

ACT 204

H.B. NO. 2669-82

A Bill for an Act Relating to Executive Departments.

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

SECTION 1. Section 26-9, Hawaii Revised Statutes, is amended to read as follows:

"§26-9 [Department of regulatory agencies.] Department of commerce and consumer affairs. (a) The department of [regulatory agencies] commerce and consumer affairs shall be headed by a single executive to be known as the director of [regulatory agencies.] commerce and consumer affairs.

(b) The department shall protect the interests of consumers, depositors, and investors throughout the State. It shall set standards and enforce all laws, rules, and regulations governing the licensing and operation of, and register and supervise the conduct of trades, businesses, and professions, including banks, insurance companies, brokerage firms, and other financial institutions.

(c) The acupuncture, cemetery and mortuary board, board of accountants, public accountancy, board of barbers, board of cosmetology, boxing commission, board of chiropractic examiners, contractors license board, board of dental examiners, board of electricians and plumbers, elevator mechanics licensing board, board of registration for professional engineers, architects, and surveyors, board of hearing aid dealers and fitters, board of massage, board of medical examiners, motor vehicle repair industry board, board of examiners in naturopathy, board of nursing, board of examiners of nursing home administrators, board of dispensing opticians, board of examiners in optometry, board of osteopathic examiners, pest control board, board of pharmacy, board of practicing psychologists, board of detectives and guards, real estate commission, board of veterinary examiners, and speech pathology and audiology are placed within the department of [regulatory agencies] commerce and consumer affairs for administrative purposes.

(d) Except as otherwise provided by this chapter, the functions, duties, and powers, subject to the administrative control of the director of [regulatory agencies,] commerce and consumer affairs, and the composition of each board and commission shall be as heretofore provided by law.

(e) Notwithstanding any provision to the contrary, the employment, appointment, promotion, transfer, demotion, discharge, and job descriptions of all officers and employees under the administrative control of this department shall be determined by the director of [regulatory agencies] commerce and consumer affairs subject only to applicable personnel laws.

(f) The director of [regulatory agencies] commerce and consumer affairs may appoint a hearings officer or officers not subject to chapters 76 and 77 to hear and decide any case or controversy regarding licenses and the application and enforcement of rules involving any of the boards or commissions within the department of [regulatory agencies.] commerce and consumer affairs. The hearings officer or officers shall have power to issue subpoenas, administer oaths, hear testimony, find facts, and make conclusions of law and a recommended decision; provided that the conclusions and decisions shall be subject to review and re-determination by the officer, board, or commission which would have heard the case in the first instance in the absence of a hearings officer. The review shall be conducted in accordance with chapter 91.

(g) The director may appoint a complaints and enforcement officer not subject to chapters 76 and 77 who shall facilitate the receipt, arbitration, investigation, prosecution, and hearing of complaints[.] regarding any person who furnishes commodities or services for which a license is required from the department or any board or commission thereunder.

(h) The functions and authority heretofore exercised by the treasurer (except funds custody, cash management, debt management, and administering of veterans loans transferred to the department of budget and finance) as heretofore constituted are transferred to the department of [regulatory agencies] commerce and consumer affairs established by this chapter. The director of [regulatory agencies] commerce and consumer affairs shall also be the insurance commissioner and commissioner of securities.

(i) In the course of an investigation of matters affecting the interest of consumers, depositors, or investors or of any other matter within the jurisdiction of the department [of regulatory agencies], the director shall have the power to subpoena witnesses, examine them under oath, and require the production of books, papers, documents, or objects which [he] the director deems relevant or material to the inquiry. Under application by the director, obedience to the subpoena may be enforced by the circuit court in the county where the person subpoenaed resides or is found in the same manner as a subpoena issued by the clerk of a circuit court.

The director shall appoint and commission one or more investigators to serve subpoenas as the exigencies of the public service may require. Subpoenas served by persons appointed and commissioned by the director shall have the same force and effect as subpoenas served by police officers or deputy sheriffs. Nothing in this subsection shall be construed to entitle persons commissioned and appointed by the director to retirement benefits applicable to police officers under chapter 88. This subsection is repealed effective July 1, 1983.

(j) The director may adopt, amend, or repeal rules pursuant to chapter 91 to effectuate the purposes of all laws within the jurisdiction of the department of [regulatory agencies.] commerce and consumer affairs. The director's authority to adopt rules shall not modify, impair, or otherwise affect the power of boards and commissions placed with the department of [regulatory agencies] commerce and consumer affairs for administrative purposes from adopting, amending, or repealing rules, except as provided for in subsection (k). The director may establish, amend, or repeal registration, renewal, and late renewal fees by rules pursuant to [chapter] chapter 91 for any regulatory program placed with the department [of regulatory agencies].

