

ACT 230

S.B. NO. 1327

A Bill for an Act Relating to Statutory Revision: Amending or Repealing Various Provisions of the Hawaii Revised Statutes or the Session Laws of Hawaii for the Purposes of Correcting Errors and References, Clarifying Language, or Deleting Obsolete or Unnecessary Provisions.

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

SECTION 1. Section 266-3, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

- “(a) The director of transportation may adopt rules as necessary [to]:
- (1) [~~Regulate~~] To regulate the manner in which all vessels may enter and moor, anchor, or dock in the commercial harbors, ports, and roadsteads of the State, or move from one dock, wharf, pier, quay, bulkhead, landing, anchorage, or mooring to another within the commercial harbors, ports, or roadsteads;
 - (2) [~~The~~] For the examination, guidance, and control of harbor masters and their assistants and their conduct while on duty;
 - (3) [~~The~~] For the embarking or disembarking of passengers;
 - (4) [~~The~~] For the expeditious and careful handling of freight, goods, wares, and merchandise of every kind [~~which~~] that may be delivered for shipment or discharged on the commercial docks, wharves, piers, quays, bulkheads, or landings belonging to or controlled by the State; and
 - (5) [~~Defining~~] To define the duties and powers of carriers, shippers, and consignees respecting passengers, freight, goods, wares, and merchandise in and upon the docks, wharves, piers, quays, bulkheads, or landings within the commercial harbors, ports, and roadsteads of the State. The director may also make further rules for the safety of the docks, wharves, piers, quays, bulkheads, and landings on, in, near, or affecting a commercial harbor and waterfront improvements belonging to or controlled by the State.”

SECTION 2. Section 266-19, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) At any time the director of transportation may transfer from the harbor special fund created by [~~paragraph~~] subsection (a) [~~of this section,~~] all or any portion of available moneys on deposit in the harbor special fund that is determined by the director of transportation to be in excess of one hundred fifty per cent of the requirements for the ensuing twelve months for the harbor special fund, as permitted by and in accordance with section 37-53. For purposes of [~~such~~] this determination, the director of transportation shall take into consideration the amount of federal funds and bond funds on deposit in, and budgeted to be expended from, the harbor special fund during [~~such period,~~] the ensuing twelve months; amounts on deposit in the harbor special fund [~~which~~] that are encumbered or otherwise obligated[.]; budgeted amounts payable from the harbor special fund during [~~such period, and~~] the ensuing twelve months; revenues anticipated to be received by and expenditures to be made from the harbor special fund during [~~such period~~] the ensuing twelve months based on existing agreements and other information for [~~the ensuing twelve months,~~] that period; and [~~such~~] any other factors as the director of transportation shall deem appropriate.”

SECTION 3. Section 268-9, Hawaii Revised Statutes, is amended to read as follows:

“**§268-9 Seamen may sue for injuries; venue.** The State consents to suits against the department of transportation by seamen for injuries occurring upon vessels under the authority of the Hawaii state ferries system in accordance with [~~section 688, Title~~] title 46[~~, of the~~] United States Code[.] section 30104. The venue of the actions may be in the first circuit court or the circuit wherein the injury occurred.”

SECTION 4. Section 291E-19, Hawaii Revised Statutes, is amended to read as follows:

~~“[§291E-19] Authorization to establish intoxicant control roadblock programs.~~ The police departments of the respective counties may establish and implement intoxicant control roadblock programs in accordance with the minimum standards and guidelines provided in section 291E-20. The chief of police in any county establishing an intoxicant control roadblock program pursuant to this section shall specify the procedures to be followed in carrying out the program in rules adopted under chapter 91; provided that the procedures shall be in conformity with and not more intrusive than the standards and guidelines described in section 291E-20. In the case of internal police standards that do not fall within the definition of “rule” under section ~~[91-1(4),]~~ 91-1, failure to comply scrupulously with ~~[such]~~ the internal police procedures shall not invalidate a roadblock that otherwise meets the minimum statutory criteria provided in section 291E-20.”

SECTION 5. Section 302A-1165, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

“(c) The department shall share the information gathered pursuant to this section with the department of human services, executive office on early learning, and state public charter school commission to the extent not otherwise prohibited by administrative rule or law.”

SECTION 6. Section 302A-1166, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

“(c) The department shall share the information gathered pursuant to this section with the department of human services, executive office on early learning, and state public charter school commission to the extent not otherwise prohibited by administrative rule or law.”

