

**ACT 147**

**H.B. NO. 2071-82**

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

or Unnecessary Provisions.

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

SECTION 1. Section 26-16, Hawaii Revised Statutes, is amended to read as follows:

**“§26-16 Department of agriculture.** (a) The department of agriculture shall be headed by an executive board to be known as the board of agriculture.

The board shall consist of [seven] eight members, one who shall be a resident of the county of Hawaii, one who shall be a resident of the county of Maui, one who shall be a resident of the county of Kauai, [and] four at large[.], and the chairperson of the board of land and natural resources who shall serve as an ex officio voting member. The appointment, tenure, and removal of the members and the filling of vacancies on the board shall be as provided in section 26-34. The governor shall appoint a chairman of the board from the members. [The chairman of the board of land and natural resources shall be added as an ex officio voting member of the board.]

(b) The board may delegate to the chairman such duties, powers, and authority, or so much thereof, as may be lawful or proper for the performance of the functions vested in the board.

The chairman of the board shall serve in a full-time capacity. He shall, in that capacity, perform such duties, and exercise such powers and authority, or so much thereof, as may be delegated to him by the board.

(c) The department shall promote the conservation, development, and utilization of agricultural resources in the State; assist the farmers of the State and any others engaged in agriculture by research projects, dissemination of information, crop and livestock reporting service, market news service, and any other means of improving the well-being of those engaged in agriculture and increasing the productivity of the lands, and administer the programs of the State relating to animal husbandry, entomology, farm credit, development of agricultural products, and the establishment and enforcement of the rules [and regulations] on the grading and labeling of agricultural products.

(d) The chairman [of the board of agriculture] or his designated representative shall hold at least one publicly announced hearing on each of the islands of Oahu, Hawaii, Maui, Kauai, and Molokai each year for the purpose of hearing complaints and suggestions, if any, from the farmers, ranchers, consumers, and other interested groups and persons with respect to matters within the duties, powers, and authority of the department of agriculture.

(e) The functions and authority heretofore exercised by the board of commissioners of agriculture and forestry (except the management of state parks and the conservation, development and utilization of forest resources, including regulatory powers over the forest reserve provided in section 183-41, and of fish and game resources transferred to the department of land and natural resources), by the farm loan board as heretofore constituted, and by the [university] University of Hawaii with respect to the crop and livestock reporting service and market news service, are transferred to the department of agriculture established by this chapter.”

SECTION 2. Section 26-17, Hawaii Revised Statutes, is amended to read as

follows:

**"§26-17 Department of Hawaiian home lands.** (a) The department of Hawaiian home lands shall be headed by an executive board to be known as the Hawaiian homes commission.

The commission shall consist of [seven] eight members including the chairman selected in accordance with section 26-34 and section 202(a) of the Hawaiian Homes Commission Act of 1920, as amended. [The governor shall appoint the chairman of the commission from among the members.]

(b) The commission may delegate to the chairman such duties, powers, and authority, or so much thereof as may be lawful or proper, for the performance of the functions vested in the commission.

The chairman of the board shall serve in a full-time capacity and shall perform such duties, and exercise such powers and authority, or so much thereof as may be delegated to him by the board.

(c) The department shall administer the Hawaiian Homes Commission Act of 1920 as set forth in the Constitution of the State and by law.

The functions and authority heretofore exercised by the Hawaiian homes commission as heretofore constituted are transferred to the department of Hawaiian home lands established by this chapter."

SECTION 3. Section 39A-116, Hawaii Revised Statutes, is amended to read as follows:

**"[§39A-116]] Issuance of special purpose revenue bonds to finance projects.** (a) In addition to the other powers which it may otherwise have, the department may issue special purpose revenue bonds to finance, in whole or in part, the costs of facilities of, or for, or to loan the proceeds of such bonds to assist project parties. All revenue bonds issued under this part are special purpose revenue bonds and the provisions of part III of chapter 39 shall not apply thereto. All special purpose revenue bonds shall be issued in the name of the department and not in the name of the State.

(b) The department, in determining the cost of any project, may also include the following:

- (1) Financing charges, fees, and expenses of any trustee and paying agents for special purpose revenue bonds issued to pay the cost of such project;
- (2) Interest on such bonds and the expenses of the State in connection with such bonds and the project to be financed from the proceeds of such bonds accruing or incurred prior to and during the estimated period of construction and not exceeding twelve months thereafter;
- (3) Amounts necessary to establish or increase reserves for the special purpose revenue bonds;
- (4) The cost of plans, specifications, studies, surveys, and estimates of costs and of revenues;
- (5) Other expenses incidental to determining the feasibility or practicability of the project;
- (6) Administration expenses;
- (7) Legal, accounting, consulting, and other special service fees;
- (8) Interest cost incurred by the project party with respect to the project prior to the issuance of the special purpose revenue bonds; and

- (9) Such other costs, commissions, and expenses incidental to the construction, acquisition, reconstruction, renovation, rehabilitation, improvement, betterment, operation, maintenance, or extension of the project, the financing, placing of same in operation, and the issuance of the special purpose revenue bonds, whether incurred prior to or after the issuance of such bonds.

(c) The legislature finds and determines that the exercise of the powers vested in the department by this part constitutes assistance to a [manufacturing] processing enterprise and that the issuance of special purpose revenue bonds to finance facilities of, or for, or to loan the proceeds of such bonds to assist, project parties, is in the public interest."

