

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. Chapter 490, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

“§490: Dishonored check; action for treble damages; procedures.

(a) In any action against a person who makes any check, draft, or order for the payment of money which has been dishonored for lack of funds or credit to pay the same, or because the maker has no account with the drawee, the plaintiff may recover from the defendant damages in an amount equal to \$100 or triple the amount for which the check, draft, or order is drawn, whichever is greater; provided that damages recovered under this section shall not exceed by more than \$500 the amount of the check, draft, or order, and may be awarded only if:

- (1) The plaintiff made written demand of the defendant for payment of the amount of the check, draft, or order not less than ten days before commencing the action; and
- (2) The defendant failed to tender to the plaintiff, prior to commencement of the action, an amount of money not less than the amount demanded.

The written demand shall include notice that if the money is not paid within ten days, triple damages may be incurred by the defendant. The plaintiff shall provide the defendant written notice of demand for payment by certified mail, restricted delivery, at the last known address of the defendant with a request for a return receipt and marked “deliver to addressee only”.

(b) Subsequent to the commencement of the action but prior to the hearing, the defendant may tender to the plaintiff as satisfaction of the claim, an amount of money equal to the sum of the amount of the check and the incurred court and service costs.

(c) If the court or jury determines that the failure of the defendant to satisfy the dishonored check was due to economic hardship, the court or jury may waive all or part of the statutory damages; provided the court or jury shall render judgment against defendant for not less than the amount of the dishonored check plus incurred court and service costs.”

SECTION 2. Section 127-7, Hawaii Revised Statutes, is amended to read as follows:

“§127-7 Compensation, rights, privileges, and immunities. No person engaged in actual disaster relief pursuant to this chapter, including a volunteer whose services are accepted by any person authorized by the director of disaster relief, shall be liable, civilly or criminally, for any act or acts done by the person in pursuance of the person’s duty; provided that nothing herein shall preclude recovery by any person for injury or damage sustained from the operation of any vehicle which may be insured under section [41-6,] 41D-8, and the director is hereby authorized to insure vehicles owned by the State or in the custody and use

of the disaster relief agency.

All persons, including volunteers whose services have been accepted by persons authorized by the director, shall, while engaged in the performance of duty pursuant to this chapter, including duty performed during periods of training, be deemed state employees and shall have the powers, duties, rights, and privileges of employees in the performance of their duty. All persons who may otherwise be employees of the State or of any political subdivision shall continue to receive the compensation they would otherwise receive; and shall for the purposes of the employees retirement system, or any applicable workers' compensation law be deemed to be engaged in the performance of their ordinary duties. All other persons when engaged in actual disaster relief, including volunteers whose services have been accepted by persons authorized by the director, shall be entitled to compensation from the State at the rate paid to jurors; provided this provision shall not be construed to prohibit the contracting for medical or other technical services at higher rates of compensation. Further, in case of injury or death arising out of and in the performance of duty pursuant to this chapter, including duty performed during periods of training, such persons or their dependents shall be entitled to all of the benefits provided in chapter 386, including medical services and supplies; provided that for the purposes of the benefits, average weekly wages shall be computed upon the basis of earnings from the usual employment of such persons. The cost thereof shall be a charge upon the state insurance fund. Nothing herein shall affect the right of any person to receive any benefits or compensation under any act of Congress."

SECTION 3. Section 128-18, Hawaii Revised Statutes, is amended to read as follows:

"§128-18 Immunities; rights. Neither the State nor any political subdivision, nor, except in cases of wilful misconduct, the persons engaged in civil defense functions pursuant to this chapter (including volunteers whose services are accepted by any authorized person), shall be liable for the death of or injury to persons, or for damage to property, as a result of any act or omission in the course of the employment or duties, and no act or omission shall be imputed to the owner of any vehicle by reason of the owner's ownership thereof; provided that nothing herein shall preclude recovery by any person for injury or damage sustained from the operation of any vehicle which may be insured under section [41-6] 41D-8 to the extent of the insurance, and unless specifically provided, insurance effected under section [41-6] 41D-8 shall not include coverage of such risk during a civil defense emergency period. The governor may insure vehicles owned by the State or in the custody and use of the civil defense agency, but insurance effected under section [41-6] 41D-8 on vehicles used for purposes other than civil defense need not necessarily include coverage of the insured vehicle against the risk incurred or which would be incurred under this chapter as a result of the use of the insured vehicle for civil defense."

