

ACT 60

H.B. NO. 2511-82

A Bill for an Act Relating to Compliance Resolution.

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. (a) The department of regulatory agencies shall be headed by a single executive to be known as the director of regulatory agencies.

(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 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, 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 subject only to applicable personnel laws.

(f) The director of regulatory agencies 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. 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 redetermination 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 officer not subject to chapters 76 and 77 who shall facilitate the investigation and hearing of complaints.

(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 consti-

tuted are transferred to the department of regulatory agencies established by this chapter. The director of regulatory agencies 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 deems relevant or material to the inquiry. Upon 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. 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 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 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 to maintain a reasonable relation between the revenue derived from the fee and the cost or value of services rendered.

(l) Every licensed person under any chapter subject to section 26H-4 shall pay upon issuance of a license a fee of \$10 and a subsequent annual fee of \$10, which may be collected biennially or pursuant to rules adopted under chapter 91 and which shall be deposited into the special fund established under this subsection. Any unpaid fee shall accrue and shall be paid by the licensed person upon application for renewal of a license. The director may increase or decrease the annual fee when necessary pursuant to rules adopted under chapter 91.

There is created in the state treasury a special fund to be expended by the director or the director's designated representative for compliance resolution as provided by this subsection. The moneys in the fund shall consist of annual fees collected under this subsection. The director may use the moneys in the fund to employ, without regard to chapters 76 and 77, hearings officers, investigators, attorneys, accountants, and other necessary personnel. The moneys in the funds may be used to train such personnel as the director finds necessary and for any other

activity related to compliance resolution.

As used in this subsection, unless otherwise required by the context, "compliance resolution" means a determination of whether any licensee under any chapter subject to section 26H-4, has complied with that chapter.

The director shall prepare and submit an annual report to the governor and the legislature on the use of the compliance resolution fund. This subsection is repealed effective July 1, 1987."

SECTION 2. Notwithstanding any other law to the contrary, the department of regulatory agencies is authorized to utilize existing surpluses in existing departmental funds, or board or commission special funds, to provide initial start-up moneys for the compliance resolution fund provided for in this Act.

SECTION 3. 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 to section 26-9, Hawaii Revised Statutes, by any other Act enacted by the regular session of 1982.

SECTION 4. Statutory material to be repealed is bracketed. New material is underscored.

SECTION 5. This Act shall take effect upon its approval.

(Approved May 5, 1982.)