, except for such damages as may result from his gross negligence or wanton acts or omissions.”

SECTION 36. Section 671-4, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) In any such medical tort action, the party against whom the complaint, counterclaim, or cross-claim is made may at any time request a statement setting forth the nature and amount of the damages sought. The request shall be served upon the complainant, [[counterclaimant[]], or cross-claimant who shall serve a [responsible] responsive statement as to the damages within fifteen days thereafter. In the event a response is not served, the requesting party may petition the court with notice to the other parties, to order the appropriate party to serve a responsive statement.”

SECTION 37. Section 706-603, Hawaii Revised Statutes, is amended to read as follows:

“**Sec. 706-603 Pre-sentence [psychiatric, psychological,] mental and medical examination.** Before suspending or imposing sentence, the court may order a defendant who has been convicted of a felony or misdemeanor to submit to [psychiatric, psychological,] mental and other medical observation and examination for a period not exceeding sixty days or such longer period, not to exceed the length of permissible imprisonment, as the court determines to be necessary for the purpose. The defendant may be remanded for this purpose to any available clinic or hospital, intake service center, or community correctional center and, in addition thereto or in the alternative, the court may appoint one or more qualified psychiatrists, physicians, or certified clinical psychologists to make the examination. If a single examiner is appointed, he shall be a qualified psychiatrist. If two or more examiners are appointed, at least one shall be a qualified psychiatrist and not more than one shall be a certified clinical psychologist.] or certified clinical psychologist. If a three-member panel is appointed one shall be a psychiatrist and one shall be a certified clinical psychologist. The third member may be either a psychiatrist, certified clinical psychologist, or qualified physician. One of the three shall be a psychiatrist or certified clinical psychologist designated by the director of health from within the department of health. The report of the examination shall be submitted to the court.”

SECTION 38. Chapter 707, part VII, Hawaii Revised Statutes, is amended by substituting the term “part” for the term “chapter”.

SECTION 39. Section 707-763, Hawaii Revised Statutes, is amended to read as follows:

“**Sec. 707-763 Collection of extensions of credit by extortionate means. (1)** “Collection of extensions of credit by extortionate means” includes[:

(1) Knowingly] knowingly participating in any way, or conspiring to do so, in the use of any extortionate means:

- (a) To collect or attempt to collect any extension of credit; or
- (b) To punish any person for the nonrepayment thereof.

(2) In any prosecution under this [chapter,] part, for the purpose of showing an

implicit threat as a means of collection, evidence may be introduced tending to show that one or more extensions of credit by the creditor were, to the knowledge of the person against whom the implicit threat was alleged to have been made, collected or attempted to be collected by extortionate means or that the nonrepayment thereof was punished by extortionate means.

(3) [Any] In any prosecution under this [chapter,] part, if evidence has been introduced tending to show the existence, at the time the extension of credit in question was made, of the circumstances described in [subparagraph] subsection (2)(a) or [subparagraph] subsection (2)(b) of [this] section 707-761 and direct evidence of the actual belief of the debtor as to the creditor's collection practices is not available, then for the purpose of showing that words or other means of communication, shown to have been employed as a means of collection, in fact carried an express or implicit threat, the court may in its discretion allow evidence to be introduced tending to show the reputation of the defendant in any community of which the person against whom the alleged threat was made was a member at the time of collection or attempt at collection."

SECTION 40. Section 708-814, Hawaii Revised Statutes, is amended to read as follows:

**"Sec. 708-814 Criminal trespass in the second degree.** (1) A person commits the offense of criminal trespass in the second degree if:

- (a) He knowingly enters or remains unlawfully in or upon premises which are enclosed in a manner designed to exclude intruders or are fenced; [or]
- (b) He enters or remains unlawfully in or upon the premises of any school, as defined pursuant to section 297-1, after reasonable warning or request to leave by school authorities or police officer[.]; or
- (c) He enters or remains unlawfully in or upon commercial premises after reasonable warning or request to leave by the owner or lessee of the commercial premises or his authorized agent or police officer; provided that this [sub]paragraph shall not apply to any conduct or activity subject to regulation by the National Labor Relations Act.

**(2) Criminal trespass in the second degree is a petty misdemeanor."**

SECTION 41. Section 708-834, Hawaii Revised Statutes, is amended to read as follows:

**"Sec. 708-834 Defenses: unawareness of ownership; claim of right; household belongings[.]; co-interest not a defense.** (1) It is a defense to a prosecution for theft that the defendant:

- (a) Was unaware that the property or service was that of another; or
- (b) Believed that he was entitled to the property or services under a claim of right or that he was authorized, by the owner or by law, to obtain or exert control as he did.

(2) If the owner of the property is the defendant's spouse, it is a defense to a prosecution for theft of property that:

- (a) The property which is obtained or over which unauthorized control is exerted constitutes household belongings; and

(b) The defendant and his spouse were living together at the time of the conduct.

(3) "Household belongings" means furniture, personal effects, vehicles, money or its equivalent in amounts customarily used for household purposes, and other property usually found in and about the common dwelling and accessible to its occupants.

(4) In a prosecution for theft, it is not a defense that the defendant has an interest in the property if the owner has an interest in the property to which the defendant is not entitled."

SECTION 42. Section 853-1, Hawaii Revised Statutes, is amended to read as follows:

**"Sec. 853-1 Deferred acceptance of guilty plea, discharge and dismissal, expungement of records.** (a) Upon proper motion as provided by this chapter:

- (1) When a defendant voluntarily pleads guilty, prior to commencement of trial, to a felony or misdemeanor or petty misdemeanor;
- (2) It appears to the court that the defendant is not likely again to engage in a criminal course of conduct; and
- (3) The ends of justice and the welfare of society do not require that the defendant shall presently suffer the penalty imposed by law,

the court, without entering a judgment of guilt and with the consent of the defendant and after considering the recommendations, if any, of the prosecutor, may defer further proceeding.

(b) The proceedings may be deferred upon any of the conditions specified by section 706-624. The court may defer the proceedings for such period of time as the court shall direct but in no case to exceed the maximum sentence allowable. The defendant may be subject to bail or recognizance at the court's discretion during the period during which the proceedings are deferred.

(c) Upon his completion of the period designated by the court and in compliance with the terms and conditions established, the court shall discharge the defendant and dismiss the charge against him.

(d) Discharge of the defendant and dismissal of the charge against him under this section shall be without adjudication of guilt, shall eliminate any civil admission of guilt, and is not a conviction.

(e) Upon discharge of the defendant and dismissal of the charge against him under this section, the defendant may apply for expungement not less than one year following discharge, pursuant to section 831-3.2."

SECTION 43. This Act shall be amended to conform to all other acts passed by the legislature during this Regular Session of 1980, whether enacted before or after the effective date of this Act, unless such acts specifically provide otherwise.

SECTION 44. Statutory material to be repealed is bracketed. New material is underscored.

SECTION 45. This Act shall take effect upon its approval.

(Approved June 7, 1980.)