

ACT 34

H.B. NO. 2088

A Bill for an Act Relating to Statutory Revision: Amending, Reenacting, or Repealing Various Provisions of the Hawaii Revised Statutes and the Session Laws of Hawaii 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 11-218, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) For the office of state senator, state representative, [city] county council member, prosecuting attorney, board of education, and all other offices, the maximum amount of public funds available to a candidate shall not exceed \$500 in any election year.”

SECTION 2. Section 40-82.5, Hawaii Revised Statutes, is amended to read as follows:

“~~[[~~**§40-82.5**~~]]~~ **Delinquent accounts, collection.** Any state agency having an account due which is delinquent, may contract with a collection agency bonded under chapter [443A.] **443B.** for collection of the delinquent account. The chairperson or director of the agency may make an agreement with the agency regarding the amount to be retained by it for services.”

SECTION 3. Section 231-13, Hawaii Revised Statutes, is amended to read as follows:

“**§231-13 Director; collection.** The director of taxation shall be responsible for the collection and general administration of all delinquent taxes. The director may forward all claims of the State for delinquent taxes to a collection agency bonded under chapter [443A.] **443B.** The director may make an agreement with the agency regarding the amount to be retained by it for services. The director shall duly and accurately account for all delinquent taxes collected.”

SECTION 4. Section 46-15.2, Hawaii Revised Statutes, is amended to read as follows:

“**§46-15.2 Housing; additional county powers.** In addition and supplemental to the powers granted to counties by section 46-15.1, any county shall have and may exercise any of the following powers:

- (1) To provide assistance and aid to persons of low and moderate income in acquiring housing by providing loans secured by a mortgage, including by acquiring such loans from private lenders for which such county has made advance commitment to acquire such loans, and to make and execute contracts with private lenders or a public agency for the origination and servicing of such loans and pay the reasonable value of such services;
- (2) In connection with the exercise of any powers granted under this section or section 46-15.1, to establish one or more loan programs and to issue bonds under chapter 47 or 49 to provide moneys to carry out the purposes of this section or section 46-15.1; provided that:
 - (A) If bonds are issued pursuant to chapter 47 to finance one or more loan programs, the county may establish such qualifications as it deems appropriate;
 - (B) If bonds are issued pursuant to chapter 49 to finance one or more loan programs, such loan program or programs shall comply with the provisions of part II, subpart B of chapter [356;] 201E;
 - (C) If bonds are issued pursuant to section [47-2.1] 47-4 or chapter 49, any loan program established pursuant to this section or any county-owned dwelling units constructed under section 46-15.1 shall be and constitute an “undertaking” under section 49-1 and the provisions of chapter 49 shall apply to such loan program or county-owned dwelling units to the extent applicable;
 - (D) In connection with the establishment of any loan program pursuant to this section, a county may employ financial consultants, attorneys, real estate counselors, appraisers, and

such other consultants as may be required in the judgment of the county and fix and pay their compensation from funds available to the county therefor;

- (E) Notwithstanding any limitation otherwise established by law, with respect to the rate of interest on any loan made under any loan program established pursuant to this section, such loan may bear such rate or rates of interest per year as the county shall determine; provided no loan made from the proceeds of any bonds of the county shall be under terms or conditions which would cause the interest on such bonds to be deemed subject to income taxation by the United States of America;
- (F) Notwithstanding any limitation otherwise established by law, with respect to the amount of compensation permitted to be paid for the servicing of loans made under any loan program established pursuant to this section, a county may fix such reasonable compensation as the county may determine;
- (G) Notwithstanding the requirement of any other law, a county may establish such separate funds and accounts with respect to bonds issued pursuant to chapter 47 or 49 to provide moneys to carry out the purposes of this section or section 46-15.1 as such county may deem appropriate;
- (H) Notwithstanding any provision of chapter 47 or 49 or of any other law, but subject to the limitations of the State Constitution, bonds issued to provide moneys to carry out the purposes of this section or section 46-15.1 may be sold at public or private sale at such price, may bear interest at such rate or rates per year, may be payable at such time or times, may mature at such time or times, may be made redeemable before maturity at the option of the county, the holder, or both, at such price or prices and upon such terms and conditions, and may be issued in coupon or registered form, or both, all as the county may determine;
- (I) If deemed necessary or advisable, the county may designate a national or state bank or trust company within or without the State to serve as trustee for the holders of bonds issued to provide moneys to carry out the purposes of this section or section 46-15.1 and enter into a trust indenture, trust agreement, or indenture of mortgage with such trustee whereby such trustee may be authorized to receive and receipt for, hold, and administer the proceeds of such bonds and to apply the proceeds to the purposes for which such bonds are issued, or to receive and receipt for, hold, and administer the revenues and other receipts derived by the county from the application of the proceeds of such bonds and to apply such revenues and receipts to the payment of the principal of, or interest on such bonds, or both. Any such trust indenture, trust agreement, or indenture of mortgage entered into with the trustee may contain any covenants and provisions as may be deemed necessary, convenient, or desirable by the county in order to secure such bonds. The county may pledge and assign to the trustee any agreements related to the application of the proceeds of such bonds and the rights of the county thereunder, including the rights to revenues and receipts derived thereunder. Upon appointment of the trustee, the director of finance may elect

not to serve as fiscal agent for the payment of the principal and interest, and for the purchase, registration, transfer, exchange, and redemption, of such bonds, or may elect to limit the functions the director of finance performs as such fiscal agent, and may appoint the trustee to serve as the fiscal agent, and may authorize and empower the trustee to perform such functions with respect to such payment, purchase, registration, transfer, exchange, and redemption, as the director of finance deems necessary, advisable, or expedient, including, without limitation, the holding of such bonds and coupons which have been paid and the supervision and conduction or the destruction thereof in accordance with law;

- (J) If a trustee is not appointed to collect, hold, and administer the proceeds of bonds issued to provide moneys to carry out the purposes of this section or section 46-15.1, or the revenues and receipts derived by the county from the application of the proceeds of such bonds, all as provided in subparagraph (I), the director of finance of such county may hold such proceeds or revenues and receipts, as the case may be, in a separate account in the treasury of the county, to be applied solely to the carrying out of the ordinance, trust indenture, trust agreement, or indenture of mortgage, if any, authorizing or securing such bonds; and
 - (K) Any law to the contrary notwithstanding the investment of funds held in reserves and sinking funds related to bonds issued to provide moneys to carry out the purposes of this section or section 46-15.1 shall comply with the provisions of section [356-214;] 201E-70; provided that any investment which requires approval by the county council pursuant to section 46-48 or 46-50 must first be approved by the county council.
- (3) To acquire such policies of insurance and enter into such banking arrangements as such county may deem necessary in order to better secure bonds issued to provide money to carry out the purposes of this section or section 46-15.1 including, without limitation, contracting for a support facility or facilities as may be necessary with respect to bonds issued with a right of the holders to put such bonds and contracting for interest rate swaps; and
 - (4) To do any and all other things necessary or appropriate to carry out the purposes and exercise the powers granted in section 46-15.1 and this section.”

SECTION 5. Section 46-105, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

“(c) The allocation of real property taxes pursuant to this part shall in no way limit the power of the county under section [47-16] 47-12 to levy ad valorem taxes without limitation as to rate or amount on all real property subject to taxation by the county for the payment of the principal and interest of its general obligation bonds.”

