

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 and References, Clarifying Language, and Deleting Obsolete or Unnecessary Provisions.

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

SECTION 1. Section 26-6, Hawaii Revised Statutes, is amended to read as follows:

**“§26-6 Department of accounting and general services.** (a) The department of accounting and general services shall be headed by a single executive to be known as the comptroller.

(b) The department shall:

- (1) Preaudit and conduct after-the-fact audits of the financial accounts of all state departments to determine the legality of expenditures and the accuracy of accounts;
- (2) Report to the governor and to each regular session of the legislature as to the finances of each department of the State;
- (3) Administer the state risk management program;
- (4) Establish and manage motor pools;
- (5) Manage the preservation and disposal of all records of the State;
- (6) Undertake the program of centralized engineering and office leasing services, including operation and maintenance of public buildings, for departments of the State;
- (7) Undertake the functions of the state surveyor;
- (8) Establish accounting and internal control systems;
- (9) Provide centralized computer information management and processing services, coordination in the use of all information processing equipment, software, facilities, and services in the executive branch of the State, and consultation and support services in the use of information processing and management technologies to improve the efficiency, effectiveness, and productivity of state government programs; and
- (10) Establish, coordinate, and manage a program to provide a means for public access to public information and develop and operate an information network in conjunction with its overall plans for establishing a communication backbone for state government.

(c) The state communication system shall be established to:

- (1) Facilitate implementation of the State’s distributed information processing and information resource management plans;
- (2) Improve data, voice, and video communications in state government;
- (3) Provide a means for connectivity among the state, university, and county computer systems; and
- (4) Provide a long-term means for public access to public information.

~~[(e)]~~ (d) The department may adopt rules as may be necessary or desirable for the operation and maintenance of public buildings, and for the operation and implementation of a program to provide a means for public access to the State’s information network system and public information. The rules shall be adopted pursuant to chapter 91.

~~[(d)]~~ (e) The King Kamehameha celebration commission shall be placed within the department of accounting and general services for administrative purposes. The functions, duties, and powers, subject to the administrative control of the

comptroller, and the composition of the commission shall be as heretofore provided by law.

[(e)] (f) The functions and authority heretofore exercised by the comptroller, board of commissioners of public archives, the archivist, the disposal committee, and the insurance management, surplus property management, and central purchasing functions of the bureau of the budget and the nonhighway functions of the department of public works as heretofore constituted are transferred to the department of accounting and general services established by this chapter.”

SECTION 2. Section 26-9, Hawaii Revised Statutes, is amended by amending subsection (o) to read as follows:

“(o) Every person licensed under any chapter within the jurisdiction of the department of commerce and consumer affairs and every person licensed subject to chapter 485 [~~or registered under chapter 467B~~] shall pay upon issuance of a license, permit, certificate, or registration a fee and a subsequent annual fee to be determined by the director and adjusted from time to time to ensure that the proceeds, together with all other fines, income, and penalties collected under this section, do not surpass the annual operating costs of conducting compliance resolution activities required under this section. The fees may be collected biennially or pursuant to rules adopted under chapter 91, and shall be deposited into the special fund established under this subsection. Every filing pursuant to chapter 514E or section 485-6(15) shall be assessed, upon initial filing and at each renewal period in which a renewal is required, a fee that shall be prescribed by rules adopted under chapter 91, and that shall be deposited into the special fund established under this subsection. Any unpaid fee shall be paid by the licensed person, upon application for renewal, restoration, reactivation, or reinstatement of a license, and by the person responsible for the renewal, restoration, reactivation, or reinstatement of a license, upon the application for renewal, restoration, reactivation, or reinstatement of the license. If the fees are not paid, the director may deny renewal, restoration, reactivation, or reinstatement of the license. The director may establish, increase, decrease, or repeal the fees when necessary pursuant to rules adopted under chapter 91. The director may also increase or decrease the fees pursuant to section 92-28.

There is created in the state treasury a special fund to be known as the compliance resolution fund to be expended by the director’s designated representatives as provided by this subsection. Notwithstanding any law to the contrary, all revenues, fees, and fines collected by the department shall be deposited into the compliance resolution fund. Unencumbered balances existing on June 30, 1999, in the cable television fund under chapter 440G, the division of consumer advocacy fund under chapter 269, the financial institution examiners’ revolving fund, section 412:2-109, the special handling fund, section 414-13, and unencumbered balances existing on June 30, 2002, in the insurance regulation fund, section 431:2-215, shall be deposited into the compliance resolution fund. This provision shall not apply to the drivers education fund underwriters fee, section 431:10C-115, insurance premium taxes and revenues, revenues of the workers’ compensation special compensation fund, section 386-151, the captive insurance administrative fund, section 431:19-101.8, the insurance commissioner’s education and training fund, section 431:2-214, the medical malpractice patients’ compensation fund as administered under section 5 of Act 232, Session Laws of Hawaii 1984, and fees collected for deposit in the office of consumer protection restitution fund, section 487-14, the real estate appraisers fund, section 466K-1, the real estate recovery fund, section 467-16, the real estate education fund, section 467-19, the contractors recovery fund, section 444-26, the contractors education fund, section 444-29, and the condominium management education fund, section 514A-131. Any law to the contrary notwithstanding, the director may use the moneys in the fund to employ, without regard to

chapter 76, hearings officers, investigators, attorneys, accountants, and other necessary personnel to implement this subsection. Any law to the contrary notwithstanding, the moneys in the fund shall be used to fund the operations of the department. The moneys in the fund may be used to train personnel as the director deems necessary and for any other activity related to compliance resolution.

As used in this subsection, unless otherwise required by the context, "compliance resolution" means a determination of whether:

- (1) Any licensee or applicant under any chapter subject to the jurisdiction of the department of commerce and consumer affairs has complied with that chapter;
  - (2) Any person subject to chapter 485 has complied with that chapter;
  - (3) Any person submitting any filing required by chapter 514E or section 485-6(15) has complied with chapter 514E or section 485-6(15); or
  - (4) Any person has complied with the prohibitions against unfair and deceptive acts or practices in trade or commerce; ~~or~~
  - (5) ~~Any person subject to chapter 467B has complied with that chapter;~~
- and includes work involved in or supporting the above functions, licensing, or registration of individuals or companies regulated by the department, consumer protection, and other activities of the department.

The director shall prepare and submit an annual report to the governor and the legislature on the use of the compliance resolution fund. The report shall describe expenditures made from the fund including non-payroll operating expenses."

SECTION 3. Section 76-16, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

"(b) The civil service to which this chapter applies shall comprise all positions in the State now existing or hereafter established and embrace all personal services performed for the State, except the following:

- (1) Commissioned and enlisted personnel of the Hawaii national guard as such, and positions in the Hawaii national guard that are required by state or federal laws or regulations or orders of the national guard to be filled from those commissioned or enlisted personnel;
- (2) Positions filled by persons employed by contract where the director of human resources development has certified that the service is special or unique or is essential to the public interest and that, because of circumstances surrounding its fulfillment, personnel to perform the service cannot be obtained through normal civil service recruitment procedures. Any such contract may be for any period not exceeding one year;
- (3) Positions that must be filled without delay to comply with a court order or decree if the director determines that recruitment through normal recruitment civil service procedures would result in delay or noncompliance, such as the Felix-Cayetano consent decree;
- (4) Positions filled by the legislature or by either house or any committee thereof;
- (5) Employees in the office of the governor and office of the lieutenant governor, and household employees at Washington Place;
- (6) Positions filled by popular vote;
- (7) Department heads, officers, and members of any board, commission, or other state agency whose appointments are made by the governor or are required by law to be confirmed by the senate;
- (8) Judges, referees, receivers, masters, jurors, notaries public, land court examiners, court commissioners, and attorneys appointed by a state court for a special temporary service;

