HAWAII

Hawaii Revised Statutes

Selected Titles — Current Text

Title 15 — Transportation and Utilities
Title 16 — Intoxicating Liquor
Title 17 — Motor and Other Vehicles
Title 37 — Hawaii Penal Code

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Chapter 261

261-1 HRS

261-1 Definitions. As used in this chapter: "Aeronautics" means the science and art of flight, including but not limited to transportation by aircraft; the operation, construction, repair, or maintenance of aircraft, aircraft power plants and accessories, including the repair, packing, and maintenance of parachutes; the design, establishment, construction, extension, operation, improvement, repair, or maintenance of airports, or other air navigation facilities; and instruction in flying or ground subjects pertaining thereto. "Aircraft" means any contrivance now known or hereafter invented, used or designed for navigation of or flight in the air. "Airman" means any individual who engages, as the person in command, or as pilot, mechanic, or member of the crew, in the navigation of aircraft while under way, and any individual who is directly in charge of the inspection, maintenance, overhauling, or repair of aircraft engines, airframes, propellers, or appliances; and any individual who serves in the capacity of aircraft dispatcher, or air-traffic control-tower operator; but does not include any individual employed outside the United States, and its territories and possessions, or any individual employed by a manufacturer of aircraft, aircraft engines, propellers, or appliances to perform duties as inspector or mechanic in connection therewith, or any individual performing inspection or mechanical duties in connection with aircraft owned or operated by the individual. "Air navigation facility" means any facility used in, available for use in, or designed for use in, aid of air navigation, including any structures, mechanisms, light, beacons, markers, communicating systems, or other instrumentalities, or devices used or useful as an aid, or constituting an advantage or convenience, to the safe taking-off, navigation, and landing of aircraft, or the safe and efficient operation or maintenance of an airport, and any combination of any or all of such facilities. "Airport" means any area of land or water which is used, or intended for use, for the landing and takeoff of aircraft, and any appurtenant areas which are used, or intended for use, for airport buildings or other airport facilities or rights-of-way, including approaches, together with all airport buildings and facilities located thereon. "Airport hazard" has the meaning defined by section 262-1. "Criminal history record check" means an examination of an individual's criminal history records by means including, but not limited to, fingerprint analysis and name inquiry into state and national criminal history record files. "Criminal history record information" means criminal history information received from state and national criminal history record checks. "Department" means the department of transportation. "Director" means the director of transportation. "Municipal" means pertaining to a municipality as herein defined. "Municipality" means any county or other political subdivision or public corporation of the State. "Operation of aircraft" or "operate aircraft" means the use, navigation, or piloting of aircraft in the airspace over the State or upon any airport within the State. "Person" means any individual, firm, partnership, corporation, company, association, joint stock association, or body politic; and includes any trustee, receiver, assignee, or other similar representative thereof. "Police officer" means a police officer and any other state or county officer charged with the enforcement of state laws. "State airway" means a route in the navigable airspace over and above the lands or waters of the State, designated by the department as a route suitable for air navigation.

261-2 Development of aeronautics, general

261-2 Development of aeronautics, general. The department of transportation shall have general supervision over aeronautics within the State. It shall encourage, foster, and assist in the development of aeronautics in the State and encourage the establishment of airports and air navigation facilities. It shall cooperate with and assist the federal government and other persons in the development of aeronautics and shall seek to coordinate the aeronautical activities of the State with those of the federal government. Municipalities may cooperate with the department in the development of aeronautics and aeronautics facilities in the State.

261-3 Legislation, intervention

261-3 Legislation, intervention. The department of transportation may:

(1) Draft and recommend necessary legislation to advance the interests of the State in aeronautics;

(2) Represent the State in aeronautical matters before federal agencies and other state agencies;

(3) Participate as party plaintiff or defendant or as intervenor on behalf of the State or any municipality or citizen thereof in any controversy which involves the interests of the State in aeronautics.

261-4 Airports, general

261-4 Airports, general.

(a) Establishment, operation, maintenance. The department of transportation may, on behalf of and in the name of the State, out of appropriations and other moneys available or made available for such purposes, plan, acquire, establish, construct, enlarge, improve, maintain, equip, install, operate, regulate, and protect, airports, air navigation facilities, buildings, and other facilities to provide for the servicing of aircraft; to provide for the comfort, accommodation, and convenience of air travelers; and to protect against airport hazards.

(b) Acquisition of property. By purchase, gift, devise, lease, or condemnation in accordance with chapter 101, the department may acquire property, real or personal, or any interest therein, including the property rights, estates, and interests mentioned in section 262-11. The department may acquire rights and interests in airports owned or controlled by others, for the purpose of meeting a civilian need which is within the scope of its functions, even though it does not have the exclusive control and operation of such airports. The department may also acquire excess federal lands as permitted by federal law.

(c) Structures and improvements. All structures and improvements to land, to be used for airport purposes, may be planned, designed, and constructed by the department.

(d) Use of state and municipal facilities and services. In carrying out this chapter, the department may use the facilities and services of other agencies of the State and of the municipalities of the State and the agencies and municipalities shall make available their facilities and services.

(e) Fire and safety inspection. The State shall conduct fire and safety inspections at all state-owned airport facilities at least once a year, as provided in section 132-6(b).

261-4.5 Biosecurity, inspection, and cargo support facilities

261-4.5 Biosecurity, inspection, and cargo support facilities. The department shall coordinate with the department of agriculture and biosecurity to facilitate the inspection, consolidation, deconsolidation, and treatment of imported and exported agriculture and other inspected commodities to meet the needs of each island and to facilitate the safe movement of enplaned and deplaned air cargo through the airports.

261-5 Disposition of airport revenue fund

261-5 Disposition of airport revenue fund.

(a) Except for:

(1) All proceeds from the passenger facility charge and deposited in the passenger facility charge special fund; and

(2) All proceeds from the rental motor vehicle customer facility charge and deposited in the rental motor vehicle customer facility charge special fund, all moneys received by the department from rents, fees, and other charges collected pursuant to this chapter, as well as all aviation fuel taxes paid pursuant to section 243-4(a)(2), shall be paid into the airport revenue fund created by section 248-8. All moneys paid into the airport revenue fund shall be appropriated, applied, or expended by the department for any purpose within the jurisdiction, powers, duties, and functions of the department related to the statewide system of airports, including, without limitation, the costs of operation, maintenance, and repair of the statewide system of airports and reserves therefor, and acquisitions (including real property and interests therein), constructions, additions, expansions, improvements, renewals, replacements, reconstruction, engineering, investigation, and planning for the statewide system of airports, all or any of which in the judgment of the department are necessary to the performance of its duties or functions. The department shall generate sufficient revenues from its airport properties to meet all of the expenditures of the statewide system of airports and to comply with section 39-61; provided that as long as sufficient revenues are generated to meet such expenditures, the director of transportation may, in the director's discretion, grant a rebate of the aviation fuel taxes paid into the airport revenue fund during a fiscal year pursuant to sections 243-4(a)(2) and 248-8 to any person who has paid airport use charges or landing fees during such fiscal year. Such rebate may be granted during the next succeeding fiscal year but shall not exceed one-half cent per gallon per person, and shall be computed on the total number of gallons for which the tax was paid by such person, for such fiscal year.

(b) At any time the director of transportation may transfer from the airport revenue fund all or any portion of the moneys received by the department paid under a contract entered into as authorized by section 261-7 on account of the display, sale and delivery of in-bond merchandise displayed or sold at locations in the State other than on airport properties, as

permitted under federal law without causing a violation of federal grant agreements, which the director of transportation shall determine, pursuant to rules promulgated pursuant to chapter 91, to be in excess of one hundred fifty per cent of the requirements of the airport revenue fund for the ensuing twelve months.

(c) All expenditures by the department shall be on vouchers duly approved by the director of transportation or such other officer as may be designated by the director.

261-5.5 Bill

261-5.5 Passenger facility charge special fund.

(a) There is established in the state treasury the passenger facility charge special fund, into which shall be deposited all proceeds from the passenger facility charge.

(b) The director of transportation shall administer the passenger facility charge special fund.

(c) The passenger facility charge shall be a charge for the use and services of an undertaking for the purposes and within the meaning of section 39-61(a)(1) and (3). Notwithstanding any laws to the contrary and without regard to chapter 91, the department may assess a passenger facility charge as authorized under title 49 United States Code section 40117 and as provided under title 14 Code of Federal Regulations part 158 for each overseas or international passenger who uses a state airport. The department shall establish the passenger facility charge in accordance with applicable federal laws and regulations. No passenger facility charge shall be assessed on flight segments between two or more airports within the State.

(d) All moneys paid into the passenger facility charge special fund shall be appropriated, applied, or expended by the department for airport capital improvement program projects approved by the legislature and as permitted under the Aviation Safety and Capacity Expansion Act of 1990, codified as [title] 49 United States Code section 40117, as amended from time to time.

(e) Any resolution or certificate authorizing any issue of bonds relating to the use of the passenger facility charge for an airport capital improvement program project approved by the legislature may establish other accounts within the passenger facility charge special fund and require the transfer of the passenger facility charge into the other accounts to pay debt service on the related bonds.

261-5.6 Bill

261-5.6 Rental motor vehicle customer facility charge special fund.

(a) There is established in the state treasury the rental motor vehicle customer facility charge special fund to be administered by the director, into which shall be deposited all proceeds from the rental motor vehicle customer facility charge.

(b) Moneys in the rental motor vehicle customer facility charge special fund shall be used for enhancement, renovation, operation, and maintenance of existing rental motor vehicle customer facilities and the development of new rental motor vehicle customer facilities and related services at state airports, including:

(1) Acquisition and maintenance of property or property rights for rental motor vehicle purposes;

(2) Acquisition of equipment for and operation of a unified shuttle bus system to and from passenger terminals and the rental motor vehicle customer facilities;

(3) Consultant fees;

(4) Management, operation, and maintenance fees for rental motor vehicle customer facilities; and

(5) Conceptual plans, plans, design, construction, operation, and maintenance of, or allocable to, the approved rental motor vehicle customer facilities and related services. In planning the future needs and expenditures of these moneys, the director, or deputy designated by the director, shall, at least once a year, consult with lessors, as defined in section 437D-3, who are using or who in the future may use the facilities and services. No moneys shall be expended to plan, design, improve, enhance, acquire, or construct rental motor vehicle customer facilities, equipment, or services shared or to be shared by rental motor vehicle concessions at a state airport except as determined by the director; provided that the director shall not approve the expenditure of any moneys except for planning and design purposes to improve or construct rental motor vehicle customer facilities and related services located at an airport until a concession bid for rental motor vehicle concessions located at the public airport as of July 1, 2008, is first advertised, bid upon, and awarded by the department of transportation.

(c) The rental motor vehicle customer facility charge special fund shall be exempt from sections 36-30 and 103-8.5.

(d) Any resolution or certificate authorizing any issue of bonds relating to the use of the rental motor vehicle customer facility charge for an airport capital improvement program project approved by the legislature may establish other accounts within the rental motor vehicle customer facility charge special fund and require the transfer of the rental motor vehicle customer facility charge into the other accounts to pay debt service on the related bonds.

261-6 Civil air patrol

261-6 Civil air patrol.

(a) Beginning in fiscal year 1988-1989 and in accordance with chapter 42F, the sum of $190,600 annually or so much thereof as may be necessary shall be granted from the general fund to carry on the operations and defray the expenses of the Hawaii wing, civil air patrol; provided that not less than $3,000 shall be allocated to each Hawaii based civil air patrol unit that meets minimum requirements established by national headquarters and has demonstrated its capability to respond to emergencies within the State.

(b) There shall be expended from the sum granted under this section only those amounts as shall be needed for:

(1) Repair or replacement of equipment which is not repaired or replaced by the United States government;

(2) Defraying expenses incurred in emergency services operations or mercy or hazard mitigating missions;

(3) Aviation and emergency services training, including supplies required to administer and implement the training;

(4) Payment of utilities on state-owned properties;

(5) Upkeep, replacement, or purchase of communication equipment (provided that only those sums shall be expended on communication equipment as will be necessary for the procurement or replacement of communication equipment not otherwise obtainable by grant or gift from any other source);

(6) Purchase of aviation and vehicular fuels, oils, inspection services, maintenance, and overhaul work solely for the use of the Hawaii wing, civil air patrol;

(7) Travel expenses related to aviation and emergency services training and coordination, not available within the State; and

(8) The cost incurred in meeting the accounting and auditing requirements of CAP Manual 173-2 and the State. No portion of this grant shall be expended for uniforms or personal equipment of any contractor, employee, or member of the Hawaii wing, civil air patrol nor shall any portion be paid for salaries except as provided in this section.

(c) The commander, Hawaii wing, civil air patrol, may employ salaried assistants, who shall not be subject to chapter 76, at a salary of not more than the SR-21 salary range. The assistants shall perform administrative and fiscal duties and other duties as may be required by the wing commander.

(d) All expenditures from the amount granted in subsection (a) shall be upon vouchers signed by the wing commander and the finance officer of the Hawaii wing, civil air patrol.

(e) A record of expenditures and a current financial statement shall be provided to the State on the last day of business of the months of September, December, March, and June of each fiscal year.

(f) In expending the sum granted, the Hawaii wing, civil air patrol shall assure further that it will consult, cooperate, and coordinate with the departments of transportation and defense to the end that the maximum education and development in aeronautical matters may be afforded and the maximum contribution to emergency operations and preparedness be made.

(g) The Hawaii wing, civil air patrol shall comply with chapter 42F in its application for grants; execute an annual contract with the department of transportation by the third day of July; and submit to the department of transportation an annual expenditure plan to ensure the disbursement of funds by the tenth day of July, October, January, and April of each fiscal year.

261-7 Operation and use privileges

261-7 Operation and use privileges.

(a) In operating an airport or air navigation facility owned or controlled by the department of transportation, or in which it has a right or interest, the department may enter into contracts, leases, licenses, and other arrangements with any person:

(1) Granting the privilege of using or improving the airport or air navigation facility or any portion or facility thereof or space therein for commercial purposes;

(2) Conferring the privilege of supplying goods, commodities, things, services, or facilities at the airport or air navigation facility;

(3) Making available services, facilities, goods, commodities, or other things to be furnished by the department or its agents at the airport or air navigation facility; or

(4) Granting the use and occupancy of any portion of the land under its jurisdiction that may not be required by the department for aeronautics purposes so that it may instead put the area to economic use and thereby derive revenue therefrom. The term "airport purpose" or "airport purposes" contained in any governor's executive order transferring jurisdiction and control of real property to the department of transportation shall be considered to include entering into contracts, leases, licenses, and other arrangements pursuant to this section.

(b) Except as otherwise provided in this section, in each case mentioned in subsection (a)(1), (2), (3), and (4), the department may establish the terms and conditions of the contract, lease, license, or other arrangement, and may fix the charges, rentals, or fees for the privileges, services, or things granted, conferred, or made available, for the purpose of meeting the expenditures of the statewide system of airports set forth in section 261-5(a), which includes expenditures for capital improvement projects approved by the legislature. Such charges shall be reasonable and uniform for the same class of privilege, service, or thing.

(c) The department shall enter into a contract with no more than one person ("contractor") for the sale and delivery of in-bond merchandise at the Daniel K. Inouye International Airport, in the manner provided by law. The contract shall confer the right to operate and maintain commercial facilities within the airport for the sale of in-bond merchandise and the right to deliver to the airport in-bond merchandise for sale to departing foreign-bound passengers. The department shall grant the contract pursuant to the laws of this State and may take into consideration:

(1) The payment to be made on in-bond merchandise sold at the Daniel K. Inouye International Airport and on in-bond merchandise displayed or sold elsewhere in the State and delivered to the airport;

(2) The ability of the applicant to comply with all federal and state rules and regulations concerning the sale and delivery of in-bond merchandise; and

(3) The reputation, experience, and financial capability of the applicant. The department shall actively supervise the operation of the contractor to ensure its effectiveness. The department shall develop and implement guidelines as it may find necessary and proper to actively supervise the operations of the contractor, and shall include guidelines relating to the department's review of the reasonableness of the contractor's price schedules, quality of merchandise, merchandise assortment, operations, and service to customers. Apart from the contract described in this subsection, the department shall confer no right upon nor suffer nor allow any person to offer to sell, sell, or deliver in-bond merchandise at the Daniel K. Inouye International Airport; provided that this section shall not prohibit the delivery of in-bond merchandise as cargo to the Daniel K. Inouye International Airport.

(d) The department, by contract, lease, or other arrangement, upon a consideration fixed by it, may grant to any qualified person the privilege of operating, as agent of the State or otherwise, any airport owned or controlled by the department; provided that no such person shall be granted any authority to operate the airport other than as a public airport or to enter into any contracts, leases, or other arrangements in connection with the operation of the airport which the department might not have undertaken under subsection (a).

(e) The department may fix and regulate, from time to time, reasonable landing fees for aircraft, including the imposition of landing surcharges or differential landing fees, and other reasonable charges for the use and enjoyment of the airports and the services and facilities furnished by the department in connection therewith, including the establishment of a statewide system of airports landing fees, a statewide system of airports support charges, and joint use charges for the use of space shared by users, which fees and charges may vary among different classes of users such as foreign carriers, domestic carriers, inter-island carriers, air taxi operators, helicopters, and such other classes as may be determined by the director, for the purpose of meeting the expenditures of the statewide system of airports set forth in section 261-5(a), which includes expenditures for capital improvement projects approved by the legislature. In setting airports rates and charges, including landing fees, the director may enter into contracts, leases, licenses, and other agreements with aeronautical users of the statewide system of airports containing such terms, conditions, and provisions as the director deems advisable. If the director has not entered into contracts, leases, licenses, and other agreements

with any or fewer than all of the aeronautical users of the statewide system of airports prior to the expiration of an existing contract, lease, license, or agreement, the director shall set and impose rates, rentals, fees, and charges pursuant to this subsection without regard to the requirements of chapter 91; provided that a public informational hearing shall be held on the rates, rentals, fees, and charges. The director shall develop rates, rentals, fees, and charges in accordance with a residual methodology so that the statewide system of airports shall be, and always remain, self-sustaining. The rates, rentals, fees, and charges shall be set at such levels as to produce revenues which, together with aviation fuel taxes, shall be at least sufficient to meet the expenditures of the statewide system of airports set forth in section 261-5(a), including expenditures for capital improvement projects approved by the legislature, and to comply with covenants and agreements with holders of airport revenue bonds. The director may develop and formulate methodology in setting the various rates, rentals, fees, and charges imposed and may determine usage of space, estimate landed weights, and apply such portion of nonaeronautical revenue deemed appropriate in determining the rates, rentals, fees, and charges applicable to aeronautical users of the statewide system of airports. The rates, rentals, fees, and charges determined by the director in the manner set forth in this subsection shall be those charges payable by the aeronautical users for the periods immediately following the date of expiration of the existing contract, lease, license, or agreement. If fees are established pursuant to this section, the department shall prepare a detailed report on the circumstances and rates and charges that have been established, and shall submit the report to the legislature no later than twenty days prior to the convening of the next regular session. If a schedule of rates, rentals, fees, and charges developed by the director in accordance with this section is projected by the department to produce revenues which, together with aviation fuel taxes, will be in excess of the amount required to meet the expenditures of the statewide system of airports set forth in section 261-5(a), including expenditures for capital improvement projects approved by the legislature, and to comply with covenants and agreements with holders of airport revenue bonds, the department shall submit the schedule of rates, rentals, fees, and charges to the legislature prior to the convening of the next regular session of the legislature. Within forty-five days after the convening of the regular session, the legislature may disapprove any schedule of rates, rentals, fees, and charges required to be submitted to it by this section by concurrent resolution. If no action is taken by the legislature within the forty-five-day period the schedule of rates, rentals, fees, and charges shall be deemed approved. If the legislature disapproves the schedule within the forty-five-day period, the director shall develop a new schedule of rates, rentals, fees, and charges in accordance with this section within seventy-five days of the disapproval. Pending the development of a new schedule of rates, rentals, fees, and charges, the schedule submitted to the legislature shall remain in force and effect. Notwithstanding any other provision of law to the contrary, the department may waive landing fees and other aircraft charges established under this section at any airport owned or controlled by the State whenever:

(1) The governor declares a state of emergency; and

(2) The department determines that the waiver of landing fees and other charges for the aircraft is consistent with assisting in the delivery of humanitarian relief to disaster-stricken areas of the State.

(f) To enforce the payment of any charges for repairs or improvements to, or storage or care of any personal property made or furnished by the department or its agent in connection with the operation of an airport or air navigation facility owned or operated by the department, the department shall have liens on the property, which shall be enforceable by it as provided by sections 507-18 to 507-22.

(g) The department from time to time may establish developmental rates for buildings and land areas used exclusively for general aviation activities at rates not less than fifty per cent of the fair market rentals of the buildings and land areas and may restrict the extent of buildings and land areas to be used.

(h) Notwithstanding any laws to the contrary, the department may establish, levy, assess, and collect rental motor vehicle customer facility charges without regard to chapter 91, which shall be paid to the department periodically as determined by the department and shall be used to pay for, or finance on a long-term basis or other-term basis where appropriate, the design, planning, construction, and other uses of the rental motor vehicle customer facility charges as set forth by the rental motor vehicle customer facility charge special fund in section 261-5.6. The rental motor vehicle customer facility charges shall be levied, assessed, and collected from all rental motor vehicle customers who benefit from the use of any type of rental motor vehicle facility or service provided by the department at a state airport. Beginning September 1, 2010, the department shall levy, assess, and collect a rental motor vehicle customer facility charge of $4.50 per day, or any portion of a day that a rental motor vehicle is rented or leased, by a rental motor vehicle concession where customers pick up and return rental vehicles to a facility at a state airport as determined by the director. All rental motor vehicle customer facility charges shall be collected by lessors as defined in section 437D-3 and who operate a rental motor vehicle

concession awarded by the department at a state airport; provided that customers of lessors, as defined in section 437D-3, who do not operate a rental motor vehicle concession at a state airport but whose customers benefit from the use of a rental motor vehicle facility or service at a state airport paid for by rental motor vehicle customer facility charges, shall collect from rental motor vehicle customers, rental motor vehicle customer facility charges in an amount determined by the department in its sole discretion that represents a fair share of the cost and ongoing expenses relating to customer use of the facility or service notwithstanding any law to the contrary and without regard to the requirements of chapter 91. All rental motor vehicle customer facility charges collected by the lessor shall be paid to the department. Notwithstanding any law to the contrary, the department may negotiate and contract the management, maintenance, and operations of the facility and related services with one or more airport concessions or their designee that share in the use of a rental motor vehicle customer facility at a state airport.

261-7.5

261-7.5 Airport facilities; collection of landing fees and other charges and fees.

(a) The department shall have a lien upon any aircraft landing upon any airport operated by it for landing fees and other charges and fees for the use of the services or facilities of the airport when payment of those charges and fees is not made immediately upon demand therefor to the operator or owner of the aircraft by a duly authorized employee of the department. The lien shall be for the full amount of the charges and fees and shall attach to any aircraft owned or operated by the person owing those charges and fees. The department shall not execute on the lien until it complies with the procedures set out in subsections (b) through

(h) of this section.

(b) The department shall cause to be placed, upon the aircraft for which charges and fees are due, a notice which shall indicate that the operator or owner of the aircraft has failed to pay such charges and fees, the time the notice was posted, and an intention to perfect a lien on the aircraft and impound it if the operator or owner of the aircraft does not pay the charges and fees incurred within forty-eight hours of the posting of the notice.

(c) Any aircraft for which the department has served notice may be summarily and administratively impounded by the department if the charges and fees which the owner or operator of the aircraft has incurred have not been paid to the department before the expiration of the forty-eight-hour notice period.

(d) Within three days after the administrative impoundment of an aircraft pursuant to this section by the department, a second notice shall be sent by certified mail, return receipt requested, to the registered owner and the operator, if known, and, if the operator is other than the owner or a representative of the owner of the impounded aircraft, the second notice shall be sent to the operator at the last address shown on the aircraft registration records of the Federal Aviation Administration. This second notice shall be comprised of a copy of the notice posted on the impounded aircraft at the start of the forty-eight-hour notice period, together with a demand that the owner or operator of the impounded aircraft pay the charges and fees which have been incurred.

(e) Within thirty days of the impoundment by the department of an aircraft, the owner or operator of the aircraft may file a written request with the department for an administrative hearing. The sole issue to be considered at this administrative hearing is whether the owner or operator is not current in payments to the department for landing fees and other fees and charges for the use of services or airport facilities owned or operated by the department. The department shall have the burden of proof at this administrative hearing. Within three days after receipt by the department of a written request for an administrative hearing from the owner or operator of the aircraft, the department shall conduct the requested hearing. In calculating the three-day period, weekends and holidays shall be excluded. In all other respects, chapter 91 shall govern this administrative hearing.

(f) If it is determined by the director that the owner or operator of the impounded aircraft is current in payments to the department for charges and fees, the impounded aircraft shall be immediately released by the department to the aircraft owner or operator. In addition, the department shall bear the cost and expense of impounding the aircraft.

(g) If it is determined by the director that the owner or operator of the impounded aircraft is not current in payments to the department for charges and fees, the department may satisfy its lien out of the proceeds of any sale or auction of the impounded aircraft; provided that any remaining balance of the proceeds of the sale or auction, after deduction of the cost of maintenance, storage, and other costs related to the impoundment and the sale or auction conducted to satisfy the lien, shall be returned to the impounded aircraft owner or operator.

(h) An owner or operator of the impounded aircraft may also obtain immediate possession of the impounded aircraft by paying to the department, without an administrative hearing, all charges and fees owed by the owner or operator of the impounded aircraft and the cost and expense of impounding the aircraft incurred by the department.

(i) If the owner or operator of an impounded aircraft does not:

(1) Request an administrative hearing within thirty days of the department's impounding of the aircraft; or

(2) Pay the department all cost and expenses of impounding the aircraft and the charges and fees due and owing within fifteen days of a finding of probable cause that the charges and fees are due and owing, the aircraft shall be disposed of by public auction, through oral tenders, or by sealed bids, after public notice has been given; provided that the public auction shall not be held less than five days after public notice is given. Where no bid is received, the aircraft may be sold by negotiation, disposed of as junk, or donated to any governmental agency.

(j) Public auction shall not be required when the appraised value of any aircraft, as determined by an independent appraiser who has had at least one year of experience in the sale or purchase of aircraft, is less than $100. Upon that determination and after public notice is given, the director may sell the aircraft by negotiation, dispose of it as junk, or donate the aircraft to any governmental agency.

(k) The transfer hereunder shall be evidenced by a bill of sale from the department, shall be considered a transfer by operation of law, and shall be governed by provisions applicable thereto.

(l) A purchaser of an aircraft sold to satisfy a lien pursuant to this section shall take the aircraft free of any rights of persons against whom that lien was valid.

261-7.6

261-7.6 Use of credit cards to pay for airport charges. Notwithstanding any other law to the contrary, any payments due and owing to the State for any products or services received from the State at any airport operated by the State may be made by credit card, if prior arrangements have been made by the department for payments through the use of the credit card and the arrangements have been approved by the comptroller. However, credit cards may not be used to make payments under protest pursuant to section 40-35. The maximum charge that may be paid to the department by use of a credit card on any transaction is $500.

261-8 Federal aid

261-8 Federal aid. The department of transportation may accept, receive, receipt for, disburse, and expend federal moneys, and other moneys, public or private, made available by grant or loan to accomplish, in whole or in part, any of the purposes of this chapter. All federal moneys accepted under this section shall be accepted and expended by the department upon such terms and conditions as are prescribed by the United States, and the department may enter into any contracts which may be required in connection therewith. All moneys received by the department pursuant to this section shall be deposited in the treasury and, unless otherwise prescribed by the authority from which the moneys were received, shall be kept in separate funds designated according to the purpose for which the same were made available, to be disbursed or expended in accordance with the terms and conditions upon which they were made available.

261-9 Contracts, law governing

261-9 Contracts, law governing. The department of transportation may enter into any contracts necessary to the execution of the powers granted it by this chapter. All contracts made by the department shall be made pursuant to the laws of the State governing the making of like contracts; provided that where the planning, acquisition, construction, improvement, maintenance, or operation of any airport, or air navigation facility is financed wholly or partially with federal moneys, the department may let contracts in the manner prescribed by the federal authorities acting under the laws of the United States and any rules or regulations made thereunder.

261-10 Exclusive rights prohibited

261-10 Exclusive rights prohibited. The department of transportation shall grant no exclusive right for the use of an airway, landing area, or air navigation facility under its jurisdiction. This section shall not prevent the making of contracts, leases, and other arrangements pursuant to section 261-7.

261-11 Public purpose of activities

261-11 Public purpose of activities. The acquisition of any lands or interests therein pursuant to this chapter, the planning, acquisition, establishment, construction, improvement, maintenance, equipment, and operation of airports and air navigation facilities; and the exercise of any other powers granted by this chapter to the department of transportation are declared to be public and governmental functions, exercised for a public purpose, and matters of public necessity. All lands and other property and privileges acquired and used by or on behalf of the State in the manner and for the purposes enumerated in this chapter shall and are declared to be acquired and used for public and governmental purposes and as a matter of public necessity.

261-12 Rules, standards

261-12 Rules, standards.

(a) Powers to adopt. The director of transportation may perform acts, issue and amend orders, adopt reasonable general or special rules and procedures, and establish minimum standards, consistent with this chapter, as the director deems necessary to carry out this chapter and to perform the duties assigned thereunder, all commensurate with and for the purpose of protecting and ensuring the general public interest and safety, the safety of persons operating, using, or traveling in aircraft, and the safety of persons and property on land or water, and developing and promoting aeronautics in the State. In furtherance of the duties assigned under this chapter, the director may adopt rules relating to:

(1) Safety measures, requirements, and practices in or about the airport premises;

(2) The licensing and regulation of persons engaged in commercial activities in or about the airport premises;

(3) The regulation of equipment and motor vehicles operated in or about the airport operational area;

(4) Airport security measures or requirements, and designation of sterile passenger holding areas and operational areas;

(5) The regulation of motor vehicles and traffic; and

(6) Any other matter relating to the health, safety, and welfare of the general public and persons operating, using, or traveling in aircraft.

(b) Tour aircraft operations. Any other law to the contrary notwithstanding, no tour aircraft operation shall be permitted in any airport under the State's control without having a permit. The director shall adopt rules to regulate tour aircraft operations by permit, which shall include but not be limited to:

(1) Identification of the types of aircraft to be utilized;

(2) The number of operations daily for each type of aircraft used and the days and hours of operation;

(3) Verification that the applicant is in compliance with all state statutes, including but not limited to this section;

(4) Verification that the applicant has the Federal Aviation Administration certificate 121 or 135;

(5) A written assessment by the department of the impact to the surrounding area and to the subject state airport;

(6) Revocation of a permit based on the failure to comply with the information provided by the applicant and the terms and conditions set forth by the department in the permit; and any false statement or misrepresentation made by the applicant;

(7) Establishment of penalties for revocation and suspension of a permit for failure to comply with permit conditions;

(8) Submission of monthly written reports to the department, which shall be made available to the public, of each tour operation that occurred during the duration of the preceding month, including: (A) The date and time that the aircraft took off and landed; (B) The number of individuals aboard the aircraft during the operation; (C) The flight path from takeoff through landing; and (D) Whether the aircraft deviated from its intended flight plan;

(9) Annual renewal of permits; and

(10) Any change of operations under the existing permit to be approved by the director. No permit shall be authorized unless accompanied by a Hawaii sectional aeronautical chart marked to indicate routes and altitudes to be used in conducting aerial tours and noise abatement procedures to be employed in the vicinity of identified noise sensitive areas. For the purposes of this subsection, "tour aircraft operations" means any business operation that offers aircraft for hire by passengers for the purpose of aerial observation of landmarks and other manmade or natural sites within an island of the State and for the purpose of transporting passengers for tourist-related activities.

(c) Notwithstanding the restriction on access by the public into operational areas, entry may be authorized for airport operational area related purposes with the prior permission of the director or the director's duly authorized representative.

(d) Conformity to federal legislation and rules. No rules, orders, or standards prescribed by the director shall be inconsistent with, or contrary to, any act of the Congress of the United States or any regulation promulgated or standard established pursuant thereto.

(e) How made. All rules having the force and effect of law shall be adopted by the director pursuant to chapter 91.

(f) Distribution. The director shall provide for the publication and general distribution of all of the department's rules and procedures having general effect.

(g) Definitions. For the purpose of this section, if not inconsistent with the context: "Operational area" means any portion of a public airport from which access by the public is prohibited by fences or appropriate signs and that is not leased or demised to anyone for exclusive use. "Operational area" includes runways, taxiways, all ramps, cargo ramps and apron areas, aircraft parking and storage areas, fuel storage areas, maintenance areas, and any other area of a public airport used or intended to be used for landing, takeoff, or surface maneuvering of aircraft or used for embarkation or debarkation of passengers. "Sterile passenger holding area" means any portion of a public airport designated by the director and identified by appropriate signs as an area into which access is conditioned upon the prior inspection of persons and property in accordance with the approved Federal Aviation Administration air carrier screening program.

261-13

261-13 Orders, notice, and opportunity for hearings, judicial review.

(a) Every order of the director of transportation requiring performance of or desistance from certain acts or compliance with certain requirements and any denial or revocation of an approval, certificate, or license or refusal of a renewal thereof shall be:

(1) In the form required by section 91-12;

(2) Made only after reasonable notice and an opportunity to be heard in conformity with chapter 91; and

(3) Served upon the persons affected either by registered or certified mail with return receipt requested or in person.

(b) In every case where reasonable notice and opportunity for hearing are required under this section, the director shall, on not less than five days' notice personally served, or seven days' notice by registered or certified mail (to be computed from the date of mailing of the notice), specify the matters prescribed in section 91-9; provided that in cases of emergency where the public interest so requires the amount of notice may be shortened, or a temporary order may be issued pending the holding of the hearing. To the extent practicable, hearings on these matters shall be held in the county where the affected person resides or does business.

(c) Any person aggrieved by an order of the director or by the grant, denial, or revocation of any approval, license, or certificate, or refusal of a renewal thereof, may obtain a review thereof by the circuit court of the circuit in which that person resides or does business in the manner provided in chapter 91 for review of orders in contested cases. Upon application of either party, the court may assign the appeal for hearing at the earliest possible date. Appeals may be taken and had in the manner provided for a review of a civil judgment of a circuit court. Upon the final termination of any judicial review, the director shall enter an order or take other action in accordance with the mandate of the court.

261-13.5

261-13.5 Promotion of safety and efficient use of facilities where congestion occurs.

(a) The legislature recognizes that air traffic congestion constitutes a serious safety problem and reduces the efficient and effective use of limited airspace and terminal facilities. The legislature also recognizes that the development of additional airports will assist in the solution to such safety and efficiency problems, but that such development may not always be a feasible or complete solution to such problems. Nevertheless, the legislature is determined that all possible actions be taken to promote safety, to alleviate safety hazards and to reduce congestion at airports under the State's control. The department of transportation shall do everything within its authority to enhance the safe use of the State's airports and shall cooperate with appropriate federal agencies and other affected parties to assist said agencies in meeting their responsibility to alleviate safety hazards resulting from air traffic congestion. In carrying out this responsibility, the department shall consider all possible alternatives including but not limited to reliever airports and limiting the number of aircraft allowed to use state airports. The department shall take appropriate action to enhance safety and to alleviate safety hazards, or, if legislative action is required, make appropriate recommendations to the legislature.

(b) To the fullest extent possible within the State's authority to act in the area of airport and air traffic safety, the department of transportation shall be responsible for promoting safe operating conditions and alleviating safety hazards due to air traffic congestion at airports under its control. To this end, the department, in close cooperation with appropriate federal authorities and other affected parties, shall examine and conduct research into the causes of and solutions for safety problems at such airports, especially those problems associated with air traffic congestion. Pursuant to sections 261-12 and 261-13, the director shall adopt such rules and standards which may include the assignment of particular runways for particular uses, the establishment of the number and types of aircraft allowed to use each public airport, and the use of similar measures where such actions may contribute to the segregation of different types of aircraft and to the reduction of peak air traffic usage at airports under state control.

261-13.6

261-13.6 Helicopter master plan; advisory committee.

(a) The legislature recognizes that air traffic congestion on the ground constitutes a serious safety problem and reduces the efficient and effective use of the limited space in airport facilities. The legislature also recognizes the increased use of airport facilities by helicopters for commercial purposes. The legislature is determined to ensure that all possible actions are taken to promote safety, alleviate safety hazards, and reduce congestion at airports under the State's control. The department of transportation shall do everything within its authority to enhance the safe use of the State's airports and shall cooperate with appropriate federal agencies and other affected parties to assist the agencies in meeting their responsibilities to alleviate safety hazards. In carrying out this responsibility, the department shall develop and implement a master plan, hereinafter referred to as the "helicopter master plan", for helicopter operations for each airport under the State's control.

(b) The director shall adopt a helicopter master plan for each state airport that shall include but not be limited to:

(1) The extent, type, nature, location, and timing of helicopter operations and helicopter facilities development at each state airport;

(2) The layout plans of existing and proposed helicopter facilities at each state airport;

(3) The determination of the maximum number of helicopters that can be accommodated at each state airport;

(4) The determination of the extent of emergency services, maintenance, and operations at each state airport; and

(5) An assessment of impact on surrounding areas.

(c) The director shall not make or permit any addition or alteration to any helicopter facilities at any state airport other than those additions or alterations in conformity with the helicopter master plan for that state airport.

(d) The helicopter master plan shall be submitted to the legislature no later than twenty days prior to the convening of the regular session of 1989, and thereafter shall be formally reviewed every five years.

(e) There is established an advisory committee within each county which shall sit in an advisory capacity to the director on matters relating to the helicopter master plan for each state airport. Each advisory committee shall consist of not more than thirteen members to be appointed by the director and whose membership shall include representatives from the helicopter industry and the communities adjacent to the airport. Each advisory committee shall be placed for administrative purposes only, within the department of transportation. Each member of an advisory committee shall serve without compensation.

(f) For the purposes of this section, "helicopter operation" means the operation of a helicopter company from an airport under the State's control.

261-14

261-14 Federal-state joint hearings, reciprocal services, accident reporting.

(a) Joint hearings. The department of transportation may confer with or hold joint hearings with any agency of the United States in connection with any matter arising under this chapter, or relating to the sound development of aeronautics.

(b) Reciprocal services. The department may avail itself of the cooperation, services, records, and facilities of the agencies of the United States as fully as may be practicable in the administration and enforcement of this chapter. The department shall furnish to the agencies of the United States, its cooperation, services, records, and facilities, insofar as may be practicable.

(c) Accident reporting. The department shall report to the appropriate agency of the United States all accidents in aeronautics in the State of which it is informed, and shall insofar as practicable preserve, protect, and prevent the removal of the component parts of any aircraft involved in an accident being investigated by it until the federal agency institutes an investigation.

261-15

261-15 Federal airman and aircraft certificates.

(a) Operation without, unlawful. It shall be unlawful for any person to operate or cause or authorize to be operated any civil aircraft within the State unless the aircraft has an appropriate effective certificate, permit, or license issued by the United States, if the certificate, permit, or license is required by the United States. It shall be unlawful for any person to engage in aeronautics as an airman in the State unless the person has an appropriate effective airman certificate, permit, rating, or license issued by the United States authorizing the person to engage in the particular class of aeronautics in which the person is engaged, if such certificate, permit, rating, or license is required by the United States.

(b) Exhibition of certificates. Where a certificate, permit, rating, or license is required for an airman by the United States, it shall be kept in the airman's personal possession when the airman is operating within the State and shall be presented for inspection upon the demand of any public officer, or any other officer of the State or of a municipality or member, official, or employee of the department of transportation authorized pursuant to section 261-17 to enforce the aeronautics laws, or any official, manager, or person in charge of any airport upon which the aircraft lands, or upon the reasonable request of any person.

261-15.6 Annual registration fee

261-15.6 Annual registration fee. The department shall assess and collect an annual registration fee of $10 from each operator of aircraft required to be registered under section 261-15.5.

261-15.7 Failure to register

261-15.7 Failure to register.

(a) All aircraft, unless exempted, shall be registered within the time prescribed by rules adopted by the director.

(b) Failure to comply with the registration requirements shall subject the operator of the aircraft to:

(1) A penalty of not more than $100 per aircraft;

(2) The denial of the use of the airport facilities; and

(3) Removal of the aircraft to a location designated pursuant to rules adopted by the director.

(c) The director is authorized to adopt rules pursuant to chapter 91 to effectuate the purposes of sections 261-15.5 to 261-15.7.

261-16 Licensing of airports

261-16 Licensing of airports.

(a) Site approvals. Except as provided in subsection (d), the department of transportation may provide for the approval of airport sites and the issuance of certificates of the approvals. No charge shall be made for any approval. Upon the department's adoption of a rule providing for the approvals, any person desiring or planning to construct or establish an airport may apply to the department for approval of the site; provided that the application is made before the acquisition of the site or before the construction or establishment of the proposed airport. The department shall issue with reasonable dispatch a certificate granting approval of a site if it is satisfied that:

(1) The site is adequate for the proposed airport;

(2) The proposed airport, if constructed or established, will conform to minimum standards of safety; and

(3) Safe air traffic patterns can be worked out for the proposed airport and for all existing airports and approved airport sites in its vicinity. An approval of a site may be granted subject to any reasonable conditions that the department may deem necessary to effectuate the purposes of this section and shall remain in effect, unless sooner revoked by the department, until a license for an airport located on the approved site has been issued pursuant to subsection (b). The department, after notice and opportunity for hearing to a holder of a certificate of approval, may revoke the approval when it shall reasonably determine that there has been an abandonment of the site as an airport site; that there has been a failure within the time prescribed, or if no time was prescribed, within a reasonable time, to develop the site as an airport

or to comply with the conditions of the approval; or that because of change of physical or legal conditions or circumstances the site is no longer usable for the aeronautical purposes for which the approval was granted.

(b) Licenses. Except as provided in subsection (d), the department may provide for the licensing of airports and the annual renewal of the licenses. The department may charge license fees not exceeding $100 for each original license, and not exceeding $10 for each renewal thereof. Upon the adoption of a rule providing for the licensing, and upon receipt of an application for an original license and the payment of the duly required fee therefor, the department shall issue with reasonable dispatch an appropriate license if the department is satisfied that the airport conforms to minimum standards of safety and that safe air traffic patterns can be worked out for the airport and for all existing airports and approved airport sites in its vicinity. All licenses shall be renewable annually upon payment of the fees prescribed. Licenses and renewals thereof may be issued subject to any reasonable conditions that the department may deem necessary to effectuate the purposes of this section. The department, after notice and opportunity for hearing to the licensee, may revoke any license or renewal thereof, or refuse to issue a renewal, when the department reasonably determines that:

(1) There has been an abandonment of the airport as such;

(2) There has been a failure to comply with the conditions of the license or renewal thereof; or

(3) Because of change of physical or legal conditions or circumstances, the airport has become either unsafe or unusable for the aeronautical purposes for which the license or renewal was issued. It shall be unlawful for any person to operate an airport without an appropriate license, as may be duly required by rule adopted pursuant to this subsection.

(c) Public hearings. In connection with the grant of approval of a proposed airport site or the issuance of an airport license under subsections (a) and (b) of this section, the department may, on its own motion or upon the request of an affected or interested person, hold a hearing open to the public, and shall hold a hearing when and as required by section 261-13.

(d) Exemptions. The requirements of this section as to site approvals and licenses shall not apply to airports owned or operated by the United States. The department may, from time to time, to the extent necessary, exempt any other class of airports, pursuant to a reasonable classification or grouping, from any rule or regulation promulgated under this section or from any requirement of such a rule or regulation, if it finds that the application of the rule, regulation, or requirement would be an undue burden on such class and is not required in the interest of public safety.

261-17 Enforcement of laws

261-17 Enforcement of laws.

(a) The director of transportation, officers, and employees of the department of transportation, and every state and county officer charged with the enforcement of state laws and ordinances, shall enforce and assist in the enforcement of this chapter and of all rules and orders issued pursuant thereto and of all other laws of the State; and in that connection each of the persons may inspect and examine at reasonable hours any premises, and the buildings and other structures thereon, where airports, air navigation facilities, or other aeronautical activities are operated or conducted. In aid of the enforcement of this chapter, the rules and orders issued pursuant thereto, and all other laws of the State, the powers of police officers are conferred upon the director, and such of the officers, employees, agents, and representatives of the department as may be designated by the director to exercise such powers, including the power to serve and execute warrants and arrest offenders, and the power to serve notices and orders. For the purposes of this subsection the term "agents and representatives" includes persons performing services at airports under contract with the department.

(b) No person shall provide or be hired to provide armed security services at airports within the State without first submitting statements signed under penalty of false swearing by the person indicating whether the person has ever been convicted of a crime which, by law, would preclude the person from carrying or using a firearm in the course of the person's employment, including a felony conviction in the State or elsewhere, and providing consent to the department to have a criminal history record check conducted by the Federal Bureau of Investigation to obtain criminal history record information. The person shall also be fingerprinted for the purpose of a Federal Bureau of Investigation criminal history record check. The Hawaii criminal justice data center may also assess the existing providers of armed security services at airports within the State, or their employees or applicants for employment, or any applicant for employment to provide armed security services at airports within the State, a reasonable fee for each criminal history record check performed by the Federal Bureau of Investigation.

(c) The department may, in the name of the State, enforce this chapter and the rules and orders issued pursuant thereto by injunction or other legal process in the courts of the State.

261-17.5 Arrest or citation

261-17.5 Arrest or citation.

(a) Except when required by state law to take immediately before a district judge a person arrested for a violation of any provision of this chapter, including any rule adopted pursuant to this chapter, any person authorized to enforce the provisions of this chapter, hereinafter referred to as an "enforcement officer", upon arresting a person for violation of any provision of this chapter, including any rule adopted pursuant to this chapter, shall in the discretion of the enforcement officer:

(1) Issue to the purported violator a summons or citation, printed in the form hereinafter described, warning the purported violator to appear and answer to the charge against the purported violator at a certain place and at a time within seven days after the arrest; or

(2) Take the purported violator without unnecessary delay before a district judge.

(b) The summons or citation shall be printed in a form comparable to the form of other summonses and citations used for arresting offenders and shall be designed to include all necessary information. The form and content of the summons or citation shall be adopted or prescribed by the district courts. Summonses and citations shall be consecutively numbered, and the carbon copy or copies of each shall bear the same number.

(c) The original of a summons or citation shall be given to the purported violator and the other copy or copies distributed in the manner prescribed by the district courts; provided that the district courts may prescribe alternative methods of distribution for the original and any other copies.

(d) Any person who fails to appear at the place and within the time specified in the summons or citation issued to the person by the enforcement officer, upon the person's arrest for violation of any provision of this chapter, including any rule adopted pursuant to this chapter, shall be guilty of a misdemeanor and, on conviction, shall be fined not more than $1,000, or be imprisoned not more than six months, or both. If any person fails to comply with a summons or citation issued to the person, or if any person fails or refuses to deposit bail as required, the enforcement officer shall cause a complaint to be entered against the person and secure the issuance of a warrant for the person's arrest.

261-17.6 Parking control at airports

261-17.6 Parking control at airports.

(a) The director may enforce airport rules pertaining to vehicle parking at airports by imposing fines not to exceed $50 per violation or by removing the vehicle of the offender from the area within the airport's jurisdiction, or both; provided that a person violating any provision of part III of chapter 291, or any rule adopted thereunder, shall be guilty of a traffic infraction under chapter 291D and shall be fined or otherwise penalized in accordance with part III of chapter 291.

(b) Written notice of the removal of any vehicle shall immediately be sent by registered or certified mail, with a return receipt, to the legal and registered owner of the vehicle at the address on record at the vehicle licensing division. The notice shall contain a brief description of the vehicle, the location of custody, and intended disposition of the vehicle if not repossessed within thirty days after the mailing of the notice. A notice need not be sent to a legal or registered owner or to any person with an unrecorded interest in the vehicle whose name or address cannot be determined.

(c) Any vehicle not repossessed within the time limits provided in subsection (b) after compliance by the department with the notice requirements provided by that subsection, shall be disposed of by public auction, through oral tenders, or by sealed bids, after public notice has been given; provided that the public auction shall not be held less than five days after public notice has been given. Where no bid is received, the vehicle may be either sold by negotiation, disposed of or sold as junk, or donated to any governmental agency; and further provided that the requirements of public auction may be waived when the appraised value of any vehicle is less than $100 as determined by an independent appraiser who has had at least one year of experience in the sale or purchase of motor vehicles as a licensed motor vehicle salesperson. In that event the vehicle, after public notice has been given, may be disposed of in the same manner as when a vehicle is put up for public auction and for which no bid is received.

(d) Any person entitled to the vehicle may repossess the same prior to the date of public auction upon payment of all towing, handling, storage, appraisal, advertising, and any other expenses incurred in connection with the vehicle. If the person claiming the vehicle is not the legal or registered owner, the person may repossess the vehicle upon paying the foregoing expenses and posting adequate security not to exceed the value of the vehicle. The security, if not forfeited, shall be returned two years from receipt.

(e) The transfer of title and interest by sale pursuant to the provisions of this section shall be considered a transfer by operation of law and shall be governed by provisions applicable thereto; provided that in the event the certificate of ownership or registration is unavailable, the bill of sale executed by the director or the director's authorized representative is satisfactory evidence authorizing the transfer of such title or interest.

(f) All proceeds from the sale of vehicles shall be deposited into the airport revenue fund. The legal or registered owner is entitled to recover the excess of the proceeds from the sale over expenses, if the claim is filed with the department within sixty days from the execution of the sales agreement. The legal owner shall receive priority of payment to the extent of the legal owner's lien on the vehicle. The department may file a claim within the same period against the legal or registered owner or person with an unrecorded interest for the deficiencies between the sale proceeds and expenses.

(g) A vehicle shall be deemed a derelict by the director under any one of the following conditions:

(1) If the certificate of registration of the vehicle has expired and the registered and legal owner no longer resides at the address listed on the last certificate of registration on record with the county director of finance;

(2) If the last registered and legal owner of record disclaims ownership;

(3) If essential major parts have been removed so as to render the vehicle inoperable, and the vehicle identification numbers, license number plates, and other means of identification have been removed so as to nullify efforts to locate or identify the registered and legal owner; or

(4) If the vehicle registration records of the county director of finance contain no record that the vehicle has ever been registered in the county.

(h) A derelict vehicle may be immediately disposed of or sold as junk without having to comply with the requirements of subsections (b) through (f).

261-17.7

261-17.7 Lost and found money or property at airports.

(a) All money or property found at an airport owned or controlled by the department shall be reported or delivered by the finder to the airport lost and found, and when so delivered shall be held by the department for forty-five days or until claimed by some person who establishes title or right of custody thereto to the satisfaction of the department. In the event of the establishment of title or right of custody, the money or property shall be delivered to the claimant by the director or the director's agent. If within forty-five days no claimant establishes a right to the money or property, the money or property, except as provided in subsection (d) with regard to electronic devices, shall be returned to the person who delivered it to the airport lost and found; provided that if the person who delivered it to the airport lost and found fails to claim the money or property within thirty days after being notified by the director, the director shall deposit the money into the state treasury to the credit of the airport revenue fund or shall dispose of the property by public auction.

(b) At least once annually, the director shall give public notice giving details as to time and place of the auction and giving notice to all persons interested or claiming the property that unless claims are made by persons who can provide satisfactory proof of ownership before a specified date, the property will be sold at public auction to the highest bidder. On the day and at the place specified in the notice, all property for which no satisfactory proof of ownership is made shall be sold by auction by or under the direction of the director. If any property that is of a perishable nature or unreasonably expensive to keep or safeguard remains unclaimed at the airport, the director may sell that property at public auction, at a time and after notice that is reasonable under the circumstances. The director shall immediately after the sale of any property pay to the airport revenue fund all moneys received by the director upon sale.

(c) For the purpose of this section, notice by regular mail to the last known address of the person who delivered the money or property to the airport lost and found shall be deemed sufficient.

(d) Before an electronic device that allows for storage of personal information is returned to the finder or disposed of by public auction or other means, the device shall be sanitized by the director or the director's agent in accordance with guidance provided by the information privacy and security council to ensure removal of personal information. If removal of personal information is not possible or cannot be verified without unreasonable expense, the device shall be destroyed in a manner sufficient to eliminate the information, and then disposed of or recycled. The director or the director's agent shall make reasonable efforts to notify the finder that the device was destroyed and disposed of or recycled because personal information could not be removed. For purposes of this subsection, "personal information" shall have the same meaning as in section 487N-1.

261-18 Hazard pay for employees

261-18 Hazard pay for employees. Any employee of the airports division of the department of transportation who performs fire, crash, or any other aircraft emergency rescue duties, in addition to the employee's regular assignment, shall receive hazard pay in accordance with the following schedule:

(1) $25 for each and every drill attended;

(2) $20 for each and every response to a fire, crash, or any other aircraft emergency rescue call-out which results in stand by duty only;

(3) For any fire, crash, or other aircraft emergency rescue call-out resulting in the actual participation in rescue operations, $50 for the first hour or fraction thereof, and $20 for each additional hour or fraction thereof. Hazard pay shall be paid out of the special funds of the airports division of the department.

261-19 Exchange of violations information

261-19 Exchange of violations information. The department of transportation may report to the appropriate federal agencies and agencies of the states and territories of the United States all proceedings instituted charging violation of section 261-15, 263-9, or 263-11, and all penalties, of which it has knowledge, imposed upon airmen or the owners or operators of aircraft for violations of the laws of the State relating to aeronautics or for violations of the rules, regulations, or orders of the department. The department may receive reports of penalties and other data from agencies of the federal government, the states, and territories of the United States and, when necessary, enter into agreements with federal agencies and the agencies of such states and territories governing the delivering, receipt, exchange, and use of reports and data. The department may make the reports and data of the federal agencies, the agencies of the states and territories, and the courts of the State available, with or without request therefor, to any and all courts of the State, and to any officer of the State or of a municipality authorized pursuant to section 261-17 to enforce the aeronautics law.

261-20 Department proceedings and reports

261-20 Department proceedings and reports. The department of transportation shall report in writing to the governor immediately following the end of each fiscal year. The report shall contain a summary of its proceedings during the preceding fiscal year, a detailed and itemized statement of all revenue and of all expenditures made by or in behalf of the department during the preceding fiscal year, an estimate of anticipated revenues and expenses for the next succeeding fiscal year, such other information as it may deem necessary or useful, and any additional information which may be requested by the governor. The fiscal year of the department shall conform to the fiscal year of the State.

261-21 Penalties

261-21 Penalties.

(a) Except as provided in subsection (c), any person violating this chapter, or any of the rules or orders issued pursuant thereto and duly adopted or served, shall be guilty of a violation subject to the following penalties:

(1) When safety measures or Federal Aviation Administration acceptable hangar use practices are violated, the person shall be subject to a fine not to exceed $500; or

(2) When the licensing and regulation of persons engaged in commercial activities at public airports is involved, the person shall be subject to a fine not to exceed $500.

(b) Except as provided in subsection (c), any person violating any rule relating to motor vehicles and traffic control or the operation of any equipment or motor vehicle in or on the operational area of the airport shall be guilty of an offense as defined under the Penal Code and be fined not more than $500.

(c) Any person violating any rule relating to parking of motor vehicles or equipment at a public airport, including baggage carts, dollies, and other similar devices, shall have committed a traffic infraction as set forth in chapter 291D, the adjudication of which shall be subject to the provisions contained therein.

261-22 AIRPORTS

261-22 Hilo International Airport. The official name of the airport situated at Waiakea, Hilo, Hawaii, shall be Hilo International Airport. The main passenger terminal at Hilo International Airport shall be designated "General Lyman Terminal" in memory of Brigadier General Albert Lyman, the first person of Hawaiian ancestry to attain such rank in the United States Army.

261-23 Daniel K

261-23 Daniel K. Inouye International Airport. All that area set aside by executive order No. 1016 for John Rodgers Airport and Keehi Lagoon Seaplane Harbor to be under the control and management of the superintendent of public works under date of April 12, 1943, is designated as the "Daniel K. Inouye International Airport".

261-24 John Rodgers Terminal

261-24 John Rodgers Terminal. When a new transpacific terminal building is constructed, it shall be designated "John Rodgers Terminal" in memory of the late Commander John Rodgers, United States Navy, who made the first flight in a Navy flying boat to these islands in September, 1925.

261-25 REPEALED

261-25 REPEALED. L 1989, c 58, §1. Previous Vol05_Ch0261-0319 Next

261-26

261-26 Ellison Onizuka Kona International Airport at Keahole. The official name of the airport situated at Keahole in Kona, Hawaii shall be the Ellison Onizuka Kona International Airport at Keahole.

261-27 Kawaihapai Airfield

261-27 Kawaihapai Airfield. The official name of the airfield located at Kawaihapai, formerly known as Dillingham Airfield, shall be Kawaihapai Airfield.

261-31 RELOCATION

261-31 Definitions. When used in sections 261-31 to 261-36: "Business" means any lawful activity conducted:

(1) Primarily for the purchase and resale, manufacture, processing, or marketing of products, commodities, or any other personal property;

(2) Primarily for the sale of services to the public; or

(3) By a nonprofit organization. "Director" means the state director of transportation. "Displaced person" means any person who is required to move from any real property on or after September 1, 1969 as a result of the acquisition of such real property for airport purposes or as the result of the acquisition for airport purposes of other real property on which such person is conducting a business or farm operation. "Family" means two or more individuals living together in the same dwelling unit who are related to each other by blood, marriage, adoption, or legal guardianship. "Farm operation" means any activity conducted solely or primarily for the production of one or more agricultural products or commodities for sale and home use, and customarily producing such products or commodities in sufficient quantity to be capable of contributing materially to the operator's support. "Person" means:

(1) Any individual, partnership, corporation, or association that is the owner of a business;

(2) Any owner, part owner, tenant, or sharecropper operating a farm;

(3) The head of a family; or

(4) An individual not a member of a family.

