

ACT 11

S.B. NO. 92

A Bill for an Act Relating to Statutory Revision: Amending 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:

PART I

SECTION 1. Section 11-228, Hawaii Revised Statutes, is amended by amending subsection (g) to read as follows:

“(g) The provisions of this section shall not apply to any person who, prior to the commencement of proceedings under this section, has paid or agreed to pay the penalties prescribed by sections [~~11-193(a)(5)~~] 11-213.5 and 11-215(c).”

SECTION 2. Section 11-229, Hawaii Revised Statutes, is amended by amending subsection (e) to read as follows:

“(e) The provisions of this section shall not apply to any person who, prior to the commencement of proceedings under this section, has paid or agreed to pay the penalties prescribed by sections [~~11-193(a)(5)~~] 11-213.5 and 11-215(c).”

SECTION 3. Section 237-31, Hawaii Revised Statutes, is amended to read as follows:

“**§237-31 Remittances.** All remittances of taxes imposed by this chapter shall be made by money, bank draft, check, cashier’s check, money order, or certificate of deposit to the office of the department of taxation to which the return was transmitted. The department shall issue its receipts therefor to the taxpayer and shall pay the moneys into the state treasury as a state realization, to be kept and accounted for as provided by law; provided that:

- (1) The sum from all general excise tax revenues realized by the State that represents the difference between \$45,000,000 and the proceeds from the sale of any general obligation bonds authorized for that fiscal year for the purposes of the state educational facilities improvement special fund shall be deposited in the state treasury in each fiscal year to the credit of the state educational facilities improvement special fund; ~~and~~
- (2) A sum, not to exceed \$5,000,000, from all general excise tax revenues realized by the State shall be deposited in the state treasury in each fiscal year to the credit of the compound interest bond reserve fund; ~~and~~
- (3) ~~A sum, not to exceed the amount necessary to meet the obligations of the integrated tax information management systems performance-based contract may be retained and deposited in the state treasury to the credit of the integrated tax information management systems special fund. The sum retained by the director of taxation for deposit to the integrated tax information management systems special fund for each fiscal year shall be limited to amounts appro-~~

~~printed by the legislature. This paragraph shall be repealed on July 1, 2005].”~~

SECTION 4. Section 343-5, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) Except as otherwise provided, an environmental assessment shall be required for actions that:

- (1) Propose the use of state or county lands or the use of state or county funds, other than funds to be used for feasibility or planning studies for possible future programs or projects that the agency has not approved, adopted, or funded, or funds to be used for the acquisition of unimproved real property; provided that the agency shall consider environmental factors and available alternatives in its feasibility or planning studies; provided further that an environmental assessment for proposed uses under section ~~[[205-2(d)(10)]]~~ 205-2(d) (11) or ~~[[205-4.5(a)(13)]]~~ shall only be required pursuant to section 205-5(b);
- (2) Propose any use within any land classified as a conservation district by the state land use commission under chapter 205;
- (3) Propose any use within a shoreline area as defined in section 205A-41;
- (4) Propose any use within any historic site as designated in the National Register or Hawaii Register, as provided for in the Historic Preservation Act of 1966, Public Law 89-665, or chapter 6E;
- (5) Propose any use within the Waikiki area of Oahu, the boundaries of which are delineated in the land use ordinance as amended, establishing the “Waikiki Special District”;
- (6) Propose any amendments to existing county general plans where the amendment would result in designations other than agriculture, conservation, or preservation, except actions proposing any new county general plan or amendments to any existing county general plan initiated by a county;
- (7) Propose any reclassification of any land classified as a conservation district by the state land use commission under chapter 205;
- (8) Propose the construction of new or the expansion or modification of existing helicopter facilities within the State, that by way of their activities, may affect:
 - (A) Any land classified as a conservation district by the state land use commission under chapter 205;
 - (B) A shoreline area as defined in section 205A-41; or
 - (C) Any historic site as designated in the National Register or Hawaii Register, as provided for in the Historic Preservation Act of 1966, Public Law 89-665, or chapter 6E; or until the statewide historic places inventory is completed, any historic site that is found by a field reconnaissance of the area affected by the helicopter facility and is under consideration for placement on the National Register or the Hawaii Register of Historic Places; and
- (9) Propose any:
 - (A) Wastewater treatment unit, except an individual wastewater system or a wastewater treatment unit serving fewer than fifty single-family dwellings or the equivalent;
 - (B) Waste-to-energy facility;
 - (C) Landfill;

- (D) Oil refinery; or
- (E) Power-generating facility.”

SECTION 5. Section 431:6-322, Hawaii Revised Statutes, is amended by amending its title to read as follows:

“§431:6-322 Common trust funds; mutual funds; and [[exchange]] traded funds.”

SECTION 6. Section 431:19-204, Hawaii Revised Statutes, is amended by amending subsection (d) to read as follows:

“(d) The commissioner may issue a certificate of authority to transact insurance and reinsurance business as a special purpose financial captive insurance company in this State that shall be valid through the term of the insurance securitization and automatically renewed each April 1 following the date of initial issuance, except as provided for in section 431:19-212, and upon the commissioner’s finding that:

- (1) The proposed plan of operation provides for a reasonable and expected successful operation;
- (2) The terms of the special purpose financial captive insurance company contract and related transactions comply with this part; and
- (3) The insurance regulator of the home domicile of each counterparty has notified the commissioner in writing or otherwise provided assurance satisfactory to the commissioner that it has approved or has not disapproved the transaction; provided that the commissioner shall not be precluded from issuing or renewing a certificate of authority [[in the event that]] the insurance regulator of the home domicile of a counterparty has not responded with respect to all or any part of the transaction.”

SECTION 7. Section 431:19-209, Hawaii Revised Statutes, is amended by amending subsection (e) to read as follows:

“(e) Unless otherwise approved in advance by the commissioner, a special purpose financial captive insurance company shall not:

- (1) Issue or otherwise administer primary insurance contracts;
- (2) Enter into a special purpose financial captive insurance company contract with a counterparty that is not licensed or otherwise authorized to transact the business of insurance or reinsurance in at least its state or country of domicile;
- (3) Enter into a special purpose financial captive insurance contract that contains any provision for payment by the special purpose financial captive insurance company in discharge of its obligations under the contract to any person other than the counterparty or receiver;
- (4) Have any direct obligation to the policyholders or reinsured of the counterparty; or
- (5) Lend or otherwise invest, or place in custody, trust, or under management any of its assets with, or to borrow money or receive a loan from anyone convicted of a felony, anyone convicted of a criminal offense involving the conversion or misappropriation of funds, including fiduciary funds or insurance amounts, or theft, deceit, fraud, misrepresentation, embezzlement, or [[corruption, or anyone]] whom the commissioner has cause to believe has violated, is violating, or is about to violate any provision of this code, any order of the commissioner, or undertakes or plans to undertake any

action that may cause the special purpose financial captive insurance company to be in a condition as to render the continuance of the special purpose financial captive insurance company's business hazardous to the public or to the holders of the special purpose financial captive insurance company contracts or special purpose financial captive insurance company securities."

SECTION 8. Section 451J-7, Hawaii Revised Statutes, is amended to read as follows:

"~~[[~~**§451J-7**~~]]~~ **Application for licensure.** Any person who files an application with the department after December 31, 1998, shall be issued a license by the department if the applicant provides satisfactory evidence to the department that the applicant is qualified for licensure pursuant to the requirements of this chapter and meets the following qualifications:

- (1) Has completed a master's degree or doctoral degree from an accredited educational institution in marriage and family therapy or in an allied field related to the practice of mental health counseling which includes or is supplemented by graduate level course work comprising a minimum of thirty-three semester, or forty-four quarter hours in the following course areas:
 - (A) Marriage and family studies—nine semester or twelve quarter hours;
 - (B) Marriage and family therapy studies—nine semester or twelve quarter hours;
 - (C) Human development—nine semester or twelve quarter hours;
 - (D) Ethical and professional studies—three semester or four quarter hours; ~~[or]~~ and
 - (E) Research—three semester or four quarter hours;
- (2) Has one year practicum with three hundred hours supervised client contact;
- (3) Completes one thousand hours of direct marriage and family therapy, and two hundred hours clinical supervision in not less than twenty-four months; and
- (4) Has passed the National Marriage and Family Therapy Exam in accordance with section 451J-8.