- (9) One bailiff for the chief justice of the supreme court who shall have the powers and duties of a court officer and bailiff under section 606-14; one secretary or clerk for each justice of the supreme court, each judge of the intermediate appellate court, and each judge of the circuit court; one secretary for the judicial council; one deputy administrative director of the courts; three law clerks for the chief justice of the supreme court, two law clerks for each associate justice of the supreme court and each judge of the intermediate appellate court, one law clerk for each judge of the circuit court, two additional law clerks for the civil administrative judge of the circuit court of the first circuit, two additional law clerks for the criminal administrative judge of the circuit court of the first circuit, one additional law clerk for the senior judge of the family court of the first circuit, two additional law clerks for the civil motions judge of the circuit court of the first circuit, two additional law clerks for the criminal motions judge of the circuit court of the first circuit, and two law clerks for the administrative judge of the district court of the first circuit; and one private secretary for the administrative director of the courts, the deputy administrative director of the courts, each department head, each deputy or first assistant, and each additional deputy, or assistant deputy, or assistant defined in paragraph (16);
- (10) First deputy and deputy attorneys general, the administrative services manager of the department of the attorney general, one secretary for the administrative services manager, an administrator and any support staff for the criminal and juvenile justice resources coordination functions, and law clerks;
- (11) (A) Teachers, principals, vice-principals, complex area superintendents, deputy and assistant superintendents, other certificated personnel, not more than twenty noncertificated administrative, professional, and technical personnel not engaged in instructional work;
- (B) Effective July 1, 2003, teaching assistants, educational assistants, bilingual/bicultural school-home assistants, school psychologists, psychological examiners, speech pathologists, athletic health care trainers, alternative school work study assistants, alternative school educational/supportive services specialists, alternative school project coordinators, and communications aides in the department of education;
- (C) The special assistant to the state librarian and one secretary for the special assistant to the state librarian; and
- (D) Members of the faculty of the University of Hawaii, including research workers, extension agents, personnel engaged in instructional work, and administrative, professional, and technical personnel of the university;
- (12) Employees engaged in special, research, or demonstration projects approved by the governor;
- (13) Positions filled by inmates, kokuas, patients of state institutions, persons with severe physical or mental handicaps participating in the work experience training programs, and students and positions filled through federally funded programs that provide temporary public service employment such as the federal Comprehensive Employment and Training Act of 1973;
- (14) A custodian or guide at Iolani Palace, the Royal Mausoleum, and Hulihee Palace;

- (15) Positions filled by persons employed on a fee, contract, or piecework basis, who may lawfully perform their duties concurrently with their private business or profession or other private employment and whose duties require only a portion of their time, if it is impracticable to ascertain or anticipate the portion of time to be devoted to the service of the State;
- (16) Positions of first deputies or first assistants of each department head appointed under or in the manner provided in section 6, Article V, of the State Constitution; three additional deputies or assistants either in charge of the highways, harbors, and airports divisions or other functions within the department of transportation as may be assigned by the director of transportation, with the approval of the governor; four additional deputies in the department of health, each in charge of one of the following:
  - ~~[(A)] Behavioral~~ behavioral health, environmental health, hospitals, and health resources administration, including other functions within the department as may be assigned by the director of health, with the approval of the governor;
  - ~~[(B)] An~~ an administrative assistant to the state librarian; and
  - ~~[(C)] An~~ an administrative assistant to the superintendent of education;
- (17) Positions specifically exempted from this part by any other law; provided that all of the positions defined by paragraph (9) shall be included in the position classification plan;
- (18) Positions in the state foster grandparent program and positions for temporary employment of senior citizens in occupations in which there is a severe personnel shortage or in special projects;
- (19) Household employees at the official residence of the president of the University of Hawaii;
- (20) Employees in the department of education engaged in the supervision of students during meal periods in the distribution, collection, and counting of meal tickets, and in the cleaning of classrooms after school hours on a less than half-time basis;
- (21) Employees hired under the tenant hire program of the housing and community development corporation of Hawaii; provided that not more than twenty-six per cent of the corporation's work force in any housing project maintained or operated by the corporation shall be hired under the tenant hire program;
- (22) Positions of the federally funded expanded food and nutrition program of the University of Hawaii that require the hiring of nutrition program assistants who live in the areas they serve;
- (23) Positions filled by severely handicapped persons who are certified by the state vocational rehabilitation office that they are able to perform safely the duties of the positions;
- (24) One public high school student to be selected by the Hawaii state student council as a nonvoting member on the board of education as authorized by the State Constitution;
- (25) Sheriff, first deputy sheriff, and second deputy sheriff;
- (26) A gender and other fairness coordinator hired by the judiciary; and
- (27) Positions in the Hawaii national guard youth challenge academy.

The director shall determine the applicability of this section to specific positions.

Nothing in this section shall be deemed to affect the civil service status of any incumbent as it existed on July 1, 1955."

SECTION 4. Section 201B-5, Hawaii Revised Statutes, is amended to read as follows:

**“§201B-5 Exemption of Hawaii tourism authority from administrative supervision of boards and commissions.** Notwithstanding any law to the contrary, the authority shall be exempt from section 26-35 with the exception of section 26-35(a)(2), (3), (7) [and], (8)[-] and subsection (b).”

SECTION 5. Section 243-4, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

“(c) The tax shall not be collected in respect to any benzol, benzene, toluol, xylol, or alternative fuel sold for use other than for operating internal combustion engines. With respect to these products, other than alternative fuels, the department by rule shall provide for the reporting and payment of the tax and for the keeping of records in respect thereto, in such manner as to collect, for each gallon of such product sold for use in internal combustion engines for the generation of power, or so used, the same tax or taxes as apply to each gallon of diesel oil. With respect to alternative fuels, the only tax collected shall be that provided in paragraphs (1), (2), and (3) of this subsection. This subsection shall not apply to aviation fuel sold for use in or used for airplanes.

- (1) Every distributor of any alternative fuel for operation of an internal combustion engine shall pay a license tax to the department of one-quarter of one cent for each gallon of such alternative fuel sold or used by the distributor;
- (2) Every distributor, in addition to the tax required under paragraph (1) of this subsection, shall pay a license tax to the department for each gallon of alternative fuel sold or used by the distributor for operating a motor vehicle or motor vehicles upon the public highways of the State at a rate proportional to that of the rates applicable to diesel oil in subsection (b), rounded to the nearest one-tenth of a cent, as follows:
  - (A) Ethanol, 0.145 times the rate for diesel;
  - (B) Methanol, 0.11 times the rate for diesel;
  - (C) Biodiesel, 0.25 times the rate for diesel;
  - (D) Liquefied petroleum gas, 0.33 times the rate for diesel; and
  - (E) For other alternative fuels, the rate shall be based on the energy content of the fuels as compared to diesel fuel, using a lower heating value of one hundred thirty thousand British thermal units per gallon as a standard for diesel, so that the tax rate, on an energy content basis, is equal to one-quarter the rate for diesel fuel.

The taxes so paid shall be paid into the state treasury and deposited in special funds or paid over in the same manner as provided in subsection (b) in respect of the tax on diesel oil;

- (3) If any user of alternative fuel furnishes to the distributor a certificate, in such form as the department shall prescribe, or the distributor who uses alternative fuel signs such certificate, certifying that the alternative fuel is for use in operating a motor vehicle or motor vehicles in areas other than upon the public highways of the State, the tax as provided by paragraphs (1) and (2) of this ~~section~~ subsection shall not be applicable; provided that no certificate shall be required if the alternative fuel is used for fuel and heating purposes in the home. In the event a certificate is not or cannot be furnished and the alternative fuel is in fact used for operating an internal combustion engine or operating a motor vehicle or motor vehicles in areas other than upon the public highways of the State, the user thereof may obtain a refund of all taxes thereon

imposed by such paragraphs. The department shall adopt rules to administer the refunding of such taxes imposed.”