261-32

261-32 Assistance for displaced person, families, businesses and nonprofit organization.

(a) The director may compensate any person, family, business, or nonprofit organization for actual and reasonable moving expenses incurred as a result of being displaced by any land acquisition program of the State for any airport purpose.

(b) Any displaced person who moves from a dwelling who elects to accept the payments authorized by this subsection in lieu of the payments authorized by subsection (a) may receive:

(1) A moving expense allowance, determined according to a schedule established by the director not to exceed $200;

(2) A dislocation allowance in the amount of $100.

(c) Any displaced person who moves or discontinues the person's business or farm operations and elects to accept the payment authorized by this subsection in lieu of the payment authorized by subsection (a) may receive a fixed relocation payment in an amount equal to the average annual net earnings of the business or farm operation, or $5,000, whichever

is less. In the case of a business, no payment shall be made under this subsection unless the director is satisfied that the business:

(1) Cannot be relocated without a substantial loss of its existing patronage; and

(2) Is not part of a commercial enterprise having at least one other establishment that is: (A) Not being acquired by the State; and (B) Engaged in the same or similar business.

(d) In addition to any payments authorized in subsection (a) and (c), the director may provide relocation assistance to any displaced person who moves a business as a result of any land acquisition program of the State for any airport use.

(e) The director may enter into leases, licenses, and other arrangements with any displaced person granting the use or occupancy of any lands or property under the department's jurisdiction. The director may allow any lessee of a site acquired by the department to remain on the site, and may enter into a new lease with such person granting the use of the site; provided that the term of the new lease shall not exceed the time remaining on the lease terminated by the acquisition. Any lease issued pursuant to this section shall be issued through negotiation, under mutually agreeable terms, conditions, and lease rent, without regard to the limitations set forth in chapter 171.

(f) The director shall include the costs specified in this section as a part of the cost of construction of the airport for which the land acquisition program is initiated.

261-33 Replacement housing

261-33 Replacement housing.

(a) In addition to any amount authorized herein as part of the cost of construction of the airport for which land acquisition is initiated, the director shall make a payment to the owner of real property improved by a single-family, two-family, or three-family dwelling actually owned and occupied by the owner for not less than one year prior to the first written offer by the department of transportation for the acquisition of such property. Such payment, not to exceed $5,000, shall be the amount, if any, which when added to the acquisition payment, equals the average price required for a comparable dwelling determined, in accordance with standards established by the director to be a decent, safe, and sanitary dwelling adequate to accommodate the displaced owner, reasonably accessible to public services and places of employment, and available on the private market. Such payment shall be made only to a displaced owner who purchases and occupies a dwelling within one year subsequent to the date on which the displaced owner is required to move from the dwelling acquired for the project.

(b) In addition to amounts otherwise authorized by this section and section 261-32, the director shall make a payment to any individual or family displaced from any dwelling not eligible to receive a payment under subsection (a) which dwelling was actually and lawfully occupied by such individual or family for not less than ninety days prior to the first written offer by the department of transportation for acquisition of such property. Such payment, not to exceed $1,500, shall be the amount which is necessary to enable such person to lease or rent for a period not to exceed two years, or to make the downpayment on the purchase of a decent, safe, and sanitary dwelling of standards adequate to accommodate such individual or family in areas not generally less desirable in regard to public utilities and public and commercial facilities.

261-34 Not treated as income

261-34 Not treated as income. No payment received under sections 261-32 and 261-33 shall be considered as income for purposes of the state income tax law; nor shall such payments be considered as income to any recipient of public assistance, and such payment shall not be deducted from the amount of aid to which the recipient would otherwise be entitled to under the state welfare programs.

261-35 Decision of director

261-35 Decision of director. The written decision of the director shall be final.

261-36 Rules and regulations

261-36 Rules and regulations. The director may adopt rules and regulations to carry out the purposes of sections 261-31 to 261-36 and may adopt all or any part of applicable federal rules and regulations which are necessary or desirable to obtain federal assistance in making payments hereunder.

261-51 FACILITY PROJECTS

261-51 Definitions. For the purpose of this part, if not inconsistent with the context: "Remodeling" includes reconstruction, renovation, rehabilitation, improvement, betterment or extension of a special facility. "Special facility" means one or more buildings, structures or facilities and the land thereof for the servicing of aircraft, for aeronautics, for air cargo operations, for airports or for the comfort, accommodation and convenience of air travelers and airline employees which is the subject of a special facility lease. "Special facility lease" includes a contract, lease or other agreement, or any combination thereof, the subject matter of which is the same special facility.

261-52 Powers

261-52 Powers. In addition and supplemental to the powers granted to the department by law, the department may:

(1) With the approval of the governor, enter into a special facility lease or an amendment or supplement thereto whereby the department agrees to construct, acquire, or remodel and furnish or equip a special facility solely for the use by another person to a special facility lease;

(2) With the approval of the governor, issue special facility revenue bonds in principal amounts that may be necessary to yield the amount of the cost of any construction, acquisition, remodeling, furnishing, and equipping of any special facility, including the costs of acquisition of the site thereof; provided that the total principal amount of the special facility revenue bonds which may be issued pursuant to the authorization of this paragraph shall not exceed $200,000,000; provided further that these funds shall not be expended on nonpublic air facilities;

(3) With the approval of the governor, issue refunding special facility revenue bonds with which to provide for the payment of outstanding special facility revenue bonds (including any special facility revenue bonds theretofore issued for this purpose) or any part thereof; provided any issuance of refunding special facility revenue bonds shall not reduce the principal amount of the bonds which may be issued as provided in paragraph (2);

(4) Perform and carry out the terms and provisions of any special facility lease;

(5) Notwithstanding section 103-7 or any other law to the contrary, acquire, construct, or remodel and furnish or equip any special facility, or accept the assignment of any contract therefor entered into by the other person to the special facility lease;

(6) Construct any special facility on land owned by the State; provided that no funds derived herein will be expended for land acquisition; and

(7) Agree with the other person to the special facility lease whereby any acquisition, construction, remodeling, furnishing, or equipping of the special facility and the expenditure of moneys therefor shall be undertaken or supervised by another person.

261-53

261-53 Findings and determination for special facility leases. The department shall not enter into any special facility lease unless the department at or prior to the entering into of the special facility lease finds and determines that:

(1) The building, structure, or facility that is to be the subject of the special facility lease will not be used to provide services, commodities, supplies, or facilities that are then adequately being made available through the airports system of the State;

(2) The result of the use or occupancy of the building, structure, or facility under the special facility lease would not result in the reduction of the revenues derived from the airports system to an amount below the amount required to be derived therefrom by section 39-61; and

(3) The entering into of the special facility lease would not be in violation of or result in a breach of any covenant contained in any resolution or certificate authorizing any bonds of the State then outstanding.

261-54 Special facility lease

261-54 Special facility lease.

(a) In addition to the conditions and terms set forth in this part, any special facility lease entered into by the department shall at least contain provisions obligating the other person to the special facility lease:

(1) To pay to the department during the initial term of the special facility lease, whether the special facility is capable of being used or occupied or is being used or occupied by the other person, a rental or rentals at the time or times and in the amount or amounts that will be sufficient: to pay the principal and interest on all special facility revenue bonds issued for

the special facility, to establish or maintain any reserves for these payments, and to pay all fees and expenses of the trustees, paying agents, transfer agents, and other fiscal agents for the special facility revenue bonds issued for the special facility;

(2) To pay to the department: (A) A ground rental, equal to the fair market rental of the land, if the land on which the special facility is located was not acquired from the proceeds of the special facility revenue bonds; or (B) A properly allocable share of the administrative costs of the department in carrying out the special facility lease and administering the special facility revenue bonds issued for the special facility, if the land was acquired from the proceeds of the special facility revenue bonds;

(3) To either operate, maintain, and repair the special facility and pay the costs thereof or to pay to the department all costs of operation, maintenance, and repair of the special facility;

(4) To: (A) Insure, or cause to be insured, the special facility under builder's risk insurance (or similar insurance) in the amount of the cost of construction of the special facility to be financed from the proceeds of the special facility revenue bonds; (B) Procure and maintain, or cause to be procured or maintained, to the extent commercially available, a comprehensive insurance policy providing protection and insuring the department and its officers, agents, servants, and employees (and so long as special facility revenue bonds are outstanding, the trustee) against all direct or contingent loss or liability for damages for personal injury or death or damage to property, including loss of use thereof, occurring on or in any way related to the special facility or occasioned by reason of occupancy by and the operations of the other person upon, in, and around the special facility; (C) Provide all risk casualty insurance, including insurance against loss or damage by fire, lightning, flood, earthquake, typhoon, or hurricane, with standard extended coverage and standard vandalism and other malicious mischief endorsements; and (D) Provide insurance for workers' compensation, employer's liability, and aircraft liability (including passenger liability) for personal injury or death or damage to property (the other party may self-insure for workers' compensation if permitted by law); provided that all policies with respect to loss or damage of property including fire or other casualty and extended coverage and builder's risk shall provide for payments of the losses to the department, the other person, or the trustee as their respective interests may appear; and provided further that the insurance may be procured and maintained as part of or in conjunction with other policies carried by the other person; and provided further that the insurance shall name the department, and so long as any special facility revenue bonds are outstanding, the trustee, as additional insured; and

(5) To indemnify, save, and hold the department, the trustee and their respective agents, officers, members, and employees harmless from and against all claims and actions and all costs and expenses incidental to the investigation and defense thereof, by or on behalf of any person, firm, or corporation, based upon or arising out of the special facility or the other person's use and occupancy thereof, including, without limitation, from and against all claims and actions based upon and arising from any: (A) Condition of the special facility; (B) Breach or default on the part of the other person in the performance of any of the person's obligations under the special facility lease; (C) Fault or act of negligence of the other person or the person's agents, contractors, servants, employees, or licensees; or (D) Accident to or injury or death of any person or loss of or damage to any property occurring in or about the special facility, including any claims or actions based upon or arising by reason of the negligence or any act of the other person. Any moneys received by the department pursuant to paragraphs (2) and (3) shall be paid into the airport revenue fund and shall not be nor be deemed to be revenues of the special facility.

(b) The term and all renewals and extensions of the term of any special facility lease (including any amendments or supplements thereto) shall not extend beyond the lesser of the reasonable life of the special facility which is the subject of the special facility lease, as estimated by the department at the time of the entering into thereof, or thirty years.

(c) Any special facility lease entered into by the department shall be subject to chapter 171 and shall contain any other terms and conditions that the department deems advisable to effectuate the purposes of this part.

261-71 [ABANDONED AIRCRAFT]

261-71 Custody and disposal of abandoned aircraft.

(a) Any aircraft:

(1) Which has been left unattended for a continuous period of more than thirty days, and

(2) Which is located upon an airport, as defined in section [261-1], under the jurisdiction or control of the State, may be deemed abandoned and taken into custody and disposed of by the director of transportation pursuant to this chapter.

(b) Upon taking custody of any such aircraft a written notice shall immediately be posted on the aircraft and a duplicate original thereof shall be sent by certified mail, with a return receipt, to the registered owner of the aircraft at the last address shown on the records of the Federal Aviation Administration or to such other address known to the department of transportation which is more current; to all lien holders who have filed a financing statement indexed in the name of the registered owner in the state bureau of conveyances or who are shown on the records of the Federal Aviation Administration; and to any other person known to have any interest in the aircraft whose address is known to the department of transportation. The notice shall contain a brief description of the aircraft, the location of custody, and the intended disposition of the aircraft if not repossessed within twenty days after the mailing of the notice. A notice need not be sent to any purported owner or any other person whose interest in the aircraft is not recorded with the Federal Aviation Administration or not known to the department of transportation.

(c) The department may assess and recover as against the owner of the aircraft, all airport use charges, landing fees, holding room use charges, towing, handling, aircraft storage charges, appraisal, advertising and other reasonable expenses incurred by the department in connection with the aircraft.

(d) If the aircraft is not repossessed within twenty days after the mailing of the notice, the aircraft shall be disposed of by public auction, through oral tenders, or by sealed bids, after public notice has been given; provided that the public auction shall not be held less than five days after public notice is given. Where no bid is received, the aircraft may be sold by negotiation, disposed of as junk, or donated to any governmental agency.

(e) Any person having an interest in the aircraft may take possession of the aircraft prior to the date of public auction upon payment to the department of transportation of all airport use charges, landing fees, holding room use charges, towing, handling, aircraft storage charges, appraisal, advertising and other expenses chargeable to the aircraft or incurred by the department in connection with the aircraft. If the person taking possession of the aircraft is not the registered owner, that person shall, prior to taking possession of the aircraft, pay the foregoing fees, charges and expenses and post adequate security which shall not exceed the value of the aircraft. The security, if not forfeited, shall be returned two years after receipt.

(f) Public auction shall not be required when the appraised value of any aircraft, as determined by an independent appraiser who has had at least one year of experience in the sale or purchase of aircraft, is less than $100. Upon that determination and after public notice has been given, the director of transportation may sell the aircraft by negotiation, dispose of it as junk, or donate the aircraft to any governmental agency.

(g) The transfer hereunder shall be evidenced by a bill of sale from the department of transportation, shall be considered a transfer by operation of law and shall be governed by provisions applicable thereto.

261-72 Disposition of proceeds of sale

261-72 Disposition of proceeds of sale. The department of transportation shall deposit into the airport revenue fund, that portion of the proceeds of the sale of an aircraft as shall represent the storage and other airport fees and charges due the department, the expenses of the auction, and any other expense incurred by the department in taking into custody and disposing of an aircraft. The balance, if any, shall be deposited into the general fund of the State. The owner may recover any such balance of the proceeds from the State only if the owner files a claim therefor with the department of budget and finance within five years after the execution of the bill of sale. A lien holder shall receive priority of payment from the balance of the proceeds to the extent of the lien holder's lien on the aircraft. If the proceeds of the sale are insufficient to cover the storage and other airport fees and charges, the expenses of the auction and other expenses of the department in taking into custody and disposing of the aircraft, the department of transportation may, within five years, bring an action for the deficiency in a court of appropriate jurisdiction against the person who was the owner of the aircraft at the time custody was taken by the department.

261-73

261-73 Custody and disposal of derelict aircraft.

(a) An aircraft which has been left unattended for a continuous period of more than twenty-four hours is a derelict, if:

(1) The aircraft is obstructing a taxiway, runway or ramp parking area, or is endangering life or property; or

(2) The aircraft has been parked or otherwise left at a state airport or on public property contrary to law or rules having the force and effect of law, or the aircraft has been left on private property without authorization of the owner or occupant of the property and if: (A) The aircraft's certificate of registration or aviation document is no longer effective and the

registered owner no longer resides at the address listed in the aircraft registration document records of the Federal Aviation Administration; or (B) The last registered owner disclaims ownership and the current owner's name or address cannot be determined; or (C) The aircraft identification numbers and other means of identification have been removed so as to nullify efforts to locate or identify the owner; or (D) The aircraft registration records of the Federal Aviation Administration contain no record that the aircraft has ever been registered and the owner's name or address cannot be determined.

(b) The director of transportation may cause a derelict aircraft to be immediately taken into custody. Upon taking custody of a derelict aircraft the director shall concurrently:

(1) Give public notice of intended disposition;

(2) When possible, post a notice of intended disposition on the aircraft; and

(3) Serve a duplicate original of the notice of intended disposition by certified mail, return receipt requested: (A) On the registered owner of the aircraft at the last address shown on records in the Federal Aviation Administration; (B) On all lien holders who have filed a financing statement indexed in the name of the registered owner in the bureau of conveyances or who are shown in the records of the Federal Aviation Administration; and (C) On any other person known to have an interest in the aircraft whose address is known to the department of transportation. If the aircraft is not repossessed within twenty days after the giving and mailing of the notice, whichever occurs later, the aircraft may be disposed of by negotiated sale, except that, when two or more purchasers indicate an interest in purchasing the aircraft, the aircraft will be sold at public auction to the highest bidder. If no purchaser expresses a desire to purchase the aircraft, the aircraft may be destroyed or disposed of by any other method authorized for abandoned aircraft.

261-74

261-74 Aircraft or property taken into legal custody; unauthorized control. No person shall exercise control over an aircraft or other property that is under legal custody, seizure, or detention by the department of transportation.

261-91 [TRESPASS TO AIRCRAFT]

261-91 Trespass to aircraft; penalty. Whoever without right, boards or remains in or upon any aircraft of another within a state airport shall be fined not more than $250, or imprisoned not more than three months, or both.

261-92

261-92 Questioning and detaining suspected persons aboard an aircraft. A police officer may detain any person found upon an aircraft, under circumstances as reasonably justify a suspicion that the person boarded without permission, for the purpose of demanding, and may demand the name and address of the person and the nature of the person's business upon the aircraft. If the police officer has reason to believe that the person has no right to be upon the aircraft, the police officer may arrest the person without a warrant on the charge of violating section 261-91.

Chapter 261D

261D-1 REPEALED

261D-1 REPEALED. L 2015, c 237, §7. Previous Vol05_Ch0261-0319 Next

261D-2

261D-2 Disposition of the transportation use special fund. [Effect and application. L 1989, c 309, §10.] For so long as airport revenue bonds issued before June 13, 1989, are outstanding, the director of transportation shall transfer to the airport revenue fund created by section 248-8 from moneys credited to the transportation use special fund, as permitted by and in accordance with section 37-53, an amount which, together with moneys on deposit in the airport revenue fund other than moneys on credit to the transportation use special fund therein, will cause the aggregate amount of moneys on deposit in the airport revenue fund other than moneys on credit to the transportation [use] special fund therein, to be at least one hundred fifty per cent of the requirements of such fund for the ensuing twelve months determined as prescribed by rules adopted pursuant to chapter 91. At any time after complying with the provisions of the preceding sentence or after no airport revenue bonds issued before June 13, 1989, are outstanding, the director of transportation may transfer all or any portion of the balance of the moneys credited to the transportation use special fund to the general fund of the State or to any special fund under the control of the department of transportation as permitted by and in accordance with

section 37-53.

261D-3 and 261D-4 REPEALED

261D-3 and 261D-4 REPEALED. L 2015, c 237, §§8, 9. Previous Vol05_Ch0261-0319 Next

Chapter 261E

261E-1 Bill

261E-1 Application of chapter; interstate or foreign commerce. This chapter shall not apply to commerce with foreign nations, with territories of the United States, or to interstate commerce, except insofar as the application is permitted under the Constitution and laws of the United States. [L Sp 2008, c 1, pt of §2] Previous Vol05_Ch0261-0319 Next

261E-2 Bill

261E-2 Definitions. As used in this chapter: "Aircraft" means any craft or other artificial contrivance of whatever description that is used or capable of being used, or intended to be used, as a means of transportation by air. "Air transportation" means the holding out to the general public of or the undertaking to provide the carriage of persons or property, except for United States mail, by air, for compensation or hire between any pair of points, both of which are within the State of Hawaii, unless the carriage is part of the continuous carriage of the persons or property to or from a point outside the State of Hawaii. For the purposes of this chapter, the term "continuous carriage" means transportation by air which does not include a stopover of more than twenty-four hours. "Certificate" means a certificate of public convenience and necessity issued under this chapter to a Hawaii air carrier. "Commission" means the air carrier commission established pursuant to section 261E-4. "Control", in reference to a relationship between any person or persons and another person or persons, includes actual as well as legal control, indirect as well as direct control, and the power to exercise substantial influence whether or not exercised. "Hawaii air carrier" or "carrier" means any person or entity who has received a certificate issued by the commission and who undertakes or holds itself out to the general public as engaging directly or indirectly in the transportation by air of passengers or property, or both, for compensation or hire within the State or between points within the State. "Rates" includes rates, fares, and charges of whatever kind and nature unless the context indicates otherwise. "Related company" means a company or persons that directly, or indirectly through one or more subsidiaries, affiliates, or a holding company, controls or is controlled by, or is under common control with, a Hawaii air carrier. "Transportation of persons" includes every service in connection with or incidental to the comfort or convenience of persons transported and the receipt, carriage, and delivery of these persons and their baggage. "Transportation of property" includes every service in connection with or incidental to the transportation of property, including in particular its receipt, carriage, preservation, and delivery, and all incidental services affecting these activities. [L Sp 2008, c 1, pt of §2] Previous Vol05_Ch0261-0319 Next

261E-3 Bill

261E-3 Exemptions; generally. Notwithstanding any other provisions of this chapter, this chapter shall not apply to:

(1) Persons transporting their own property where the transportation is in furtherance of a primary business purpose or enterprise of that person, except where the transportation is undertaken by a Hawaii air carrier to evade the regulatory purposes of this chapter; or

(2) Persons engaged in the business of transporting persons solely for sightseeing and other recreational activities not involving point-to-point travel. [L Sp 2008, c 1, pt of §2] Previous Vol05_Ch0261-0319 Next

261E-4 Bill

261E-4 Air carrier commission; establishment.

(a) There is established an air carrier commission to assist in the regulation of interisland air carriers pursuant to the purposes of this chapter. The commission shall be placed with the department of transportation for administrative purposes.

(b) The commission shall consist of five members. The commission shall be appointed in the manner prescribed in section 26-34, except as otherwise provided in this section. The members shall be appointed for terms of six years each, subject to the advice and consent of the senate. The terms of the members initially appointed shall be for two, three, four, five, and six years, respectively, as designated by the governor at the time of appointment. The governor shall designate

a member of the commission to be chairperson of the commission. Each member shall hold office until the member's successor is appointed and qualified.

(c) In appointing members, the governor shall consider persons who have experience in transportation, accounting, engineering, government, finance, law, or other similar fields. No person owning any stock or bonds of any Hawaii air carrier or of any common carrier by air, or having any interest in, or deriving any remuneration from, any Hawaii air carrier or any common carrier by air shall be appointed as a commissioner; provided that any person who has retired from the service of, and no longer holds any position with, any common carrier or Hawaii air carrier may be eligible for appointment.

(d) The members of the commission shall receive no compensation for their services on the commission, but shall be reimbursed for actual expenses, including travel expenses, incurred in the performance of their duties. [L Sp 2008, c 1, pt of §2]

261E-5 Bill

261E-5 Staff. The air carrier commission may appoint and employ, on a contractual or noncontractual basis not subject to chapter 76, persons the commission determines necessary for the performance of the commission's functions. The commission shall determine the powers, duties, and compensation of the staff. [L Sp 2008, c 1, pt of §2] Previous Vol05_Ch0261-0319 Next

261E-6 Bill

261E-6 General powers and duties. The air carrier commission shall have general supervision over all Hawaii air carriers providing air transportation and, to the extent determined by the commission to be necessary to effectuate the purposes of this chapter, over any related company, and shall perform the duties and exercise the powers imposed or conferred upon it by this chapter. The general powers of the commission shall include:

(1) Regulating Hawaii air carriers by using, in addition to its other powers, the investigative powers set forth in section 261E-7;

(2) Establishing reasonable classifications of Hawaii air carriers based upon the nature of the services provided by the carriers and adopting rules pursuant to chapter 91 to regulate those classes of Hawaii air carriers; and

(3) Exempting from this chapter, in whole or in part, when determined to be in the public interest, any Hawaii air carrier engaging in air transportation solely with aircraft with a maximum seating capacity of not more than seventeen passengers or maximum cargo capacity of not more than three thousand pounds. [L Sp 2008, c 1, pt of §2] Previous Vol05_Ch0261-0319 Next

261E-7 Bill

261E-7 Investigative powers.

(a) The air carrier commission shall have the power to examine the condition of each Hawaii air carrier and, to the extent determined by the commission to be necessary to effectuate the purposes of this chapter, any related companies, including:

(1) The manner in which carriers are operated with reference to the accommodation of the public;

(2) The fares and rates charged by carriers;

(3) The value of the physical property of carriers;

(4) The issuance of stocks and bonds, and the disposition of the proceeds thereof, by carriers;

(5) The amount and disposition of the income and all financial transactions, of carriers;

(6) The business relations of carriers with other persons, companies, or corporations;

(7) The compliance of carriers with all applicable state and federal laws and with the provisions of their franchise, charter, and articles of association, if any;

(8) The classifications, rules, regulations, practices, and service of carriers; and

(9) All matters of every nature affecting the relations and transactions between carriers and the public, persons, or corporations.

(b) Any investigation may be made by the commission on its own motion or a sworn written complaint that the commission determines sets forth any prima facie cause of complaint.

(c) A related company shall be deemed to have consented to examination and investigation pursuant to this section by entering into or maintaining a control relationship with a Hawaii air carrier. [L Sp 2008, c 1, pt of §2] Previous Vol05_Ch0261-0319 Next

261E-8 Bill

261E-8 Certificates of public convenience and necessity.

(a) Except as otherwise provided in this chapter, no person shall engage in air transportation unless the person holds a certificate issued by the air carrier commission authorizing its operation.

(b) Applications for certificates shall be made in writing to the commission. Applications shall be in the proper form and contain the required information, with the proof of service upon the interested parties, as the commission shall require by rule.

(c) A certificate shall be issued to any qualified applicant, authorizing the whole or any part of the operations covered by the application if it is found that the applicant is a citizen of the United States and fit, willing, and able to properly perform the service proposed and to conform to this chapter and the requirements and rules of the commission, and that the proposed service, to the extent to be authorized by the certificate, is required by the public convenience and necessity; otherwise the application shall be denied. The applicant shall have the burden of proof to establish that any proposed service is required by the public convenience and necessity. The commission shall institute an oral evidentiary hearing to consider any application for a certificate that would authorize the holder to use aircraft capable of carrying more than seventeen passengers.

(d) Any applicant receiving a certificate under this chapter shall pay, upon receipt of the certificate, a registration fee and subsequent annual fee that shall be determined by the commission and deposited into the state general fund.

(e) Any Hawaii air carrier engaging in air transportation under a certificate issued by the commission may occasionally deviate from the route over which it is authorized to operate under the certificate under rules adopted by the commission. [L Sp 2008, c 1, pt of §2] Previous Vol05_Ch0261-0319 Next

261E-9 Bill

261E-9 Temporary authority. To enable the provision of service for which there is an immediate and urgent need to a point or points having no Hawaii air carrier service capable of and willing to meet the need, the air carrier commission, in its discretion and without hearings or other proceedings, may grant temporary authority for the service by a Hawaii air carrier. The temporary authority, unless suspended or revoked for good cause, shall be valid for the time the commission shall specify, but for not more than a period of one hundred twenty days for any one immediate and urgent need. [L Sp 2008, c 1, pt of §2] Previous Vol05_Ch0261-0319 Next

261E-10 Bill

261E-10 Transfer of certificates of public convenience and necessity; carrier property; control of carriers.

(a) No Hawaii air carrier shall sell, lease, assign, mortgage, or otherwise dispose of, or encumber any certificate, in whole or in part, or any of its property necessary or useful in the performance of transportation services for the public; nor shall any Hawaii air carrier, by any means, directly or indirectly, merge or consolidate its property, certificates, or any part thereof, with any other carrier, without in each case first having secured from the air carrier commission an order authorizing it to do so, and every such sale, lease, assignment, mortgage, disposition, encumbrance, merger, or consolidation, made other than in accordance with an order of the commission authorizing the same, shall be void and of no effect.

(b) No Hawaii air carrier shall purchase or acquire, take, or hold any part of the capital stock of any other common carrier without having been first authorized to do so by the commission. Every assignment or transfer of any stock by or through any person to any person, or otherwise, in violation of this section shall be void and of no effect, and no such transfer shall be made on the books of any air carrier. Nothing in this subsection shall prevent the holding of stock lawfully acquired prior to the effective date of this chapter.

(c) No person shall acquire control of any Hawaii air carrier without first receiving the approval of the commission.

(d) Whenever a transaction is proposed under subsection (a), (b), or (c), the Hawaii air carrier or carriers, or person or persons, seeking approval shall present an application to the commission in the form prescribed by the commission. The commission may act upon the application with or without first holding a public hearing; provided that, if requested, the commission shall afford reasonable opportunity for interested parties to be heard. If the commission finds, subject to the terms and conditions that it determines to be just and reasonable, that the proposed transaction will be consistent with the public interest, the commission shall enter an order approving and authorizing the transaction, upon the terms and conditions and with the modifications found to be just and reasonable. The proponent of the transaction within the scope of subsection (a), (b), or (c) shall have the burden of proof to establish that the transaction is consistent with the public interest.

(e) Pending the determination of an application filed with the commission for approval of a consolidation or merger of the properties of two or more Hawaii air carriers, or of a purchase, lease, charter, or contract to operate the properties of one or more Hawaii air carriers, or of an acquisition of control of a Hawaii air carrier, the commission, in its discretion and without hearings or other proceedings, may grant temporary approval for a period not exceeding one hundred twenty days, or for an additional period as the determination of an application may require, of the operation of the Hawaii air carrier properties sought to be acquired by the persons proposing in the pending application to acquire the properties, if it appears that failure to grant this temporary approval may result in destruction of or injury to the Hawaii air carrier properties sought to be acquired or substantial interference with their future usefulness in the performance of adequate and continuous service to the public.

(f) This section shall apply to any transaction entered into or proposed to be entered into by a related company that is determined by the commission to have potential impact upon the related Hawaii air carrier or its operations. A related company shall notify the commission of any such transaction at least sixty days prior to its consummation. [L Sp 2008, c 1, pt of §2]

261E-11 Bill

261E-11 Suspension, change, and revocation of certificates.

(a) Certificates shall be effective from the date specified and shall remain in effect until suspended or terminated as provided in this section.

(b) Any certificate, upon application of the certificate holder, in the discretion of the air carrier commission, may be amended or revoked in whole or in part. Upon complaint, or on the commission's own initiative, a certificate may be suspended, changed, or revoked in whole or in part for wilful failure by the holder or any related company to comply with this chapter, or with any lawful order or rule of the commission, or with any term, condition, or limitation of the certificate. No certificate shall be revoked except upon application of the holder unless the certificate holder or any related company wilfully fails to comply, within a reasonable time that shall not be fewer than thirty days and that shall be fixed by the commission, with a lawful order of the commission, rule of the commission, or to a term, condition, or limitation of the certificate or permit.

(c) The right to engage in transportation by virtue of any certificate issued pursuant to section 261E-8 or by virtue of temporary authority or approval granted under section 261E-9 or 261E-10, may be suspended by the commission upon reasonable notice of not fewer than fifteen days to the carrier, but without hearing or other proceedings, for failure to comply by the carrier or any related company, with the terms of the certificate or temporary authority or approval or with any lawful order or rule of the commission regarding the certificate or temporary authority or approval. [L Sp 2008, c 1, pt of §2] Previous Vol05_Ch0261-0319 Next

261E-12 Bill

261E-12 Rates, fares, and other charges of air carriers.

(a) In the transportation of passengers, every Hawaii air carrier shall:

(1) Provide safe and adequate service, equipment, and facilities for the transportation of the passengers; and

(2) Establish, observe, and enforce just and reasonable: (A) Rates, fares, and charges; (B) Regulations and practices relating to rates, fares, and charges; and (C) Regulations and practices relating to:

(i) The issuance, form, and substance of tickets; (ii) The carrying of personal, sample, and excess baggage; (iii) The facilities for transportation; and (iv) All other matters relating to or connected with the transportation of passengers as determined by the commission.

(b) In the transportation of property, every Hawaii air carrier shall:

(1) Provide safe and adequate service, equipment, and facilities for the transportation of the property; and

(2) Establish, observe, and enforce just and reasonable: (A) Rates, charges, and classifications; (B) Regulations and practices relating to rates, charges, and classifications; and (C) Regulations and practices relating to:

(i) The manner and method of presenting, marking, packing, and delivering property for transportation; (ii) The facilities for transportation; and (iii) All other matters relating to or connected with the transportation of property as determined by the commission.

(c) All charges made for any service rendered by any Hawaii air carrier in the transportation of passengers or property or in connection with the service shall be just and reasonable and every unjust and unreasonable charge for the service or any part thereof shall be prohibited and declared to be unlawful.

(d) Any person or body politic may make a complaint in writing to the commission that any rate, fare, charge, rule, or practice, in effect or proposed to be put into effect, is or will be in violation of this section. Whenever, after hearing, upon complaint or in an investigation on its own initiative, the commission determines that any individual rate, fare, or charge, demanded, charged, or collected by any Hawaii air carrier, or any rule or practice whatsoever of the Hawaii air carrier affecting the rate, fare, or charge or the value of the service is or will be unjust or unreasonable, the commission shall determine and prescribe the lawful rate, fare, or charge or the maximum or minimum rate, fare, or charge thereafter to be observed, or the lawful rule or practice thereafter to be made effective.

(e) In the exercise of its power to prescribe just and reasonable rates, fares, and charges for the transportation of passengers or property by Hawaii air carriers and to prescribe classifications, rules, and practices relating thereto, the commission shall give consideration, among other factors, to the following:

(1) The effect of the rates upon the movement of traffic by the Hawaii air carrier or carriers for which the rates are prescribed;

(2) The need, in the public interest, of adequate and efficient transportation service by the carriers at the lowest cost consistent with the furnishing of the service; and

(3) The need for revenues sufficient to enable the carriers, under honest, economical, and efficient management, including the operation of service at reasonable load factors, to provide the service.

(f) The commission shall establish and thereafter periodically adjust the recognized level of the fare, rate, or charge. The commission may adjust the recognized level by increasing or decreasing it, as appropriate, by the percentage change in the aggregate cost per available seat mile of similarly situated carriers for fares and per available ton mile for general commodity rates.

(g) The commission shall have no authority to find that any fare, rate, or other charge for service established by any Hawaii air carrier is unjust, unreasonable, or unjustified or to suspend the fare, rate, or other charge on the basis that the fare, rate or charge is too low or too high if the fare, rate, or charge is not more than five per cent higher or ten per cent lower than the recognized level of the fare, rate, or charge. Separate recognized levels shall be established and thereafter periodically adjusted on a peak and off-peak basis for first class fares, normal economy fares, tour basing fares, group fares, kamaaina fares, and for general commodity rates. The commission shall have no authority to find that a contract freight rate is unjust or unreasonable. [L Sp 2008, c 1, pt of §2] Previous Vol05_Ch0261-0319 Next

261E-13 Bill

261E-13 Tariffs.

(a) Every Hawaii air carrier shall file with the air carrier commission, and keep open to public inspection, tariffs showing all the rates, fares, and charges for transportation, and all services in connection therewith, of passengers or property. The rates, fares, and charges shall be stated in terms of lawful money of the United States. The tariffs required by this section shall be published, filed, and posted in the form and manner and shall contain the information that the commission shall prescribe by rule. The commission may reject any tariff filed with it that is inconsistent with this section. Any tariff rejected by the commission shall be void and its use shall be unlawful.

(b) No change shall be made in any rate, fare, charge, or classification, or any rule, or practice affecting the rate, fare, charge, or classification, or the value of the service thereunder, specified in any effective tariff of a Hawaii air carrier, except after thirty days notice of the proposed change filed and posted in accordance with subsection (a). The commission, in its discretion and for good cause shown, may allow the change upon notice less than that specified or

modify the requirements of this section with respect to posting and filing of tariffs, either in particular instances or by general order applicable to special or peculiar circumstances or conditions.

(c) No Hawaii air carrier shall engage in the transportation of persons or property unless the rates, fares, and charges upon which the same are transported by the carrier have been filed and published in accordance with this chapter.

(d) Whenever any schedule is filed with the commission stating a new rate, fare, or charge for the transportation of passengers or property by a Hawaii air carrier or any rule or practice affecting the rate, fare, or charge, or the value of the service thereunder, the carrier, on its own initiative may, or by order of the commission served prior to the effective date of the schedule shall, concurrently file an economic justification that shall be prepared under the same form and in the same manner as prescribed by the commission unless the changed fare or rate is within the zone of fare or rate flexibility established pursuant to section 261E-12(g). Except as provided in section 261E-12(g), the commission, upon complaint of any interested person or upon its own initiative at once and, if it so orders, without answer or other formal pleading by the interested carrier or carriers, but upon reasonable notice, may enter upon a hearing concerning the lawfulness of the rate, fare, or charge, or the rule or practice, and pending the hearing and decision the commission, may suspend the operation of the schedule and defer the use of the rate, fare, or charge, or the rule or practice, by delivering to the affected carrier or carriers not later than five days prior to the effective date of the schedule, a statement in writing of its reasons for the suspension. The commission shall have up to six months from the date of ordering a hearing to investigate the lawfulness of the rate, fare, or charge, to complete its investigation. If the commission fails to issue a final order within the six-month period then the changes proposed by the carrier shall go into effect. At any hearing involving a change in a rate, fare, charge, or classification, or in a rule or practice, the burden of proof shall be upon the carrier to show that the proposed changed rate, fare, charge, classification, rule, or practice is just and reasonable. In exercising its authority under this subsection and subsection (e), the commission shall consider the factors regarding reasonableness set forth in section 261E-12(e).

(e) When a fare or rate increase application is filed, the commission, in its discretion, may authorize temporary increases in rates, fares, and charges, upon a prima facie showing by a Hawaii air carrier that such fares, rates, or charges are just and reasonable; provided that the commission by order shall require the carrier to keep an accurate account of all amounts received from the increase. The commission, after hearing and decision, shall require a carrier to refund the portion of the increased rates or charges found to be not justified to persons in whose behalf the amounts were paid. [L Sp 2008, c 1, pt of §2] Previous Vol05_Ch0261-0319 Next

261E-14 Bill

261E-14 Investigation of unfair or deceptive practices. The commission, upon its own initiative or upon complaint, if it considers the action to be in the public interest, may investigate and determine whether any Hawaii air carrier has been or is engaged in unfair or deceptive practices or unfair methods of competition in air transportation or the sale thereof. If the commission finds, after notice and hearing, that a carrier is engaged in unfair or deceptive practices or unfair methods of competition, it shall order the carrier to cease and desist from those practices or methods of competition. Notwithstanding section 480-2(d), a complaint may be made by any person, a government, or competing carrier and may relate to practices involving advertising and marketing, service and ancillary services, pricing, or any other aspect of the operations of a Hawaii air carrier. [L Sp 2008, c 1, pt of §2] Previous Vol05_Ch0261-0319 Next

261E-15 Bill

261E-15 Issuance of securities; execution of leases. A Hawaii air carrier, with the approval of the air carrier commission, may issue stocks and stock certificates, bonds, notes, and other evidences of indebtedness, payable at periods of more than twelve months after the date thereof, and enter into long-term leases of more than five years and leverage leases, for the following purposes:

(1) For the acquisition or use of property;

(2) For the construction, completion, extension, or improvement of or addition to its facilities or service;

(3) For the discharge or lawful refunding of its obligations; and

(4) For the reimbursement of moneys actually expended from income or from any other moneys in its treasury not secured by or obtained from the issue of its stocks or stock certificates, or bonds, notes, or other evidences of indebtedness, except maintenance of service, replacements, and substitutions not constituting capital expenditure in cases where the air carrier has kept its accounts for the expenditure in a manner as to enable the commission to

ascertain the amount of moneys expended and the purposes for which the expenditures were made and the sources of the funds in its treasury applied to the expenditures. A Hawaii air carrier may not issue securities or enter into long-term leases of more than three years and leverage leases, to acquire or use property or to construct, complete, extend, improve, or add to its facilities or service, if the commission determines that the proposed transaction will have a material adverse effect on the carrier's operations. No carrier shall repurchase or reissue its own common stock without the approval of the commission. This section shall apply to a transaction involving a related company to the extent that the commission determines that the transaction may have a potential impact upon the relevant Hawaii air carrier or its operations. A related company shall notify the commission of any transaction at least sixty days prior to its consummation. [L Sp 2008, c 1, pt of §2] Previous Vol05_Ch0261-0319 Next

261E-16 Bill

261E-16 Accounts, records, and reports. The air carrier commission may require annual, periodic, or special reports from all Hawaii air carriers and related companies. The commission shall prescribe the manner and form in which the reports shall be made. [L Sp 2008, c 1, pt of §2] Previous Vol05_Ch0261-0319 Next

261E-17 Bill

261E-17 Unlawful actions; penalties.

(a) Any person who knowingly and wilfully violates any provision of this chapter, or the terms of any certificate, for which violation a penalty is not otherwise provided in this chapter, shall be fined not less than $500 or more than $2,000 for the first offense and not less than $1,000 nor more than $10,000 for any subsequent offense. Each day of the violation shall constitute a separate offense.

(b) Any person, whether carrier, shipper, or consignee, or any officer, employee, agent, or representative thereof, who:

(1) Knowingly offers, grants, gives, solicits, accepts, or receives any rebate, concession, or discrimination in violation of any provision of this chapter;

(2) By means of any false statement or representation or by the use of any false or fictitious bill, bill of lading, receipt, voucher, roll, account, claim, certificate, affidavit, deposition, lease, or bill of sale, or by any other means or device, knowingly and wilfully assists, suffers, or permits any person or persons, natural or artificial, to obtain transportation of passengers or property subject to this chapter for less than the applicable rate, fare, or charge; or

(3) Knowingly and wilfully by any such means or otherwise fraudulently seeks to evade or defeat regulations in this chapter, shall be fined not less than $100 nor more than $5,000 for each offense.

(c) Any person who knowingly and wilfully divulges any fact or information that may come to the person's knowledge during the course of any examination or inspection made under authority of this chapter, except as the person may be directed by the commission or by a court or judge of competent jurisdiction, shall be guilty of a misdemeanor.

(d) Any Hawaii air carrier or related company, or any officer, agent, employee, or representative thereof, who knowingly and wilfully fails or refuses to comply with any provision of this chapter, or any rule, filed tariff, or requirement or order thereunder, shall pay a civil penalty to the State in the sum of not less than $100 nor more than $5,000 for each offense and, in the case of a continuing violation, a penalty not to exceed $1,000 for each additional day during which the failure or refusal continues. A penalty shall become due and payable when the person incurring it receives a notice in writing from the air carrier commission, reasonably describing the violation and advising that the penalty is due. Penalties against a related company, at the discretion of the air carrier commission, may be collected from the related Hawaii air carrier.

(e) The commission may compromise any fine or civil penalty taking into consideration, among other factors, the impact on consumers and remedial measures to be taken. [L Sp 2008, c 1, pt of §2] Previous Vol05_Ch0261-0319 Next

261E-18 Bill

261E-18 Hearings.

(a) Unless otherwise provided in this chapter, all hearings, investigations, and proceedings shall be governed by chapter 91 and by rules adopted by the air carrier commission, and in the conduct thereof, the rules of evidence need not be applied; provided that in all evidentiary hearings conducted pursuant to chapter 91 in which a person has the burden of:

(1) Justifying the reasonableness of its rates, fares, charges, or classifications;

(2) Establishing the need for service in the public convenience and necessity or of demonstrating that a proposed transaction is consistent with the public interest; or

(3) Proving the reasonableness of expenditures, contracts, leases, or other transactions between the carrier and corporate affiliates of the carrier, the burden shall be satisfied only if the reliable, probative, and substantial evidence is clear and convincing. No informality in any hearing, investigation, or proceeding, or in the manner of taking testimony shall invalidate any order, decision, or rule made, approved, or confirmed by the commission.

(b) Complaints may be made in writing by the commission on its own motion or by any person or body politic setting forth any act or thing done, or omitted to be done, by any person subject to the commission's jurisdiction, including any rule, rate, or charge, heretofore established or fixed by or for any Hawaii air carrier, in violation or claimed to be in violation, of any law or any order or rule of the commission. [L Sp 2008, c 1, pt of §2] Previous Vol05_Ch0261-0319 Next

261E-19 Bill

261E-19 Review and appeals.

(a) Within ten days after the issuance of any final decision or order of the commission under this chapter, any party aggrieved by the action of the commission may submit a petition to the director of transportation requesting the director to review the decision or order. The filing of any petition shall stay the effectiveness of the decision or order until the director has issued a final decision on review. The director may affirm in whole or in part the order or decision of the commission or remand it to the commission for further consideration, in which case the order or decision shall remain stayed until it is again submitted to and approved by the director.

(b) An appeal from an order of the air carrier commission under this chapter, whether or not reviewed by the director, shall be made to the supreme court in the manner and within the time provided by chapter 602 and the rules of court; provided that the order is final. If the order is preliminary, an appeal may be made pursuant to section 91-14(a). The appeal shall not of itself stay the operation of the order appealed from, but the court may stay the order after a hearing upon a motion therefor and may impose such conditions as it may deem proper as to giving a bond and keeping the necessary accounts or otherwise securing restitution of the excess charges, if any, made during the pendency of the appeal in case the order appealed from should be sustained, revised, or modified, in whole or in part.

(c) Any party injured by a violation of this chapter may file an action to enjoin such violation before any court of general jurisdiction of the State of Hawaii. [L Sp 2008, c 1, pt of §2] Previous Vol05_Ch0261-0319 Next

261E-20 Bill

261E-20 Existing service.

(a) As of the effective date of enactment of all required federal legislation, any person providing air transportation with turnaround service between two points, both of which are within the State of Hawaii pursuant to authority granted by the United States Department of Transportation, shall be deemed qualified and shall be issued a certificate pursuant to this chapter.

(b) For the purposes of this section, "turnaround service" means the operation of an aircraft that only serves points within the State of Hawaii. [L Sp 2008, c 1, pt of §2] Previous Vol05_Ch0261-0319 Next

Chapter 262

262-1 Definitions

262-1 Definitions. As used in this chapter, unless the context otherwise requires: "Airport" means any area of land or water designed and set aside for the landing and taking-off of all aircraft and utilized or to be utilized in the interest of the public for such purposes; "Airport hazard" means any structure or tree which obstructs the air space required for the flight of aircraft in landing or taking-off at an airport, or any use of land which creates a dangerous condition, including the placement of strong lights which blind pilots during such operations; "Airport hazard area" means any area of land or water upon which an airport hazard might be established if not prevented as provided in this chapter; "Airport protection" means protection against an airport hazard; "Department" means the department of transportation; "Director" means the director of transportation or the director's authorized representative; "Person" means any individual, partnership, corporation, unincorporated association, joint stock association, or any trustee, receiver, assignee, or other similar representative thereof; or the State or any of its political subdivisions, or agencies thereof; "Structure" means any object

constructed or installed by humans, including, but without limitation, buildings, towers, smokestacks, chimneys, and overhead transmission lines; "Tree" means any object of natural growth.

262-2

262-2 Airport hazards contrary to public interest. An airport hazard endangers the lives and property of users of an airport and of occupants of land in its vicinity, and in effect reduces the size of the area available for the landing, taking-off, and maneuvering of aircraft, thus tending to destroy or impair the utility of an airport and the public investment therein. Accordingly, it is declared:

(1) That the creation, maintenance, or establishment of an airport hazard is a public nuisance and an injury to the community served by the airport in question; therefore, it is necessary in the interest of the public health, public safety, and general welfare that the creation, maintenance, or establishment of airport hazards be prevented; and

(2) That the prevention of the creation, maintenance, or establishment of airport hazards should be accomplished, to the extent legally possible, by exercise of the police power, without compensation. It is further declared that both the prevention of the creation, maintenance, or establishment of airport hazards and the elimination, removal, alteration, mitigation, or marking and lighting of existing airport hazards are public purposes.

262-3

262-3 Power to adopt airport zoning regulations. To prevent the creation or establishment of airport hazards, the director of transportation may adopt, amend, repeal, administer, and enforce, under the police power and in the manner and upon the conditions prescribed in this chapter, airport zoning regulations for an airport hazard area in the State, which regulations may divide each area into zones, and, within such zones, specify the land uses permitted and regulate and restrict the height to which structures may be erected and trees allowed to grow, subject to section 262-6.

262-4

262-4 Relation to comprehensive zoning regulations. In the event of conflict between any airport zoning regulations adopted under this chapter and any ordinances or other regulations applicable to the same area, whether the conflict be with respect to the height of structures or trees, the use of land, or any other matter, and whether other regulations were adopted by or under the authority of the State or by or under the authority of a county, the more stringent limitation or requirement shall govern and prevail.

262-4.5 Bill

262-4.5 Outdoor lighting . To the extent that it is practical and not in conflict with any safety regulation or federal law, regulation, or mandate, if any airport rule or standard relating to outdoor lighting on any ramp or apron area, roadway, or parking lot conflicts with any county ordinance or other rule regarding outdoor lighting, the more stringent requirement or standard shall govern all new installations of outdoor lighting.

262-5

262-5 Procedure for adoption of zoning regulations.

(a) The director of transportation shall adopt airport zoning regulations in accordance with chapter 91.

(b) At least ninety days before the public hearing on the initial zoning of any airport hazard area, the director shall notify the appropriate state and county planning agencies and any boards or commissions of a similar nature which may be concerned, and thirty days before the public hearing such agencies, boards, and commissions may file with the director their recommendations as to the boundaries of the various zones to be established and the regulations to be adopted therefor. The director shall give due consideration to recommendations so filed.

262-6 Airport zoning regulations

262-6 Airport zoning regulations.

(a) All airport zoning regulations adopted under this chapter shall have the force and effect of law. The regulations shall be reasonable and none shall impose any requirement or restriction which is not reasonably necessary to effectuate the purposes of this chapter. In determining what regulations the director may adopt, the director of transportation shall consider, among other things, the character of the flying operations expected to be conducted at the airport, the nature of the terrain within the airport hazard area, the character of the neighborhood, and the uses to which the property to be zoned is put and adaptable.

(b) Nonconforming uses. No airport zoning regulations adopted under this chapter shall require the removal, lowering, or other change or alteration of any structure or tree not conforming to the regulations when adopted or amended, or otherwise interfere with the continuance of any nonconforming use, except as provided in section 262-7.

262-7

262-7 Permits, hazard markings, and lighting.

(a) Permits. Any airport zoning regulations adopted under this chapter may require that before any new structure, tree, or use may be constructed, planted, or established, and before any existing use, tree, or structure may be substantially changed, replanted, or substantially altered or repaired, a permit be obtained authorizing such construction, planting, establishment, change, replanting, alteration, or repair. In any event, all the regulations shall provide that before any nonconforming structure or tree may be replaced, substantially altered or repaired, rebuilt, or replanted, a permit must be secured from the department of transportation authorizing the replacement, alteration, repair, rebuilding, or replanting. No permit shall be granted that would allow the establishment, maintenance, or creation of an airport hazard. Except as provided herein, all applications for permits shall be granted.

(b) Hazard markings and lighting. In granting any permit under this section, the director may, if the director deems such action advisable to effectuate the purposes of this chapter and reasonable under the circumstances, so condition such permit as to require the owner of the structure or tree in question to permit the State, at its own expense, to install, operate, and maintain thereon such markers and lights as may be necessary to indicate to operators of aircraft the presence of an airport hazard.

262-8 Appeals

262-8 Appeals. Any person aggrieved by any order, requirement, determination, or decision of the director of transportation made in the adoption, amendment, repeal, or administration of airport zoning regulations may appeal the person's grievance to the appropriate circuit court in accordance with chapter 91.

262-9 Application

262-9 Application. If the airport zoning regulations adopted under this chapter, although generally reasonable, are finally held to interfere with the use or enjoyment of a particular structure or parcel of land to such an extent as to be in violation of the State Constitution or the Constitution of the United States, the holding shall not affect the application of the regulations to other structures and parcels of land.

262-10 Enforcement and remedies

262-10 Enforcement and remedies. Any person who wilfully violates section 262-7(a) or any regulations, orders, or rulings promulgated or made pursuant to this chapter, shall for each violation, be fined not more than $1,000 or imprisoned not more than ninety days, or both. In addition the director of transportation may institute, in any court of competent jurisdiction, an action in the name of the State to prevent, restrain, correct, or abate any violation of this chapter, or of airport zoning regulations adopted under this chapter, or of any order or ruling made in connection with their administration or enforcement, and the court shall adjudge to the State such relief, by way of injunction (which may be mandatory) or otherwise, as may be proper under all the facts and circumstances of the case, to effectuate the purposes of this chapter and of the regulations adopted and orders and ruling made pursuant thereto.

262-11 Acquisition of air rights

262-11 Acquisition of air rights. When:

(1) It is desired to remove, lower, or otherwise terminate a nonconforming structure or use;

(2) The approach protection necessary, because of constitutional limitations, cannot be provided by airport zoning regulations under this chapter; or

(3) It appears advisable that the necessary approach protection be provided by acquisition of property rights rather than by airport zoning regulations, the director of transportation on behalf of the State may acquire by purchase, grant, or condemnation in the manner provided by chapter 101 the air right, aviation easement, or other estate or interest in the property or nonconforming structure or use in question as may be necessary or proper to effectuate the purposes of this chapter, including acquisition of a fee simple estate.

Chapter 263

263-1 Definition of terms

263-1 Definition of terms. In this chapter, "aircraft" includes balloon, airplane, hydroplane, and every other vehicle used for navigation through the air. A hydroplane, while at rest on water and while being operated on or immediately above water, shall be governed by the rules regarding water navigation; while being operated through the air otherwise than immediately above water, it shall be treated as an aircraft. "Aeronaut" includes aviator, pilot, balloonist, and every other person having any part in the operation of aircraft while in flight. "Commercial use" includes the carriage in air commerce of persons or property for compensation or hire, and the lease or rental of any aircraft. "Passenger" includes any person riding in an aircraft but having no part in its operation.

263-2 Sovereignty in space

263-2 Sovereignty in space. Sovereignty in the space above the lands and waters of the State is declared to rest in the State, except where granted to and assumed by the United States.

263-3 Ownership of space

263-3 Ownership of space. The ownership of the space above the lands and waters of the State is declared to be vested in the several owners of the surface beneath, subject to the right of flight described in section 263-4.

263-4 Lawfulness of flight

263-4 Lawfulness of flight. Flight in aircraft over the lands and waters of the State is lawful, unless at such a low altitude as to interfere with the then existing use to which the land or water, or the space over the land or water, is put by the owner; or unless so conducted as to be imminently dangerous to persons or property lawfully on the land or water beneath. The landing of an aircraft on the lands or waters of another, without that person's consent, is unlawful, except in the case of a forced landing. For damages caused by a forced landing, however, the owner or lessee of the aircraft or the aeronaut shall be liable, as provided in section 263-5.

263-5 Damage on land

263-5 Damage on land. The owner of every aircraft which is operated over the lands or waters of the State is presumed liable, except the owner of every aircraft operated for commercial use is absolutely liable, for injuries to persons or property on the land or water beneath caused by the ascent, descent, or flight of the aircraft, or the dropping or falling of any object therefrom, whether the owner was negligent or not, unless the injury is caused in whole or in part by the negligence of the person injured, or of the owner or bailee of the property injured. If the aircraft is leased at the time of the injury to person or property, both owner and lessee shall be liable, and they may be sued jointly, or either or both of them may be sued separately. An aeronaut who is not the owner or lessee shall be liable only for the consequences of the aeronaut's own negligence. The injured person, or owner or bailee of injured property, shall have a lien on the aircraft causing the injury to the extent of the damage caused by the aircraft or objects falling from it.

263-6 Collision of aircraft

263-6 Collision of aircraft. The liability of the owner of one aircraft to the owner of another aircraft, or to aeronauts or passengers on either aircraft, for damage caused by collision on land or in the air, shall be determined by the rules of law applicable to torts on land.

263-7 Jurisdiction over crimes and torts

263-7 Jurisdiction over crimes and torts. All crimes, torts, and other wrongs committed by or against an aeronaut or passenger while in flight over the State shall be governed by the laws of the State. The question whether damage occasioned by or to an aircraft while in flight over the State constitutes a tort, crime, or other wrong by or against the owner of the aircraft, shall be determined by the laws of the State.

263-8 Jurisdiction over contracts

263-8 Jurisdiction over contracts. All contractual and other legal relations entered into by aeronauts or passengers while in flight over the State shall have the same effect as if entered into on the land or water beneath.

263-9

263-9 Dangerous flying a misdemeanor; penalty. Any aeronaut or passenger who, while in flight over a thickly inhabited area or over a public gathering within the State, engages in trick or acrobatic flying, or in any acrobatic feat, or flies,

except while in landing or taking off, at such a low level as to endanger the persons on the surface beneath, or drops any object except loose water or loose sand ballast, or paper handbills, shall be guilty of a misdemeanor and punishable by a fine of not more than $1,000, or imprisonment for not more than one year, or both.

263-10 Hunting from aircraft; penalty

263-10 Hunting from aircraft; penalty.

(a) Any aeronaut or passenger who, while in flight in, across, or above the State, intentionally kills or attempts to kill any birds or animals shall be guilty of a misdemeanor and punished by a fine of not more than $1,000, or by imprisonment for not more than one year, or both.

(b) Notwithstanding any other law to the contrary, state employees and independent contractors retained by the State may, while in flight in, across, or above the State, intentionally kill or attempt to kill any wildlife in furtherance of official state duties.

263-11

263-11 Reckless operation of aircraft a misdemeanor. It shall be unlawful for any person to operate an aircraft in the air, or on the ground or water, while under the influence of intoxicating liquor, narcotics, or other habit-forming drug, or to operate an aircraft in the air or on the ground or water, in a careless or reckless manner so as to endanger the life or property of another. For the purposes of this section a hydroplane shall be deemed an aircraft. In any proceeding charging careless or reckless operation of an aircraft in violation of this section, the court in determining whether the operation was careless or reckless shall consider the standards for safe operation of aircraft prescribed by federal statutes or regulations governing aeronautics, or by state regulations governing aeronautics. Any person violating this section shall be guilty of a misdemeanor, and punishable by a fine of not more than $1,000, or imprisonment for not more than one year, or both. For any violation of this section or section 263-9, in addition to, or in lieu of, the penalties hereinabove provided or provided by section 263-9, or as a condition to the suspension of a sentence which may be imposed pursuant thereto, the court in its discretion may prohibit the violator from operating an aircraft within the State for such period as it may determine but not to exceed one year. Violation of the duly imposed prohibition of the court may be treated as a separate offense under the sections or as a contempt of court.