An individual who is a clinical member of the association shall be deemed to have met the educational and clinical experience requirements of this section."

SECTION 9. Section 846-30.5, Hawaii Revised Statutes, is amended to read as follows:

"**§846-30.5 Expiration date.** Every certificate of identification issued under this part, whether an original or a renewal, shall bear an expiration date which shall be on the person's birthday, six years after the year of issuance; provided that if the person is a legal nonimmigrant, the certificate shall bear an expiration date that is the same as the expiration date on the person's ~~[Immigration and Naturalization Service]~~ U.S. Citizenship and Immigration Services departure card (I-94). All certificates of identification issued without expiration dates shall expire on December 31, 1999. To provide for the transition to expiration dates that are birthdays of the persons issued certificates, any certificate issued to a person with an expiration date other than the birthday of that person in the

year of expiration shall expire on that person's last birthday immediately preceding the certificate's stated expiration date."

SECTION 10. Section 846E-1, Hawaii Revised Statutes, is amended by amending the definition of "sexual offense" to read as follows:

"Sexual offense" means an offense that is:

- (1) Set forth in section 707-730(1)(a), 707-730(1)(b), 707-730(1)(c), 707-730(1)(d) or (e), 707-731(1)(a), 707-731(1)(b), 707-731(1)(c), 707-732(1)(a), 707-732(1)(b), 707-732(1)(c), 707-732(1)(d), 707-732(1)(e), 707-732(1)(f), 707-733(1)(a), 707-733.6, 712-1202(1)(b), or 712-1203(1)(b), but excludes conduct that is criminal only because of the age of the victim, as provided in section 707-730(1)(b), or section 707-732(1)(b) if the perpetrator is under the age of eighteen;
- (2) An act defined in section 707-720 if the charging document for the offense for which there has been a conviction alleged intent to subject the victim to a sexual offense;
- (3) An act that consists of:
 - (A) Criminal sexual conduct toward a minor, including but not limited to an offense set forth in section 707-759;
 - (B) Solicitation of a minor who is less than fourteen years old to engage in sexual conduct;
 - (C) Use of a minor in a sexual performance;
 - (D) Production, distribution, or possession of child pornography chargeable as a felony under section 707-750, 707-751, or 707-752;
 - (E) Electronic enticement of a child chargeable under section 707-756[, or 707-757[, or 707-]] if the offense was committed with the intent to promote or facilitate the commission of another covered offense as defined in this section [846E-1]; or
 - (F) Solicitation of a minor to practice prostitution;
- (4) A criminal offense that is comparable to or that exceeds a sexual offense as defined in paragraphs (1) through (3) or any federal, military, or out-of-state conviction for any offense that under the laws of this State would be a sexual offense as defined in paragraphs (1) through (3); or
- (5) An act, as described in chapter 705, that is an attempt, criminal solicitation, or criminal conspiracy to commit one of the offenses designated in paragraphs (1) through (4)."

SECTION 11. Act 9, Session Laws of Hawaii 2008, is amended by amending section 5 to read as follows:

"SECTION 5. This Act shall take effect upon its approval[-]; provided that the amendments made to section 461-1, Hawaii Revised Statutes, by section 3 of this Act, shall not be repealed when section 461-1, Hawaii Revised Statutes, is reenacted on July 1, 2010, pursuant to section 11 of Act 190, Session Laws of Hawaii 2004."

SECTION 12. Act 28, Session Laws of Hawaii 2008, is amended by amending section 43 to read as follows:

"SECTION 43. Upon its approval, this Act shall take effect retroactive to July 1, 2006; provided that:

- (1) Section 3(2) shall be repealed on June 30, 2008;
- (2) Sections 3(3) and [~~23~~] 23 shall take effect on July 1, 2008; and

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- (3) The amendments to section 237-24.3, Hawaii Revised Statutes, by section 26 of this Act shall not be repealed when that section is reenacted on December 31, 2009, by section 4 of Act 239, Session Laws of Hawaii 2007.”

SECTION 13. Act 106, Session Laws of Hawaii 2008, is amended by amending section 3 to read as follows:

“SECTION 3. This Act shall take effect on July 1, 2008, and shall be repealed on June 30, 2011[-]; provided that section 304A-2251, Hawaii Revised Statutes, shall be reenacted in the form in which it read on the day before the effective date of this Act.”

SECTION 14. Act 120, Session Laws of Hawaii 2008, is amended by amending section 3 to read as follows:

“SECTION 3. This Act shall take effect on July 1, 2008, and shall be repealed on July 1, 2013[-]; provided that section 431:2-201.5, Hawaii Revised Statutes, shall be reenacted in the form in which it read on the day before the effective date of this Act.”

SECTION 15. Act 128, Session Laws of Hawaii 2008, is amended by amending section 7 to read as follows:

“SECTION 7. This Act shall take effect upon its approval and shall be repealed on July 1, 2011[-]; provided that sections 711-1109.1(1), 711-1109.2(1), (3), and (5), and 711-1110.5, Hawaii Revised Statutes, shall be reenacted in the form in which they read on the day before the effective date of this Act.”

SECTION 16. Act 154, Session Laws of Hawaii 2008, is amended by amending the prefatory language in section 27 to read as follows:

“SECTION 27. Section [~~626-1-505.5~~] 626-1, Hawaii Revised Statutes, is amended by amending subsection (d) of rule 505.5 to read as follows:”

SECTION 17. Act 171, Session Laws of Hawaii 2008, is amended by amending section 20 to read as follows:

“SECTION 20. This Act shall take effect on July 1, 2008; provided that sections 2 through 11 shall take effect on July 1, 2010; provided further that sections 15 and 16 shall be repealed on June 30, 2010[-]; and provided further that sections 287-20(a) and 291E-61(g), Hawaii Revised Statutes, shall be reenacted in the form in which they read on the day before the effective date of this Act.”

SECTION 18. Act 177, Session Laws of Hawaii 2008, is amended by amending section 7 to read as follows:

“SECTION 7. This Act shall take effect upon its approval, and shall be repealed two years from the date of its approval[-]; provided that section 431:7-101(a) and (b), Hawaii Revised Statutes, shall be reenacted in the form in which it read on the day before the effective date of this Act.”

SECTION 19. Act 180, Session Laws of Hawaii 2008, is amended by amending section 6 to read as follows:

“SECTION 6. This Act shall take effect on July 1, 2008 and shall be repealed on July 1, 2010[-]; provided that sections 586-4(e) and 586-11(a), Hawaii Revised Statutes, shall be reenacted in the form in which they read on the day before the effective date of this Act.”

SECTION 20. Act 212, Session Laws of Hawaii 2008, is amended by amending section 7 to read as follows:

“SECTION 7. This Act shall take effect upon its approval and shall be repealed on January 1, 2013[-]; provided that sections 461-1 and 461-14, Hawaii Revised Statutes, are reenacted in the form in which they read on the day before the effective date of this Act: and provided further that the 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 on July 1, 2010, pursuant to section 11 of Act 190, Session Laws of Hawaii 2004.”