SECTION 6. Section 245-23, Hawaii Revised Statutes, is amended by amending its title to read as follows:

**“§245-23 Department to furnish stamps; designs, specifications, and denominations[; procurement].”**

SECTION 7. Section 249-31, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) All vehicles and motor vehicles in the State as defined in section 249-1, including antique motor vehicles, except as otherwise provided in sections [249-3 to] 249-4 and 249-6, shall be subject to a \$25 annual vehicle registration fee. The fee shall become due and payable on January 1, and shall be paid before April 1 in each year together with all other taxes and fees levied by this chapter; provided that should any county elect to renew motor vehicle registrations on a staggered basis as authorized by section 286-51, the state registration for that county shall likewise be staggered so that the state registration fee is due and payable at the same time and shall be collected together with the county fee. The state registration fee shall be deemed delinquent if not paid with the county registration fee. The respective counties shall collect this fee together with the vehicle registration tax collected for the county and shall transfer the moneys collected under this section to the State [to be paid into the state highway fund].”

SECTION 8. Section 255D-4, Hawaii Revised Statutes, is amended to read as follows:

**“§255D-4 Authority to enter agreement.** The department may enter into the streamlined sales and use tax agreement with one or more states to simplify and modernize sales and use tax administration to substantially reduce the burden of tax compliance for all sellers and for all types of commerce. In furtherance of the agreement, the department may act jointly with other states that are members of the agreement to establish standards for certification of a certified service provider and certified automated system and establish performance standards for multistate sellers. The department may take other actions reasonably required to implement this section. Other actions authorized by this section include but are not limited to the adoption of rules not subject to chapter 91[;] and the joint procurement not subject to chapter 103D, with other member states, of goods and services in furtherance of the cooperative agreement. The department, or the department’s designee, may represent this State before the other states that are signatories to the agreement.”

SECTION 9. Section 269-1, Hawaii Revised Statutes, is amended by amending the definition of “enforcement officer” to read as follows:

““Enforcement officer” means any person employed and authorized by the commission to investigate any matter on behalf of the commission. The term also means a motor vehicle safety officer employed and assigned, pursuant to section 271-38, by the department of transportation to enforce sections 271-8, 271-12, 271-13, 271-19, and 271-29 through assessment of civil penalties as provided in section 271-27(h), (i), and (j).”

SECTION 10. Section 269-2, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) Effective January 1, 1989, and January 1, 1990, the chairperson of the commission shall be paid a salary set by the governor within the range of \$69,748 to \$74,608 and \$72,886 to \$77,966 a year, respectively, and each of the other commissioners shall be paid a salary equal to ninety-five per cent of the chairperson’s salary. The commissioners shall be exempt from chapters 76 and 89 but shall be members of the state employees retirement system and shall be eligible to receive the benefits of any state or federal employee benefit program generally applicable to officers and employees of the State, including those under chapter [87:] 87A.

The commission is placed within the department of budget and finance for administrative purposes.”

SECTION 11. Section 269-17.5, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) “Nonresident alien” means a person not a citizen of the United States who is not defined as a resident alien by the [~~United States Immigration and Naturalization Services.~~] United States Citizenship and Immigration Services.”

SECTION 12. Section 271-4, Hawaii Revised Statutes, is amended by amending the definition of “enforcement officer” to read as follows:

“(15) “Enforcement officer” means any person employed and authorized by the commission to investigate any matter on behalf of the commission. The term also means a motor vehicle safety officer employed and assigned, pursuant to section 271-38, by the department of transportation to enforce sections 271-8, 271-12, 271-13, 271-19, and 271-29 through the assessment of civil penalties as provided in section 271-27(h), (i), and (j).”

SECTION 13. Section 302A-433, Hawaii Revised Statutes, is amended to read as follows:

“[~~§~~302A-433] **Scope of adult and community education programs offered.** As rapidly as resources are available and interest is developed, instructional programs shall be initiated in the following fields:

- (1) Basic elementary education. A foundation program in reading and speaking English, writing, and arithmetic for persons with no schooling or only primary grade training;
- (2) Advanced elementary education. A program in advanced elementary education for those persons who have completed four to eight years of schooling and who desire to obtain more complete mastery of the fundamentals;
- (3) Secondary education. A program of secondary education for those adults who, in youth, left school or for some reason had their education curtailed and who now desire to continue their education; for those youths who have been excepted from compulsory attendance under section 302A-1132; and for those youths who are in need of courses to complete their high school graduation requirements;
- (4) Adult literacy education. A basic program in reading and writing English, and arithmetic for persons who need to develop or improve their mastery of basic literacy skills in these areas for purposes of enhancing their personal, social, or employment lives;
- (5) Homemaking and parent education. A program in homemaking and parent education for all those parents and other adults who desire training in family life, including child care, nursing, budgeting, and other instruction basic to homemaking;

- (6) Community education. A program to facilitate understanding and enlightenment in civic duties, responsibilities, and obligations for all persons who desire to keep pace with today's community, national, and world developments and who realize the necessity of continuing study for the adequate fulfillment of their civic functions. Community education addresses responsibilities within a given community, especially concerns related to education and the schools, and offers additional services to supplement and enrich the educational program of in-school children and youths;
- (7) Naturalization training. The standard course of training provided by the ~~[United States Immigration and Naturalization Service,]~~ United States Citizenship and Immigration Services, which shall be provided to all those persons who have filed applications for United States citizenship and desire to enroll in such a course under the supervision of the department; and
- (8) Cultural opportunities. A program of adult and community education that will meet the interests and desires of those people who wish to enrich and to broaden their cultural, recreational, and social interests."

SECTION 14. Section 302A-1185, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

"(c) To enable new century charter schools to access state funding prior to the start of each school year, foster their fiscal planning, and enhance their accountability, the charter school administrative office shall:

- (1) Provide fifty per cent of a new century charter school's per pupil allocation based on the new century charter school's projected student enrollment no later than July 20 of each fiscal year; provided that the new century charter school shall submit to the charter school administrative office a projected student enrollment no later than May 15 of each year;
- (2) Provide an additional forty per cent of a new century charter school's per pupil allocation no later than November 15 of each year; provided that the new century charter school shall submit to the charter school administrative office:
  - (A) Student enrollment as verified on October 15 of each year, provided that the student enrollment shall be verified on the first day of business immediately prior to October 15 should that date fall on a weekend; and
  - (B) An accounting of the percentage of student enrollment who transferred from public schools established and maintained by the department, provided that these accountings shall also be submitted by the charter school administrative office to the legislature no later than twenty days prior to the convening of each regular session; and
- (3) ~~[The]~~ Provide the remaining ten per cent per pupil allocation of a new century charter school no later than January 1 of each year as a contingency balance to ensure fiscal accountability."

SECTION 15. Section 327G-3, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

"(c) A written advance mental health care directive may include the principal's nomination of a guardian ~~[of the person]~~. The court shall make its appointment of a guardian ~~[of the person]~~ in accordance with the principal's most recent nomination in a valid and unrevoked advance mental health care directive, except for good cause shown."

SECTION 16. Section 327G-9, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) A duly appointed guardian [~~of the person of~~] for the principal shall comply with the principal’s preferences or instructions expressed in the advance mental health care directive and shall not revoke the principal’s advance mental health care directive, unless otherwise expressly authorized by a court of competent jurisdiction.”