SECTION 4. Section 39A-208, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

"(b) For the purpose of public disclosure, the public utilities commission, in every rate proceeding involving a public utility which has utilized special purpose revenue bonds, shall make estimates of (A) the probable amounts which would have been incurred by the utility as capital costs if financing by means other than special purpose revenue bonds were utilized, (B) the amount the utility pays for such bonds, including the principal and sinking fund requirements, the interest, and other expenses appropriately attributable to special purpose revenue bond financing, and (C) the difference between (A) and (B), or the estimated savings realized by the consumers of the utility services."

SECTION 5. Section 42-6, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) Funds for each grant, subsidy, or purchase of service agreement that are not included in the budget submitted by the chief executive to the legislature may be appropriated by a separate bill; provided that all appropriations are based on a request reviewed in accordance with section 42-4(d) or [[ ]42-5(c)[ ]]. The bill shall specify whether a grant, subsidy, or purchase or service is being made, name the recipient in the case of a grant or subsidy, and define the public purpose to be served by the appropriation. Funds shall be appropriated by "cost categories" and "cost elements" as defined in section 37-62."

SECTION 6. Section 88-122, Hawaii Revised Statutes, is amended to read as follows:

**"§88-122 Determination of employer normal cost and accrued liability contributions.** (a) Based on regular interest and such mortality and other tables as are adopted by the board of trustees, the actuary engaged by the board [shall], on the basis of successive annual actuarial valuations, shall determine the employer's normal cost and accrued liability contributions for each fiscal year beginning July 1 separately for the following two groups of employees: [police]

(1) Police officers, firefighters, and corrections officers[.]; and [all]

(2) All other employees.

(b) The actuarial valuations made for years ending on June 30, 1980, 1981, and 1982, shall be based on a seven per cent investment yield rate and such tables and factors as are adopted by the board of trustees for actuarial valuations of the system. The actuarial valuations made for years ending on June 30, 1983 and there-

after shall be based on a four and one-half per cent investment yield rate and such tables and factors as are adopted by the board of trustees for actuarial valuations of the system.

[[1)] (c) With respect to each of the [aforesaid] two groups of employees[,] in subsection (a), the normal cost for each year after June 30, 1976 shall be the percentage of the aggregate annual compensation of employees as of March 31 of the preceding year which, if contributed over each employee's prospective period of service and added to his prospective contributions, will be sufficient to provide for the payment of all future benefits after subtracting the sum of the unfunded accrued liability as of the beginning of the year and the assets of the pension accumulation fund as of the end of the preceding year. One each June 30 the board shall determine the allocation of the assets of the pension accumulation fund between the [aforesaid] two groups of employees[;] in subsection (a); provided that the assets of the pension accumulation fund as of June 30, 1976 shall be allocated between the two groups in the same proportion as the aggregate annual compensation of each group as of March 31, 1976.

[(2)] (d) The total unfunded accrued liability as of July 1, 1976 shall be fixed at \$239,000,000, and shall be allocated as follows: \$32,000,000 to police officers, firefighters, and corrections officers, and \$207,000,000 to all other employees. With respect to each of the [aforesaid] two groups of employees[,] in subsection (a), the accrued liability contribution for each [[year]] after June 30, 1976 shall be the level annual payment required to liquidate such unfunded accrued liability over the remainder of the period of fifty years beginning July 1, 1964."

SECTION 7. Section 134-7, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

"(c) No person who:

- (1) Is or has been under treatment for addiction to any dangerous, harmful, or detrimental drug, intoxicating compound as defined in section [712,] 712-1240, or intoxicating liquor;
- (2) Has been committed pursuant to section 333-27, 333-35, or 333-35.5;
- (3) Has been admitted to and detained at a psychiatric facility pursuant to chapter 334, part IV or V;
- (4) Has been acquitted of a crime on the grounds of mental disease, disorder, or defect pursuant to section 704-411; or
- (5) Is or has been under treatment for significant behavioral, emotional or mental disorders as defined by the most current diagnostic manual of the American Psychiatric Association or for treatment for organic brain syndromes;

shall own, possess, or control any firearm or ammunition therefor, unless [such] the person has been medically documented to have been cured of the addiction, mental disease, disorder, or defect."

SECTION 8. Section 150-41, Hawaii Revised Statutes, is amended to read as follows:

"[[§150-41]] **Seed distribution program; revolving fund.** There is established a revolving fund the purpose of which shall be to enable the seed distribution program to operate at a level which will adequately meet the demand for seed. The

fund shall be used for the cultivation and production of seeds and for research and developmental purposes directly related to such cultivation and production. The fund shall be administered by the college of tropical agriculture[.] and human resources. All sums withdrawn from the fund shall be reimbursed or restored thereto from the proceeds realized through the sale of seeds. The college of tropical agriculture and human resources shall submit an annual report summarizing receipt and expenditures and the fund balance of the revolving fund to the department of budget and finance. The first annual report shall be due within six months following the initial twelve-month period that the revolving fund is in operation and shall be due annually thereafter not later than September 30 following the end of the immediately preceding fiscal year.