SECTION 21. Act 226, Session Laws of Hawaii 2008, is amended by amending section 16 to read as follows:

“SECTION 16. This Act shall take effect on July 1, 2008[-]; provided that the amendments made to section 437D-8.4(a), Hawaii Revised Statutes, by this Act, shall not be repealed when section 437D-8.4, Hawaii Revised Statutes, is reenacted on December 31, 2022, pursuant to Act 247, Session Laws of Hawaii 2005.”

SECTION 22. Act 227, Session Laws of Hawaii 2008, is amended by amending section 5 to read as follows:

“SECTION 5. This Act shall take effect upon its approval, and shall be repealed on June 30, 2011[-]; provided that section 431:13-103(a), Hawaii Revised Statutes, shall be reenacted in the form in which it read on the day before the effective date of this Act.”

SECTION 23. Act 11, First Special Session Laws of Hawaii 2008, is amended by amending section 15 to read as follows:

“SECTION 15. This Act shall take effect on July 1, 2008[-]; provided that section 2 shall take effect on June 29, 2008.”

SECTION 24. Chapter 235D, Hawaii Revised Statutes, is repealed.

SECTION 25. Section 237-27.1, Hawaii Revised Statutes, is repealed.

PART II

SECTION 26. Section 92-28, Hawaii Revised Statutes, is amended to read as follows:

“§92-28 State service fees; increase or decrease of. Any law to the contrary notwithstanding, the fees or other nontax revenues assessed or charged by any board, commission, or other governmental agency may be increased or decreased by the body in an amount not to exceed fifty per cent of the statutorily assessed fee or nontax revenue, to maintain a reasonable relation between the revenues derived from such fee or nontax revenue and the cost or value of services rendered, comparability among fees imposed by the State, or any other purpose which it may deem necessary and reasonable; provided that:

- (1) The authority to increase or decrease fees or nontax revenues shall be subject to the approval of the governor and extend only to the following: chapters 36, 92, 94, 142, 144, 145, 147, 150, 171, 188, 189, 231, 269, 271, 321, 338, 373, 412, 414, 414D, 415A, 417E, 419, 421, 421C, 421H, 421I, 425, 425E, 428, 431, 436E, 437, 437B, 438, 439, 440, 441, 442, 443B, 444, 447, 448, 448E, 448F, 448H, 451A, 451J, 452, 453, 453D, 454, 455, 456, 457, 457A, 457B, 457G, 458, 459, [460,] 460J, 461, 461J, 462A, 463, 463E, 464, 465, 466, 466K, 467,

- 467E, 468E, 468L, 468M, 469, 471, 482, 482E, 484, 485A, 501, 502, 505, 514A, 514B, 514E, 572, 574, and 846 (part II);
- (2) The authority to increase or decrease fees or nontax revenues under the chapters listed in paragraph (1) that are established by the department of commerce and consumer affairs shall apply to fees or nontax revenues established by statute or rule;
 - (3) The authority to increase or decrease fees or nontax revenues established by the University of Hawaii under chapter 304A shall be subject to the approval of the board of regents; provided that the board's approval of any increase or decrease in tuition for regular credit courses shall be preceded by an open public meeting held during or prior to the semester preceding the semester to which the tuition applies;
 - (4) This section shall not apply to judicial fees as may be set by any chapter cited in this section;
 - (5) The authority to increase or decrease fees or nontax revenues pursuant to this section shall be exempt from the public notice and public hearing requirements of chapter 91; and
 - (6) Fees for copies of proposed and final rules and public notices of proposed rulemaking actions under chapter 91 shall not exceed 10 cents a page, as required by section 91-2.5."

SECTION 27. Section 235-1, Hawaii Revised Statutes, is amended by amending the definition of "person totally disabled" to read as follows:

"Person totally disabled" means a person who is totally and permanently disabled, either physically or mentally, which results in the person's inability to engage in any substantial gainful business or occupation.

The disability shall be certified to by (1) a physician or osteopathic physician licensed under chapter 453 [~~or 460, or both~~], (2) a qualified out-of-state physician who is currently licensed to practice in the state in which the physician resides, or (3) a commissioned medical officer in the United States Army, Navy, Marine Corps, or Public Health Service, engaged in the discharge of one's official duty. Certification shall be on forms prescribed by the department of taxation."

SECTION 28. Section 246-31, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

"(b) Any person who is totally disabled, as defined in section 235-1, so long as the person is totally disabled, shall be exempt from real property taxes on all real property owned by the person up to, but not exceeding, a taxable value of \$15,000. The disability shall be certified to by a physician or osteopathic physician licensed under chapter 453 [~~or 460, or both~~], on forms prescribed by the department of taxation."

SECTION 29. Section 304A-1752, Hawaii Revised Statutes, is amended to read as follows:

"[~~§~~304A-1752] **Qualifications for residency program.** The school of medicine of the University of Hawaii shall recommend that two positions within the University of Hawaii medical residency program be filled each year, in accordance with this subpart, by persons who have the necessary qualifications, other than the qualification of residency training, to take the examination for licensure as physicians or osteopathic physicians under chapter 453 [~~or osteopathic physicians under chapter 460~~] and who volunteer to enter into contracts

under section [§304A-1753], regardless of whether they are graduates of the school of medicine of the University of Hawaii. The department of public safety and the department of health shall notify the school of medicine of the type of physicians or osteopathic physicians needed by the correctional facilities and by rural communities. The school of medicine shall establish procedures to provide for applications by, and selection of, persons who are qualified and interested to fill the positions.”

SECTION 30. Section 304A-1753, Hawaii Revised Statutes, is amended to read as follows:

“[§304A-1753] **Contract necessary for filling of positions.** In order to fill a position under this subpart, a person shall enter into a contract with the school of medicine of the University of Hawaii stating that the person:

- (1) Agrees to participate in the residency program for the minimum period required to qualify for the licensure examination under chapter 453 [~~or 460~~];
- (2) Agrees to obtain a permanent license to practice medicine and surgery or osteopathy under chapter 453 [~~or osteopathy under chapter 460,~~] as soon as possible following termination of participation in the residency program;
- (3) Agrees to serve for two years as:
 - (A) An officer or employee of the department of public safety who is based in a correctional facility and whose normal course of duty requires medical treatment of inmates of the facility, another correctional facility, or both; or
 - (B) An officer or employee of the department of health who is employed to provide primary medical care to residents of and to be based in a rural community with a shortage of physicians; and
- (4) Agrees to commence fulfilling the requirement under paragraph (3) immediately following the termination of participation in the residency program and licensure.”

SECTION 31. Section 304A-1754, Hawaii Revised Statutes, is amended to read as follows:

“[§304A-1754] **Penalty for breach of contract.** A person who is placed in the residency program under this subpart, but who breaches any term of the contract under section [§304A-1753], shall pay to the State damages of \$10,000; provided that a contract shall not be deemed breached if the person has obtained a permanent license to practice medicine and surgery or osteopathy under chapter 453 [~~or osteopathy under chapter 460~~], but could not fulfill the requirements of section [§304A-1753(3) and (4)] because no employment vacancy existed in the correctional facilities of the department of public safety or no shortage of physicians or osteopathic physicians existed in any rural community and the department of public safety or the department of health, as applicable, certifies that no employment vacancy or shortage existed.”

SECTION 32. Section 304A-1755, Hawaii Revised Statutes, is amended to read as follows:

“[§304A-1755] **Residency program; defined.** For the purpose of this subpart, “residency program” means a graduate medical education program in a

hospital in this State that is accredited as a medical school residency program by the school of medicine of the University of Hawaii. The school of medicine may develop a special residency program for the purpose of this subpart; provided that the program, upon completion by the person, qualifies the person to take the licensure examination under chapter 453 [~~or 460~~].”