SECTION 17. Section 327G-14, Hawaii Revised Statutes, is amended to read as follows:

“[~~§~~327G-14] **Optional form.** The following sample form may be used to create an advance mental health care directive. This sample form may be duplicated, or modified to suit the needs of the person. Any written document that contains the substance of the following information may be used in an advance mental health care directive:

## “ADVANCE MENTAL HEALTH CARE DIRECTIVE

### Explanation

You have the right to give instructions about your own mental health care. You also have the right to name someone else to make mental health treatment decisions for you. This form lets you do either or both of these things. It also lets you express your wishes regarding the designation of your health care providers. If you use this form, you may complete or modify all or any part of it. You are free to use a different form.

Part 1 of this form is a list of options you may designate as part of your mental health care and treatment. For ease of designating specific instructions, mark those options in Part 1.

Part 2 of this form is a power of attorney for mental health care. This lets you name another individual as your agent to make mental health treatment decisions for you, if you become incapable of making your own decisions, or if you want someone else to make those decisions for you now, even though you are still capable of making your own decisions. You may name alternate agents to act for you if your first choice is not willing, able, or reasonably available to make decisions for you. Unless related to you, your agent may not be an owner, operator, or employee of a health care institution where you are receiving care.

You may allow your agent to make all mental health treatment decisions for you. However, if you wish to limit the authority of your agent, you may specify those limitations on the form. If you do not limit the authority of your agent, your agent will have the right to:

- (1) Consent or refuse consent to any care, treatment, service, or procedure to maintain, diagnose, or otherwise affect a mental condition;
- (2) Select or discharge health care providers and institutions;
- (3) Approve or disapprove diagnostic tests, surgical procedures, and programs of medication; and
- (4) Approve or disapprove of electroconvulsive treatment.

Part 3 of this form lets you give specific instructions about any aspect of your mental health care and treatment. Choices are provided for you to express your wishes regarding the provision, withholding, or withdrawal of medication and treatment. Space is provided for you to add to the choices you have made or for you to write out any additional wishes.

Part 4 of this form must be completed in order to activate the advance mental health care directive. After completing this form, sign and date the form at the end and have the form witnessed by one or both of the two methods listed below. Give a copy of the signed and completed form to your physician, to any other health care providers you may have, to any health care institution at which you are receiving care, and to any mental health care agents you have named. You should talk to the persons you have named as agents to make sure that they understand your wishes and are willing to take the responsibility.

You have the right to revoke this advance mental health care directive or replace this form at any time, unless otherwise specified in writing in the advance mental health care directive.

If you are in imminent danger of causing bodily harm to yourself or others, or have been involuntarily committed to a health care institution for mental health treatment, the advance mental health care directive will not apply.

**PART 1  
CHECKLIST OF MENTAL HEALTH CARE OPTIONS**

**NOTE TO PROVIDER:** The following is a checklist of selections I have made regarding my mental health care and treatment. I include this statement to express my strong desire for you to acknowledge and abide by my rights, under state and federal laws, to influence decisions about the care I will receive.

(Declarant: Put a check mark in the left-hand column for each section you have completed.)

- \_\_\_ Designation of my mental health care agent(s).
- \_\_\_ Authority granted to my agent(s).
- \_\_\_ My preference for a court appointed guardian.
- \_\_\_ My preference of treating facility and alternatives to hospitalization.
- \_\_\_ My preferences about the physicians or other mental health care providers who will treat me if I am hospitalized.
- \_\_\_ My preferences regarding medications.
- \_\_\_ My preferences regarding electroconvulsive therapy (ECT or shock treatment).
- \_\_\_ My preferences regarding emergency interventions (seclusion, restraint, medications).
- \_\_\_ Consent for experimental drugs or treatments.
- \_\_\_ Who should be notified immediately of my admission to a facility.
- \_\_\_ Who should be prohibited from visiting me.
- \_\_\_ My preferences for care and temporary custody of my children or pets.
- \_\_\_ Other instructions about mental health care and treatment.

**PART 2  
DURABLE POWER OF ATTORNEY FOR MENTAL HEALTH  
TREATMENT DECISIONS**

(1) **DESIGNATION OF AGENT:** I designate the following individual as my agent to make mental health care decisions for me:

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(name of individual you choose as agent)

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(address)	(city)	(state)	(zip code)
(home phone)	(work phone)		

OPTIONAL: If I revoke my agent’s authority or if my agent is not willing, able, or reasonably available to make a mental health care decision for me, I designate as my first alternate agent:

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(name of individual you choose as first alternate agent)

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(address) (city) (state) (zip code)

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(home phone) (work phone)

OPTIONAL: If I revoke the authority of my agent and first alternate agent or if neither is willing, able, or reasonably available to make a mental health care decision for me, I designate as my second alternate agent:

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(name of individual you choose as second alternate agent)

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(address) (city) (state) (zip code)

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(home phone) (work phone)

(2) AGENT’S AUTHORITY: My agent is authorized to make all mental health care treatment decisions for me, including decisions to provide, withhold, or withdraw medication and treatment, and all other forms of mental health care, except as I state here:

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(Add additional sheets if needed.)

(3) WHEN AGENT’S AUTHORITY BECOMES EFFECTIVE: My agent’s authority becomes effective when my supervising health care provider who is a physician and one other physician or licensed psychologist determine that I am unable to make my own mental health care decisions.

(4) AGENT’S OBLIGATION: My agent shall make mental health care decisions for me in accordance with this power of attorney for mental health care, any instructions I give in Part 2 of this form, and my other wishes to the extent known to my agent. To the extent my wishes are unknown, my agent shall make mental health care decisions for me in accordance with what my agent determines to be in my best interest. In determining my best interest, my agent shall consider my personal values to the extent known to my agent.

(5) NOMINATION OF GUARDIAN: If a guardian [of the person] needs to be appointed for me by a court, I nominate the agent designated in this form. If that agent is not willing, able, or reasonably available to act as guardian, I nominate the alternate agents whom I have named, in the order designated.

**PART 3  
INSTRUCTIONS FOR MENTAL HEALTH CARE AND TREATMENT**

If you are satisfied to allow your agent to determine what is best for you, you need not fill out this part of the form. If you do fill out this part of the form, you may strike any wording you do not want.

- (6) My preference of treating facility and alternatives to hospitalization:
- (7) My preferences about the physicians or other mental health care providers who will treat me if I am hospitalized:
- (8) My preferences regarding medications:
- (9) My preferences regarding electroconvulsive therapy (ECT or shock treatment):

(10) My preferences regarding emergency interventions (seclusion, restraint, medications):

(11) Consent for experimental drugs or treatments:

(12) Who should be notified immediately of my admission to a facility:

(13) Who should be prohibited from visiting me:

(14) My preferences for care and temporary custody of my children or pets:

(15) My preferences about revocation of my advance mental health care directive during a period of incapacity:

(16) OTHER WISHES: (If you do not agree with any of the optional choices above and wish to write your own, or if you wish to add to the instructions you have given above, you may do so here.) I direct that:

\_\_\_\_\_  
\_\_\_\_\_

(Add additional sheets if needed.)

**PART 4  
WITNESSES AND SIGNATURES**

(17) EFFECT OF COPY: A copy of this form has the same effect as the original.

(18) SIGNATURES: Sign and date the form here:

\_\_\_\_\_  
(date)

\_\_\_\_\_  
(sign your name)

\_\_\_\_\_  
(address)

\_\_\_\_\_  
(print your name)

\_\_\_\_\_  
(city)

\_\_\_\_\_  
(state)

(19) WITNESSES: This power of attorney will not be valid for making mental health care decisions unless it is either: (a) signed by two qualified adult witnesses who are personally known to you and who are present when you sign or acknowledge your signature; or (b) acknowledged before a notary public in the State.