[There is appropriated out of the general revenues of the State of Hawaii the sum of \$35,000, to be deposited in the seed distribution revolving fund. Any funds in excess of \$35,000 at the end of each fiscal year shall be remitted] The seed distribution revolving fund shall remit any moneys in excess of \$35,000 to the state general fund[.] at the end of each fiscal year."

SECTION 9. Section 188-23, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

"(b) It is unlawful to deposit in, permit to pass into, or place where it can pass into the state waters for the purpose of taking aquatic life any of the following:

- (1) Any petroleum, coal or oil tar, lampblack, aniline, asphalt, bitumen, or residuary product of petroleum or carbonaceous material or substance;
- (2) Hypochlorous acid or any of its salts, including bleaches commonly sold under various trade names, such as Clorox and Purex, and bleaching powders;
- (3) Preparations containing rotenone, tephrosin, or plant materials from *Barringtonia asiatica*, *Cocculus ferrandianus*, *Hura crepitans*, [[Piscidia]] erythrina, *Tephrosia* [[purpurea]], [[Wikstroemia]]; and
- (4) Any other substance or material deleterious to aquatic life; except under the terms and conditions of a permit first obtained by the user from the department.

The department may issue permits to allow the possession of stated amounts of these substances poisonous to aquatic life if the department deems the amount in possession is for legitimate purposes or in quantities too small to harm aquatic life.

The possession of these substances without a permit by any person on or near the water where fish can be taken, or aboard any fishing vessel or boat is prima facie evidence of a violation of this section.

The department may revoke any permit for any infraction of the terms and conditions of the permit. Any person whose permit has been revoked shall not be eligible to apply for another permit until the expiration of one year from the date of revocation.

Nothing in this section shall be held or construed to be an amendment of the rules of the department of transportation."

SECTION 10. Section 199-4, Hawaii Revised Statutes, is amended to read as follows:

**"§199-4 Board of land and natural resources, police powers. (a)** The board of land and natural resources shall have police powers and may appoint and commission enforcement officers within the conservation and resources enforcement program. Persons appointed and commissioned under this section shall have and may exercise all of the powers and authority of a police officer, including the power of arrest, and shall enforce all state laws and rules, and county ordinances within all state lands, state shorewaters and shores, and county parks; provided that such powers shall remain in force and effect only while in actual performance of their duties, which [duties] shall include off-duty employment when such employment is for other state departments or agencies. These enforcement officers shall consist of personnel whose primary duty will be the enforcement of title 12, entitled "Conservation and Resources," and the rules [promulgated] adopted thereunder within the areas the jurisdiction of the department of land and natural resources.

(b) An enforcement officer, upon arresting any person for violation of title 12 and rules [promulgated] adopted thereunder, [[ ]may[ ]] immediately take the person arrested to a police station or before a district judge, or take the name, address, and the number of the fishing, hunting, or other licenses or permits, if any, of the person, and note the violation of [such] the law or rule by the person, and issue him a summons or citation, printed in the form described in section 199-5, warning him to appear and to answer to the charge against him at a certain place and time within seven days after the arrest. Any person failing to obey a summons issued pursuant to this section shall be subject to section 199-6."

SECTION 11. Section 206J-3, Hawaii Revised Statutes, is amended to read as follows:

**"[[ ]§206J-3[[ ]] Aloha Tower complex; designated boundaries.** Being portions of Honolulu Harbor (Governor's Executive Order No. 1793), Irwin Memorial Park (Governor's Executive Order No. 472), Fort Street and Ala Moana

Being also portions of:

L.P. 8489 L.C.Aw. 11219 to the Hawaiian Government, Sea Boundary of "Kaakaukukui" R.P. 4483 L.C.Aw. 7712 Apana 6 No. 1 to M. Kekuanaoa no V. Kama-malu, R.P. 4532 L.C.Aw. 9971 Parts 1 and 2 to W.P. Leleiohoku and L.C.Aw. 1784 Parts 1 and 2 to James Robinson,

Exchange Deed: Minister of Interior to Samuel C. Allen dated December 21, 1897 and recorded in Liber 173, Pages 432-434,

Grant 1753 No. 2 to William Miller,

Land Court Application 787

Land situated at Kaakaukukui and Waikahalulu, Honolulu, Oahu, Hawaii

Beginning at the most Northerly corner of this piece of land, on the West side of the present Nimitz Highway (Honolulu-Pearl Harbor Road), the coordinates of said point of beginning referred to Government Survey Triangulation Station "Punchbowl" being 1,160.55 feet South and 5,210.56 feet West, thence running by azimuths measured clockwise from true South:

1. 6° 00' 1.45 feet along the West side of the present Nimitz Highway;
2. 276° 00' 5.50 feet along same;
3. 6° 00' 28.00 feet along same;