Chapter 263A

263A-1

263A-1 Implied consent of operator of aircraft to submit to testing to determine alcoholic content of blood.

(a) Any person who operates an aircraft within the State shall be deemed to have given consent to a test approved by the director of health of the person's breath or blood for the purpose of determining the alcoholic content of the person's blood. The person shall have the option to take a test of the person's breath or blood, or both.

(b) The test or tests shall be administered at the request of a law enforcement officer having probable cause to believe the person operating or in actual physical control of an aircraft is under the influence of intoxicating liquor only after:

(1) A lawful arrest; and

(2) The officer has informed the person of the sanctions of section 263A-5.

263A-2

263A-2 Persons qualified to take blood specimen. No person, other than a physician, registered nurse, or person licensed in a clinical laboratory occupation under section 321-13, may withdraw blood for the purpose of determining the alcoholic content therein. This limitation shall not apply to the taking of a breath specimen.

263A-3 Additional tests

263A-3 Additional tests. The person tested may select and allow any physician, registered nurse, or person licensed in a clinical laboratory occupation under section 321-13 to withdraw blood or have any person administer a test or tests in addition to any administered at the direction of a law enforcement officer. The results of the additional test or tests may be used as provided in section 263A-5. The failure or inability to obtain an additional test by a person shall not preclude the admission of a test or tests taken at the direction of a law enforcement officer. Upon the request of the person who is tested, full information concerning the test or tests taken at the direction of the law enforcement officer shall be made

available to the person.

263A-4

263A-4 Consent of person incapable of refusal not withdrawn. The consent of a person deemed to have given consent pursuant to section 263A-1 shall not be withdrawn by reason of the person's being dead, unconscious, or in any other state which renders the person incapable of consenting to examination, and the test may be given. In such event, a test of the person's blood shall be administered.

263A-5

263A-5 Revocation of privilege to operate an aircraft upon refusal to submit to testing.

(a) If a person under arrest refuses to submit to a breath or blood test, none shall be given except as provided in section 263A-9, but the law enforcement officer, as soon as practicable, shall submit an affidavit to a district judge of the circuit in which the arrest was made, stating:

(1) That at the time of the arrest, the law enforcement officer had probable cause to believe the arrested person had either been flying or was in actual physical control of an aircraft while under the influence of intoxicating liquor;

(2) That the arrested person had been informed of the sanctions of this section; and

(3) That the person had refused to submit to a breath or blood test.

(b) Upon receipt of the affidavit, the district judge shall hold a hearing as provided in section 263A-6, and shall determine whether the statements contained in the affidavit are true. If the district judge finds the statements contained in the affidavit are true, the judge shall prohibit the person from operating an aircraft from a state or private airport for a period of one year.

(c) Whenever a court penalizes a person under this section, it shall also require that the person be referred to a substance abuse counselor who has been certified pursuant to section 321-193 for an assessment of the person's alcohol dependence and the need for treatment. The counselor shall submit a report with recommendations to the court. The court may require the person to obtain appropriate treatment. All costs for such assessment or treatment or both shall be borne by the penalized person.

(d) The penalties provided by this section are additional penalties and not substitutes for other penalties provided by law.

263A-7

263A-7 Notice to Federal Aviation Administration. When it is determined under this chapter that a nonresident's privilege to operate an aircraft from a state or private airport shall be prohibited, the director of transportation shall so inform the administrator of the Federal Aviation Administration in writing.

263A-8 Test results to be collected

263A-8 Test results to be collected. The results of any test for alcohol content made upon the operator of an aircraft involved in an accident shall be sent to the state director of transportation who shall compile the data without revealing the identity of any individual tested. This data shall be available only to the State and the administrator of the Federal Aviation Administration, but may be made available to other government agencies as the director of transportation deems necessary and advisable.

263A-9 Applicable scope of chapter

263A-9 Applicable scope of chapter. Nothing in this chapter shall be construed to prevent a law enforcement officer from obtaining a sample of breath or blood as evidence of intoxication from the operator of any aircraft involved in an accident resulting in injury to or death of any person.

263A-10 Evidence of intoxication

263A-10 Evidence of intoxication.

(a) In any criminal prosecution for a violation of section 263-11, four-hundredths per cent or more by weight of alcohol in the defendant's blood within four hours after the time of the alleged violation as shown by chemical analysis of the defendant's blood or breath or other approved analytical technique shall be competent evidence that the defendant was under the influence of intoxicating liquor at the time of the alleged violation.

(b) In any criminal prosecution for a violation of section 263-11, the amount of alcohol found in the defendant's blood within four hours after the time of the alleged violation as shown by chemical analysis of the defendant's blood or breath or other approved analytical technique shall be competent evidence of whether or not the defendant was under the influence of intoxicating liquor at the time of the alleged violation, and shall give rise to the following presumptions:

(1) If there were two-hundredths per cent or less by weight of alcohol in the defendant's blood, it shall be presumed that the defendant was not under the influence of intoxicating liquor at the time of the alleged violation.

(2) If there were in excess of two-hundredths per cent but less than four-hundredths per cent by weight of alcohol in the defendant's blood, that fact may be considered with other competent evidence in determining whether or not the defendant was at the time of the alleged violation under the influence of intoxicating liquor, but shall not of itself give rise to any presumption.

(c) Subsection (b) shall not be construed as limiting the introduction of any other competent evidence bearing upon the question of whether or not the defendant was under the influence of intoxicating liquor at the time of the alleged violation.

Chapter 264

264-1 I

264-1 Public highways and trails.

(a) All highways, roads, alleys, streets, ways, lanes, bikeways, bridges, and all other real property highway-related interests in the State, opened, laid out, subdivided, consolidated, and acquired and built by the government are declared to be public highways. Public highways are of two types:

(1) State highways, which are those lands, interests, or other real property rights, as defined above, having an alignment or possession of a real property highway-related interest as established by law, subdivided and acquired in accordance with policies and procedures of the department of transportation, separate and exempt from any county subdivision ordinances, and all those under the jurisdiction of the department of transportation; and

(2) County highways, which are all other public highways.

(b) All trails, and other nonvehicular rights-of-way in the State declared to be public rights-of-ways by the Highways Act of 1892, or opened, laid out, or built by the government or otherwise created or vested as nonvehicular public rights-of-way at any time thereafter, or in the future, are declared to be public trails. A public trail is under the jurisdiction of the state board of land and natural resources unless it was created by or dedicated to a particular county, in which case it shall be under the jurisdiction of that county.

(c) All highways, roads, alleys, streets, ways, lanes, bikeways, bridges, and trails in the State, opened, laid out, or built by private parties and dedicated or condemned to the public use, are declared to be public highways or public trails as follows:

(1) Dedication of public highways, roads, alleys, streets, ways, lanes, bikeways, bridges, or trails shall be by deed of conveyance naming the State as grantee in the case of a state highway, road, alley, street, way, lane, bikeway, bridge, or trail and naming the county as grantee in the case of a county highway, road, alley, street, way, lane, bikeway, bridge, or trail. The deed of conveyance shall be delivered to and accepted by the director of transportation in the case of a state highway, road, alley, street, way, lane, bikeway, or bridge, or the board of land and natural resources in the case of a state trail. In the case of a county highway, road, alley, street, way, lane, bikeway, bridge, or trail, the deed shall be delivered to and accepted by the legislative body of a county; provided that in every case where the highway, road, alley, street, way, lane, bikeway, bridge, or trail is constructed and completed as required by any ordinance of the county or any rule, regulation, or resolution thereof having the effect of law, the legislative body of the county shall accept the dedication of the same without exercise of discretion; and

(2) Condemnation of public highways, roads, alleys, streets, ways, lanes, bikeways, bridges, or trails initiated by the State or county pursuant to chapter 101 shall be by final order of condemnation by a court; provided that any private owner of a highway, road, alley, street, way, lane, bikeway, bridge, or trail may petition the mayor of the county in which the highway, road, alley, street, way, lane, bikeway, bridge, or trail is located to initiate condemnation proceedings if the highway, road, alley, street, way, lane, bikeway, bridge, or trail is part of a public road, ownership has not been exercised by limiting use or access, or the State or county has provided some form of maintenance to the highway, road, alley, street, way, lane, bikeway, bridge, or trail in the interest of the public; provided further that a private owner may only

petition the mayor of a county after the dissolution of the roads commission established by Act 194, Session Laws of Hawaii 2016; provided further that in every case where the highway, road, alley, street, way, lane, bikeway, bridge, or trail is constructed and completed as required by any ordinance of the county or any rule, regulation, or resolution thereof having the effect of law at the time of construction and completion, the highway, road, alley, street, way, lane, bikeway, bridge, or trail shall be exempt from meeting the construction standards in place at the time of condemnation by the State or county.

(d) If a privately owned highway, road, alley, street, way, lane, bikeway, bridge, or trail has been condemned by the State or county pursuant to subsection (c), the State or county shall be exempt for a period of three years from any state laws or rules adopted pursuant thereto that would require the State or county to perform construction, reconstruction, preservation, resurfacing, restoration, or rehabilitation upon it. The State and counties may only be held jointly and severally liable for acts or omissions that occurred after the condemnation of a highway, road, alley, street, way, lane, bikeway, bridge, or trail.

(e) All county public highways and trails once established shall continue until vacated, closed, abandoned, or discontinued by a resolution of the legislative body of the county wherein the county highway or trail lies. All state trails once established shall continue until lawfully disposed of pursuant to the requirements of chapter 171.

(f) A privately owned highway, road, alley, street, way, lane, bikeway, or bridge that has been condemned by the State or county pursuant to subsection (c) may be accorded flexibility in design, including limitations of liability, pursuant to section 264-20, in consideration of the unique nature and limitations associated with property dedicated or condemned to public use.

264-1.5 Bill

264-1.5 Emergency powers; traffic emergency zones.

(a) Notwithstanding any law to the contrary, if the governor or state director of transportation, in the case of a state highway, or the mayor of a county or the county director of transportation, in the case of a county highway, determines that substantial endangerment to public health and safety is or is highly likely to be caused by the temporary closure of, or the lack of adequate access to an area by, a county highway or a state highway as defined under section 264-1(a), which requires immediate action, the governor or state director of transportation, in the case of a state highway, or a mayor of a county or the county director of transportation, in the case of a county highway, without a public hearing, may designate the area to be a traffic emergency zone, and may take any action that may be necessary until access to the designated area has been established. The designation shall fix a place and time, not later than twenty-four hours after the designation, for a hearing to be held before the state director of transportation, or the county director of transportation.

(b) Upon designation of an area as a traffic emergency zone by the governor or the state director of transportation, or the mayor of a county or the county director of transportation:

(1) State or county highway or street improvements, including but not limited to new construction, reconstruction, preservation, resurfacing, restoration, or rehabilitation of any county or state highway may be undertaken without regard to chapter 103D;

(2) All structures and improvements to land to be used for state or county highway purposes: (A) May be planned, designed, and constructed by the appropriate state or county department without the approval of county agencies; and (B) Shall be exempt from any county permitting requirements; and

(3) The state department of transportation or county department of transportation may acquire and designate cane haul roads as state or county highways; provided that the use of cane haul roads as state or county highways shall be for temporary purposes only for a period of time as determined by the state or county director of transportation, but for no longer than the public health and safety requires.

(c) Any other law to the contrary notwithstanding, except as otherwise provided in subsection (d), any decision under this section by the governor, the department of transportation, the mayor of a county, the transportation department of a county, or any officers, employees, or agents of the State or a county, shall not give rise to a cause of action or claim against:

(1) The State or any county;

(2) The state department of transportation;

(3) A county department of transportation; or

(4) Any officer, employee, or agent of an entity under paragraphs (1) to (3).

(d) There shall be a qualified standard of care of the common-law emergency doctrine that shall apply to a claim of negligence in any design, construction, repair, and correction undertaken pursuant to this section.

(e) Where a cane haul road is designated as a state or county highway under subsection (b)(3), the State or county, as the case may be, shall indemnify the owner of the cane haul road from any liability that may arise out of the use of such cane haul road when designated as a state highway.

(f) For the purposes of this section: "Cane haul road" means a road that is part of an agricultural system of roads or ways established to take agricultural products from the fields to processing facilities without using the public highways. "County highway" shall have the same meaning as in section 264-1(a). "State highway" shall have the same meaning as in section 264-1(a). "Traffic emergency zone" means an area that is accessible by a single state highway and whose accessibility would be compromised by major motor vehicle accidents, fires, floods, erosion, or other factors that would cause the closure of a state or county highway and causes or is highly likely to cause substantial endangerment to public health and safety.

(g) Each designation of a traffic emergency zone shall expire within five years.

264-2 Owned by government

264-2 Owned by government. The ownership of all public highways and the land, real estate and property of the same shall be in the government in fee simple. The term "government" as used herein means the State with reference to state highways and means the respective counties with reference to county highways. If any county highway is required by the State for state highway purposes, the ownership of the county highway shall be transferred to and vested in the State without compensation. The governor may, at any time by executive order, turn over to any county, state land, in fee simple, for use as a county highway, and the county involved shall thereafter be responsible for its repair and maintenance as a county highway. The ownership of all county highways is transferred to and vested in the respective counties in which the county highways lie.

264-2.1 HRS

264-2.1 County highways; ownership.

(a) As used in this section: "Disputed road" means any highway, road, alley, street, way, lane, bikeway, bridge, or trail that is open to the public and is located in any county with a population of five hundred thousand or more, for which there is a dispute over ownership and jurisdiction, as determined by the department of transportation, between the State or any of its political subdivisions and a county or a private party, or between a county and a private party.

(b) If no party has exercised ownership over the disputed road in the five years prior to July 1, 2017, the disputed road shall be deemed to have been surrendered to the county in which the road is situated, pursuant to an administrative order issued by the state director of transportation. The county shall accept without exercise of discretion all surrendered roads and shall record its ownership immediately with the bureau of conveyances. For purposes of this subsection, driving on a disputed road shall not, on its own, constitute an act of ownership.

264-2.5 HRS

264-2.5 Private streets; ownership. [Section effective July 1, 2027.] [Section repealed July 1, 2032. L 2025, c 88, §3.]

(a) Notwithstanding any provision of law to the contrary, in any county with a population of less than 250,000, fee simple absolute title of a privately owned highway, road, alley, street, way, lane, bikeway, bridge, or trail held by a subdivider shall be deemed transferred to a community association consisting of the owners of property contiguous or adjacent thereto, when:

(1) The subdivider has dissolved or ceased to exist for not less than five years; and

(2) There has not been a dedication of the privately owned highway, road, alley, street, way, lane, bikeway, bridge, or trail by deed of conveyance naming the State or county as grantee pursuant to subsection 264-1(c);

(3) The community association to which the property is to be transferred has given written notice of a potential transfer of property pursuant to this section to all property owners contiguous or adjacent thereto, the mayor of the county within which the property resides, the administrative judge of the circuit court of the first circuit with jurisdiction over land court within the Hawaii State Judiciary, the Bureau of Conveyances, and published in a paper of broad circulation in the county in which the property is located; and

(4) A year has lapsed without the filing of a competing challenge or claim since the community association has met the requirements pursuant to paragraph (3).

(b) For the purposes of this section: "Community association" means a nonprofit homeowners or community association existing pursuant to covenants running with the land. "Subdivider" means a person, firm, corporation, partnership, association, trust, or other legal entity or combination thereof causing land to be subdivided or consolidated, which is the owner of the land or the duly authorized agent or lessee of the owner.

264-3

264-3 Disposal of abandoned public highway. Whenever a public highway, or any portion thereof is at any time vacated, closed, abandoned, or discontinued, the public highway shall be used or disposed of for the use of the State in the case of a state highway as provided by law and for the use of the county in which the highway lies in the case of a county highway; provided that:

(1) In the case of a county highway, before it is disposed of in any way, it shall be first offered to the abutters for a reasonable length of time and at a reasonable price, and if they do not take the county highway, then it may be sold at public auction; and

(2) If any county highway, the right-of-way for which has been acquired in whole or in part by expenditure of federal funds, is abandoned and disposed of, the necessary portion of the proceeds from the sale thereof shall be remitted to the State for reimbursement or credit to the Federal Highway Administration, if reimbursement or credit is so required.

264-4 Restoration of boundary markers

264-4 Restoration of boundary markers. In all cases in which a boundary marker along the right-of-way of a public highway has been disturbed or removed by a public agency of the State or a county in connection with the widening, construction, or maintenance of the highway, the public agency which caused the disturbance or removal shall, if requested by an owner of land a boundary marker of which has been so affected, restore the boundary marker or set a new one at the point of intersection of the affected boundary of the owner's land with the boundary of the right-of-way; provided that no boundary marker shall be restored or set unless its proper location has been established by law or by agreement of all persons having an interest in the location thereof; and provided further that this section shall not apply to markers disturbed or removed prior to January 1, 1950.

264-5 In lieu of other compensation

264-5 In lieu of other compensation. Any such restoration or setting of new boundary markers shall be in lieu of all other compensation for the disturbance or removal.

264-7 Permits, fees, etc

264-7 Permits, fees, etc.

(a) Any person or government agency desiring the permit required by section 264-6 shall apply for a permit on a form prescribed by the director of transportation. Any permit issued shall be conditioned upon the adherence of the applicant to the requirements of sections 264-8 and 264-9; provided that on awarding any contract for the construction, reconstruction, maintenance or repair of any state highway or federal-aid highway project, the director of transportation or the director's authorized representative shall ascertain whether the work to be done by the terms of that contract will require the contractor, the contractor's employees, or the contractor's agents to engage in any of the activities enumerated in section 264-6(1) and (2) and, if one or more such activities is likely to be required, shall issue the permit required by section 264-6, waiving the fee requirements imposed by subsection (b) of this section.

(b) The director, subject to chapter 91, shall establish a fee schedule for the issuance of the permit. The fee schedule established shall be calculated to provide revenues sufficient to defray any expenses the department of transportation may incur in connection with the permit under sections 264-6 to 264-12. An applicant for a permit shall pay the applicable fee, provided that the director may waive the fee payable when the director determines that the work to be done will either improve the highway or otherwise be of benefit to the State; and provided further that no fee shall be required where the only work to be done is the setting of poles and guys to carry overhead wires.

264-8

264-8 Specifications, standards, procedures. Specifications, standards and procedures to be followed in the installation and construction of connections for streets, roads and driveways, concrete curbs and sidewalks, structures, drainage

systems, landscaping or grading within the highway rights-of-way, excavation and backfilling of trenches or other openings in state highways, and in the restoration, replacement, or repair of the base course, pavement surfaces, highway structures, and other highway improvements shall be prescribed by the director of transportation. At the request of an applicant for a permit, a copy of such specifications, standards and procedures, shall be furnished. In prescribing the specifications, standards and procedures, the director need not comply with the provisions of law relating to the adoption of rules and regulations.

264-8.5 REPEALED

264-8.5 REPEALED. L 1994, c 201, §4.

264-9

264-9 Backfilling, repaving, repairing, expense of permit holder.

(a) All excess materials remaining at the site of the work done under any permit shall be removed at the expense of the permit holder. The excess material shall not be deposited or placed within any highway right-of-way except with the approval of the director of transportation or the director's authorized representative.

(b) The permit holder, at the permit holder's own expense and upon completion of the work for which the permit was issued, shall backfill all trenches or other openings and make all necessary repairs to or replacement of any concrete gutter, curb, sidewalk, or any other structure in public use and restore or replace any plants, landscaping, signs, markers, or other facilities or improvements that were cut or damaged by the permit holder to a condition similar to that which existed before work was begun under the permit.

(c) Except as otherwise provided in section 264-33, the permit holder shall be responsible for all costs in the installation, construction, repair, removal, restoration, reconstruction or replacement of any improvement within the right-of-way of any state highway.

264-10 Deposit of fees, etc

264-10 Deposit of fees, etc.; inspectors. Fees collected pursuant to section 264-7 shall be deposited in the state highway fund. The department of transportation shall employ one or more persons who shall inspect the work of the permit holder and require that it be done in accordance with sections 264-8 and 264-9.

264-11 Performance bond

264-11 Performance bond. The director of transportation may require that before the issuance of a permit the applicant give a cash bond, surety company bond, or personal surety bond in favor of the State, and for an amount equal to the estimated cost of backfilling, restoring, or repairing the base court pavement surface, structures, improvements, and landscaped area, and any other additional costs that may be incurred as a result of the work done under the permit during the one-year period following the satisfactory completion of the work. The bond shall be conditioned upon the compliance of the permit holder with the requirements of sections 264-8 and 264-9.

264-12 Penalty for violations

264-12 Penalty for violations. Any person, including any public officer or employee who violates section 264-6, shall be fined not more than $250 or imprisoned not more than three months, or both.

264-13 Easements, etc

264-13 Easements, etc., along state highways. Notwithstanding any law to the contrary, the governor or the director of transportation as the governor's designee, may dispose of easements within and access rights along the state highway rights-of-way under such terms and conditions which, in the director's opinion, are in the best interest of the public.

264-14 Permit and paving requirements

264-14 Permit and paving requirements. Notwithstanding the existence of any right of vehicle access to or from a state highway in favor of an abutting owner, the department of transportation may prohibit vehicle access via any street, road or driveway to or from abutting properties unless the owner applies for a permit and paves the highway right-of-way between the access opening and the paved portion of the highway pursuant to sections 264-6 to 264-11. Access to or from abutting property via any street, road or driveway which is in use on April 16, 1971 shall not be affected by this section.

264-15

264-15 Highway advance acquisition; source of funds. The director may, with the approval of the governor, expend moneys appropriated by the legislature as may be necessary for the acquisition of real property when the director determines:

(1) The acquisition of the real property is necessary for a state highway project authorized by the legislature;

(2) Funds previously authorized by the legislature are inadequate;

(3) That any delay in the acquisition of such property would unnecessarily increase the cost of the highway project; and

(4) The acquisition, management, or maintenance of the real property as necessary for projects relating to climate mitigation and adaptation and visual and noise buffer zones and barriers; provided that the selected corridor and alignment of the project shall have been approved by the governor. All moneys received from the rental, sale, or lease of any property acquired under this section shall be paid into the state general fund; provided that whenever federal funds are involved in the acquisition of the property, any money received from the sale, lease, or rental of such property shall be expended toward the project for which the property was acquired.

264-16 State highway clearing accounts

264-16 State highway clearing accounts. The director of transportation may with the prior approval of the director of finance and comptroller establish the state highway payroll clearing account, employee benefits clearing account, construction administration clearing trust account, and any other necessary clearing account or clearing trust account to effectively account for program costs and appropriations. The director of transportation may, from time to time, make advances to the clearing accounts or clearing trust accounts from the state highway fund or from any moneys appropriated or otherwise made available to the department. The advances shall be in such amounts as may be required to meet the obligations of the department which are authorized by the legislature. As soon as practicable after an expenditure from a clearing account or clearing trust account, a determination shall be made of the proper fund or appropriation to which the expenditure should be charged. The fund or account from which funds are advanced shall thereupon be reimbursed out of the proper fund or appropriation.

264-17 Public hearing

264-17 Public hearing. Any state or county agency which prepares proposed plans for a major public highway project shall provide an opportunity for a public hearing at the earliest practicable time before the proposed plans for the project are finalized and commitments have been made by the state or county to the plans or the project. The public hearing shall be conducted and notice given in an adequate manner to apprise all interested persons of the proposed routes and scope of the projects and allow an opportunity for all interested persons to submit data, views, or arguments, orally or in writing. The public hearing required under this section may be held in conjunction with a public hearing held on the project to meet the requirement of any federal, state or county law provided the provisions of this section are satisfied. The proposing agency shall satisfy any requirement for holding a public hearing under this section if adequate notice of the opportunity for the public hearing on the project is given to interested persons and no written requests for the hearing are received by the agency within a reasonable time. This section shall not apply to the construction of highway projects where the governor has made a formal determination that the construction of the project is urgently needed because of an emergency, a natural disaster, or a catastrophic failure.

264-18

264-18 Use of highway fund for bikeways.

(a) Out of the state highway fund amounts, whether state funds or federal funds, shall be expended as necessary by the State for the establishment of bikeways; provided that bikeways shall be established, whenever practicable, wherever a new or existing highway, road, or street is being designed, planned, constructed, reconstructed, relocated, or rehabilitated. A t least two per cent of eligible federal funds, and in addition, other state highway fund moneys as available, shall be expended to:

(1) Establish multi-use paths, bicycle paths, and bicycle lanes; and (2) I nstall signage and safety devices along bikeways; provided that the department of transportation shall include the bicycling community in a public involvement process to determine the location of multi-use paths, bicycle paths, bicycle lanes, and installation of signage and safety devices along bikeways. Planning for any mass transit system shall include appropriate accommodation for bicycle lanes, bikeways, and bicycle routes, including bicycle racks on mass transit vehicles, to enable mass transit users to connect conveniently by bicycle to transit stations and bus stops. This subsection shall not be construed as requiring the

expenditure of a county surcharge on state tax under section 46■16.8, on bicycle paths if the application of this subsection conflicts with section 46-16.8.

(b) Bikeways are not required to be established under subsection (a):

(1) Where the establishment of the lanes, paths, routes, and ways would be contrary to public safety; or

(2) If the cost of establishing the lanes, paths, routes, and ways would be excessively disproportionate to the need or probable use; or

(3) Where low population density, other available ways, or other factors indicate an absence of any need for the lanes, paths, routes, and ways; provided that the department of transportation shall involve representatives of the bicycling community, such as the Hawaii Bicycling League, Kauai PATH, Maui Bicycling Alliance, PATH (Big Island), and others in making a determination under paragraphs (1), (2), and (3); provided further that any decision under this subsection shall be documented, including but not limited to, the factors considered in making a decision; and provided further that the department of transportation shall have the burden of persuasion under paragraphs (2) and (3).

(c) The department of transportation, when requested, shall provide technical assistance and advice to counties in carrying out the purpose of this section. The department of transportation shall recommend construction standards for bikeways. The department of transportation, in the manner prescribed for marking highways under section 264-25, shall provide a uniform system of marking and signing such lanes, paths, routes, and ways which shall apply to lanes, paths, routes, and ways under the jurisdiction of the department of transportation and the counties. Notwithstanding any provision to the contrary, the department of transportation and the counties may restrict the use of the lanes, paths, routes, and ways to pedestrians and non-motorized vehicles.

(d) As used in this section, the terms "bikeway", "bicycle path", and "bicycle lane" shall have the same meaning as in section 291C-1.

(e) The department of transportation shall report annually to the legislature before the convening of each regular session as to bikeway expenditures and current projects.

264-19 REPEALED

264-19 REPEALED. L Sp 2021, c 9, §63. Previous Vol05_Ch0261-0319 Next

264-19.1 HRS

264-19.1 Microchip scanning of deceased animals on roadways.

(a) The department of transportation shall:

(1) Scan any cat or dog carcass found on a state roadway for a microchip;

(2) Record any microchip number or other identifying information and a basic description of the animal, if discernible;

(3) Notify the appropriate county animal services contractor or animal control agency within forty-eight hours of discovery; and

(4) When feasible, make reasonable efforts to contact the registered owner of a deceased animal if microchip information is obtained.

(b) The department of transportation may coordinate with the counties to share microchip scanner resources or protocols as needed.

264-20

264-20 Flexibility in highway design; liability of State, counties, and public utilities.

(a) If a highway, including any bridge, principal and minor arterial road, collector and local road, or street, requires new construction, reconstruction, preservation, resurfacing (except for maintenance surfacing), restoration, or rehabilitation, the department of transportation with regard to a state highway, or a county with regard to a county highway, may select or apply flexible highway design guidelines consistent with practices used by the Federal Highway Administration and the American Association of State Highway and Transportation Officials. Flexibility in highway design shall consider, among other factors:

(1) Safety, durability, and economy of maintenance;

(2) The constructed and natural environment of the area;

(3) Community development plans and relevant county ordinances;

(4) Sites listed on the State or National Register of Historic Places;

(5) The environmental, scenic, aesthetic, historic, community, and preservation impacts of the activity;

(6) Access for other modes of transportation, including but not limited to bicycle and pedestrian transportation;

(7) Access to and integration of sites deemed culturally and historically significant to the communities affected;

(8) Acceptable engineering practices and standards; and

(9) Safety studies and other pertinent research.

(b) Any other law to the contrary notwithstanding, any decision by the State, the department of transportation, a county, or any officers, employees, or agents of the State, the department of transportation, or a county to select or apply flexibility in highway design pursuant to this section and consistent with the practices used by the Federal Highway Administration and the American Association of State Highway and Transportation Officials shall not give rise to a cause of action or claim against:

(1) The State;

(2) The department of transportation;

(3) The counties;

(4) Any public utility regulated under chapter 269 that places its facilities within the highway right-of-way; or

(5) Any officer, employee, or agent of an entity listed in paragraphs (1) to (4).

(c) The exception to liability provided in subsection (b) applies only to the decision to select or apply flexibility in highway design pursuant to this section and does not extend to design, construction, repair, correction, or maintenance inconsistent with subsection (a).

264-20.5 HRS

264-20.5 Complete streets.

(a) The department of transportation and the county transportation departments shall adopt a complete streets policy that seeks to reasonably accommodate convenient access and mobility for all users of the public highways within their respective jurisdictions as described under section 264-1, including pedestrians, bicyclists, transit users, motorists, and persons of all ages and abilities.

(b) This section shall apply to new construction, reconstruction, and maintenance of highways, roads, streets, ways, and lanes located within urban, suburban, and rural areas, if appropriate for the application of complete streets.

(c) This section shall not apply if:

(1) Use of a particular highway, road, street, way, or lane by bicyclists or pedestrians is prohibited by law, including within interstate highway corridors;

(2) The costs would be excessively disproportionate to the need or probable use of the particular highway, road, street, way, or lane;

(3) There exists a sparseness of population, or there exists other available means, or similar factors indicating an absence of a future need; or

(4) The safety of vehicular, pedestrian, or bicycle traffic may be placed at unacceptable risk.

264-20.7 HRS

264-20.7 Clean ground transportation goal. The department of transportation, in collaboration with the Hawaii state energy office, shall develop strategies to transition all light-duty motor vehicles in the State's fleets to meet the clean ground transportation goal established pursuant to section 196-9(c)(10).

264-21 II

264-21 Definitions. Whenever used in this part: "Administrator" means the official or officials administering the Federal Highway Act. "Federal-aid funds" means funds appropriated by the Congress of the United States under or for the purposes of the Federal Highway Act, in which the State is entitled to share. "Federal-aid project" means any project for the construction or reconstruction of any highway or portion thereof upon which federal-aid funds are to be, are being, or

have been, expended, in connection with local appropriations as in this section defined. "Federal Highway Act" means Title 23 of the United States Code, and all acts of the Congress of the United States amendatory or supplementary thereto, including future enactments not requiring substantial changes of the powers and duties provided for by this part. "Local funds" means funds appropriated by the State or any county for the construction of any federal-aid project.

264-22 State highway department

264-22 State highway department. For the purpose of complying with the Federal Highway Act, the department of transportation is designated as the state highway department.

264-23 Duties of director

264-23 Duties of director. The director of transportation shall:

(1) Select, designate, acquire, or lay out, in compliance with the requirements of the Federal Highway Act, a system or systems of highways in the State, upon which federal-aid funds may or are to be expended, together with state or county funds, or both;

(2) Alter, modify, revise, or acquire new or additional real property interests in support of the system or systems or any portion or portions thereof, to such extent as may be required by the administrator under the Federal Highway Act; provided the alteration, modification, revision, or acquisition of new or additional real property interests is not forbidden by the laws of the State and exempt from any county subdivision ordinances;

(3) Prepare, or cause to be prepared, and submit for approval to the administrator, in conformity with the Federal Highway Act, project statements setting forth proposed construction or reconstruction of any highway or portion thereof upon which federal-aid funds are proposed or desired to be expended in connection with local funds; and upon approval of any of the project statements, in conformity with the Federal Highway Act, prepare or cause to be prepared, and submit for approval to the administrator, the surveys, plans, specifications, and estimates for the project embraced by the statement, or any portion thereof, that the administrator may require;

(4) Subject to the approval of the administrator, and in conformity with the Federal Highway Act, on behalf of the State, undertake, and enter into contracts for, the construction of the federal-aid projects, and the expenditure of federal-aid funds, together with local funds, upon the projects, and supervise the construction of the projects; and

(5) Undertake and perform any and all acts that are necessary or proper for the purpose of complying with the Federal Highway Act and securing the benefits of federal-aid for highways which the State is eligible to receive under the Federal Highway Act. The director may designate in writing a qualified subordinate who may sign vouchers, make routine reports, and perform any other routine duties that the director may deem necessary to delegate. All acts of the subordinate shall be performed under the direction of the director, who shall be responsible therefor.

264-24 Powers of director

264-24 Powers of director. The director of transportation shall have any powers which may be necessary for the full and effective performance and discharge of the duties imposed upon the director by this part or which may be necessary fully and completely to carry out and effectuate the purposes of this part. The director may, on behalf of the State, with the approval of the governor, accept donations of land, money, or other property for deposit in the state highway fund or for any purpose of this part, upon such terms and conditions as are acceptable to the director, and not inconsistent with the proper discharge of the director's duties and functions or prejudicial to the obtaining of the federal-aid funds payable to the State without such donations.

264-25

264-25 Signs and markings on federal-aid highways. On any federal-aid highway, the location, form, and character of informational, regulatory, and warning guideposts, direction boards, signs, curb, and pavement or other markings, and traffic signals, installed or placed by or under the authority of any county, shall be subject to the approval of the director of transportation or the director's authorized representative. The director shall exercise the authority conferred upon the director in such manner as to protect and promote the securing of federal-aid for highways.

264-26

264-26 Combination of federal and state funds.

(a) Every agreement for the engineering or construction of federal-aid highways or for the acquisition of rights-of-way for these highways shall be made on behalf of the State by the director of transportation. Section 103D-309 shall apply only to that portion of the price that is payable out of local funds. As to that portion of the price that is payable out of federal-aid funds, the agreement is that the State will pay the contractor only out of federal funds actually received for that portion of the project and is not a general agreement on the part of the State to pay that portion out of any other funds. Each agreement shall be deemed to contain a provision to that effect whether specifically included or not.

(b) Any moneys appropriated for the State's share of the price or any moneys in the state highway fund created by section 248-8, in the discretion of the director, may be drawn upon to advance the federal share of payments:

(1) Earned by contractors on federal-aid projects for completed portions of the work; or

(2) Due the owners for property conveyed by them, where the necessary federal-aid moneys are not immediately forthcoming; provided that the appropriation or fund, as applicable, shall be reimbursed for the advances when federal-aid moneys are received.

264-27 REPEALED

264-27 REPEALED. L 1979, c 165, §1. Previous Vol05_Ch0261-0319 Next

264-28

264-28 Federal-aid projects; mandatory on council. Whenever appropriations are made by the legislature for the construction or reconstruction of any highway or portion thereof, the director of transportation, in the absence of any provisions to the contrary in the act making the appropriation or in any other state laws applicable thereto, and in case the highway is eligible for federal aid and the director deems such course advisable, may, subject to the approval of the administrator, construct such highway as a federal-aid project and contract for it in accordance with the provisions of this part and of the Federal Highway Act. If any appropriation made by the legislature for the construction or reconstruction of any highway or any portion thereof is required by the act making the appropriation to be expended by the council of a particular county, the director may, in the absence of any specific provision to the contrary in the act making such appropriation, subject to the approval of the governor, designate such highway as a federal-aid project; and the council, upon that designation, shall place the appropriation in the control and at the disposal of the director for the purpose of constructing the highway or portion thereof as a federal-aid project, and the director shall proceed to construct such highway as a federal-aid project and to contract for it in accordance with this part and the Federal Highway Act.

264-29 Council's authority

264-29 Council's authority. The council of a county, by resolution adopted in the manner required by law relating to resolutions involving the expenditure of public money, may place under the control and at the disposal of the director of transportation any funds of the county expendable for construction or reconstruction of highways within the county for the purpose of securing or attempting to secure federal aid for the construction or reconstruction, as a federal-aid project, of any highway or portion thereof eligible for federal aid within the county. The council, whenever an appropriation for the construction of any highway or portion thereof lying within the system or systems of highways eligible for federal aid, as designated from time to time by the governor and the administrator under the provisions of the Federal Highway Act, as amended, is made by it, by resolution shall place the appropriation under the control of the director for the purpose of constructing the highway or portion thereof as a federal-aid project. The council, by the resolution, shall also grant the director of transportation exemptions from county subdivision requirements in order to expedite and make efficient the expenditure of public money.

264-30 Transfers of county funds

264-30 Transfers of county funds. If any funds for highways are placed at the disposal of the director of transportation by the council of any county under the provisions of section 264-28 or 264-29, these funds, if not already in the treasury of the State, or under the immediate control of the proper officers of the State, shall be paid by the county into the treasury of the State for the purpose specified, and shall thereafter be expendable only by the director for the purpose upon warrants drawn by the comptroller based upon vouchers approved by the director. If the funds are not wholly expended for such project, or if for any reason the project fails to become a federal-aid project, the director shall certify such fact to the comptroller and director of finance of the State and to the council of the county concerned, and such funds or the unexpended balance thereof, as the case may be, shall, upon the certification immediately resume the former status thereof, and shall be retransferred to the proper fund, or to the county, as the case may be, to which it formerly belonged.

264-31

264-31 Maintenance of federal-aid highways.

(a) The maintenance work on all roads upon which federal-aid funds have been expended shall be performed under the direction and supervision of the director of transportation either by public employment or by contract, or the director may have the work performed by the county road department, by public employment or by contract, upon authorization of the council of the county concerned. Expenditures for the maintenance work shall be made from the state highway fund created by section 248-8.

(b) All maintenance work shall consider the extent to which work undertaken will increase traffic congestion and the director shall ensure that action is taken to reasonably minimize any adverse impact. The feasibility of off-hour maintenance work shall be considered for all maintenance work that results in significant traffic congestion or delay.

(c) As used in this section, "off-hour maintenance work" means maintenance work performed between the hours of six o'clock p.m. and six o'clock a.m.

264-32 Utility facility defined

264-32 Utility facility defined. The term "utility facility" wherever used in section 264-33 means and includes any of the following: any surface, underground, or overhead water mains, fire hydrants, gas mains, sewer mains, pipes (including fuel oil lines), conduits, utility holes, poles, wires, cables, lines, street lighting structures, or other structures or equipment, and the appurtenances thereto, owned by any privately owned public utility or by any county or by any police department or board of water supply of a county and used in connection with the producing or the furnishing of water, gas, light, electric power, communications, transportation, or other public utility services.

264-33.5

264-33.5 Underground installation of utility facilities along federal-aid highways; when required; when waived.

(a) The director of transportation shall arrange for the installation of all utility cables and facilities below the ground, within a berm or away from the alignment of a highway, during the design or redesign and construction or reconstruction phases of any new or existing federal-aid highway project, when a determination is made that federal highway funds are available to pay for the federal share of the cost differential between underground and overhead facilities.

(b) The director of transportation may make exceptions to subsection (a) if:

(1) The director determines that exceptions are appropriate due to either: (A) Any of the following criteria: environmental, safety, research, technology, corridor alignment, or management concern; or (B) The following criteria collectively: state funding impacts, economic feasibility, and federal funding concerns; or

(2) The projects do not lend themselves to undergrounding, such as: resurfacing, traffic signal installation, drainage installation, bikeway markings, guardrail installation, traffic markings, and enhancement improvements.

264-34 Portions of projects deemed one

264-34 Portions of projects deemed one. Where a particular highway project is divided into sections or portions for the purpose of calling for bids thereon, all sections or portions of the project for which bids are called for at or about the same time shall be deemed one project for the purposes of determining the expense of the removal, relocation, replacement, or reconstruction.

264-35

264-35 Assistance for displaced families and business.

(a) As used in this section the term "eligible person" means any individual, family, business concern (including the operation of a farm), and nonprofit organization to be displaced by construction of a project.

(b) The director of transportation, in estimating the cost of any project under section 106, Title 23, United States Code, for right-of-way acquisition or actual construction, shall include as a part of the cost of construction on any of the federal-aid highway systems, relocation payments to be made initially by the director, from state highway funds, to eligible persons for their reasonable and necessary moving expenses caused by their displacement from real property acquired for such project.

(c) Payments under this section shall not exceed $200 in the case of an individual or family, or $3,000 in the case of a business concern (including the operation of a farm) or nonprofit organization. In the case of a business (including the

operation of a farm) and in the case of a nonprofit organization, the allowable expenses for transportation under this subsection shall not exceed the cost of moving fifty miles from the point from which the business or organization is being displaced.

(d) In order that the State may avail itself of federal participation in making payments under this section, the director will comply with such rules and regulations regarding payments as may be prescribed by the Secretary of Transportation of the United States.

264-36

264-36 Conformance with county general or master plans. All federal-aid highways shall conform to the general or master plans of the respective political subdivisions of the State unless the conformance jeopardizes the receipt of federal aid, in which case the governor, by executive order, may set aside the general or master plan to the extent any conflict prevents the receipt of federal aid on any given project or the prosecution of the work thereunder.

264-41 III

264-41 Establishment. There is established a state highway system which shall consist of federal-aid highways and other public highways which may be designated for inclusion in the system pursuant to section 264-42.

264-42

264-42 Authority to include other public highways in the state highway system. The director of transportation acting in cooperation with appropriate federal and county agencies, may designate for inclusion in the state highway system, such other public highways, including county highways, which are used primarily for through traffic and not for access to any specific property, whether residential, business, or other abutting property.

264-43 Responsibility

264-43 Responsibility. The department of transportation shall acquire, subdivide, consolidate, construct, maintain, and administer all highways comprising the state highway system in accordance with all state and federal laws and exempt from county subdivision ordinances.

264-44

264-44 Maintenance of state highway system.

(a) The maintenance of the state highway system may be performed either by public employment or by contract, or the director of transportation may have the maintenance performed by the county in which the highways are situated, by public employment or by contract, upon authorization of the legislative body of the county concerned.

(b) All maintenance work shall consider the extent to which work undertaken will increase traffic congestion and the director shall ensure that action is taken to reasonably minimize any adverse impact. The feasibility of off-hour maintenance work shall be considered for all maintenance work that results in significant traffic congestion or delay.

(c) As used in this section, "off-hour maintenance work" means maintenance work performed between the hours of six o'clock p.m. and six o'clock a.m.

264-45 Bill

264-45 Highway lighting. To the extent that it is practical and not in conflict with any safety regulation or federal law, regulation, or mandate, if any highway rule or standard relating to highway lighting conflicts with any county ordinance or other rule regarding highway lighting, the more stringent requirement or standard shall govern all new installations of highway lighting.

264-61 IV

264-61 Definition of a controlled-access facility. For the purposes of this part, a controlled-access facility is defined as a public highway especially designed for through traffic, and over, from, or to which owners or occupants of abutting land or other persons have no right or easement or have only a controlled right or easement of access, light, air, or view by reason of the fact that their property abuts upon the controlled-access facility or for any other reason.

264-62

264-62 Authority to establish controlled-access facilities. The director of transportation, acting alone or in cooperation with any federal, or local agency, may plan, designate, establish, regulate, vacate, alter, realign, widen, improve, maintain, and

provide controlled-access facilities for public use whenever the director is of the opinion that traffic conditions, present or future, will justify the special facilities. The director may regulate, restrict, or prohibit the use of the controlled-access facilities by the various classes of vehicles or traffic by means of signs and other devices to promote the safe and efficient use of the facilities.

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264-64

264-64 Design of controlled-access facility and regulation, restriction, or prohibition of access; penalty. The director of transportation may so design any controlled-access facility and so regulate, restrict, or prohibit access as to best serve the traffic for which such facility is intended. In this connection, the director may divide and separate any controlled-access facility into separate roadways by the construction of raised curbing, central dividing sections, or other physical separations, or by designating the separate roadways by signs, markers, stripes, and the proper lane for the traffic by appropriate signs, markers, stripes, and other devices. No person shall have any right of ingress or egress to, from, or across controlled-access facilities to or from abutting lands, except at the designated points at which access may be permitted, upon such terms and conditions as may be specified by the director. Any person who violates this section shall be fined not more than $250 or imprisoned not more than three months, or both.

264-65

264-65 New and existing facilities; grade-crossing eliminations. The director of transportation may designate and establish controlled-access highways as new and additional facilities or may designate and establish an existing public highway as included within a controlled-access facility. The director may provide for the elimination of intersections at grade of controlled-access facilities with existing public highways by grade separation or service road, or by closing off the highways at the right-of-way boundary line of the controlled-access facility; and after the establishment of any controlled-access facility, no highway which is not part of the facility shall intersect the same at grade. No public highway shall be opened into or connected with any such controlled-access facility without the consent and previous approval of the director. The consent and approval shall be given only if the public interest is served thereby.

264-66 Authority to enter into agreements

264-66 Authority to enter into agreements. The director of transportation may enter into agreements with the council of any county, or with the federal government, respecting the financing, planning, establishment, improvement, maintenance, use, regulation, or vacation of controlled-access facilities or other public highways, to facilitate the purposes of this part.

264-67 Local service roads

264-67 Local service roads. In connection with the development of any controlled-access facility, the director of transportation may plan, designate, establish, use, regulate, alter, realign, widen, improve, maintain, and vacate local service roads and streets or designate as local service roads and streets any existing public highway, and exercise jurisdiction over service roads and streets in the same manner as is authorized over controlled-access facilities under this part, if, in the director's opinion, the local service roads or streets are necessary or desirable. The local service roads or streets shall be of appropriate design, and shall be separated from the controlled-access facility proper by means of all devices designated as necessary or desirable by the director.

264-71 V

264-71 Definitions. For the purpose of this part, if not inconsistent with the context: "Department" means the department of transportation. "Director" means the director of transportation. "Outdoor advertising" means any device which is: [(1)] A writing, picture, painting, light, model, display, emblem, sign, billboard, or similar device situated outdoors, which is so designed that it draws the attention of persons on any federal-aid or state highway, to any property, services, entertainment, or amusement, bought, sold, rented, hired, offered, or otherwise traded in by any person, or to the place or person where or by whom such buying, selling, renting, hiring, offering or other trading is carried on; [(2)] A sign, billboard, poster, notice, bill, or word or words in writing situated outdoors and so designed that it draws the attention of and is read by persons on any federal-aid or state highway; or [(3)] A sign, billboard, writing, symbol, or emblem made of lights, or a devise or design made of lights so designed that its primary function is not giving light, which is situated outdoors and

draws the attention of persons on any federal-aid or state highway.

264-73 Regulations

264-73 Regulations. The director of transportation may promulgate rules and regulations governing the erection and maintenance of outdoor advertising permitted under section 264-72, consistent with the safety and welfare of the traveling public and with the national standards promulgated by the Secretary of Transportation pursuant to Title 23, United States Code.

264-74

264-74 Removal of nonconforming outdoor advertising. Any outdoor advertising lawfully in existence on May 4, 1966, and which is not in conformity with the provisions contained herein shall be required to be removed by July 1, 1970. Any other outdoor advertising lawfully erected which subsequently does not conform to this part shall not be required to be removed until the end of the fifth year after it becomes nonconforming.

264-76 Unlawful outdoor advertising

264-76 Unlawful outdoor advertising. Any outdoor advertising which violates this part is a public nuisance.

264-77 Penalty

264-77 Penalty. Any person violating this part shall be fined not less than $25 nor more than $500, or imprisoned not more than one month, or both.

264-78 Interpretation

264-78 Interpretation. Nothing in this part shall be construed to abrogate or affect the provisions of any law, ordinance, or regulation which are more restrictive than this part.

264-79

264-79 Agreements with the United States authorized. The director of transportation may enter into agreements with the Secretary of Transportation of the United States as provided by Title 23, United States Code, relating to control of outdoor advertising in areas adjacent to any federal-aid highway, and take action in the name of the State to comply with the terms of the agreement.

264-81 VI

264-81 Short title. This part may be cited as the "Junkyard Control Act".

264-82 Purposes

264-82 Purposes. For the purpose of promoting the public safety, health, welfare, convenience, and enjoyment of public travel, to protect the public investment in public highways, and to preserve and enhance the scenic beauty of lands bordering public highways, it is declared to be in the public interest to regulate and restrict the establishment, operation, and maintenance of junkyards in areas adjacent to federal-aid or state highways within the State. The legislature finds, determines, and declares that junkyards which do not conform to the requirements of this part are public nuisances.

264-83 Definitions

264-83 Definitions. For the purpose of this part, if not inconsistent with the context: "Automobile graveyard" means any establishment or place of business which is maintained, used, or operated, for storing, keeping, buying, or selling wrecked, scrapped, ruined, or dismantled motor vehicles or motor vehicle parts. "Department" means the department of transportation. "Director" means the director of transportation. "Junk" means old or scrap copper, brass, rope, rags, batteries, paper, trash, rubber debris, waste, or junked, dismantled, or wrecked automobiles, or parts thereof, iron, steel, and other old or scrap ferrous or nonferrous material. "Junkyard" means an establishment or place of business which is maintained, operated, or used for storing, keeping, buying, or selling junk, or for the maintenance or operation of an automobile graveyard, and the term includes garbage dumps and sanitary fills.

264-84

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264-85 Junkyards lawfully in existence

264-85 Junkyards lawfully in existence. Any junkyard lawfully in existence on May 4, 1966, which is within one thousand feet of the nearest edge of the right-of-way and visible from the main traveled way of any federal-aid or state highway shall be screened, if feasible, by the department of transportation at locations on the highway right-of-way or in areas acquired for such purposes outside the right-of-way so as not to be visible from the main traveled way of the highway; provided that if such a junkyard is located in an area zoned for industrial use, the requirement for screening shall not apply.

264-86 Requirement as to screening

264-86 Requirement as to screening. The director of transportation may promulgate rules and regulations governing the location, planting, construction, and maintenance, including the materials used in the screening required by this part.

264-87

264-87 Authority to acquire interest in land for removal and screening of existing junkyards. When the director of transportation determines that the topography of the land will not permit the adequate screening of existing junkyards or that the screening of the junkyards would not be economically feasible, the director may acquire by gift, purchase, exchange, or condemnation, such interests in lands as may be necessary to secure the relocation, removal, or disposal of the junkyards, and pay for the costs of relocation, removal, or disposal thereof. When the director determines that it is in the best interest of the State, the director may acquire such lands, or interests in lands, as may be necessary to provide adequate screening of the junkyards.

264-88 Injunction

264-88 Injunction. The department of transportation may apply to the circuit court in the county in which the junkyards may be located for an injunction to abate the nuisance of a nonconforming junkyard.

264-89 Interpretation

264-89 Interpretation. Nothing in this part shall be construed to abrogate or affect the provisions of any lawful ordinance or regulation which are more restrictive than this part.

264-90

264-90 Agreements with the United States authorized. The director of transportation may enter into agreements with the Secretary of Transportation of the United States as provided by Title 23, United States Code, relating to the control of junkyards in areas adjacent to any federal-aid highway, and take action in the name of the State to comply with the terms of the agreements.

264-101 VII

264-101 Vending from highways prohibited.

(a) No person shall park or place a vehicle or structure wholly or partly on any highway for the purpose of selling the vehicle or structure or of selling therefrom or therein any article, service, or thing, thereby creating a hazardous condition or a public nuisance or in reckless disregard of the risk of creating a hazardous condition or public nuisance. The department of transportation may remove or require the immediate removal of the vehicle or structure from the highway.

(b) The director of transportation, in the case of state highways, may, upon application in writing, issue a written permit, subject to any terms and conditions imposed by the director, authorizing the applicant to vend in the airspace, which includes the space above or below a highway, in the State's interstate highway system.

(c) For the purposes of this section, "highway" means the entire width, including the berm or shoulder of a public highway as defined in section 264-1.

264-102 Penalty

264-102 Penalty. Any person who violates section 264-101 is guilty of a petty misdemeanor and shall be fined not more than $1,000 or imprisoned not more than thirty days, or both.

264-121 Bill

264-121 Definitions. As used in this part, unless the context requires otherwise: "Capital costs" means part or all of the cost for capital improvements. Capital costs may include costs to acquire right-of-way, plan, design, engineer, finance, and construct improvements including costs of management and consultant fees. Capital costs shall not include periodic

maintenance and other operating costs. "Department" means the department of transportation. "Development" means any artificial change to real property that requires a county grading or building permit including but not limited to construction, expansion, enlargement, alteration, or erection of buildings or structures. "Director" means the director of transportation. "Impact fee" means an assessment on a development used to incrementally fund a fair share of the capital costs of public highway improvements reasonably needed to serve that development. "State highway improvements" means capital improvements to the physical infrastructure of state highways.

264-122 Bill

264-122 Highway development special fund.

(a) There is established in the state treasury the highway development special fund to be administered by the department, into which shall be deposited:

(1) Transfers of county impact fees assessed under part VIII of chapter 46 and this part to pay for state highway improvements;

(2) Interest from investment of deposits; and

(3) Legislative and county appropriations.

(b) Moneys in the highway development special fund shall be used for the following purposes:

(1) Capital costs of qualifying proposed state highway improvements;

(2) Reevaluation of the need, geographic limitations, amount, and use of impact fees;

(3) Transfers to reimburse other special funds for expenditures which otherwise might have been funded with moneys in the highway development special fund;

(4) Transfers under sections 36-27 and 36-30;

(5) Refunds under section 264-125; and

(6) The department's costs to implement this part, including but not limited to costs to administer the highway development special fund.

(c) The department may establish accounts in the highway development special fund as necessary to implement this part and rules adopted by the department.

(d) There is established within the highway development special fund an electric bicycle and electric moped subaccount. The department shall expend moneys in the subaccount for the purposes of funding the electric bicycle and electric moped rebate program established pursuant to section 196-7.8.

264-123 Bill

264-123 Authority to assess impact fees; needs assessment study.

(a) A county may assess, impose, levy, collect, and transfer to the department impact fees for any development pursuant to ordinances adopted under section 46■142 and this part, and the department is authorized to receive those funds for state highway improvements.

(b) Prior to the assessment, imposition, levy, collection, or transfer to the department of impact fees pursuant to this section, the director shall approve a needs assessment study that shall identify the kinds of state highway improvements for which the fees shall be imposed by the county pursuant to part VIII of chapter 46.

264-124 Bill

264-124 Impact fees; director's consent.] Notwithstanding section 264-123, no county shall assess impact fees for state highway improvements without the director’s consent.

264-125 Bill

264-125 Refund of impact fees to county. Upon the request of a county, the department shall refund impact fees transferred to the highway development special fund which have not been expended or encumbered for purposes established under this part within six years after collection under part VIII of chapter 46.

264-126 Bill

264-126 Adoption of rules. The department may adopt rules pursuant to chapter 91 to implement this part.

264-127 Bill

264-127 Limitations on actions. A civil lawsuit contesting an action by the department or a county under this part or under part VIII of chapter 46 shall be filed within sixty calendar days after the date of the action.

264-131 HRS

264-131 Sidewalk project priority lists.

(a) The department of transportation shall maintain a priority list of statewide sidewalk installation and pedestrian improvement projects, including potential alternatives to sidewalks that may be better suited for individual communities. The priority list shall be updated no less than once per year.

(b) Each county's transportation department shall create and maintain a priority list of county sidewalk installation and pedestrian improvement projects, including potential alternatives to sidewalks that may be better suited for individual communities. The priority lists shall be updated no less than once per year.

(c) Each priority list required by subsections

(a) and (b) shall include information about the type, cost, and location of the projects on the priority list.

(d) In establishing a priority list required by subsections (a) and (b), the department of transportation and each county's transportation department shall incorporate considerations for each project's:

(1) Cost;

(2) Impact on pedestrian safety;

(3) Importance to a larger pedestrian network; and

(4) Importance for providing first- and last-mile connectivity to transit.

(e) Each priority list required by subsections

(a) and (b) shall be published on the respective websites of the department of transportation and each county transportation department.

264-141 HRS

264-141 Definitions. As used in this part, "department" means the department of transportation.

264-142 HRS

264-142 Ground transportation facilities.

(a) The department shall develop and implement a plan for the establishment of the following:

(1) A contiguous network of motor vehicle highways connecting communities throughout each island, in which intersections with other modes of transportation shall be minimized and a priority and preference for access shall be given to public mass transportation;

(2) A contiguous network of bicycle and electric bicycle highways or pathways connecting communities throughout each island, in which intersections with other modes of transportation shall be minimized; provided that the bicycle and electric bicycle highways and pathways shall be separated and protected from vehicular traffic by physical or natural barriers or by meaningful distance or elevation; and

(3) A contiguous network of pedestrian highways or pathways connecting communities throughout each island, in which intersections with other modes of transportation shall be minimized; provided that the pedestrian highways and pathways shall be separated and protected from vehicular and bicycle traffic by physical or natural barriers, or by meaningful distance or elevation.

(b) Within each community the department shall coordinate with the applicable county to develop a comprehensive plan for the establishment of any portion of the following within the department or county's jurisdiction, as applicable:

(1) A contiguous network of bicycle and pedestrian pathways connecting all public schools and libraries in each school complex area to one another, and to its respective state and county transportation infrastructure, in which intersections with other modes of transportation shall be minimized; provided that the pathway network shall be separated and protected from vehicular traffic by physical or natural barriers, or by meaningful distance or elevation;

(2) A contiguous network of bicycle and pedestrian pathways connecting commercial business and shopping hubs to residential areas, and to its respective state and county transportation infrastructure, in which intersections with other

modes of transportation shall be minimized; provided that the pathway network shall be separated and protected from vehicular traffic by physical or natural barriers, or by meaningful distance or elevation; and

(3) Pedestrian exercise and active health pathways of meaningful length in which intersections with other modes of transportation shall be minimized; provided that these pathways shall be separated and protected from vehicular traffic by physical or natural barriers, or by meaningful distance or elevation, and easily accessible to residential and high density communities where appropriate.

264-143 HRS

264-143 Ground transportation; project goals; reporting.