**AFFIRMATION OF WITNESSES**

Witness 1

I declare under penalty of false swearing pursuant to section 710-1062, Hawaii Revised Statutes, that the principal is personally known to me, that the principal signed or acknowledged this power of attorney in my presence, that the principal appears to be of sound mind and under no duress, fraud, or undue influence, that I am not the person appointed as agent by this document, and that I am not a health care provider, nor an employee of a health care provider or facility. I am not related to the principal by blood, marriage, or adoption, and to the best of my knowledge, I am not entitled to any part of the estate of the principal upon the death of the principal under a will now existing or by operation of law.

\_\_\_\_\_  
(date)

\_\_\_\_\_  
(sign your name)

\_\_\_\_\_  
(address)

\_\_\_\_\_  
(print your name)

\_\_\_\_\_  
(city)

\_\_\_\_\_  
(state)

Witness 2

I declare under penalty of false swearing pursuant to section 710-1062, Hawaii Revised Statutes, that the principal is personally known to me, that the principal signed or acknowledged this power of attorney in my presence, that the principal appears to be of sound mind and under no duress, fraud, or undue influence, that I am not the person appointed as agent by this document, and that I am not a health care provider, nor an employee of a health care provider or facility. I am not related to the principal by blood, marriage, or adoption, and to the best of my knowledge, I am not entitled to any part of the estate of the principal upon the death of the principal under a will now existing or by operation of law.

\_\_\_\_\_  
(date) (sign your name)  
\_\_\_\_\_  
(address) (print your name)  
\_\_\_\_\_  
(city) (state)

DECLARATION OF NOTARY

State of Hawaii  
County of \_\_\_\_\_

On this \_\_\_\_\_ day of \_\_\_\_\_, in the year \_\_\_\_\_, before me, \_\_\_\_\_ (insert name of notary public) appeared \_\_\_\_\_, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to this instrument, and acknowledged that he or she executed it.

Notary Seal \_\_\_\_\_  
(Signature of Notary Public)''''

SECTION 18. Section 333F-1, Hawaii Revised Statutes, is amended by amending the definition of "representative" to read as follows:

""Representative" means any individual who can advise and advocate for a person with developmental disabilities or mental retardation and who shall serve at the request and pleasure of such person; provided that if the person with developmental disabilities or mental retardation is a minor or is legally incapacitated and has not requested a representative, the parent or guardian [of the person] may request a representative to assist on behalf of the person with developmental disabilities or mental retardation."

SECTION 19. Section 333F-11, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) The director, if so appointed, shall have all the powers and duties of a guardian [of the person] duly appointed by the court; provided that the director shall not be liable in damages for any tortious act committed by the person.”

SECTION 20. Section 346-312.5, Hawaii Revised Statutes, is amended by amending subsection (d) to read as follows:

“(d) The determination of a drug’s safety and efficacy shall be consistent with the standards set forth in the peer-reviewed literature and other available sources, including but not limited to:

- (1) The American Hospital Formulary Service Drug Information;
- (2) The United States Pharmacopoeia Drug Information;

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- (3) The DRUGDEX System; and
- (4) The [~~America Medical Association Drug Evaluations.~~] American Medical Association Drug Evaluations.”

SECTION 21. Section 353-25, Hawaii Revised Statutes, is amended by amending its title to read as follows:

**“§353-25 Powers and duties of [~~guardian.~~] conservator.”**

SECTION 22. Section 353-26, Hawaii Revised Statutes, is amended to read as follows:

**“§353-26 Removal of conservator.** The conservator may be removed, and another conservator appointed in the former [~~guardian’s~~] conservator’s place, whenever the judge thinks there is just cause for removal.”

SECTION 23. Section 353-66, Hawaii Revised Statutes, is amended by amending subsection (f) to read as follows:

“(f) The Hawaii paroling authority may require a paroled prisoner to undergo and complete a substance abuse treatment program when the paroled prisoner has committed a violation of the terms and conditions of parole involving possession or use, not including to distribute or manufacture as defined in section 712-1240, of any dangerous drug, detrimental drug, harmful drug, intoxicating compound, marijuana, or marijuana concentrate, as defined in section 712-1240, unlawful methamphetamine trafficking as provided in section 712-1240.6, or involving possession or use of drug paraphernalia under section 329-43.5. If the paroled prisoner fails to complete the substance abuse treatment program or the Hawaii paroling authority determines that the paroled prisoner cannot benefit from any [~~substance abuse program,~~] substance abuse treatment program, the paroled prisoner shall be subject to revocation of parole and return to incarceration. As a condition of parole, the Hawaii paroling authority may require the paroled prisoner to:

- (1) Be assessed by a certified substance abuse counselor for substance abuse dependency or abuse under the applicable Diagnostic and Statistical Manual and Addiction Severity Index;
- (2) Present a proposal to receive substance abuse treatment in accordance with the treatment plan prepared by a certified substance abuse counselor through a substance abuse treatment program that includes an identified source of payment for the treatment program;
- (3) Contribute to the cost of the substance abuse treatment program; and
- (4) Comply with any other terms and conditions for parole.

As used in this subsection, “substance abuse treatment program” means drug or substance abuse treatment services provided outside a correctional facility by a public, private, or nonprofit entity that specializes in treating persons who are diagnosed with having substance abuse or dependency and preferably employs licensed professionals or certified substance abuse counselors.

Nothing in this subsection shall be construed to give rise to a cause of action against the State, a state employee, or a treatment provider.”

SECTION 24. Section 414D-233, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) A public benefit corporation shall give the attorney general written notice that it intends to dissolve before the time it delivers the articles of dissolution

to the ~~[[department]]~~ director. The notice shall include a copy or summary of the plan of dissolution.”

SECTION 25. Section 431:10-202, Hawaii Revised Statutes, is amended to read as follows:

“**§431:10-202 Definitions.** For purposes of this part:

~~[(a) Insurable interest]~~ “Insurable interest” includes only interests as follows:

- (1) In the case of individuals related closely by blood or by law, a substantial interest engendered by love and affection.
- (2) In the case of other persons, a lawful and substantial economic interest in having the life, health, or bodily safety of the individual insured continue, as distinguished from an interest which would arise only by, or would be enhanced in value by, the death, disablement, or injury of the individual insured.
- (3) An individual party to a contract or option for the purchase or sale of an interest in a business partnership or firm, or of shares of stock of a close corporation or of an interest in such shares, has an insurable interest in the life of each individual party to the contract and for the purposes of the contract only, in addition to any insurable interest which may otherwise exist as to the life of the individual.
- (4) A charitable organization as defined in section 467B-1 ~~[and registered under section 467B-2]~~ has an insurable interest in the life of each proposed insured who joins with said organization in applying for a life insurance policy naming said organization as owner and irrevocable beneficiary.

~~[(b) Policy]~~ “Policy” means the written instrument in which a contract of insurance and any endorsement or addendum thereto is set forth.”

SECTION 26. Section 431:10C-109, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

“(c) If the card or affidavit is not returned within the period specified, the insurer may:

- (1) If the premiums for the period shown on the motor vehicle insurance identification card have been prepaid, withhold the unearned portions of the premiums until the identification card or an affidavit signed by the insured has been returned. In addition, all premiums shall be considered “earned” until the card is returned.
- (2) If the premiums for the period shown on the identification card have not been paid in full, bring a civil action for three times the unpaid portion of the premiums. Notwithstanding section 607-14 ~~[and section 607-17]~~, the insurer shall be awarded reasonable attorney’s fees and court costs. If the motor vehicle insurance identification card is returned after the civil action is filed but before the matter is taken to trial, the insurer shall be awarded damages of not less than \$100, but not more than the amount of the unpaid premiums together with reasonable attorney’s fees and costs as provided in this section.”