4. 6° 00' 50.00 feet along same;
5. 6° 00' 241.10 feet along same;
6. 6° 00' 35.00 feet along same;
7. Thence along same on a curve to the right with a radius of 110.00 feet, the chord azimuth and distance being  
12° 20' 25" 24.30 feet;
8. Thence along same on a curve to the right with a radius of 60.66 feet, the chord azimuth and distance being  
26° 18' 40" 16.11 feet;
9. 59° 35' 22.85 feet along the Westerly side of the present Nimitz Highway;
10. 329° 35' 72.15 feet along same;
11. Thence along same on a curve to the right with a radius of 72.00 feet, the chord azimuth and distance being  
294° 10' 02" 83.45 feet;
12. 329° 35' 226.07 feet along the Westerly side of the present Nimitz Highway;
13. Thence along same on a curve to the right with a radius of 72.29 feet, the chord azimuth and distance being  
11° 12' 30" 96.04 feet;
14. 52° 50' 120.37 feet along the Northerly side of Bishop Street;
15. 52° 50' 69.73 feet along same;
16. 52° 50' 110.32 feet across Ala Moana;
17. 149° 35' 29.33 feet along the remainder of Honolulu Harbor (Governor's Executive Order No. 1793), the true azimuths and distances to a "+" cut on concrete (found and adopted) being (a)  
149° 35' 2.36 feet and (b)  
239° 35' 2.00 feet;
18. 59° 34' 594.52 feet along same;
19. Thence along same on a curve to the right with a radius of 12.98 feet, the chord azimuth and distance being  
116° 17' 45" 21.70 feet;
20. 173° 01' 30" 608.15 feet along the remainder of Honolulu Harbor (Governor's Executive Order No. 1793);
21. 228° 25' 495.96 feet along same;
22. 318° 25' 0.94 of a foot along same;
23. 228° [[J25'[]]] 459.72 feet along same to the point of beginning and containing an area of 567,442 square feet or 13.027 acres.

Vehicle access shall not be permitted into and from Nimitz Highway (Honolulu-Pearl Harbor Road) and Bishop Street, over and across Courses 1, 2, 3, 5, 8, 9, 11, 12, 13, and 14 of the above described Aloha Tower Plaza."

SECTION 12. Section 206J-12, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) The development corporation, with the approval of the governor, may issue bonds in such amounts as authorized from time to time by law and as deemed



advisable for any of its corporate purposes. The principal of, premium, if any, and interest on such bonds shall be payable; except as limited by section 206J-5(16):

- (1) Exclusively from the moneys derived from rates, rentals, fees, and charges of the project financed with the proceeds of such bonds, or from such moneys together with any grant from the government in aid of such project; or
  - (2) Exclusively from the moneys derived from rates, rentals, fees, and charges of certain designated projects, whether or not they are financed in whole or in part with the proceeds of the bonds; or
  - (3) From its moneys derived from rates, rentals, fees, and charges generally.
- The bonds shall be secured by a pledge of such revenue and may be additionally secured by a mortgage of any project or other property of the development corporation to the extent of its interest therein. Neither the ~~[[ ]~~board members~~[[ ]]~~ nor any person executing the bonds shall be liable personally on the bonds by reason of the issuance thereof."

SECTION 13. Section 286-5, Hawaii Revised Statutes, is amended to read as follows:

**"§286-5 State highways safety council.** There is established the Hawaii highway safety council. The [state] director of transportation shall serve as its chairman. ~~[Together with the director of transportation, the]~~ The following or their designated representatives shall be members of the council: the chief justice, the attorney general, the director of health, ~~[the director of transportation,]~~ the superintendent of education, the president of the University of Hawaii, the chairman of each of the county highway safety councils established under section 286-6, and not more than twenty other persons who shall be appointed by the governor on the basis of their interest in highway safety.

The state highway safety council shall advise the governor on matters relating to the programs and activities of the State in the field of highway safety.

~~[Except for the state director of transportation, the]~~ The members of the council shall serve without pay but shall be entitled to reimbursement for necessary expenses while attending meetings and while in discharge of their duties."

SECTION 14. Section 298-5, Hawaii Revised Statutes, is amended to read as follows:

**"§298-5 Public schools special fees and charges[.]; standards; grouping of students.** (a) No equipment, material, or other fees shall be assessed against any pupil in any school, except that the department of education may assess and collect special fees and charges from pupils who negligently break, damage, lose, or destroy equipment and supplies. Any pupil found to be responsible for loss, destruction, breakage, or damage to school books, which shall include library and textbooks, shall make restitution to the school in any manner including the payment by the pupil or the pupil's parents of the actual replacement costs of the books.

(b) No pupil shall be required to make restitution in any manner, unless the pupil and the pupil's parents and guardians have been notified and have been given an opportunity to be heard before the principal of the school on the charges that the pupil was responsible for the loss, destruction, breakage, or damage to school books.

(c) If the principal, upon a hearing on the charges, has reasonable cause to believe that the pupil is responsible for the loss, destruction, breakage, or damage to school books, he shall design a restitution program which shall be submitted to the pupil, and his or her parents or guardian for agreement in writing.

If restitution is made in this fashion, then all records and documents regarding the charges and hearing shall be destroyed. No information about the charges, hearing, and the actions taken shall be communicated to any person not directly involved in the proceedings.

If the pupil and parent or guardian do not agree with the determination made by the principal, the principal shall preserve all the records and documents regarding the charges and hearing and shall report to the district superintendent of the determination made by the principal for any further action.

(d) Notwithstanding any provisions herein to the contrary, the State may elect to bring any appropriate action for the recovery of all damages to school properties. Nothing in this [[]section[[]] shall limit the right of the State to bring [such] any action against any person to recover [such] the damages.

(e) The fees or charges shall be deposited in a separate fund and expended by the department under such rules [and regulations] as it may prescribe.

(f) The department shall raise the standards of all public schools to the level of the English standard system starting in September 1949, and continue these adjustments annually, until all the schools of the State are raised to the level of a single standard system.