SECTION 4. Section 134-51, Hawaii Revised Statutes, is amended by amending its title to read as follows:

"§134-51 Deadly weapons; prohibitions; penalty."

SECTION 5. Section 174C-6, Hawaii Revised Statutes, is amended by amending its title and subsection (a) to read as follows:

“[§174C-6] Deputy to the chairperson of the commission [for] on water resource management. (a) There shall be a first deputy to the chairperson of the commission [for] on water resource management (“deputy for water resource management”) who shall be in addition to any other first deputy to the chairperson as the chairperson of the board of land and natural resources. The deputy shall have experience in the area of water resources and shall be appointed by the chairperson with the approval of a majority of the commission.”

SECTION 6. Section 398-3, Hawaii Revised Statutes, is amended by amending subsection (d) to read as follows:

“(d) If unpaid leave under this [subsection] chapter conflicts with the unreduced compensation requirement for exempt employees under the federal Fair Labor Standards Act, an employer may require the employee to make up the leave within the same pay period.”

SECTION 7. Section 408-15, Hawaii Revised Statutes, is amended by amending subsection (l) to read as follows:

“(l) Open-end loan. A licensee shall also have power to make open-end loans subject to the following requirements:

- (1) A licensee may not contract for and receive interest on an open-end loan in excess of the higher of that set forth in subsection (c) or (d).
- (2) A licensee shall not compound interest by adding any unpaid interest authorized by this subsection to the unpaid principal balance of the borrower's open-end loan account; provided that the unpaid principal balance may include charges other than interest and late charges.
- (3) Interest authorized by this subsection shall be deemed not to exceed the maximum interest permitted by this section if such interest is computed for each billing cycle at an annual rate not to exceed that permitted in paragraph (1) [of this subsection] by any of the following methods:
 - (A) By converting such annual rate to a daily rate and multiplying such daily rate by each daily unpaid principal balance of the open-end loan account in the billing cycle, and then adding the products of all such multiplications (in which case the daily rate is determined by dividing the authorized annual rate by 365); or
 - (B) By multiplying such annual rate by the average daily unpaid principal balance of the open-end loan account in the billing cycle and then dividing the product so obtained by 365 and then multiplying the quotient by the number of days in the billing cycle (in which case the average daily unpaid principal balance is the sum of the amount unpaid each day during the cycle divided by the number of days in the cycle); or
 - (C) By converting such annual rate to a daily rate and multiplying such daily rate by the average daily unpaid principal balance of the open-end loan account in the billing cycle, and then multiplying the product so obtained by the number of days in the billing cycle (in which case the daily rate is determined by dividing the authorized annual rate by 365, and the average daily unpaid principal balance is the sum of the amounts unpaid for all days during the cycle divided by the number of