SECTION 27. Section 431:10C-307.8, Hawaii Revised Statutes, is amended to read as follows:

“**§431:10C-307.8 Insurance fraud investigations unit.** (a) There is established in the insurance division an insurance fraud investigations unit.

(b) The unit shall employ attorneys, investigators, investigator assistants, and other support staff as necessary to promote the effective and efficient conduct of the unit's activities. Notwithstanding any other law to the contrary, the attorneys may represent the State in any judicial or administrative proceeding to enforce all applicable state laws relating to insurance fraud, including but not limited to criminal prosecutions and actions for declaratory and injunctive relief. Investigators may serve process and apply for and execute search warrants pursuant to chapter 803 and the rules of court but shall not otherwise have the powers of a police officer or deputy sheriff. The commissioner may hire such employees not subject to chapter 76.

(c) The purpose of the insurance fraud investigations unit shall be to conduct a statewide program for the prevention, investigation, and prosecution of insurance fraud cases and violations of all applicable state laws relating to insurance fraud. The insurance fraud investigations unit may also review and take appropriate action on complaints relating to insurance fraud.

~~[(d) Funding for the insurance fraud investigations unit shall come from the motor vehicle insurance administration revolving fund.]~~

SECTION 28. Section 431:19-102.2, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) Any captive insurance company formed pursuant to this section shall be subject to articles 5, 10, 10A, 10B, 10C, 10D, 10E, 10F, 10G, 12, and 15~~[, and 17]~~ of ~~[chapter 431]~~ this chapter in addition to all other applicable law.”

SECTION 29. Section 431P-3, Hawaii Revised Statutes, is amended by amending subsection (h) to read as follows:

“(h) The board may appoint, not subject to chapter 76, an executive director of the fund whose salary shall be set by the board. The board may employ, not subject to chapter 76, technical experts and officers, agents, and employees, permanent or temporary, as required. The board may also contract with persons, not subject to chapters 76~~[, 77,]~~ and 78 when in the determination of the board, the services to be performed are unique and essential to the execution of the functions of the fund.”

SECTION 30. Section 432E-4, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

“(c) The provider shall discuss with the enrollee and the enrollee's immediate family both ~~[living wills]~~ advanced health-care directives and durable powers of attorney in relation to medical treatment, as provided for in chapter ~~[327D]~~ 327E and section 551D-2.5.”

SECTION 31. Section 453D-12, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) In addition to any other acts or conditions provided by law, the director may refuse to renew, reinstate, or restore, and may deny, revoke, suspend, or condition in any manner, any license for any one or more of the following acts or conditions on the part of a licensee or license applicant:

- (1) Failing to meet or maintain the conditions and requirements necessary to qualify for the granting of a license;
- (2) Engaging in false, fraudulent, or deceptive advertising, or making untruthful or improbable statements;
- (3) Being addicted to, dependent on, or a habitual user of a narcotic, barbiturate, amphetamine, hallucinogen, opium, cocaine, or other drugs or derivatives of a similar nature;

- (4) Practicing the licensed profession while impaired by alcohol, drugs, physical disability, or mental instability;
- (5) Procuring a license through fraud, misrepresentation, or deceit;
- (6) Aiding and abetting an unlicensed person to directly or indirectly perform activities requiring a license;
- (7) Professional misconduct, incompetence, gross negligence, or manifest incapacity, in the practice of the licensed profession;
- (8) Engaging in conduct or practice contrary to recognized standards of ethics for the licensed profession;
- (9) Violating any condition or limitation upon which a [econdition] conditional or temporary license was issued;
- (10) Engaging in business under a past or present license issued pursuant to the licensing laws, in a manner causing injury to one or more members of the public;
- (11) Failing to comply with, observe, or adhere to any law in a manner such that the director deems the applicant or holder to be an unfit or improper person to hold a license;
- (12) Having had a license revoked or suspended, or having been the subject of other disciplinary action, by another state or a federal agency for any reason provided by the licensing laws or this section;
- (13) Having been convicted of a crime, whether by nolo contendere or otherwise, directly related to the qualifications, functions, or duties of the licensed profession;
- (14) Failing to report in writing to the director any disciplinary decision issued against the licensee or applicant in another jurisdiction within thirty days of the disciplinary decision;
- (15) Employing, utilizing, or attempting to employ or utilize, at any time, any person not licensed under the licensing laws where licensure is required; or
- (16) Violating this chapter, chapter 436B, or any rule or order of the director.”

SECTION 32. Section 461-11.5, Hawaii Revised Statutes, is amended to read as follows:

“**[§461-11.5] Return of prescription drugs.** Prescription drugs previously dispensed or distributed by a pharmacy for administration to patients in an institutional facility by personnel of the institutional facility may be returned to and redispensed or redistributed by the pharmacist if the prescription drug:

- (1) Is in:
  - (A) Its original dispensed, unopened, untampered multiple dose container or unopened, untampered single user unit; or
  - (B) An in-use multiple dose container subject to appropriate safeguards as defined in rules for public health or operational considerations;
- (2) Has remained at all times under the control or direction of a person in the institutional facility or the pharmacy trained and knowledgeable in the storage of drugs, including periods in transit by any carrier for hire or person or entity hired solely to transport prescription drugs;
- (3) Is not adulterated or misbranded;
- (4) Has been stored under conditions meeting United States Pharmacopoeia standards;
- (5) Is returned and redispensed or redistributed before the expiration date or use by date on the multiple dose container or single user unit;

- (6) Has not been in the possession of an individual member of the public; and
- (7) Is not included within the classification of controlled substances, as defined in applicable federal and state laws.

Nothing in this [{}section{}] shall be construed to relieve any person from any requirement prescribed by law with respect to drugs included or that may be included within the classification of controlled substances, as defined in applicable federal and state laws. Previously billed returned drugs shall be subject to crediting to the payer pursuant to chapter 328B.”

SECTION 33. Section 478-8, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) The provisions of this chapter (except for this section and section 478-3) shall not apply to any:

- (1) Indebtedness that is secured by a first mortgage lien on real property, and is agreed to or incurred after May 30, 1980;
- (2) Consumer credit agreement of sale made after May 30, 1980, under which a vendor agrees to sell real property to a vendee but retains legal title to the real property and in which the rate of interest or the manner in which such rate shall be determined is clearly stated. As used in this paragraph, “agreement of sale” includes subagreement of sale or other subsequent subagreement of sale made on or after June 18, 1982. Notwithstanding the first sentence of this paragraph, with respect to any consumer credit agreement of sale made on or after July 1, 1985, upon extension at maturity or renegotiation thereof, the maximum rate of interest charged thereafter shall not be more than the greater of the rate of interest payable under the agreement of sale immediately prior to such maturity or renegotiation or four percentage points above the highest weekly average yield on United States Treasury securities adjusted to a constant maturity of three years, as made available by the Federal Reserve Board within sixty days prior to the time of extension or renegotiation;
- (3) Indebtedness that is secured by a purchase-money junior mortgage lien on real property that is agreed to and incurred after June 18, 1982; provided that purchase-money junior mortgage lien means a mortgage that is subordinate in lien priority to an existing mortgage on the same real property that is given to the seller as part of the buyer’s consideration for the purchase of real property and delivered at the same time that the real property is transferred as a simultaneous part of the transaction;
- (4) Transaction for the sale of goods, services, or both, by a seller in the business of selling such goods or services, if the transaction is subject to chapter 476 or the rate of interest charged by the seller in the transaction does not exceed eighteen per cent a year; provided that this paragraph shall not apply to any transaction regulated by chapter 412 or 431 or to any transaction for the sale of financial services. This paragraph shall not be deemed to limit any seller’s right to charge interest under section 478-2;
- (5) Payment of any claim under section 431:13-108; or
- (6) Indebtedness secured by a time share interest defined in [{}section{}] 514E-1, if that time share interest is not otherwise governed by section 478-8(a) or 478-8(b)(1) to (4), and if the rate of interest does not exceed eighteen per cent per year. This [{}paragraph{}] shall not be deemed to limit a seller’s right to charge interest under section 478-2.”