The department may continue to group pupils within any public school in accordance with their abilities and educational needs."

SECTION 15. Section 326-25, Hawaii Revised Statutes, is amended to read as follows:

"§326-25 **Accounts, reports.** The department of health shall keep an accurate and detailed account of all sums of money expended by it. The department shall report to the legislature at its regular sessions, such expenditures in detail, together with such information regarding [leprosy] Hansen's disease as it may deem to be of interest to the public."

SECTION 16. Section 326-26, Hawaii Revised Statutes, is amended to read as follows:

"§326-26 **Who allowed at settlement.** No person, not having Hansen's disease, shall be allowed to visit or remain upon any land, place, or inclosure set apart by the department of health for the isolation and confinement of persons affected with [[]Hansen's disease[[]], without the written permission of the director of health, or some officer authorized thereto by the department, under any circumstances whatever, and any person found upon such land, place, or inclosure without a written permission shall be fined not less than \$10 nor more than \$100 for such offense; provided that any patient resident of Kalaupapa desiring to remain at the settlement shall be permitted to do so for as long as he may choose, regardless of whether or not he has been successfully treated."

SECTION 17. Section 346-37, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) If a recipient under this chapter dies after leaving an estate and does not

have a surviving spouse, child, father, mother, grandfather, grandmother, grandchild, stepfather, stepmother, or any designated heir, the department may file a claim against the estate for the amount of social services payments, [money payments,] financial assistance, or burial payments granted, and the claim shall be allowed. The department may file a claim against the estate of a deceased recipient of medical assistance for the amount of medical assistance granted, only if the recipient was age sixty-five or over when such medical assistance was received and there is no dependent surviving spouse, or dependent child under twenty-one years of age, or is blind, or disabled."

SECTION 18. Section 353-17, Hawaii Revised Statutes, is amended to read as follows:

**"§353-17 Transfer of prisoners affected with [leprosy.] Hansen's disease.** Upon [receipt of a certificate of the department of health that the prisoner has been declared a person affected with leprosy in the manner provided for in section 326-8, and upon] written recommendation of the director of health that [the] a prisoner who is determined to be a Hansen's disease sufferer be removed to any hospital, settlement, or place for care and treatment of [persons affected with leprosy] Hansen's disease sufferers as designated by the director of health for such specialized care and treatment, the director of social services may direct any official having custody of any prisoner convicted of a felony and incarcerated in a state correctional facility to cause the prisoner to be removed to any hospital, settlement, or place for care and treatment of [persons affected with leprosy] Hansen's disease sufferers as designated by the director of health for such specialized care and treatment, [there to be kept] until discharged under chapter 326 or until the maximum sentence (with deduction for good time and commutation of sentence) has been served. Any such prisoner who may be discharged before the maximum term of imprisonment shall be returned to the state correctional facility from which he was removed. Any such person who has served his maximum sentence before he is discharged under chapter 326 shall remain in the custody of the director of health until lawfully discharged or removed by his direction or permission. Supervision, care, and treatment of the prisoner transferred to any hospital, settlement, or place for the care and treatment of [persons affected with leprosy] Hansen's disease sufferers shall be governed by the rules, policies, and procedures of the department of health."

SECTION 19. Section 383-170, Hawaii Revised Statutes, is amended to read as follows:

**"§383-170 Eligibility requirements for extended benefits. (a)** An individual shall be eligible to receive extended benefits with respect to any week of unemployment in his eligibility period only if the department finds that with respect to [such] that week:

- (1) He is an "exhaustee" as defined in section [[ ]383-168(12)[ ].]; and
- (2) He has satisfied the requirements of this chapter for the receipt of regular benefits that are applicable to individuals claiming extended benefits, including not being subject to a disqualification for the receipt of benefits.

[(3) (A)] (b) Notwithstanding the provisions of [paragraph (2) of this

section,] subsection (a)(2), an individual shall be ineligible for payment of extended benefits for any week of unemployment in his eligibility period if the department finds that during such period:

[(i)] (1) He failed to accept any offer of suitable work or failed to apply for any suitable work (as defined under [subparagraph (C)]) subsection (d) to which he was referred by the department; or

[(ii)] (2) He failed to actively engage in seeking work as prescribed under [subparagraph (E)] subsection (f).

[(B)] (c) Any individual who has been found ineligible for extended benefits by reason of the provisions in [subparagraph (A)] subsection (b) shall also be denied benefits beginning with the first day of the week following the week in which such failure occurred and until he has been employed in each of four subsequent weeks (whether or not consecutive) and has earned remuneration equal to not less than four times the extended weekly benefit amount.