(a) When planning, designing, and implementing ground transportation infrastructure for each project pursuant to this part, the department shall endeavor to:

(1) Assess and maximize total throughput of people across all modes of transportation;

(2) Achieve any goals described in the complete streets policy adopted pursuant to section 264-20.5;

(3) Reduce vehicle miles traveled;

(4) Decrease the percentage of single occupancy vehicles in the State's mode share;

(5) Provide equity for all communities and users;

(6) Improve safety and achieve any goals described in the vision zero policy adopted pursuant to section 286-7.5;

(7) Reduce user cost of transportation;

(8) Improve public health;

(9) Reduce carbon emissions and greenhouse gasses to meet state renewable portfolio standards established in section 269-92 and zero emissions clean economy by 2045 pursuant to section 225P-5;

(10) Reduce urban temperatures by incorporating tree canopy and foliage over hardened surfaces; and

(11) Beautify public infrastructure.

(b) For each project planned by the department, the department shall create a report detailing:

(1) How each goal in subsection (a) was implemented;

(2) How each goal meets the overall goals of transportation infrastructure as outlined in subsection (a); and

(3) Any necessary deviations from the goals outlined in subsection (a) and the reasons for those deviations.

(c) No later than twenty days prior to the convening of each regular session, the department shall submit to the legislature a stand-alone report of, or include in any of the department's relevant annual reports to the legislature, the following:

(1) A list of all projects initiated, underway, or completed during the preceding calendar year;

(2) The status of each project initiated or underway during the preceding calendar year;

(3) The report for each project as required by subsection (b); and

(4) A progress update outlining the department's success in meeting the goals described in subsection (a).

264-144 HRS

264-144 Highways; ground transportation; generally. The department shall provide for a safe, accessible, equitable, fully multimodal, and sustainable system of ground connections that ensures the accessibility of people and goods and improves economic vitality, public health, livability, and quality of life.

Chapter 265A

265A-1 County authority

265A-1 County authority. The several councils or other governing bodies of the several political subdivisions of the State shall have the general supervision, charge, and control of, and the duty to maintain and repair, all county highways, bikeways, and sidewalks and shall have the power to determine the terms under which irrigation or drainage ditches, flumes, railroads, including plantation railroads and similar structures, telephone, electric light and power lines and pipes

and other conduits may be maintained upon, under, over, and across the same, and the councils or other governing bodies may make all regulations needful for the public convenience and safety in all cases where permission has been or may be granted to maintain the ditches, railroads, pipes, or other structures across, under, over, and upon all county highways. Any other law to the contrary notwithstanding, the several counties by ordinance may take over, or receive by dedication or otherwise, any private street or way or may improve, grade, repair, or do any construction work upon private streets, ways, pavement, water lines, street lighting systems, or sewer repairs.

265A-2 HRS

265A-2 Microchip scanning of deceased animals on roadways.

(a) Each county shall:

(1) Scan any cat or dog carcass found on a county roadway for a microchip;

(2) Record any microchip number or other identifying information and a basic description of the animal, if discernible; and

(3) Notify the appropriate county animal services contractor or animal control agency within forty-eight hours of discovery.

(b) A county animal services contractor or animal control agency shall make reasonable efforts to contact the registered owner of a deceased animal if microchip information is obtained.

(c) Each county may coordinate with the department of transportation or other counties to share scanner resources or protocols.

Chapter 266

266-1 [PART I

266-1 Department of transportation; harbors; jurisdiction. All commercial harbors and roadsteads, and all commercial harbor and waterfront improvements belonging to or controlled by the State, and all vessels and shipping within the commercial harbors and roadsteads shall be under the care and control of the department of transportation. For the purpose of this chapter, "commercial harbor" means a harbor or off-shore mooring facility which is primarily for the movement of commercial cargo, passenger and fishing vessels entering, leaving, or traveling within the State, and facilities and supporting services for loading, off-loading, and handling of cargo, passengers, and vessels.

266-1.5 Bill

266-1.5 Honolulu harbor Piers 1 and 2; jurisdiction. Any law to the contrary notwithstanding, the department of transportation shall have jurisdiction and administrative authority over Honolulu harbor Piers 1 and 2 and the contiguous backup fast lands currently used for manifested cargo and passenger operations. This area is defined as all of lot 3 and parcels A and B of the Forrest Avenue subdivision, as shown on the map filed with the bureau of conveyances of the State of Hawaii, as file plan 2335, and lot A-2, as shown on map 2, filed in the office of the assistant registrar of the land court of the State of Hawaii with land court application 1328; provided that all existing easements affecting and appurtenant to the parcels to be deleted from the Kakaako community development district boundaries shall not be affected by this change.

266-1.6 Bill

266-1.6 Hana harbor; jurisdiction. Notwithstanding any law to the contrary, the department of transportation shall have jurisdiction and administrative authority over Hana harbor, excluding its small boat ramp facility. The Hana harbor small boat ramp facility shall remain under the jurisdiction and administrative authority of the department of land and natural resources.

266-2 Powers and duties of department

266-2 Powers and duties of department.

(a) The department of transportation shall:

(1) Have and exercise all the powers and shall perform all the duties which may lawfully be exercised by or under the State relative to the control and management of commercial harbors, commercial harbor and waterfront improvements, ports, docks, wharves, piers, quays, bulkheads, and landings belonging to or controlled by the State, and the shipping using the same;

(2) Have the authority to use and permit and regulate the use of the commercial docks, wharves, piers, quays, bulkheads, and landings belonging to or controlled by the State for receiving or discharging passengers and for loading and landing merchandise, with a right to collect wharfage and demurrage thereon or therefor;

(3) Subject to all applicable provisions of law, have the power to fix and regulate from time to time rates and charges for: (A) Services rendered in mooring commercial vessels; (B) The use of commercial moorings belonging to or controlled by the State; (C) Wharfage or demurrage; (D) Warehouse space, office space, and storage space for freight, goods, wares and merchandise; and (E) The use of derricks or other equipment belonging to the State or under the control of the department;

(4) Make other charges including toll or tonnage charges on freight passing over or across docks, wharves, piers, quays, bulkheads, or landings;

(5) Appoint and remove clerks, harbor agents and their assistants, and all such other employees as may be necessary, and to fix their compensation;

(6) Adopt rules pursuant to chapter 91 and not inconsistent with law; and

(7) Generally have all powers necessary to fully carry out this chapter.

(b) Notwithstanding any law or provision to the contrary, the department of transportation is authorized to plan, construct, operate, and maintain any commercial harbor facility in the State, including, but not limited to, the acquisition and use of lands necessary to stockpile dredged spoils, without the approval of county agencies. All moneys appropriated for commercial harbor improvements, including new construction, reconstruction, repairs, salaries, and operating expenses, shall be expended under the supervision and control of the department, subject to this chapter and chapter 103D. All contracts and agreements authorized by law to be entered into by the department shall be executed on its behalf by the director of transportation.

(c) The department shall prepare and submit annually to the governor a report of its official acts during the preceding fiscal year, together with its recommendations as to commercial harbor improvements throughout the State.

266-2.2 HRS

266-2.2 Exemption from conservation district permitting and site plan approval requirements . Notwithstanding any law to the contrary, all work involving submerged lands used for state commercial harbor purposes shall be exempt from any permitting and site plan approval requirements established for lands in a conservation district.

266-2.3 Bill

266-2.3 REPEALED. L 2022, c 6, §1. Previous Vol05_Ch0261-0319 Next

266-2.5 Bill

266-2.5 Outdoor lighting . To the extent that it is practical and not in conflict with any safety regulation or federal law, regulation, or mandate, if any harbor rule or standard relating to outdoor lighting at any harbor facility conflicts with any county ordinance or other rule regarding outdoor lighting, the more stringent requirement or standard shall govern all new installations of outdoor lighting.

266-3 Rules

266-3 Rules.

(a) The director of transportation may adopt rules as necessary:

(1) 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) For the examination, guidance, and control of harbor masters and their assistants and their conduct while on duty;

(3) For the embarking or disembarking of passengers;

(4) For the expeditious and careful handling of freight, goods, wares, and merchandise of every kind 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) 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.

(b) The director may also adopt, amend, and repeal such rules as are necessary:

(1) For the proper regulation and control of all shipping, traffic, and other related activities in the commercial harbors belonging to or controlled by the State; of the entry, departure, mooring, and berthing of vessels therein; and of all other matters and things connected with such activities;

(2) To establish safety measures and security requirements in or about the commercial harbors, land, and facilities belonging to or controlled by the State;

(3) To prevent the discharge or throwing into commercial harbors of rubbish, refuse, garbage, or other substances likely to affect water quality or that contribute to making such harbors unsightly, unhealthful, or unclean, or that are liable to fill up shoal or shallow waters in, near, or affecting the commercial harbors; and

(4) To prevent the escape of fuel or other oils or substances into the waters in, near, or affecting commercial harbors from any source point, including, but not limited to, any vessel or pipes or storage tanks upon the land.

(c) The rules shall be adopted in the manner prescribed in chapter 91 and shall have the force and effect of law.

266-4 Limitation of powers

266-4 Limitation of powers. The jurisdiction and powers conferred on the department of transportation are subject to such restrictions as may be imposed by the statutes of the State, and shall be exercised in accordance with the provisions thereof. [March 28, 1916, c 54, §4, 39 Stat 41; RL 1925, §837; RL 1935, §1735; RL 1945, §4985; RL 1955, §112-6; am L Sp 1959 2d, c 1, §26; HRS §266-4] Previous Vol05_Ch0261-0319 Next

266-4.5

266-4.5 Disposition of public land; reservation of right of way.] Whenever any disposition of public land is made by the department of transportation, under its powers relating to public lands under its jurisdiction, to any persons, organizations, associations, corporations or clubs for recreational or social purposes, such leases, licenses, permits or right-of-entry, or any extensions thereof, covering the disposition of public lands shall contain provisions reserving adequate public right of way or public access to adjacent public areas over and across the public land disposed.

266-5 REPEALED

266-5 REPEALED. L 1985, c 22, §1. Previous Vol05_Ch0261-0319 Next

266-6 Expenditures

266-6 Expenditures. Expenditures by the department of transportation shall be made upon vouchers signed by the director of transportation; provided that the director, may, in writing, designate a qualified subordinate to sign vouchers, make routine reports, and perform other routine business duties, subject to the direction of the director, for whose acts the director shall be responsible. The department may cause work to be performed by day labor or by contract or by any other method deemed by the department to be most advantageous to the State.

266-7 Department; duties

266-7 Department; duties. The department of transportation shall collect all moneys, fees, and dues paid to the State for wharfage, demurrage, and all other fees or compensation in respect to the entry, anchorage, and wharfage of all vessels and other craft entering into the ports of the State, and shall account for the same to the State as hereinafter provided. The department shall keep a full and complete record of the official acts of the department.

266-8 to 266-12 REPEALED

266-8 to 266-12 REPEALED. L 1971, c 12, pt of §1. Previous Vol05_Ch0261-0319 Next

266-13 Dockage

266-13 Dockage.

(a) All watercraft:

(1) Lying idle alongside any wharf, pier, bulkhead, quay, or landing belonging to or controlled by the State; or

(2) Discharging or receiving freight or passengers on or from any wharf, pier, bulkhead, quay, or landing belonging to or controlled by the State, while made fast or lying alongside of the wharf, pier, bulkhead, quay, or landing; shall pay to the department of transportation such rates of dockage as shall be fixed by the department.

(b) All watercraft that receive or discharge freight or passengers:

(1) From or upon any wharf, pier, bulkhead, quay, or landing, by means of boats, lighters, or otherwise, while lying at anchor or under steam in any bay, harbor, or roadstead; or

(2) While lying in any slip or dock belonging to or controlled by the State, but not made fast to or lying alongside any wharf, pier, bulkhead, quay, or landing; shall pay such rates of dockage as shall be fixed by the department.

(c) Notwithstanding subsections (a) and (b), the department may waive dockage and other charges at any wharf, pier, bulkhead, quay, landing, slip, or dock belonging to or controlled by the State whenever:

(1) The governor declares a state of emergency; and

(2) The department determines that the waiver of dockage fees and other charges is consistent with assisting in the delivery of humanitarian relief to disaster-stricken areas of the State.

(d) Any watercraft leaving any wharf, pier, bulkhead, quay, landing, slip, dock, basin, or waters belonging to or controlled by the State without paying dockage and other charges, with intent to evade the payment thereof, shall be liable to pay double rates.

266-14 Demurrage, lien, foreclosure

266-14 Demurrage, lien, foreclosure. When any freight has remained upon any wharf, pier, bulkhead, quay, or landing for more than twenty-four hours, the department of transportation, in its discretion, may make demurrage charges for each subsequent day or part thereof that in its opinion are just and equitable. The amount payable by any shipper or consignee for demurrage or other charges in respect of any freight shall be a lien on the freight, and the department may take and hold possession of any freight to secure the payment of the amount, and for the purpose of the lien, shall be deemed to have possession of the freight until the amount has been paid. If the charges due on freight are not paid within thirty days after being landed, the department may sell the freight at public auction and out of the proceeds retain the charges accrued, including the costs of public notice and sale, which latter shall be prorated upon the articles or lots sold in proportion to the amount received for each article or lot. Before any sale is made, the department shall give public notice of the time and place of sale at least once each week for three successive weeks in the county in which the place is located to which the freight is consigned or addressed, or by posting this notice at the courthouses of the district in which the place is located to which the freight is consigned or addressed. The notice shall contain a description of the property as near as may be, the name of the owner or consignee if known, the amount of charges due thereon, together with the time and place of sale. Any freight in its nature perishable may be sold by the department either at public or private sale as soon as its condition makes a sale necessary. The surplus, if any, received from the sale, after paying any accrued freight charges on the freight, shall be paid to the owner or consignee, if known, and if not known, shall be deposited in the state treasury as a special fund. The fund shall consist of the surplus received from sales made under this section. At any time within one year thereafter, upon written demand and proof of identity satisfactory to the director, the director of finance shall pay the owner thereof the surplus. If this surplus is not claimed by the owner within one year after the date of sale it shall thereupon escheat to the State, and be transferred to the general fund of the State.

266-15 REPEALED

266-15 REPEALED. L 1971, c 12, pt of §1. Previous Vol05_Ch0261-0319 Next

266-17 Rates, how fixed

266-17 Rates, how fixed.

(a) The department of transportation shall adjust, fix, and enforce the rates assessable and chargeable by it in respect to dockage, wharfage, demurrage, and other rates and fees pertaining to harbors, wharves, and properties managed and operated by it so as to produce from the rates and fees, in respect to all harbors, wharves, and other properties, except those that are principally used for recreation or the landing of fish, revenues sufficient to:

(1) Pay when due the principal of and interest on all bonds and other obligations for the payment of which the revenue is or has been pledged, charged, or otherwise encumbered, or which are otherwise payable from the revenue or from a

special fund maintained or to be maintained from the revenue, including reserves therefor, and to maintain the special fund in an amount at least sufficient to pay when due all bonds or other revenue obligations and interest thereon, which are payable from the special fund, including reserves therefor;

(2) Provide for all expenses of operation and maintenance of the properties, including reserves therefor, and the expenses of the department in connection with operation and maintenance; and

(3) Reimburse the general fund of the State for all bond requirements for general obligation bonds which are or have been issued for harbor or wharf improvements, or to refund any of the improvement bonds, excluding bonds, the proceeds of which were or are to be expended for improvements which are or will be neither revenue producing nor connected in their use directly with revenue producing properties.

(b) When weather, road closures due to special events, or road repairs do not permit the loading or unloading of passengers at Kewalo Basin, cruise boats holding a Kewalo Basin sublease approved by the State shall be allowed to use Honolulu Harbor facilities on a space available basis, and the fees for the use of facilities shall be in accordance with the Hawaii administrative rules of the department of transportation relating to fees for use of facilities for private gain.

266-18 REPEALED

266-18 REPEALED. L 1991, c 272, §17. Previous Vol05_Ch0261-0319 Next

266-19

266-19 Creation of harbor special fund; disposition of harbor special fund. [Effect and application. L 1989, c 309, §10.]

(a) There is created in the treasury of the State the harbor special fund. All moneys received by the department of transportation from the rates, fees, fines, and administrative penalties pursuant to sections 266-17(a)(1), 266-25, 266-28, and 266-30 shall be paid into the harbor special fund. The harbor special fund and the second separate harbor special fund heretofore created shall be consolidated into the harbor special fund at such time as there are no longer any revenue bonds payable from the second separate harbor special fund. The harbor reserve fund heretofore created is abolished. All moneys derived pursuant to this chapter from harbor properties of the statewide system of harbors shall be paid into the harbor special fund and each fiscal year shall be appropriated, applied, or expended by the department of transportation for the statewide system of harbors for any purpose within the jurisdiction, powers, duties, and functions of the department of transportation related to the statewide system of harbors, including, without limitation, the costs of operation, maintenance, and repair of the statewide system of harbors and reserves therefor, and acquisitions (including real property and interests therein), constructions, additions, expansions, improvements, renewals, replacements, reconstruction, engineering, investigation, and planning, for the statewide system of harbors, all or any of which in the judgment of the department of transportation are necessary to the performance of its duties or functions.

(b) At any time the director of transportation may transfer from the harbor special fund created by subsection (a) 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 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 the ensuing twelve months; amounts on deposit in the harbor special fund that are encumbered or otherwise obligated; budgeted amounts payable from the harbor special fund during the ensuing twelve months; revenues anticipated to be received by and expenditures to be made from the harbor special fund during the ensuing twelve months based on existing agreements and other information for that period; and any other factors as the director of transportation shall deem appropriate.

(c) All expenditures by the department shall be made on vouchers duly approved by the director of transportation or such other officer as may be designated by the director of transportation.

266-19.5

266-19.5 Private financing of harbor improvements.

(a) Notwithstanding any law to the contrary, the department of transportation may enter into a capital advancement contract with a private party for any public improvement to or construction of a state harbor, commercial harbor, roadstead, or other waterfront improvement belonging to or controlled by the State, if the director of transportation determines that a capital advancement contract promotes the best interest of the State by finding that:

(1) Private development is likely to be less costly than any other type of contract;

(2) Private development provides needed public improvements on a significantly more timely basis; or

(3) Public financing for the public improvements is not available on a timely basis.

(b) A capital advancement contract under subsection (a) may be financed by legislative appropriation to reimburse the private party or by credit against the private party's future rental or tariff payments to the State; provided that the terms of the contract shall ensure that the State benefits financially from the arrangement and that public use of the facility is maintained; provided further that capital advancement contracts under this section shall not be general obligations of the State for which the full faith and credit of the department is pledged and the legislature shall have no obligation to appropriate funds to reimburse a private party to a capital advancement contract.

(c) A capital advancement contract under subsection (a) shall be subject to the requirements of chapters 103 and 103D and be subject to the approval of the department of transportation; provided that all related transactions shall be subject to state audit.

(d) The department of transportation may execute capital advancement contracts pursuant to subsection (a) with a total contract value of $5,000,000 or less without legislative approval. If the total value of a capital advancement contract pursuant to subsection (a) is greater than $5,000,000 then the department of transportation shall obtain legislative approval in the form of the adoption of a concurrent resolution affirming the purpose, project, and contract issuance before executing the capital advancement contract. The total aggregate value of all capital advancement contracts entered into by the department pursuant to this section shall not exceed $30,000,000 in any fiscal year. The department shall submit a report to the legislature of all executed capital advancement contracts for the previous twelve-month period from July 1 to June 30 no later than twenty days prior to the convening of each regular session.

(e) For the purposes of this section: "Capital advancement contract" means an agreement between the department of transportation and a private party whereby the private party agrees to furnish capital, labor, or materials for a public improvement to or construction of a state harbor, commercial harbor, roadstead, or other waterfront improvement belonging to or controlled by the State and in return for which the private party may be reimbursed in a manner to be determined by the department. "Total value" includes any contract extension, project redesign, add-ons, or any other occurrence, act, or material cost that may increase the cost of the contracted project.

266-20 and 266-21 REPEALED

266-20 and 266-21 REPEALED. L 1991, c 272, §§18, 19. Previous Vol05_Ch0261-0319 Next

266-21.4 Marine inspections

266-21.4 Marine inspections.

(a) The department shall:

(1) Develop a list of minimum requirements for the marine inspection of vessels seeking permits to moor in state commercial harbors;

(2) Approve qualified marine surveyors to inspect vessels seeking permits to moor in state commercial harbors; and

(3) Approve a fee schedule for marine surveyors' inspections.

(b) Vessels failing the marine inspection for a permit or a permit renewal shall have thirty days to correct deficiencies and complete the inspection.

(c) Owners of vessels that fail the marine inspection may contest the inspection at an arbitration board of three approved inspectors and the original inspector.

266-21.5 Biosecurity, inspection, and cargo support facilities

266-21.5 Biosecurity, inspection, and cargo support facilities.

(a) The department of transportation shall provide space at commercial harbors for biosecurity and inspection facilities and to facilitate the safe and efficient movement of maritime cargo through the commercial harbors.

(b) The department and department of agriculture and biosecurity shall plan, design, and construct biosecurity, inspection, consolidation, deconsolidation, and treatment facilities for use by the department of agriculture and biosecurity to enhance the efficient and safe movement of imported and exported marine cargo, to include food [safe ty] and food security guidelines and standards.

266-22 REPEALED

266-22 REPEALED. L 2022, c 6, §2. Previous Vol05_Ch0261-0319 Next

266-23 Acceptance of gifts

266-23 Acceptance of gifts. The director of transportation may, with the approval of the governor, accept and receive gifts of personal property, which gifts shall be used for harbor purposes; provided that moneys received by the director, pursuant to the authority granted herein, shall be deposited into an appropriate fund or account before being used for harbor purposes.

266-24 Enforcement

266-24 Enforcement.

(a) Every state and county officer charged with the enforcement of any law, statute, rule, regulation, ordinance, or order, shall enforce and assist in the enforcement of this chapter and of all rules and orders issued pursuant thereto, and in carrying out the responsibilities hereunder, each shall be specifically authorized to:

(1) Conduct any enforcement action hereunder in any commercial harbor area and any area over which the department of transportation and the director of transportation has jurisdiction under this chapter;

(2) Inspect and examine at reasonable hours any premises, and the buildings and other structures thereon, where harbors or harbor facilities are situated, or where harbor-related activities are operated or conducted; and

(3) Serve notices and orders.

(b) The department of transportation, in the name of the State, may enforce this chapter and the rules and orders issued pursuant thereto by injunction or other legal process in the courts of the State.

266-24.2

266-24.2 Vessels or property taken into legal custody; unauthorized control. No person shall exercise control over a vessel or other property that is under legal custody, seizure, or detention by the department of transportation, with intent to defeat the custody, seizure, or detention, or impede, oppose, or defeat the process whereby the vessel or other property is under custody, seizure, or detention.

266-25 Violation of rules; penalty

266-25 Violation of rules; penalty.

(a) In addition to the reimbursement of fines and costs as provided in section 266-28, any person who violates any rule made, adopted, and published by the department of transportation as herein provided, or who violates any lawful command of any harbor master, harbor agent, facility security officer, or harbor district manager, while in the discharge of the person's duty, or who violates this chapter, except as provided in subsections (b) and (c), shall be fined not more than $1,000 or less than $50 for each violation, and any vessel, the agents, owner, or crew of which violate the rules of the department or this part, shall be fined not more than $1,000 or less than $50 for each violation; provided that in addition to or as a condition to the suspension of the fines and penalties, a court, the department, or an administrative hearings officer may deprive the offender of the privilege of entering the secured area of the port or obtaining an operating or mooring permit for any vessel in state waters for a period of not more [than] one year; provided further that the offender, at the resumption of the privilege of operating or mooring a vessel in state waters, shall assume the last position on any waiting list.

(b) Any person who violates any rule adopted by the department of transportation under this part regulating vehicular parking or traffic movement shall have committed a traffic infraction as set forth in chapter 291D, the adjudication of which shall be subject to the provisions contained therein. A person found to have committed such a traffic infraction shall be fined not more than:

(1) $100 for a first violation;

(2) $200 for a second violation; and

(3) $500 for a third or subsequent violation.

(c) Any person who violates any rule adopted by the department of transportation relating to unauthorized discharge, dumping, or abandoning any petroleum product, hazardous material, or sewage in any state harbor facility or state waters in violation of the state water quality standards established by the department of health, shall be fined not more than

$10,000 for each day of violation, and any vessel, the agents, owner, or crew of which violate the rules of the department of transportation or this chapter, shall be fined not more than $10,000 for each day of violation; provided that in addition to or as a condition to the suspension of the fines and penalties, the court, department, or administrative [hearings] officer may deprive the offender of the privilege of entering the secured area of the port or obtaining an operating or mooring permit for any vessel in state waters for a period of not more than one year; provided further that the offender, at the resumption of the privilege of operating or mooring a vessel in state waters, shall assume the last position on any waiting list.

266-26

266-26 Responsibility of vessel owner; evidence of unauthorized mooring.] In any proceeding for violation of any statute or any rule adopted by the department pursuant to chapter 91 governing the mooring or placement of a vessel in the State, proof of ownership through:

(1) The state registration number; or

(2) The documented name or number of a vessel; or

(3) Any other identifying name or number; affixed to a vessel involved in such violation shall constitute prima facie evidence that the owner of the vessel was the person who moored or placed the vessel at the point where, and during the time when, such violation occurred.

266-27

266-27 Mooring of unauthorized vessel in state harbors; impoundment and disposal proceedings.

(a) No person shall moor a vessel in a state commercial harbor without obtaining a use permit; nor shall a person continue to moor a vessel in any state commercial harbor if the use permit authorizing the vessel to moor has expired or otherwise been terminated. A vessel moored without a use permit or with a use permit that has expired or been terminated is an unauthorized vessel and is subject to subsections (b) to (e).

(b) The department shall cause to be placed upon, or as near to the unauthorized vessel as possible, a notice to remove vessel, which shall indicate that the vessel is in violation of this section, the date and time the notice was posted, and that the vessel must be removed within seventy-two hours from the time the notice was posted.

(c) An unauthorized vessel may be impounded by the department at the sole cost and risk of the owner of the vessel, if such a vessel is not removed after the seventy-two-hour period or if during said period the vessel is removed and re-moored in said harbor or any other state commercial harbor without a use permit.

(d) Custody of an impounded vessel shall be returned to the person entitled to possession upon payment to the department of all fees and costs due, and fines levied by a court. In addition, the department, within seventy-two hours of impoundment, shall send by certified mail, return receipt requested, a notice of impoundment to the registered owner or operator of any impounded vessel. The owner or operator of an impounded vessel shall have ten days after receipt of notice of impoundment of the vessel to request in writing an administrative hearing. This administrative hearing is solely for the purpose of allowing the owner or operator of an impounded vessel to contest the basis given by the department for the impoundment of the vessel. The administrative hearing must be held within five days of the department's receipt of the written request, excluding Saturdays, Sundays, and holidays designated under section 8-1. The department shall adopt rules pursuant to chapter 91 to implement the requirement for this post-seizure administrative hearing process.

(e) Any unauthorized vessel impounded under this section, which remains unclaimed by the person entitled to possession, the registered owner, or a lien holder for more than thirty days, may be sold by the department at public auction. Where no bid is received, the vessel may be sold by negotiation, disposed of as junk, or donated to any governmental agency.

266-28 Bill

266-28 Fines arising from environmental protection and maritime transportation security violations. Notwithstanding any other law to the contrary, any commercial harbor tenant or user, including any shipper or shipping agent, who violates any federal, state, or county law or rule relating to environmental protection or maritime transportation security pursuant to title 33 Code of Federal Regulations chapter 1 and thereby causes a fine to be levied by the United States Coast Guard upon the department, shall reimburse the department for the entire amount of the fine. The department may take such actions necessary to collect and deposit any amount reimbursable under this section into the harbor special fund, and may also

demand reimbursement for costs or expenses incurred by the department resulting from enforcement of this section.

266-29 HRS

266-29 State harbors civil violations system; authorization.

(a) There is established, within the department of transportation, a state harbors civil violations system, whose purpose shall be to process violations of departmental regulations for which administrative penalties have been authorized by law or rules adopted thereunder.

(b) The department of transportation shall adopt, amend, and repeal rules, subject to chapter 91, for the purposes of this section.

(c) Rules adopted pursuant to subsection (b) may include, but are not limited to, the following:

(1) Requirements for notice of state harbors infraction;

(2) A form of the answer that shall be made pursuant to a notice of state harbors infraction, which answer may be an admission of the infraction, a denial of the infraction, or an admission of the infraction with mitigating circumstances;

(3) The action to be taken after an answer is received or when a person fails to answer the notice of state harbors infraction;

(4) Procedures for administrative hearings under this section;

(5) The imposition and enforcement of monetary assessments made pursuant to this section; and

(6) Means of assuring that the alleged violator who answers the notice of state harbors infraction by an admission of the infraction or an admission of the infraction with mitigating circumstances has knowingly and voluntarily elected to use the state harbors civil violations system and waive the appeal provided for in section 91-14.

(d) Notwithstanding any other provision of law to the contrary, all state harbors infractions that the department of transportation identifies as subject to administrative penalties may be adjudicated pursuant to this section.

266-30 HRS

266-30 General administrative penalties.

(a) Except as otherwise provided by law, the department of transportation may set, charge, and collect administrative fines or bring legal action to recover administrative fees and costs as documented by receipts or affidavit, including attorneys' fees and costs; or bring legal action to recover administrative fines, fees, and costs, including attorneys' fees and costs, or payment for damages resulting from a violation of this chapter or any rule adopted pursuant to this chapter. The administrative fines shall not exceed $10,000 for each day of violation.

(b) Any criminal action against a person for any violation of this chapter or any rule adopted pursuant to this chapter shall not be deemed to preclude the State from pursuing civil legal action against that person. Any civil legal action against a person to recover administrative fines and costs for any violation of this chapter or any rule adopted pursuant to this chapter shall not be deemed to preclude the State from pursuing any criminal action against that person. Each day of each violation shall constitute a separate offense.

266-31 HRS

266-31 Restriction of use of facilities. The department of transportation may delay or deny approval for port entry or departure for any vessel for which the department has received notice from a federal agency or other agency that the vessel or its crew has engaged in activity that has violated any federal, state, or county law or rule pertaining to environmental protection, maritime transportation, trafficking of illegal contraband, or the collection or extraction of undersea minerals unlicensed or unpermitted by the State; provided that the department may grant approvals for use of any commercial harbor facility by that vessel in coordination with the federal agency or other agency.

266-51 [PART II

266-51 Definitions. For the purpose of this part, if not inconsistent with the context: "Remodeling" includes reconstruction, renovation, rehabilitation, improvement, betterment, or extension of a special facility. "Special facility" means one or more buildings, structures, or facilities on land owned by the State for maritime and marine operations, including cargo handling and control; storage, repair, maintenance, and servicing of marine and marine-related equipment; processing and canning of fish and fish products; and offices and accommodations for the personnel and employees of persons engaged in maritime and maritime-related operations that are the subject of a special facility lease. "Special facility lease" includes

a contract, lease, or other agreement, or any combination thereof, the subject matter of which is the special facility.

266-52 Powers

266-52 Powers. In addition and supplemental to the powers granted to the department by law, the department may:

(1) With the approval of the governor, enter into a special facility lease or an amendment or supplement thereto whereby the department agrees with another person engaged in maritime and maritime-related operations to construct, acquire, remodel, furnish, or equip a special facility solely for the use by that other person to a special facility lease; provided that the special facility lease may be amendatory and supplemental to an existing lease between the department and the other person for the land upon which the special facility that is the subject of the special facility lease is to be situated;

(2) With the approval of the governor: (A) Issue special facility revenue bonds in principal amounts as may be necessary to yield the amount of the cost of any construction, acquisition, remodeling, furnishing, and equipping of any special facility; provided that the total principal amount of the special facility revenue bonds that may be issued pursuant to this subparagraph shall not exceed $600,000,000; and (B) Issue special facility revenue refunding bonds, without further authorization by the legislature, to refund outstanding special facility revenue bonds, including special facility revenue refunding bonds, or any part thereof, at or before the maturity or redemption date, issued pursuant to this part; provided that any issuance of the refunding bonds shall not reduce the amount authorized by the legislature as provided in paragraph (2)(A);

(3) Perform and carry out the terms and provisions of any special facility lease;

(4) Notwithstanding section 103-7 or any other law to the contrary, acquire, construct, remodel, furnish, or equip any special facility, or accept the assignment of any contract therefor entered into by the other person to the special facility lease;

(5) Construct any special facility on land owned by the State; and

(6) Agree with the other person to the special facility lease whereby any acquisition, construction, remodeling, furnishing, or equipping of the special facility and the expenditure of moneys therefor shall be undertaken or supervised by the other person.

266-54 Special facility lease

266-54 Special facility lease.

(a) In addition to the conditions and terms set forth in this part, any special facility lease entered into by the department shall contain provisions obligating the other person to the special facility lease:

(1) To pay to the department during the term of the special facility lease, whether the special facility is capable of being used or occupied or is being used or occupied by the other person, a rental or rentals at such time or times and in such amount or amounts as will be sufficient: to pay the principal and interest on all special facility revenue bonds issued for the special facility, to establish or maintain any reserves for such payments, and to pay all fees and expenses of the trustees, paying agents, transfer agents, and other fiscal agents for the special facility revenue bonds issued for the special facility.

(2) To pay to the department a ground rental equal to the fair market rental of the land, if the special facility is situated on land owned by the department.

(3) To either operate, maintain, and repair the special facility and pay the costs thereof or to pay to the department all costs of operation, maintenance, and repair of the special facility.

(b) Any moneys derived by the department pursuant to subsection (a)(1) shall be deemed revenues of the special facility. Any moneys received by the department pursuant to subsection (a)(2) and (3) shall be paid into the harbor special fund and shall not be nor be deemed to be revenues of the special facility.

(c) The term and all renewals and extensions of the term of any special facility lease (including any amendments or supplements thereto) shall not extend beyond the reasonable life of the special facility which is the subject of such special facility lease, as estimated by the department at the time of the entering into thereof, or thirty-five years, whichever is less.

(d) Any special facility lease entered into by the department shall be subject to chapter 171 and shall contain such other terms and conditions as the department deems advisable to effectuate the purposes of this part.

266-56 REPEALED

266-56 REPEALED. L 1993, c 2, §4 and c 212, §4. Previous Vol05_Ch0261-0319 Next

266-61 HRS

266-61 Labor subject to collective bargaining; required. [See Note at part heading.]

(a) Except as provided in subsection (b), in addition to the duties of the department of transportation imposed under part I, the department of transportation shall require that the securing of mooring lines from vessels to commercial docks, wharves, piers, quays, and landings be performed by labor subject to collective bargaining.

(b) Subsection (a) shall not apply to:

(1) Any labor being performed at any shipyard or drydock; by or on behalf of any ship repair or construction company; or involving any activity relating to ship repair, construction and overhaul services, and maritime research and development; and

(2) The securing of mooring lines from fishing vessels; government-owned or government-sponsored vessels; tour boats; and training vessels.

Chapter 268

268-1

268-1 Ferry system and facilities authorized. It being hereby declared that the establishment of a ferry system to provide the people of this State with an economic means of transportation is a public purpose, the department of transportation, hereinafter referred to as the department, may acquire by lease, charter, contract, purchase, condemnation, or construction, and partly by any or all of such means, and thereafter operate, improve, and extend, as a public undertaking and enterprise, a system of ferries between the islands of the State and connecting with the public streets and highways in the State, the system of ferries to include such boats, vessels, wharves, docks, approaches, landings, franchises, licenses, and appurtenances, as shall be determined by the department to be necessary or desirable for the efficient operation of a ferry system to best serve the public. In general the department shall have all the powers necessary or convenient to carry out effectively the purpose and provisions of this chapter. The department may acquire by purchase, condemnation, or construction and include in such ferry system such approaches and connecting roadways as may be deemed by the department advantageous in channeling traffic to points served by the ferry system. The department may enter into any contracts, agreements, or leases with any person, firm, or corporation whether public or private and thereby provide, on such terms and conditions as it shall determine, for the operation of any ferry or ferries or system thereof, whether acquired by the department or not. The department may further exercise the power of eminent domain for the acquisition of either real or personal property, necessary for the ferry system.

268-1.5

268-1.5 Private ferry or ferry system; authority to provide. Notwithstanding any other provisions of this chapter, the department, in lieu of establishing the Hawaii State Ferries, an inter-island or intra-island ferry or ferry system operated and maintained by the State under the provisions of the chapter, may enter into a contract, lease, or other agreement with any person to provide for a privately operated ferry or ferry system; provided that no contract, lease, or other agreement shall be made except under contract let after public advertisement for sealed tenders, subject to the provisions under chapter 103D.

268-2

268-2 "Hawaii State Ferries" name authorized. The department of transportation may operate its ferry system under the name "Hawaii State Ferries".

268-2.5

268-2.5 Intra-island water ferry transportation system; authority to implement.] The department of transportation is authorized to implement an intra-island water ferry transportation system subject to chapter 103D. The intra-island water ferry transportation system shall be premised upon the transportation of commuters during peak traffic periods and may be used for other revenue-generating purposes during non-peak traffic periods. The system may include landings at various locations along the southern coast of Oahu and shall be integrated with ground transportation. The department of transportation and the department of land and natural resources are authorized to:

(1) Waive or assess nominal fees for the use of public infrastructures and terminals by the operator of the intra-island water ferry transportation system; and

(2) Lease public lands at a nominal cost to the operator of the intra-island water ferry transportation system. In return for concessions as determined jointly by the department of transportation and the department of land and natural resources, the operator of the intra-island water ferry transportation system shall provide the ferry service at no cost or nominal cost to the State for the duration of the concessions. Operating expenses may be further supplemented by other revenue-generating activities during non-peak traffic periods. The department of transportation shall aggressively explore the possibility of obtaining federal funds to implement the intra-island water ferry transportation system.

268-2.6 Ferry project special fund

268-2.6 Ferry project special fund.] There is established in the state treasury the ferry project special fund, into which shall be deposited revenues collected by the operators of the intra-island water ferry transportation system. Moneys in the ferry project special fund shall be used to offset costs incurred by the intra-island water ferry transportation system or demonstration project, or both; provided that no expenditure shall be made from, and no obligation shall be incurred against the fund in excess of its deposits. Moneys in the fund shall be expended by the department of transportation.

268-3 Survey

268-3 Survey. The department of transportation may make any examination, investigation, survey, or reconnaissance it deems necessary for obtaining information relative to the acquisition, construction, or operation of the ferry or ferry facilities.

268-4 Appropriation; personnel

268-4 Appropriation; personnel. There is appropriated from the general revenues of the State the sum of $150,000 or so much thereof as may be necessary, to defray the cost of any examination, investigation, survey, or reconnaissance and all other expenses necessary for the issuance of any bonds and the implementation of the ferry system; provided that upon the sale of the revenue bonds authorized herein, that portion of the $150,000 which is expended for planning, designing, or preparation of plans and specifications for the construction or improvement of the ferry vessel or terminal facilities needed for the operation of the ferry system shall be repaid by the department of transportation to the State. The department may hire personnel to perform the services noted above and to implement the ferry system. The personnel, however, shall be hired by contract and be exempt from chapter 76 and the appropriate collective bargaining agreement, executive order, executive directive, or rule.

268-5 Bonds; issue authorized

268-5 Bonds; issue authorized. For the purpose of paying any and all costs in connection with the acquisition by lease, charter, contract, purchase, condemnation, or construction of all or any part of the ferry system, approaches, and roadways incidental thereto, and for rehabilitating, rebuilding, enlarging, extending, battering, and improving all or any part of the system and of the facilities used or useful in connection therewith and for providing initial working capital, the department of transportation is authorized to issue by certificate of its director revenue bonds of the State in an amount not exceeding $14,000,000 or so much thereof as may be necessary; provided that the department may issue the revenue bonds only after approval by the governor. Revenue bonds issued pursuant to the provisions of the chapter shall be payable solely from and secured by a first charge and a prior and paramount lien upon all or such part of the gross revenues derived from the operation of the ferry system as shall be pledged thereto in and by the certificate of the director of transportation providing for the issuance of the bonds, and the bonds shall not constitute an indebtedness of the State. Except as otherwise provided herein, the bonds shall be issued in accordance with, be subject to and be entitled to the security and benefits of chapter 39, part III. The bonds shall be sold by the director at public sale as provided in section 39-54, or, with the approval of the governor and of the director of finance, may be sold by the director at private sale, and in either event may be sold at a discount of not to exceed two per cent of the par value thereof.

268-6

268-6 Bonds, certificates of issuance; terms and conditions.

(a) Any certificate or certificates providing for the issuance of revenue bonds pursuant to this chapter shall provide that the revenue bonds shall be redeemable before the maturity thereof at the option of the department of transportation at any time after five years from the date of such bonds on such terms and conditions as the certificate or certificates

providing for the issuance of the bonds shall prescribe, including the payment of premiums upon the redemption thereof, and may contain covenants on behalf of the State to protect and safeguard the security and rights of the holders thereof authorized by chapter 39, part III, and, in addition thereto, covenants as to, among other things:

(1) Subject to section 268-8, the establishment and maintenance of adequate rates, rentals, and charges for the services and facilities sold, furnished, or supplied through the ferry system; and

(2) Limitations upon the right to dispose of the ferry system or any part thereof without providing for the payment of revenue bonds issued pursuant to this chapter.

(b) All gross revenues derived from the operation of the ferry system and any additions or extensions thereof shall be deposited to the credit of the state general fund.

268-7 Operation of ferry system

268-7 Operation of ferry system. The department of transportation may operate such ferry system, including all operations, whether intrastate or international, upon any route or routes, as a revenue producing undertaking, and the State covenants with the holders from time to time of bonds issued pursuant to this chapter that so long as any of the bonds are outstanding and unpaid the State will continue to maintain and operate the ferry system and to impose and collect rates, rentals, and charges for the services, facilities, and commodities sold, furnished, or supplied through the facilities of the ferry system which will provide gross revenues sufficient to pay the principal of and interest on all bonds issued pursuant to this chapter, including reserves therefor, and to maintain all funds or reserves created pursuant to the certificate authorizing such bonds for the rehabilitation, renewal, and replacement of the facilities of the ferry system so as to maintain the same in good operating condition. The department shall have full charge of the construction, rehabilitation, rebuilding, enlarging, improving, and maintenance of the ferry system, including approaches and roadways incidental thereto that may be authorized by the department, the granting of concessions, the collection of tolls, and other charges for the services and facilities of the undertaking; provided that the department shall comply with the provisions of chapter 102 relating to contracts for concessions on public property. The gross revenues derived from the operation of the ferry system shall be appropriated, applied, or expended for the purposes and in the order of priority set forth in section [39-62]; provided that if the certificate authorizing the issuance of the bonds shall so provide, the revenues shall be appropriated, applied, or expended for the rehabilitation, renewal and replacement of the facilities required to maintain the ferry system in good operating condition, including such reserve or reserves therefor as shall be provided in the certificate, immediately after being appropriated, applied, or expended to the payment of the bonds and interest thereon, including reserves therefor, and before being appropriated, applied, or expended to the other purposes set forth in the section.

268-8

268-8 Fixing of charges, rates, and disbursements of revenues. So long as any of the bonds authorized pursuant to this chapter are outstanding and unpaid, the department of transportation shall establish, maintain, and collect charges, rentals, and rates for the services, facilities, and commodities sold, furnished, or supplied through the facilities of the ferry system as shall be reasonable and consistent with the purpose of providing economical inter-island transportation, notwithstanding section [39-61] or any other law to the contrary; provided that the rates, rentals, and charges shall at all times be sufficient to provide revenues in amounts necessary to pay the principal of and interest on all bonds issued pursuant to this chapter, including reserves therefor, and to maintain all funds or reserves created by the certificate authorizing the issuance of the bonds for the rehabilitation, renewal, and replacement of facilities required to maintain the ferry system in good operating condition.

268-9 Seamen may sue for injuries; venue

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 title 46 United States Code section 30104. The venue of the actions may be in the first circuit court or the circuit wherein the injury occurred.

268-10

268-10 Authority as a common carrier; rights and liabilities. The department of transportation shall have all the obligations, duties, and rights of a common carrier of persons and property in its operation of ferries, terminals, or other facilities used in its ferry operations, including the right to participate in joint rates and through routes, agreements, and

divisions of through and joint rates with railroads and other common carriers and the right to make any filings with the Interstate Commerce Commission, the United States Maritime Commission, or any other state or federal regulatory or governmental body and to comply with the lawful rules and regulations or requirements of any such body, and shall be subject to laws relating to carrier's liability for loss or damage to property transported, and for personal injury or death of persons transported.

268-11

268-11 Liability for damages as to persons or property. In case of property loss or damage, personal injuries or death resulting from the operation of any ferry or terminal by the department of transportation, any person or the personal representative of any person shall, subject to and to the extent hereinafter provided, have a right of action against the department for the damage, loss, injury, or death.

268-12

268-12 Liability to persons other than shippers or passengers; limitation. The right of action extended by this chapter shall be applicable to loss or damage of property or personal injury or death, resulting from the operation of ferries or terminals by the department of transportation to persons other than shippers or passengers, but any recovery of damages in such cases shall not exceed an amount equal to the limitations of the insurance carried by the department to insure it against loss for such liability.

268-13

268-13 Claim for damages; filing and contents; time limitations. As a condition to a recovery thereon, a verified claim against the department of transportation growing out of damages, loss, injuries, or death must first be presented to the department and filed with its director within thirty days after the time when the claim accrued. If the claimant shall be incapacitated from verifying and filing the claimant's claim within the thirty days, then the claim may be verified and presented on behalf of the claimant by the claimant's relative, attorney, or agent. If the claimant is a minor or incompetent person, the claim may be verified and filed by the claimant's guardian or next friend. Each claim must accurately locate and describe the event or defect that caused the damage, loss, injury, or death, reasonably describe the damage, loss, or injury, and state the time when the same occurred, give the claimant's residence for six months last past, and contain the items of damages claimed. No action shall be maintained against the department upon the claim until the same has been presented to, and filed with, the department and sixty days have elapsed after the presentation and filing, nor more than two years after the claim accrued.

268-14 Payment of claims

268-14 Payment of claims. The department of transportation may upon such terms and conditions as it may impose and under such rules and regulations as it may adopt, pay claims arising under its operation of ferries or terminals or compromise or settle the claims. No claim shall be paid by the department or any settlement or compromise thereof be made except from its operating revenues derived from its operation of ferries or terminals or from the proceeds of insurance recoveries.

268-15

268-15 Venue of actions; enforcement of judgment. Actions for the recovery of damages under sections 268-11 to 268-15 may be brought in the first circuit court or in the circuit in which the aggrieved person resides. No execution upon a judgment or attachment shall be levied against the property of the department of transportation, nor does the State consent to any maritime lien against vessels of the department, but the department may be required by order of court to pay any judgment.

268-16 Report

268-16 Report. The director of transportation shall prepare a report in writing of the nature and extent of the director's activities under this chapter whenever the director deems it necessary or appropriate. The report shall be delivered to each house of the legislature.

Chapter 269

269-1 [PART I

269-1 Definitions. As used in this chapter: "Agricultural activities" means a commercial agricultural, silvicultural, or aquacultural facility or pursuit conducted, in whole or in part, including the care and production of livestock and livestock products, poultry and poultry products, apiary products, and plant and animal production for nonfood uses; the planting, cultivating, harvesting, and processing of crops; and the farming or ranching of any plant or animal species in a controlled salt, brackish, or freshwater environment. "Basic exchange service" means those services consisting of single-line dial tone, touch-tone dialing, access to operator service, access to 911 services, telecommunications relay service, telephone directory, and access to directory-assistance service via 411 dialing. "Carrier of last resort" means a telecommunications carrier designated by the commission to provide universal service in a given local exchange service area determined to be lacking in effective competition. "Designated local exchange service area" means an area as determined by the commission to be best served by designating a carrier of last resort pursuant to section 269-43. "Dial tone" means the ability to make or receive telephone calls with or without operator intervention. "Document" includes any application, complaint, pleading, brief, answer, motion, memorandum, declaration, exhibit, certificate of service, and other papers filed by or with the commission. "Enforcement officer" means any person employed and authorized by the commission to investigate any matter on behalf of the commission. " Lifecycle greenhouse gas emissions assessment " means the evaluation of potential greenhouse gas emissions over the course of a product, program, or project's lifetime or stages of production, construction, operations, and decommissioning, which includes but is not limited to, as applicable, upstream stages such as extraction and processing of raw materials, manufacturing and processing of materials, and transportation; operations stages such as the use of any fuels or feedstocks and the production of any materials; and downstream stages such as transportation, decommissioning, recycling, and the final disposal. "Public highways" has the meaning defined by section 264-1, including both state and county highways, but operation upon rails shall not be deemed transportation on public highways. "Public utility":

(1) Includes every person who may own, control, operate, or manage as owner, lessee, trustee, receiver, or otherwise, whether under a franchise, charter, license, articles of association, or otherwise, any plant or equipment, or any part thereof, directly or indirectly for public use for the transportation of passengers or freight; for the conveyance or transmission of telecommunications messages; for the furnishing of facilities for the transmission of intelligence by electricity within the State or between points within the State by land, water, or air; for the production, conveyance, transmission, delivery, or furnishing of light, power, heat, cold, water, gas, or oil; for the storage or warehousing of goods; or for the disposal of sewage; provided that the term shall include: (A) An owner or operator of a private sewer company or sewer facility; and (B) A telecommunications carrier or telecommunications common carrier; and

(2) Shall not include: (A) An owner or operator of an aerial transportation enterprise; (B) An owner or operator of a taxicab as defined in this section; (C) Common carriers that transport only freight on the public highways, unless operating within localities, along routes, or between points that the public utilities commission finds to be inadequately serviced without regulation under this chapter; (D) Persons engaged in the business of warehousing or storage unless the commission finds that regulation is necessary in the public interest; (E) A carrier by water to the extent that the carrier enters into private contracts for towage, salvage, hauling, or carriage between points within the State; provided that the towing, salvage, hauling, or carriage is not pursuant to either an established schedule or an undertaking to perform carriage services on behalf of the public generally; (F) A carrier by water, substantially engaged in interstate or foreign commerce, that transports passengers on luxury cruises between points within the State or on luxury round-trip cruises returning to the point of departure; (G) Any user, owner, or operator of the Hawaii electric system as defined under section 269-141; (H) A telecommunications provider only to the extent determined by the public utilities commission pursuant to section 269-16.9; (I) Any person who controls, operates, or manages plants or facilities developed pursuant to chapter 167 for conveying, distributing, and transmitting water for irrigation and other purposes for public use and purpose; (J) Any person who owns, controls, operates, or manages plants or facilities for the reclamation of wastewater; provided that:

(i) The services of the facility are provided pursuant to a service contract between the person and a state or county agency and at least ten per cent of the wastewater processed is used directly by the state or county agency that entered into the service contract; (ii) The primary function of the facility is the processing of secondary treated wastewater that has been produced by a municipal wastewater treatment facility owned by a state or county agency; (iii) The facility does not make sales of water to residential customers; (iv) The facility may distribute and sell recycled or reclaimed water to entities not covered by a state or county service contract; provided that, in the absence of regulatory oversight and direct competition, the distribution and sale of recycled or reclaimed water shall be voluntary and its pricing fair and reasonable. For purposes of this subparagraph, "recycled water" and "reclaimed water" means treated wastewater that by design is

intended or used for a beneficial purpose; and

(v) The facility is not engaged, either directly or indirectly, in the processing of food wastes; (K) Any person who owns, controls, operates, or manages any seawater air conditioning district cooling project; provided that at least fifty per cent of the energy required for the seawater air conditioning district cooling system is provided by a renewable energy resource, such as cold, deep seawater; (L) Any person who owns, controls, operates, or manages plants or facilities primarily used to charge or discharge a vehicle battery that provides power for vehicle propulsion; (M) Any person who:

(i) Owns, controls, operates, or manages a renewable energy system that is located on a customer's property; and (ii) Provides, sells, or transmits the power generated from that renewable energy system to an electric utility or to the customer on whose property the renewable energy system is located; provided that, for purposes of this subparagraph, a customer's property shall include all contiguous property owned or leased by the customer without regard to interruptions in contiguity caused by easements, public thoroughfares, transportation rights-of-way, and utility rights-of-way; and (N) Any person who owns, controls, operates, or manages a renewable energy system that is located on the person's property and provides, sells, or transmits the power generated from that renewable energy system to an electric utility or to lessees or tenants on the person's property where the renewable energy system is located; provided that:

(i) An interconnection, as defined in section 269-141, is maintained with an electric public utility to preserve the lessees' or tenants' ability to be served by an electric utility; (ii) The person does not use an electric public utility's transmission or distribution lines to provide, sell, or transmit electricity to lessees or tenants; (iii) At the time that the lease agreement is signed, the rate charged to the lessee or tenant for the power generated by the renewable energy system shall be no greater than the effective rate charged per kilowatt hour from the applicable electric utility schedule filed with the public utilities commission; (iv) The rate schedule or formula shall be established for the duration of the lease, and the lease agreement entered into by the lessee or tenant shall reflect the rate schedule or formula;

(v) The lease agreement shall not abrogate any terms or conditions of applicable tariffs for termination of services for nonpayment of electric utility services or rules regarding health, safety, and welfare; and (vi) The lease agreement shall disclose: (1) the rate schedule or formula for the duration of the lease agreement; (2) that, at the time that the lease agreement is signed, the rate charged to the lessee or tenant for the power generated by the renewable energy system shall be no greater than the effective rate charged per kilowatt hour from the applicable electric utility schedule filed with the public utilities commission; (3) that the lease agreement shall not abrogate any terms or conditions of applicable tariffs for termination of services for nonpayment of electric utility services or rules regarding health, safety, and welfare; and (4) whether the lease is contingent upon the purchase of electricity from the renewable energy system; provided further that any disputes concerning the requirements of this provision shall be resolved pursuant to the provisions of the lease agreement or chapter 521, if applicable. If the application of this chapter is ordered by the commission in any case provided in paragraph (2)(C), (D), (H), and (I), the business of any public utility that presents evidence of bona fide operation on the date of the commencement of the proceedings resulting in the order shall be presumed to be necessary to the public convenience and necessity, but any certificate issued under this proviso shall nevertheless be subject to terms and conditions as the public utilities commission may prescribe, as provided in sections 269-16.9 and 269-20. "Renewable energy system" means any identifiable facility, equipment, apparatus, or the like that converts renewable energy, as defined in section 269-91, to useful thermal or electrical energy for heating, cooling, or reducing the use of other types of energy that are dependent on fossil fuel for their generation. "Single-line" means a single-party line or a one-party line. "Taxicab" means and includes:

(1) Any motor vehicle used in the movement of passengers on the public highways under the following circumstances, namely, the passenger hires the vehicle on call or at a fixed stand, with or without baggage for transportation, and controls the vehicle to the passenger's destination; and

(2) Any motor vehicle having seating accommodations for eight or less passengers used in the movement of passengers on the public highways between a terminal, i.e., a fixed stand, in the city of Honolulu, and a terminal in a geographical district outside the limits of the city of Honolulu, and vice versa, without picking up passengers other than at the terminals or fixed stands; provided that passengers may be unloaded at any point between terminals; and provided further that this definition relating to motor vehicles operating between terminals shall pertain only to those motor vehicles whose operators or owners were duly licensed (under section 445-222 and any other applicable provision of law or ordinance) and doing business between such terminals on January 1, 1957. "Telecommunications carrier" or "telecommunications common carrier" means any person that owns, operates, manages, or controls any facility used to furnish telecommunications services for profit to the public, or to classes of users as to be effectively available to the public,

engaged in the provision of services, such as voice, data, image, graphics, and video services, that make use of all or part of their transmission facilities, switches, broadcast equipment, signalling, or control devices. "Telecommunications service" or "telecommunications" means the offering of transmission between or among points specified by a user, of information of the user's choosing, including voice, data, image, graphics, and video without change in the form or content of the information, as sent and received, by means of electromagnetic transmission, or other similarly capable means of transmission, with or without benefit of any closed transmission medium, and does not include cable service as defined in section 440G-3. "Touch-tone dialing" means dual-tone multi-frequency, as opposed to dial-pulse signaling. "Wheeling" means the transmission of renewable electric power from a storage or energy generation system through the utility meter for consumption by a separate utility account holder.

269-2

269-2 Public utilities commission; number, appointment of commissioners, qualifications; compensation; persons having interest in public utilities; authority.

(a) There shall be a public utilities commission of three members, to be called commissioners, and who shall be appointed in the manner prescribed in section 26-34, except as otherwise provided in this section. All members shall be appointed for terms of six years each, except that the terms of the members first appointed shall be for two, four, and six years, respectively, as designated by the governor at the time of appointment. The governor shall designate a member to be chairperson of the commission. Each member shall hold office until the member's successor is appointed and qualified. Section 26-34 shall not apply insofar as it relates to the number of terms and consecutive number of years a member can serve on the commission; provided that no member shall serve more than twelve consecutive years. In appointing commissioners, the governor shall select persons who have had experience in accounting, business, engineering, government, finance, law, or other similar fields. The commissioners shall devote full time to their duties as members of the commission and no commissioner shall hold any other public office or other employment during the commissioner's term of office. No person owning any stock or bonds of any public utility corporation, or having any interest in, or deriving any remuneration from, any public utility shall be appointed a commissioner.

(b) Effective July 1, 2005, the chairperson of the commission shall be paid a salary set at eighty-seven per cent of the salary of the director of human resources development, and each of the other commissioners shall be paid a salary equal to ninety-five per cent of the chairperson's salary. The commissioners shall be exempt from chapters 76 and 89 but shall be members of the state [employees'] retirement system and shall be eligible to receive the benefits of any state or federal employee benefit program generally applicable to officers and employees of the State, including those under chapter 87A.

(c) The commission is placed, for administrative purposes only, within the department of commerce and consumer affairs. The department of commerce and consumer affairs shall not direct or exert authority over the day-to-day operations or functions of the commission, except as provided in subsection (g) and section 269-3.