SECTION 34. Section 486-36, Hawaii Revised Statutes, is amended to read as follows:

“**§486-36 Remedies.** Notwithstanding other penalties provided in this chapter, including but not limited to penalties provided under section 486-32, the board may enforce this chapter in both administrative and judicial proceedings:

- (1) **Administrative.** If the administrator determines that any person is violating any provision of this chapter or any rule adopted thereunder, or any variance or exemption or waiver issued pursuant thereto, the administrator may have that person served with a notice of violation and an order. The notice shall specify the alleged violation. The order may require that the alleged violator do any or all of the following:
  - (A) Cease and desist from the violation;
  - (B) Pay an administrative penalty not to exceed \$2,000 for each day of violation;
  - (C) Correct the violation at the alleged violator’s own expense; or
  - (D) Appear before the board at a time and place specified in the order and answer the charges complained of.

The order shall become final twenty calendar days after service unless within those twenty calendar days the alleged violator requests in writing a hearing before the board. Upon such request the board shall specify a time and place for the alleged violator to appear. After a hearing pursuant to this [§]paragraph[§], the board may affirm, modify, or rescind the order as appropriate.

Factors to be considered in imposing the administrative penalty may include the nature and history of the violation and any prior violation and the opportunity, difficulty, and history of corrective action. It is presumed that the violator’s economic and financial conditions allow payment of the penalty and the burden of proof to the contrary is on the violator; and

- (2) **Judicial.** The board may institute a civil action in any court of competent jurisdiction for the enforcement of any order issued pursuant to this section. In any judicial proceeding to enforce the administrative penalty imposed pursuant to this chapter, the board shall be required to show that:
  - (A) Notice was given;
  - (B) A hearing was held or the time granted for requesting a hearing had expired without such a request;
  - (C) The administrative penalty was imposed; and
  - (D) The penalty imposed remains unsatisfied.

The board may also institute a civil action in any court of competent jurisdiction for injunctive relief to enjoin violation of any order issued or rule adopted pursuant to this chapter, in addition to any other remedy or penalty provided for under this chapter.”

SECTION 35. Section 507-46, Hawaii Revised Statutes, is amended to read as follows:

“**§507-46 Priority, record of; satisfaction.** The lien shall relate to and take effect from the time of the visible commencement of operations for the improvement; it shall rank equally in priority subject to the provisos hereinafter contained with all other mechanics’ and materialmen’s liens and shall have priority over all other liens of any nature, except liens in favor of any branch of the government and mortgages, liens or judgments recorded or filed prior to the time of the visible

commencement of operation; provided that all liens for wages for labor performed in the completion of the improvement, but not exceeding \$300 for each claimant, shall have priority as a class over all other mechanics' and materialmen's liens where claims are filed by:

- (1) The person who actually performed the labor;
- (2) The person's legal representative in the event of death or incapacity; or
- (3) The director of labor and industrial relations pursuant to chapter 371;

and provided further that where a mortgage is recorded prior to the date of completion, and all or a portion of the money advanced under and secured by the mortgage is thereafter used for the purpose of paying for the improvement, the mortgagee shall be entitled, to the extent of the payments, to priority over liens of mechanics and materialmen, but no such priority shall be allowed unless the mortgage recites that the purpose of the mortgage is to secure the moneys advanced for the purpose of paying for the improvement in whole or in part. Payments made in good faith to the general contractor for such purposes shall be presumed to have been used for the purpose of paying for the improvement. Whenever the lien or claim of lien herein provided is satisfied (other than by the limitations expressed in section 507-43), a written notice thereof shall, at the expense of the lienee, be filed with the clerk of the circuit court, which shall be noted in the mechanics' lien record, and if title to the land involved is registered in the land court and the lien did not attach solely to the interest of the lessee in one or more leasehold time share interests, it shall also be filed in the office of the assistant registrar of the court."

SECTION 36. Section 551A-2, Hawaii Revised Statutes, is amended as follows:

1. By amending subsections (c) and (d) to read:

"(c) The public guardian shall assist the court, as the court may request or direct, in proceedings for the appointment of a guardian [~~of the person~~] and in the supervision of persons, corporations, or agencies which have been appointed as guardians [~~of the person~~].

(d) The public guardian shall advise and assist persons, corporations, and agencies which are seeking appointment as a guardian for an incapacitated person. The public guardian shall also provide advice, information, and guidance to the persons, corporations, or agencies who have been appointed as guardian [~~of the person~~] to assist them in the discharge of their duties."

2. By amending subsection (f) to read:

"(f) The public guardian shall develop programs of public education on guardianship and alternatives to guardianship and encourage the development of private guardians able and willing to serve as guardian [~~of the person~~]."

SECTION 37. Section 560:5-409, Hawaii Revised Statutes, is amended by amending subsection (d) to read as follows:

"(d) The appointment of a conservator or the entry of another protective order shall not be deemed a determination of incapacity of the protected person under article part 3."

SECTION 38. Section 560:5-601, Hawaii Revised Statutes, is amended by amending the definition of "ward" to read as follows:

"'Ward' means an incapacitated person for whom a guardian [~~of the person~~] has been appointed and who, because of the terms of the appointment of the guardian, lacks the legal power to consent to sterilization."

SECTION 39. Section 560:6-101, Hawaii Revised Statutes, is amended by amending the definition of "party" to read as follows:

““Party” means a person who, by the terms of the account, has a present right, subject to request, to payment from a multiple-party account. A payable-on-death payee or beneficiary of a trust account is a party only after the account becomes payable to the payable-on-death payee or beneficiary by reason of the payable-on-death payee’s or beneficiary’s surviving the original payee or trustee. Unless the context otherwise requires, it includes a guardian [~~of the person or of the property~~], conservator, personal representative, or assignee, of a party. It also includes a person identified as a trustee of an account for another whether or not a beneficiary is named, but it does not include any named beneficiary unless the beneficiary has a present right of withdrawal;”

SECTION 40. Section 571-2, Hawaii Revised Statutes, is amended by amending the definition of “guardianship of a minor” to read as follows:

““Guardianship of a minor” means the duty and authority to make important decisions in matters having a permanent effect on the life and development of the minor and to be concerned about the minor’s general welfare. It includes, but shall not necessarily be limited, in either number or kind to:

- (1) The authority to consent to marriage, to enlistment in the armed forces of the United States, or to major medical, psychiatric, and surgical treatment; to represent the minor in legal actions; to make other decisions concerning the minor of substantial legal significance;
- (2) The authority and duty of reasonable visitation, except to the extent that the right of visitation has been limited by court order;
- (3) The rights and responsibilities of legal custody when guardianship [~~of the person~~] is exercised by the natural or adoptive parent, except where legal custody has been vested in another individual, agency, or institution; and
- (4) The authority to consent to the adoption of the minor and to make any other decision concerning the minor that the minor’s parents could make, when the rights of the minor’s parents, or only living parent, have been judicially terminated as provided for in the statutes governing termination of parental rights to facilitate legal adoption, or when both of the minor’s legal parents are deceased.”