[(C)] (d) For purposes of [this paragraph,] subsections (b) through (g), the term "suitable work" means, with respect to any individual, any work which is within such individual's capabilities; provided that:

[(i)] (1) The gross average weekly remuneration payable for the work shall exceed the sum of the individual's extended weekly benefit amount plus the amount, if any, of supplemental unemployment benefits (as defined in section 501(c)(17)(D) of the federal Internal Revenue Code of 1954, as amended) payable to such individual for such week; and

[(ii)] (2) The work pays wages equal to the higher of the minimum wages provided by section (6)(a)(1) of the Fair Labor Standards Act of 1938, without regard to any exemption; or the state or local minimum wage; and

[(iii)] (3) No individual shall be denied extended benefits for failure to accept an offer of or referral to any job which meets the definition of suitability described [above] in this subsection if the position was not offered to such individual in writing and was not listed with the employment service; or such failure could not result in a denial of benefits under the definition of suitable work for regular benefit claimants in section 383-30(3) to the extent that the criteria of suitability in that section are not inconsistent with this [subparagraph (C);] subsection; or the individual furnishes satisfactory evidence to the department that the individual's prospects of obtaining work in the individual's customary occupation within a reasonably short period are good. If such evidence is deemed satisfactory for this purpose, the determination of whether any work is suitable with respect to such individual shall be made in accordance with the definition of suitable work in section 383-30(3) without regard to the definition specified in this [subparagraph.] subsection.

[(D)] (e) Notwithstanding the provisions of [this paragraph] subsections (b) through (g) to the contrary, no work shall be deemed to be suitable work for an individual which does not conform with the labor standard provisions required by section 3304(a)(5) of the federal Internal Revenue Code of 1954, as

amended, and set forth under section 383-30(3).

[(E)] (f) For the purposes of [subparagraph (A)(ii), ] subsection (b)(2), an individual shall be treated as actively engaged in seeking work during any week if:

[(i)] (1) The individual has engaged in a systematic and sustained effort to obtain work during such week; and

[(ii)] (2) The individual furnishes tangible evidence that he has engaged in such effort during such week.

[(F)] (g) The employment service shall refer any claimant entitled to extended benefits under this chapter to any suitable work which meets the criteria prescribed in [subparagraph (C).] subsection (d).”

SECTION 20. Section 406-1, Hawaii Revised Statutes, is amended to read as follows:

“§406-1 **Trust company defined.** The term “trust company” as used in this chapter means any corporation or joint-stock company, organized[,] under the general laws of the State, which has obtained from the director of regulatory agencies a certificate that it is qualified to act as a trust company under section [406-2.] 406-1.5.”

SECTION 21. Section 408-8, Hawaii Revised Statutes, is amended to read as follows:

“§408-8 **Application for license; investigation fee.** (a) Any company required or desiring to obtain a license to operate under this chapter shall file an application, in writing, under oath, with the bank examiner, in the form prescribed by the bank examiner, which shall contain:

- (1) The full name and address of the applicant, and, if the applicant is a firm, of every member thereof, or, if the applicant is a corporation, of every officer thereof;
- (2) The county and town with street and number where the business is to be conducted; and
- (3) Such other information as the bank examiner may require.

(b) The applicant shall pay to the director of regulatory agencies at the time of filing of an application for license an investigation fee of \$1,000, which shall not be refundable. Licensees who apply for the relocation of their present offices shall pay to the director an investigation fee of \$50, which shall not be refundable.

[Conditions for approval.] (c) Upon the filing of the application, if the bank examiner upon investigation finds:

- (1) That the financial responsibility, experience, character, and general fitness of the applicant and of the officers or members thereof are such as to command the confidence of the community and to warrant belief that the business will be operated honestly, fairly, and efficiently within the purposes of this chapter;
- (2) That allowing the applicant to engage in this business will promote the convenience and advantage of the locality or community in which the business of the applicant is to be conducted;
- (3) That the applicant has available for the operation of this business at the specified location capital of at least \$100,000; and

- (4) That allowing the applicant to engage in this business will not substantially lessen competition or tend to create a monopoly or in any other manner be in restraint of trade,

then the bank examiner shall write upon the face of the application the fact that he has approved the same, together with the date, and affix his signature. The application shall then be returned to the applicant who [shall], upon receipt of an approved application, shall transmit it within thirty days to the director who shall file and preserve the application.

[Review of disapproval.] (d) No application shall be disapproved except after the applicant has had a notice of a hearing on the application and an opportunity to be heard thereon. If the application is denied, the bank examiner [shall], within twenty days thereafter, shall prepare and keep on file in his office, a written order of denial thereof, which shall contain his findings with respect thereto and the reasons supporting the denial, and forthwith serve upon the applicant a copy [thereof.] of the order of denial. Within ten days after the receipt of the copy, the applicant may appeal from the order of denial to a board consisting of the director of regulatory agencies, comptroller, and attorney general by filing with the comptroller a notice of appeal. After notice by mail to the applicant and after a hearing at which the applicant shall be entitled to be present and to be heard, the board shall file with the comptroller its decision in writing either ordering the bank examiner to approve the application or affirming his action in disapproving the same. A copy of the decision or order of the board shall forthwith be served upon the applicant by the bank examiner. The applicant may appeal from an adverse decision of the board to the circuit court of the circuit in which the applicant proposes to establish an office, as provided in chapter 91."