(k) Any law to the contrary notwithstanding, the fees assessed or charged by any board or commission placed within the department of [regulatory agencies] commerce and consumer affairs for administrative purposes may be established, pursuant to chapter 91, as separate application, examination, and license fees, and be increased or decreased by the director of [regulatory agencies] commerce and consumer affairs to maintain a reasonable relation between the revenue derived from the fee and the cost or value of services rendered.

(l) Notwithstanding section 92-17 or any other law to the contrary, all boards and commissions placed within the department of commerce and consumer affairs for administrative purposes shall delegate their authority to receive, arbitrate, investigate, and prosecute complaints to the department. No board or commission shall delegate its authority to take disciplinary action against a licensee."

SECTION 2. Section 487-2, Hawaii Revised Statutes, is amended to read as

follows:

"§487-2 Office of consumer protection; director. There is [hereby] created within the department of [regulatory agencies] commerce and consumer affairs for administrative purposes an office of consumer protection. The head of this office shall be the director of the office of consumer protection. He shall have been admitted to practice law before the [Supreme Court] supreme court of this State and shall be appointed by the governor without regard to chapters 76 and 77."

SECTION 3. Section 487-6, Hawaii Revised Statutes, is amended to read as follows:

"[[§487-6]] Consumer advisory council. There shall be a consumer advisory council consisting of eleven members who shall be appointed by the governor and serve at his pleasure. There shall be at least one member from each of the counties of the State. The chairman of the council shall be selected by the members. Each member shall serve without pay and shall be reimbursed for necessary expenses incurred while attending meetings and while in the discharge of [his] the member's responsibilities. The council shall assist the office of consumer protection and the director of commerce and consumer affairs in an advisory capacity in carrying out the duties and functions of the office."

SECTION 4. Section 487-13, Hawaii Revised Statutes, is amended to read as follows:

"§487-13 Penalties for unlicensed acts. (a) Any person who furnishes commodities or services for which a license is required from the department of [regulatory agencies] commerce and consumer affairs or any board or commission thereunder without having such license is engaged in an unlawful act or practice and shall be subject to the penalty provided in subsection (b).

(b) Any person who engages in an unlawful act or practice as provided in subsection (a) shall be fined by a sum not less than \$500 nor more than \$2,500 for each unlawful act or practice, which sum shall be collected in a civil suit brought by the office of consumer protection[,] or the department of commerce and consumer affairs.

(c) Any contract for the furnishing of commodities or services by an unlicensed person shall be void and shall prevent such person from recovering the contract price or the reasonable value thereof."

SECTION 5. Section 487-15, Hawaii Revised Statutes, is amended to read as follows:

"[[§487-15]] Injunction. The director of [the] commerce and consumer affairs or the office of consumer protection [shall be authorized to] may bring civil proceedings to enjoin any violation of section 487-13(a)."

SECTION 6. Section 269-51, Hawaii Revised Statutes, is amended to read as follows:

"[[§269-51]] Consumer advocate; director of [regulatory agencies.] commerce and consumer affairs. The director of [regulatory agencies.] commerce and consumer affairs shall be the consumer advocate in hearings before the public utilities commission. [He] The consumer advocate shall represent, protect, and advance the interest of consumers of utility services. The consumer advocate shall

not receive any salary in addition to [his] the salary received as director of [regulatory agencies] commerce and consumer affairs.

The responsibility for advocating the interests of the consumer of utility services shall be separate and distinct from the responsibilities of the public utilities commission and those assistants employed by the commission. As consumer advocate, the director of [regulatory agencies] commerce and consumer affairs shall have full rights to participate as a party in interest in all proceedings before the public utilities commission."

SECTION 7. Section 269-52, Hawaii Revised Statutes, is amended to read as follows:

"**[§269-52]] Public utilities division; personnel.** There shall be a public utilities division within the department of [regulatory agencies] commerce and consumer affairs to provide administrative support to the director of [regulatory agencies] commerce and consumer affairs acting in [his] capacity [as] of consumer advocate. The director may employ and at pleasure dismiss an executive administrator, who shall be exempt from chapters 76 and 77, [and] define [his] the executive administrator's powers and duties and fix [his] the executive administrator's compensation. The director may employ [such] engineers, accountants, investigators, clerks, stenographers, and other assistants as may be necessary for the performance of the consumer advocate's functions, subject to chapters 76 and 77."

SECTION 8. The Hawaii Revised Statutes is amended by amending the title "department of regulatory agencies" wherever it appears therein to "department of commerce and consumer affairs".

SECTION 9. The substantive provisions of this Act shall amend any other conflicting Act enacted by the regular session of 1982, but nonsubstantive amendments made by this Act shall not supersede any substantive amendments made by any other Act enacted by the regular session of 1982.

SECTION 10. Statutory material to be repealed is bracketed. New material is underscored.

SECTION 11. This Act shall take effect upon its approval.

(Approved June 10, 1982.)