- days in the cycle); or
- (D) By converting such annual rate to a daily rate by the method set forth in subparagraph (A) and multiplying such daily rate times the sum of all the daily unpaid principal balances of the open-end loan account during the billing cycle.
- (4) For all of the above methods of computation, the unpaid principal balance of any day shall be determined by adding to any balance unpaid as of the beginning of that day all advances and other permissible amounts (other than interest) charged to the borrower and deducting all payments and other credits made or received that day.
- (5) A licensee may increase the rate of interest being charged on the unpaid principal balance of the borrower's open-end loans, provided that with respect to open-end loans which are subject to the Truth in Lending Act (A) that the licensee shall mail or deliver written notice of the change to the borrower at least fifteen days prior to the effective date of the increase, unless the increase has been agreed to by the borrower, or the rate is increased as a result of the borrower's delinquency or default, and (B) that the borrower may choose to terminate the open-end loan account, and the licensee will allow the borrower to repay, under the existing open-end loan account terms, the unpaid balance incurred prior to the effective date of the increase, unless the borrower incurs additional debt on or after that date or otherwise agrees to the increase.
- (6) The borrower may pay all or any part of the unpaid balance in the borrower's open-end loan account, or the borrower may pay the unpaid balance in periodic installments subject to minimum payment requirements, date of maturity, and other conditions as determined by the licensee and set forth in the contract.
- (7) A licensee may charge, contract for, and receive the interest, fees, and charges permitted under subsections (c), (e), and (j) or subsections (d) and (e).
- (8) If credit life or disability insurance is provided, the additional charge for credit life insurance or credit disability insurance shall be calculated in each billing cycle by applying the current monthly premium rate for such insurance as such rate may be approved by the insurance commissioner pursuant to article 10B of chapter [435.] 431, to the entire outstanding balances in the borrower's open-end loan account, or so much thereof as the insurance covers using any of the methods specified in this subsection for the calculation of loan interest. A licensee shall not be responsible for advancing premiums for credit life or disability insurance on a borrower who is delinquent in the making of the required minimum payments on the loan if one or more of such payments is past due for a period of ninety days or more; provided that the licensee shall advance to the insurer the amounts required to keep such insurance, if provided, in force during such ninety-day period, which amounts may be debited to the borrower's open-end loan account.
- (9) A licensee, until the open-end loan account is terminated, may retain any security interest in real or personal property given to secure the open-end loan account. Upon such termination the licensee shall, within ten business days following receipt of written demand by the borrower, release the mortgage, security interest, pledge, or other security for the open-end loan. For the purposes of this paragraph,

termination of the open-end loan account means the cancellation, rescission, or other cessation of the open-end loan account by mutual agreement where the borrower has paid all amounts owed on the open-end loan account and the borrower has complied with all of the terms of the open-end loan agreement. Nothing in this paragraph shall preclude any licensee from exercising any other rights the licensee has to or in the security for open-end loans in the event of the borrower's default."

SECTION 8. Section 411-2, Hawaii Revised Statutes, is amended by amending the definition of "state-chartered financial institution in danger of failing" to read as follows:

"State-chartered financial institution in danger of failing" means a state-chartered bank or financial services loan company, as those terms are defined in this chapter that:

- (1) Is not likely to be able to meet the demands of its depositors or its investment or thrift certificate holders or pay its obligations in the normal course of business, and there is no reasonable prospect that it will be able to meet such demands or pay such obligations; or
- (2) Has incurred or is likely to incur losses that will deplete all or substantially all of its capital and there is no reasonable prospect for the replenishment of the institution's capital; or
- (3) Is insolvent as defined in section [403-6] 403-2 as that section now exists or as it may be recodified, amended, or renumbered; or
- (4) Is an institution whose capital is impaired as defined by sections 403-161 and 403-162; or
- (5) Is an institution which the commissioner has determined to be suffering from severe financial conditions and circumstances which threaten the future financial stability of the institution and will require the financial assistance of the FDIC to facilitate an acquisition of its stock, an acquisition of its assets and assumption of its liabilities, or its merger with another corporation; or
- (6) Is an institution which has requested or agreed in a cease and desist order or similar order that the provisions of this chapter can be applied."

SECTION 9. Section 437B-23, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

"(b) The certification program shall provide for issuing a certificate to mechanics generally skilled in the repair of motor vehicles and to mechanics who specialize in certain areas of motor vehicle repair. A person may be certified as being generally skilled in the repair of motor vehicles, specially skilled in one or more areas of motor vehicle repair, or both generally and specially skilled. Each area shall be separately tested and certified. The program shall provide for apprenticeship leading to certification as a mechanic. The program may be an apprenticeship program registered with the department of labor and industrial relations in accordance with chapter 372. Nothing in this section or chapter shall prevent a student in a course leading to certification from repairing motor vehicles so long as the student is supervised by a mechanic."