SECTION 7. Section 328G-2, Hawaii Revised Statutes, is amended by amending subsection (j) to read as follows:

“(j) The department may remove any person from the registry for failure to comply with any law or regulation under this chapter. It is the responsibility of the hemp processor to make sure it is registered and legally allowed to process hemp and in compliance with any and all laws and regulations. The removal of a hemp processor from the registry shall be in accordance with the procedures set forth in section ~~[328H-F.]~~ 328G-6.”

SECTION 8. Section 346-186, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) To the extent not prohibited by administrative rule or law, the department, department of education, state public charter school commission, and executive office on early learning shall share any information gathered pursuant to sections 302A-1165, 302A-1166, 302D-37, and 302D-38 with each other, along with any other information the department, department of education, or state public charter school commission may collect on all children in the State who are three to four years old and children who will not be at least five years of age on or before July 31 of the current school year.”

SECTION 9. Section 436M-8, Hawaii Revised Statutes, is amended to read as follows:

~~“[§436M-8] Activation.~~ No alarm system shall be activated intentionally except~~[:]~~ to:

- (1) ~~[to report]~~ Report an unauthorized intrusion or the commission of an unlawful act; ~~[or]~~

- (2) [~~to test~~] Test an installed system with the prior knowledge and consent of the police; or
- (3) [~~to permit~~] Permit an alarm business to demonstrate a system to a prospective buyer or user.”

SECTION 10. Section 437-1.1, Hawaii Revised Statutes, is amended by amending the definition of “new motor vehicle” to read as follows:

““New motor vehicle” means a motor vehicle [~~which~~] that:

- (1) [~~has~~] Has not previously been sold to any person except a distributor, wholesaler, or dealer for resale, except where the vehicle has not left the dealer’s possession after the sale to a consumer[~~;~~];
- (2) [~~has~~] Has not previously been registered or titled in the name of a consumer except where the vehicle has not left the dealer’s possession after the sale to a consumer[~~;~~]; and
- (3) [~~has~~] Has not been driven more than five hundred miles;

provided that where a sale, registration, entitlement, or transfer of title of a motor vehicle, or the accrual of mileage thereon, is primarily for the purpose of evading this provision, the motor vehicle shall be deemed a new motor vehicle for the purposes of this chapter.”

SECTION 11. Section 437B-12, Hawaii Revised Statutes, is amended by amending subsection (e) to read as follows:

“(e) Each:

- (1) Mobile air conditioner serviced without using refrigerant recovery and recycling equipment;
- (2) Motor vehicle or mobile air conditioner serviced after January 1, 1994, without successful completion of an appropriate training course dealing with the recovery and recycling of CFC and HCFC refrigerants; and
- (3) Violation of chapter 342C[~~;~~];

constitutes a separate offense for which fines may be imposed under subsection (b).”

SECTION 12. Section 440G-3, Hawaii Revised Statutes, is amended by amending the definitions of “cable operator”, “cable service”, “cable system”, and “public, educational, or governmental access facilities” to read as follows:

““Cable operator” means any person or group of persons who:

- (1) [~~who provides~~] Provides cable service over a cable system and directly or through one or more affiliates owns a significant interest in the cable system; or
- (2) [~~who otherwise~~] Otherwise controls or is responsible for, through any arrangement, the management and operation of a cable system.

“Cable service” means:

- (1) [~~the~~] The one-way transmission to subscribers of video programming or other programming service; and
- (2) [~~subscriber~~] Subscriber interaction, if any, [~~which~~] that is required for the selection of video programming or other programming service.

“Cable system” means any facility within this State consisting of a set of closed transmission paths and associated signal generation, reception, and control equipment that is designed to provide cable service [~~which~~] that includes video programming and [~~which~~] is provided to multiple subscribers within a community, but does not include;

- (1) [a] A facility that serves only to retransmit the television signals of one or more television broadcast stations;
- (2) [a] A facility that serves only subscribers in one or more multiple unit dwellings under common ownership, control, or management, unless that facility or facilities uses any public right-of-way; or
- (3) [a] A facility of a public utility subject in whole or in part to the provisions of chapter 269, except to the extent that those facilities provide video programming directly to subscribers.

“Public, educational, or governmental access facilities” means:

- (1) [~~channel~~] Channel capacity designated for public, educational, or governmental uses; and
- (2) [~~facilities~~] Facilities and equipment for the use of that channel capacity.”