SECTION 33. Section 321-32, Hawaii Revised Statutes, is amended to read as follows:

“~~[[§321-32]]~~ **Epidemiological specialists.** Notwithstanding any other law to the contrary, epidemiological specialists may perform blood collection by venipuncture or capillary puncture and other methods of specimen collection, excluding catheterization, when employed by or acting as an agent of the department and when done under the direct or indirect supervision of a physician or osteopathic physician licensed pursuant to chapter 453 [~~or chapter 460~~].”

SECTION 34. Section 321-313, Hawaii Revised Statutes, is amended to read as follows:

“~~[[§321-313]]~~ **Definition of health care professional.** A health care professional means a physician or osteopathic physician as licensed under chapter 453 [~~and an osteopath as licensed under chapter 460~~].”

SECTION 35. Section 321-373, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) The department shall adopt rules under chapter 91 to implement this part. The rules shall include but not be limited to:

- (1) Prohibiting the use of injections, unless administered by a physician or osteopathic physician licensed under chapter 453 [~~or 460~~], or by a registered nurse licensed under chapter 457;
- (2) Appropriate restrictions on topical anesthetics;
- (3) Prescribing procedures and conditions for sterilization, storage of sterilized equipment, resterilization, and disposal of discarded needles and other equipment;
- (4) Creating examination standards; and
- (5) Fixing penalties and fines for violations of this part or any of the rules adopted by the department.”

SECTION 36. Section 321-374, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) Physicians or osteopathic physicians holding a valid unrevoked license under chapter 453 [~~or 460~~] are exempt from the requirements of this part.”

SECTION 37. Section 321-376, Hawaii Revised Statutes, is amended to read as follows:

“~~§321-376~~ **Facial tattoos.** Application of facial tattoos shall be prohibited except by a physician or osteopathic physician licensed under chapter 453 [~~or 460~~], or by a tattoo artist who is under the general supervision of such a physician[-] or osteopathic physician.”

SECTION 38. Section 325-101, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) The records of any person that indicate that a person has a human immunodeficiency virus (HIV) infection, AIDS related complex (ARC), or acquired immune deficiency syndrome (AIDS), which are held or maintained by any state agency, health care provider or facility, physician, osteopathic physician, laboratory, clinic, blood bank, third party payor, or any other agency, individual, or organization in the State shall be strictly confidential. For the purposes of this part, the term “records” shall be broadly construed to include all communication that identifies any individual who has HIV infection, ARC, or AIDS. This information shall not be released or made public upon subpoena or any other method of discovery. Notwithstanding any other provision to the contrary, release of the records protected under this part shall be permitted under the following circumstances:

- (1) Release is made to the department of health in order that it may comply with federal reporting requirements imposed on the State. The department shall ensure that personal identifying information from these records is protected from public disclosure;
- (2) Release is made of the records, or of specific medical or epidemiological information contained therein, with the prior written consent of the person or persons to whom the records pertain;
- (3) Release is made to medical personnel in a medical emergency only to the extent necessary to protect the health, life, or well-being of the named party;
- (4) Release is made from a physician or osteopathic physician licensed pursuant to chapter 453 ~~or 460~~ to the department of health to inform the sexual or needle sharing contact of an HIV seropositive patient where:
 - (A) There is reason for the physician or osteopathic physician to believe that the contact is or has been at risk of HIV transmission as a result of the index patient having engaged in conduct which is likely to transmit HIV; and
 - (B) The index patient has first been counseled by the physician or osteopathic physician of the need for disclosure and the patient is unwilling to inform the contact directly or is unwilling to consent to the disclosure of the index patient’s HIV status by the physician, the osteopathic physician, or the department of health; provided that the identity of the index patient is not disclosed; and provided further that there is no obligation to identify or locate any contact. Any determination by a physician or osteopathic physician to disclose or withhold disclosure of an index patient’s sexual contacts to the department of health pursuant to this subsection which is made in good faith shall not be subject to penalties under this part or otherwise subject to civil or criminal liability for damages under the laws of the State;
- (5) Release is made by the department of health of medical or epidemiological information from the records to medical personnel, appropriate county and state agencies, blood banks, plasma centers, organ and tissue banks, schools, preschools, day care centers, or county or district courts to enforce this part and to enforce rules adopted by the department concerning the control and treatment of HIV infection, ARC, and AIDS, or to the sexual or needle sharing contacts of an HIV seropositive index patient for purposes of contact notification as provided in paragraph (4); provided that the identity of the index patient, if known, shall not be disclosed; provided further that

release of information under this paragraph shall only be made by confidential communication to a designated individual charged with compliance with this part;

- (6) Release of a child's records is made to the department of human services for the purpose of enforcing chapters 350 and 587;
- (7) Release of a child's records is made within the department of human services and to child protective services team consultants under contract to the department of human services for the purpose of enforcing and administering chapters 350 and 587 on a need to know basis pursuant to a written protocol to be established and implemented, in consultation with the director of health, by the director of human services;
- (8) Release of a child's records is made by employees of the department of human services authorized to do so by the protocol established in paragraph (7) to a natural parent of a child who is the subject of the case when the natural parent is a client in the case, the guardian ad litem of the child, the court, each party to the court proceedings, and also to an adoptive or a prospective adoptive parent, an individual or an agency with whom the child is placed for twenty-four hour residential care, and medical personnel responsible for the care or treatment of the child. When a release is made to a natural parent of the child, it shall be with appropriate counseling as required by section 325-16. In no event shall proceedings be initiated against a child's natural parents for claims of child abuse under chapter 350 or harm to a child or to affect parental rights under chapter 587 solely on the basis of the HIV seropositivity of a child or the child's natural parents;
- (9) Release is made to the patient's health care insurer to obtain reimbursement for services rendered to the patient; provided that release shall not be made if, after being informed that a claim will be made to an insurer, the patient is afforded the opportunity to make the reimbursement directly and actually makes the reimbursement;
- (10) Release is made by the patient's health care provider to another health care provider for the purpose of continued care or treatment of the patient;
- (11) Release is made pursuant to a court order, after an in camera review of the records, upon a showing of good cause by the party seeking release of the records;
- (12) Disclosure by a physician[;] or osteopathic physician, on a confidential basis, of the identity of a person who is HIV seropositive and who also shows evidence of tuberculosis infection, to a person within the department of health as designated by the director of health for purposes of evaluating the need for or the monitoring of tuberculosis chemotherapy for the person and the person's contacts who are at risk of developing tuberculosis; or
- (13) Release is made for the purpose of complying with sections 325-16.5 and 801D-4(b). Nothing in this section shall be construed to prohibit a victim to whom information is released pursuant to section 325-16.5 from requesting the release of information by a physician, osteopathic physician, or HIV counselor to a person with whom the victim shares a privileged relationship recognized by chapter 626; provided that prior to such release, the person to whom the information is to be released shall be required to sign a notice of HIV status disclosure advising them of the confidentiality provisions regard-

ing HIV test results and the penalties for unlawful disclosure to any person other than a designated physician, osteopathic physician, or HIV counselor.

As used in this part, unless the context requires otherwise:

“Medical emergency” means any disease-related situation that threatens life or limb.

“Medical personnel” means any health care provider in the State, as provided in section 323D-2, who deals directly or indirectly with the identified patient or the patient’s contacts, and includes hospital emergency room personnel, the staff of the communicable disease division of the department of health, and any other department personnel as designated by the director.”

SECTION 39. Section 327C-1, Hawaii Revised Statutes, is amended by amending subsections (a), (b), and (c) to read as follows:

“(a) Except as provided in subsection (b), a person shall be considered dead if, in the announced opinion of a physician or osteopathic physician licensed under part I of chapter 453, [~~physician and surgeon licensed under chapter 460;~~] physician or osteopathic physician excepted from licensure by section 453-2(b) (3), or registered nurse licensed under chapter 457, based on ordinary standards of current medical practice, the person has experienced irreversible cessation of spontaneous respiratory and circulatory functions. Death will have occurred at the time when the irreversible cessation of the functions first coincided.