(d) Notwithstanding section 26-35(a)(1) to the contrary, the commission may communicate directly with the governor or the legislature as determined by the chairperson; provided that the department of commerce and consumer affairs may represent the commission in communications with the governor or the legislature upon request by the chairperson of the commission and agreement by the department of commerce and consumer affairs.

(e) Notwithstanding section 26-35(a)(5) to the contrary, the commission's operational expenditures, such as the purchase of supplies, equipment, furniture, dues and subscriptions, travel, consultant services, and staff training, shall be determined by the chairperson and may be delegated to the executive officer appointed and employed pursuant to section 269-3; provided that such expenditures shall be subject to all applicable procurement laws and procedures.

(f) Notwithstanding section 26-35(a)(6) to the contrary, the utilization, allocation, renovation, or other use of space or spaces to be occupied by the commission shall be determined by the chairperson and may be delegated to the executive officer appointed and employed pursuant to section 269-3.

(g) Determinations made under subsection (d), (e), or (f) by the chairperson or the executive officer as delegated by the chairperson, may be reviewed by the director of commerce and consumer affairs for completeness and for compliance and conformance with applicable administrative processes and procedures of the department of commerce and consumer affairs.

269-3 Employment of assistants

269-3 Employment of assistants.

(a) The chairperson of the public utilities commission may appoint and employ professional staff and other assistants for the public utilities commission as the chairperson finds necessary for the performance of the commission's functions and define their powers and duties. Notwithstanding section 26-35(a)(4) to the contrary and subject to applicable personnel laws, the employment, appointment, applicable salary schedules, promotion, transfer, demotion, discharge, and job descriptions of all officers and employees of or under the jurisdiction of the commission shall be determined by the chairperson and may be delegated to the executive officer appointed and employed pursuant to subsection (b); provided that determinations concerning personnel matters made by the chairperson or the executive officer, as delegated by the chairperson, may be reviewed by the director of commerce and consumer affairs for completeness and for compliance and conformance with applicable administrative processes and procedures of the department of commerce and consumer affairs. The chairperson may appoint and, at pleasure, dismiss a chief administrator and attorneys as may be necessary, and who shall be exempt from chapter 76. The chairperson may also appoint other staff, including a fiscal officer and a personnel officer, with or without regard to chapter 76.

(b) The chairperson of the commission shall appoint, employ, and dismiss, at pleasure, an executive officer who shall be responsible for managing the operations of the commission. The responsibilities of the executive officer shall include management and recruitment of personnel, budget planning and implementation, strategic planning and implementation, procurement and contract administration, and implementation of administrative programs and projects. The executive officer shall be exempt from chapter 76.

(c) Notwithstanding section 91-13, the commission may consult with its assistants appointed under authority of this section in any contested case or agency hearing concerning any issue of facts. Neither the commission nor any of its assistants shall in such proceeding consult with any other person or party except upon notice and an opportunity for all parties to participate, save to the extent required for the disposition of ex parte matters authorized by law.

269-4 REPEALED

269-4 REPEALED. L 1976, c 165, §3. Previous Vol05_Ch0261-0319 Next

269-5

269-5 Annual report and register of orders. The public utilities commission shall prepare and present to the governor in the month of January in each year a report respecting its actions during the preceding fiscal year. This report shall include summary information and analytical, comparative, and trend data concerning major regulatory issues acted upon and pending before the commission; cases processed by the commission, including their dispositions; utility company operations, capital improvements, and rates; utility company performance in terms of efficiency and quality of services rendered; financing orders issued, adjustments made to the public benefits fee, and repayments or credits provided to electric utility customers pursuant to part X or chapter 196, part IV; a summary of power purchase agreements, including pricing, in effect during the fiscal year; environmental matters having a significant impact upon public utilities; actions of the federal government affecting the regulation of public utilities in Hawaii; long and short-range plans and objectives of the commission; together with the commission's recommendations respecting legislation and other matters requiring executive and legislative consideration. Electronic copies of the annual reports shall be furnished by the governor to the legislature. In addition, the commission shall establish and maintain a register of all its orders and decisions, which shall be open and readily available for public inspection, and no order or decision of the commission shall take effect until it is filed and recorded in this register.

269-6 General powers and duties

269-6 General powers and duties.

(a) The public utilities commission shall have the general supervision hereinafter set forth over all public utilities, and shall perform the duties and exercise the powers imposed or conferred upon it by this chapter. Included among the general powers of the public utilities commission is the authority to adopt rules pursuant to chapter 91 necessary for the purposes of this chapter.

(b) The public utilities commission shall consider the need to reduce the State's reliance on fossil fuels through energy efficiency and increased renewable energy generation in exercising its authority and duties under this chapter. In making determinations of the reasonableness of the costs pertaining to electric or gas utility system capital improvements and operations, the public utilities commission shall explicitly consider, quantitatively or qualitatively, the effect of the State's

reliance on fossil fuels on:

(1) Price volatility;

(2) Export of funds for fuel imports;

(3) Fuel supply reliability risk; and

(4) Lifecycle greenhouse gas emissions; provided that the public utilities commission may waive the requirement for a lifecycle greenhouse gas emissions assessment for energy projects that do not involve combustion. The public utilities commission may determine that short-term costs or direct costs of renewable energy generation that are higher than alternatives relying more heavily on fossil fuels are reasonable, considering the impacts resulting from the use of fossil fuels. The public utilities commission shall determine whether such analysis is necessary for proceedings involving water, wastewater, or telecommunications providers on an individual basis.

(c) The analysis described in subsection (b) shall not be required for a utility's routine system replacements, such as overhauls and overhead or underground line determinations, or determinations that do not pertain to capital improvements or operations, including but not limited to financing requests.

(d) In exercising its authority and duties under this chapter, the public utilities commission shall consider the costs and benefits of a diverse portfolio of energy resources and of maximizing the efficiency of all electric utility assets to lower and stabilize the cost of electricity. Nothing in this section shall subvert the obligation of electric utilities to meet the renewable portfolio standards set forth in section 269-92.

(e) The public utilities commission, in carrying out its responsibilities under this chapter, shall consider whether the implementation of one or more of the following economic incentives or cost recovery mechanisms would be in the public interest:

(1) The establishment of a shared cost savings incentive mechanism designed to induce a public utility to reduce energy costs and operating costs and accelerate the implementation of energy cost reduction practices;

(2) The establishment of a renewable energy curtailment mitigation incentive mechanism to encourage public utilities to implement curtailment mitigation practices when lower cost renewable energy is available but not utilized through the sharing of energy cost savings between the public utility, ratepayer, and affected renewable energy projects;

(3) The establishment of a stranded cost recovery mechanism to encourage the accelerated retirement of an electric utility fossil fuel electric generation plant by allowing an electric utility to recover the stranded costs created by early retirement of a fossil fuel generation plant; and

(4) The establishment of differentiated authorized rates of return on common equity to encourage increased utility investments in transmission and distribution infrastructure, discourage electric utility investment in fossil fuel electric generation plants to incentivize grid modernization, and disincentivize fossil fuel generation, respectively.

(f) The chairperson of the public utilities commission may appoint a hearings officer, who shall not be subject to chapter 76, to hear and recommend decisions in any proceeding before it other than a proceeding involving the rates or any other matters covered in the tariffs filed by the public utilities. The hearings officer shall have the power to take testimony, make findings of fact and conclusions of law, and recommend a decision; provided that the findings of fact, the conclusions of law, and the recommended decision shall be reviewed and may be approved by the public utilities commission after notice to the parties and an opportunity to be heard. The hearings officer shall have all of the above powers conferred upon the public utilities commission under section 269-10.

269-6.5

269-6.5 Electronic copies of documents.

(a) No later than July 1, 2011, the public utilities commission shall accept from any person who submits a document to the commission the original or one electronic copy of each application, complaint, pleading, brief, or other document required to be filed with the commission pursuant to this chapter, and the consumer advocate shall accept service of one paper or electronic copy of each application, complaint, pleading, brief, or other document filed with the commission.

(b) The commission shall adopt rules pursuant to chapter 91 to effectuate the purposes of this section. Until the final adoption by the commission of rules governing the electronic filing of documents with the commission, the following requirements shall apply to all documents submitted to the commission pursuant to this section; provided that additional requirements with regard to document format may be established by the commission through written guidelines:

(1) Unless otherwise required by this chapter or the guidelines of the commission, each person who submits or files an application, complaint, pleading, brief, or other document shall submit to or file with the commission an original or one electronic copy of each document and shall serve one paper or electronic copy of each document on the consumer advocate;

(2) All paper documents submitted to or filed with the commission shall be printed on one side of the page only and, if practicable, in portrait orientation;

(3) Original paper documents submitted to or filed with the commission shall not be stapled but shall be clipped together or placed in a clearly marked three-ring binder, as appropriate;

(4) All paper documents filed or submitted to the commission shall include appropriately labeled separator pages in addition to tabbed dividers, as applicable;

(5) All confidential documents filed under confidential seal shall be clearly designated in accordance with the requirements of any applicable protective order, and the sealed envelope in which the confidential documents are enclosed shall clearly indicate the appropriate docket number and subject; and

(6) Electronic documents shall be named using the filing party's name, docket number, date of filing, and name of document as part of the document title. Upon final adoption of rules pursuant to chapter 91, the rules of the commission governing submission or filing of electronic documents shall supersede the provisions of this subsection.

(c) No later than July 1, 2013, the public utilities commission shall accept any application, complaint, pleading, brief, or other document required to be filed with the commission pursuant to this chapter as either a paper document or an electronic document.

(d) If a signature is required on any document submitted electronically pursuant to this section, that requirement shall be satisfied by the inclusion of an electronic signature. Chapter 489E shall apply to all electronic documents submitted pursuant to this section.

(e) Communications, correspondence, and service of orders and other official documents shall be made upon the public utility, complainant, and any other party at the last recorded mailing or electronic mail address on file with the commission. Proof of service by certified or registered mail or by electronic transmission to the last known mailing or electronic mail address shall constitute a valid service of any communication, correspondence, order, or other official document.

(f) A document filed by electronic means shall be equivalent to an original document for the purposes of this chapter.

269-7 Investigative powers

269-7 Investigative powers.

(a) The public utilities commission and each commissioner shall have power to examine into the condition of each public utility, the manner in which it is operated with reference to the safety or accommodation of the public, the safety, working hours, and wages of its employees, the fares and rates charged by it, the value of its physical property, the issuance by it of stocks and bonds, and the disposition of the proceeds thereof, the amount and disposition of its income, and all its financial transactions, its business relations with other persons, companies, or corporations, its compliance with all applicable state and federal laws and with the provisions of its franchise, charter, and articles of association, if any, its classifications, rules, regulations, practices, and service, and all matters of every nature affecting the relations and transactions between it and the public or persons or corporations.

(b) The commission may investigate any person acting in the capacity of or engaging in the business of a public utility within the State, without having a certificate of public convenience and necessity or other authority previously obtained under and in compliance with this chapter or the rules promulgated under this chapter.

(c) Any investigation may be made by the commission on its own motion, and shall be made when requested by the public utility to be investigated, or by any person upon a sworn written complaint to the commission, setting forth any prima facie cause of complaint. A majority of the commission shall constitute a quorum.

269-7.5

269-7.5 Certificates of public convenience and necessity.

(a) No public utility, as defined in section 269-1, shall commence its business without first having obtained from the commission a certificate of public convenience and necessity. Applications for certificates shall be made in writing, on

paper or electronically, to the commission and shall comply with the requirements prescribed in the commission's rules. The application shall include the type of service to be performed, the geographical scope of the operation, the type of equipment to be employed in the service, the name of competing utilities for the proposed service, a statement of its financial ability to render the proposed service, a current financial statement of the applicant, and the rates or charges proposed to be charged including the rules governing the proposed service.

(b) If the applicant for a certificate of public convenience and necessity has any known consumers or patrons at the time of the filing of the application, the applicant shall notify these consumers or patrons of the rates and charges proposed to be established by the application; provided that:

(1) The notice shall be mailed to the last known address of the consumer or patron on file with the applicant or the applicant's affiliates; and

(2) The manner and the fact of the notification shall be reported to the commission, within seven days from the filing of the application.

(c) A certificate shall be issued to any qualified applicant, authorizing the whole or any part of the operations covered by the application, if it is found that the applicant is fit, willing, and able properly to perform the service proposed and to conform to the terms, conditions, and rules adopted by the commission, and that the proposed service is, or will be, required by the present or future public convenience and necessity; otherwise the application shall be denied. Any certificate issued shall specify the service to be rendered and there shall be attached to the exercise of the privileges granted by the certificate at the time of issuance and from time to time thereafter, such reasonable conditions and limitations as a public convenience and necessity may require. The reasonableness of the rates, charges, and tariff rules proposed by the applicant shall be determined by the commission during the same proceeding examining the present and future conveniences and needs of the public and qualifications of the applicant, in accordance with the standards set forth in section 269■16.

(d) No public utility that holds a franchise or charter enacted or granted by the legislative or executive authority of the State or its predecessor governments, or that has a bona fide operation as a public utility heretofore recognized by the commission, shall be required to obtain a certificate of public convenience and necessity under this section.

(e) Any certificate, upon application of the holder and at the discretion of the public utilities commission, may be amended, suspended, or revoked, in whole or in part. The commission after notice and hearing may suspend, amend, or revoke any certificate in part or in whole, if the holder is found to be in wilful violation of any of the provisions of this chapter or with any lawful order or rule of the commission adopted thereunder, or with any term, condition, or limitation of the certificate.

269-8

269-8 Public utilities to furnish information. Every public utility or other person subject to investigation by the commission, shall at all times, upon request, furnish to the public utilities commission all information that it may require respecting any of the matters concerning which it is given power to investigate, and shall permit the examination of its books, records, contracts, maps, and other documents by the commission, or any of its members, or any person authorized by it in writing to make such examination, and shall furnish the commission with a complete inventory of its property in such form as the commission may direct.

269-8.2 Location of records

269-8.2 Location of records. A public utility shall keep and maintain within the State such records, books, papers, accounts, and other documents as the public utilities commission may determine are necessary to its effective regulation.

269-8.5 Annual financial reports

269-8.5 Annual financial reports. All annual financial reports required to be filed with the commission by public utilities shall include a certification that such report conforms with the applicable uniform system of accounts adopted by the commission.

269-9 Report accidents

269-9 Report accidents. Every public utility shall report to the public utilities commission all accidents caused by or occurring in connection with its operations and service, and the commission shall investigate the causes of any accident which results in loss of life, and may investigate any other accidents which in its opinion require investigation.

269-10

269-10 Commission may compel attendance of witnesses, etc. In all investigations made by the public utilities commission, and in all proceedings before it, the commission and each commissioner shall have the same powers respecting administering oaths, compelling the attendance of witnesses and the production of documentary evidence, examining witnesses, and punishing for contempt, as are possessed by circuit courts. In case of disobedience by any person to any order of the commission or of any commissioner, or any subpoena issued by it or the commissioner, or of the refusal of any witness to testify to any matter regarding which the witness may be questioned lawfully, any circuit court, on application by the commission or a commissioner, shall compel obedience as in case of disobedience of the requirements of a subpoena issued from a circuit court or a refusal to testify therein. No person shall be excused from testifying or from producing any book, waybill, document, paper, or account in any investigation or inquiry by a hearing before the commission or any commissioner, when ordered to do so, upon the ground that the testimony or evidence, book, waybill, document, paper, or account required of the person may tend to incriminate the person or subject the person to penalty or forfeiture; but no person shall be prosecuted for any crime, punished for any crime, or subjected to any criminal penalty or criminal forfeiture for or on account of any act, transaction, matter, or thing concerning which the person shall under oath have testified or produced documentary evidence. Nothing herein shall be construed as in any manner giving to any public utility or any person immunity of any kind. The fees and traveling expenses of witnesses shall be the same as allowed witnesses in the circuit courts and shall be paid by the State out of any appropriation available for the expenses of the commission. All meetings and hearings of the commission shall be public.

269-11 REPEALED

269-11 REPEALED. L 1983, c 98, §3. Previous Vol05_Ch0261-0319 Next

269-12 Notices

269-12 Notices.

(a) Whenever an investigation is undertaken by the public utilities commission, reasonable notice in writing of such fact and of the subject or subjects to be investigated shall be given to the public utility or the person concerned, and when based upon complaints made to it as prescribed in section 269-7, a copy of the complaint, and a notice in writing of the date and place fixed by the commission for beginning the investigation, shall be served upon the public utility or the person concerned, or other respondent and the complainant not less than two weeks before the date designated for the hearing.

(b) Any notice provided pursuant to section 269-16(b), shall plainly state the rate, fare, charge, classification, schedule, rule, or practice proposed to be established, abandoned, modified, or departed from and the proposed effective date thereof and shall be given by filing the notice with the commission and keeping it open for public inspection.

(c) Any public hearing held pursuant to section 269-16(b), shall be a noticed public hearing or hearings on the island or islands on which the utility provides utility services. Notice of the hearing, with the purpose thereof and the date, time, and place at which it will open, shall be given not less than once in each of three weeks in the county or counties in which the utility provides utility service, the first notice being not less than twenty-one days before the public hearing and the last notice being not more than two days before the scheduled hearing. The applicant or applicants shall notify their consumers or patrons of the proposed change in rates and of the time and place of the public hearing not less than one week before the date set, the manner and the fact of notification to be reported to the commission before the date of hearing.

269-13 Right to be represented by counsel

269-13 Right to be represented by counsel. At any investigation by or proceeding before the public utilities commission the public utility or the person concerned, or other respondent or party and any complainant or permitted intervenor shall have the right to be present and represented by counsel, to present any evidence desired, and to cross-examine any witness who may be called.

269-14 REPEALED

269-14 REPEALED. L 1983, c 219, §2. Previous Vol05_Ch0261-0319 Next

269-14.5 HRS

269-14.5 Appointment of receiver for public utilities.

(a) Whenever the commission finds that a regulated water utility, regulated investor-owned electric utility, or regulated sewer utility is failing, or that there is an imminent threat of the utility failing, to provide adequate and reasonable service to its customers, and that the failure is a serious and imminent threat to health, safety, and welfare, the commission may appoint a receiver to take any temporary action necessary to assure continued service or to bring the service up to appropriate regulatory standards. The commission may also appoint a receiver to take any temporary action necessary to assure continued service if, after notice and hearing, the commission finds that any water, electric, or sewer utility regulated under this chapter consistently fails to provide adequate and reasonable service. In carrying out its responsibilities, the receiver and any additional outside legal counsel, consultants, or staff the commission or receiver may deem necessary under the circumstances, shall have the authority to gain access to all of the utility company assets and records and to manage those assets in a manner that will restore or maintain an acceptable level of service to customers. The receiver shall be authorized to expend existing utility company revenues for labor and materials and to commit additional resources as are essential to providing an acceptable level of service. The appointed receiver shall recognize and maintain the terms and conditions of any existing collective bargaining agreement at the time of and throughout receivership and shall not induce or cause a reduction in force, or terminate a covered employee, other than for a cause consistent with any collective bargaining agreement. Any expenditures shall be funded in accordance with generally accepted ratemaking practices. Any costs incurred by the commission, its staff, or the appointed receiver under this section shall be the responsibility of the utility in receivership or its ratepayers. Control of and responsibility for the utility shall remain with the receiver until the utility can be returned to the original owners, transferred to new owners, or liquidated as the commission determines to be in the public interest.

(b) If the commission determines that the utility's action or inaction that caused it to be placed under the control and responsibility of a receiver under this section was due to intentional misappropriation or wrongful diversion of the assets or income of the utility or to other wilful misconduct by any director, officer, or manager of the utility, it may require such director, officer, or manager to make restitution to the utility.

269-15

269-15 Commission may institute proceedings to enforce chapter.

(a) If the public utilities commission is of the opinion that any public utility or any person is violating or neglecting to comply with any provision of this chapter or of any rule, order, or other requirement of the commission, or of any provisions of its franchise, charter, or articles of association, if any, or that changes, additions, extensions, or repairs are desirable in its plant or service to meet the reasonable convenience or necessity of the public, or to insure greater safety or security, or that any rates, fares, classifications, charges, or rules are unreasonable or unreasonably discriminatory, or that in any way it is doing what it ought not to do, or not doing what it ought to do, it shall in writing, on paper or electronically, inform the public utility or the person and may institute proceedings before it, as may be necessary to require the public utility or the person to correct the deficiency. The commission may, by order, direct the consumer advocate to appear in the proceeding to carry out the purposes of this section. The commission may examine into any of the matters referred to in section 269-7, notwithstanding that the same may be within the jurisdiction of any court or other body; provided that this section shall not be construed as in any manner limiting or otherwise affecting the jurisdiction of the court or other body.

(b) In addition to any other remedy available, the commission or its enforcement officer may issue citations to any person acting in the capacity of or engaging in the business of a public utility within the State, without having a certificate of public convenience and necessity or other authority previously obtained under and in compliance with this chapter or the rules adopted thereunder.

(1) The citation may contain an order of abatement and an assessment of civil penalties as provided in section 269-28(c). All penalties collected under this subsection shall be deposited in the treasury of the State. Service of a citation issued under this subsection shall be made by personal service whenever possible, or by certified mail, restricted delivery, sent to the last known business or residence address of the person cited.

(2) Any person served with a citation under this subsection may submit a written request, on paper or electronically, to the commission for a hearing within twenty days from the receipt of the citation, with respect to the violations alleged, the scope of the order of abatement, and the amount of civil penalties assessed. If the person cited under this subsection timely notifies the commission of the request for a hearing, the commission shall afford an opportunity for a hearing under chapter 91. The hearing shall be conducted by the commission, or the commission may designate a hearings officer to hold the hearing.

(3) If the person cited under this subsection does not submit a written request, on paper or electronically, to the commission for a hearing within twenty days from the receipt of the citation, the citation shall be deemed a final order of the commission. The commission may apply to the appropriate court for a judgment to enforce the provisions of any final order, issued by the commission or designated hearings officer pursuant to this subsection, including the provisions for abatement and civil penalties imposed. In any proceeding to enforce the provisions of the final order of the commission or designated hearings officer, the commission need only show that the notice was given, a hearing was held, or the time granted for requesting the hearing has run without such a request, and a certified copy of the final order of the commission or designated hearings officer.

(4) If any party is aggrieved by the decision of the commission or the designated hearings officer, the party may appeal to the intermediate appellate court, subject to chapter 602, in the manner provided for civil appeals from the circuit court; provided that the operation of an abatement order shall not be stayed on appeal unless specifically ordered by a court of competent jurisdiction after applying the stay criteria enumerated in section 91-14(c). The sanctions and disposition authorized under this subsection shall be separate and in addition to all other remedies either civil or criminal provided in any other applicable statutory provision. The commission may adopt rules under chapter 91 as may be necessary to fully effectuate this subsection.

269-15.5 Appeals

269-15.5 Appeals. Except as otherwise provided in this chapter, an appeal from an order of the public utilities commission under this chapter shall lie, subject to chapter 602, in the manner provided for civil appeals from the circuit courts. Only a person aggrieved in a contested case proceeding provided for in this chapter may appeal from the order, if the order is final, or if preliminary, is of the nature defined by section 91-14(a). The commission may elect to be a party to all matters from which an order of the commission is appealed, and the commission may file appropriate responsive briefs or pleadings in the appeal; provided that where there was no adverse party in the case below, or in cases where there is no adverse party to the appeal, the commission shall be a party to all matters in which an order of the commission is appealed and shall file the appropriate responsive briefs or pleadings in defending all such orders. The appearance of the commission as a party in appellate proceedings in no way limits the participation of persons otherwise qualified to be parties on appeal. The appeal shall not of itself stay the operation of the order appealed from, but the appellate court may stay the order after a hearing upon a motion therefor and may impose conditions it deems proper, including but not limited to requiring a bond, requiring that accounts be kept, or requiring that other measures be taken as ordered to secure restitution of the excess charges, if any, made during the pendency of the appeal, in case the order appealed from is sustained, reversed, or modified in whole or in part.

269-15.6 Alternative dispute resolution

269-15.6 Alternative dispute resolution. The commission may require the parties in any matter before the commission to participate in nonbinding arbitration, mediation, or other alternative dispute resolution process prior to the hearing.

269-16 Regulation of utility rates; ratemaking procedures

269-16 Regulation of utility rates; ratemaking procedures.

(a) All rates, fares, charges, classifications, schedules, rules, and practices made, charged, or observed by any public utility or by two or more public utilities jointly shall be just and reasonable and shall be filed with the public utilities commission. The rates, fares, classifications, charges, and rules of every public utility shall be published by the public utility in such manner as the public utilities commission may require, and copies shall be furnished to any person on request. To the extent the contested case proceedings referred to in chapter 91 are required in any rate proceeding to ensure fairness and to provide due process to parties that may be affected by rates approved by the commission, the evidentiary hearings shall be conducted expeditiously and shall be conducted as a part of the ratemaking proceeding.

(b) No rate, fare, charge, classification, schedule, rule, or practice, other than one established pursuant to an automatic rate adjustment clause previously approved by the commission, shall be established, abandoned, modified, or departed from by any public utility, except after thirty days' notice to the commission as prescribed in section 269-12(b), and prior approval by the commission for any increases in rates, fares, or charges. The commission, in its discretion and for good cause shown, may allow any rate, fare, charge, classification, schedule, rule, or practice to be established, abandoned, modified, or departed from upon notice less than that provided for in section 269-12(b). A contested case hearing shall be held in connection with any increase in rates, and the hearing shall be preceded by a public hearing as prescribed in section 269-12(c), at which the consumers or patrons of the public utility may present testimony to the commission

concerning the increase. The commission, upon notice to the public utility, may:

(1) Suspend the operation of all or any part of the proposed rate, fare, charge, classification, schedule, rule, or practice or any proposed abandonment or modification thereof or departure therefrom;

(2) After a hearing, by order: (A) Regulate, fix, and change all such rates, fares, charges, classifications, schedules, rules, and practices so that the same shall be just and reasonable; (B) Prohibit rebates and unreasonable discrimination between localities or between users or consumers under substantially similar conditions; (C) Regulate the manner in which the property of every public utility is operated with reference to the safety and accommodation of the public; (D) Prescribe its form and method of keeping accounts, books, and records, and its accounting system; (E) Regulate the return upon its public utility property; (F) Regulate the incurring of indebtedness relating to its public utility business; and (G) Regulate its financial transactions; and

(3) Do all things that are necessary and in the exercise of the commission's power and jurisdiction, all of which as so ordered, regulated, fixed, and changed are just and reasonable, and provide a fair return on the property of the utility used and useful for public utility purposes.

(c) The commission may in its discretion, after public hearing and upon showing by a public utility of probable entitlement and financial need, authorize temporary increases in rates, fares, and charges; provided that the commission shall require by order the public utility to return, in the form of an adjustment to rates, fares, or charges to be billed in the future, any amounts with interest, at a rate equal to the rate of return on the public utility's rate base found to be reasonable by the commission, received by reason of continued operation that are in excess of the rates, fares, or charges finally determined to be just and reasonable by the commission. Interest on any excess shall commence as of the date that any rate, fare, or charge goes into effect that results in the excess and shall continue to accrue on the balance of the excess until returned.

(d) The commission shall make every effort to complete its deliberations and issue its decision as expeditiously as possible and before nine months from the date the public utility filed its completed application; provided that in carrying out this mandate, the commission shall require all parties to a proceeding to comply strictly with procedural time schedules that it establishes. If a decision is rendered after the nine-month period, the commission shall report in writing, on paper or electronically, the reasons therefor to the legislature within thirty days after rendering the decision. Notwithstanding subsection (c), if the commission has not issued its final decision on a public utility's rate application within the nine-month period stated in this section, the commission, within one month after the expiration of the nine-month period, shall render an interim decision allowing the increase in rates, fares and charges, if any, to which the commission, based on the evidentiary record before it, believes the public utility is probably entitled. The commission may postpone its interim rate decision for thirty days if the commission considers the evidentiary hearings incomplete. In the event interim rates are made effective, the commission shall require by order the public utility to return, in the form of an adjustment to rates, fares, or charges to be billed in the future, any amounts with interest, at a rate equal to the rate of return on the public utility's rate base found to be reasonable by the commission, received under the interim rates that are in excess of the rates, fares, or charges finally determined to be just and reasonable by the commission. Interest on any excess shall commence as of the date that any rate, fare, or charge goes into effect that results in the excess and shall continue to accrue on the balance of the excess until returned. The nine-month period in this subsection shall begin only after a completed application has been filed with the commission and a paper or an electronic copy served on the consumer advocate. The commission shall establish standards concerning the data required to be set forth in the application in order for it to be deemed a completed application. The consumer advocate may, within twenty-one days after receipt, object to the sufficiency of any application, and the commission shall hear and determine any objection within twenty-one days after it is filed. If the commission finds that the objections are without merit, the application shall be deemed to have been completed upon original filing. If the commission finds the application to be incomplete, it shall require the applicant to submit an amended application consistent with its findings, and the nine-month period shall not commence until the amended application is filed.

(e) In any case of two or more organizations, trades, or businesses (whether or not incorporated, whether or not organized in the State of Hawaii, and whether or not affiliated) owned or controlled directly or indirectly by the same interests, the commission may distribute, apportion, or allocate gross income, deductions, credits, or allowances between or among the organizations, trades, or businesses, if it determines that the distribution, apportionment, or allocation is necessary to adequately reflect the income of any such organizations, trades, or businesses to carry out the regulatory duties imposed by this section.

(f) Notwithstanding any law to the contrary, for public utilities having annual gross revenues of less than $2,000,000, the commission may make and amend its rules and procedures to provide the commission with sufficient facts necessary to determine the reasonableness of the proposed rates without unduly burdening the utility company and its customers. In the determination of the reasonableness of the proposed rates, the commission shall:

(1) Require the filing of a standard form application to be developed by the commission. The standard form application for general rate increases shall describe the specific facts that shall be submitted to support a determination of the reasonableness of the proposed rates, and require the submission of financial information in conformance with a standard chart of accounts to be approved by the commission, and other commission guidelines to allow expeditious review of a requested general rate increase application;

(2) Hold a public hearing as prescribed in section 269-12(c), at which the consumers or patrons of the public utility may present testimony to the commission concerning the increase. The public hearing shall be preceded by proper notice, as prescribed in section 269-12; and

(3) Make every effort to complete its deliberations and issue a proposed decision and order within six months from the date the public utility files a completed application with the commission; provided that all parties to the proceeding strictly comply with the procedural schedule established by the commission and no person is permitted to intervene. If a proposed decision and order is rendered after the six-month period, the commission shall report in writing, on paper or electronically, the reasons therefor to the legislature within thirty days after rendering the proposed decision and order. Prior to the issuance of the commission's proposed decision and order, the parties shall not be entitled to a contested case hearing. If all parties to the proceeding accept the proposed decision and order, the parties shall not be entitled to a contested case hearing, and section 269-15.5 shall not apply. If the commission permits a person to intervene, the six-month period shall not apply and the commission shall make every effort to complete its deliberations and issue its decision within the nine-month period from the date the public utility's completed application was filed, pursuant to subsections (b), (c), and (d). If a party does not accept the proposed decision and order, either in whole or in part, that party shall give notice of its objection or nonacceptance within the timeframe prescribed by the commission in the proposed decision and order, setting forth the basis for its objection or nonacceptance; provided that the proposed decision and order shall have no force or effect pending the commission's final decision. If notice is filed, the above six-month period shall not apply and the commission shall make every effort to complete its deliberations and issue its decision within the nine-month period from the date the public utility's completed application was filed as set forth in subsection (d). Any party that does not accept the proposed decision and order under this paragraph shall be entitled to a contested case hearing; provided that the parties to the proceeding may waive the contested case hearing. Public utilities subject to this subsection shall follow the standard chart of accounts to be approved by the commission for financial reporting purposes. The public utilities shall file a certified copy of the annual financial statements in addition to an updated chart of accounts used to maintain their financial records with the commission and consumer advocate within ninety days from the end of each calendar or fiscal year, as applicable, unless this timeframe is extended by the commission. The owner, officer, general partner, or authorized agent of the utility shall certify that the reports were prepared in accordance with the standard chart of accounts.

(g) Any automatic fuel rate adjustment clause requested by a public utility in an application filed with the commission shall be designed, as determined in the commission's discretion, to:

(1) Fairly share the risk of fuel cost changes between the public utility and its customers;

(2) Provide the public utility with sufficient incentive to reasonably manage or lower its fuel costs and encourage greater use of renewable energy;

(3) Allow the public utility to mitigate the risk of sudden or frequent fuel cost changes that cannot otherwise reasonably be mitigated through other commercially available means, such as through fuel hedging contracts;

(4) Preserve, to the extent reasonably possible, the public utility's financial integrity; and

(5) Minimize, to the extent reasonably possible, the public utility's need to apply for frequent applications for general rate increases to account for the changes to its fuel costs.

269-16.1 HRS

269-16.1 Performance incentive and penalty mechanisms.

(a) On or before January 1, 2020, the public utilities commission shall establish performance incentives and penalty mechanisms that directly tie an electric [utility's] revenues to that utility's achievement on performance metrics and break the direct link between allowed revenues and investment levels. The performance incentives and penalty mechanisms, as may be amended by the public utilities commission from time to time, shall apply to the regulation of electric utility rates under section 269-16.

(b) In developing performance incentive and penalty mechanisms, the public utilities commission's review of electric utility performance shall consider, but not be limited to, the following:

(1) The economic incentives and cost-recovery mechanisms described in section 269-6(e);

(2) Volatility and affordability of electric rates and customer electric bills;

(3) Electric service reliability;

(4) Customer engagement and satisfaction, including customer options for managing electricity costs;

(5) Access to utility system information, including but not limited to public access to electric system planning data and aggregated customer energy use data and individual access to granular information about an individual customer's own energy use data;

(6) Rapid integration of renewable energy sources, including quality interconnection of customer-sited resources; and

(7) Timely execution of competitive procurement, third-party interconnection, and other business processes.

(c) This section shall not apply to a member-owned cooperative electric utility.

269-16.2

269-16.2 Approval of rules of a public utility. Any rules, guidelines, or other standards of a public utility which interpret federal or state laws governing nonutility generators, or which make a nonutility generator monetarily responsible for the public utility's costs and profits of doing business as a public utility, shall be approved by the public utilities commission before adoption. As used in this section, a "nonutility generator" means a person that produces electric power but is not a public utility.

269-16.3

269-16.3 Statewide rate increase surcharge assessment on ratepayers in emergency situations.

(a) Any utility that sustains damage to its facilities as a result of a state of emergency or local state of emergency, including emergencies as defined in chapter 127A, and incurs costs related to the restoration and repair of its facilities which, if assessed only on the utility ratepayers of the affected utility service territory, may result in a rate increase of more than fifteen per cent for the average ratepayer in that utility service territory, may apply to the public utilities commission in accordance with this section to recover the costs provided herein through a monthly surcharge which shall be assessed on a statewide basis and shall be based on the utility's net restoration and repair costs; provided that the surcharge shall not result in an assessment of more than fifteen per cent for the average ratepayer in each of the other utility service territories and provided further that the public utilities commission shall exclude ratepayers in utility service territories with rates that may be substantially higher than other utility service territories in the State. The public utilities commission shall have the authority to initially set, or subsequently revise, the surcharge to reflect the actual net restoration and repair costs incurred after deduction of amounts received from outside sources of recovery. Such outside sources of recovery shall include, but not be limited to, insurance proceeds, government grants, and shareholder contributions.

(b) Any utility meeting the criteria set forth in subsection (a) may file an application with the public utilities commission setting forth its estimated restoration and repair costs as well as the estimated amount or amounts that may be received from outside sources of recovery.

(c) Within ninety days after filing of the utility's application, the public utilities commission, upon notice, hearing, and a determination that the application is just, reasonable, and in the public interest, shall:

(1) Decide the extent to which it is just, reasonable, and in the public interest for the damaged utility's ratepayers or shareholders, or both, to bear part or all of the repair and restoration costs;

(2) Determine whether the estimated amount of any net restoration and repair costs to be borne by the ratepayers of the damaged utility would result in a rate increase of more than fifteen per cent for the average residential ratepayer in that utility's service territory;

(3) Issue an order allowing the affected utility or another utility acting on behalf of the affected utility to implement a monthly surcharge on all ratepayers statewide for the type of service rendered by the affected utility if the public utilities commission determines pursuant to paragraph (2) that a rate increase of more than fifteen per cent would otherwise be assessed;

(4) Exclude from any such order ratepayers in utility service territories with rates that are substantially higher than other utility service territories in the State; and

(5) Periodically review the order to ensure that the amounts collected by, or on behalf of, the utility shall not exceed the amount determined by the public utilities commission to be the net restoration and repair costs actually incurred. The surcharge shall be assessed over a period to be determined by the public utilities commission; provided, however, that the period shall not exceed ten years.

(d) Any outside sources of recovery, including but not limited to grants from federal or state sources, shall be used to offset any repair and restoration costs except where the use of such funds is otherwise limited by the grantor thereof.

(e) For the purposes of this section, the term "restoration and repair costs" means those costs necessary to restore facilities damaged by a state-declared emergency to a functional level substantially the same as that existing immediately before the emergency and does not include the costs of upgrades or enhancements.

(f) Any utility authorized by the public utilities commission to assess a surcharge pursuant to this section shall state separately the amount of the assessment on each affected ratepayer's monthly bill.

269-16.4 Bill

269-16.4 Annual fuel mix disclosure.

(a) Beginning June 1, 2004, and every June 1 thereafter, each retail supplier of electricity shall disclose fuel mix information by generation category to its existing and new retail electricity customers for the prior calendar year.

(b) Beginning June 1, 2004, and every June 1 thereafter, each retail supplier of electricity shall state the average retail price of electricity (per kilowatt-hour) for each rate class of service for the prior calendar year. The average retail price of electricity for each rate class of service shall be determined by dividing the total electric revenues for each rate class of service by the total kilowatt-hours sold to each respective rate class.

(c) The disclosure required by this section shall be:

(1) Printed either on the customer's bill or as a bill insert; provided that this disclosure requirement shall not result in increased costs to ratepayers; and

(2) Posted and updated on the supplier's internet website, if any.

(d) As used in this section, the term "fuel mix" means the electricity sold to retail electricity customers expressed in terms of percentage contribution by generation category. The total fuel mix included in each disclosure shall total one hundred per cent.

269-16.5 Lifeline telephone rates

269-16.5 Lifeline telephone rates.

(a) The public utilities commission shall implement a program to achieve lifeline telephone rates for residential telephone users.

(b) "Lifeline telephone rate" means a discounted rate for residential telephone users identified as elders with limited income and the handicapped with limited income as designated by the commission.

(c) The commission shall require every telephone public utility providing local telephone service to file a schedule of rates and charges providing a rate for lifeline telephone subscribers.

(d) Nothing in this section shall preclude the commission from changing any rate established pursuant to subsection (a) either specifically or pursuant to any general restructuring of all telephone rates, charges, and classifications.

269-16.6

269-16.6 Telecommunications relay services for the deaf, persons with hearing disabilities, and persons with speech disabilities.

(a) The public utilities commission shall implement intrastate telecommunications relay services for the deaf, persons with hearing disabilities, and persons with speech disabilities.

(b) The commission shall investigate the availability of experienced providers of quality telecommunications relay services for the deaf, persons with hearing disabilities, and persons with speech disabilities. The provision of these telecommunications relay services to be rendered on or after July 1, 1992, shall be awarded by the commission to the provider or providers the commission determines to be best qualified to provide these services. In reviewing the qualifications of the provider or providers, the commission shall consider the factors of cost, quality of services, and experience, and such other factors as the commission deems appropriate.

(c) If the commission determines that the telecommunications relay service can be provided in a cost-effective manner by a service provider or service providers, the commission may require every intrastate telecommunications carrier to contract with such provider or providers for the provision of the telecommunications relay service under the terms established by the commission.

(d) The commission may establish a surcharge to collect customer contributions for telecommunications relay services required under this section.

(e) The commission may adopt rules to establish a mechanism to recover the costs of administering and providing telecommunications relay services required under this section.

(f) The commission shall require every intrastate telecommunications carrier to file a schedule of rates and charges and every provider of telecommunications relay service to maintain a separate accounting for the costs of providing telecommunications relay services for the deaf, persons with hearing disabilities, and persons with speech disabilities.

(g) Nothing in this section shall preclude the commission from changing any rate established pursuant to this section either specifically or pursuant to any general restructuring of all telephone rates, charges, and classifications.

(h) As used in this section: "Telecommunications relay services" means telephone transmission services that provide an individual who has a hearing or speech disability the ability to engage in communication by wire or radio with a hearing individual in a manner that is functionally equivalent to the ability of an individual who does not have a hearing or speech disability to communicate using wire or radio voice communication services. "Telecommunications relay services" includes services that enable two-way communication using text telephones or other nonvoice terminal devices, speech-to-speech services, video relay services, and non-English relay services.

269-16.7 REPEALED

269-16.7 REPEALED. L 2003, c 50, §3. Previous Vol05_Ch0261-0319 Next

269-16.8

269-16.8 Aggregators of telephone service requirements.

(a) For the purposes of this section: "Aggregator" means every person or entity that is not a telecommunications carrier, who, in the ordinary course of its business, makes telephones available and aggregates the calls of the public or transient users of its business, including but not limited to a hotel, motel, hospital, or university, that provides operator-assisted services through access to an operator service provider. "Operator service" means a service provided by a telecommunications company to assist a customer to complete a telephone call.

(b) The commission, by rule or order, shall adopt and enforce operating requirements for the provision of operator-assisted services by an aggregator. These requirements shall include, but not be limited to, the following:

(1) Posting and display of information in a prominent and conspicuous fashion on or near the telephone equipment owned or controlled by the aggregator which states the identity of the operator service provider, the operator service provider's complaint handling procedures, and means by which the customer may access the various operator service providers.

(2) Identification by name of the operator service provider prior to the call connection and, if not posted pursuant to subsection (b)(1), a disclosure of pertinent rates, terms, conditions, and means of access to various operator service providers and the local exchange carriers; provided that the operator service provider shall disclose this information at any time upon request by the customer.

(3) Allowing the customer access to any operator service provider operating in the relevant geographic area through the access method chosen by the provider or as deemed appropriate by the commission.

(4) Other requirements as deemed reasonable by the commission in the areas of public safety, quality of service, unjust or discriminatory pricing, or other matters in the public interest.

269-16.9

269-16.9 Telecommunications providers and services.

(a) Notwithstanding any provision of this chapter to the contrary, the commission, upon its own motion or upon the application of any person, and upon notice and hearing, may exempt a telecommunications provider or a telecommunications service from any or all of the provisions of this chapter, except the provisions of section 269-34, upon a determination that the exemption is in the public interest. In determining whether an exemption is in the public interest, the commission shall consider whether the exemption promotes state policies in telecommunications, the development, maintenance, and operation of effective and economically efficient telecommunications services, and the furnishing of telecommunications services at just and reasonable rates and in a fair manner in view of the needs of the various customer segments of the telecommunications industry. Among the specific factors the commission may consider are:

(1) The responsiveness of the exemption to changes in the structure and technology of the State's telecommunications industry;

(2) The benefits accruing to the customers and users of the exempt telecommunications provider or service;

(3) The impact of the exemption on the quality, efficiency, and availability of telecommunications services;

(4) The impact of the exemption on the maintenance of fair, just, and reasonable rates for telecommunications services;

(5) The likelihood of prejudice or disadvantage to ratepayers of basic local exchange service resulting from the exemption;

(6) The effect of the exemption on the preservation and promotion of affordable, universal, basic telecommunications services as those services are determined by the commission;

(7) The resulting subsidization, if any, of the exempt telecommunications service or provider by nonexempt services;

(8) The impact of the exemption on the availability of diversity in the supply of telecommunications services throughout the State;

(9) The improvements in the regulatory system to be gained from the exemption, including the reduction in regulatory delays and costs;

(10) The impact of the exemption on promoting innovations in telecommunications services;

(11) The opportunity provided by the exemption for telecommunications providers to respond to competition; and

(12) The potential for the exercise of substantial market power by the exempt provider or by a provider of the exempt telecommunications service.

(b) The commission shall expedite, where practicable, the regulatory process with respect to exemptions and shall adopt guidelines under which each provider of an exempted service shall be subject to similar terms and conditions.

(c) The commission may condition or limit any exemption as the commission deems necessary in the public interest. The commission may provide a trial period for any exemption and may terminate the exemption or continue it for such period and under such conditions and limitations as it deems appropriate.

(d) The commission may require a telecommunications provider to apply for a certificate of public convenience and necessity pursuant to section 269-7.5; provided that the commission may waive any application requirement whenever it deems the waiver to be in furtherance of the purposes of this section. The exemptions under this section may be granted in a proceeding for certification or in a separate proceeding.

(e) The commission may waive other regulatory requirements under this chapter applicable to telecommunications providers when it determines that competition will serve the same purpose as public interest regulation.

(f) If any provider of an exempt telecommunications service or any exempt telecommunications provider elects to terminate its service, it shall provide notice of this to its customers, the commission, and every telephone public utility providing basic local exchange service in this State. The notice shall be in writing and given not less than six months before the intended termination date. Upon termination of service by a provider of an exempt service or by an exempt provider, the appropriate telephone public utility providing basic local exchange service shall ensure that all customers affected by the termination receive basic local exchange service. The commission shall, upon notice and hearing or by

rule, determine the party or parties who shall bear the cost, if any, of access to the basic local exchange service by the customers of the terminated exempt service.

(g) Upon the petition of any person or upon its own motion, the commission may rescind any exemption or waiver granted under this section if, after notice and hearing, it finds that the conditions prompting the granting of the exemption or waiver no longer apply, or that the exemption or waiver is no longer in the public interest, or that the telecommunications provider has failed to comply with one or more of the conditions of the exemption or applicable statutory or regulatory requirements.

(h) For purposes of this section, the commission, upon determination that any area of the State has less than adequate telecommunications service, shall require the existing telecommunications provider to show cause as to why the commission should not authorize an alternative telecommunications provider for that area under the terms and conditions of this section.

269-17 Issuance of securities

269-17 Issuance of securities. A public utility corporation may, on securing the prior approval of the public utilities commission, and not otherwise, except as provided in section 269G-4, issue stocks and stock certificates, bonds, notes, and other evidences of indebtedness, payable at periods of more than twelve months after the date thereof, for the following purposes and no other, namely: for the acquisition of property or for the construction, completion, extension, or improvement of or addition to its facilities or service, or for the discharge or lawful refunding of its obligations or for the reimbursement of moneys actually expended from income or from any other moneys in its treasury not secured by or obtained from the issue of its stocks or stock certificates, or bonds, notes, or other evidences of indebtedness, for any of the purposes stated in this section except maintenance of service, replacements, and substitutions not constituting capital expenditure in cases where the corporation has kept its accounts for those expenditures in a manner that enables the commission to ascertain the amount of moneys so expended and the purposes for which the expenditures were made, and the sources of the funds in its treasury applied to the expenditures. As used in this section, "property" and "facilities" mean property and facilities used in all operations of a public utility corporation regardless of whether included in its public utility operations or rate base. A public utility corporation may not issue securities to acquire property or to construct, complete, extend or improve or add to its facilities or service if the commission determines that the proposed purpose will have a material adverse effect on its public utility operations. All stock and every stock certificate, and every bond, note, or other evidence of indebtedness of a public utility corporation not payable within twelve months, issued without an order of the commission authorizing the same, then in effect, shall be void.

269-18

269-18 Acquirement of stock of another public utility. No public utility corporation shall purchase or acquire, take or hold, any part of the capital stock of any other public utility corporation, organized or existing under or by virtue of the laws of the State, without having been first authorized to do so by the order of the public utilities commission. Every assignment, transfer, contract, or agreement for assignment or transfer of any stock by or through any person or corporation to any corporation or otherwise in violation of this section shall be void and of no effect; and no such transfer shall be made on the books of any public utility. Nothing herein shall be construed to make illegal the holding of stock lawfully acquired before July 1, 1933.

269-19

269-19 Merger and consolidation of public utilities.

(a) No public utility shall sell, lease, assign, mortgage, or otherwise dispose of or encumber the whole or any part of its road, line, plant, system, or other property necessary or useful in the performance of its duties to the public, or any franchise or permit, or any right thereunder, nor by any means, directly or indirectly, merge or consolidate with any other public utility without first having secured from the public utilities commission an order authorizing it so to do, unless:

(1) The sale, lease, assignment, mortgage, disposition, encumbrance, merger, or consolidation is done in accordance with subsection (b);

(2) The public utility is disposing a fully depreciated asset or property with a zero net book value; provided that the disposal: (A) Is made to an unaffiliated entity; and (B) Results in a zero or net reduction to the public utility's rate base; or

(3) The public utility is donating a fully depreciated asset or property with zero net book value to a charitable or nonprofit organization. Every sale, lease, assignment, mortgage, disposition, encumbrance, merger, or consolidation that requires

authorization from the public utilities commission under this subsection and is made other than in accordance with the order of the commission shall be void.

(b) A public utility, under circumstances that it deems exigent and in its judgment require a response that rapidly restores one of its customers to normal, or near normal, operating status in order to prevent serious disruption of essential public services, or avoid serious risk to public safety, or to mitigate severe economic losses to that customer, may transfer, assign, or otherwise dispose of its property without prior approval from the public utilities commission as required in subsection (a); provided that in so doing:

(1) The public utility does not unduly hinder or degrade the public utility's operation with respect to its services or other customers;

(2) The public utility is duly compensated for its property; and

(3) The public utility reports in detail to the public utilities commission within thirty days of any such action unless otherwise approved by the public utilities commission for good cause shown. For purposes of this subsection, "property" does not include real property.

269-19.5

269-19.5 Relations with an affiliated interest; definition; contracts with affiliates filed and subject to commission action.

(a) For purposes of this section "affiliated interests" with a public utility includes the following:

(1) Every person owning or holding, directly or indirectly, ten per cent or more of the voting securities of a public utility, and every person having ownership of ten per cent or more of voting securities of a person owning ten per cent or more of the voting securities of a public utility;

(2) Every corporation ten per cent or more of whose voting securities is owned by any person owning ten per cent or more of the voting securities of a public utility;

(3) Every person who is an officer or director of a public utility;

(4) Every corporation operating a public utility, or providing engineering, accounting, legal, or similar service to public utilities or common carriers by water, which has three or more officers or three or more directors in common with a public utility, and every other corporation which has directors in common with a public utility where the number of common directors is more than one-third of the total number of the utility's directors.

(b) The purpose of this section is to encourage companies providing essential utility and regulated transport service to Hawaii consumers to obtain their services, supplies, and equipment by relying, to the extent practicable, on competitive procurement practices; provided that when companies obtain their services, supplies, and equipment from affiliated interests, the contracts and agreements between the regulated entity and its affiliates must be shown by clear and convincing evidence to be in furtherance of the interests of the public.

(c) No contract or agreement providing for the furnishing of management, supervisory, construction, engineering, accounting, legal, financial, or similar services, and no contract or agreement for the purchase, sale, lease, furnishing, or exchange of any real or personal property rights, including but not limited to real estate, improvements on land, equipment, leasehold interests, easements, rights-of-way, franchises, licenses, permits, trademarks, and copyrights, made or entered into after July 1, 1988, between a public utility and any affiliated interest shall be valid or effective unless and until the contract or agreement has been received by the commission. It shall be the duty of every public utility to file with the commission a verified paper or electronic copy of any contract or agreement with an affiliate having a face value of at least $300,000, or a verified summary of any unwritten contract or agreement having a face value of at least $300,000 within forty-five days of the effective date of the contract or agreement. Each and every contract or agreement between a public utility and an affiliate for capital expenditures, other than for real property or an interest therein, shall be accompanied with price quotations provided by at least two nonaffiliated suppliers, providers, or purveyors, or if the price quotations cannot be obtained without substantial expense to the utility, the public utility shall verify that fact by affidavit; provided that all contracts or agreements effective at the time of a general rate proceeding, which were discoverable and subject to review by the commission, shall be valid and not subject to subsequent regulatory review and action by the commission; provided further that notwithstanding any other provision to the contrary, there shall be no transfer of real property, or interest in real property, between a public utility and an affiliate without prior approval of the commission, after hearing, wherein the public utility must show that the transfer is in the best interest of the public utility and all of its customers. No affirmative action is required by the commission with regard to the filing of the contract or agreement;

provided that if the commission, in its discretion, determines that the terms and conditions of the contract or agreement to be unreasonable or otherwise contrary to the public interest, the commission shall notify the public utility of its determination, whereupon the public utility shall have the option to alter, revise, amend, or terminate the contract or agreement, or assume the risk that future payments for performance of the contract or agreement will be deemed unreasonable and excluded by the commission for ratemaking purposes.

(d) In any proceeding, whether upon the commission's own motion or upon application or complaint, involving the rates or practices of any public utility, the commission may exclude from the accounts of the public utility any payment or compensation to an affiliated interest for any services rendered or property or service furnished, as above described, under existing contracts or agreements with the affiliated interest unless the public utility shall establish by clear and convincing evidence the reasonableness of the payment or compensation.

(e) The commission shall have continuing supervisory control over the terms and conditions of the contracts and agreements above described so far as necessary to protect and promote the public interest. The commission shall have the same jurisdiction over modifications of or amendments to contracts or agreements as it has over original contracts or agreements. The fact that the public utility may have entered into contracts or agreements without submittal of documents to the commission shall not preclude disallowance or disapproval of payments made pursuant thereto, for ratemaking purposes, if upon actual experience under the contracts or agreements it appears that the payments provided for or made are or were unreasonable. Every contract or agreement shall be expressly conditioned upon the reserved power of the commission to take appropriate ratemaking actions if, and as necessary, subsequent to submittal of the contract or agreement in order to protect and promote the public interest.

(f) Whenever the commission shall discover that any public utility is giving effect to any contract or agreement without the contract or agreement having been received by the commission for review, as required by this section, the commission has authority to issue an order to the public utility to show cause why the public utility should not cease and desist from making any payments or otherwise giving any effect to the terms of the contract or agreement, and the public utility shall have the opportunity to show with clear and convincing evidence that the contract or agreement is in the best interest of the public utility and all of its customers.

(g) None of the provisions of this section shall apply to transactions with affiliated interests where the total consideration involved in a transaction is less than $300,000 for any calendar year provided that multiple payments under any contract or agreement shall be added together for purposes of construing this provision; and provided, further, that the provisions of this section shall apply to any contract or agreement structured specifically to avoid regulation hereunder.

(h) Transactions between affiliated Hawaii based utilities, and any transactions by public utilities providing basic exchange service to every county in the State, shall be exempt from the provisions of this section.

269-20

269-20 Certificates of public convenience and necessity for water carriers.

(a) No person which holds itself out to the general public to engage in the transportation by water of passengers or property or any class or classes thereof for compensation, between points in the State of Hawaii, shall operate unless there is in force with respect to such carrier a certificate of public convenience and necessity issued by the commission authorizing such transportation; provided that this section shall not apply to any carrier by water to the extent that the carrier is excluded from the definition of a public utility under section [269-1(2)(E) and (F)].

(b) Applications for certificates shall be made in writing under oath to the commission in such form as it requires.

(c) A certificate shall be issued to any qualified applicant therefor, authorizing the whole or any part of the operations covered by the application, if it is found that the applicant is fit, willing, and able properly to perform the service proposed and to conform to the provisions of this chapter and the requirements, rules and regulations of the commission thereunder, and that the proposed service, to the extent authorized by the certificate, is or will be required by the present or future public convenience and necessity; otherwise such application shall be denied. Any certificate issued shall specify the service to be rendered and the routes and ports which the water carrier is to serve and there shall be attached to the exercise of the privileges granted by the certificate, at the time of issuance and from time to time thereafter, such reasonable conditions and limitations as the public convenience and necessity may require.

(d) The commission may at any time suspend, change or revoke such certificate in the manner provided in section 271-19.

269-21 and 269-22 REPEALED

269-21 and 269-22 REPEALED. L 1969, c 55, §2. Previous Vol05_Ch0261-0319 Next

269-23

269-23 Liability of initial and delivering common carrier for loss; limitation of liability; notice and filing of claim. Any common carrier receiving property for transportation from a point in Hawaii to a point in Hawaii shall issue a receipt or bill of lading therefor, and shall be liable to the lawful holder thereof for any loss, damage, or injury to the property caused by it or by any common carrier or transportation company to which the property may be delivered or over whose line or lines the property may pass when transported on a through bill of lading, and no contract, receipt, rule, regulation, or other limitation of any character whatsoever shall exempt the common carrier from the liability imposed; and any such common carrier so receiving property for transportation or any common carrier or transportation company delivering the property so received and transported shall be liable to the lawful holder of the receipt or bill of lading or to any party entitled to recover thereon, whether the receipt or bill of lading has been issued or not, for the full actual loss, damage, or injury to such property caused by it or by any common carrier or transportation company to which the property may be delivered or over whose line or lines the property may pass when transported on a through bill of lading, notwithstanding any limitation of liability or limitation of the amount of recovery or representation or agreement as to value in any receipt or bill of lading, or in any contract, rule, regulation, or in any tariff filed with the public utilities commission; and any such limitation, without respect to the manner or form in which it is sought to be made is declared to be unlawful and void; provided that if the loss, damage, or injury occurs while the property is in the custody of a carrier by water the liability of the carrier shall be determined by the bill of lading of the carrier by water and by and under the laws and regulations applicable to transportation by water, and the liability of the initial or delivering carrier shall be the same as that of the carrier by water; provided that the provisions hereof respecting liability for full actual loss, damage, or injury, notwithstanding any limitation of liability or recovery or representation or agreement or release as to value, and declaring any such limitation to be unlawful and void, shall not apply, first, to baggage carried on passenger trains or boats, or trains or boats carrying passengers; second, to property, except ordinary livestock, received for transportation concerning which the carrier shall have been or shall be expressly authorized or required by order of the commission to establish and maintain rates dependent upon the value declared in writing by the shipper or agreed upon in writing as the released value of the property, in which case the declaration or agreement shall have no other effect than to limit liability and recovery to an amount not exceeding the value so declared or released, and any tariff schedule which may be filed with the commission pursuant to the order shall contain specific reference thereto and may establish rates varying with the value so declared and agreed upon; and the commission may make such order in cases where rates dependent upon and varying with declared or agreed values would, in its opinion, be just and reasonable under the circumstances and conditions surrounding the transportation; provided further that nothing in this section shall deprive any holder of the receipt or bill of lading of any remedy or right of action which the holder has under the existing law; provided further that it shall be unlawful for any such receiving or delivering common carrier to provide by rule, contract, regulation, or otherwise a shorter period for the filing of claims than four months, and for the institution of suits than two years, such period for institution of suits to be computed from the day when notice in writing is given by the carrier to the claimant that the carrier has disallowed the claim or any part or parts thereof specified in the notice; and provided further that the liability imposed by this section shall also apply in the case of property reconsigned or diverted in accordance with the applicable tariffs filed as provided by the commission.