SECTION 13. Section 443B-3.5, Hawaii Revised Statutes, is amended as follows:

1. By amending subsection (b) to read:

“(b) To be designated as an exempt out-of-state collection agency, a collection agency shall:

- (1) Not have any employees or agents located in the State who engage in the collection of debts for another person;
- (2) Not have any business location or office in the State that engages in collection agency activities;
- (3) Hold a current, unrestricted, and unconditional license, permit, or registration as a collection agency in the reciprocal state identified in its application;
- (4) Limit its collection activity in the State to the collection of debts from residents of the State on behalf of out-of-state clients through interstate communication by telephone, mail, facsimile, or electronic mail; and
- (5) Not collect debts on behalf of creditors who have a business presence in the State.

~~[For purposes of this section, a creditor has a “business presence” in the State if either the creditor or an affiliate or subsidiary of the creditor has an office in the State.]”~~

2. By amending subsection (n) to read:

“(n) For purposes of this section~~[-, a “reciprocal state” is one]~~:

“Business presence in the State” means the creditor or an affiliate or subsidiary of the creditor has an office in the State.

“Reciprocal state” means a state:

- (1) Whose requirements to be licensed, permitted, or registered as a collection agency in that state are at a minimum substantially equivalent to the requirements to be registered as a collection agency in this State, including but not limited to the bonding requirements in section 443B-5; and
- (2) That does not require a Hawaii collection agency to obtain a license, permit, or registration to collect debts in that state if the activities of the Hawaii collection agency are limited to collecting debts on behalf of an out-of-state creditor using interstate communication methods, including telephone, facsimile, mail, or electronic mail, and the Hawaii collection agency does not solicit or engage in collection activities for clients in that state.”

SECTION 14. Section 444-16, Hawaii Revised Statutes, is amended to read as follows:

“**§444-16 Action on applications.** Within one hundred and twenty days after the filing of a proper application for a license and the payment of the required fees, the board shall:

- (1) ~~[conduct]~~ Conduct an investigation of the applicant, and in that investigation may post pertinent information, including ~~[but not limited to,]~~ the name and address of the applicant[;] and ~~[if the applicant is associated in any partnership, corporation, or other entity,]~~ the names, addresses, and official capacities of ~~[the applicant's associates;]~~ any partnership, corporation, or other entity that the applicant is associated with; and
- (2) ~~[either]~~ Either issue a license to the applicant or notify the applicant in writing by registered mail of the board's decision not to grant the license and specifically notify the applicant of the applicant's right to submit a request for a contested case hearing pursuant to chapter 91 within sixty days of the board's decision. The hearing shall be conducted in accordance with chapter 91.”

SECTION 15. Section 444-26, Hawaii Revised Statutes, is amended as follows:

1. By amending subsection (a) to read:

“(a) The board is authorized to establish and maintain a contractors recovery fund from which any person injured by an act, representation, transaction, or conduct of a duly licensed contractor~~[-, which]~~ that is in violation of this chapter or the rules adopted pursuant thereto[;] may recover, by order of the circuit court or district court of the judicial circuit where the violation occurred, an amount of not more than \$12,500 per contract, regardless of the number of persons injured under the contract, for damages sustained ~~[by]~~ from the act, representation, transaction, or conduct. Recovery from the fund shall be limited to the actual damages suffered by the claimant, including court costs and fees as set by law[;] and reasonable attorney fees as determined by the court; provided that recovery from the fund shall not be awarded to persons injured by an act, representation, transaction, or conduct of a contractor whose license was suspended, revoked, forfeited, terminated, or in an inactive status at the time the claimant entered into the contract with the contractor.”

2. By amending subsection (c) to read:

“(c) When any person applies for a contractors license, the person shall pay, in addition to the person's original license fee, a fee of \$150 for deposit in the contractors recovery fund[;] and a fee for deposit in the contractors education fund as provided in rules adopted by the director pursuant to chapter 91. ~~[In the event that]~~ If the board does not issue the license, these fees shall be returned to the applicant.”