(b) In the event that artificial means of support preclude a determination that respiratory and circulatory functions have ceased, a person shall be considered dead if, in the opinion of an attending physician or osteopathic physician licensed under part I of chapter 453, [~~attending physician and surgeon licensed under chapter 460;~~] or attending physician or osteopathic physician excepted from licensure by section 453-2(b)(3), and of a consulting physician or osteopathic physician licensed under part I of chapter 453, [~~consulting physician and surgeon licensed under chapter 460;~~] or consulting physician or osteopathic physician excepted from licensure by section 453-2(b)(3), based on ordinary standards of current medical practice, the person has experienced irreversible cessation of all functions of the entire brain, including the brain stem. The opinions of the physicians or osteopathic physicians shall be evidenced by signed statements. Death will have occurred at the time when the irreversible cessation of all functions of the entire brain, including the brain stem, first occurred. Death shall be pronounced before artificial means of support are withdrawn and before any vital organ is removed for purposes of transplantation.

(c) When a part of a donor is used for direct organ transplantation under chapter 327, and the donor’s death is established by determining that the donor experienced irreversible cessation of all functions of the entire brain, including the brain stem, the determination shall only be made under subsection (b). The determination of death in all other cases shall be made under subsection (a). The physicians or osteopathic physicians making the determination of death shall not participate in the procedures for removing or transplanting a part, or in the care of any recipient.”

SECTION 40. Section 327E-2, Hawaii Revised Statutes, is amended by amending the definition of “physician” to read as follows:

““Physician” means an individual authorized to practice medicine or osteopathy under chapter 453 [~~or 460~~].”

SECTION 41. Section 327G-2, Hawaii Revised Statutes, is amended by amending the definition of “physician” to read as follows:

““Physician” means an individual authorized to practice medicine or osteopathy under chapter 453 [~~or osteopathy under chapter 460~~].”

SECTION 42. Section 329-104, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

“(c) This section shall not prevent the disclosure, at the discretion of the administrator, of investigative information to:

- (1) Law enforcement officers, investigative agents of federal, state, or county law enforcement agencies, prosecuting attorneys, or the attorney general; provided that the administrator has reasonable grounds to believe that the disclosure of any information collected under this part is in furtherance of an ongoing criminal investigation or prosecution;
- (2) Registrants authorized under chapters 448, 453, [460,] and 463E who are registered to administer, prescribe, or dispense controlled substances; provided that the information disclosed relates only to the registrant’s own patient;
- (3) Pharmacists, employed by a pharmacy registered under section 329-32, who request prescription information about a customer relating to a violation or possible violation of this chapter; or
- (4) Other state-authorized governmental prescription-monitoring programs.

Information disclosed to a registrant, pharmacist, or authorized government agency under this section shall be transmitted by a secure means determined by the designated agency.”

SECTION 43. Section 329-121, Hawaii Revised Statutes, is amended by amending the definition of “physician” to read as follows:

““Physician” means a person who is licensed to practice medicine or osteopathic medicine under [~~chapters~~] chapter 453 [~~and 460,~~] and is licensed with authority to prescribe drugs and is registered under section 329-32. “Physician” does not include physician’s assistant as described in section 453-5.3.”

SECTION 44. Section 338-1, Hawaii Revised Statutes, is amended by amending the definition of “physician” to read as follows:

““Physician” means a person licensed to practice medicine or osteopathic medicine under part I of chapter 453 or a practitioner of medicine, osteopathic medicine, or surgery excepted from licensure by section 453-2(b)(3) [~~or a person licensed to practice osteopathy under chapter 460~~].”

SECTION 45. Section 346-67, Hawaii Revised Statutes, is amended as follows:

1. By amending subsection (a) to read:

“(a) Public assistance recipients in this State who receive medical assistance pursuant to this chapter shall be allowed coverage for medical foods and low-protein modified food products for the treatment of an inborn error of metabolism; provided that the medical food or low-protein modified food product is:

- (1) Prescribed as medically necessary for the therapeutic treatment of an inborn error of metabolism; and
- (2) Consumed or administered enterally under the supervision of a physician or osteopathic physician licensed under chapter 453 [~~or 460~~].

The department shall adopt rules pursuant to chapter 91 to effectuate this subsection.”

2. By amending subsection (c) to read:

“(c) For the purposes of this section:

“Inborn error of metabolism” means a disease caused by an inherited abnormality of the body chemistry of a person that is characterized by deficient metabolism, originating from congenital defects or defects arising shortly after birth, of amino acid, organic acid, carbohydrate, or fat.

“Low-protein modified food product” means a food product that:

- (1) Is specially formulated to have less than one gram of protein per serving;
- (2) Is prescribed or ordered by a physician or osteopathic physician as medically necessary for the dietary treatment of an inborn error of metabolism; and
- (3) Does not include a food that is naturally low in protein.

“Medical food” means a food that is formulated to be consumed or administered enterally under the supervision of a physician or osteopathic physician and is intended for the specific dietary management of a disease or condition for which distinctive nutritional requirements, based on recognized scientific principles, are established by medical evaluation.”

SECTION 46. Section 346C-8, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) An individual qualifying for long-term care services under the program shall have written certification from a physician or osteopathic physician licensed under chapter 453 [~~or 460,~~] or an advanced practice registered nurse recognized under section 457-8.5, assigned by the board of trustees certifying that the individual requires one or more long-term care services for the period of time during which the individual receives the benefits under the program. The written certification shall specify that the individual:

- (1) Is unable to perform, without substantial assistance from another individual, at least two of six activities of daily living for a period of at least ninety days due to a loss of functional capacity; or
- (2) Requires substantial supervision to protect the individual from threats to health and safety to self or others due to severe cognitive impairment.”

SECTION 47. Section 386-1, Hawaii Revised Statutes, is amended by amending the definition of “health care provider” to read as follows:

““Health care provider” means a person qualified by the director to render health care and service and who has a license for the practice of:

- (1) Medicine or osteopathy under chapter 453;
- (2) Dentistry under chapter 448;
- (3) Chiropractic under chapter 442;
- ~~(4) Osteopathy under chapter 460;~~
- ~~(5) (4) Naturopathy under chapter 455;~~
- ~~(6) (5) Optometry under chapter 459;~~
- ~~(7) (6) Podiatry under chapter 463E; and~~
- ~~(8) (7) Psychology under chapter 465.”~~

SECTION 48. Section 386-27, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) All health care providers rendering health care and services under this chapter shall be qualified by the director and shall remain qualified by satis-

ifying the requirements established in this section. The director shall qualify any person initially who has a license for the practice of:

- (1) Medicine or osteopathy under chapter 453;
- (2) Dentistry under chapter 448;
- (3) Chiropractic under chapter 442;
- ~~[(4) Osteopathy under chapter 460;~~
- ~~(5)~~ (4) Naturopathy under chapter 455;
- ~~[(6)~~ (5) Optometry under chapter 459;
- ~~[(7)~~ (6) Podiatry under chapter 463E; and
- ~~[(8)~~ (7) Psychology under chapter 465.”

SECTION 49. Section 415A-2, Hawaii Revised Statutes, is amended by amending the definition of “professional service” to read as follows:

““Professional service” means any service which lawfully may be rendered only by persons licensed under chapters 442, 448, 453, 455, 457, 459, ~~[460,]~~ 461, 463E, 465, 466, 471, and 605, and section 554-2.”