SECTION 6. Section 237-27.6, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

“(c) For the purposes of this section:

“Debt service costs” means payments of principal and interest on general obligation bonds issued at any time by a political subdivision for the construction of the facility.

“Sale and leaseback” means a transaction in which a facility is sold by a political subdivision to a private entity for cash, under an installment sale, a financing lease, or similar arrangement, or any combination thereof, where the political subdivision has the right to repurchase the facility at a later date, and where the facility is leased to an operator of the facility.

“Solid waste processing, disposal, and electric generating facility” or “facility” means a facility for the processing and disposal of solid waste or the generation of electric energy, or both, the construction of which has been financed pursuant to section [47-2.1] 47-4 and constitutes an undertaking as defined in section 49-1.

“Operator” means a private entity who enters into an agreement or other arrangement with the owner of a solid waste processing, disposal, and electric generating facility for the purpose of operating such facility for a political subdivision of the State.

“Owner” means any person who purchases a solid waste processing, disposal, and electric generating facility under section 46-19.1.”

SECTION 7. Section 87-1, Hawaii Revised Statutes, is amended by amending the definition of “health benefits plan” to read as follows:

- “(8) “Health benefits plan” means (A) a group insurance contract or medical, hospital, surgical, prescribed drugs, vision, or dental service agreement in which a carrier agrees to provide, pay for, arrange for, or reimburse the cost of [health,] medical, hospital, surgical, prescribed drugs, vision, dental services, or long-term care services as determined by the board; or (B) a similar schedule of benefits established by the board and provided through the fund on a noninsured basis;”

SECTION 8. Section 88-119, Hawaii Revised Statutes, is amended to read as follows:

“**§88-119 Investments.** Investments may be made in:

- (1) Real estate loans and mortgages. Obligations (as defined in section [431-286] 431:6-101) of any of the following classes:
 - (A) Obligations secured by mortgages of nonprofit corporations desiring to build multirental units (ten units or more) subject to control of the government for occupancy by families displaced as a result of government action.
 - (B) Obligations secured by mortgages insured by the federal housing administration.
 - (C) Obligations for the repayment of home loans made under the Servicemen’s Readjustment Act of 1944 or under Title II of the National Housing Act.
 - (D) Other obligations secured by first mortgages on unencumbered improved real estate owned in fee simple; provided that the amount of the obligation shall not at the time investment is made therein exceed eighty per cent of the value of the real estate and improvements mortgaged to secure it, and except that the amount of the obligation at the time investment is made therein may exceed eighty per cent but no

more than ninety per cent of the value of the real estate and improvements mortgaged to secure it; provided further that the obligation is insured or guaranteed against default or loss under a mortgage insurance policy issued by a casualty insurance company licensed to do business in the State. The coverage provided by the insurer should be sufficient to reduce the system's exposure to not more than eighty per cent of the value of the real estate and improvements mortgaged to secure it. Such insurance coverage shall remain in force until the principal amount of the obligation is reduced to eighty per cent of the market value of the real estate and improvements mortgaged to secure it, at which time the coverage shall be subject to cancellation solely at the option of the board of trustees. Real estate shall not be deemed to be encumbered within the meaning of this subparagraph by reason of the existence of any of the restrictions, charges, or claims described in section [431-293(a).] 431:6-308.

- (E) Other obligations secured by first mortgages of leasehold interests in improved real estate; provided that (i) each such leasehold interest at such time shall have a current term extending at least two years beyond the stated maturity of the obligation it secures, and (ii) the amount of the obligation shall not at the time investment is made therein exceed eighty per cent of the value of the respective leasehold interest and improvements, and except that the amount of the obligation, at the time investment is made therein, may exceed eighty per cent but no more than ninety per cent of the value of the leasehold interest and improvements mortgaged to secure it; provided further that the obligation is insured or guaranteed against default or loss under a mortgage insurance policy issued by a casualty insurance company licensed to do business in the State. The coverage provided by the insurer should be sufficient to reduce the system's exposure to not more than eighty per cent of the value of the leasehold interest and improvements mortgaged to secure it. Such insurance coverage shall remain in force until the principal amount of the obligation is reduced to eighty per cent of the market value of the leasehold interest and improvements mortgaged to secure it, at which time the coverage shall be subject to cancellation solely at the option of the board of trustees.
- (F) Obligations for the repayment of home loans guaranteed by the department of Hawaiian home lands pursuant to section 214(b) of the Hawaiian Homes Commission Act, 1920.
- (G) Obligations secured by second mortgages on improved real estate for which the mortgagor procures a second mortgage on the improved real estate for the purpose of acquiring the leaseholder's fee simple interest in the improved real estate; provided that any prior mortgage does not contain provisions which might jeopardize the security position of the retirement system or the borrower's ability to repay the mortgage loan.

The board of trustees may retain such real estate, including leasehold interests therein, as it may acquire by foreclosure of mortgages or in enforcement of security, or as may be conveyed to it in satisfaction of debts previously contracted; provided that all such

real estate, other than leasehold interests, shall be sold within five years after acquiring the same, subject to extension by the governor for additional periods not exceeding five years each, and that all such leasehold interests shall be sold within one year after acquiring the same, subject to extension by the governor for additional periods not exceeding one year each.

- (2) Government obligations, etc. Obligations of any of the following classes:
 - (A) Obligations issued or guaranteed as to principal and interest by the United States or by any state thereof, or by the Dominion of Canada or by any province thereof, or by any municipal or political subdivision or school district of any of the foregoing; provided that principal of and interest on such obligations are payable in currency of the United States.
 - (B) Revenue bonds, whether or not permitted by any other provision hereof, of the State or any municipal or political subdivision thereof, including the board of water supply of the city and county of Honolulu, and street or improvement district bonds of any district or project in the State.
 - (C) Obligations issued or guaranteed by any federal home loan bank including consolidated federal home loan bank obligations, the Home Owner's Loan Corporation, the Federal National Mortgage Association, or the Small Business Administration.
- (3) Corporate obligations. Obligations of any corporation created or existing under the laws of the United States or of any state or district thereof, and qualified under any of the following:
 - (A) Fixed interest-bearing obligations, if the average annual net earnings of the obligor or guarantor available for its fixed charges for a period of five fiscal years next preceding the date of the investment have equalled at least one hundred fifty per cent of its average annual fixed charges applicable to the period and if its net earnings for the last year of the period have equalled at least one hundred fifty per cent of its fixed charges for such year.
 - (B) Fixed interest-bearing obligations secured by assignment of a lease or leases, or the rentals payable thereunder, of real or personal property (including, without limitation, charters of vessels) to a corporation created or existing under the laws of the United States or of any state or district thereof; provided that (i) the fixed rentals assigned shall be sufficient to repay the principal of and interest on the obligation within the unexpired term of the lease, exclusive of the term which may be provided by any option of renewal, and (ii) the net earnings of the corporation shall meet the requirements described in subparagraph (A).
 - (C) Fixed interest-bearing obligations secured by rights or assignment of rights under a contract (including, without limitation, a contract for the sale of products, materials, supplies, or other property, or for the furnishing of transportation or services) with a corporation created or existing under the laws of the United States or of any state or district thereof; provided that (i) the rights securing such obligations shall include the right to receive payments sufficient to repay the principal of and

interest on the obligations within the unexpired term of the contract, and (ii) the net earnings of the corporation shall meet the requirements described in subparagraph (A).