SECTION 22. Section 408-14, Hawaii Revised Statutes, is amended to read as follows:

"§408-14 **Specific powers.** (a) Every industrial loan company, in addition to the powers exercisable by or conferred upon it under or by the general corporation law of the State, or by any other provision of this chapter, shall possess and may exercise the following powers:

- (1) To borrow money upon its own secured or unsecured notes;
- (2) To lend money upon individual credit or upon the security of comakers, personal endorsement, or the pledge or mortgage of real or personal property or choses in action, or upon any combination of such credit and security, and to contract for such interest, discount, or other consideration as is permitted by this chapter, and to sell or broker, loans or contracts, in whole or in part, to other lenders, and charge or retain a fee for the originating, selling, brokering, or servicing of such loans or contracts;
- (3) To discount, purchase, or otherwise acquire notes, installment contracts, warehouse receipts, or other choses in action, notwithstanding section 416-31 to the contrary;
- (4) To establish branches within the State with the prior written approval of the bank examiner;
- (5) To finance purchases for others by taking title to merchandise tem-

porarily and only for the purpose of securing loans entered into for the purchases; and

- (6) To issue and sell certificates for the payment of money at any time, either fixed or uncertain, including without limitation evidences of thrift accounts as defined in chapter 408A, and to receive amounts invested therein in installments or otherwise, with or without allowance of interest on such investments. A company may, but need not, require an investor to subscribe to a certain amount of investment in such certificates, subject to minimum or maximum investments required by law or [regulation.] rules. Nothing herein shall be construed to authorize any industrial loan company to receive deposits or to create any liability due on demand.

(b) The certificates[,] in subsection (a), including the evidence of [such] the thrift accounts, shall not be issued by any [such] industrial loan company without receiving the prior written approval of the bank examiner, and shall bear upon the face of the instrument the words, "THIS IS NOT A CERTIFICATE OF DEPOSIT."

(c) No industrial loan company shall have outstanding at any time its certificates [and/or its], debentures, or both registered under chapter 485 in an aggregate sum in excess of ten times the aggregate amount of its paid-up capital and surplus; provided that the bank examiner shall have the authority to limit the ratio of certificates [and/or], debentures, or both to capital and surplus which may be issued by any industrial loan company if he determines that [such] the lower ratio is necessary in the public interest. In determining the ratio to be permitted, the bank examiner shall consider all relevant circumstances, including, without limitation, the following factors:

- (1) The length of time the company has been in operation[.];
- (2) Ratio of losses to volume of loans made and contracts purchased[.];
- (3) The creation and maintenance of adequate reserve for losses[.];
- (4) Charge-off of uncollectible accounts[.];
- (5) The amount or growth of undivided profits [and/or], earned surplus[.], or both;
- (6) Diversification of character and source of loans made and contracts purchased[.];
- (7) Creation and maintenance of adequate internal controls[.]; and
- (8) Sound and efficient management.

(d) Every industrial loan company [shall], as of January 1, 1977, shall maintain and have on hand at all times a reserve composed of cash and other securities in an amount equal to the sum of five per cent of its liabilities on outstanding certificates and debentures with an original term not exceeding one year and five per cent of its liabilities on outstanding certificates and debentures with an original term of one year or more, and after January 1, 1978, maintain and have on hand at all times the above-mentioned reserve in an amount equal to the sum of seven per cent of its liabilities on outstanding certificates and debentures with an original term not exceeding one year and five per cent of its liabilities on outstanding certificates and debentures with an original term of one year or more. [Said] The reserve shall not be pledged.

This reserve shall be determined as of a particular date and shall be based upon the daily average of all outstanding certificates and debentures of the immediate preceding seven calendar days. During a succeeding seven calendar day period, the average daily balance of [said] the reserve shall equal or exceed [such] the reserve amount. At the end of the seven calendar day period, a new reserve amount shall be determined based upon the daily average of the immediate preceding seven calendar days and for the next succeeding seven calendar day period, the average daily balance of [said] the reserve shall equal or exceed such new amount. Determination of reserve requirements shall be made on [form] forms approved by the bank examiner and shall be computed within two working days after the date of determination. Upon any failure to maintain the reserve requirement for the required seven calendar day period, the industrial loan company shall [promptly];

- (1) Promptly take action to correct the reserve deficiencies[, shall cease];
- (2) Cease making any loans or other advances or extensions of credit until the reserve deficiency is corrected[, and shall notify]; and
- (3) Notify the bank examiner within two working days after the close of the period.

The bank examiner may in writing direct specific directors and officers of any industrial loan company in violation of this section to take actions reasonably necessary to increase its reserve so as to comply with this section.

(e) Cash reserves shall be limited to cash in banks and on hand, bank or savings and loan certificates of deposit, direct United States, state, or county government securities, and passbook deposits in banks or savings and loans[; and such]. The cash reserve shall at all times equal no less than fifty per cent of the [aforementioned] reserve that is required by this section.

(f) Other securities shall be limited to direct obligations of the United States government, state, or county, bankers acceptances approved by the bank examiner, irrevocable lines of credit in a form acceptable to the bank examiner, and securities listed on the New York stock exchange or the American stock exchange [and no]. Not more than twenty-five per cent of the total reserve of cash and other security shall be held in securities listed on the New York stock exchange or the American stock exchange."

**SECTION 23.** Section 417-3, Hawaii Revised Statutes, is amended to read as follows:

**"§417-3 Agreement; approval of board of directors.** (a) The board of directors of each constituent corporation shall prepare for consideration by the stockholders a proposed merger or consolidation agreement which shall set forth [that];

- (1) That the constituent corporations are to become a single new corporation, or that one or more of the constituent corporations are to be merged into a specified constituent corporation; [the]
- (2) The terms and conditions of the merger or consolidation and the mode of carrying the same into effect; [the]
- (3) The names and addresses of the first directors and officers of the surviving or consolidated corporation and their respective terms of



office; [the]

- (4) The amount of the capital stock of the surviving or consolidated corporation, and if the privilege of subsequent extension of the capital stock is asked for, the limit of the extension; [the]
- (5) The preferences, voting powers, restrictions, and qualifications of all classes of stock of the surviving or consolidated corporation, if there is to be more than one class of stock; and [the]
- (6) The manner and basis of converting the shares of each of the constituent corporations into shares of the surviving or consolidated corporation.