SECTION 50. Section 431:10A-120, Hawaii Revised Statutes, is amended as follows:

1. By amending subsection (a) to read:

“(a) Each policy of accident and health or sickness insurance, other than life insurance, disability income insurance, and long-term care insurance, issued or renewed in this State, each employer group health policy, contract, plan, or agreement issued or renewed in this State, all accident and health or sickness insurance policies issued or renewed in this State, all policies providing family coverages as defined in section 431:10A-103, and all policies providing reciprocal beneficiary family coverage as defined in section 431:10A-601, shall contain a provision for coverage for medical foods and low-protein modified food products for the treatment of an inborn error of metabolism for its policyholders or dependents of the policyholder in this State; provided that the medical food or low-protein modified food product is:

- (1) Prescribed as medically necessary for the therapeutic treatment of an inborn error of metabolism; and
- (2) Consumed or administered enterally under the supervision of a physician or osteopathic physician licensed under chapter 453 ~~[or 460]~~.

Coverage shall be for at least eighty per cent of the cost of the medical food or low-protein modified food product prescribed and administered pursuant to this subsection.”

2. By amending subsection (c) to read:

“(c) For the purposes of this section:

“Inborn error of metabolism” means a disease caused by an inherited abnormality of the body chemistry of a person that is characterized by deficient metabolism, originating from congenital defects or defects arising shortly after birth, of amino acid, organic acid, carbohydrate, or fat.

“Low-protein modified food product” means a food product that:

- (1) Is specially formulated to have less than one gram of protein per serving;
- (2) Is prescribed or ordered by a physician or osteopathic physician as medically necessary for the dietary treatment of an inborn error of metabolism; and
- (3) Does not include a food that is naturally low in protein.

“Medical food” means a food that is formulated to be consumed or administered enterally under the supervision of a physician or osteopathic physician

and is intended for the specific dietary management of a disease or condition for which distinctive nutritional requirements, based on recognized scientific principles, are established by medical evaluation.”

SECTION 51. Section 431:10C-308.7, Hawaii Revised Statutes, is amended by amending subsection (g) to read as follows:

“(g) For the purposes of this section, the term “health care provider” means any person who is licensed to provide health care services pursuant to chapters 436E, 442, 448, 452, 453, 455, 457G, 459, [460,] 461J, 463E, and 465.”

SECTION 52. Section 431M-1, Hawaii Revised Statutes, is amended by amending the definition of “physician” to read as follows:

““Physician” means a person licensed in the practice of medicine or osteopathy pursuant to chapter 453 [~~or 460, respectively~~].”

SECTION 53. Section 432:1-609, Hawaii Revised Statutes, is amended as follows:

1. By amending subsection (a) to read:

“(a) All individual and group hospital and medical service plan contracts and medical service corporation contracts under this chapter shall provide coverage for medical foods and low-protein modified food products for the treatment of an inborn error of metabolism for its members or dependents of the member in this State; provided that the medical food or low-protein modified food product is:

- (1) Prescribed as medically necessary for the therapeutic treatment of an inborn error of metabolism; and
- (2) Consumed or administered enterally under the supervision of a physician or osteopathic physician licensed under chapter 453 [~~or 460~~].

Coverage shall be for at least eighty per cent of the cost of the medical food or low-protein modified food product prescribed and administered pursuant to this subsection.”

2. By amending subsection (c) to read:

“(c) For the purposes of this section:

“Inborn error of metabolism” means a disease caused by an inherited abnormality of the body chemistry of a person that is characterized by deficient metabolism, originating from congenital defects or defects arising shortly after birth, of amino acid, organic acid, carbohydrate, or fat.

“Low-protein modified food product” means a food product that:

- (1) Is specially formulated to have less than one gram of protein per serving;
- (2) Is prescribed or ordered by a physician or osteopathic physician as medically necessary for the dietary treatment of an inherited metabolic disease; and
- (3) Does not include a food that is naturally low in protein.

“Medical food” means a food that is formulated to be consumed or administered enterally under the supervision of a physician or osteopathic physician and is intended for the specific dietary management of a disease or condition for which distinctive nutritional requirements, based on recognized scientific principles, are established by medical evaluation.”

SECTION 54. Section 432D-19, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

“(c) Any health maintenance organization granted a certificate of authority under this chapter shall not be deemed to be practicing medicine or osteopathic medicine and shall be exempt from the provision of chapter 453 relating to the practice of medicine or osteopathic medicine [~~or chapter 460 relating to the practice of osteopathic medicine~~].”

SECTION 55. Section 432E-1.5, Hawaii Revised Statutes, is amended to read as follows:

“~~[[~~**§432E-1.5**~~]]~~ **Licensure of managed care plan medical directors.** The medical director of any managed care plan providing services in the State shall hold an unlimited license to practice medicine or osteopathic medicine in the State pursuant to chapter 453 [~~or 460~~].”

SECTION 56. Section 435E-1, Hawaii Revised Statutes, is amended by amending the definition of “physician” to read as follows:

““Physician” or “surgeon” means any person licensed to practice medicine or osteopathic medicine under chapter 453 [~~or 460~~]; or any professional corporation, partnership, or other entity whose stockholders or partners are comprised solely of persons licensed under chapter 453 [~~or 460~~].”

SECTION 57. Section 436E-3.5, Hawaii Revised Statutes, is amended to read as follows:

“**§436E-3.5 Physicians and osteopaths not exempt.** Persons licensed under [~~chapters~~] chapter 453 [~~and 460~~] who desire to practice acupuncture shall be subject to licensing under this chapter.”

SECTION 58. Section 440E-5, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) No mixed martial arts event shall take place unless the director has granted a permit for the proposed event. In addition, the director shall not allow any mixed martial arts contest unless:

- (1) The contest consists of not more than five rounds of a duration of not more than five minutes each with an interval of at least one minute between each round and the succeeding round;
- (2) Each contestant is at least eighteen years of age, is not disqualified from competing in a similar mixed martial arts contest in another jurisdiction at the time of the contest, and does not use stimulants or banned substances before or during the contest;
- (3) Each mixed martial arts contestant is examined one hour prior to the contest by at least one physician or osteopathic physician licensed under chapter 453 [~~or 460~~] who shall certify in writing to the referee of the contest that the contestant is physically fit to engage therein;
- (4) Each contestant furnishes to the director:
 - (A) A medical report of a medical examination completed not less than six months before the contest, at the sole expense of the promoter, including the results of HIV and hepatitis testing; and
 - (B) Previous fight records that establish the contestant’s fitness to compete in the contest;
- (5) The contest is under the control of a licensed referee in the ring who has at least one year of experience in refereeing a match or exhibi-

tion involving mixed martial arts and who has passed a physical examination by a physician or osteopathic physician licensed under chapter 453 [or 460], including an eye examination, within two years prior to the contest;

- (6) The promoter has complied with sections 440E-6 and 440E-7; and
- (7) All licensees have complied with the requirements of this chapter and rules adopted in accordance with chapter 91, including any rules or requirements that protect the safety of the contestants to the extent feasible.”

SECTION 59. Section 440E-16, Hawaii Revised Statutes, is amended to read as follows:

“~~[[§440E-16]]~~ **Physician[s] or osteopathic physician; duties.** Every promoter holding a license to conduct, hold, or give mixed martial arts contests shall have in attendance at every contest at least two physicians licensed to practice medicine or osteopathic medicine in the State under chapter 453 [or 460,] who shall observe the physical condition of the mixed martial arts contestants and advise the referee with regard thereto and, one hour before each contestant enters the ring, certify in writing as to the physical condition of the contestant to engage in the contest. A report of the medical examination shall be filed with the director not later than forty-eight hours after the conclusion of the contest. If a contestant is knocked down or severely injured during a contest, or for any other ~~[[reason]]~~ as provided in rules adopted by the director pursuant to chapter 91, at least one physician shall immediately examine the contestant and file a written medical opinion with the director within forty-eight hours of the contest.”