As used in this paragraph, the terms “fixed charges” and “net earnings available for fixed charges” shall have the meanings and application ascribed thereto in sections [431-286 and 431-287.] 431:6-101 and 431:6-102.

- (4) Preferred and common stocks. Shares of preferred or common stock of any corporation created or existing under the laws of the United States or of any state or district thereof or of any country in the Pacific Basin or Western Europe; provided that the book value of the total investment in such stocks shall at no time exceed forty per cent of the total book value of all investments of the system.
- (5) Obligations eligible by law for purchase in the open market by federal reserve banks.
- (6) Obligations issued or guaranteed by the International Bank for Reconstruction and Development, the Inter-American Development Bank, the Asian Development Bank, or the African Development Bank.
- (7) Obligations secured by collateral consisting of any of the securities or stock listed above and worth, at the time the investment is made, at least fifteen per cent more than the amount of the respective obligations.
- (8) Insurance company obligations. Contracts and agreements supplemental thereto providing for participation in one or more accounts of a life insurance company authorized to do business in Hawaii, including its separate accounts, and whether the investments allocated thereto are comprised of stocks or other securities or of real or personal property or interests therein.
- (9) Interests in real property. Interests in improved or productive real property in which, in the informed opinion of the board of trustees, it is prudent to invest funds of the system; provided that the total book value of these investments at no time shall exceed five per cent of the total book value of all investments in the system. For purposes of this paragraph, “real property” includes any property treated as real property either by local law or for federal income tax purposes. Investments in improved or productive real property may be made directly or through pooled funds, including common or collective trust funds of banks and trust companies; group or unit trusts, limited partnerships, investment trusts, and other pooled funds invested on behalf of the system by investment managers retained by the system.
- (10) Other securities and futures contracts. Securities and futures contracts in which in the informed opinion of the board of trustees it is prudent to invest funds of the system, including interest rate and stock index futures contracts and options on such contracts within the meaning of the Commodity Exchange Act and traded on an exchange or board of trade regulated under that Act only to hedge against anticipated changes in interest rates and stock prices that might otherwise have an adverse effect upon the value of the system’s securities portfolios; covered put and call options on securities traded on one or more of the exchanges; and stock; whether or not the securities, stock, futures contracts, or options on futures are expressly authorized by or qualify under the foregoing paragraphs,

and notwithstanding any limitation of any of the foregoing paragraphs (including paragraph (4)); provided that the total book value of investments under this paragraph shall at no time exceed ten per cent of the total book value of all investments of the system.”

SECTION 9. Section 101-23, Hawaii Revised Statutes, is amended to read as follows:

“§101-23 Damages assessed, how. In fixing the compensation or damages to be paid for the condemnation of any property, the value of the property sought to be condemned with all improvements thereon shall be assessed, and if any of the improvements are separately owned, the value thereof shall be separately assessed. If the property sought to be condemned constitutes only a portion of a larger tract, the damages which will accrue to the portion not sought to be condemned by reason of its severance from the portion sought to be condemned, and the construction of the improvements in the manner proposed by the plaintiff shall also be assessed, and also how much the portion not sought to be condemned will be specifically benefited, if at all, by the construction of the improvement proposed by the plaintiff. If the benefit shall be equal to the amount of compensation assessed for the property taken, and for damages by reason of its severance from another portion of the same tract, then the owner shall be allowed no compensation, but if the benefits shall be less than the amount so assessed as damages or compensation, then the former shall be deducted from the latter and the remainder shall be the amount awarded as compensation or damages. In case of the exercise of the power of eminent domain by the city and county of Honolulu in furtherance of any governmental power under section [70-111] 46-74.2 and the improvement ordinance of the city, the amount of damages or compensation assessed, or awarded, or agreed upon in any compromise approved by motion of the city council shall in no case be construed as limiting or affecting the power of the city council to distribute any portion of the cost upon any property found to be benefited thereby proportioned as provided by law in the exercise of their judgment whether under an improvement district or frontage improvement created before or after the acquisition of any such land. If condemnation is for the purpose of widening or realigning any existing highway or other public road, the owner of the property condemned shall be entitled to full compensation for the property actually taken and special benefits shall be considered only insofar as the value of the benefits shall not exceed the damages which will accrue to the portion not sought to be condemned by reason of its severance from the portion sought to be condemned and the construction of the improvements in the manner proposed by the plaintiff. That is, if the special benefits shall be equal to the severance damages, then the owner of the parcel shall be allowed no compensation except the value of the portion taken, but if the special benefits shall be less than the severance damages, then the former shall be deducted from the latter and the remainder shall be the only damages allowed in addition to the value of the land taken.”

SECTION 10. Section 206X-6, Hawaii Revised Statutes, is amended to read as follows:

“~~§~~206X-6~~§~~ Convention center district rules. The authority shall establish rules for the development within the convention center district under chapter 91 on health, safety, building, planning, zoning, and land use which, upon final approval by the authority of a convention center development plan, shall supersede all other inconsistent ordinances and rules relating to the use, zoning, planning, and development of land and construction thereon. The convention

center development plan approved by the authority shall be made a part of, and shall have the same force and effect as, the rules aforesaid. Any development proposal within the convention center district under agreement with a private developer shall be subject to the requirements of chapter 343 relating to environmental impact statements and shall be provided for in the rules. The environmental impact statement shall include the disclosure of the environmental effects of the proposed development, effects of the proposed development on the economic and social welfare of the community and State including the welfare of persons to be dislocated by the proposed development, effects of the economic activities arising out of the proposed development, measures proposed to minimize adverse effects, and alternatives to the action and their environmental effects. Rules adopted under this section shall follow existing law, rules, ordinances, and regulations as closely as is consistent with standards meeting minimum requirements of good design, pleasant amenities, health, safety, and coordinated development.

For purposes of chapters 501, 502, and 514A, the authority may certify maps and plans of lands and real property interests within the convention center district as having complied with applicable laws and ordinances relating to consolidation, subdivision of lands, and [horizontal] condominium property regimes, and such maps and plans shall be accepted for registration or recordation by the land court and registrar.”

SECTION 11. Section 206X-7, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) As a condition and consideration of the right to develop the real property within the convention center district under the agreement, pursuant to this chapter, the private developer shall dedicate, at no cost to the State, a marketable real property interest in the convention center facility to the State with warranty of title free and clear of all encumbrances, subject to declaration of [horizontal] condominium property regime, if any, and to such encumbrances and easements as shall be acceptable to the State. For a period of two years from the date of the dedication, the private developer shall manage, operate and maintain the convention center facility. All profit and loss for the two-year period from the management, operation and maintenance of the convention center facility shall accrue to or be suffered by the private developer. The private developer shall submit to the authority annual reports, including financial statements, covering the operations of the convention center facility by the private developer during the two year period. The private developer shall coordinate with the authority on all reservations based on requests for conventions at the convention center facility to occur on dates after the two-year period. The authority shall thereafter manage, operate and maintain the convention center facility.”

SECTION 12. Section 514C-1, Hawaii Revised Statutes, is amended by amending the definition of “condominium” to read as follows:

““Condominium” means the ownership of single units, with common elements, located on property within the [horizontal] condominium property regime.”