269-24 REPEALED

269-24 REPEALED. L 1981, c 167, §2. Previous Vol05_Ch0261-0319 Next

269-25 Valuations

269-25 Valuations. The public utilities commission may either upon its own motion or upon application by any utility for any order where the commission deems it advisable and to the best interest of the public and the utility cause a valuation to be made to ascertain for any purpose specified in this chapter the value of the property of any public utility and every fact and element of value which in its judgment may or does have any bearing on such value. The commission may make revaluations and ascertain the value of all additions, betterments, extensions, and acquisitions of property of any public utility.

269-26

269-26 Investigation of water rates charged by lessee under state leases. The public utilities commission shall investigate charges made by all persons for water supplied to consumers for domestic uses and purposes, where the water supplied is secured by virtue of a lease from the State, requiring rates to be fixed by the licensee with the approval of the department of land and natural resources. If it appears upon investigation that the water supplied to consumers for domestic uses and purposes is by virtue of a lease requiring rates to be fixed by the licensee, with the approval of the department, then the public utilities commission shall report to the department the result of the investigation, and whether the rates charged to consumers are reasonable or not.

269-26.5 Bill

269-26.5 Preferential water rates for agricultural activities.

(a) It is the policy of the State to promote the long-term viability of agriculture by establishing mechanisms that provide for preferential rates for potable water for agricultural activities. The public utilities commission shall have the authority to establish preferential rates for potable water used for agricultural activities in a public utility's service area.

(b) Upon receipt of a bona fide request for preferential rates for potable water to be used for agricultural activities, and proof that the customer engages in agricultural activities, a public utility shall provide proposed preferential rates for potable water to be used only for qualified agricultural activities to the public utilities commission for approval. All such rates approved by the public utilities commission shall be subsidized by the potable water rates charged to other customers of the public utility if required as determined by the public utilities commission. In reviewing the proposed preferential rates, the public utilities commission, in consultation with the department of agriculture and biosecurity, may establish additional criteria to qualify bona fide agribusinesses for water used solely for agricultural activities. For rate cases initiated pursuant to this section, the public utilities commission shall allow the recovery of any reasonable unamortized costs incurred by the public utility in its previous rate case; provided however, upon full amortization of these costs, rates shall be adjusted accordingly.

269-26.6 HRS

269-26.6 Preferential water carrier service rates for agricultural activities. The public utilities commission may authorize preferential water carrier service rates by tariff for ratepayers that engage in agricultural activities. The application process for obtaining preferential water carrier service rates by tariff may be established by the public utilities commission.

269-27

269-27 Prevention of unreasonable water rates. In the event the public utilities commission, investigating as provided in section 269-26, reports that in its judgment the rates charged to consumers for water supplied to them for domestic uses and purposes, are not reasonable, the attorney general shall take appropriate action to secure for the consumers reasonable rates for such water, or, if the attorney general is so advised, proceed to cancel the licenses and leases of the persons charging the unreasonable rates.

269-27.1

269-27.1 Establishment of geothermal energy rates.

(a) The rate payable by a public utility to the producer of geothermal steam or electricity generated from geothermal steam shall be established by agreement between the public utility and the supplier, subject to approval by the public utilities commission; provided that if the public utility and the supplier fail to reach an agreement for such rate, or if the agreed upon rate is disapproved by the commission, the public utilities commission shall establish a just and reasonable rate for the geothermal steam or electricity generated from geothermal steam supplied to the public utility by the producer.

(b) The producer of geothermal steam or electricity generated from geothermal steam shall be excluded from coverage of the term "public utility" as defined in section 269-1.

269-27.2

269-27.2 Utilization of electricity generated from nonfossil fuels.

(a) The public utilities commission shall investigate and determine the extent to which electricity generated from nonfossil fuel sources is available to public utilities that supply electricity to the public, which electricity is in excess of that utilized or otherwise needed by the producers for their internal uses and which the producers are willing to make available to the electric public utilities.

(b) The public utilities commission may direct public utilities that supply electricity to the public to arrange for the acquisition of and to acquire electricity generated from nonfossil fuel sources as is available from and the producers are willing and able to make available to the public utilities, and to employ and dispatch the nonfossil fuel generated electricity in a manner consistent with the availability thereof to maximize the reduction in consumption of fossil fuels in the generation of electricity to be provided to the public.

(c) The rate payable by the public utility to the producer for the nonfossil fuel generated electricity supplied to the public utility shall be as agreed between the public utility and the supplier and as approved by the public utilities commission; provided that in the event the public utility and the supplier fail to reach an agreement for a rate, the rate shall be as prescribed by the public utilities commission according to the powers and procedures provided in this chapter. The commission's determination of the just and reasonable rate shall be accomplished by establishing a methodology that removes or significantly reduces any linkage between the price of fossil fuels and the rate for the nonfossil fuel generated electricity to potentially enable utility customers to share in the benefits of fuel cost savings resulting from the use of nonfossil fuel generated electricity. As the commission deems appropriate, the just and reasonable rate for nonfossil fuel generated electricity supplied to the public utility by the producer may include mechanisms for reasonable and appropriate incremental adjustments, such as adjustments linked to consumer price indices for inflation or other acceptable adjustment mechanisms.

(d) Upon application of a public utility that supplies electricity to the public, and notification of its customers, the commission, after an evidentiary hearing, may allow payments made by the public utility to nonfossil fuel producers for firm capacity and related revenue taxes to be recovered by the public utility through an interim increase in rates until the effective date of the rate change approved by the commission's final decision in the public utility's next general rate proceeding under section 269-16, notwithstanding any requirements to the contrary of any other provision in this chapter or in the commission's rules or practices; provided the amount recovered by the utility and the amount of increase in rates due to the payments for firm capacity and related revenue taxes to be charged to the consumers of the electricity are found by the commission to be:

(1) Just and reasonable;

(2) Not unduly prejudicial to the customers of the public utility;

(3) Promotional of Hawaii's long-term objective of energy self-sufficiency;

(4) Encouraging to the maintenance or development of nonfossil fueled sources of electrical energy; and

(5) In the overall best interest of the general public. The evidentiary hearing provided for in this subsection shall be conducted expeditiously and shall be limited to evidence related to the above findings. Notwithstanding section 269-16, no public hearing shall be required, except as the commission in its discretion may require.

269-27.3 HRS

269-27.3 Preferential renewable energy rates; agricultural activities. [(a)] It is the policy of the State to promote the long-term viability of agriculture by establishing mechanisms that provide for preferential rates for the purchase of renewable energy produced in conjunction with agricultural activities. The public utilities commission shall have the authority to establish preferential rates for the purchase of renewable energy produced in conjunction with agricultural activities. [(b)] Upon receipt of a bona fide request for preferential rates for the purchase of renewable energy produced in conjunction with agricultural activities, and proof that the renewable energy is produced in conjunction with agricultural activities, a public utility shall forward the request for preferential rates to the public utilities commission for approval.

269-27.4 HRS

269-27.4 Community-based renewable energy tariffs.

(a) Each electric utility in the State shall file a proposed community-based renewable energy tariff or tariffs with the public utilities commission by October 1, 2015. The public utilities commission shall establish a community-based renewable energy tariff or tariffs, pursuant to section 269-16; provided that the tariff or tariffs are found to be in the public interest.

(b) Any person or entity may own or operate an eligible community-based renewable energy project or projects provided that the person or entity complies with all applicable statutes, rules, tariffs, and regulations governing the ownership and interconnection of such project or projects.

(c) As used in this section: "Community-based renewable energy tariff" means a tariff approved by the commission that:

(1) Allows an electric utility customer to participate in an eligible renewable energy project that is providing electricity and electric grid services to the electric utility;

(2) Allows the electric utility to implement a billing arrangement to compensate those customers for the electricity and electric grid services provided to the electric utility;

(3) Is designed to provide fair compensation for electricity, electric grid services, and other benefits provided to or by the electric utility, participating ratepayers, and non-participating ratepayers; and

(4) To the extent possible, standardizes and streamlines the related interconnection processes for community-based renewable energy projects.

269-27.6

269-27.6 Construction of high-voltage electric transmission lines; overhead or underground construction.

(a) Notwithstanding any law to the contrary, whenever a public utility applies to the public utilities commission for approval to place, construct, erect, or otherwise build a new 46 kilovolt or greater high-voltage electric transmission system, either above or below the surface of the ground, the public utilities commission shall determine whether the electric transmission system shall be placed, constructed, erected, or built above or below the surface of the ground; provided that in its determination, the public utilities commission shall consider:

(1) Whether a benefit exists that outweighs the costs of placing the electric transmission system underground;

(2) Whether there is a governmental public policy requiring the electric transmission system to be placed, constructed, erected, or built underground, and the governmental agency establishing the policy commits funds for the additional costs of undergrounding;

(3) Whether any governmental agency or other parties are willing to pay for the additional costs of undergrounding;

(4) The recommendation of the division of consumer advocacy of the department of commerce and consumer affairs, which shall be based on an evaluation of the factors set forth under this subsection; and

(5) Any other relevant factors.

(b) In making the determination set forth in subsection (a), for new 138 kilovolt or greater high-voltage electric transmission systems, the public utilities commission shall evaluate and make specific findings on all of the following factors:

(1) The amortized cost of construction over the respective usable life of an above-ground versus underground system;

(2) The amortized cost of repair over the respective usable life of an above-ground versus underground system;

(3) The risk of damage or destruction over the respective usable life of an above-ground versus an underground system;

(4) The relative safety and liability risks of an above-ground versus underground system;

(5) The electromagnetic field emission exposure from an above-ground versus underground system;

(6) The proximity and visibility of an above-ground system to: (A) High density population areas; (B) Conservation and other valuable natural resource and public recreation areas; (C) Areas of special importance to the tourism industry; and (D) Other industries particularly dependent on Hawaii's natural beauty;

(7) The length of the system;

(8) The breadth and depth of public sentiment with respect to an above-ground versus underground system; and

(9) Any other factors that the public utilities commission deems relevant.

(c) A public utility making an application to the public utilities commission under this section shall clearly and fully state and support its evaluation of each factor set forth in subsection (b).

(d) Notwithstanding the requirements under subsections (a) and (b), a public utility shall not be required to seek public utilities commission approval to place, construct, erect, or otherwise build a high-voltage electric transmission system if:

(1) The electric transmission system is to be built underground;

(2) The entire cost due to building underground, rather than above-ground, is paid by an entity other than the public utility as a contribution in aid of construction; and

(3) Prior to commencing construction, the public utility provides a report to the public utilities commission, with a copy to the consumer advocate, describing in detail the electric transmission system and providing sufficient documentation that

affirms that the additional costs of building the electric transmission system underground will be paid by an entity other than the public utility.

(e) The public utilities commission shall have sixty days to take action on the report filed pursuant to subsection (d)(3), or it shall be assumed that the public utility may proceed with the project.

269-27.7 HRS

269-27.7 Preferential electricity rates; protected agriculture.

(a) The public utilities commission may establish preferential electricity rates for agricultural activities that utilize protected agriculture to produce fruits or vegetables for distribution; provided that the protected agriculture includes reasonable efforts to incorporate cost-effective renewable energy sources and energy efficiency measures.

(b) In considering preferential rates, the public utilities commission shall ensure that any subsidization being paid by other customers is limited and reasonable and shall periodically review and adjust the rate, if necessary.

(c) A public utility shall provide a request for preferential electricity rates to the public utilities commission for approval upon receipt of:

(1) A bona fide request for preferential electricity rates for agricultural activities that utilize protected agriculture to produce fruits or vegetables for distribution; and

(2) Proof that the fruits or vegetables cited in the request are produced in a manner consistent with this section.

(d) For purposes of this section, "protected agriculture" means any crop production technologies or techniques that partially or fully control a plant's micro-climate to target the particular requirements of the species; provided that the term shall not include agricultural activities that produce medical cannabis.

269-27.8 HRS

269-27.8 Electric cooperative cost recovery for wildfire mitigation, repair, and restoration costs.

(a) An electric cooperative may recover commission-approved wildfire mitigation, repair, and restoration costs through an automatic rate adjustment clause or other tariff recovery mechanism to be established by the commission.

(b) For purposes of this section, "electric cooperative" means a public utility that satisfies the requirements under section 269-31(c).

269-27.9 HRS

269-27.9 Determination of limitation on liability.

(a) The commission shall initiate a proceeding for the adoption of rules pursuant to chapter 91 to establish the maximum amount each electric utility may pay to resolve claims arising from any covered catastrophic wildfires, as defined in section 663-8.8, for set periods of time established by rules in accordance with this section. The commission shall have sole discretion to establish the maximum payable amounts and applicable periods of time. The rules adopted by the commission under this section shall have the force and effect of law.

(b) The commission shall adopt rules as soon as is practicable. The rules shall authorize the maximum payable amount each electric utility may pay to resolve qualifying damages arising from any covered catastrophic wildfires, as those terms are defined in section 663-8.8, that occur within a set period of time, or per event, as determined by the commission, without harming ratepayers or materially impacting each electric utility's ability to provide adequate and safe service consistent with the public interest. In adopting rules to establish the maximum payable amount, the commission shall consider, at a minimum:

(1) Whether the maximum payable amount shall be delineated by the qualifying damages arising from covered catastrophic wildfires that occur: (A) Within a set period of time that is determined by the commission; or (B) Per event;

(2) Different approaches to establishing the maximum payable amount, such as a flat dollar limit for the set period of time, or per event; one based upon a percentage of the electric utility's market capitalization or rate base; or hybrid approaches, including examining frameworks adopted or considered in other wildfire-prone states and their effectiveness;

(3) Impacts on the electric utility's credit ratings, borrowing costs, and customer's electricity rates, and how the establishment of the maximum payable amount will help to achieve intended outcomes of improving the utility's credit rating and lowering costs passed on to customers;

(4) Impacts of the maximum payable amount upon the insurance market in the State;

(5) Impacts of the maximum payable amount on the indemnity, contribution, and subrogation rights of any person or entity;

(6) Impacts on the liability exposure of other hypothetical future co-defendants with respect to claims arising from a catastrophic wildfire;

(7) Impacts on potential future plaintiffs who could be negatively impacted by the establishment of the maximum payable amount;

(8) The affordability of electric utility service and the potential impacts on customer's electricity rates by the establishment of the maximum payable amount;

(9) Requirements to maintain or improve the quality of service to the electric utility's customers;

(10) Requirements to improve the management of the electric utility doing business in the State;

(11) Requirements to meet state policy goals for clean energy and climate;

(12) Requirements to implement wildfire mitigation plans and improve safety;

(13) Requirements to improve interconnection costs and timeliness; and

(14) The restriction or reduction of compensation packages and bonuses to officers and employees of the electric utility.

(c) The rules adopted pursuant to this section shall also include:

(1) Conditions to ensure that the establishment of the maximum payable amount is consistent with the public interest;

(2) Annual reporting requirements for compliance with any conditions established; and

(3) Procedures for corrective actions if the electric utility is not in compliance. Rules required to be adopted under this section shall be adopted in a single rulemaking proceeding. Upon request by the commission, the electric utility or any state or county agency shall provide any information that is relevant to the rulemaking proceedings under this section.

(d) Notwithstanding any other law to the contrary, the rules adopted under this section shall be presented to, and subject to the approval of, the governor. If the governor approves the rules, the governor shall sign the rules, and the rules shall be adopted as provided in section 91-3. If the governor does not approve the rules, the governor may return the rules to the commission with the governor's reasons for disapproval. The governor shall have twenty-one days to consider the rules after the rules are presented to the governor, and if the rules are neither signed nor returned by the governor within that time, the rules shall be adopted as if the governor had signed them. If the rules are returned to the commission, the commission may start anew the rule-making process set forth in subsection (b).

(e) On or before the last day of the preceding set period of time established by the commission with respect to each electric utility, the commission shall adopt rules pursuant to [subsections] (b) and (c) for the next subsequent proposed period of time.

(f) Notwithstanding any other law to the contrary, the supreme court shall have original jurisdiction over any petition to obtain a judicial determination as to the validity of the rules adopted under this section. The petition shall be filed with the clerk of the supreme court within thirty days of the filing of the rules with the lieutenant governor pursuant to section 91-4(b). After an action is filed pursuant to this paragraph, the supreme court shall give priority to the action over all other civil or administrative appeals or matters and shall render a final judgment and opinion as expeditiously as possible. No action challenging the validity of the rules may be brought except as provided in this subsection. In all collateral proceedings, including any civil action to recover damages for a covered catastrophic wildfire, the maximum payable amounts established by the rules shall be conclusive and not subject to judicial review. Nothing in this section or rules adopted under this section shall be construed to create any property interest or entitlement of any kind in the electric utility, and no claim by any party, whether sounding in law or equity, or under article I, section 20, of the Hawaii State Constitution, may be brought against the commission, its commissioners, officials, and employees, or the State relating to rulemaking under this section.

(g) For purposes of this section: "Electric utility" includes an electric cooperative, as defined in section 269-27.8(b). "Wildfire mitigation plan" means the plan that each electric utility shall file with the commission, and which shall be periodically updated at a frequency determined by the commission, that sets forth the utility's practices to protect public safety and reduce risk to customers from wildfires and to promote the resilience of the electric system to wildfire damage, pursuant to requirements established by the commission. [L 2025, c 258, pt of §1] Previous Vol05_Ch0261-0319 Next

269-28 Penalty

269-28 Penalty.

(a) Any public utility violating or neglecting or failing in any particular to conform to or comply with this chapter or any lawful order of the public utilities commission shall be subject to a civil penalty not to exceed $25,000 for each day such violation, neglect, or failure continues, to be assessed by the commission after a hearing in accordance with chapter 91. The commission may order the public utility to cease carrying on its business while the violation, neglect, or failure continues.

(b) Notwithstanding the provisions of subsection (a), any public utility violating or neglecting or failing in any particular to conform to or comply with any rule or order of the commission setting forth safety requirements applicable to the transmission of gas shall be subject to a civil penalty not to exceed $25,000 for each day that the violation, neglect, or failure continues; provided that the maximum penalty for related violations arising out of the same act, omission, or occurrence shall not exceed $500,000.

(c) Notwithstanding the provisions of subsection (a), any person acting in the capacity of or engaging in the business of a public utility in the State without having a certificate of public convenience and necessity or other authority previously obtained under and in compliance with this chapter and the rules promulgated thereunder may be subject to a civil penalty not to exceed $5,000 for each such offense, and, in the case of a continuing violation, $5,000 for each day that uncertified activity continues.

(d) Upon written application filed within fifteen days after service of an order imposing a civil penalty pursuant to this section, the commission may remit or mitigate such penalty upon such terms as it deems proper.

(e) If any civil penalty imposed pursuant to this section is not paid within such period as the commission may direct, the

269-29 Perjury

269-29 Perjury. Any person who wilfully and knowingly makes under oath any false statement in connection with any investigation by or proceeding before the public utilities commission shall be guilty of perjury and, upon conviction, shall be subject to the penalty prescribed by law for the offense.

269-30 Finances; public utility fee

269-30 Finances; public utility fee.

(a) Sections 607■5 to 607-9 shall apply to the public utilities commission and each commissioner, as well as to the supreme and circuit courts, and all costs and fees paid or collected pursuant to this section shall be deposited with the director of finance to the credit of the public utilities commission special fund established under section 269-33.

(b) There also shall be paid to the public utilities commission in each of the months of July and December of each year, by each public utility subject to investigation by the public utilities commission, a fee equal to one-fourth of one per cent of the gross income from the public utility's business during the preceding year, or the sum of $30, whichever is greater. This fee shall be deposited with the director of finance to the credit of the public utilities commission special fund.

(c) Each public utility paying a fee under subsection (b) may impose a surcharge to recover the amount paid above one-eighth of one per cent of gross income. The surcharge imposed shall not be subject to the notice, hearing, and approval requirements of this chapter; provided that the surcharge may be imposed by the utility only after thirty days' notice to the public utilities commission. Unless ordered by the public utilities commission, the surcharge shall be imposed only until the conclusion of the public utility's next rate case; provided that the surcharge shall be subject to refund with interest at the public utility's authorized rate of return on rate base if the utility collects more money from the surcharge than actually paid due to the increase in the fee to one-fourth of one per cent.

(d) Notwithstanding any provision of this chapter to the contrary, the public utilities commission may, upon the filing of a petition by a public utility, credit a public utility for amounts paid under subsection (b) toward amounts the public utility owes in one call center fees under section 269E-6(f).

269-31 Application of this chapter

269-31 Application of this chapter.

(a) This chapter shall not apply to commerce with foreign nations, or commerce with the several states of the United States, except insofar as the same may be permitted under the Constitution and laws of the United States; nor shall it apply to public utilities owned and operated by the State, or any county, or other political subdivision.

(b) Notwithstanding any provision of this chapter or any franchise, charter, law, decision, order, or rule to the contrary, the public utilities commission, sua sponte or upon the application of an electric cooperative, may waive or exempt an electric cooperative from any or all requirements of this chapter or any applicable franchise, charter, decision, order, rule, or other law upon a determination or demonstration that such requirement or requirements should not be applied to an electric cooperative or are otherwise unjust, unreasonable, or not in the public interest. Notwithstanding the above, the public utilities commission and the consumer advocate shall at all times consider the ownership structure and interests of an electric cooperative in determining the scope and need for any regulatory oversight or requirements over such electric cooperative. To the extent any other provision of this chapter or any franchise, charter, law, decision, order, or rule is contrary to or otherwise conflicts with this section in any manner, the provisions of this section shall govern and apply.

(c) For purposes of this chapter, an "electric cooperative" is a cooperative association or entity that is:

(1) Owned by its members;

(2) Formed pursuant to chapter 421C;

(3) Operated on a not-for-profit basis;

(4) Authorized pursuant to a legislatively granted franchise or other legislative authority to manufacture, sell, furnish, and supply electric light, electric current, or electric power to its members or a designated service area; and

(5) Governed by a board of directors who are members of the electric cooperative and who are democratically elected by members of the electric cooperative pursuant to applicable bylaws.

269-32

269-32 Injury to public utility property. Any person who injures or destroys, through want of proper care, any necessary or useful facility, equipment or property of any public utility shall be liable to the public utility for all damages sustained thereby. The measure of damages to the facility, equipment or property injured or destroyed shall be the cost to repair or replace the property injured or destroyed including direct and allocated costs for labor, materials, supervision, supplies, tools, taxes, transportation, administrative and general expense and other indirect or overhead expenses, less credit, if any, for salvage. The specifying of the measure of damages for the facility, equipment or property shall not preclude the recovery of such other damages occasioned thereby as may be authorized by law.

269-33

269-33 Public utilities commission special fund.

(a) There is established in the state treasury a public utilities commission special fund to be administered by the public utilities commission. The proceeds of the fund shall be used by the public utilities commission and the division of consumer advocacy of the department of commerce and consumer affairs for all expenses incurred in the administration of chapters 269, 271, 271G, 269E, and 486J, and for costs incurred by the department of commerce and consumer affairs to fulfill the department's limited oversight and administrative support functions; provided that the expenditures of the public utilities commission shall be in accordance with legislative appropriations. On a quarterly basis, an amount not exceeding thirty per cent of the proceeds remaining in the fund after the deduction for central service expenses, pursuant to section 36-27, shall be allocated by the public utilities commission to the division of consumer advocacy and deposited in the compliance resolution fund established pursuant to section 26-9(o); provided that all moneys allocated by the public utilities commission from the fund to the division of consumer advocacy shall be in accordance with legislative appropriations.

(b) All moneys appropriated to, received, and collected by the public utilities commission that are not otherwise pledged, obligated, or required by law to be placed in any other special fund or expended for any other purpose shall be deposited into the public utilities commission special fund including, but not limited to, all moneys received and collected by the public utilities commission pursuant to sections 92-21, 243-3.5, 269-28, 269-30, 271-27, 271-36, 271G-19, 269E-6, 269E-14, and 607-5.

(c) The public utilities commission shall submit an update as part of its annual report submitted pursuant to section 269-5 detailing all funds received and all moneys disbursed out of the fund.

(d) All moneys in excess of $1,000,000 remaining on balance in the public utilities commission special fund on June 30 of each year shall lapse to the credit of the state general fund; provided that this ceiling shall not apply to the subaccount established in subsections (e) and (f).

(e) There is established within the public utilities commission special fund an electric vehicle charging system subaccount. The public utilities commission shall expend moneys in the subaccount for the purposes of funding the electric vehicle charging system rebate program established pursuant to sections 269-72 and 269-73. The funds in this subaccount shall not be subject to the special fund ceiling in subsection (d).

(f) There is established within the public utilities commission special fund a hydrogen fueling system subaccount. The public utilities commission shall expend moneys in the subaccount for the purposes of funding the zero-emission vehicle fueling system rebate program established pursuant to section 269-74. The funds in this subaccount shall not be subject to the special fund ceiling in subsection (d).

269-34

269-34 Obligations of telecommunications carriers. In accordance with conditions and guidelines established by the commission to facilitate the introduction of competition into the State's telecommunications marketplace, each telecommunications carrier, upon bona fide request, shall provide services or information services, on reasonable terms and conditions, to an entity seeking to provide intrastate telecommunications, including:

(1) Interconnection to the telecommunications carrier's telecommunications facilities at any technically feasible and economically reasonable point within the telecommunications carrier's network so that the networks are fully interoperable;

(2) The current interstate tariff used as the access rate until the commission can adopt a new intrastate local service interconnection tariff pursuant to section 269-37;

(3) Nondiscriminatory and equal access to any telecommunications carrier's telecommunications facilities, functions, and the information necessary to the transmission and routing of any telecommunications service and the interoperability of both carriers' networks;

(4) Nondiscriminatory access among all telecommunications carriers, where technically feasible and economically reasonable, and where safety or the provision of existing electrical service is not at risk, to the poles, ducts, conduits, and rights-of-way owned or controlled by the telecommunications carrier, or the commission shall authorize access to electric utilities' poles as provided by the joint pole agreement, commission tariffs, rules, orders, or Federal Communications Commission rules and regulations;

(5) Nondiscriminatory access to the network functions of the telecommunications carrier's telecommunications network, that shall be offered on an unbundled, competitively neutral, and cost-based basis;

(6) Telecommunications services and network functions without unreasonable restrictions on the resale or sharing of those services and functions; and

(7) Nondiscriminatory access of customers to the telecommunications carrier of their choice without the need to dial additional digits or access codes, where technically feasible. The commission shall determine the equitable distribution of costs among the authorized telecommunications carriers that will use such access and shall establish rules to ensure such access. Where possible, telecommunications carriers shall enter into negotiations to agree on the provision of services or information services without requiring intervention by the commission; provided that any such agreement shall be subject to review by the commission to ensure compliance with the requirements of this section.

269-36

269-36 Telecommunications number portability. The commission shall ensure that telecommunications number portability within an exchange is available, upon request, as soon as technically feasible and economically reasonable. An impartial entity shall administer telecommunications numbering and make the numbers available on an equitable basis.

269-37 Compensation agreements

269-37 Compensation agreements. The commission shall ensure that telecommunications carriers are compensated on a fair basis for termination of telecommunications services on each other's networks, taking into account, among other things, reasonable and necessary costs to each telecommunications carrier of providing the services in question. Telecommunications carriers may negotiate compensation arrangements, that may include "bill and keep", mutual and equal compensation, or any other reasonable division of revenues pending tariff access rates to be set by the commission. Upon failure of the negotiations, the commission shall determine the proper methodology and amount of compensation.

269-38

269-38 Regulatory flexibility for effectively competitive services. The commission may allow telecommunications carriers to have pricing flexibility for services that the commission finds are effectively competitive; provided that universal service is preserved and advanced.

269-39 Cross-subsidies

269-39 Cross-subsidies.

(a) The commission shall ensure that noncompetitive services shall not cross-subsidize competitive services. Cross-subsidization shall be deemed to have occurred:

(1) If any competitive service is priced below the total service long-run incremental cost of providing the service as determined by the commission in subsection (b); or

(2) If competitive services, taken as a whole, fail to cover their direct and allocated joint and common costs as determined by the commission.

(b) The commission shall determine the methodology and frequency with which providers calculate total service long-run incremental cost and fully allocated joint and common costs. The total service long-run incremental cost of a service shall include an imputation of an amount equal to the contribution that the telecommunications carrier receives from noncompetitive inputs used by alternative providers in providing the same or equivalent service.

269-40 Access to advanced services

269-40 Access to advanced services. The commission shall ensure that all consumers are provided with nondiscriminatory, reasonable, and equitable access to high quality telecommunications network facilities and capabilities that provide subscribers with sufficient network capacity to access information services that provide a combination of voice, data, image, and video.

269-41

269-41 Universal service program; establishment; purpose; principles. There is established the universal service program. The purpose of this program is to:

(1) Maintain affordable, just, and reasonable rates for basic residential telecommunications service, as defined by the commission;

(2) Assist customers located in the areas of the State that have high costs of essential telecommunications service, low-income customers, and customers with disabilities, in obtaining and maintaining access to a basic set of essential telecommunications services as determined by the commission. The commission may expand or otherwise modify relevant programs, such as the lifeline program under section 269-16.5;

(3) Ensure that consumers in all communities are provided with access, at reasonably comparable rates, to all telecommunications services that are used by a majority of consumers located in metropolitan areas of the State. The commission shall provide for a reasonable transition period to support the statewide deployment of these advanced telecommunications services, including but not limited to the use of strategic community access points in public facilities, such as education, library, and health care facilities;

(4) Ensure that consumers are given the information necessary to make informed choices among the alternative telecommunications carriers and services;

(5) Promote affordable access throughout the State to enhanced government information and services, including education, health care, public safety, and other government services; and

(6) Ensure access to essential telecommunications services for individuals with print disabilities, including providing free, print-disability-friendly telephonic access to time-sensitive information for individuals who are blind or visually impaired. For the purposes of this paragraph, "time-sensitive information" includes state and government information, public notices, emergency alerts, job opportunities, and daily newspapers. The commission shall administer the universal service program, including the establishment of criteria by which the purposes of the program are met. [L 1995, c 225, pt of §2; am L 2025, c 202, §2] Previous Vol05_Ch0261-0319 Next

269-42

269-42 Universal service program; contributions.

(a) There is established outside of the state treasury a special fund to be known as the universal service fund to be administered by the commission to implement the policies and goals of universal service through the universal service program. The fund shall consist of contributions from the sources identified in subsections (e) and (f). Interest earned from the balance of the fund shall become a part of the fund. The commission shall adopt rules regarding the distribution of moneys from the fund including reimbursements to carriers for providing reduced rates to low-income, elderly, residents of underserved or rural areas, or other subscribers, as authorized by the commission.

(b) The commission may use available funds in the fund to provide free telephonic access to time-sensitive information for individuals with print disabilities; provided that the amount of funds expended from the fund for this purpose shall not exceed $150,000. The commission may allow distribution of funds from the fund directly to customers based upon a need criteria established by the commission.

(c) A telecommunications carrier or other person contributing to the universal service program may establish a surcharge which is clearly identified and explained on customers' bills to collect from customers contributions required under this section.

(d) Telecommunications carriers may compete to provide services to underserved areas using funds from the universal service program. For the purposes of this section, "underserved areas" means those areas in the State that lack or have very limited access to high capacity, advanced telecommunications networks and information services, including access to cable television.

(e) The commission shall require all telecommunications carriers to contribute to the universal service program. The commission may require a person other than a telecommunications carrier to contribute to the universal service program if, after notice and opportunity for hearing, the commission determines that the person is offering a commercial service in the State that directly benefits from the telecommunications infrastructure, and that directly competes with a telecommunications service provided in the State for which a contribution is required under this subsection.

(f) The commission shall designate the method by which the contributions under subsection (e) shall be calculated and collected. The commission shall consider basing contributions solely on the gross operating revenues from the retail provision of intrastate telecommunications services offered by the telecommunications carriers subject to the contribution. The commission may determine the percentage of telecommunications fees to be contributed to the universal service fund.

269-43 Carriers of last resort

269-43 Carriers of last resort.

(a) The commission may define and designate local exchange service areas where the commission has determined that providing universal service funds to a single provider will be the most appropriate way to ensure service for these areas.

(b) The commission shall determine the level of service that is appropriate for each designated local exchange service area and shall invite telecommunications providers to bid for a level of service that is appropriate. The successful bidder shall be designated the carrier of last resort for the designated local exchange service area for a period of time and upon conditions set by the commission. In determining the successful bidder, the commission shall take into consideration the level of service to be provided, the investment commitment, and the length of the agreement, in addition to the other qualifications of the bidder.

(c) The universal service fund shall also provide service drops and basic service at discounted rates to public institutions, as stated in section 269-41.

(d) The commission shall adopt rules pursuant to chapter 91 to carry out the provisions of this section.

269-44 Bill

269-44 Solar water heater system standards. Not later than July 1, 2009, or as soon as reasonably practicable, the public utilities commission shall adopt or establish by rule, tariff, or order, standards for solar water heater systems to include, but not be limited to, specifications for the performance, materials, components, durability, longevity, proper sizing, installation, and quality to promote the objectives of section 269-124.

269-45 HRS

269-45 Gas utility companies; renewable energy; reporting requirements.

(a) Each gas utility company shall submit an annual report to the public utilities commission on or before March 31 of each year that shall include but not be limited to the following information:

(1) The percentage of total feedstock used to produce natural gas, biogas, biofuels, or biofeedstocks for use in the State that is comprised of petroleum feedstock;

(2) The percentage of total feedstock used to produce natural gas, biogas, biofuels, or biofeedstocks for use by the gas utility in the State that is comprised of non-petroleum feedstock;

(3) The energy quantity in therms of natural gas, biogas, or gallons of biofuels, or biofeedstocks produced from petroleum feedstock for use by the gas utility within the State; and

(4) The energy quantity in therms of natural gas, biogas, or gallons of biofuels, or biofeedstocks produced from non-petroleum feedstock energy for use by the gas utility in the State. Within thirty days of receipt of the report, the public utilities commission shall submit the information required by paragraphs (1) and (2) to the legislature. Due to the proprietary nature of the information required by paragraphs (3) and (4), that information shall be held in confidence by the commission; provided that any information obtained by the commission under this section, including confidential information, shall be made available to the department of business, economic development, and tourism or its authorized representative, which shall safeguard the confidentiality of that information. The department, with its own staff and other support staff with relevant expertise and experience, shall use the information obtained under this section to effectuate the purposes and intent of chapters 125C, 196, and other relevant laws. The first report required by this section shall be for the year 2011 and shall be submitted no later than March 31, 2012.

(b) For the purposes of this section: "Department" means the department of business, economic development, and tourism. "Feedstock" means a material that is converted, consumed, or blended to produce an end use product. "Non-petroleum feedstock" includes but is not limited to plant and animal fats and oils, algae and algae products, other organic material, organic waste, municipal solid waste, waste water, or sewage. "Total feedstock" means petroleum and non-petroleum feedstock combined.

269-45.5 HRS

269-45.5 Renewable gas tariff.

(a) Each gas utility in the State shall file a proposed initial renewable gas tariff or tariffs with the public utilities commission by August 31, 2025, to establish appropriate and reasonable rates for renewable gas for customers who choose to receive service under a renewable gas tariff. If the public utilities commission finds that the tariff or tariffs are just, reasonable, and in the public interest, the commission shall establish an initial or revised renewable gas tariff or tariffs no later than nine months after the filing of a completed application for a proposed renewable gas tariff; provided that the renewable gas tariff shall not increase rates for other customers; provided further that all filings shall be in accordance with the Hawaii Administrative Rules. The nine-month period in this subsection shall begin only after a completed application has been filed with the commission and a paper or an electronic copy served on the consumer advocate. The consumer advocate may, within twenty-one days after receipt of the copy, object to the sufficiency of any application, and the commission shall hear and determine any objection within twenty-one days after it is filed . If the commission finds that the objections are without merit, the application shall be deemed to have been completed upon original filing. If the commission finds the application to be incomplete, it shall require the applicant to submit an amended application consistent with its findings, and the nine-month period shall not commence until the amended application is filed.

(b) The renewable gas tariff shall be based on eligible customers' net therm usage and as determined by the public utilities commission.

(c) For the purposes of this section: "Net therm usage" means the amount of gas a customer uses during a monthly billing period, as measured in therm units. "Renewable gas" means gas produced from non-petroleum feedstock, as defined in section 269-45(b), for use by a gas utility in the State, or as otherwise defined by the public utilities commission by rule or order. "Renewable gas tariff" means a tariff approved by the public utilities commission that allows a gas utility customer to voluntarily purchase renewable gas from a gas utility company.

269-46 HRS

269-46 Microgrids.

(a) By July 1, 2018, the public utilities commission shall open a proceeding to establish a microgrid services tariff.

(b) Any person or entity may own or operate an eligible microgrid project or projects; provided that the person or entity complies with all applicable statutes, rules, tariffs, and orders governing the ownership and interconnection of the project or projects.

(c) As used in this section: "Microgrid project" means a group of interconnected loads and distributed energy resources within clearly defined electrical boundaries that acts as a single controllable entity with respect to the utility's electrical grid and can connect to a public utility's electrical grid to operate in grid-connected mode and can disconnect from the grid to operate in island mode, and that:

(1) Is subject to a microgrid services tariff; and

(2) Generates or produces energy. "Microgrid services tariff" means a tariff approved by the public utilities commission that:

(1) Is designed to provide fair compensation for electricity, electric grid services, and other benefits provided to, or by, the electric utility, the person or entity operating the microgrid, and other ratepayers;

(2) To the extent possible, standardizes and streamlines the related interconnection processes for microgrid projects; and

(3) Does not apply to a municipal utility cooperative.

269-46.1 HRS

269-46.1 Distributed energy resources installation goal; tariffs; requirements.

(a) The public utilities commission shall establish a goal for new customer-sited distributed energy resources, to be installed in the State by December 31, 2030.

(b) The public utilities commission shall establish tariffs for grid services programs, microgrids, and community-based renewable energy with fair compensation to achieve the goal established pursuant to subsection (a).

(c) Any tariffs or tariff amendments filed pursuant to this section shall:

(1) Include a rider for new and existing energy storage devices;

(2) Include provisions that allow aggregators to: (A) Participate in grid service programs; (B) Automatically enroll and manage their customers' participation; (C) Receive dispatch signals and other communications from the electric utility; (D) Deliver performance measurement and verification data to the electric utility; and (E) Receive grid service program payments directly from the electric utility; and

(3) Provide for measurement and verification of energy storage device performance directly at the device without the requirement for the installation of an additional meter, and other measurement standards for non-energy-storage and electric vehicle technologies for approval by the commission.

269-46.2 HRS

269-46.2 Compensation for solar and energy storage exports.

(a) Notwithstanding any law to the contrary, energy exported to the electric grid past a participating customer-generator's point of common coupling from photovoltaic solar systems paired with energy storage as part of a grid service program shall be credited at a rate of electricity to be established by the public utilities commission for the relevant time period. The rate shall be sufficient to encourage deployment of customer-sited distributed energy resources to meet the goal established pursuant to section 269-46.1.

(b) The public utilities commission shall establish grid service compensation values that compensate system owners for the resiliency, capacity, and ancillary service value provided by their system. The compensation values shall be sufficient to encourage participation in grid service programs.

(c) This section shall not apply to a member-owned cooperative electric utility.

269-46.3 HRS

269-46.3 Microgrids; public utility; exception. Notwithstanding any other law to the contrary, a person that constructs, maintains, or operates a new microgrid shall not be considered a public utility under section 269-1 solely as a result of furnishing service through that new microgrid to participating consumers. This section shall not apply to a member-owned cooperative electric utility.

269-46.4 HRS

269-46.4 Wheeling; renewable energy; rules . (a) Notwithstanding any provision of this chapter to the contrary, the authorization for wheeling under this chapter shall be restricted to wheeling of renewable electricity.

(b) No later than January 1, 2027, the public utilities commission shall establish, by rule or order, policies and procedures to implement wheeling and microgrid service tariffs that include appropriate charges for wheeling participants and any consumer protection measures the commission deems necessary; provided that any wheeling project eligible under the rule or order shall have a capacity of not less than one hundred kilowatts alternating current and not more than two megawatts alternating current.

(c) This section shall not apply to a member-owned cooperative electric utility.

269-47 HRS

269-47 Electric power systems data access and transparency; principles.

(a) The commission, in carrying out its responsibilities under this chapter, shall consider the value of improving electric power systems data access and transparency within the State in order to empower ratepayers, improve decision-making related to reliability and operational efficiency of the electric system, maximize the value of grid modernization technologies and investments, and promote innovation and economic development opportunities related to electric power systems data analysis.

(b) In advancing the public interest, the commission shall balance consumer privacy, critical infrastructure security, grid modernization, and economic innovation considerations associated with electric power systems data access and transparency, including but not limited to the following principles:

(1) Enabling ratepayers to access their energy consumption and production data;

(2) Enabling ratepayers to authorize third-party data access, and allow verification of third-party authorization through electronic signature;

(3) Increasing the amount of publicly-available data related to utility generation, transmission, and distribution systems, as well as non-utility data from third parties that provide generation or non-wire alternatives to individual customers or the grid; and

(4) Ensuring that electric power systems data is made available through simple, electronic, consistent, machine-readable formats with temporal and geographic granularity.

269-48 HRS

269-48 Coal power purchase agreements; prohibited. Beginning after June 30, 2020, the public utilities commission shall not approve:

(1) Any new or renewed power purchase agreement that proposes to burn or consume coal to generate electricity; or

(2) A modification of a coal power purchase agreement that proposes to extend the term or increase the amount of generation that is allowed to be produced under the existing agreement.

269-51 [PART II

269-51 Consumer advocate; executive director of the division of consumer advocacy. [(a)] The executive director of the division of consumer advocacy shall be the consumer advocate in hearings before the public utilities commission. The consumer advocate shall represent, protect, and advance the interests of all consumers, including small businesses, of utility services. [(b)] The responsibility of the consumer advocate for advocating the interests of the consumer of utility services shall be separate and distinct from the responsibilities of the public utilities commission and those assistants employed by the commission. The consumer advocate shall have full rights to participate as a party in interest in all proceedings before the public utilities commission.

269-52

269-52 Division of consumer advocacy; personnel. There shall be a division of consumer advocacy within the department of commerce and consumer affairs. The director of commerce and consumer affairs may appoint an executive director, who shall be exempt from chapter 76, and fix the executive director's compensation. The executive director shall supervise and control the operations and personnel of the division. The executive director shall be responsible for the performance of the duties imposed upon the division and shall be the consumer advocate as specified in section 269-51.

The executive director may employ engineers, accountants, investigators, clerks, and stenographers as may be necessary for the performance of the consumer advocate's functions, in accordance with chapter 76; provided that:

(1) The executive director may employ up to ten utility analysts exempt from chapter 76; and

(2) Each analyst shall possess at least the minimum qualifications required of comparable experts in the relevant industry.

269-53 Legal counsel

269-53 Legal counsel. The executive director of the division of consumer advocacy may appoint or retain, without regard to chapter 76, attorneys to provide legal services for the division of consumer advocacy. Nothing in this section precludes the director of commerce and consumer affairs or the executive director of the division of consumer advocacy from requesting and securing legal services from the attorney general and the department of the attorney general.

269-54 General powers; duties

269-54 General powers; duties.

(a) The consumer advocate shall have the authority expressly conferred by or reasonably implied from the provisions of this part.

(b) The consumer advocate may:

(1) Adopt rules pursuant to chapter 91 necessary to effectuate the purposes of this part.

(2) Conduct investigations to secure information useful in the lawful administration of any provision of this part.

(3) Assist, advise, and cooperate with federal, state, and local agencies and officials to protect and promote the interests of the consumer in the public utilities field.

(4) Study the operation of laws affecting all consumers, including small businesses, of utility services and recommend to the governor and the legislature new laws and amendments of laws in the consumers' interest in the public utilities field.

(5) Organize and hold conferences on problems affecting consumers of utility services.

(6) Perform such other acts as may be incidental to the exercise of the functions, powers, and duties set forth in this section.

(7) Represent the interests of consumers of utility services before any state or federal agency or instrumentality having jurisdiction over matters which affect those interests.

(c) The consumer advocate shall consider the long-term benefits of renewable resources in the consumer advocate's role as consumer advocate.

(d) Whenever it appears to the consumer advocate that:

(1) Any public utility has violated or failed to comply with any provision of this part or of any state or federal law;

(2) Any public utility has failed to comply with any rule, regulation, or other requirement of the public utilities commission or of any other state or federal agency;

(3) Any public utility has failed to comply with any provision of its charter or franchise;

(4) Changes, additions, extensions, or repairs to the plant or service of any public utility are necessary to meet the reasonable convenience or necessity of the public; or

(5) The rates, fares, classifications, charges, or rules of any public utility are unreasonable or unreasonably discriminatory, the consumer advocate may institute proceedings for appropriate relief before the public utilities commission. The consumer advocate may appeal any final decision and order in any proceeding to which the consumer advocate is a party in the manner provided by law.

(e) The consumer advocate may file with the commission and serve on any public utility a request in writing to furnish any information reasonably relevant to any matter or proceeding before the commission or reasonably required by the consumer advocate to perform the duties hereunder. Any such request shall set forth with reasonable specificity the purpose for which the information is requested and shall designate with reasonable specificity the information desired. The public utility shall comply with such request within the time limit set forth by the consumer advocate unless within ten days following service it requests a hearing on the matter before the public utilities commission and states its reasons therefor. If a hearing is requested, the public utilities commission shall proceed to hold the hearing and make its

determination on the request within thirty days after the same is filed. The consumer advocate or the public utility may appeal the decision of the commission on any such request, subject to chapter 602, in the manner provided for civil appeals from the circuit courts. Subject to the foregoing, such requests may ask the public utility to:

(1) Furnish any information with which the consumer advocate may require concerning the condition, operations, practices, or services of the public utility;

(2) Produce and permit the consumer advocate or the consumer advocate's representative to inspect and copy any designated documents (including writings, drawings, graphs, charts, photographs, recordings, and other data compilations from which information can be obtained), or to inspect and copy, test, or sample any designated tangible thing which is in the possession, custody, or control of the public utility; or

(3) Permit entry upon land or other property in the possession or control of the utility for the purpose of inspection and measuring, surveying, photographing, testing, or sampling the property or any designated object thereon.

269-55 Handling of complaints

269-55 Handling of complaints. The consumer advocate shall counsel utility customers in the handling of consumer complaints before the public utilities commission. The public utilities commission shall provide a central clearinghouse of information by collecting and compiling all consumer complaints and inquiries concerning public utilities.

269-71 [PART III

269-71 Meter tampering. Any person who, without permission or authorization from a utility tampers with, damages, destroys, removes, connects, causes to connect, disconnects, or causes to be disconnected or bypassed any wire, cable, conductor, gas pipe, billing or collection equipment, or device on any meter, line, conduit, property, or facilities of a utility for the purpose of using unmetered services, in addition to any other penalty authorized by law, shall be liable to the utility for treble the amount of the value of the utility services used and the damages or loss of any equipment, property, or facilities of a utility.

269-72 HRS

269-72 Electric vehicle charging system; rebate program.

(a) The public utilities commission, in consultation with electric vehicle stakeholders and the Hawaii state energy office, shall administer a rebate program that incentivizes the installation or upgrade of an electric vehicle charging system, as provided in this section, and may contract with a third-party administrator pursuant to section 269-73 to operate and manage the rebate program.

(b) An applicant may be eligible for a rebate under the rebate program if the applicant:

(1) Installs a new electric vehicle charging system where none previously existed to either: (A) An alternating current Level 2 station with one or more ports that provide electricity to one or more electric vehicles; or (B) A direct current fast charging system; or

(2) Upgrades an existing electric vehicle charging system to either: (A) An alternating current Level 2 station with one or more ports that provide electricity to one or more electric vehicles; or (B) A direct current fast charging system.

(c) Subject to subsection (f), rebates shall be distributed as follows:

(1) Each eligible installation of an electric vehicle charging system shall receive: (A) Up to $2,000 for the installation of an alternating current Level 2 station with one port; (B) Up to $4,500 for the installation of an alternating current Level 2 station with two or more ports; and (C) Up to $35,000 for the installation of a direct current fast charging system; and

(2) Each eligible upgrade of an electric vehicle charging system shall receive: (A) Up to $1,300 for the upgrade to an alternating current Level 2 station with one port; (B) Up to $3,000 for the upgrade to an alternating current Level 2 station with two or more ports; and (C) Up to $28,000 for the upgrade to a direct current fast charging system.

(d) The public utilities commission shall:

(1) Prepare any forms that may be necessary for an applicant to claim a rebate pursuant to this section; and

(2) Require each applicant to furnish reasonable information to ascertain the validity of the claim, including but not limited to documentation necessary to demonstrate that the installation or upgrade for which the rebate is claimed is eligible.

(e) This section shall apply to electric vehicle charging systems that are installed or upgraded after December 31, 2019.

(f) Applicants shall submit applications to the public utilities commission within twelve months of the date that the newly installed or upgraded charging system is placed into service to claim a rebate from the electric vehicle charging system rebate program. Failure to apply to the commission within twelve months of the date that the newly installed or upgraded charging system is placed into service shall constitute a waiver of the right to claim the rebate. Rebates shall be subject to available funds, and the program administrator shall not approve additional rebates for the remainder of the fiscal year after program funds have been fully exhausted.

(g) Nothing in this section shall alter taxes due on the original purchase or upgrade price of an electric vehicle charging system before the application of the rebate. Any rebate received pursuant to the electric vehicle charging system rebate program shall not be considered income for the purposes of state or county taxes.

(h) In administering the electric vehicle charging system rebate program, the public utilities commission shall give consideration to the following guidelines:

(1) Priority should be given to electric vehicle charging systems that are publicly available; serve multiple tenants, employees, or customers; serve electric vehicle fleets; support the visitor industry in transitioning to clean transportation; or serve low-income, moderate-income, or environmental justice communities;

(2) Electric vehicle charging system rebates should enhance broader public clean energy and grid resiliency goals by supporting deployment of electric vehicle charging systems that can regulate their time of use, be networked and co-optimized with other electric vehicle charging systems, and otherwise provide grid services or other benefits to the utility and electric grid;

(3) Electric vehicle charging systems that serve a single person, such as a reserved parking stall or a single-family residence, shall not be eligible for rebates;

(4) Electric vehicle charging system rebates should support accessibility of charging to as many electric vehicle drivers as feasible; and

(5) The program administrator may propose new or modified guidelines to be considered in addition to those specified in this subsection and should have the flexibility to make programmatic adjustments due to market changes, technological advancements, and levels of participation to ensure the prudent use of taxpayer funds and to effectively manage the program budget.

(i) As used in this section: "Alternating current Level 2 charging station", commonly referred to as "Level 2 charging station", means an electric vehicle charging system that utilizes alternating current electricity providing at least three kilowatts and means a system that:

(1) Is capable of providing electricity from a non-vehicle source to charge the batteries of one or more electric vehicles;

(2) Meets recognized standards and protocols including, but not limited to, Society of Automotive Engineers (SAE) J1772™ of SAE International and Tesla protocol; and

(3) Is designed and installed in compliance with article 625 of the National Electrical Code to appropriate Nationally Recognized Testing Laboratories' standards. "Applicant" means an individual; non-profit or for-profit corporation; local, state, or federal government agency; homeowner association; or any other eligible entity as defined under rules adopted for the electric vehicle charging system rebate program. "Direct current fast charging system", commonly referred to as "DC fast charging system", means an electric vehicle charging system that utilizes direct current electricity providing forty kilowatts or greater and:

(1) Is capable of providing electricity from a non-vehicle source to charge the batteries of one or more electric vehicles;

(2) Meets recognized standards and protocols, including, but not limited to, Society of Automotive Engineers (SAE) J1772™ of SAE International, Tesla protocol, and CHAdeMO protocol; and

(3) Is designed and installed in compliance with article 625 of the National Electrical Code to appropriate Nationally Recognized Testing Laboratories' standards. "Electric vehicle charging system" has the same meaning as Electric Vehicle Supply Equipment as defined in article 625.2 of the National Electrical Code, as amended.

269-73 HRS

269-73 Electric vehicle charging system; rebate program; administrator; establishment.

(a) The public utilities commission may contract with a third-party administrator to operate and manage any programs established under section 269-72. The administrator shall not be deemed to be a "governmental body" as defined in

section 103D-104; provided that all moneys transferred to the third-party administrator shall have been appropriated by the legislature or shall be from funds provided by the federal government or private funding sources. The administrator shall not expend more than fifteen per cent of the amounts appropriated for the rebate program or other reasonable percentage determined by the public utilities commission for administration of the programs established under section 269-72; provided that program administration expenses may include marketing and outreach expenses to increase program participation, if needed; provided further that not more than ten per cent of the amounts appropriated for the rebate program may be expended on non-marketing and outreach programs or administration of the program.

(b) The electric vehicle charging system rebate program administrator shall be subject to regulation by the public utilities commission under any provision applicable to a public utility in sections 269-7, 269-8, 269-8.2, 269-8.5, 269-9, 269■10, 269-13, 269-15, 269-19.5, and 269-28, and shall report to the public utilities commission on a regular basis. Notwithstanding any other provision of law to the contrary, the electric vehicle charging system rebate program administrator shall not be an electric public utility or an electric public utility affiliate.

269-74 HRS

269-74 Zero-emission vehicle fueling system rebate program.

(a) The public utilities commission, in consultation with zero-emission vehicle stakeholders and the Hawaii state energy office, shall administer a zero-emission vehicle fueling system rebate program that incentivizes the installation or upgrade of a zero-emission vehicle fueling system, as provided in this section, and may contract with a third-party administrator pursuant to section 269-73 to operate and manage the rebate program.

(b) An applicant may be eligible for a rebate under the rebate program if the applicant installs a hydrogen fueling system; provided that it stores or dispenses only renewable hydrogen.

(c) Rebates shall be distributed for each eligible installation of a zero-emission vehicle fueling system as follows:

(1) $200,000 for the installation of a hydrogen fueling system; provided that it stores or dispenses only renewable hydrogen; and

(2) $200,000 for the upgrade of fuel capacity for a hydrogen fueling system; provided that it stores or dispenses only renewable hydrogen.

(d) The public utilities commission shall:

(1) Prepare any forms that may be necessary for an applicant to claim a rebate pursuant to this section; and

(2) Require each applicant to furnish reasonable information to ascertain the validity of the claim, including but not limited to documentation necessary to demonstrate that the installation or upgrade for which the rebate is claimed is eligible.

(e) This section shall apply to hydrogen fueling systems that are installed or upgraded after December 31, 2022.

(f) Applicants shall submit applications to the public utilities commission within twelve months of the date that the newly installed or upgraded hydrogen fueling system is placed into service to claim a rebate from the zero-emission vehicle fueling system rebate program. Failure to apply to the commission within twelve months of the date that the newly installed or upgraded hydrogen fueling system is placed into service shall constitute a waiver of the right to claim the rebate.

(g) Nothing in this section shall alter taxes due on the original purchase or upgrade price of a hydrogen fueling system prior to the application of the rebate. Any rebate received pursuant to the zero-emission vehicle fueling system rebate program shall not be considered income for the purposes of state or county taxes.

(h) In administering the zero-emission vehicle fueling system rebate program, the public utilities commission shall give priority to hydrogen fueling systems that are publicly available, serve multiple tenants, employees, or customers, or serve electric vehicle fleets.

(i) For the purposes of this section: "Applicant" means an individual; non-profit or for-profit corporation; local, state, or federal government agency; homeowner association; or any other eligible entity as defined under rules adopted for the zero-emission vehicle fueling system rebate program. "Renewable hydrogen" means hydrogen produced entirely from renewable sources that have a life cycle emissions of not more than fifty grams of carbon dioxide per kilowatt hour. "Zero-emission vehicle fueling system" means a hydrogen fueling system that stores and dispenses only renewable hydrogen.