SECTION 60. Section 451D-2, Hawaii Revised Statutes, is amended by amending the definitions of “board” and “health care professional” to read as follows:

““Board” means the board of dental examiners, the Hawaii medical board, the board of psychology, the board of nursing, ~~[the board of osteopathic examiners,]~~ the board of veterinary examiners, the board of acupuncture, the board of massage therapy, the board of examiners in naturopathy, the board of chiropractic examiners, and the board of pharmacy.

“Health care professional” includes physicians and surgeons and others licensed pursuant to ~~[chapters]~~ chapter 453 ~~[and 460]~~, podiatrists licensed pursuant to chapter 463E, dentists licensed pursuant to chapter 448, psychologists licensed pursuant to chapter 465, nurses licensed pursuant to chapter 457, veterinarians licensed pursuant to chapter 471, acupuncturists licensed pursuant to chapter 436E, massage therapists licensed pursuant to chapter 452, naturopathic physicians licensed pursuant to chapter 455, chiropractors licensed pursuant to chapter 442, and pharmacists licensed pursuant to chapter 461.”

SECTION 61. Section 457-2, Hawaii Revised Statutes, is amended by amending the definitions of “the practice of nursing as a licensed practical nurse” and “the practice of nursing as a registered nurse” to read as follows:

““The practice of nursing as a licensed practical nurse” means the performance of those acts commensurate with the required educational preparation and demonstrated competency of the individual, whereby the individual shall be accountable and responsible to the consumer for the quality of nursing care rendered. The foregoing may include, but not be limited to, implementation of basic nursing procedures in the plan of care; or observing and caring for individuals at all levels of the health spectrum, giving counsel and acting to safeguard life

and health and functioning as a part of the health care team, under the direction of a dentist, medical doctor[;] or osteopath, registered nurse, [~~osteopath~~] or podiatrist licensed in accordance with chapter 448, 453, 457, [460,] or 463E; or administration of treatment and medication as prescribed; or promotion of health maintenance of individuals, families, or groups; or teaching and supervision of auxiliary personnel.

“The practice of nursing as a registered nurse” means the performance of professional services commensurate with the educational preparation and demonstrated competency of the individual having specialized knowledge, judgment, and skill based on the principles of the biological, physical, behavioral, and sociological sciences and nursing theory, whereby the individual shall be accountable and responsible to the consumer for the quality of nursing care rendered. The foregoing may include, but not be limited to, observation, assessment, development, implementation, and evaluation of a plan of care, health counseling, supervision and teaching of other personnel, and teaching of individuals, families, and groups in any stage of health or illness; or administration, supervision, coordination, delegation, and evaluation of nursing practice; or provisions of health care to the patient in collaboration with other members of the health care team as autonomous health care professionals providing the nursing component of health care; or utilization of reasonable judgment in carrying out prescribed medical orders of a licensed dentist, medical doctor[;] or osteopath, or podiatrist licensed in accordance with chapter 448, 453, [460,] or 463E or the orders of an advanced practice registered nurse recognized in accordance with this chapter.”

SECTION 62. Section 461-1, Hawaii Revised Statutes, is amended by amending the definition of “licensed physician” to read as follows:

““Licensed physician” means a physician or osteopathic physician licensed by the Hawaii medical board pursuant to chapter 453 [~~or 460~~].”

SECTION 63. Section 461-8, Hawaii Revised Statutes, is amended by amending subsection (d) to read as follows:

“(d) Beginning with the renewal for the licensing biennium commencing on January 1, 2008, and every biennial renewal thereafter, each licensee shall have completed thirty credit hours in continuing education courses within the two-year period preceding the renewal date, regardless of the licensee’s initial date of licensure; provided that a licensee who has graduated from an accredited pharmacy school within one year of the licensee’s first license renewal period shall not be subject to the continuing education requirement for the first license renewal. The board may extend the deadline for compliance with the continuing education requirement based on any of the following:

- (1) Illness, as certified by a physician or osteopathic physician licensed under chapter 453 [~~or 460~~] or licensed in the jurisdiction in which the licensee was treated;
- (2) Military service under extended active duty with the armed forces of the United States;
- (3) Lack of access to continuing education courses due to the practice of pharmacy in geographically isolated areas; and
- (4) Inability to undertake continuing education due to incapacity, undue hardship, or other extenuating circumstances.”

SECTION 64. Section 461J-4, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) There is established within the department of commerce and consumer affairs for administrative purposes the board of physical therapy. The

board shall consist of seven members. Four members shall be physical therapists, one member shall be a physician, osteopathic physician, or surgeon with a permanent license under chapter 453 [~~or 460~~], or a dentist with a permanent license under chapter 448, and two members shall be consumers. All members shall be at least eighteen years of age and residents of the State.”

SECTION 65. Section 466J-2, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) The board shall consist of ten members. The membership shall be composed of:

- (1) Two persons licensed to practice medicine or osteopathic medicine pursuant to chapter 453 [~~or 460~~] and certified by the American Board of Radiology;
- (2) Four persons, each with at least five years’ experience and certified in the practice of radiography, two of whom shall be persons engaged in the hospital practice of radiography;
- (3) One person with at least five years’ experience who is certified and engaged in the practice of radiation therapy technology;
- (4) One person with at least five years’ experience, who is certified and engaged in the practice of nuclear medicine technology;
- (5) One person from the general public; and
- (6) The director or the director’s designated representative shall be the tenth, ex officio voting member of the board.”

SECTION 66. Section 560:5-601, Hawaii Revised Statutes, is amended by amending the definition of “licensed physician” to read as follows:

““Licensed physician” means any person who is licensed to practice medicine or osteopathic medicine in Hawaii under chapter 453 [~~or 460~~].”

SECTION 67. Section 671-1, Hawaii Revised Statutes, is amended to read as follows:

“§671-1 Definitions. As used in this chapter:

- (+)
[+] “Health care provider” means a physician, osteopathic physician, or surgeon licensed under chapter 453, [~~a physician and surgeon licensed under chapter 460,~~] a podiatrist licensed under chapter 463E, a health care facility as defined in section 323D-2, and the employees of any of them. Health care provider shall not mean any nursing institution or nursing service conducted by and for those who rely upon treatment by spiritual means through prayer alone, or employees of such institution or service.
- (-)
[-] “Medical tort” means professional negligence, the rendering of professional service without informed consent, or an error or omission in professional practice, by a health care provider, which proximately causes death, injury, or other damage to a patient.”

SECTION 68. Section 671-5, Hawaii Revised Statutes, is amended by amending subsections (b) and (c) to read as follows:

“(b) The insurance commissioner shall forward the name of every health care provider, except a hospital and physician or an osteopathic physician or surgeon licensed under chapter 453 [~~or an osteopathic physician or surgeon licensed under chapter 460~~] or a podiatrist licensed under chapter 463E, against whom a settlement is made, an arbitration award is made, or judgment is rendered to the appropriate board of professional registration and examination for review

of the fitness of the health care provider to practice the health care provider's profession. The insurance commissioner shall forward the entire report under subsection (a) to the department of commerce and consumer affairs if the person against whom settlement or arbitration award is made or judgment rendered is a physician or osteopathic physician or surgeon licensed under chapter 453 [~~or an osteopathic physician and surgeon licensed under chapter 460~~] or a podiatrist licensed under chapter 463E.

(c) A failure on the part of any self-insured health care provider to report as requested by this section shall be grounds for disciplinary action by the Hawaii medical board [~~board of osteopathic examiners,~~] or the state health planning agency, as applicable. A violation by an insurer shall be grounds for suspension of its certificate of authority."