SECTION 13. Section 239-5, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) There shall be levied and assessed upon each public utility, except airlines, motor carriers, common carriers by water, and contract carriers taxed by section 239-6, a tax of such rate per cent of its gross income each year from its public utility business as shall be determined in the manner hereinafter provided. The tax imposed by this section is in lieu of all taxes other than those below set out, and is a means of taxing the real property (owned by the public utility or leased to it by a lease under which the public utility is required to pay the taxes upon the property), and the personal property of the public utility, tangible and intangible, including going concern value. In addition to the tax imposed by this chapter there also are imposed income taxes, the specific taxes imposed by chapter 249, the fees prescribed by chapter 269, any tax specifically imposed by the terms of the public utility’s franchise or under chapter 240, the use or consumption tax imposed by chapter 238, and employment taxes.

The rate of the tax upon the gross income of the public utility shall be determined as follows:

If the ratio of the net income of the company to its gross income is fifteen per cent or less, the rate of the tax on gross income shall be 5.885 per cent; for all companies having net income in excess of fifteen per cent of the gross, the rate of the tax on gross income shall increase continuously in proportion to the increase in ratio of net income to gross, at such rate that for each increase of one per cent in the ratio of net income to gross, there shall be an increase of .2675 per cent in the rate of the tax.

The following formula may be used to determine the rate, in which formula the term “R” is the ratio of net income to gross income, and “X” is the required rate of the tax on gross income for the utility in question:

$$X = (1.8725 + 26.75R)\%$$

Provided that in no case governed by the formula shall “X” be less than 5.885 per cent or more than 8.2 per cent.

However, if the gross income is apportioned under section 239-8(b) or (c), there shall be no adjustment of the rate of tax on the amount of gross income so apportioned to the State on account of the ratio of the net income to the gross income being in excess of fifteen per cent, and it shall be assumed in such case that the ratio is fifteen per cent or less.”

SECTION 14. Section 286-26, Hawaii Revised Statutes, is amended by amending subsection (i) to read as follows:

“(i) As part of the inspection required by this section, the owner of the vehicle to be inspected shall produce and display the no-fault insurance identification card for the inspected motor vehicle required by section 431:10C-107 or the proof of insurance card required by section [431:10C-502.] 431:10G-106. If no card is displayed, then the sticker authorized by the director of transportation shall not be affixed to the vehicle and the certificate of inspection shall not be issued.”

SECTION 15. Section 286-104, Hawaii Revised Statutes, is amended to read as follows:

“§286-104 What persons shall not be licensed. The examiner of drivers shall not issue any license hereunder:

- (1) To any person whose license has been suspended by a court of competent jurisdiction during the suspension period; nor to any person whose license has been revoked until the expiration of one year after the date of the revocation, or until the expiration of the

- period of revocation specified by law, whichever is greater; nor to any person who, while unlicensed, has within two years been convicted of driving while drunk;
- (2) To any person who is required by this part to take an examination, unless such person has successfully passed the examination;
 - (3) To any person who is required under the motor vehicle financial responsibility laws of this State to deposit proof of financial responsibility and who has not deposited such proof;
 - (4) To any person when the examiner of drivers has good cause to believe that such person by reason of physical or mental disability would not be able to operate a motor vehicle with safety upon the highways;
 - (5) To any person who is under seventeen years of age; provided that a person who is fifteen or sixteen years of age may be granted a special license upon satisfying the requirements of sections 286-108 and 286-109, which license may be suspended or revoked by a judge having jurisdiction over the holder of the special license. Upon revocation of the special license, the person shall not be eligible to operate a motor vehicle on the highway until the person is seventeen years of age and has again satisfied the requirements of sections 286-108 and 286-109;
 - (6) To any person who has been ordered to be hospitalized under chapter 334 or committed under chapter [333] 333F unless the director of health certifies to the examiner of drivers that the person is mentally competent and may be examined to determine the person's fitness to operate a motor vehicle.

Any person denied a license under this or any other section of this part shall have a right of appeal as hereinafter provided."

SECTION 16. Section 571-50, Hawaii Revised Statutes, is amended to read as follows:

"§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 the child 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 584;
- (4) Termination of parental rights proceedings under this chapter;
- (5) Waimano training school and hospital commitment proceedings under chapter [333;] 333F;
- (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 17. Section 607-5, Hawaii Revised Statutes, is amended to read as follows:

"§607-5 Costs; circuit courts. (a) The fees prescribed by the below schedule shall be paid to the clerk of the circuit court as costs of court by the person instituting the action or proceeding, or offering the paper for filing, or causing the document to be issued or the services to be performed in the circuit court; provided that nothing in the schedule shall apply to cases of adults charged with commission of a crime, or to proceedings under section 571-11(1) or (2), or to proceedings under chapter [333] 333F or 334, or to small estates (including decedents' estates and protection of property of minors and persons under disability) when the amount payable is fixed by another statute.

For the purpose of this section, "judgment" includes a decree and any order from which an appeal lies.

SCHEDULE

In the application of this schedule, each case assigned a new number or filed under the number previously assigned to a probate, trust, guardianship, or conservatorship, shall carry a fee for the institution or transfer of the action or proceeding as prescribed by part I, and in addition the fees prescribed by parts II and III unless otherwise provided.

PART I

(b)

Action or proceeding, general:

- (1) Civil action or special proceeding, unless another item in this part I applies \$30
- (2) Appeal to a circuit court \$30
- (3) Transfer of action to circuit court from district court, in addition to district court fees \$20

Trusts:

- (4) Proceeding for (A) appointment of trustee; (B) appointment of successor; (C) resignation of trustee; (D) instructions; (E) approval of investment; (F) approval of sale, mortgage, lease, or other disposition of property; (G) approval of compromise of claim, for each such matter \$15
- (5) Proceeding for (A) removal of trustee; (B) order requiring accounting; (C) invalidation of action taken by trustee; (D) termination of trust, for each such matter \$15
- (6) Accounting, this fee to be paid for each account filed and to include the settlement of the account \$10
- (7) Vesting order no charge under part I
- (8) Allowance of fees of trustees, attorneys, or other fees for services incurred in a proceeding for which a fee has been paid under this section no charge under part I
- (8a) Registration of a trust, or release of registration, under chapter 560 \$3
- (9) Any other proceeding relating to a trust \$15

Guardianship of estate or conservatorship:

- (10) Proceeding for (A) appointment; (B) appointment of successor; (C) resignation; (D) instructions, unless included in one of the foregoing proceedings; (E), (F), (G) approval of any matter listed in (E), (F), or (G) of item (4) in relation to a trust, for each such matter \$15
- (11) Proceeding of the nature listed in (A), (B), (C), or (D) of item (5) in relation to a trust, for each such matter \$15
- (12) Accounting, same as provided by item (6) in relation to a trust ... \$10
- (13) Any other proceeding relating to guardianship of an estate, or a conservatorship no charge under part I

Probate (decedents' estates). These fees include all matters of the nature listed in items (4) to (9), without additional charge:

- (14) Application for appointment of special administrator by order of the court, in addition to fee prescribed by item (15) \$10
- (15) Probate, administration, or ancillary administration, this fee to be paid once only for each decedent's estate \$30
- (15a) Informal probate or appointment proceeding under chapter 560, this fee to be paid instead of the fee prescribed by item (15) \$10
- (15b) Application under chapter 560 for formal testacy proceedings, or for supervised administration, this fee to be paid once only for each decedent's estate as an addition to the fee prescribed by item (15a) \$20

Family court cases:

- (16) Matrimonial action (annulment, divorce, separation, or separate maintenance) \$30
- (17) Adoption \$15
- (18) Guardianship of the person, including all matters of the nature listed in items (4) to (9) \$15
- (19) Termination of parental rights no charge under part I

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- (20) Any other family court proceeding, including without limitation custody proceedings even if in the form of an habeas corpus proceeding.....\$15

(c) PART II

The fees prescribed by this part do not apply to decedents' estates, guardianships, or conservatorships.