SECTION 16. Section 456-17, Hawaii Revised Statutes, is amended to read as follows:

“**§456-17 Fees.** Subject to section 456-18, every notary public is entitled to demand and receive the following fees:

- (1) For noting the protest of mercantile paper, \$5;
- (2) For each notice and certified copy of protest, \$5;
- (3) For noting any other protest, \$5;
- (4) For every notice thereof[;] and certified copy of protest, \$5;
- (5) For every deposition[;] or official certificate, \$5;

- (6) For the administration of oath, including the certificate of the oath, \$5; for affixing the certificate of the oath to every duplicate original instrument beyond four, \$2.50;
- (7) For taking any acknowledgment, \$5 for each party signing; for affixing to every duplicate original beyond one of any instrument acknowledged before the notary public, the notary public's certificate of the acknowledgment, \$2.50 for each person making the acknowledgment; and
- (8) For any of the foregoing notarial acts performed for a remotely located individual under section 456-23, other than affixing a notary public's certificate to a duplicate original, \$25."

SECTION 17. Section 458-13, Hawaii Revised Statutes, is amended to read as follows:

"§458-13 Acts prohibited. It shall be unlawful to do any of the following:

- (1) To engage in the occupation of dispensing optician without first having been issued a dispensing optician license under this chapter;
- (2) To advertise in any manner that would tend to mislead or deceive the public;
- (3) To dispense, furnish, or supply the services and appliances to the intended wearer or user thereof, except upon a prescription issued by a licensed physician[;] or optometrist; provided that duplications, replacements, reproductions, and repetitions[;] without change in the refractive value may be done without prescription by individuals holding a license of dispensing optician issued under this chapter;
- (4) To fit or duplicate, or offer, undertake, or attempt to fit or duplicate, hard and soft contact lenses or artificial eyes except under the written orders and personal supervision of an ophthalmologist or optometrist [~~or fail to provide notice as required by section 458-12.5~~];
- (5) For a dispensing optician to grant, allow, credit, or pay, directly or indirectly, openly or secretly, any price differential, rebate, refund, discount, commission, credit, kickback, or other allowance, whether in the form of money or otherwise, to any oculist, optometrist, physician, or practitioner of any other profession for or on account of:
 - (A) [~~for or on account of the~~] The referring or sending by any oculist, optometrist, physician, or practitioner to the dispensing optician of any person for the rendition of any of the services performed or articles or appliances furnished by a dispensing optician as described in section 458-1[;]; or
 - (B) [~~for or on account of the~~] The rendition of any services or the furnishing of any articles or appliances to a person so referred or sent by any oculist, optometrist, physician, or practitioner.

Every scheme, agreement, undertaking, arrangement, or device shall also be deemed in violation of section 481-7. The license of every dispensing optician who violates this paragraph shall be revoked; or

- (6) For a dispensing optician to permit any unlicensed person to take facial measurements[;] or to fit or adjust lenses or frames or duplicate frames unless the unlicensed person is acting under the direct personal supervision of a licensed dispensing optician. "Direct personal supervision" means the licensed optician is present on the premises of the optical dispensing establishment and is available for consultation by the unlicensed person."

SECTION 18. Section 459-1.5, Hawaii Revised Statutes, is amended by adding a new definition to be appropriately inserted and to read as follows:

“Ophthalmic lens” means any spectacle lens that has a spherical, cylindrical, or prismatic power or value and is ground pursuant to a prescription.”

SECTION 19. Section 459-2, Hawaii Revised Statutes, is amended to read as follows:

§459-2 Optometry; unauthorized practice, unlawful. It shall be unlawful for any person to practice optometry or to append the letters “O.D.” or any other optometric degree to a person’s name with the intent thereby to imply that the individual is a practitioner of optometry, without first securing and holding an unrevoked and unsuspended license under and as provided in this chapter. This chapter shall not ~~apply~~:

- (1) Apply to, or prohibit, a duly licensed physician from practicing optometry as defined in this chapter ~~[defined, nor shall it prohibit]~~;
- (2) Prohibit a duly licensed physician or optometrist from filling prescriptions or orders ~~[, nor shall it prohibit]~~;
- (3) Prohibit the replacement, duplication, or repair of ophthalmic lenses, contact lenses, or frames, or fittings thereof, by persons qualified to write or fill prescriptions or orders under this chapter ~~[, nor shall it prohibit]~~;
- (4) Prohibit or prevent any dispensing optician licensed under chapter 458 from performing the activities authorized by the license ~~[, nor shall it apply]~~; or
- (5) Apply to optometric service corporations formed for the primary purpose of contracting with individuals, groups of individuals, and corporations for defraying or assuming the cost of services of optometrists and of contracting on behalf of optometrists to furnish services as provided in chapter 424.