SECTION 10. Section 460J-16, Hawaii Revised Statutes, is amended by

amending subsection (c) to read as follows:

“(c) In all proceedings before it, the board and each member thereof shall have the same powers respecting administering oaths, compelling the attendance of witnesses, and the production of documentary evidence, and examining witnesses as are possessed by circuit judges at chambers. In case of disobedience by any person of any order of the board, or any member thereof, or of any subpoena issued by it, or a member, or the refusal of any witness to testify to any matter regarding which the witness may be questioned lawfully, any circuit judge, on application by the board, or a member thereof, shall compel obedience as in the case of disobedience of the requirements of a subpoena issued by a circuit court, or a refusal to testify therein.”

SECTION 11. Section 485-14.5, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) The exemption provided under [the] this section shall be limited to the sale of variable annuities and other variable insurance products. The sale of any other security shall constitute a violation of this chapter. The commissioner retains full powers to inspect the records of any dealer pursuant to section 485-16.”

SECTION 12. Section 502-31, Hawaii Revised Statutes, is amended to read as follows:

“**§502-31 Recording, method.** The registrar shall make or cause to be made an entire literal copy of all instruments required to be recorded in the registrar’s office, and the registrar, the registrar’s deputy, or clerk shall certify its correspondence with the original, after which the registrar, the registrar’s deputy, or clerk shall certify upon the exterior, or indorse upon the recorded instrument, the date of its registry and the document number.

The registrar, for purposes of the general indexes of the bureau of conveyances, shall use the names of the parties as they first appear in the recorded instrument. All names of individual signatories shall be typewritten, stamped or printed beneath all signatures.

The registrar or the registrar’s deputy may refuse to accept for record any document of a size larger than eight and one-half inches by fourteen inches, or which contains a schedule or inventory sheet in excess of such size.

This [paragraph] section shall apply to all instruments presented for recording in the bureau of conveyances, unless otherwise provided by rules established by the department of land and natural resources, pursuant to chapter 91.

On all instruments to be recorded the top three and one-half inches of space of the first page shall be reserved for recording information for the assistant registrar on the left half of such space, and for the registrar of conveyances on the right half of such space. The following one inch of space shall be reserved for information showing to whom the document should be returned. If an instrument consists of more than one page, it shall be stapled once in the upper left corner. The registrar may refuse to accept all instruments, papers, or notices presented for recordation that will not reproduce legibly under photographic or electrostatic methods.”

SECTION 13. Section 584-9, Hawaii Revised Statutes, is amended by amending subsections (b) and (c) to read as follows:

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“(b) If it appears to the satisfaction of the court that [a man] an alleged, known, or presumed [to be the father] parent of the child is a minor, the court shall cause notice of the pendency of the proceedings and copies of the pleadings on file to be served upon the legal parents or guardian of the minor [and] as parties. The court may appoint a guardian ad litem to represent the minor in the proceedings. If the legal parents or guardian of any such minor cannot be found, the notice may be served in such manner as the court may direct pursuant to sections 634-21 to 634-24. The court may align the parties.

(c) The county attorney or corporation counsel, upon request of the child support enforcement agency, shall represent the child’s custodial parent, or the custodial parent’s personal representative or parent if the custodial parent has died, or any agency authorized to seek the determination and establishment of paternity or maternity under chapter [346,] 576D, if an application for services is made. Fees may be charged of the applicant as provided for by [the provisions of] chapter [346.] 576D.”

SECTION 14. Act 321, Session Laws of Hawaii 1991, is amended by amending the prefatory language in section 19 to read as follows:

“SECTION 19. Section 327D-24, Hawaii Revised Statutes, is [repealed:] amended to read as follows:”

SECTION 15. This Act shall be amended to conform to all other acts passed by the legislature during this Regular Session of 1992, whether enacted before or after the effective date of this Act, unless the other acts specifically provided otherwise.

SECTION 16. Statutory material to be repealed is bracketed. New statutory material is underscored.¹

SECTION 17. This Act shall take effect upon its approval; provided that section 14 shall take effect retroactive to July 1, 1991.

(Approved May 27, 1992.)

Note

1. Edited pursuant to HRS §23G-16.5.