Intervention; affirmative relief:

- (21) Intervention \$15
- (22) Answer containing one or more cross-claims, cross-complaints, or counterclaims \$15
- (23) Third-party complaint..... \$15

Motions:

- (24) Motion or other application for: (A) preliminary injunction including temporary restraining order; (B) change of venue; (C) involuntary dismissal, or preliminary hearing of a defense which may lead to involuntary dismissal; (D) judgment on the pleadings; (E) summary judgment; (F) new trial; (G) vacating, altering, or amending judgment, for each such matter, provided that an application in the alternative shall be treated as one matter..... \$15

Writs; garnishee summons. For the issuance of the following:

- (25) Garnishee summons \$10
- (26) Writ of possession, attachment, or execution \$10
- (27) Temporary restraining order or other injunction ... no charge except for the motion
- (28) Any other writ.....\$10

(d) PART III

The fees prescribed by this part apply without exception.

Jury trial:

- (29) Demand for jury trial, including without limitation probate cases, appeals to the circuit court, and cases transferred to the circuit court from the district court, this fee to be paid to the court in which the demand is filed by the party first making the demand \$50
- (30) Remand to district court in cases transferred to circuit court from district court on demand for jury trial, where jury trial is waived and a remand of such cases to district court is allowed \$50

Subpoena:

- (31) Issuance of a subpoena, for each witness to be served..... \$3

Deposition; examination:

- (32) Deposition upon oral examination or written questions, or physical or mental examination, or examination of judgment debtor or other person under section 636-4, to be paid by the party filing the first paper in the matter, for each person whom the party seeks to question or examine \$10

Miscellaneous:

- (33) Filing of notice of appeal to supreme court, to be paid in addition to the deposit of supreme court costs \$30
- (34) Search of records by the clerk \$2
- (35) Making of copy; comparing of copy with original; certification or authentication of notaries..... Fees prescribed by section 92-21
- (36) Certification under seal of copy of pleading or other paper subsequent to the initial filing of the pleading or paper, except record on appeal.....\$1
- (37) Exemplification, instead of item (36)\$2

- (38) Filing of copy of notice of completion of contract, with affidavit of publication\$3
- (39) Filing of initial paper under section 507-43 by person asserting mechanic’s or materialman’s lien (this fee to be additional to the fee prescribed by part I for bringing an action under section 507-47).....\$15
- (40) Filing of any other paper not in a pending proceeding.....\$3
- (41) Printing, publishing, or posting notice; service fees; garnishee fees; mileage charges; or other services actually performed Amounts necessary to cover actual costs or disbursements.”

SECTION 18. Section 327D-26, Hawaii Revised Statutes, is amended to read as follows:

“~~[[§327D-26]]~~ **Effect of multiple documents.** In the event a person has one or more valid declarations executed in accordance with this chapter, and/or one or more valid durable powers of attorney executed pursuant to chapter [560,] 551D, or both, the most recently executed document shall reflect the person’s intent.”

SECTION 19. Section 328K-16, Hawaii Revised Statutes, is repealed.

SECTION 20. Section 329-45, Hawaii Revised Statutes, is amended by amending subsection (a) to read:

“(a) Except as authorized by law, or upon the prescription issued for a legitimate medical purpose by a practitioner acting in the usual course of [his] the practitioner’s professional practice, it is unlawful for any person to knowingly:

- (1) Possess an anabolic steroid;
- (2) Possess any [anabolics] anabolic steroid with intent to distribute;
- (3) Distribute any anabolic steroid; or
- (4) Manufacture, compound, convert, produce, derive, process, or prepare, either directly or indirectly by chemical extraction or independently by means of chemical synthesis, any anabolic steroid.

For the purpose of this section, “distribute” means to sell, transfer, prescribe, administer, give, or deliver to another, or to leave, barter, or exchange with another, or to offer or agree to do the same.”

SECTION 21. Section 342H-1, Hawaii Revised Statutes, is amended by amending the definition of “person” to read as follows:

““Person” means any individual, partnership, firm, association, public or private corporation, federal agency, the State or any of its political subdivisions, trust, estate, or any other legal entity.”

SECTION 22. Section 352D-6, Hawaii Revised Statutes, is amended to read as follows:

“~~[[§352D-6]]~~ **Organizational structure.** The office of youth services shall be composed of such divisions and sections as are deemed necessary by the director to provide:

- (1) Diagnostic evaluation, treatment, and rehabilitation services for all youths referred to services provided by the office or placed in the office’s custody by the family court;

- (2) Supervision and counseling services for youth in shelter or correctional facilities under the office's jurisdiction, including community-based facilities;
- (3) Educational, vocational-educational, and other programs to effectively occupy the time of the youth placed in a facility under the office's jurisdiction which promote the development of self-esteem and useful skills to prepare youths in becoming productive members of the community;
- (4) Continuous program planning, development, and coordination of youth services, including the coordination with other government and private social service agencies that work with youths to ensure that a full-range of programs is available and that such programs are consistent with the policy of this chapter and are not unnecessarily duplicative or conflicting;
- (5) Prevention services to include a comprehensive intake/assessment and information/referral system throughout the State which shall access services to youth and their families;
- (6) A case management system based on the individual needs of youth which shall provide for in-depth client assessment, appropriate service planning, and client advocacy;
- (7) Provide for the implementation of chapter 352, youth correctional facilities and other needed correctional services;
- (8) Facilitate the development of and, when appropriate, provide for training programs for persons offering services to youth at risk;
- (9) Provide for technical assistance and consultation to providers and potential providers;
- (10) Seek, apply for, and encourage the use of all federal funds for youth services and facilitate the coordination of federal, state, and local policies concerning services for youth;
- (11) Prepare and submit an annual report to the governor and the legislature. This report shall include, but not be limited to, a review of the status of youth services within the State, recommendations for priorities for the development and coordination of youth services; and
- (12) Monitor, evaluate, and audit all [grant] grants, subsidies, and purchase of services under chapter 42 which relate to the office of youth services."

SECTION 23. Section 352D-8, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) Beginning July 1, 1991, and terminating on June 30, 1992, there shall be established within the office of youth services an oversight committee, consisting of seven members. The committee shall include five members who represent providers of youth services and two lay citizens. All members shall have knowledge and experience regarding the needs of youth. All members shall be appointed by the governor as provided in section 26-34. The director shall serve as executive secretary of the committee. The oversight committee shall have the responsibility of investigating and reporting misfeasance and malfeasance within the youth service system, inquiring into areas of concern, and conducting periodic audit evaluations of the youth service system to ascertain its effectiveness and compliance with established responsibilities. This responsibility shall not include, however, services which are provided directly by the office of youth services.