~~[An “ophthalmic lens” within the meaning of this chapter means any spectacle lens which has a spherical, cylindrical, or prismatic power or value, and is ground pursuant to a prescription.]”~~

SECTION 20. Section 467-30, Hawaii Revised Statutes, is amended as follows:

1. By amending subsection (a) to read:

~~“(a) As used in this section[;]~~

~~“[condominium] “Condominium hotel” includes those units in a project as defined in section 514B-3 and subject to chapter 514B[; which] that are used to provide transient lodging for periods of less than thirty days.~~

~~“Operating a condominium hotel” includes the:~~

- (1) Management of the apartments or units in a condominium project for purposes of providing transient lodging; and
- (2) Renting or leasing of condominium apartments or units directly or indirectly from the apartment or unit owners for purposes of providing transient lodging.”

2. By amending subsection (e) to read:

~~“(e) [As used in this section, “operating a condominium hotel” includes the management of the apartments or units in a condominium project for purposes of providing transient lodging, and includes the renting or leasing of condominium apartments or units directly or indirectly from the apartment or unit owners for purposes of providing transient lodging.] The condominium hotel operator shall provide [a written contract] to the owner or owners of each apartment or unit under the condominium hotel operation[;] a written contract~~

expressing the exact agreements of each party, including all financial and accounting obligations, and the notification requirements of subsection (g).”

SECTION 21. Section 652-2, Hawaii Revised Statutes, is amended to read as follows:

“**§652-2 Garnishee, rights, duties; collection by levying officer.** The garnishee [~~shall~~], when summoned before judgment rendered against [~~his~~] the garnishee’s principal, if [~~he~~] the garnishee desires, shall be admitted to defend [~~his~~] the garnishee’s principal in the action.

If judgment is rendered in favor of the plaintiff, and likewise in all cases in which the garnishee is summoned after judgment, the garnishee fund, or [~~such~~] any part thereof as may be sufficient for that purpose, shall be liable to pay the same. The plaintiff on praying out execution shall be entitled to have included in the execution an order directing the officer serving the same to make demand of the garnishee for the goods and effects of the defendant secured in [~~his~~] the garnishee’s hands, whose duty it will be to expose the same to be taken on execution, and also to make demand of the garnishee for the debt or wages secured in [~~his~~] the garnishee’s hands or the moneys held by [~~him~~] the garnishee for safekeeping, or [~~such~~] any part thereof as may satisfy the judgment. It shall be the duty of the garnishee to pay the same. If the garnishee has in any manner disposed of the goods and effects or does not expose and subject the same to be taken on execution, or if the garnishee does not pay to the officer, when demanded, the debt [~~or~~], wages, or moneys held for safekeeping, the garnishee shall be liable to satisfy the judgment out of [~~his~~] the garnishee’s own estate, as [~~his~~] the garnishee’s own proper debt, if the goods [~~or~~], effects [~~or~~], debt [~~or~~], wages, or moneys held for safekeeping[;] be of sufficient value or amount and, if not, then to the value of the same; provided that every garnishee, whether summoned before or after judgment, shall be allowed to retain or deduct from the goods, effects, and credits of the defendant in [~~his~~] the garnishee’s hands at the time of service all demands against the defendant of which [~~he~~] the garnishee could have availed [~~himself~~] the garnishee’s self if [~~he~~] the garnishee had not been [~~garnisheed~~] garnished, whether the same are at the time due or not, and whether by setoff on a trial or by setoff of judgments or executions between [~~himself~~] the garnishee and the defendant, and shall be liable only for the balance after adjustment of all mutual demands between [~~himself~~] the garnishee and the defendant; provided that in [~~such~~] the adjustment no demands for unliquidated damages for wrongs or injuries shall be included[;]; and provided further that the judgment shall show the amount of any setoff.

No garnishee shall be liable to anyone for the nonpayment of any sum or for the nondelivery of any goods or effects when the garnishee in good faith believes, or has reason to believe, that garnishment or other process affects the same, though such be not the case, but this paragraph shall not supersede section 652-9 where the same are applicable.”

SECTION 22. Section 36-35, Hawaii Revised Statutes, is repealed.

SECTION 23. Statutory material to be repealed is bracketed and stricken.¹ New statutory material is underscored.

SECTION 24. This Act shall take effect upon its approval.

(Approved July 6, 2021.)

Note

1. Edited pursuant to HRS §23G-16.5.