(b) The agreement may also provide for the distribution or exchange of cash or any other property, assets, or shares of stock of any other corporation held as an asset by any constituent corporation, in whole or in part, in lieu of or partially in lieu of shares of the surviving consolidated corporation to stockholders of the constituent corporations or any class of them; but nothing in this part shall be deemed to authorize the distribution or exchange of cash, or other property, assets, or shares of stock of any other corporation held as an asset by any constituent corporation to the stockholders of any constituent corporation (except in payment of dissenting stockholders for their shares under sections 417-19 to 417-30) unless after giving effect to any such distribution or exchange of cash, or other property, assets, or shares of stock of any other corporation held as an asset by any constituent corporation, the liabilities of the surviving or consolidated corporation, including those derived by it from the constituent corporations, plus the amount of the capital stock of the surviving or consolidated corporation do not exceed the value of the remaining assets and property of the surviving or consolidated corporation, and unless the liabilities of the surviving or consolidated corporation, including those derived by it from the constituent corporations, are less in amount than one-half the value of the remaining assets and property of the surviving or consolidated corporation.

(c) The agreement may also provide the time or conditions, upon the happening of which the agreement shall be executed and filed as herein provided. The agreement may also provide that the name of the consolidated corporation shall be the same as the name of a constituent corporation.

(d) If the agreement is for a consolidation, it shall state therein or incorporate as part thereof, by reference and exhibit number, complete articles of association as is required by chapter 416 in the case of the formation of new corporations (except that the name of the incorporators [and the affidavit referred to in section 416-15] shall not be required). These articles of association shall be deemed to be the articles of association of the consolidated corporation upon the filing of consolidation agreement in the office of the director of regulatory agencies as hereinafter provided. The articles of association of the consolidated corporation may contain all the powers and privileges that could be lawfully conferred or obtained in original articles of association.

(e) If the agreement is for a merger, it shall state any matters with respect to which the articles of the surviving corporation are proposed to be amended, and shall set forth or incorporate as part thereof, by reference and exhibit number, the proposed articles of association as amended, and the articles shall be deemed to be the amended articles of association of the surviving corporation upon the filing of

the merger agreement in the office of the director as hereinafter provided. The amended articles of association of the surviving corporation may provide for the extension of the term of its corporate existence, and may contain all the powers and privileges that could be lawfully conferred or obtained in original articles of association.

(f) Prior to its execution, the proposed merger or consolidation agreement shall be approved by the board of directors of each constituent corporation. The approval may be given either before or after the approval or authorization of the stockholders as herein provided."

SECTION 24. Section 453-11, Hawaii Revised Statutes, is amended to read as follows:

"§453-11 **Recalcitrant witnesses; contempt.** If any person called before the board as a witness in any [such] proceeding, whether under subpoena or otherwise, except as privileged by law, refuses to answer any question which is relevant to the proceeding and is put to him by the board, a member thereof or the person whose license is sought to be revoked, limited, or suspended in [such] the proceeding, or disobeys any order of the circuit court relating to the proceeding, the board shall report the matter in writing to any judge of the circuit court of the circuit in which such proceeding is held and [such] the person shall be cited to appear before the circuit judge to show cause why he should not be punished for contempt of court under [chapter 729.] section 710-1077."

SECTION 25. Section 577-26, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

"(c) Notwithstanding any other law to the contrary, no spouse, parent, custodian, or guardian, whose consent has not been obtained or who has no prior knowledge that the minor has consented to the provision of such counseling services for alcohol or drug abuse shall be liable for the costs incurred by virtue of the minor's consent."

SECTION 26. Section 712-1211, Hawaii Revised Statutes, is amended by amending subsection (1) to read as follows:

"(1) A person commits the offense of displaying indecent matter if [[he]] knowingly or recklessly displays on any sign, billboard, or other object visible from any street, highway, or public sidewalk,<sup>2</sup> a photograph, drawing, sculpture, or similar visual representation of any person of the age of puberty or older:

- (a) Which reveals the person with less than a fully opaque covering over his or her genitals, pubic area, or buttocks, or depicting the person in a state of sexual excitement or engaged in an act of sexual conduct or sado-masochistic abuse; and
- (b) Which is presented in such a<sup>2</sup> manner as to exploit lust; and
- (c) Which lacks serious literary, artistic, political, or scientific value."

SECTION 27. This Act shall be amended to conform to all other acts passed by the legislature during this Regular Session of 1982, whether enacted before or after the effective date of this Act, unless such other acts specifically provide otherwise.

SECTION 28. Statutory material to be repealed is bracketed. New material

is underscored.

**SECTION 29.** This Act shall take effect upon its approval, except for section 6, which shall take effect on July 1, 1982.

(Approved May 28, 1982.)

**Notes**

1. The period after "Aw" should be underscored.
2. Should not be underscored.