SECTION 69. Section 671-11, Hawaii Revised Statutes, is amended as follows:

1. By amending subsection (b) to read:

"(b) A medical claim conciliation panel shall be formed for each claim filed pursuant to section 671-12 and after each panel renders its decision or the claim is otherwise disposed of it shall be disbanded. Each medical claim conciliation panel shall consist of one chairperson selected from among persons who are familiar with and experienced in the personal injury claims settlement process, one attorney licensed to practice in the courts of the State and experienced in trial practice, and one physician, osteopathic physician, or surgeon licensed to practice under chapter 453 [~~or chapter 460~~]. The chairperson shall be appointed by the director of the department of commerce and consumer affairs from a list of eligible persons approved by the chief justice of the supreme court of Hawaii. The attorney shall be appointed by the chairperson from a list of not less than thirty-five attorneys experienced in trial practice submitted annually by the supreme court. The physician, osteopathic physician, or surgeon shall be appointed by the chairperson and shall be currently licensed and in good standing under chapter 453 [~~or under chapter 460~~]."

2. By amending subsection (g) to read:

"(g) The Hawaii medical board [~~and board of osteopathic examiners~~] shall [~~each~~] prepare a list of physicians, osteopathic physicians, surgeons, and podiatrists, as the case may be, along with their respective specialties. These physicians, osteopathic physicians, and surgeons shall be eligible to serve as consultants to the panel in their respective fields. Panel members may consult with other legal, medical, and insurance specialists."

SECTION 70. Section 671-15, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) Within thirty days after the completion of a hearing, the medical claim conciliation panel shall file a written advisory decision with the insurance commissioner who shall thereupon mail copies to all parties concerned, their counsel, and the representative of each health care provider's liability insurance carrier authorized to act for such carrier, [~~and the board of osteopathic examiners,~~] as appropriate. The insurance commissioner also shall mail copies of the advisory decision to the department of commerce and consumer affairs, if the claim is against a physician, osteopathic physician, or surgeon licensed under chapter 453 [~~or an osteopathic physician and surgeon licensed under chapter 460~~] or a podiatrist licensed under chapter 463E. The panel shall decide the issue of liability and shall state its conclusions in substantially the following language: "We find the health care provider was actionably negligent in his or her care and treatment of the patient and we, therefore, find for the claimant"; or "We find

the health care provider was not actionably negligent in his or her care and treatment of the patient and we, therefore, find for the health care provider”.”

SECTION 71. Section 671D-4, Hawaii Revised Statutes, is amended by amending the definition of “physician” to read as follows:

““Physician” means an individual licensed under chapter 453 [~~or 460, or both,~~] or section 463E-1, to practice medicine or surgery or osteopathy or podiatric medicine; an individual licensed under chapter 448 to practice dentistry or dental surgery; or any individual who, without authority, holds oneself out to be so authorized.”

SECTION 72. Section 707-730, Hawaii Revised Statutes, is amended by amending subsection (1) to read as follows:

“(1) A person commits the offense of sexual assault in the first degree if:

- (a) The person knowingly subjects another person to an act of sexual penetration by strong compulsion;
- (b) The person knowingly engages in sexual penetration with another person who is less than fourteen years old;
- (c) The person knowingly engages in sexual penetration with a person who is at least fourteen years old but less than sixteen years old; provided that:
 - (i) The person is not less than five years older than the minor; and
 - (ii) The person is not legally married to the minor;
- (d) The person knowingly subjects to sexual penetration another person who is mentally defective; or
- (e) The person knowingly subjects to sexual penetration another person who is mentally incapacitated or physically helpless as a result of the influence of a substance that the actor knowingly caused to be administered to the other person without the other person’s consent.

Paragraphs (b) and (c) shall not be construed to prohibit practitioners licensed under chapter 453[~~]~~ or 455[~~or 460~~] from performing any act within their respective practices.”

SECTION 73. Section 707-731, Hawaii Revised Statutes, is amended by amending subsection (1) to read as follows:

“(1) A person commits the offense of sexual assault in the second degree if:

- (a) The person knowingly subjects another person to an act of sexual penetration by compulsion;
- (b) The person knowingly subjects to sexual penetration another person who is mentally incapacitated or physically helpless; or
- (c) The person, while employed:
 - (i) In a state correctional facility;
 - (ii) By a private company providing services at a correctional facility;
 - (iii) By a private company providing community-based residential services to persons committed to the director of public safety and having received notice of this statute;
 - (iv) By a private correctional facility operating in the State of Hawaii; or
 - (v) As a law enforcement officer as defined in section 710-1000(13),

knowingly subjects to sexual penetration an imprisoned person, a person confined to a detention facility, a person committed to the director of public safety, a person residing in a private correctional facility operating in the State of Hawaii, or a person in custody; provided that paragraph (b) and this paragraph shall not be construed to prohibit practitioners licensed under chapter 453[,] or 455[, ~~or~~ 460,] from performing any act within their respective practices; and further provided that this paragraph shall not be construed to prohibit a law enforcement officer from performing a lawful search pursuant to a warrant or exception to the warrant clause.”

SECTION 74. Section 707-732, Hawaii Revised Statutes, is amended by amending subsection (1) to read as follows:

“(1) A person commits the offense of sexual assault in the third degree if:

- (a) The person recklessly subjects another person to an act of sexual penetration by compulsion;
- (b) The person knowingly subjects to sexual contact another person who is less than fourteen years old or causes such a person to have sexual contact with the person;
- (c) The person knowingly engages in sexual contact with a person who is at least fourteen years old but less than sixteen years old or causes the minor to have sexual contact with the person; provided that:
 - (i) The person is not less than five years older than the minor; and
 - (ii) The person is not legally married to the minor;
- (d) The person knowingly subjects to sexual contact another person who is mentally defective, mentally incapacitated, or physically helpless, or causes such a person to have sexual contact with the actor;
- (e) The person, while employed:
 - (i) In a state correctional facility;
 - (ii) By a private company providing services at a correctional facility;
 - (iii) By a private company providing community-based residential services to persons committed to the director of public safety and having received notice of this statute;
 - (iv) By a private correctional facility operating in the State of Hawaii; or
 - (v) As a law enforcement officer as defined in section 710-1000(13), knowingly subjects to sexual contact an imprisoned person, a person confined to a detention facility, a person committed to the director of public safety, a person residing in a private correctional facility operating in the State of Hawaii, or a person in custody, or causes the person to have sexual contact with the actor; or
- (f) The person knowingly, by strong compulsion, has sexual contact with another person or causes another person to have sexual contact with the actor.

Paragraphs (b), (c), (d), and (e) shall not be construed to prohibit practitioners licensed under chapter 453[,] or 455[, ~~or~~ 460,] from performing any act within their respective practices; provided further that paragraph (e)(v) shall not be construed to prohibit a law enforcement officer from performing a lawful search pursuant to a warrant or an exception to the warrant clause.”

PART III

SECTION 75. Statutory material to be repealed is bracketed and stricken.² New statutory material is underscored.

SECTION 76. This Act shall take effect upon approval, provided that:

- (1) Section 23 shall take effect retroactive to June 29, 2008;
- (2) Part II shall take effect retroactive to April 3, 2008; provided that sections 58 and 59, amending sections 440E-5 and 440E-16, Hawaii Revised Statutes, shall take effect on July 1, 2009; and
- (3) Section 62, amending section 461-1, Hawaii Revised Statutes, shall not be repealed when section 461-1, Hawaii Revised Statutes, is reenacted on July 1, 2010, pursuant to section 11 of Act 190, Session Laws of Hawaii 2004.

(Approved April 21, 2009.)

Notes

1. So in original.
2. Edited pursuant to HRS §23G-16.5.