SECTION 41. Section 578-8, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

“(c) In cases where a child is adopted from a foreign country and is brought into the State, the court, in its discretion, may dispense with a hearing upon receipt of a sworn affidavit, ex-parte, from the adoptive parents requesting that the hearing be dispensed with, and upon a finding that the issues it would have reviewed have received full consideration by the country from which the child was adopted and the [~~United States Immigration and Naturalization Service.~~] United States Citizenship and Immigration Services.”

SECTION 42. Section 607-4, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) The fees prescribed by subsection (b) shall be paid to the clerk of the district 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 district court; provided that nothing in subsection (b) shall apply to cases of adults charged with commission of a crime, or minors referred to the district court by the family court; provided further that for the purposes of subsection (b), “judgment” includes an order from which an appeal lies; and provided further that [~~one-half of~~] the fees [~~collected pursuant to paragraphs (7), (8), and (9) of~~

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~~subsection (b)]~~ prescribed by subsection (b)(10) shall be deposited by the clerk of the district court into the judiciary computer system special fund pursuant to section 601-3.7. One-half of the fees collected pursuant to paragraphs (7), (8), and (9) of subsection (b) also shall be deposited into the fund.”

SECTION 43. Section 672E-5, Hawaii Revised Statutes, is amended to read as follows:

“~~[H]§672E-5~~ **Written notice of acceptance; access to premises.** (a) The claimant, within thirty days after receipt of a contractor’s settlement offer, may accept any offer by serving the contractor with a written notice of acceptance; provided that an association shall have forty-five days to respond. If no written notice of acceptance is served, the settlement offer shall be deemed ~~[H]rejected~~.”

(b) If a claimant accepts a contractor’s offer to repair, the claimant shall ~~[H]provide~~ unfettered access to perform and complete the construction within the timetable stated in the settlement offer.”

SECTION 44. Section 302A-1502.5, Hawaii Revised Statutes, is repealed.

SECTION 45. Act 53, Session Laws of Hawaii 2003, is amended by amending section 3 to read as follows:

“SECTION 3. This Act shall take effect upon its approval; provided that the amendments made to section 514A-90(b), Hawaii Revised Statutes, by this Act shall not be repealed when section 514A-90 is reenacted on December 31, ~~[2003]~~ 2007, pursuant to section 4 of Act 39, Session Laws of Hawaii 2000.”

SECTION 46. Act 10, Session Laws of Hawaii 2004, is amended by amending section 18 to read as follows:

“SECTION 18. This Act shall take effect upon its approval, provided that:

- (1) Section 3 shall take effect December 31, 2004;
- (2) Section 7 shall take effect retroactive to April 1, 2003~~;~~, and the amendments made to section 201B-2, Hawaii Revised Statutes, by this Act shall not be repealed when that section is reenacted on June 30, 2007, pursuant to section 14(2) of Act 58, Session Laws of Hawaii 2004;
- (3) Section 13 shall take effect retroactive to April 19, 2000;
- (4) Section 14 shall take effect retroactive to April 27, 2000;
- (5) Section 15 shall take effect retroactive to June 29, 2003; and
- (6) Section 16 shall take effect retroactive to May 23, 2003.”

SECTION 47. Act 29, Session Laws of Hawaii 2004, is amended by amending the prefatory language in section 2 to read as follows:

“SECTION 2. Section 163D-3, Hawaii Revised Statutes, is amended by amending ~~[section]~~ subsection (b) to read as follows:”

SECTION 48. Act 51, Session Laws of Hawaii 2004, is amended by amending the prefatory language in section 6 to read as follows:

“SECTION 6. ~~[Section 302A,]~~ Section 302A-101, Hawaii Revised Statutes, is amended by adding a new definition to be appropriately inserted and to read as follows:”

SECTION 49. Act 57, Session Laws of Hawaii 2004, is amended by amending section 17 to read as follows:

“SECTION 17. This Act shall take effect upon its approval[-]; provided that the amendments made to section 28-8.3, Hawaii Revised Statutes, by this Act shall not be repealed when section 28-8.3, Hawaii Revised Statutes, is reenacted on June 30, 2007 pursuant to section 14(2) of Act 58, Session Laws of Hawaii 2004.”

SECTION 50. Act 58, Session Laws of Hawaii 2004, is amended by amending section 14 to read as follows:

“SECTION 14. This Act shall take effect [øñ] upon its approval; provided that:

- (1) The amendments made to sections 40-1, 40-4, and 40-6, Hawaii Revised Statutes, by part I of this Act shall not be repealed when those sections are reenacted on June 30, 2005, by section 24 of Act 115, Session Laws of Hawaii 1998;
- (2) Part I shall be repealed on June 30, 2007, and sections 28-8.3, [~~40-1, 40-4, and 40-6,~~] 201B-2, and 201B-11, Hawaii Revised Statutes, shall be reenacted in the form in which they read on [~~June 29, 2005;~~] May 5, 2004, and sections 40-1, 40-4, and 40-6, Hawaii Revised Statutes, shall be reenacted in the form in which they read on June 30, 1986; and
- (3) Section 9 shall take effect July 1, 2004.”

SECTION 51. Act 141, Session Laws of Hawaii 2004, is amended by amending section 7 to read as follows:

“SECTION 7. This Act shall take effect on July 1, 2004, and shall be repealed on June 30, 2009[-]; provided that sections 269-30 and 269-33, Hawaii Revised Statutes, shall be reenacted in the form in which they read on the day before the effective date of this Act.”

SECTION 52. Act 165, Session Laws of Hawaii 2004, is amended by amending section 7 to read as follows:

“SECTION 7. This Act shall take effect upon its approval and shall apply to license renewals for the licensing biennium beginning on January 1, 2008[-]; provided that amendments made to section 461-1, Hawaii Revised Statutes, by this Act shall not be repealed when section 461-1, Hawaii Revised Statutes, is reenacted pursuant to section 11 of Act 190, Session Laws of Hawaii 2004.”

SECTION 53. Act 239, Session Laws of Hawaii 2004, is amended by amending section 3 to read as follows:

“SECTION 3. This Act shall take effect upon its approval[-]; provided that amendments made to section 461-1, Hawaii Revised Statutes, by this Act shall not be repealed when section 461-1, Hawaii Revised Statutes, is reenacted pursuant to section 11 of Act 190, Session Laws of Hawaii 2004.”

SECTION 54. Statutory material to be repealed is bracketed and stricken.<sup>1</sup> New statutory material is underscored.

SECTION 55. This Act shall take effect upon its approval, provided that:

- (1) Section 2 shall take effect on July 1, 2005;

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- (2) Section 3 shall take effect retroactive to July 1, 2004; provided that the amendments made to section 76-16(b), Hawaii Revised Statutes, by this Act shall not be repealed when that section is reenacted on July 1, 2006, pursuant to section 5 of Act 128, Session Laws of Hawaii 2004;
- (3) Section 4 shall take effect retroactive to April 23, 2004;
- (4) Section 7 shall take effect retroactive to October 1, 2004;
- (5) Section 8 shall take effect retroactive to January 1, 2005;
- (6) Section 14 shall take effect retroactive to June 17, 2004;
- (7) Sections 15, 16, 17, 18, 19, 21, 22, 36, 38, 39, 40 and 42 shall take effect retroactive to January 1, 2005;
- (8) Section 45 shall take effect retroactive to May 13, 2003; and
- (9) Section 50 shall take effect retroactive to May 6, 2004.

(Approved April 20, 2005.)

### Note

1. Edited pursuant to HRS §23G-16.5.