It shall be the duty of the oversight committee to conduct regular, periodic, unannounced inspections of state-operated children's institutions and facilities and to review the reports of the inspections of the [state fire marshal] county fire chief and the department of health and any agencies which accredit such institutions and facilities."

SECTION 24. Section 386-207, Hawaii Revised Statutes, is amended by amending subsection (e) to read as follows:

"(e) The insurance commissioner shall proceed against an insolvent group in the same manner as the insurance commissioner would proceed against an insolvent domestic insurer in this State as prescribed in [sections 431-651 to 431-686.] chapter 431, article 15. The insurance commissioner shall have the same powers and limitations in the proceedings as are provided under those laws, except as otherwise provided in this chapter."

SECTION 25. Section 387-2, Hawaii Revised Statutes, is amended to read as follows:

"**§387-2 Minimum wages.** Except as provided in section 387-9 and this paragraph, every employer shall pay to each employee employed by the employer wages at the rate of not less than: \$2.65 per hour beginning July 1, 1978; \$2.90 per hour beginning July 1, 1979; \$3.10 per hour beginning July 1, 1980; \$3.35 per hour beginning July 1, 1981; and] \$3.85 per hour beginning January 1, 1988. The hourly wage of a tipped employee may be deemed to be increased on account of tips if the employee is paid not less than twenty cents below the applicable minimum wage by the employee's employer and the combined amount the employee receives from the employee's employer and in tips is at least fifty cents more than the applicable minimum wage."

SECTION 26. Section 421H-6, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) At the request of any party, any dispute concerning or involving one or more stockholders and a limited-equity housing corporation, its board of directors, managing agent, or one or more other stockholders relating to the interpretation, application or enforcement of [chapter] this chapter or the corporation's charter of incorporation, bylaws, or administrative rules adopted in accordance with its bylaws shall be submitted to arbitration. The arbitration shall be conducted, unless otherwise agreed by the parties, in accordance with the rules adopted by the real estate commission and the provisions of chapter 658; provided that the Horizontal Property Regime Rules on Arbitration of Disputes of the American Arbitration Association shall be used until the commission adopts its rules; provided further that where any arbitration rule conflicts with chapter 658, chapter 658 shall prevail; provided further that notwithstanding any rule to the contrary, the arbitrator shall conduct the proceedings in a manner which affords substantial justice to all parties; provided further that the proceedings shall be concluded ninety days after the commencement of the arbitration unless extended by mutual consent of the parties involved and their counsel. The arbitrator shall be bound by rules of substantive law and shall not be bound by rules of evidence, whether or not set out by statute, except for provisions relating to privileged communications. The arbitrator shall permit discovery as provided for in the Hawaii rules of civil procedure; provided that the arbitrator may restrict the scope of such discovery for good cause to avoid excessive delay and

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costs to the parties or the arbitrator may refer any matter involving discovery to the circuit court for disposition in accordance with the Hawaii rules of civil procedure then in effect.”

SECTION 27. Section 425D-1106, Hawaii Revised Statutes, is amended by amending the title to read as follows:

“**[[[§425D-1106]]] Rules for cases not provided for in this [part.] chapter.**”

SECTION 28. Section 431:10A-522, Hawaii Revised Statutes, is amended to read as follows:

“**[[[§431:10A-522]]] Prohibition.** No insurance policy may be advertised, marketed, or offered as long-term care or nursing home insurance unless it complies with this part. A policy which is expressly or implicitly advertised, marketed, or **[[[offered]]]** as long-term care insurance shall meet the requirements of this [chapter.] **part.** A policy which is not expressly or implicitly advertised, marketed, or offered as long-term care insurance need not meet the requirements of this [chapter.] **part.**”

SECTION 29. Section 454D-2, Hawaii Revised Statutes, is amended to read as follows:

“**§454D-2 Exemptions.** This chapter shall not apply to the following persons:

- (1) Real estate brokers and salesmen licensed under chapter 467 and residing in the State who provide collection and mortgage services where the services are limited to those incident to a particular real estate transaction, or where the broker, or the salesman’s broker, has an errors and [commissions] **omissions** insurance policy in effect which has, as part of the insurance policy, coverage for activities relating to collection and mortgage services and where a copy of the insurance policy is filed annually with the department of commerce and consumer affairs;
- (2) Banks, collection agencies, credit unions, escrow depositories, financial services loan companies, savings and loan associations, and trust companies authorized to do business in the State;
- (3) Any financial institution which is an approved lender for programs administered by the United States Department of Housing and Urban Development; provided that the financial institution files annually with the department of commerce and consumer affairs satisfactory proof of that status;
- (4) Persons performing the services normally rendered by servicing agents under order of any court; and
- (5) Persons performing the services normally rendered by servicing agents, but with respect to fewer than five agreements at any one time that would otherwise come within the purview of this chapter.”

SECTION 30. Section 463E-5, Hawaii Revised Statutes, is amended to read as follows:

“**§463E-5 Fees; expenses.** No applicant shall be examined under this chapter until the applicant has paid to the board of medical examiners application, examination, and license fees. The board may provide separate fees for

licensure by endorsement and for limited and temporary licenses. Every person holding a license under this chapter shall reregister with the board no later than January 31[,] of each even-numbered year, and for registration shall pay a renewal fee. At the time of reregistration, the licensee shall provide written proof of a minimum of forty hours of postgraduate work or continuing education of podiatric medicine taken during the previous biennium. Failure to reregister and present this proof shall constitute a forfeiture of the license, which may be restored only upon written application therefor and payment to the board of a restoration fee. A license that has been forfeited for one renewal term shall be automatically terminated and cannot be restored, and a new application for licensure shall be required. All fees shall be as provided in rules adopted by the director of commerce and consumer affairs pursuant to chapter 91 and shall be deposited with the director of finance to the credit of the general fund.”

SECTION 31. Section 466-11.5, Hawaii Revised Statutes, is amended to read as follows:

“**§466-11.5 Single act evidence of practice.** In any action brought under this [section,] chapter, evidence of the commission of a single act prohibited by this chapter shall be sufficient to justify a penalty, injunction, restraining order, or conviction, respectively, without evidence of a general course of conduct.”