269-81 [PART IV

269-91 [PART V

269-91 [Definitions.] For the purposes of this [part]: "Biofuels" means liquid or gaseous fuels produced from organic sources such as biomass crops, agricultural residues and oil crops, such as palm oil, canola oil, soybean oil, waste cooking oil, grease, and food wastes, animal residues and wastes, and sewage and landfill wastes. "Cost-effective" means the ability to produce or purchase electric energy or firm capacity, or both, from renewable energy resources at or below avoided costs or as the commission otherwise determines to be just and reasonable consistent with the methodology set by the public utilities commission in accordance with section 269-27.2. "Electric utility company" means a public utility as defined under section 269-1, for the production, conveyance, transmission, delivery, or furnishing of power. "Renewable electrical energy" means:

(1) Electrical energy generated using renewable energy as the source, and beginning January 1, 2015, includes customer-sited, grid-connected renewable energy generation; and

(2) Electrical energy savings brought about by: (A) The use of renewable displacement or off-set technologies, including solar water heating, sea-water air-conditioning district cooling systems, solar air-conditioning, and customer-sited, grid-connected renewable energy systems; provided that, beginning January 1, 2015, electrical energy savings shall not include customer-sited, grid-connected renewable-energy systems; or (B) The use of energy efficiency technologies, including heat pump water heating, ice storage, ratepayer-funded energy efficiency programs, and use of rejected heat from co-generation and combined heat and power systems, excluding fossil-fueled qualifying facilities that sell electricity to electric utility companies and central station power projects. "Renewable energy" means energy generated or produced using the following sources:

(1) Wind;

(2) The sun;

(3) Falling water;

(4) Biogas, including landfill and sewage-based digester gas;

(5) Geothermal;

(6) Ocean water, currents, and waves, including ocean thermal energy conversion;

(7) Biomass, including biomass crops, agricultural and animal residues and wastes, and municipal solid waste and other solid waste;

(8) Biofuels; and

(9) Hydrogen produced from renewable energy sources. "Renewable portfolio standard" means the percentage of electrical energy generation that is represented by renewable electrical energy, excluding customer-sited, grid connected generation that does not produce renewable energy.

269-92

269-92 Renewable portfolio standards.

(a) Each electric utility company that sells electricity for consumption in the State shall establish a renewable portfolio standard of:

(1) Ten per cent of its net electricity sales by December 31, 2010;

(2) Fifteen per cent of its net electricity sales by December 31, 2015;

(3) Thirty per cent of its net electricity sales by December 31, 2020;

(4) Forty per cent of its net electricity generation by December 31, 2030;

(5) Seventy per cent of its net electricity generation by December 31, 2040; and

(6) One hundred per cent of its net electricity generation by December 31, 2045.

(b) The public utilities commission may establish standards for each electric utility company that prescribe the portion of the renewable portfolio standards that shall be met by specific types of renewable energy resources; provided that:

(1) Before January 1, 2015, at least fifty per cent of the renewable portfolio standards shall be met by electrical energy generated using renewable energy as the source, and after December 31, 2014, the entire renewable portfolio standard

shall be met by electrical generation from renewable energy sources;

(2) Beginning January 1, 2015, electrical energy savings shall not count toward renewable energy portfolio standards;

(3) Where electrical energy is generated or displaced by a combination of renewable and nonrenewable means, the proportion attributable to the renewable means shall be credited as renewable energy; and

(4) Where fossil and renewable fuels are co-fired in the same generating unit, the unit shall be considered to generate renewable electrical energy (electricity) in direct proportion to the percentage of the total heat input value represented by the heat input value of the renewable fuels.

(c) If the public utilities commission determines that an electric utility company failed to meet the renewable portfolio standard, after a hearing in accordance with chapter 91, the utility shall be subject to penalties to be established by the public utilities commission; provided that if the commission determines that the electric utility company is unable to meet the renewable portfolio standards because of reasons beyond the reasonable control of the electric utility company, as set forth in subsection (d), the commission, in its discretion, may waive in whole or in part any otherwise applicable penalties.

(d) Events or circumstances that are beyond an electric utility company's reasonable control may include, to the extent the event or circumstance could not be reasonably foreseen and ameliorated:

(1) Weather-related damage;

(2) Natural disasters;

(3) Mechanical or resource failure;

(4) Failure of renewable electrical energy producers to meet contractual obligations to the electric utility company;

(5) Labor strikes or lockouts;

(6) Actions of governmental authorities that adversely affect the generation, transmission, or distribution of renewable electrical energy under contract to an electric utility company;

(7) Inability to acquire sufficient renewable electrical energy due to lapsing of tax credits related to renewable energy development;

(8) Inability to obtain permits or land use approvals for renewable electrical energy projects;

(9) Inability to acquire sufficient cost-effective renewable electrical energy;

(10) Inability to acquire sufficient renewable electrical energy to meet the renewable portfolio standard goals beyond 2030 in a manner that is beneficial to Hawaii's economy in relation to comparable fossil fuel resources;

(11) Substantial limitations, restrictions, or prohibitions on utility renewable electrical energy projects;

(12) Non-renewable energy generated by electric generation facilities where the electric utility company otherwise does not have direct control or ownership of independent power producers, government and non-government agencies, and any persons or entities, including merchant or co-generation facilities ; and

(13) Other events and circumstances of a similar nature.

269-93 Achieving portfolio standard

269-93 Achieving portfolio standard.

(a) An electric utility company and its electric utility affiliates may aggregate their renewable portfolios to achieve the renewable portfolio standard.

(b) If an electric utility company and its electric utility affiliates aggregate their renewable portfolios to achieve the renewable portfolio standard, the public utilities commission may distribute, apportion, or allocate the costs and expenses of all or any portion of the respective renewable portfolios among the electric utility company, its electric utility affiliates, and their respective ratepayers, as is reasonable under the circumstances.

(c) An electric utility company may recover, through an automatic rate adjustment clause, the electric utility company's revenue requirement resulting from the distribution, apportionment, or allocation of the costs and expenses of the renewable portfolios of the electric utility company and its electric utility affiliates.

(d) To provide for timely recovery of the revenue requirement under subsection (c), the commission may establish a separate automatic rate adjustment clause, or approve the use of a previously approved automatic rate adjustment clause, without a rate case filing. The use of the automatic rate adjustment clause to recover the revenue requirement

shall be allowed to continue until the revenue requirement is incorporated in rates in the respective electric utility company's rate case.

269-94

269-94 Waivers, extensions, and incentives.] Any electric utility company not meeting the renewable portfolio standard shall report to the public utilities commission within ninety days following the goal dates established in section [269-92], and provide an explanation for not meeting the renewable portfolio standard. The public utilities commission shall have the option to either grant a waiver from the renewable portfolio standard or an extension for meeting the prescribed standard. The public utilities commission may provide incentives to encourage electric utility companies to exceed their renewable portfolio standards or to meet their renewable portfolio standards ahead of time, or both.

269-95 Bill

269-95 Renewable portfolio standards study. The public utilities commission shall:

(1) By December 31, 2007, develop and implement a utility ratemaking structure, which may include performance-based ratemaking, to provide incentives that encourage Hawaii's electric utility companies to use cost-effective renewable energy resources found in Hawaii to meet the renewable portfolio standards established in section 269-92, while allowing for deviation from the standards in the event that the standards cannot be met in a cost-effective manner or as a result of events or circumstances, such as described in section 269-92(d), beyond the control of the electric utility company that could not have been reasonably anticipated or ameliorated;

(2) Gather, review, and analyze empirical data to: (A) Determine the extent to which any proposed utility ratemaking structure would impact electric utility companies' profit margins; and (B) Ensure that the electric utility companies' opportunity to earn a fair rate of return is not diminished;

(3) Use funds from the public utilities special fund to contract with the Hawaii natural energy institute of the University of Hawaii to conduct independent studies to be reviewed by a panel of experts from entities such as the United States Department of Energy, National Renewable Energy Laboratory, Electric Power Research Institute, Hawaii electric utility companies, environmental groups, and other similar institutions with the required expertise. These studies shall include findings and recommendations regarding: (A) The capability of Hawaii's electric utility companies to achieve renewable portfolio standards in a cost-effective manner and shall assess factors such as:

(i) The impact on consumer rates; (ii) Utility system reliability and stability; (iii) Costs and availability of appropriate renewable energy resources and technologies, including the impact of renewable portfolio standards, if any, on the energy prices offered by renewable energy developers; (iv) Permitting approvals;

(v) Effects on the economy; (vi) Balance of trade, culture, community, environment, land, and water; (vii) Climate change policies; (viii) Demographics; (ix) Cost of fossil fuel volatility; and

(x) Other factors deemed appropriate by the commission; and (B) Projected renewable portfolio standards to be set five and ten years beyond the then current standards;

(4) Evaluate the renewable portfolio standards every five years, beginning in 2013, and may revise the standards based on the best information available at the time to determine if the standards established by section 269■92 remain effective and achievable; and

(5) Report its findings and revisions to the renewable portfolio standards, based on its own studies and other information, to the legislature no later than twenty days before the convening of the regular session of 2014, and every five years thereafter.

269-96 HRS

269-96 Energy-efficiency portfolio standards.

(a) The public utilities commission shall establish energy-efficiency portfolio standards that will maximize cost-effective energy-efficiency programs and technologies.

(b) The energy-efficiency portfolio standards shall be designed to achieve four thousand three hundred gigawatt hours of electricity use reductions statewide by 2030 and six thousand gigawatt hours of electricity use reductions statewide by 2045; provided that the public utilities commission shall establish interim goals for electricity use reduction to be achieved by 2015, 2020, 2025, 2035, and 2040, and may also adjust the 2030 and 2045 standards and any interim standards by rule or order to maximize cost-effective energy-efficiency programs and technologies; provided further that the interim

goals established by the public utilities commission shall show clear progress toward meeting the State's 2030 and 2045 energy-efficiency portfolio standards.

(c) The public utilities commission may establish, by rule or order, incentives and penalties based on performance in achieving the energy-efficiency portfolio standards.

(d) The public utilities commission shall evaluate the energy-efficiency portfolio standards every five years, beginning in 2013, to determine if the energy-efficiency portfolio standards established by this section remain effective and achievable and may revise the standards, based on the best information available at the time. The public utilities commission shall report its findings and revisions to the energy-efficiency portfolio standards, based on its own studies and other information, to the legislature no later than twenty days before the convening of the regular session of 2014, and every five years thereafter.

(e) Beginning in 2015, electric energy savings brought about by the use of renewable displacement or off-set technologies, including solar water heating and sea-water air-conditioning district cooling systems, shall count toward these standards.

269-97 HRS

269-97 Annual report; electric utility company . Each electric utility company shall track and report to the public utilities commission, on an annual basis, data and trends regarding customer retention or attrition at a time and in a manner as prescribed by the commission.

269-101 [PART VI

269-101 Definitions. As used in this part: "Eligible customer-generator" means a metered residential or commercial customer, including a government entity, of an electric utility who owns and operates a solar, wind turbine, biomass, or hydroelectric energy generating facility, or a hybrid system consisting of two or more of these facilities, that is:

(1) Located on the customer's premises;

(2) Operated in parallel with the utility's transmission and distribution facilities;

(3) In conformance with the utility's interconnection requirements; and

(4) Intended primarily to offset part or all of the customer's own electrical requirements. "Net energy metering" means measuring the difference between the electricity supplied through the electric grid and the electricity generated by an eligible customer-generator and fed back to the electric grid over a monthly billing period; provided that:

(1) Net energy metering shall be accomplished using a single meter capable of registering the flow of electricity in two directions;

(2) An additional meter or meters to monitor the flow of electricity in each direction may be installed with the consent of the customer-generator, at the expense of the electric utility, and the additional metering shall be used only to provide the information necessary to accurately bill or credit the customer-generator, or to collect solar, wind turbine, biomass, or hydroelectric energy generating system performance information for research purposes;

(3) If the existing electrical meter of an eligible customer-generator is not capable of measuring the flow of electricity in two directions, the electric utility shall be responsible for all expenses involved in purchasing and installing a meter that is able to measure electricity flow in two directions;

(4) If an additional meter or meters are installed, the net energy metering calculation shall yield a result identical to that of a single meter; and

(5) An eligible customer-generator who already owns an existing solar, wind turbine, biomass, or hydroelectric energy generating facility, or a hybrid system consisting of two or more of these facilities, is eligible to receive net energy metering service in accordance with this part.

269-101.5

269-101.5 Maximum capacity of eligible customer-generator. The eligible customer-generator shall have a capacity of not more than fifty kilowatts; provided that the public utilities commission may increase the maximum allowable capacity that eligible customer-generators may have to an amount greater than fifty kilowatts by rule or order.

269-102

269-102 Standard contract or tariff; rate structure.

(a) Every electric utility shall develop a standard contract or tariff providing for net energy metering and shall make this contract available to eligible customer-generators, upon request, on a first-come-first-served basis until the time that the total rated generating capacity produced by eligible customer-generators equals .5 per cent of the electric utility's system peak demand; provided that the public utilities commission may modify, by rule or order, the total rated generating capacity produced by eligible customer-generators; provided further that the public utilities commission shall ensure that a percentage of the total rated generating capacity produced by eligible customer-generators shall be reserved for electricity produced by eligible residential or small commercial customer-generators. The public utilities commission may define, by rule or order, the maximum capacity for eligible residential or small commercial customer-generators. Notwithstanding the generating capacity requirements of this subsection, the public utilities commission may evaluate, on an island-by-island basis, the applicability of the generating capacity requirements of this subsection and, in its discretion, may exempt an island or a utility grid system from the generating capacity requirements.

(b) Each net energy metering contract or tariff shall be identical, with respect to rate structure, to the contract or tariff to which the same customer would be assigned if the customer was not an eligible customer-generator. The charges for all retail rate components for eligible customer-generators shall be based exclusively on the eligible customer-generator's net kilowatt-hour consumption over a monthly billing period. Any new or additional demand charge, standby charge, customer charge, minimum monthly charge, interconnection charge, or other charge that would increase an eligible customer-generator's costs beyond those of other customers in the rate class to which the eligible customer-generator would otherwise be assigned are contrary to the intent of this section, and shall not form a part of net energy metering contracts or tariffs.

(c) The public utilities commission may amend the rate structure or standard contract or tariff by rule or order.

269-103 Generating capacity

269-103 Generating capacity. On an annual basis, beginning in 2003, every electric utility shall make available to the public utilities commission information on the total rated generating capacity produced by eligible customer-generators that are customers of that utility in the utility's service area. The public utilities commission shall develop a process for making the information required by this section available to electric utilities , and for using that information to determine when, pursuant to section 269-104, an electric utility is not obligated to provide net energy metering to additional customer-generators in its service area.

269-104 Additional customer-generators

269-104 Additional customer-generators. Notwithstanding section 269-102, an electric utility is not obligated to provide net energy metering to additional customer-generators in its service area when the combined total peak generating capacity of all eligible customer-generators served by all the electric utilities in that service area furnishing net energy metering to eligible customer-generators equals .5 per cent of the system peak demand of those electric utilities; provided that the public utilities commission may increase, by rule or order, the allowable percentage of the electric utility's system peak demand produced from eligible customer-generators in the electric utility's service area, whereupon the electric utility will be obligated to provide net energy metering to additional eligible customer-generators in that service area up to the increased percentage amount.

269-105 Calculation

269-105 Calculation. The net energy metering calculation shall be made by measuring the difference between the electricity supplied to the eligible customer-generator and:

(1) The electricity generated by the eligible customer-generator and fed back to the electric grid over a monthly billing period; and

(2) Any unused credits for excess electricity from the eligible customer-generator carried over from previous months since the last twelve-month reconciliation period.

269-106

269-106 Billing periods; twelve-month reconciliation.

(a) Billing of net energy metering customers shall be on a monthly basis; provided that the last monthly bill for each twelve-month period shall reconcile for that twelve-month period the net electricity provided by the electric utility with:

(1) The electricity generated by the eligible customer-generator and fed back to the electric grid over the monthly billing period; and

(2) Any unused credits for excess electricity from the eligible customer-generator carried over from prior months since the last twelve-month reconciliation period.

(b) Credits for excess electricity from the eligible customer-generator that remain unused after each twelve-month reconciliation period may not be carried over to the next twelve-month period.

269-107 Net electricity consumers

269-107 Net electricity consumers. At the end of each monthly billing period, where the electricity supplied during the period by the electric utility exceeds:

(1) The electricity generated by the eligible customer-generator during that same period; and

(2) Any unused credits for excess electricity from the eligible customer-generator carried over from prior months since the last twelve-month reconciliation period, the eligible customer-generator is a net electricity consumer and the electric utility shall be owed compensation for the eligible customer-generator's net kilowatt-hour consumption over that same period. The compensation owed for the eligible customer-generator's net monthly kilowatt-hour consumption shall be calculated at the retail rate of the rate class the customer is normally assigned to.

269-108

269-108 Net electricity producers; excess electricity credits and credit carry over. At the end of each monthly billing period, where the electricity generated by the eligible customer-generator during the month exceeds the electricity supplied by the electric utility during that same period, the eligible customer-generator is a net electricity producer and the electric utility shall retain any excess kilowatt-hours generated during the prior monthly billing period; provided that the excess electricity generated by the customer-generator, if any, in each monthly billing period shall be carried over to the next month as a monetary value to the credit of the eligible customer-generator, which credit may accumulate and be used to offset the compensation owed the electric utility for the eligible customer-generator's net kilowatt-hour consumption for succeeding months within each twelve-month period; provided further that the electric utility shall reconcile the eligible customer-generator's electricity production and consumption for each twelve-month period as set forth in section 269-106. The eligible customer-generator shall not be owed any compensation for excess kilowatt-hours unless the electric utility enters into a purchase agreement with the eligible customer-generator for those excess kilowatt-hours.

269-109

269-109 Net electricity consumption or production information. The electric utility shall provide every eligible customer-generator with net electricity consumption or production information with each regular monthly bill, which shall include:

(1) The current monetary balance owed the electric utility for net electricity consumed;

(2) The net electricity produced since the end of the last monthly billing period; and

(3) An accounting of the credits for excess electricity produced by the eligible customer-generator since the last twelve-month reconciliation period that shows credits applied to the monthly billing period and the balance of unused credits, if any.

269-110

269-110 Termination by eligible customer-generators. If an eligible customer-generator terminates the customer relationship with the electric utility, the electric utility shall reconcile the eligible customer■generator's consumption and production of electricity, including any unused credits for excess electricity from the eligible customer■generator carried over from prior months, for the period following the last twelve-month reconciliation period to the date of termination of the relationship, according to the requirements set forth in this part.

269-111 Safety and performance standards

269-111 Safety and performance standards.

(a) A solar, wind turbine, biomass, or hydroelectric energy generating system, or a hybrid system consisting of two or more of these facilities, used by an eligible customer-generator shall meet all applicable safety and performance

standards established by the National Electrical Code, the Institute of Electrical and Electronics Engineers, and accredited testing laboratories such as the Underwriters Laboratories and, where applicable, rules of the public utilities commission regarding safety and reliability.

(b) For systems of ten kilowatts or less, an eligible customer-generator whose solar, wind turbine, biomass, or hydroelectric energy generating system, or whose hybrid system consisting of two or more of these facilities, meets the standards and rules under subsection

(a) shall not be required to install additional controls, perform or pay for additional tests, or purchase additional liability insurance.

(c) For eligible customer-generator systems of greater than ten kilowatts, the commission, either through decision and order, by tariff adoption, or by rule, shall:

(1) Set forth safety, performance, and reliability standards and requirements; and

(2) Establish the qualifications for exemption from a requirement to install additional controls, perform or pay for additional tests, or purchase additional liability insurance.

269-121 Bill

269-121 Public benefits fee authorization.

(a) The public utilities commission, by order or rule, may require that all or a portion of the moneys collected by Hawaii's electric utilities from its ratepayers through a demand-side management surcharge be transferred to a third-party administrator contracted by the public utilities commission. The moneys transferred shall be known as the public benefits fee.

(b) The public benefits fee shall be used to support clean energy technology, demand response technology, and energy use reduction, and demand-side management infrastructure, programs, and services, subject to the review and approval of the public utilities commission. These moneys shall not be available to meet any current or past general obligations of the State; provided that the State may participate in any clean energy technology, demand response technology, or energy use reduction, and demand-side management infrastructure, programs, and services on the same basis as any other electric consumer. For the purpose of this subsection, "clean energy technology" means any commercially available technology that enables the State to meet the renewable portfolio standards, established pursuant to section 269-92, or the energy-efficiency portfolio standards, established pursuant to section 269-96, and approved by the public utilities commission by rule or order.

(c) Nothing in this section shall create or be construed to cause the public benefits fee to be considered state or public moneys subject to appropriation by the legislature or be required to be deposited into the state treasury.

269-122 Bill

269-122 Public benefits fee administrator; establishment.

(a) The public utilities commission may contract with a third-party administrator, to operate and manage any programs established under section 269-121. The administrator shall not be deemed to be a "governmental body" as defined in section 103D-104; provided that all moneys transferred to the third-party administrator shall be comprised solely of public [benefits] fees collected pursuant to section 269-121 or from funds provided by the federal government or by private funding sources. The administrator shall not expend more than ten per cent of the collected public benefits fees in any fiscal year, or other reasonable percentage determined by the public utilities commission, for administration of the programs established under section 269-121.

(b) The public benefits fee administrator shall be subject to regulation by the public utilities commission under any provision applicable to a public utility in sections 269-7, 269-8, 269-8.2, 269-8.5, 269-9, 269-10, 269-13, 269-15, 269-19.5, and 269-28, and shall report to the public utilities commission on a regular basis. Notwithstanding any other provision of law to the contrary, the public benefits fee administrator shall not be an electric public utility or an electric public utility affiliate.

269-123 Bill

269-123 Requirements for the public benefits fee administrator.

(a) Any public benefits fee administrator contracted pursuant to section 269-122 shall satisfy the qualification requirements established by the public utilities commission by rule or order. These requirements may include experience

and expertise in:

(1) Energy-efficient and renewable energy technologies and methods; and

(2) Identifying, developing, administering, and implementing demand-side management and energy-efficiency programs.

(b) The public benefits fee administrator's duties and responsibilities shall be established by the public utilities commission by rule or order, and may include:

(1) Identifying, developing, administering, promoting, implementing, and evaluating programs, methods, and technologies that support energy-efficiency and demand-side management programs;

(2) Encouraging the continuance or improvement of efficiencies made in the production, delivery, and use of energy-efficiency and demand-side management programs and services;

(3) Using the energy-efficiency expertise and capabilities that have developed or may develop in the State and consulting with state agency experts;

(4) Promoting program initiatives, incentives, and market strategies that address the needs of persons facing the most significant barriers to participation;

(5) Promoting coordinated program delivery, including coordination with electric public utilities regarding the delivery of low-income home energy assistance, other demand-side management or energy-efficiency programs, and any utility programs;

(6) Consideration of innovative approaches to delivering demand-side management and energy-efficiency services, including strategies to encourage third-party financing and customer contributions to the cost of demand-side management and energy-efficiency services;

(7) Submitting, to the public utilities commission for review and approval, a multi-year budget and planning cycle that promotes program improvement, program stability, and maturation of programs and delivery resources; and

(8) Educating and training appliance manufacturers, distributors, and retailers of appliances covered under part VI of chapter 196 about the appliance efficiency standards established under that part to improve compliance.

269-124 Bill

269-124 Transitioning from utility demand-side management programs to the public benefits fee. If the public utilities commission establishes a public benefits fee pursuant to section 269-121, the public utilities commission shall:

(1) Develop a transition plan that ensures that: (A) Utility demand-side management programs are continued, to the extent practicable, until the transition date; and (B) The public benefits fee administrator will be able to provide demand-side management and energy-efficiency services on the transition date;

(2) Encourage programs that allow all retail electricity customers, including state and county agencies, regardless of the retail electricity or gas provider, to have an opportunity to participate in and benefit from a comprehensive set of cost-effective demand-side management and energy-efficiency programs and initiatives designed to overcome barriers to participation;

(3) Encourage programs, measures, and delivery mechanisms that reasonably reflect current and projected utility integrated resource planning, market conditions, technological options, and environmental benefits;

(4) Facilitate the delivery of these programs as rapidly as possible, taking into consideration the need for these services and cost-effective delivery mechanisms;

(5) Consider the unique geographic location of the State and the high costs of energy in developing programs that will promote technologies to advance energy efficiency and use of renewable energy and permit the State to take advantage of activities undertaken in other states, including the opportunity for multi-state programs;

(6) Require the public benefits fee administrator contracted by the public utilities commission under section 269-122 to deliver programs in an effective, efficient, timely, and competent manner and to meet standards that are consistent with state policy and public utilities commission policy; and

(7) Before January 2, 2008, and every three years thereafter, require verification by an independent auditor of the reported energy and capacity savings and incremental renewable energy production savings associated with the programs delivered by the public benefits fee administrator contracted by the public utilities commission to deliver energy-efficiency and demand-side management programs under section 269-121.

269-125 On-bill financing for energy efficiency and renewable energy

269-125 On-bill financing for energy efficiency and renewable energy.

(a) The public utilities commission shall investigate an on-bill financing program that would allow an electric utility company customer to purchase or otherwise acquire a renewable energy system or energy-efficient device, as determined by the public utilities commission, by providing for billing and payment of such a system or device through an assessment on the electric utility company customer's electricity bill.

(b) In investigating an on-bill financing program, the public utilities commission may consider:

(1) The costs and benefits associated with the establishment and administration of the program;

(2) The ability of the program to effectively provide life cycle cost savings to participating electric utility company customers;

(3) The ability of the program to make renewable energy and energy efficiency more accessible to the rental market and other underserved markets;

(4) Methods to structure the program to ensure that any public benefits fee funds are spent cost-effectively and in compliance with applicable statutes;

(5) The use of non-ratepayer funds or private capital to provide financing for renewable energy systems or energy-efficient devices acquired through the program;

(6) Reasonable penalties, which may include fines and disconnection of utility services, for nonpayment of on-bill financing costs;

(7) The ability of an electric utility company to recover costs incurred due to the program; and

(8) Other issues the public utilities commission deems appropriate.

(c) If on-bill financing is determined by the public utilities commission to be viable, the public utilities commission may implement an on-bill financing program by decision and order or by rules pursuant to chapter 91.

(d) Amounts collected from electric utility customers by electric utilities for the repayment of on-bill obligations shall not be considered revenue of the electric utilities and accordingly, shall not be subject to state or county taxes, including the general excise tax under chapter 237, the public service company tax under chapter 239, the public utility fee under section 269-30, and the public utility franchise tax under chapter 240.

(e) The act of serving as an agent to bill and to collect the repayment of on-bill obligations shall not cause any electric utility to be subject to the laws that regulate financial institutions, escrow depositories, or collection agencies. An electric utility shall not be responsible for lending, underwriting, and credit determinations.

(f) As used in this section: "On-bill obligation" means any and all costs resulting from the acquisition and installation of renewable energy, energy efficiency, or energy conservation systems approved by the public utilities commission for repayment through an on-bill program. "On-bill program" means any program approved by the public utilities commission that allows for the payment or repayment by an electric utility customer for the acquisition and installation of renewable energy, energy efficiency, or energy conservation systems as part of the electric utility customer's electric utility bill.

269-131 HRS

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269-141 HRS

269-141 Definitions. As used in this part: "Advanced grid modernization technology" means equipment, facilities, and associated processes that individually or collectively function to improve the reliability, resiliency, flexibility, and efficiency of the Hawaii electric system. Advanced grid modernization technology provides functional characteristics that improve the operational capability of the Hawaii electric system, including but not limited to automatic restoration of electrical service in response to power disturbance events, greater enabling of participation in utility customer programs, resilient operation against both physical and cyber-based attacks, the ability to satisfy power quality requirements of new technologies and end users, accommodation of energy generation and storage choices, enabling of innovative products and services in electricity markets, improving customer energy-efficiency practices encouraged by the availability of timely energy use information, and optimization of assets and improving the operational efficiency of the Hawaii electric system. "Ancillary services" means those essential grid support services provided by a facility, or other equipment to support and

ensure the reliable generation, transmission, and distribution of electricity, including frequency response and regulation, inertial response, reactive power and voltage control, and operating reserves. "Commission" means the public utilities commission. "Electric element" means any plant, line, cable, facility, control system, equipment, or other technology used for the generation, transmission, distribution, storage, regulation, or physical control of electricity. "Hawaii electric system" means all electric elements located within the State together with all interconnections located within the State that collectively provide for the generation, transmission, distribution, storage, regulation, or physical control of electricity over a geographic area; provided that this term shall not include any electric element operating without any interconnection to any other electric element located within the State. "Interconnection" means the physical contact point connecting an electric element to another electric element or group of electric elements that allows for the flow and transfer of electricity between electric elements. "Interconnection requirement" means a standard or rule, adopted by the commission under this part, concerning the performance levels, processes, practices, equipment, or facilities of any entity either having or seeking to obtain an interconnection to the Hawaii electric system under procedures established pursuant to section 269-145 to ensure the reliable operation of the Hawaii electric system. "Reliability standard" means an electric reliability requirement or requirements, adopted by the commission under this part, to ensure the reliable design and operation of any or all portions of the Hawaii electric system, including but not limited to ancillary service requirements. "User, owner, or operator of the Hawaii electric system" means any person, business, organization, or other entity who:

(1) Owns, controls, operates, or manages plants or facilities for the generation, transmission, or furnishing of electricity; and

(2) Provides, sells, or transmits all of that electricity, except such electricity as is used in its own internal operations or is used for its own consumption, directly to a public utility for either transmission or distribution to the public; provided that a user, owner, or operator of the Hawaii electric system shall not be considered a public utility for the purposes of this chapter.

269-142 HRS

269-142 Reliability standards; interconnection requirements; adoption and development; force and effect.

(a) The commission may adopt, by rule or order, reliability standards and interconnection requirements. Reliability standards and interconnection requirements adopted by the commission shall apply to any electric utility and any user, owner, or operator of the Hawaii electric system. The commission shall not contract for the performance of the functions under this subsection to any other entity as provided under section 269-147.

(b) The commission may develop reliability standards and interconnection requirements as it determines necessary or upon recommendation from any entity, including an entity contracted by the commission to serve as the Hawaii electricity reliability administrator provided for under this part, for the continuing reliable design and operation of the Hawaii electric system. Any reliability standard or interconnection requirement developed by the commission shall be adopted by the commission in accordance with subsection (a) in order to be effective. The commission shall not contract for the performance of the functions under this subsection to any other entity as provided under section 269-147.

(c) The commission shall have jurisdiction over matters concerning interconnection requirements and interconnections located in the State between electric utilities, any user, owner, or operator of the Hawaii electric system, or any other person, business, or entity connecting to the Hawaii electric system or otherwise applying to connect generation or equipment providing ancillary services to, or operate generation and equipment providing ancillary services in parallel with the Hawaii electric system under processes established in accordance with section 269-145. Nothing in this subsection is intended to give the commission general supervision authority over any user, owner, or operator of the Hawaii electric system or any other person, business, or entity that is not a public utility as defined in section 269-1.

269-143 HRS

269-143 Monitoring.

(a) The commission shall have the authority to monitor the reliability and operation of the Hawaii electric system using any data, files, maps, reports, or any other information concerning any electric utility, any user, owner, or operator of the Hawaii electric system, or any person, business, or entity connecting to the Hawaii electric system, considered by the commission to be necessary for ensuring the reliable operation of the Hawaii electric system. The authority of the commission to monitor information in this section shall include the authority to request, acquire, or otherwise accumulate real-time data on any matter the commission deems necessary to monitor the reliable design and operation of the Hawaii electric system.

(b) The commission shall have the authority to monitor and compel the production of data, files, maps, reports, or any other information concerning any electric utility, any user, owner, or operator of the Hawaii electric system, or other person, business, or entity, considered by the commission to be necessary for exercising jurisdiction over interconnection to the Hawaii electric system, or for administering the process for interconnection to the Hawaii electric system under section 269-145.

(c) Any and all data, files, maps, reports, or any other information the commission requests under subsection (a) or (b) shall be produced in a timely manner. The commission may institute proceedings in accordance with section 269-15 upon a determination that any party for or on behalf of an electric utility, any other user, owner, or operator of the Hawaii electric system, or other person, business, or entity, has refused to provide or is causing unreasonable delay or expense in providing information requested under this section.

269-144 HRS

269-144 Compliance and enforcement.

(a) The commission shall take all necessary steps, including audits, spot checks, data requests, report requests, and internal monitoring procedures, to ensure that any electric utility, any user, owner, or operator of the Hawaii electric system, or any other person, business, or entity connecting to the Hawaii electric system is in compliance with all adopted reliability standards and interconnection requirements, as appropriate.

(b) The commission may impose reasonable penalties on any user, owner, or operator of the Hawaii electric system, or any other person, business, or entity connecting to the Hawaii electric system acting in violation of an adopted reliability standard after notice as provided under section 269-12 and an opportunity for a proceeding under section 269-15 has been given.

(c) The commission shall adopt rules pursuant to chapter 91 for the issuance of any penalty under this section. In adopting rules, the commission may make provisions for the Hawaii electric reliability administrator to recommend penalties and enforcement to the commission.

269-145 HRS

269-145 Grid access; procedures for interconnection; dispute resolution.

(a) Each user, owner, or operator of the Hawaii electric system, or any other person, business, or entity seeking to make an interconnection on the Hawaii electric system shall do so in accordance with procedures to be established by the commission by rule or order.

(b) The commission shall have the authority to make final determinations regarding any dispute between any user, owner, or operator of the Hawaii electric system, or any other person, business, or entity connecting to the Hawaii electric system, concerning either an existing interconnection on the Hawaii electric system or an interconnection to the Hawaii electric system created under the processes established by the commission under this section.

269-145.5 HRS

269-145.5 Advanced grid modernization technology; principles.

(a) The commission, in carrying out its responsibilities under this chapter, shall consider the value of improving electrical generation, transmission, and distribution systems and infrastructure within the State through the use of advanced grid modernization technology in order to improve the overall reliability and operational efficiency of the Hawaii electric system.

(b) In advancing the public interest, the commission shall balance technical, economic, environmental, and cultural considerations associated with modernization of the electric grid, based on principles that include but are not limited to:

(1) Enabling a diverse portfolio of renewable energy resources;

(2) Expanding options for customers to manage their energy use;

(3) Maximizing interconnection of distributed generation to the State's electric grids on a cost-effective basis at non-discriminatory terms and at just and reasonable rates, while maintaining the reliability of the State's electric grids, and allowing such access and rates through applicable rules, orders, and tariffs as reviewed and approved by the commission;

(4) Determining fair compensation for electric grid services and other benefits provided to customers and for electric grid services and other benefits provided by distributed generation customers and other non-utility service providers; and

(5) Maintaining or enhancing grid reliability and safety through modernization of the State's electric grids.

269-146 HRS

269-146 Hawaii electricity reliability surcharge; authorization; cost recovery.

(a) The commission may require, by rule or order, that all utilities, persons, businesses, or entities connecting to the Hawaii electric system, or any other user, owner, or operator of any electric element that is a part of an interconnection on the Hawaii electric system shall pay a surcharge that shall be collected by Hawaii's electric utilities. The commission shall not contract or otherwise delegate the ability to create the Hawaii electricity reliability surcharge under this section to any other entity. This surcharge amount shall be known as the Hawaii electricity reliability surcharge.

(b) Amounts collected through the Hawaii electricity reliability surcharge shall be transferred in whole or in part to any entity contracted by the commission to act as the Hawaii electricity reliability administrator provided for under this part.

(c) The Hawaii electricity reliability surcharge shall be used for the purposes of ensuring the reliable operation of the Hawaii electric system and overseeing grid access on the Hawaii electric system through the activities of the Hawaii electricity reliability administrator contracted under section 269-147; provided that amounts collected under the Hawaii electricity reliability surcharge shall not be available to meet any current or past general obligations of the State.

(d) The commission may allow an electric utility to recover appropriate and reasonable costs under the Hawaii electricity reliability surcharge for any interconnection to the Hawaii electric system, including interconnection studies and other analysis associated with studying the impact or necessary infrastructure and operational requirements needed to reliably interconnect a generator, as well as from electric utility customers through a surcharge or assessment subject to review and approval by the commission under section 269-16.

(e) Nothing in this section shall create or be construed to cause amounts collected through the Hawaii electricity reliability surcharge to be considered state or public moneys subject to appropriation by the legislature or be required to be deposited into the state treasury.

269-147 HRS

269-147 Hawaii electricity reliability administrator; contracting.

(a) The commission may contract for the performance of its functions under this part with a person, business, or organization, except for a public utility as defined under this chapter, that will serve as the Hawaii electricity reliability administrator provided for under this part; provided that the commission shall not contract for the performance of its functions under sections 269-142(a) and (b) and 269-146.

(b) Any entity contracted by the commission to serve as the Hawaii electricity reliability administrator under this section shall be selected by the commission in accordance with state law, including chapter 103D. The Hawaii electricity reliability administrator, if so enabled by the commission through mutual agreement under the laws of the State of Hawaii, shall hold the powers and rights delegated by the commission under this part for the term of the executed contract; provided that the commission shall retain full authority over the Hawaii electricity reliability administrator and the exclusive authority to carry out functions and responsibilities enumerated under sections 269-142(a) and (b) and 269-146.

269-148 HRS

269-148 Hawaii electricity reliability administrator; qualifications. Any entity contracted by the commission to serve as the Hawaii electricity reliability administrator shall:

(1) Satisfy the qualification requirements established by the commission by rule or order;

(2) Maintain reasonable and necessary staffing with appropriate skills and expertise to offer prudent and reasonable recommendations on the development of reliability standards and interconnection requirements adopted by the commission under this part, including the technical skills required to properly monitor operations of the Hawaii electric system using information provided under section 269-143; and

(3) Maintain reasonable and necessary staffing with an appropriate level of independence to fairly and impartially review matters concerning interconnection to the Hawaii electric system under section 269-145, including independence of the entity from any electric utility, any user, owner, or operator of the Hawaii electric system, or any other person, business, or entity connecting to the Hawaii electric system.

269-149 HRS

269-149 Funding; reporting.

(a) The Hawaii electricity reliability administrator shall use funds collected through the Hawaii electricity reliability surcharge provided for under section 269-146 to carry out its operations, including administrative, technological, or other related requirements for effectively ensuring the reliability of the Hawaii electric system.

(b) The Hawaii electricity reliability administrator shall report to the commission each year on the date of agreement under section 269-147 following the original contracting between the Hawaii electricity reliability administrator and the commission on the status of its operations, financial position, and a projected operational budget for the fiscal year following the date of the report.

(c) The Hawaii electricity reliability administrator shall be subject to regulation by the commission under any provision applicable to a public utility in sections 269-7, 269-8, 269■8.2, 269-8.5, 269-9, 269-10, 269-13, 269-15, 269-19.5, and 269-28. Notwithstanding any other provision of law to the contrary, the Hawaii electricity reliability administrator shall not be an electric public utility or an electric public utility affiliate.

269-161 HRS

269-161 Definitions. As used in this part: "Ancillary agreement" means any bond insurance policy, letter of credit, reserve account, surety bond, swap arrangement, hedging arrangement, liquidity or credit support arrangement, or other related bond document or other similar agreement or arrangement entered into in connection with the issuance of bonds that is designed to promote the credit quality and marketability of the bonds or to mitigate the risk of an increase in interest rates. "Authority" means the Hawaii green infrastructure authority established under section 196-63. "Bond" or "green infrastructure bond" means any bond, note or other evidence of indebtedness that is issued by the State, acting through the department, under a financing order, the proceeds of which are used directly or indirectly to recover, finance, or refinance financing costs of clean energy technology, demand response technology, and energy use reduction and demand side management infrastructure, programs, and services, and that are secured by or payable from green infrastructure property. "Bondholder" means any holder or owner of a bond. "Clean energy technology" means any technology as defined in section 269-121(b). "Department" means the department of business, economic development, and tourism, or any successor by law. "Electric utilities" means all electric utilities subject to billing, collecting, and remitting the public benefits fee, or the green infrastructure fee, at the time the financing order becomes final, and any other electric utility designated in the financing order. "Financing costs" means any of the following:

(1) Principal and interest payable on bonds;

(2) Any payment required under an ancillary agreement;

(3) Any amount required to fund or replenish a reserve account or another account established under any indenture, ancillary agreement, or other financing document relating to the issuance of bonds;

(4) Any redemption or call premium or cost of redeeming or refunding any existing debt of the department in connection with either the issuance of, or the use of proceeds from, bonds;

(5) Any costs incurred by the department to modify or amend any indenture, financing agreement, security agreement, or similar agreement or instrument securing any bond or any ancillary agreement;

(6) Any costs incurred by the department to obtain any consent, release, waiver, or approval from any bondholder or of any party to an ancillary agreement that are necessary to be incurred for the department to issue bonds;

(7) Any costs related to issuing or servicing bonds or related to obtaining a financing order, including servicing fees and expenses, trustee fees and expenses, legal, accounting, or other professional fees and expenses, administrative fees, placement fees, underwriting fees and discounts, capitalized interest and equity, and rating-agency fees; or loan program administration costs as authorized for recovery under a financing order or orders; or

(8) Any other similar costs incident to the issuance, administration, or servicing of the bonds that the department finds appropriate. "Financing order" means an order issued at the request of the department by the public utilities commission under this part that has become final as provided by law, and that authorizes the issuance of bonds and the imposition, adjustment from time to time, and collection of green infrastructure fees. "Financing party" means:

(1) Any trustee, collateral agent, or other person acting for the benefit of a bondholder; or

(2) Any party to an ancillary agreement, the rights and obligations of which relate to or depend upon the existence of green infrastructure property and green infrastructure fees, the enforcement and priority of a security interest in green infrastructure property, the timely collection and payment of green infrastructure fees, or a combination of these factors. "Green infrastructure bond fund" means the special fund created pursuant to section 196-67. "Green infrastructure charge" means the on-bill charges as defined in section 196-61. "Green infrastructure fee" means the nonbypassable fees and charges authorized by section 269-166 and in a financing order authorized under this part to be imposed on and collected from all existing and future customers of electric utilities or any successor. "Green infrastructure loan program order" means an order issued by the public utilities commission under section 269-171 that establishes the use or other disposition of amounts deposited and held in the Hawaii green infrastructure special fund pursuant to section 196-65. "Green infrastructure property" means the property, rights, and interests created by the public utilities commission under a financing order, including the right to impose, charge, and collect from electric utility customers the green infrastructure fee that shall be used to pay and secure the payment of bonds and financing costs, including the right to obtain adjustments to the green infrastructure fee, and any revenues, receipts, collections, rights to payment, payments, moneys, claims, or other proceeds arising from the rights and interests created by the public utilities commission under any financing order. "Green infrastructure special fund" means the special fund created pursuant to section 196-65. "Successor" means, with respect to any electric utility, another electric utility or other entity that succeeds voluntarily or by operation of law to the rights and obligations of the first electric utility or other entity pursuant to any bankruptcy, reorganization, restructuring, or other insolvency proceedings; any merger, acquisition, or consolidation; or any sale or transfer of assets, regardless of how any of these actions occurred. "Trustee" means any trustee or fiscal agent appointed under an indenture or certificate of the director executed in connection with the issuance of bonds pursuant to section 39-68.

269-162 HRS

269-162 Applications to issue bonds and authorize green infrastructure fee.

(a) In connection with the issuance of bonds, the department may apply to the public utilities commission for one or more financing orders, each of which financing orders authorizes the following:

(1) The imposition, charging, and collection on behalf of the department of the green infrastructure fee, to become effective upon the issuance of the bonds, and the adjustment of the green infrastructure fee on behalf of the department in accordance with an adjustment mechanism requested by the department under this part in amounts sufficient to pay the principal of and interest on bonds and all related financing costs on a timely basis;

(2) The creation of green infrastructure property under the financing order; and

(3) The deposit of the net proceeds of the bonds into the green infrastructure special fund.

(b) The application shall include all of the following:

(1) The principal amount of the bonds proposed to be issued;

(2) An estimate of the date each series of bonds is expected to be issued;

(3) The expected term, not to exceed thirty years, during which term the green infrastructure fee associated with the issuance of each series of bonds is expected to be imposed and collected;

(4) An estimate of the financing costs associated with the issuance of each series of bonds;

(5) An estimate of the amount of the green infrastructure fee revenues necessary to pay principal and interest on the bonds and related financing costs as set forth in the application and the calculation for that estimate, which calculation shall take into account the estimated date or dates of issuance and the estimated principal amount of each series of bonds;

(6) A proposed methodology for allocating the green infrastructure fee among electric utilities and customer classes within each electric utility;

(7) A description of a proposed formulaic adjustment mechanism for the adjustment of the green infrastructure fee to ensure the timely payment of principal and interest on the bonds and related financing costs; and

(8) Any other information required by the public utilities commission.

269-163 HRS

269-163 Green infrastructure financing order.

(a) The public utilities commission shall issue its financing order as final or if a finding in subsection (b) cannot be made, its denial of a financing order, as expeditiously as possible and in any event within ninety days from the date the completed application is submitted.

(b) The public utilities commission may issue a financing order if the public utilities commission finds that the creation of the green infrastructure property to secure the payment of the bonds, including the imposition of the green infrastructure fee, will facilitate the acquisition of low-cost financing, pursuant to an application under section 269-162.

(c) The public utilities commission shall include all of the following in a financing order:

(1) The maximum amount of bonds to be issued by the State acting through the department under the financing order;

(2) A description of the green infrastructure property, the creation of which property is authorized by the financing order;

(3) A description of the financing costs that will be recoverable through green infrastructure fees, including any reserves or overcollateralization amounts required by the department to secure payment of the bonds;

(4) A description of the methodology to be applied by the public utilities commission, on behalf of the department, for calculating the green infrastructure fee, including the allocation of financing costs among electric utilities and customer classes;

(5) A description of the formulaic adjustment mechanism to be used by the public utilities commission, on behalf of the department, to adjust the green infrastructure fee in order to ensure that the amount of the green infrastructure fee projected to be collected shall be sufficient to pay the principal and interest on the bonds, and all related financing costs on a timely basis, including the funding or maintenance of any reserves required to be maintained by the department;

(6) The term of the bonds, as proposed by the department, during which term the green infrastructure fee shall continue to be collected and pledged to pay the bonds, which term shall automatically be extended by the term of any refunding bonds, as approved in a subsequent financing order, issued in such principal amounts as the department may determine to be necessary to refund the bonds that are the subject of the original financing order;

(7) A requirement that the electric utilities, including any successors, serve as agents to collect the green infrastructure fee and transfer those surcharges to the trustee or other financing party as required by the financing order and any agreements with the department;

(8) The procedures to be followed by the electric utilities in the event of nonpayment or partial payment of the green infrastructure fee by the electric utilities' customers, which procedures shall be consistent with the public utilities commission approved procedures for nonpayment and partial payment of rates, charges, and fees under the electric utilities' tariffs;

(9) The distribution of the total amounts collected by the electric utilities for amounts billed to customers for the electric utilities' rates, fees, the green infrastructure fee, other public utilities commission approved fees, and for associated taxes, in the event of partial payments of the billed amounts;

(10) Terms satisfactory to the public utilities commission to ensure that the green infrastructure fee shall be nonbypassable and will be paid by all existing and future customers of an electric utility or any successor; and

(11) Any other provision the public utilities commission considers appropriate to ensure the full and timely imposition, charging, collection, and adjustment, pursuant to an approved adjustment mechanism, of the green infrastructure fee described in this subsection. The electric utilities serving as billing and collecting agents shall be parties to the proceedings in which the financing order or orders are issued.

(d) The public utilities commission, in a financing order, may permit the department flexibility in establishing the terms and conditions for the bonds to accommodate changes in market conditions, including repayment schedules, interest rates, financing costs, collateral requirements, required debt service and other reserves, and the ability of the department, at its option, to effect a series of issuances of bonds and correlated assignments, sales, pledges, or other transfers of green infrastructure property. Any changes made under this section to terms and conditions for the bonds shall be in conformance with the financing order.

(e) At the request of the department, the public utilities commission shall determine, in accordance with the adjustment mechanism set forth in the financing order, the initial green infrastructure fee after the determination of the final terms of each series of bonds, so that the green infrastructure fee shall be final and effective upon issuance of the bonds.

(f) Any adjustment to the green infrastructure fee made by the public utilities commission pursuant to the adjustment mechanism approved in the financing order shall be a ministerial act of the public utilities commission.

269-164 HRS

269-164 Green infrastructure property.

(a) The green infrastructure property shall be created simultaneously with the issuance of the bonds and shall immediately vest in the department, which shall pledge and create a lien on the property, together with all other money in the green infrastructure bond fund, solely and exclusively in favor of bondholders and financing parties, to secure the payment of bonds, amounts payable to financing parties and bondholders, amounts payable under any ancillary agreement, and other financing costs as provided in the financing documents executed by the department. Subject to this subsection, the lien and charge on green infrastructure property and all other moneys in the green infrastructure bond fund for the benefit of any financing party shall be governed by section 39-63.

(b) An electric utility shall have no ownership or beneficial interest in nor any claim or right to the green infrastructure fee, green infrastructure property, green infrastructure equipment, or green infrastructure charge other than the obligation to bill and collect the green infrastructure fee and green infrastructure charge as agent for the department or any financing party and remit the collected revenue to the department or such financing party entitled to receive those surcharges in accordance with the financing order. The public utilities commission shall ensure that all reasonable costs incurred by electric utilities to implement the green infrastructure fee may be recovered as part of the electric utility's revenue requirement, including necessary billing system adjustments, costs arising out of the billing and collection of the green infrastructure fee, and any costs for the green infrastructure fee that are not recovered otherwise. The green infrastructure fee or green infrastructure property shall not be considered revenue of any electric utility.

(c) The obligation of any electric utility customer to pay the green infrastructure fee or green infrastructure charge and, notwithstanding subsection (b), the obligation of the electric utility to collect and remit the green infrastructure fee or green infrastructure charge shall not be subject to any setoff, counterclaim, surcharge, or defense by the electric utility or by any electric utility customer, or in connection with a bankruptcy of any electric utility or any electric utility customer.

269-165 HRS

269-165 Bonds financing order.

(a) A financing order shall remain in effect until the bonds issued under the financing order and all financing costs related to the bonds have been paid in full or defeased by their terms. A financing order shall remain in effect and unabated notwithstanding the bankruptcy, reorganization, or insolvency of any electric utility or any affiliate of the electric utility or the commencement of any judicial or nonjudicial proceeding on the financing order.

(b) Once a financing order has become final as provided by law, the financing order shall become irrevocable. The public utilities commission may not directly or indirectly, except as provided in the adjustment mechanism approved in the financing order, reduce, impair, postpone, rescind, alter, or terminate the green infrastructure fee authorized in the financing order or impair the green infrastructure property or the collection of the green infrastructure fee so long as any bonds are outstanding or any financing costs remain unpaid.

(c) Under a final financing order, the department shall retain sole discretion to cause bonds to be issued, including the right to defer or postpone such issuance, assignment, sale, or transfer.

269-166 HRS

269-166 Green infrastructure fee ; nonbypassable .

(a) The public utilities commission may create, pursuant to a financing order approved pursuant to section 269-163, a utility-wide nonbypassable surcharge, referred to as the green infrastructure fee, which shall be deposited into the green infrastructure bond fund and be pledged to secure and be applied to the repayment of bonds and related financing costs as described in this part. The green infrastructure fee may be a usage - based surcharge, a flat user fee, or a charge based upon customer revenues as determined by the public utilities commission for each customer class in any financing order.

(b) The green infrastructure fee may be applied to reduce the public benefits fee to be transferred pursuant to section 269-121 if so provided in a financing order. Nothing in this subsection shall affect the right to impose, collect, and adjust from time to time the green infrastructure fee as provided in the financing order and this chapter. (c) As long as any bonds are outstanding and any financing costs have not been paid in full, the green infrastructure fee authorized under any financing order shall be nonbypassable. Subject to any exceptions provided in a financing order, the green infrastructure fee shall be paid by all existing and future customers of electric utilit ies or any successor s .

(d) The green infrastructure fee shall be collected by the electric utilities or their successors, as collection agents for the department or the financing parties, in full through a surcharge, fee, or charge that is separate and apart from the electric utilities' rates.

269-167 HRS

269-167 Electric utility successor requirements; default of electric utility.

(a) Any successor to an electric utility subject to a financing order shall be bound by the requirements of this part. The successor shall perform and satisfy all obligations of the electric utility under the financing order, in the same manner and to the same extent as the electric utility, including the obligation to collect and pay the green infrastructure fee to the department or to any financing party as required by a financing order.

(b) The public utilities commission may require, in the financing order creating the green infrastructure fee and green infrastructure property, that, if a default by the electric utility in remittance of the green infrastructure fee collected arising with respect to green infrastructure property occurs, the public utilities commission, upon the application by the department, and without limiting any other remedies available to the department or any financing party by reason of the default, shall order the sequestration and payment to the beneficiaries of the green infrastructure fee collected arising with respect to the green infrastructure property. Any order shall remain in full force and effect notwithstanding any bankruptcy, reorganization, or other insolvency proceedings with respect to the electric utility.

269-168 HRS

269-168 Treatment of bonds, fees, and property .

(a) In the furtherance of section 39-65, the ownership, transfer, and pledge of the green infrastructure fee and green infrastructure property and the imposition, charging, collection, and receipt of the green infrastructure fee and green infrastructure charge are exempt from all taxes and surcharges imposed by the State or the counties, including the general excise tax under chapter 237, public service company tax under chapter 239, public utility fee under section 269-30, and public utility franchise tax under chapter 240.

(b) Bonds issued under a financing order shall not be an obligation of any electric utility. The issuance of bonds shall not directly, indirectly, or contingently obligate the electric utility for payment of the principal of or interest on the bonds.

269-169 HRS

269-169 Green infrastructure property; non-impairment .

(a) In furtherance of section 39-61, the State pledges to and agrees with the bondholders and any financing parties under a financing order that the State will not take or permit any action that impairs the value of green infrastructure property under the financing order, or reduce, alter, or impair the green infrastructure fee that is imposed, charged, collected, or remitted for the benefit of the bondholders and any financing parties, until any principal, interest, and redemption premium in respect of bonds, all financing costs, and all amounts to be paid to a financing party under an ancillary agreement are paid or performed in full or unless adequate provision has been made by law for the protection of bondholders and other financing parties.

(b) In issuing the bonds, the department may include the pledge specified in subsection (a) in the bonds, ancillary agreements, and documentation related to the issuance and marketing of the bonds.

269-170 HRS

269-170 Green infrastructure loan program order; application.

(a) The authority shall submit an application to the public utilities commission for the use or other disposition of amounts deposited or held in the green infrastructure special fund pursuant to section 196-65 prior to the allocation, use, expenditure, or other disposition of any such amounts; provided that this subsection shall not apply to the expenditure of amounts deposited or held in the green infrastructure special fund that have been reviewed and approved by the public utilities commission for operational or administrative expenses of the authority pursuant to section 196-64.

(b) An application submitted by the authority to the public utilities commission under this section shall include the following:

(1) A description of each project, program, financing agreement, or other arrangement for which the authority seeks to allocate, use, expend, or otherwise dispose of amounts deposited or held in the green infrastructure special fund,

including: (A) The clean energy technology, demand response technology, and energy use reduction and demand side management infrastructure, programs, and services to be financed; (B) A description of the parties, both direct and incidental, intended to benefit from any financing made in connection with the green infrastructure special fund amounts requested by the authority in an application submitted to the public utilities commission under this section; (C) A description of the loan programs or other arrangements designed, established, identified, agreed to, agreed to in principle, continued, carried over, or otherwise intended to be effectuated for the use of the green infrastructure special fund amounts requested by the authority in an application submitted to the public utilities commission under this section; and (D) Any and all funding or credit sources identified, pledged, dedicated, or otherwise provided to supplement the green infrastructure special fund amounts requested by the authority in an application submitted to the public utilities commission under this section;

(2) Minimum lending, crediting, or investing criteria in relation to each project, program, financing agreement, or other arrangement described in an application submitted to the public utilities commission under this section;

(3) A description of the repayment processes, mechanisms, and applicable calculations for each project, program, financing agreement, or other arrangement described in an application submitted to the public utilities commission under this section;

(4) An explanation of the anticipated impacts and benefits to electric utility ratepayers of any project, program, financing agreement, or other arrangement described under an application submitted by the authority to the public utilities commission under this section; and

(5) Any other additional information determined to be necessary by the public utilities commission upon the review of an application submitted or resubmitted by the authority under this section.

269-171 HRS

269-171 Green infrastructure loan program order; issuance.

(a) The public utilities commission may issue a program order authorizing the allocation, use, expenditure, or other disposition of any amounts deposited or held in the green infrastructure special fund upon the submission by the authority to the commission of a completed application, as described in this section. A green infrastructure loan program order issued by the public utilities commission shall include the following, where determined necessary and applicable by the commission:

(1) An identification and description of each project, program, financing agreement, or other arrangement approved by the public utilities commission for which amounts deposited or held in the green infrastructure special fund may be allocated, used, expended, or otherwise disposed of;

(2) Minimum criteria for the lending, crediting, or investing of amounts deposited or held in the green infrastructure special fund;

(3) A description of the repayment processes, mechanisms, and applicable calculations for each project, program, financing agreement, or other arrangement approved by the public utilities commission for which amounts deposited or held in the green infrastructure special fund may be allocated, used, expended, or otherwise disposed of;

(4) A review of the anticipated impacts and benefits to electric utility ratepayers of any project, program, financing agreement, or other arrangement approved under a green infrastructure loan program order; and

(5) Any other provision or information determined to be necessary by the public utilities commission.

(b) The public utilities commission shall issue an order under this section as expeditiously as possible upon the receipt from the authority of a completed application submitted pursuant to section 269-170.

(c) The order shall specify the following, including:

(1) The procedures to be followed by the electric utilities in the event of nonpayment or partial payment of the green infrastructure charge by the electric utilities' customers, which procedures shall be consistent with the public utilities commission's approved procedures for nonpayment and partial payment of rates, charges, and fees under the electric utilities' tariffs; and

(2) The distribution of the total amounts collected by the electric utilities for amounts billed to customers for the electric utilities' rates, fees, and charges, for the green infrastructure charge, for other fees and charges approved by the public utilities commission, and for associated taxes, in the event of partial payments of the billed amounts. The electric utilities

serving as billing and collecting agents shall be parties to the proceedings in which the order or orders are issued.

269-172 HRS

269-172 Electric utilities; cost recovery; billing agent.

(a) The public utilities commission shall ensure that all reasonable costs incurred by electric utilities to start up and implement the loan program may be recovered as part of the electric utility's revenue requirement, including necessary billing system adjustments, costs arising out of the billing and collection of green infrastructure charges, and any costs for green infrastructure charges that are not recovered via participating customers' green infrastructure bill payments, or otherwise.