SECTION 32. Section 467-14, Hawaii Revised Statutes, is amended to read as follows:

“**§467-14 Revocation and suspension of licenses.** The real estate commission may revoke any license issued under this chapter, or suspend the right of the licensee to use the license, for any of the following causes:

- (1) Making any misrepresentation concerning any real estate transaction;
- (2) Making any false promises concerning any real estate transaction of a character likely to mislead another;
- (3) Pursuing a continued and flagrant course of misrepresentation, or making of false promises through advertising or otherwise;
- (4) Without first having obtained the written consent to do so of both parties involved in any real estate transaction, acting for both the parties in connection with the transaction, or collecting or attempting to collect commissions or other compensation for the licensee’s services from both of such parties;
- (5) When the licensee, being a real estate salesperson, accepts any commission or other compensation for the performance of any of the acts enumerated in the definition set forth in section 467-1 of real estate salesperson from any person, copartnership, or corporation other than the salesperson’s employer or the broker with whom the salesperson associates or, being a real estate broker or salesperson, compensates one not licensed under this chapter to perform any such act;
- (6) When the licensee, being a real estate salesperson, acts or attempts to act as a real estate broker or represents, or attempts to represent, any real estate broker other than the salesperson’s employer or the broker with whom the salesperson is associated;
- (7) Failing, within a reasonable time, to account for any moneys belonging to others which may be in the possession or under the control of the licensee;

- (8) Any other conduct constituting fraudulent or dishonest dealings;
- (9) When the licensee, being a copartnership, permits any member of the copartnership who does not hold a real estate broker's license to actively participate in the real estate brokerage business thereof or permits any employee thereof who does not hold a real estate salesperson's license to act as a real estate salesperson therefor;
- (10) When the licensee, being a corporation, permits any officer or employee of the corporation who does not hold a real estate broker's license to have the direct management of the real estate brokerage business thereof or permits any officer or employee thereof who does not hold a real estate salesperson's license to act as a real estate salesperson therefor;
- (11) When the licensee, being a real estate salesperson, fails to file with the commission a written statement setting forth the name of the real estate broker by whom the licensee is employed or with whom the licensee is associated;
- (12) When the licensee fails to obtain on the contract between the parties to the real estate transaction confirmation of who the broker represents;
- (13) Violating this chapter, chapter 484, 514A, 514E, 515; section 516-71 or 516D-11; or the rules adopted pursuant thereto;
- (14) Splitting fees with or otherwise compensating others not licensed hereunder for referring business; provided that notwithstanding paragraph (5), a licensed broker may pay a commission to:
 - (A) A licensed broker of another state, territory, or possession of the United States if such broker does not conduct in this State any of the negotiations for which a commission is paid;
 - (B) A broker lawfully engaged in brokerage activity under the laws of a foreign country if such broker does not conduct in this State any of the negotiations for which a commission is paid; or
 - (C) A travel agency that in the course of business as a travel agency or sales representative, arranges for compensation the rental of transient vacation rental; provided that for purposes of this paragraph "travel agency" means any sole proprietorship, organization, trust, group, association, partnership, corporation, society, or combination of such, which for compensation or other consideration, acts or attempts to act as an intermediary between a person seeking to purchase travel services and any person seeking to sell travel services, including an air or ocean carrier;
- (15) Commingling the money or other property of the licensee's principal with the licensee's own;
- (16) Converting other people's moneys to the licensee's own use;
- (17) The licensee is adjudicated insane or incompetent; and
- (18) Failing to ascertain and disclose all material facts concerning every property for which the licensee accepts the agency, so that the licensee may fulfill the licensee's obligation to avoid error, misrepresentation, or concealment of material facts; provided that for the purposes of this paragraph, the fact that an occupant has AIDS or AIDS Related Complex (ARC) or has been tested for HIV (human immunodeficiency virus) infection shall not be considered a material fact; and

- (19) When the licensee obtains or causes to be obtained, directly or indirectly, any licensing examination or licensing examination question for the purpose of disseminating the information to future takers of the examination for the benefit or gain of the licensee.

Disciplinary action may be taken by the commission whether the licensee is acting as a real estate broker, or salesperson, or on the licensee's own behalf.

No [licensee] license shall be suspended for longer than two years and no person whose license has been revoked shall be eligible to apply for a new license until the expiration of two years."

SECTION 33. Section 521-74.5, Hawaii Revised Statutes, is amended to read as follows:

"[§521-74.5] Recovery of possession limited. The landlord shall not recover or take possession of a dwelling unit by the wilful interruption or diminution of running water, hot water, or electric, gas, or other essential service to the tenant contrary to the rental agreement or section 521-42, except in case of abandonment or surrender. A landlord who engages in this act shall be deemed to have engaged in an unfair method of competition or unfair and deceptive acts or practices in the conduct of any trade or commerce within the meaning of section 480-2; provided that in addition to the penalties available under section [480-2.] 480-3.1, there shall also be minimum damages of three times the monthly rent or \$1,000, whichever is greater."

SECTION 34. Section 571-62, Hawaii Revised Statutes, is amended to read as follows:

"§571-62 Hearing; investigation and report. Every petition under section 571-61 shall be filed in duplicate and the clerk of the court in which the same is filed shall immediately forward a copy of the petition, and of the notice of the time and place of the hearing thereof, to the director of the department of human services [or to the nearest county administrator of the department]. The director [or any such county administrator] shall be permitted to appear and be heard at any such hearing on behalf of the petitioner or the child or minor or the State and shall have the same right of appeal as any party to the proceeding. The attorney general shall, at the request of the director, represent and defend the interests of the department in any such proceeding. Upon the request of any petitioning parent or parents or upon the request of the department of human services, any child-placing organization, approved by the department under section 346-17, shall be permitted to appear together with or in place of the department.

If any petitioner or the department or any such child-placing organization approved by the department or any parent whose rights are sought to be terminated requests of the court a continuance of the hearing for the purpose of permitting an objective investigation of the circumstances of the minor and the parent or parents concerned, no judgment of termination shall be entered prior to the expiration of thirty days from the date of the request or until the earlier date of the filing of a report of the investigation. If the petition has been filed by or at the request of the department of human services or any such child-placing organization, or, in the event that a continuance has been requested as above provided, the department of human services shall prepare or procure and file in the termination proceeding a report of the facts disclosed as a result of investigation of the circumstances of the minor and the parent or parents whose rights are sought to be terminated. The court may, for good cause, grant extensions of the time within which such report must be filed. Any such report shall be incorpo-

rated in the record of the proceeding and shall be considered by the court in determining the issues presented by the petition. The court may, if it deems such action necessary, appoint a guardian ad litem to represent and defend the interests of the child or minor or of any minor parent.”

SECTION 35. Section 578-8, Hawaii Revised Statutes, is amended to read as follows:

“§578-8 Hearing; investigation; decree. No decree of adoption shall be entered unless a hearing has been held at which the petitioner or petitioners, and any legal parent married to a petitioner, and any individual whose consent is required, have personally appeared before the court, unless expressly excused by the court. After considering the petition and such evidence as the petitioners and any other properly interested person may wish to present, the court may enter a decree of adoption if it is satisfied (1) that the individual is adoptable under sections 578-1 and 578-2, (2) that the individual is physically, mentally, and otherwise suitable for adoption by the petitioners, (3) that the petitioners are fit and proper persons and financially able to give the individual a proper home and education, if the individual is a child, and (4) that the adoption will be for the best interests of the individual, which decree shall take effect upon such date as may be fixed therein by the court, such date to be not earlier than the date of the filing of the petition and not later than six months after the date of the entry of the decree.

Before entering the decree, the court shall notify the director of human services [or the nearest county administrator of the department of human services] of the pendency of such petition for adoption and allow a reasonable time for the director [or such county administrator] to make such investigation as the director [or county administrator] may deem proper as to the fitness of the petitioners to adopt the individual, however, the physical disability of the petitioners shall not of itself be determinant of unfitness for purposes of this section, and as to whether the best interest of the individual will be subserved by the adoption; provided that the court may, if it finds that the best interests of the individual to be adopted so require, by written order waive the requirement for notification and investigation above set forth, and enter its decree solely on the basis of the evidence adduced at the hearing. The director shall have the right to intervene in any adoption proceeding for the purpose of protecting the interests of the individual to be adopted or of any legal parent of the individual, and shall have the same rights of appeal as any party to the proceeding. The attorney general, upon the request of the director, shall represent the director in any such proceeding. The director, when notified as above set forth, or when the director has intervened without notification, shall make a report to the court within the time required, reporting the facts disclosed and the director’s recommendation; provided that the director, if the director determines that the best interests of the individual to be adopted will be served thereby, may refer any such notification to a child placing organization approved by the department under section 346-17, and the report and recommendation of such organization, when forwarded by the director, shall be considered by the court in lieu of a report and recommendation by the director. If the court determines that any such report discloses facts adverse to the petitioners or indicates that the best interests of the individual to be adopted will not be subserved by the proposed adoption, it shall thereupon give notice of the determination to the petitioners and afford them a reasonable opportunity to rebut the report.”

SECTION 36. Section 608-1.5, Hawaii Revised Statutes, is amended by amending the title to read as follows:

“[[[§608-1.5]] [Judiciary] Judicial salary commission.”

SECTION 37. Section 803-46, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) Each application for an order authorizing or approving the interception of a wire, oral, or electronic communication shall be made in writing upon oath or affirmation to a designated circuit court and shall state the applicant’s authority to make such application. The terms “designated circuit,” “designated judge,” “authorized circuit court,” “designated circuit court,” “issuing judge,” and the “court” as used in this section shall not only mean a circuit court judge specifically designated by the chief justice of Hawaii supreme court, but shall also mean any circuit court judge or district court judge if no circuit court judge has been designated by the chief justice, or is otherwise unavailable. Each application shall include the following information:

- (1) The identity of the investigative or law enforcement officer(s) requesting the application, the official(s) applying for an order;
- (2) A full and complete statement of the facts and circumstances relied upon by the applicant, to justify the applicant’s belief that an order should be issued, including (A) details as to the particular offense that has been, is being, or is about to be committed, (B) a particular description of the nature and location of the facilities from which or the place where the communication is to be intercepted, (C) a particular description of the type of communications sought to be intercepted, (D) the identity or descriptions of all persons, if known, committing the offense and whose communications are to be intercepted, and where appropriate (E) the involvement of organized crime;
- (3) A full and complete statement of the facts concerning how the interception is to be accomplished, and if physical entry upon private premises is necessary, facts supporting such necessity;
- (4) A full and complete statement of facts as to whether or not other investigative procedures have been tried and failed or why they reasonably appear to be unlikely to succeed if tried or to be too dangerous;
- (5) A statement of facts indicating the period of time for which the interception is required to be maintained. If the nature of the investigation is such that the authorization for interception should not automatically terminate when the described type of communication has been obtained, a particular description of facts establishing probable cause to believe that additional communications of the same type will occur thereafter;
- (6) A full and complete statement of the facts concerning all previous applications known to the individual authorizing and making the application, made to any court for authorization to intercept, or for approval of interceptions of, wire, oral, or electronic communications involving any of the same persons, facilities, or places specified in the application, and the action taken by the court on each such application; and

- (7) Where the application is for the extension of an order, a statement setting forth the results thus far obtained from the interception, or a reasonable explanation of the failure to obtain such results.”

SECTION 38. Section 803-46, Hawaii Revised Statutes, is amended by amending subsection (i) to read as follows:

- “(i) (1) Any aggrieved person in any trial, hearing, or proceeding in or before any court, department, officer, agency, regulatory body, or other authority of this State, or a political subdivision thereof, may move to suppress the content of any intercepted wire, oral, or electronic communication, or evidence derived therefrom, on the grounds that:
- (A) The communication was unlawfully intercepted;
 - (B) The order of authorization or approval under which it was intercepted is insufficient on its face; or
 - (C) The interception was not made in conformity with the order of authorization or approval.

Such motion shall be made before the trial, hearing, or proceedings unless there was no opportunity to make such motion or the person was not aware of the grounds of the motion. If the motion is granted, the contents of the intercepted wire [or wireless], oral, or electronic communication, or evidence derived therefrom, shall be treated as having been obtained in violation of this part. The court, or other official before whom the motion is made, upon the filing of such motion by the aggrieved person, shall make available to the aggrieved person or the aggrieved person’s counsel for inspection portions of the recording which contain intercepted communications of the defendant or evidence derived therefrom, the applications, orders, transcript of hearing, and such additional evidence as the court determines to be in the interest of justice.

- (2) In addition to any other right to appeal the State shall have the right to appeal:
- (A) From an order granting a motion to suppress made under paragraph (1) of this subsection if the attorney general or prosecuting attorney, or their designated representatives, shall certify to the court or other official granting such motion that the appeal shall be taken within thirty days after the date the order of suppression was entered and shall be diligently prosecuted as in the case of other interlocutory appeals or under such rules as the supreme court may adopt;
 - (B) From an order denying an application for an order of authorization or approval, and such an appeal shall be in camera and in preference to all other pending appeals in accordance with rules promulgated by the supreme court.”

SECTION 39. Section 804-4, Hawaii Revised Statutes, is amended to read as follows:

“§804-4 **When a matter of right.** If the charge is for an offense for which bail is allowable under section 804-3, the defendant may be admitted to bail before conviction as a matter of right. The right to bail shall continue after conviction of a misdemeanor, petty misdemeanor, or violation, and release on bail may continue, in the discretion of the court after conviction of a felony until

the final determination of any motion for a new trial, appeal, habeas corpus, or other proceedings which are made, taken, issued, or allowed for the purpose of securing a review of the rulings, verdict, judgment, sentence, or other proceedings of any court or jury in or by which the defendant has been arraigned, tried, convicted, or sentenced; except that no bail shall be allowed after conviction and prior to sentencing in cases where bail was not available under section 804-3, or where bail was denied or revoked before conviction; and provided further that no bail shall be allowed pending appeal of a felony conviction where a sentence of imprisonment has been imposed. The court shall order that a person who has been found guilty of an offense and sentenced to a term of imprisonment, and who has filed an appeal or a petition for a writ of certiorari, be detained, unless the court finds:

- (1) By clear and convincing evidence that the person is not likely to flee or pose a danger to the safety of any other person or the community if released; and
- (2) That the appeal is not for purpose of delay and raises a substantial question of law or fact likely to result in reversal or an order for a new trial.

If the court makes such findings, [he] the court shall order the release of the person in accordance with the provisions of section 804-7.1. No defendant entitled to bail, whether bailed or not, shall, without the defendant's written consent, be subject to the operation of any sentence passed upon the defendant while any proceedings to procure a review of any action of the trial court or jury in the premises are pending and undetermined, except as provided in section 641-14(a)."

SECTION 40. Act 266, Sessions Laws of Hawaii 1989, is amended by amending the prefatory language in section 2 to read as follows:

"SECTION 2. Chapter 408, Hawaii Revised Statutes, is amended by amending the title and sections 408-1, 408-2, and 408-2.1 to read as follows:"

SECTION 41. This Act shall be amended to conform to all other acts passed by the legislature during this Regular Session of 1990, whether enacted before or after the effective date of this Act, unless such other acts specifically provided otherwise.

SECTION 42. Statutory material to be repealed is bracketed. New statutory material is underscored.¹

SECTION 43. This Act shall take effect on July 1, 1990.

(Approved April 23, 1990.)

Note

1. Edited pursuant to HRS §23G-16.5.