(b) The green infrastructure charge shall not be considered revenue of the electric utilities and accordingly, shall not be subject to state or county taxes, including the general excise tax under chapter 237, the public service company tax under chapter 239, the public utility fee under section 269■30, and the public utility franchise tax under chapter 240.

(c) The loan program or the act of serving as an agent to bill and to collect the green infrastructure charge shall not cause any electric utility to be subject to the laws that regulate financial institutions, escrow depositories, or collection agencies. An electric utility shall not be responsible for lending, underwriting, and credit determinations.

269-173 HRS

269-173 Severability . If any provision of this part is held to be invalid or is superseded, replaced, repealed, or expires for any reason:

(1) That occurrence shall not affect any action allowed under this part that is taken prior to that occurrence by the public utilities commission, an electric utility, the department, the authority, a bondholder, or any financing party, and any such action shall remain in full force and effect; and

(2) The validity and enforceability of the rest of this part shall remain unaffected.

269-174 HRS

269-174 Miscellaneous. Neither the department nor a financing party shall be considered an electric utility or person providing electric service by virtue of engaging in the transactions described in this part.

269-175 HRS

269-175 Revenue bonds; exclusion from debt limit. Green infrastructure bonds are revenue bonds issued under article VII, section 12 , of the Hawaii State Constitution, and chapter 39, part III, as modified by this part, and the department shall ensure that any bonds issued under this part are excluded from the calculation of the State's debt limit pursuant to article VII, section 13 , of the Hawaii State Constitution .

269-176 HRS

269-176 Financing order; adjustments to green infrastructure fee. The financing order shall include, without limitation, a procedure to require the public utilities commission, in accordance with a formula set out in the financing order and approved by the department, to expeditiously review and approve periodic adjustments to the green infrastructure fee to ensure the payment of the bonds and related financing costs on a timely basis.

269-191 HRS

269-191 Definitions . As used in this part: "Covered power purchase agreement" means a power purchase agreement that is subject to a step-in agreement. "Default" means the failure by an electric utility to pay power purchase costs as and when due to an obligee under a covered power purchase agreement after the expiration of any applicable grace or cure periods and extensions thereto. "Default" does not mean a bankruptcy filing by an electric utility. "Department" means the department of budget and finance, or any successor by law. "Electric utility" means a public utility that produces, conveys, transmits, delivers, or furnishes electric power. "Energy cost recovery clause" means the provision, or other equivalent, in an electric utility's rate schedules that allows the electric utility to recover its costs of fuel, expenses, and related taxes for energy costs of power purchased under a power purchase agreement. "Fund" means the power purchase costs trust fund established pursuant to section 269-194. "Hawaii electric system" has the same meaning as defined in section 269-141. "Independent power producer" has the same meaning as user, owner, or operator of the Hawaii electric system. "Investment grade status" means a credit rating for the electric utility's senior unsecured long-term debt obligations or an issuer credit rating for the electric utility, in each case, without regard for third-party credit enhancements, from at least

two out of three of the following:

(1) BBB- or higher for S&P Global Ratings, or any successor by law;

(2) BAA3 or higher by Moody's Investor Services, Inc., or any successor by law; or

(3) BBB- or higher by Fitch Ratings, Inc., or any successor by law. "Obligee" means any user, owner, or operator of the Hawaii electric system that does not claim a tax credit for a project system under section 235-12.5, and that is owed payment of power purchase costs by the electric utility under a power purchase agreement. "Power purchase agreement" means a contract between an electric utility and a user, owner, or operator of the Hawaii electric system, pursuant to which the electric utility agrees to purchase, and the user, owner, or operator of the Hawaii electric system agrees to sell, electric energy and related products produced by plants or facilities that have not provided, sold, or transmitted electricity to the electric utility before July 1, 2025. "Power purchase charges" means the on-bill charges, excluding reserve fees, authorized by the public utilities commission to be imposed on and collected from all existing and future customers of an electric utility or any successor for power purchase costs, including but not limited to the energy cost recovery clause and the purchased power adjustment clause. "Power purchase costs" means costs incurred by an electric utility pursuant to the terms of a power purchase agreement, including but not limited to costs such as termination payments payable by an electric utility in connection with the termination of a power purchase agreement as a result of a default by the electric utility. "Power purchase costs" includes but is not limited to all categories of costs recoverable under the energy cost recovery clause and the purchased power adjustment clause under their respective tariffs in effect on July 1, 2025. "Purchased power adjustment clause" means the provision, or other equivalent, in an electric utility's rate schedules that allows the electric utility to recover expenses and related taxes for non-energy costs of power purchased under a power purchase agreement. "Reserve account" refers to the account for deposit and accounting of revenues from reserve fees within the fund established pursuant to section 269-194(a). "Reserve fees" means the surcharge described in section 269-195(a). "Revenue" means moneys from power purchase charges and reserve fees net of any applicable taxes or government fees, including but not limited to the franchise tax, public service company tax, and public utilities commission fee. "Step-in agreement" means a contract by which the department undertakes the obligation of payment for power purchase costs owed to an obligee as and when due by an electric utility under a power purchase agreement following a default by the electric utility as described in section 269-192(a); provided that the department's payment obligation under the step-in agreement is limited to the revenues from power purchase charges collected in connection with covered power purchase agreements and reserve fees that are on deposit in the fund. "User, owner, or operator of the Hawaii electric system" has the same meaning as defined in section 269-141.

269-192 HRS

269-192 Step-in agreements.

(a) Within ninety days of receiving notice of the filing of an application to the public utilities commission for approval of a power purchase agreement, or if an application has already been filed as of July 1, 2025, within ninety days of receiving notice of the pending application, the department shall execute a step-in agreement related to the power purchase agreement with the obligee; provided that, before the expiration of the ninety-day period, the department completes a due diligence investigation of the obligee and the proposed step-in agreement and finds the obligee and proposed step-in agreement to be satisfactory; and further provided that if the public utilities commission denies the application, the step-in agreement shall be deemed void. The step-in agreement shall require the department to make payments for power purchase costs owed by an electric utility to the obligee in the event of a default under the related covered power purchase agreement. Pursuant to the step-in agreement and upon a default by the electric utility under the covered power purchase agreement related to the step-in agreement, the department shall make payments to the obligee for power purchase costs with revenues received from power purchase charges from covered power purchase agreements and reserve fees that are on deposit in the fund as and when due by the electric utility under the related covered power purchase agreement; provided that any step-in agreement entered into by the department shall provide that the department's payment obligation thereunder shall be limited to the revenues received from power purchase charges from covered power purchase agreements and reserve fees that are on deposit in the fund. Each step-in agreement shall include a clause stating that neither the full faith and credit of the State nor any other moneys of the State will be pledged for any obligations pursuant to the terms of the step-in agreement and that in any action concerning a failure by the department to comply with the terms of a step-in agreement, the sole and exclusive remedy available to an obligee and the electric utility under the step-in agreement against the department shall be a court order directing specific performance by the department of the step-in agreement, and that under no circumstances shall the department be liable

for any costs, expenses, or other monetary relief or compensatory damages. An obligee of a covered power purchase agreement shall have no claim or lien on any moneys of the State. An obligee of a covered power purchase agreement shall only have a claim or lien on those revenues from power purchase charges and reserve fees that are transferred by the electric utility and on deposit in the fund. An obligee shall remain entitled to all payments for power purchase costs owed under its covered power purchase agreement, whether or not the revenues from power purchase charges attributable to its covered power purchase agreement are timely collected. Notwithstanding anything to the contrary in this part, a step-in agreement shall also obligate the department to pay claims of an obligee from revenues received from power purchase charges and reserve fees on deposit in the fund arising out of a termination of the covered power purchase agreement by the electric utility under bankruptcy law. In determining any amounts owed, the department shall have a right, but not an obligation, to rely on an invoice from an obligee describing amounts owed to make that determination. The department shall not be deemed in breach of the step-in agreement by sole reason of having relied or failed to rely on the invoice. Notwithstanding any law to the contrary, the department shall not be bound to make any independent calculation, verification, or investigation into the invoice from an obligee.

(b) The department shall enter into a step-in agreement only if the power purchase agreement that is subject to the step-in agreement arises from the Stage 3 request for proposals under docket number 2017-0352 before the public utilities commission or the first Integrated Grid Planning request for proposals issued under docket number 2024-0258 before the public utilities commission. The department shall enter into a step-in agreement related to a power purchase agreement subject to the department completing its due diligence review and finding both the obligee and the contract to be satisfactory as provided in subsection (a).

(c) The payment obligation of the department under a step-in agreement shall commence not later than two days after the date of a notice given by the department to the electric utility pursuant to section 269-193(a).

(d) A step-in agreement shall terminate when the credit rating of the electric utility or its successor achieves investment grade status for at least thirty days, or may be terminated by express agreement of the obligee, department, and electric utility. Following the termination of a step-in agreement, the department shall have no obligation to the electric utility or the obligee upon a continuing or future default by the electric utility under the related power purchase agreement.

(e) Following a default of a covered power purchase agreement and any payment by the department from revenues in the fund, the electric utility, through explicit agreement with the respective obligee of its covered power purchase agreement, may elect to resume payments owed by the electric utility for power purchase costs related to the covered power purchase agreement in default, regardless of the credit rating of the electric utility at that time, in which case the electric utility shall cease to transfer revenues received from power purchase charges in connection with the covered power purchase agreement in default to the department for deposit into the fund as described in section 269-193(a), and may use the revenues received from power purchase charges related to the covered power purchase agreement in default through the vesting of title in the electric utility as described in subsection (h); provided that any election by the electric utility to continue making payments shall not terminate the step-in agreement that is related to the covered power purchase agreement in default, the related step-in agreement shall remain in effect until terminated pursuant to subsection (d), and the department shall remain obligated to pay the obligee of the covered power purchase agreement in default upon a subsequent default by the electric utility solely from revenues on deposit in the fund; provided further that no election by the electric utility shall be permitted if the department has made payment for any power purchase costs with revenues from the reserve account.

(f) The department may impose other conditions, and may include other terms, in a step-in agreement that the department deems necessary to implement the requirements of this part; provided that the conditions and terms shall not adversely affect the obligation of the department as set forth in this part, including but not limited to the obligation to make payments under the step-in agreement, but only to the extent that there are moneys in the fund, for power purchase costs owed by an electric utility to an obligee under a covered power purchase agreement related to the step-in agreement as and when due in the event of a default as required under subsection (a) or otherwise be inconsistent with the related covered power purchase agreement.

(g) As consideration for the department entering into a step-in agreement, the electric utility or its successor shall enter into an agreement to assign and transfer title to the revenues from power purchase charges and reserve fees attributable to the covered power purchase agreement to the department to be held in trust for the benefit of the obligees under the covered power purchase agreements to the extent of the amounts owed to the obligees. The assignment and transfer of title to the revenues from the power purchase charges by the electric utility shall be made and remain for the term of the

step-in agreement free and clear of any prior lien, pledge, security interest, or encumbrance of any kind, and shall be exempt from section 269-19. The revenues from power purchase charges and reserve fees shall not be subject to appropriation for any other purpose. The revenues shall be exempt from the requirements of chapters 36 and 38. The electric utility or its successor shall be and remain at all times, even upon the occurrence and during the continuance of a default by the electric utility or its successor, obligated to bill and collect the power purchase charges and reserve fees as an agent for the department to effectuate the purposes of this part.

(h) Before default or an entry of an order of relief with respect to the electric utility pursuant to title 11 of the United States Code, if any payment obligation of the electric utility under a covered power purchase agreement for power purchase costs becomes owed and due, any title held in trust by the department to the revenues from power purchase charges for the payment obligation owed and due shall divest from the department and vest in the electric utility or its successor at the time the payment by the electric utility or its successor is made to the obligee. Any vesting of revenues from power purchase charges to the electric utility at the time of payment may be made without appropriation by the legislature or allotment. The department, except as permitted pursuant to section 269-193(a), shall not otherwise assign, sell, or transfer any title to, or any claim or right to, the revenues from power purchase charges or reserve fees.

(i) To meet the requirements of the State and the public utilities commission as they pertain to electric reliability, energy security, and energy diversification under this chapter and any rules adopted pursuant thereto, the electric utility shall ensure that it maintains sufficient availability of electric energy and related products, to the extent provided by an obligee in accordance with a covered power purchase agreement. The public utilities commission shall exercise its regulatory powers to ensure that the electric utility complies with its obligations under a covered power purchase agreement.

(j) Notwithstanding any other law to the contrary, the electric utility shall file with the public utilities commission, and the public utilities commission shall allow to become effective, monthly rate adjustments provided under the energy cost recovery clause and purchased power adjustment clause to establish or adjust power purchase charges in a manner designed to:

(1) Generate sufficient revenues from power purchase charges to timely and fully pay amounts when owed and due under covered power purchase agreements;

(2) Ensure that in no event shall revenues from power purchase charges fall below the amounts owed and due under covered power purchase agreements by a sum that exceeds the amounts in the reserve account established under section 269-195; and

(3) Recover any applicable taxes and government fees and any incremental administrative costs of the electric utility or the department incurred to implement the requirements of this part. To achieve the objectives established pursuant to this subsection, unless the public utilities commission otherwise directs, before a default, the electric utility may retain revenues collected from power purchase charges in excess of amounts owed and due under the covered power purchase agreements. Any moneys in the reserve account established under the fund shall remain with the department at all times, subject to section 269-193(a). The obligations of the electric utility and of the public utilities commission under this section shall survive any default by the electric utility and shall terminate only upon the termination of the step-in agreement as provided in subsection (d).

269-193 HRS

269-193 Default of electric utility; successor requirements.

(a) After an obligee provides notice to the department of a default of a covered power purchase agreement, the department shall promptly provide the electric utility with a copy of the notice. No later than twenty-four hours from the time the electric utility receives the notice, the electric utility shall record a journal entry accounting for the transfer of all revenues from the power purchase charges arising from any covered power purchase agreements identified in the notice, regardless of when collected, then in its possession, to the fund established pursuant to section 269-194(a). No later than forty-eight hours from the time the electric utility receives the notice, the electric utility shall transfer all revenues from the power purchase charges arising from any covered power purchase agreements identified in the notice, regardless of when collected, then in its possession, and, subject to section 269-192(e), all future revenues from the power purchase charges arising from the covered power purchase agreement identified in the notice and reserve fees thereafter collected to the fund established pursuant to section 269-194(a). These amounts shall include all revenues from power purchase charges and reserve fees received by the electric utility after a default for the power purchase charges and reserve fees billed before the default. Following a default, the department shall use the revenues collected from the power purchase

charges and reserve fees on deposit in the fund, only in the order as follows:

(1) To pay power purchase costs pursuant to step-in agreements, subject to the appointment, authorization, and empowerment of the electric utility as an agent as described in section 269-196(e); provided that, for purposes of complying with the requirements of this part, the department shall have a right, but not an obligation, in determining the amounts owed to an obligee, to rely on an invoice from an obligee describing amounts owed, and the department shall not be deemed to have breached the step-in agreement by sole reason of having relied or failed to rely on the invoice; and notwithstanding any law to the contrary, the department shall not be bound to make any independent calculation, verification, or investigation into the invoice from an obligee;

(2) To recover any incremental administrative costs of the electric utility or the department incurred to implement the requirements of this part; and

(3) To implement a rate credit to customers.

(b) Any step-in agreement shall remain in effect notwithstanding any bankruptcy, reorganization, or other insolvency proceedings with respect to the electric utility.

(c) The obligation of the electric utility to collect and remit the revenues from power purchase charges and reserve fees pursuant to the requirements of this part shall not be subject to any setoff, counterclaim, surcharge, or defense by the electric utility, or in connection with a bankruptcy of any electric utility.

(d) Any successor to an electric utility shall be bound by the requirements of this part. The successor shall perform and satisfy all obligations of the electric utility in the same manner and to the same extent as the electric utility, including the obligations upon a default.

(e) If a step-in agreement is terminated as described in section 269-192(d), then by operation of law, any title to the revenues related to power purchase charges attributable to the related covered power purchase agreement shall immediately cease to be held in trust and the electric utility or its successor shall thereafter be the sole holder of title or beneficial and equitable interest in, and any claim or right to, the revenues related to power purchase charges attributable to the related covered power purchase agreement, and the obligation of the electric utility or its successor to bill and collect the power purchase charges and reserve fees for the covered power purchase agreement as an agent for the department, and, if applicable, to remit the collected revenues for the covered power purchase agreement to the fund, shall terminate.

269-194 HRS

269-194 Power purchase costs trust fund.

(a) There is established outside the state treasury the power purchase costs trust fund to be administered by the department. The department shall establish and maintain two separate accounts within the fund, the first account to be utilized for the deposit of all revenues received from power purchase charges transferred by the electric utility and the second account to be utilized for the deposit of revenues received from reserve fees transferred by the electric utility. The electric utility shall transfer to the department for deposit into the applicable account in the fund all revenues collected in connection with a covered power purchase agreement from:

(1) Power purchase charges following a default of the covered power purchase agreement; and

(2) Reserve fees.

(b) Moneys in the fund shall be held by the department in trust for the benefit of the obligees of covered power purchase agreements to the extent of the amounts owed to the obligees. The department's payments from the fund shall be made without appropriation or allotment, as provided in section 37-40.

(c) If a step-in agreement is terminated as described in section 269-192(d), the fund shall cease to receive any revenues from the power purchase charges collected by the electric utility or its successor related to the terminated covered power purchase agreement and the department, as directed by the electric utility, shall pay to the electric utility or its successor the remainder of any revenues in the fund attributable to power purchase charges associated with the terminated covered power purchase agreement related to the step-in agreement, which shall be considered moneys of the electric utility or its successor.

(d) The department shall be under no obligation to make payment to any obligee in excess of the moneys in the fund. Any default or failure by the department to make payments pursuant to the terms of a step-in agreement under this part shall not result in any recourse by the electric utility or an obligee to any funds of the State. An obligee of a covered

power purchase agreement shall have only the benefit of revenues derived from power purchase charges and the reserve fees collected and on deposit in the fund. In any action concerning a breach by the department of a step-in agreement, the sole and exclusive remedy available to an obligee and the electric utility against the department shall be a court order directing specific performance by the department of the step-in agreement, and under no circumstances shall the department be liable for any costs, expenses, or any other monetary relief or compensatory damages for a failure to comply with the terms of a step-in agreement.

269-195 HRS

269-195 Reserve account; establishment.

(a) By August 1, 2025, the public utilities commission shall create a surcharge, referred to as reserve fees, which shall be deposited into an account within the fund and be pledged to secure and be applied to the repayment of payment obligations under a covered power purchase agreement to the extent that there is a shortfall in the amount of revenues received from power purchase charges on deposit in the fund. Reserve fees shall be collected in full by the electric utility or its successors, as collection agents for the department, through a surcharge that is separate and apart from the electric utility's rates. Reserve fees may be included in the purchased power adjustment clause on customer bills. The department shall establish and maintain a separate account within the fund to accept and account for revenues from reserve fees, and the electric utility shall, within twenty-four hours of receipt, transfer all revenues collected from the surcharge related to the reserve fees directly to the department for deposit into the account. The electric utility shall not otherwise assign, sell, or transfer any title to, or any claim or right to, the revenues from reserve fees, except as provided under this part. The electric utility shall not access the reserve account or utilize the revenues from the reserve fees deposited therein, except as directed by the department pursuant to section 269-196(e). The public utilities commission may require, in the financing order creating the surcharge, that, if a default occurs by the electric utility in remittance of the reserve fees collected, the public utilities commission, upon the application by the department, and without limiting any other remedies available to the department by reason of the default, shall order the sequestration and payment to the department of the reserve fees. Any order shall remain in full force and effect notwithstanding any bankruptcy, reorganization, or other insolvency proceedings with respect to the electric utility.

(b) Reserve fees shall be collected and maintained and if necessary, reinstated, to establish or replenish a reserve account in an amount not to exceed the total of fifteen per cent of the forecasted monthly power purchase costs of all covered power purchase agreements plus an amount sufficient to recover costs related to administration by the department of the reserve account and any applicable taxes and fees.

(c) If a step-in agreement terminates pursuant to section 269-192(d), reserve fees collected in connection with the related covered power purchase agreement shall cease to be collected. Upon the termination of all step-in agreements, all moneys remaining in the reserve account shall be returned in full, together with any associated interest earned, to customers through a rate credit.

269-196 HRS

269-196 Electric utility; agent of the department.

(a) To implement the requirements of this part, the department shall designate the electric utility or its successor to act as an agent of the department to provide billing, collection, payment, and other related services. In any action concerning a breach by the department of an agency agreement entered into in connection with the billing, collection, payment, and other related services, the sole remedy available to an electric utility against the department shall be a court order directing specific performance by the department of the agency agreement. Under no circumstances shall the department be liable for any costs, expenses, or other monetary relief or compensatory damages in connection with a breach of any agency agreement.

(b) At the request of the department, the public utilities commission shall order the electric utility or its successor to perform the duties designated under subsection (a).

(c) The act of serving as an agent to bill and to collect the power purchase charges and reserve fees shall not cause the electric utility to be subject to the laws that regulate financial institutions, escrow depositories, or collection agencies. The electric utility shall not be responsible for lending, underwriting, and credit determinations in respect to these billing and collection activities.

(d) To the extent any revenues are received by the electric utility pursuant to subsection (a) in the process of collection and pending their transfer to the fund pursuant to section 269-194(a), those revenues shall be held in trust for the department's exercise of its obligations pursuant to this part.

(e) To implement the requirements of this part, the director of finance may appoint, authorize, and empower the electric utility, as agent for and on behalf of the department, to collect and pay out moneys, including from the fund, for fulfillment of payment obligations of the department arising from step-in agreements related to covered power purchase agreements. The appointment shall terminate when all step-in agreements are terminated as described in section 269-192(d) or as otherwise directed by the director of finance.

(f) The department's designation of the electric utility for services pursuant to subsections (a) and (e) shall be exempt from chapter 103D.

Chapter 269E

269E-1 Bill

269E-1 Administration.] This chapter shall be administered by the public utilities commission and the provisions of this chapter and of chapter 269, not inconsistent with this chapter, shall govern its administration; provided that sections 269-7.5, 269-8.2, 269-8.5, 269-9, 269-16 to 269-28, 269-30, 269-31, 269-34 to 269-43, and 269-71 to 269-111 shall not, in any respect, apply to the one call center.

269E-2 Bill

269E-2 Definitions. As used in this [chapter], unless the context clearly requires otherwise: "Agency" means any state or county department, commission, board, bureau, office, or other establishment of the state or county government or semi-autonomous part thereof. "Approximate location of subsurface installation" means a strip of land not more than thirty inches on either side of the exterior surface of the subsurface installation, and does not refer to the depth of the subsurface installation. "Center" means the one call center. "Commission" means the public utilities commission. "Committee" means the one call center advisory committee. "Damage" means:

(1) The substantial weakening of the structural or lateral support of a subsurface installation;

(2) The penetration or destruction of any protective coating, housing, or other protective device of a subsurface installation; or

(3) The partial or complete severance of a subsurface installation. "Demolition" means the wrecking, razing, rendering, movement, or removal of a structure or mass of material by means of tools, equipment, or the placement and discharge of explosives. "Emergency" means a sudden, unexpected occurrence involving a clear and imminent danger, demanding immediate action to prevent or mitigate loss of or damage to life, health, property, or essential public services. "Excavation" means any operation in which earth, rock, or other material in the ground is moved, removed, or otherwise displaced by means of tools, equipment, or explosives, including but not limited to the following: grading, trenching, digging, ditching, boring, drilling, auguring, tunneling, scraping cable or pipe plowing and driving, demolition, and dredging. "Excavation" shall not include any operation in which earth, rock, or other material in the ground is moved, removed, or otherwise displaced by means of tools, equipment, or explosives as part of an existing principal place of residence for one or two families, or improving or constructing an appurtenance thereto, on a parcel of land two acres or less in size, zoned for residential use, which is used or occupied or is developed, devoted, intended, or permitted to be used or occupied as a principal place of residence for one or two families. "Excavator" means any person, including an operator, who performs any excavation, other than an operator whose employees are performing maintenance work on the operator's subsurface installation. "Inquiry identification number" means the number issued by the center to every excavator who contacts the center for the purpose of excavating. "One call center" means a private provider selected by the commission pursuant to section 269E-5 that provides advance warning to excavators of the location of subsurface installations in the area of an excavation for the purpose of protecting those installations from damage. "Operator" means any person who owns, operates, or maintains a subsurface installation. "Person" means any individual, firm, joint venture, partnership, corporation, association, agency, cooperative or joint stock association, contractor, subcontractor, operator, or other entity. "Subsurface installation" means any pipeline, conduit, cable, duct, wire, sewer line, storm drain, vault, or other structure that is located underground. "Working day" means every day from 7:00 a.m. to 5:00 p.m., except Saturday, Sunday, or any federal or state holiday.

269E-3 Bill

269E-3 General duties and powers of the commission. The general duties and powers of the commission shall be to:

(1) Establish and administer a one call center that provides advance warning to excavators in this State of the location of subsurface installations in the area of an excavation for the purpose of protecting those installations from damage;

(2) Adopt, amend, or repeal rules pursuant to chapter 91 as it may deem necessary to effectuate this chapter. The rules adopted shall have the force and effect of law and may include but are not limited to rules that: (A) Forbid acts or practices deemed by the commission to be detrimental to the accomplishment of the purposes of this chapter; and (B) Require operators and excavators to make reports to the commission containing information that will enable the commission to improve the accomplishment of this chapter;

(3) Enforce this chapter and any rules adopted pursuant thereto;

(4) Issue binding interpretations or declaratory rulings, and conduct contested case proceedings pursuant to chapter 91; and

(5) Subpoena witnesses and documents, administer oaths, and receive affidavits and oral testimony, including telephonic and electronic communications.

269E-4 Bill

269E-4 One call center advisory committee.

(a) The commission shall establish a one call center advisory committee as a governmental entity as defined under chapter 662D to advise the commission in implementing this chapter. The committee shall consist of seventeen voting members and one ex officio[,] nonvoting member. Of the voting members:

(1) Eleven shall be appointed by the commission to serve until successors are appointed by the commission. The appointments shall be as follows: (A) One from the gas utility industry; (B) One from the electric utility industry; (C) One from the telecommunications utility industry; (D) One from the pipeline operator industry; (E) Two from the General Contractors Association of Hawaii; (F) Two from the Building Industry Association of Hawaii; (G) One from the cable service industry; (H) One from the water utility industry; and (I) One from the wastewater industry;

(2) One shall be the representative of the city and county of Honolulu designated by the mayor of the city and county of Honolulu;

(3) One shall be the representative of the county of Hawaii designated by the mayor of the county of Hawaii;

(4) One shall be the representative of the county of Maui designated by the mayor of the county of Maui;

(5) One shall be the representative of the county of Kauai designated by the mayor of the county of Kauai;

(6) One shall be the director of the state department of transportation, or the director's representative; and

(7) One shall be the executive director of the division of consumer advocacy, department of commerce and consumer affairs, or the executive director's representative. A representative of the center shall serve as an ex officio[,] nonvoting member of the committee.

(b) No member shall receive any compensation for the member's services.

(c) The committee shall advise the commission on:

(1) The establishment of rules;

(2) The setting of appropriate fees and assessments for the administration and operation of the center;

(3) The selection of the center provider;

(4) The enforcement of this chapter; and

(5) Other aspects regarding the establishment and operation of the center; provided that the committee shall not advise the commission in the exercise of the commission's quasi-judicial, adjudicatory functions, or participate in the commission's deliberations. The committee shall be exempt from chapter 92.

269E-5 Bill

269E-5 One call center established.

(a) By January 1, 2006, the commission shall establish and begin administration of a one call center that provides advance warning to excavators in this State of the location of subsurface installations in the area of an excavation for the

purpose of protecting those installations from damage. In establishing the center, the commission shall consider the availability of experienced center providers. The commission shall award administration of the center to the provider the commission determines to be best qualified to provide center services. In reviewing a provider's qualifications, the commission shall consider cost, quality of service, experience, and other factors the commission deems appropriate.

(b) Pursuant to rules adopted by the commission, all operators shall furnish to the center information relating to subsurface installations that the center may use to identify operators known to have subsurface installations in the area of a proposed excavation; provided that operators shall not be required to furnish to the center information relating to subsurface installations that are deemed confidential or proprietary.

269E-6 Bill

269E-6 One call center financing.

(a) To finance the establishment and operation of the center and the administrative costs of the commission, operators shall pay to the commission a fee in an amount and at a schedule determined by the commission. The commission may also assess fees on excavators. All fees paid by operators and excavators shall be deposited with the director of finance to the credit of the public utilities commission special fund.

(b) All operators of subsurface installations in this State shall share in the operational and administrative costs of the center, except where:

(1) All of the operator's subsurface installations are located on property owned exclusively by that operator; and

(2) The operator has not authorized another operator to use the property for any subsurface installation.

(c) The commission may accept revenues, compensations, proceeds, charges, penalties, grants, or any other payments in any form, from any public agency or any other source.

(d) Any agency required to participate may charge a reasonable fee in an amount sufficient to cover the administrative and operational costs required by this chapter.

(e) Civil penalties collected pursuant to this chapter shall be used by the commission to educate the operating and excavating community in Hawaii and to reduce the center's operating costs.

(f) Any operator or excavator that pays public utility fees to the commission pursuant to section 269-30 may petition the commission for approval to apply a portion of its public utility fee payments as a credit toward its center fees.

269E-7 Bill

269E-7 Notification of excavation; inquiry identification number.

(a) Except in an emergency, every excavator planning to conduct an excavation on public or private property shall notify the center of the excavation at least five working days but not more than twenty-eight calendar days prior to commencing excavation. The excavator shall provide to the center a description of the excavation site that includes the county, place, and address or description of where the excavation will take place, including but not limited to the nearest intersecting street, side of street, footages, or other tie-in measurements as needed. An excavator need not contact the center if the excavation is:

(1) On private property that is owned exclusively by the excavator; and

(2) No operator has been authorized to use the property for any subsurface installation.

(b) The center shall provide an inquiry identification number to an excavator who contacts the center and shall, on that same day, notify any operator known to have a subsurface installation in the area of the proposed excavation. The inquiry identification number shall remain valid for not more than twenty-eight calendar days from the date of issuance, and after that date shall require center revalidation. An excavator may revalidate the inquiry identification number by applying to the center for revalidation prior to expiration. The excavator shall maintain a valid inquiry identification number for the duration of the excavation.

(c) The center shall maintain a record of all notifications by and from excavators and operators for a period of not fewer than three years.

269E-8 Bill

269E-8 Marking of excavation site.

(a) The excavator shall delineate the area to be excavated with white spray chalk or other suitable markings prior to calling the center. The excavator shall indicate the entire dimension of the excavation by known industrial practices and display the excavator's name, abbreviations, or initials next to or in the white spray chalk markings to identify the excavation site.

(b) When an excavator delineates an area to be excavated with white spray chalk, the excavator shall delineate the area in a manner that shall not be:

(1) Misleading to the public using affected streets and highways;

(2) Subject to misinterpretation as a traffic or pedestrian control; and

(3) Construed as duplicative.

(c) Where an excavator determines that delineating with white spray chalk may be misleading, misinterpreted, or duplicative as specified under subsection (b), the excavator shall inform the center that the area to be excavated shall instead be identified with flags, stakes, or stake chasers marked with the excavator's name, abbreviations, or initials, to enable the operator to determine the area of excavation.

269E-9 Bill

269E-9 Identification of subsurface installations by operator.

(a) Any operator who receives timely notification from the center of any proposed excavation work pursuant to section 269E-7(b) shall within five working days of that notification or before the start of the excavation work, whichever is later, or at a later time mutually agreeable to the operator and the excavator:

(1) Advise the excavator that the operator does not operate any subsurface installations that may be affected by the excavation;

(2) Advise the excavator of the approximate location of the operator's subsurface installations that may be affected by the excavation to the extent and degree of accuracy that the information is available in the records of the operator;

(3) Make available to the excavator, for inspection and copying at the excavator's expense, information in that specific operator's or agency's records on the approximate location of that specific operator's or agency's subsurface installations that may be affected by the excavation to the extent and degree of accuracy that the information is available in that specific operator's or agency's records; or

(4) Locate and field mark in conformance with the American Public Works Association Uniform Color Code the approximate location and the number of subsurface installations that may be affected by the excavation to the extent and degree of accuracy that the information is available as determined through the use of standard locating techniques or based on the records of the operator. The operator shall promptly notify the center when the operator has fulfilled the requirements of this section. After receiving this notification from all affected operators, the center shall promptly provide notice to the excavator that all affected operators have fulfilled the requirements of this section.

(b) The excavator shall notify the center of any operator's failure to comply with this section and of the applicable inquiry identification number.

269E-10 Bill

269E-10 Commencement of excavation. The center shall not prohibit an excavator from beginning excavation work:

(1) After receiving notice that all affected operators have fulfilled the requirements of section 269E-9; or

(2) Five working days after the excavator provides notice of the excavation to the center pursuant to section 269E-7(a); provided that this subsection shall not be construed as affording the excavator any immunity or protection from claims for damages or injuries relating to the excavation.

269E-11 Bill

269E-11 Remarking of operator's subsurface installation.

(a) The excavator shall take reasonable care to maintain an operator's field markings.

(b) If at any time during an excavation for which there is a valid inquiry identification number an operator's field markings are no longer reasonably visible, the excavator shall shut down the excavation and contact the center and request remarking of the subsurface installations. The center shall, on the same day, contact the operator and request remarking.

(c) Upon receiving timely renotification pursuant to this section, the operator shall within five working days, and to the extent necessary, remark those subsurface installations that may be affected by the excavation in conformance with section 269E■9(a)(4). The operator shall promptly notify the center when the requirements of this section are fulfilled.

(d) The excavator may continue excavation:

(1) After the center notifies the excavator that the operator has fulfilled the requirements of section 269E-11(c); or

(2) Five working days after the excavator requests remarking pursuant to section 269E-11(b); provided that this subsection shall not be construed as affording the excavator any immunity or protection from claims for damages or injuries relating to the excavation.

(e) If the excavator maintains the operator's field markings, then the excavator, when extending a location request ticket through the center, shall not request the operator to remark the operator's subsurface installations.

(f) The excavator shall notify the center of any operator's failure to comply with this section and of the applicable inquiry identification number.

(g) This section shall not apply to operators who comply with section 269E-9(a)(1), (2), or (3).

269E-12 Bill

269E-12 Excavation procedures.

(a) The excavator shall exercise reasonable care when excavating in the vicinity of a subsurface installation.

(b) Before using any power-operated or power-driven excavating equipment, the excavator shall determine the exact location of subsurface installations in conflict with the excavation by first excavating down to the depth of the excavation with the appropriate hand tools within the area of the approximate location of the subsurface installations; provided that power-operated or power-driven excavating may be used:

(1) For the removal of any existing pavement if there are no subsurface installations contained in the pavement; or

(2) Within the approximate location of a subsurface installation by mutual agreement between the operator and the excavator.

(c) If after making every reasonable effort to locate the subsurface installation, the excavator cannot determine the exact location by hand excavation as set forth in subsection (b), the excavator shall request that the operator provide additional information through the center to locate the subsurface installation. The operator, within two working days, shall provide any information that is available to the operator to aid the excavator in determining the exact location.

(d) If after making every reasonable effort to locate the subsurface installation with the additional information provided pursuant to subsection (c) the excavator still cannot determine the exact location of the subsurface installation by hand excavation, the excavator shall notify the center. The center shall then:

(1) Require the operator to determine the exact location of the operator's subsurface installation with appropriate hand tools; or

(2) Allow the excavator to use powered equipment to continue the excavation, with or without on-site supervision by the operator; provided that this subsection shall not be construed as affording the excavator any immunity or protection from claims for damages or injuries relating to the excavation.

(e) Each excavator responsible for any excavation that results in contact with, exposure of, or damage to a subsurface installation, before continuing excavation in the immediate area of the subsurface installation shall:

(1) Immediately notify the operator of the location and nature of the damage and undertake any reasonable measures as requested by the operator; and

(2) Allow reasonable time, consistent with industry practice, for any necessary repairs to be made to the subsurface installation.

(f) If the damage to a subsurface installation creates an emergency situation, the excavator shall:

(1) Immediately notify the 911 emergency service and the operator of the facility; and

(2) Minimize the hazard until the arrival of the 911 emergency service authority or the operator.

269E-13 Bill

269E-13 Excavation permits. Prior to conducting an excavation, the excavator shall obtain all necessary permits from the appropriate agency or agencies pursuant to the laws, rules, regulations, procedures, and requirements governing the issuance of such permits.

269E-14 Bill

269E-14 Penalties.

(a) An action for the enforcement of penalties pursuant to this chapter shall be brought before the commission by the State, county, excavator, or any operator.

(b) Any excavator or operator who negligently violates, neglects, or fails in any particular instance to conform to or comply with any requirement of this chapter or any order or rule of the commission:

(1) Shall be subject to a civil penalty not to exceed $5,000 per day for each day such violation, neglect, or failure continues, to be assessed by the commission after a hearing in accordance with chapter 91; provided that the maximum penalty for related violations arising out of the same act, omission, or occurrence shall not exceed $100,000; and

(2) May be required, at the expense of the violator, to participate in an educational program conducted by the center; provided that any excavator who negligently violates section 269E-7(a) shall be required, at the expense of the excavator, to participate in an educational program conducted by the center.

(c) Upon written application filed within fifteen days after service of an order imposing a civil penalty pursuant to this section, the commission may remit or mitigate such penalty upon such terms as it deems proper. In determining whether such penalty should be remitted or mitigated, the commission may consider:

(1) The gravity of the violation;

(2) Whether the excavator or operator charged with the violation attempted in good faith to comply with this chapter, before and after notification of the violation; and

(3) Any history of previous violations of this chapter by the operator or excavator.

(d) If any penalties imposed pursuant to this section are not paid or complied with within such period as the commission may direct, the attorney general shall institute a civil action in circuit court for compliance of the same.

(e) In addition to civil penalties imposed, the nonprevailing party shall reimburse the prevailing party for legal fees and costs incurred by the prevailing party.

(f) Notwithstanding any other law to the contrary, this chapter shall not affect any remedies, civil or criminal, otherwise provided by law. This chapter, and compliance therewith, shall not be construed as altering or mitigating any liabilities, responsibilities, or obligations imposed by law, rule, agreement, or contract, or as affording any immunity or protection from claims for injuries or damages relating to the excavation. This chapter does not expressly transfer, and shall not be deemed to imply the transfer of, any liability between operators and excavators. No insurance policy shall provide coverage for any civil penalties imposed under this chapter.

269E-15 Bill

269E-15 Hearings.

(a) All hearings, investigations, and proceedings shall be governed by this section, chapter 91, and by rules of practice and procedure adopted by the commission, and in the conduct thereof, the technical rules of evidence need not be applied. No informality in any hearing, investigation, or proceeding, or in the manner of taking testimony shall invalidate any order, decision, or rule made, approved, or confirmed by the commission.

(b) Complaints may be made, in writing, by the commission on its own motion or by the State, county, excavator, or any operator, setting forth any act or thing done, or omitted to be done by any excavator or operator in violation or claimed to be in violation, of any requirement of this chapter or of any order or rule of the commission.

(c) All matters upon which complaint may be founded may be joined in one hearing, and no motion shall be entertained against a complaint for misjoinder of causes of action or grievances or misjoinder or nonjoinder of parties. In any review by the courts of orders or decisions of the commission, the same rule shall apply with regard to the joinder of causes and parties as herein provided. The commission shall not be required to dismiss any complaint because of the absence of direct damage to the complainant.

(d) Upon the filing of a complaint, the commission shall cause a copy thereof to be served upon the operator or excavator complained of. Service in all hearings, investigations, and proceedings pending before the commission may be made upon any person upon whom a summons may be served in any proceeding before the courts of this State, and may be made personally or by mailing in a sealed envelope, registered or certified, with postage prepaid. The commission shall fix the time when and place where a hearing will be had upon the complaint and shall serve notice thereof, not less than fifteen days before the time set for the hearing.

(e) At the time fixed for any hearing before the commission or the time to which the hearing has been continued, the complainant and the person complained of, and such persons as the commission allows to intervene, shall be entitled to be heard and to introduce evidence. The commission shall issue process to enforce the attendance of all necessary witnesses. After the conclusion of the hearing, the commission shall make and file its order, containing its decision which shall be based on findings of fact and conclusions of law therein stated. A copy of each order shall be served upon the person complained of, or the person's attorney.

(f) A complete record of all proceedings and testimony before the commission on any formal hearing shall be taken down by a reporter appointed by the commission, and the parties shall be entitled to be heard in person or by attorney. In case of an action to review an order or decision of the commission, a transcript of the testimony, together with all exhibits or copies thereof introduced, and of the pleadings, records, and proceedings in the cause, shall constitute the record of the commission, but the party or parties to the proceeding and the commission may stipulate that designated parts of the record need not be transmitted to the appellate court, as provided by the rules of the court.

269E-16 Bill

269E-16 Reconsideration and rehearings. After any order or decision has been made by the public utilities commission, any party to the proceeding may apply once for reconsideration or a rehearing in respect to any matter determined in the proceeding and specified in the motion for reconsideration or rehearing. The motion for reconsideration or a rehearing shall be filed within ten days after the decision and order has been served and shall set forth specifically the ground or grounds on which the applicant considers the decision or order to be unlawful. No person shall in any court urge or rely on any ground not so set forth in the motion. A motion for reconsideration or rehearing shall not excuse any person from complying with and obeying any order or decision, or any requirement of any order or decision of the commission theretofore made, or operate in any manner to stay or postpone the enforcement thereof, except in such cases and upon such terms as the commission by order directs. If, after reconsideration or rehearing the commission is of the opinion that the original order or decision, or any part thereof, is in any respect unjust or unwarranted, or should be changed, the commission may abrogate, change, or modify it. The order or decision abrogating, changing, or modifying the original order or decision shall have the same force and effect as an original order or decision, but shall not affect any right or the enforcement of any right arising from or by virtue of the original order or decision unless so ordered by the commission.

269E-17 Bill

269E-17 Appeals. From the order made on an application for reconsideration or rehearing by the public utilities commission under this chapter, an appeal shall lie in the manner provided in section 269-15.5.

Chapter 271

271-1 Declaration of policy

271-1 Declaration of policy. The legislature of this State recognizes and declares that the transportation of persons and of property, for commercial purposes, over the public highways of this State constitutes a business affected with the public interest. It is intended by this chapter to provide for fair and impartial regulation of such transportation in the interest of preserving for the public the full benefit and use of the highways consistent with the public safety and the needs of commerce; to promote safe, adequate, economical, and efficient service and foster sound economic conditions in transportation and among the several carriers, to encourage the establishment and maintenance of reasonable rates and charges for transportation and related accessorial service, without unjust discrimination, undue preference or advantage, or unfair or destructive competitive practices. This chapter shall be administered and enforced with a view to carrying out the above declaration of policy.

271-2

271-2 Administration; governing provisions of other acts. This chapter shall be administered by the public utilities commission of the State and the provisions of this chapter and of chapter 269, not inconsistent with this chapter, shall govern its administration; provided that sections 269-4, 269-9, 269-11, 269-16 to 269-28 and 269-30 shall not, in any respect, apply to the regulation of motor carriers.

271-3

271-3 Application of chapter, interstate, or foreign commerce. Neither this chapter nor any provision hereof shall apply to commerce with foreign nations or to interstate commerce, except insofar as the application is permitted under the Constitution and laws of the United States.

271-4 Definitions

271-4 Definitions. As used in this chapter: "Certificate" means a certificate of public convenience and necessity issued under this chapter to common carriers by motor vehicle. "Chapter" means the Motor Carrier Law. "Commission" means the public utilities commission. "Common carrier by motor vehicle" means any person that holds itself out to the general public to engage in the transportation by motor vehicle of passengers or property or any class or classes thereof for compensation. "Contract carrier by motor vehicle" means any person that engages in transportation by motor vehicle of passengers or property for compensation (other than transportation referred to in the definition of "common carrier by motor vehicle") under continuing contracts with one person or a limited number of persons for the furnishing of transportation services:

(1) Through the assignment of motor vehicles for a continuing period of time to the exclusive use of each person served; or

(2) Designed to meet the distinct need of each individual customer. "Department" means the department of transportation. "Document" includes any application, complaint, pleading, brief, answer, motion, memorandum, declaration, exhibit, certificate of service, and other papers filed by or with the commission. "Enforcement officer" means:

(1) Any person employed and authorized by the department to investigate any matter on behalf of the department; and

(2) A motor vehicle safety officer employed and assigned, pursuant to section 271-38, by the department to enforce this chapter. "Highway" means the public roads, highways, streets, and ways in this State. "Motor carrier" includes both a common carrier by motor vehicle and a contract carrier by motor vehicle. "Motor vehicle" means any vehicle, machine, tractor, trailer, or semitrailer propelled or drawn by mechanical power and used upon the highways in the transportation of passengers or property, or any combination thereof determined by the commission, but does not include any vehicle, locomotive, or car operated exclusively on a rail or rails or a trolley bus operated by electric power derived from a fixed overhead wire, furnishing local passenger transportation similar to street-railway service. "Permit" means a permit issued under this chapter to contract carriers by motor vehicle. "Person" or "persons" means any individual, firm, copartnership, corporation, company, association, or joint stock association; and includes any trustee, receiver, assignee, or personal representative thereof. "Private carrier of property by motor vehicle" means any person not included in the terms "common carrier by motor vehicle" or "contract carrier by motor vehicle", who or that transports by motor vehicle property of which the person is the owner, lessee, or bailee, when the transportation is for the purpose of sale, lease, rent, or bailment or in the furtherance of any commercial enterprise. "Rates" includes rates, fares, tolls, rentals, and charges of whatever kind and nature unless the context indicates otherwise; provided that for transportation by motor vehicle of passengers, where the provision of transportation is part of a package that may include air fare, meals, attractions, and other services, "rates" shall only include the charges for the provision of transportation by motor vehicle. "Transportation of persons" includes every service in connection with or incidental to the safety, comfort, or convenience of persons transported and the receipt, carriage, and delivery of these persons and their baggage. "Transportation of property" includes every service in connection with or incidental to the transportation of property, including in particular its receipt, delivery, elevation, transfer, carriage, ventilation, refrigeration, icing, dunnage, storage in transit, handling, and consolidation for the purposes of forwarding within the State.

271-5 Exemptions, generally

271-5 Exemptions, generally. Notwithstanding any other provisions of this chapter, its contents shall not apply to:

(1) Persons transporting their own property where the transportation is in furtherance of a primary business purpose or enterprise of that person, except where the transportation is undertaken by a motor carrier to evade the regulatory purposes of this chapter;

(2) Persons operating motor vehicles when engaged in the transportation of school children and teachers to and from school, and to and from school functions; provided that these persons may engage in providing transportation at special rates for groups of persons belonging to an eleemosynary or benevolent organization or association domiciled in the State where the organization or association sponsors or is conducting a nonregular excursion; provided further that whenever the persons engage in the transportation of persons other than those exempted in this paragraph, that portion of their operation shall not be exempt from this chapter. Nothing in this paragraph shall be construed to authorize any person to engage in the transportation of persons, other than the transportation of persons exempted by the terms of this paragraph, without a permit or certificate issued by the commission authorizing such transportation;

(3) Persons operating taxicabs or other motor vehicles utilized in performing a bona fide taxicab service. "Taxicab" includes: (A) Any motor vehicle used in the movement of passengers on the public highways under the following circumstances, namely the passenger hires the vehicle on call or at a fixed stand, with or without baggage for transportation, and controls the vehicle to the passenger's destination; (B) Any motor vehicle for hire having seating accommodations for eight or fewer passengers used in the movement of passengers on the public highways that may, as part of a continuous trip, pick up or discharge passengers from various unrelated locations; provided that they shall be regulated by the counties in accordance with section 46-16.5(c); provided further that this subparagraph shall not apply to any exclusive rights granted by the department of transportation for taxicab services at facilities under the department's control; and (C) Any motor vehicle having seating accommodations for eight or fewer passengers used in the movement of passengers on the public highways between a terminal, i.e., a fixed stand, in the Honolulu district, as defined in section 4-1 and a terminal in a geographical district outside the limits of the Honolulu district, and vice versa, without picking up passengers other than at the terminals or fixed stands; provided that the passengers may be picked up by telephone call from their homes in the rural area or may be unloaded at any point between the fixed stands or may be delivered to their homes in the rural area;

(4) Persons operating motor vehicles in the transportation of persons pursuant to a franchise from the legislature and whose operations are presently regulated under chapter 269;

(5) Nonprofit agricultural cooperative associations to the extent that they engage in the transportation of their own property or the property of their members;

(6) Persons operating motor vehicles specially constructed for the towing of disabled or wrecked vehicles but not otherwise used in the transportation of property for compensation or hire;

(7) Persons operating motor vehicles in the transportation of mail, newspapers, periodicals, magazines, messages, documents, letters, or blueprints;

(8) Persons operating funeral cars or ambulances;

(9) Persons operating motor vehicles in the transportation of garbage or refuse;

(10) Persons operating the type of passenger carrying motor vehicles known as "sampan buses" within the radius of twenty miles from the city of Hilo, Hawaii;

(11) Persons transporting unprocessed pineapple to a cannery, seed corn to a processing facility, or returning any containers used in the transportation to the fields;

(12) Sugar plantations transporting sugarcane, raw sugar, molasses, sugar by-products, and farming supplies for neighboring farmers pursuant to contracts administered by the United States Department of Agriculture;

(13) Persons engaged in the ranching or meat or feed business who transport cattle to slaughterhouses for hire where such transportation is their sole transportation for hire and where their earnings from the transportation constitute less than fifty per cent of their gross income from their business and the transportation for hire;

(14) Persons transporting unprocessed raw milk to processing plants and returning any containers used in the transportation to dairy farms for reloading;

(15) Persons transporting animal feeds to animal husbandry farmers and farming supplies directly to animal husbandry farmers and returning any containers used in the transportation to these sources of the feeds and supplies for reloading;

(16) Persons engaged in transporting no more than fifteen passengers between their places of abode, or termini near such places, and their places of employment in a single daily round trip where the driver is also on the driver's way to or from the driver's place of employment;

(17) Persons transporting passengers without charge in motor vehicles owned or operated by the person, where the transportation is provided in conjunction with and in furtherance of a related primary business purpose or enterprise of that person, and the transportation is provided only directly to and from the place of business of the person, except that this exemption shall not apply to persons making any contract, agreement, or arrangement to provide, procure, furnish, or arrange for transportation as a travel agent or broker or a person engaged in tour or sightseeing activities, nor shall this exemption apply where the transportation is undertaken by a person to evade the regulatory purposes of this chapter;

(18) Persons conducting the type of county-regulated passenger carrying operation known as "jitney services". For the purposes of this paragraph, "jitney services" means public transportation services utilizing motor vehicles that have seating accommodations for six to twenty-five passengers, operate along specific routes during defined service hours, and levy a flat fare schedule; and

(19) Community-based organizations engaged in community-based economic development providing transportation services; provided that: (A) The transportation services are operated within the parameters of a state- or county-approved plan that is contracted or regulated under the authority of that state or county government agency. The state or county government agency shall require, or may exceed, the minimum requirements for commercial and business insurance required under section 271-17; (B) The community-based organization owns the transportation service-related assets, and these assets cannot be sold for personal gain for the duration of the exemption from this chapter; (C) Community stakeholders have a role in the operation of the community-based organization; and (D) The state or county government agency shall notify the commission of the agency's determination that the community-based organization qualifies for this exemption. For the purposes of this paragraph: "Community-based economic development" has the same meaning as defined in section 210D-2. "Community-based organization" has the same meaning as defined in section 210D-2. "Community stakeholders" means individuals, groups, or other organizations within the geographically defined area served by, and that have a direct interest in the activities and outcomes of, the community-based organization and community-based economic development.

271-6 REPEALED

271-6 REPEALED. L Sp 1977 1st, c 20, §3. Previous Vol05_Ch0261-0319 Next

271-7

271-7 Exemptions, vehicles used by farmers. Notwithstanding any other provisions of this chapter all motor vehicles used by farmers exclusively for their farm operations and all motor vehicles used by farmers who infrequently transport from the place of production to a warehouse, regular market, place of storage, or place of shipment, the farm products of neighboring farmers in exchange for like or reciprocal services, for farm products, or for a cash consideration not exceeding $1,500 per year; provided that the transportation shall constitute the sole transportation of property for hire or compensation of the farmers are exempted from this chapter.

271-8 Certificate or permit required

271-8 Certificate or permit required. Except as provided in section 271-5, no person shall engage in the transportation of persons or property, for compensation or hire, by motor vehicle, over any public highway of this State unless there is in force with respect to the person a certificate or permit issued by the public utilities commission authorizing the transportation.

271-8.5 Advertising

271-8.5 Advertising.

(a) It shall be a misdemeanor for any person, including a person who is exempt under section 271-5, to advertise as a motor carrier of passengers or property, unless the person holds a valid certificate or permit required by this chapter as to the classification so advertised. The term "advertise", as used in this section, includes: the issuance of any card, sign, or device to any person, or the causing, permitting, or allowing of any sign or marking on or in any building or motor vehicle, or the advertising in any newspaper, magazine, or advertising other than in-column listings in any directory, or the commercial broadcasting by airwave transmission, or any and all communications media.

(b) A licensee may advertise in print or broadcast medium as described in subsection (a) only if the licensee includes in the advertisement the licensee's applicable and current certificate or permit number and provides proof of the number's validity to the publisher or producer of the advertising medium. The publisher or producer of a print or broadcast advertising medium shall not publish or broadcast an advertisement for a licensee who does not provide proof of a current

certificate or permit or who does not include a currently valid certificate or permit number in the advertisement.

(c) Upon notice from the public utilities commission of the entry of a final order of the commission pursuant to chapter 91 or a judgment by a court of competent jurisdiction, that a person has advertised in violation of either subsection (a) or section 271-8, the public utility furnishing the telecommunications service shall disconnect that person's access to the telephone number or telecommunications service number contained in the advertisement or listing. A public utility complying with a notice to disconnect is immune from liability for damages resulting from its compliance.

(d) The publisher or producer of a print or broadcast advertising medium shall not be liable in any suit, action, or claim arising from its refusal to list or accept advertisements pursuant to subsection (b).

271-9

271-9 General duties and powers of the commission.

(a) The general duties and powers of the public utilities commission shall be:

(1) To regulate common carriers by motor vehicle, and to that end the commission shall establish reasonable requirements with respect to continuous and adequate service, leasing of motor vehicles, uniform system of accounts, records, and reports, and preservation of records.

(2) To regulate contract carriers by motor vehicle, and to that end the commission shall establish reasonable requirements with respect to leasing of motor vehicles, uniform system of accounts, records, and reports, and preservation of records.

(3) To administer, execute, and enforce this chapter, to make all necessary orders in connection therewith, and to prescribe rules, regulations, and procedures for the administration.

(4) For purposes of the administration of this chapter, to inquire into the management of the business of motor carriers, and into the management of the business of persons controlling, controlled by, or under common control with, motor carriers to the extent that the business of these persons is related to the management of the business of one or more motor carriers, and the commission shall keep itself informed as to the manner and method in which the same are conducted, and may obtain from the carriers and persons such information as the commission deems necessary to carry out the provisions of this chapter.

(5) To investigate any person acting in the capacity of or engaging in the business of a motor carrier within the State, without having a certificate of public convenience and necessity or other authority previously obtained under and in compliance with this chapter or the rules promulgated thereunder.

(b) The commission may from time to time establish such just and reasonable classifications of groups of carriers included in the term "common carrier by motor vehicle" or "contract carrier by motor vehicle", as the special nature of the services performed by the carriers shall require, and such just and reasonable rules, regulations, and requirements, consistent with this chapter, to be observed by the carriers so classified or grouped, as the commission deems necessary or desirable in the public interest.

(c) Upon complaint in writing to the commission by any person or body politic, or upon its own initiative without complaint, the commission may investigate whether any motor carrier has failed to comply with any provision of this chapter, or with any regulation, requirements, or order established or issued pursuant thereto. If the commission, after notice and hearing as prescribed in section 271-31, finds upon any investigation that the motor carrier has failed to comply with any provision, regulation, requirements, or order, the commission shall issue an appropriate order to compel the carrier to comply therewith. Whenever the commission is of the opinion that any complaint does not state reasonable grounds for investigation and action on its part, it may dismiss the complaint.

271-9.5

271-9.5 Electronic copies of documents.

(a) No later than July 1, 2011, the public utilities commission shall accept from any person who submits a document to the commission the original or one electronic copy of each application, complaint, pleading, brief, or other document required to be filed with the commission pursuant to this chapter, and the consumer advocate shall accept service of one paper or electronic copy of each application, complaint, pleading, brief, or other document filed with the commission.

(b) The commission shall adopt rules pursuant to chapter 91 to effectuate the purposes of this section. Until the final adoption by the commission of rules governing the electronic filing of documents with the commission, the following

requirements shall apply to all documents submitted to the commission pursuant to this section; provided that additional requirements with regard to document format may be established by the commission through written guidelines:

(1) Unless otherwise required by this chapter or the guidelines of the commission, each person who submits or files an application, complaint, pleading, brief, or other document shall submit to or file with the commission an original or one electronic copy of each document and shall serve one paper or electronic copy of each document on the consumer advocate;

(2) All paper documents submitted to or filed with the commission shall be printed on one side of the page only and, if practicable, in portrait orientation;

(3) Original paper documents submitted to or filed with the commission shall not be stapled but shall be clipped together or placed in a clearly marked three-ring binder, as appropriate;

(4) All paper documents filed or submitted to the commission shall include appropriately labeled separator pages in addition to tabbed dividers, as applicable;

(5) All confidential documents filed under confidential seal shall be clearly designated in accordance with the requirements of any applicable protective order, and the sealed envelope in which the confidential documents are enclosed shall clearly indicate the appropriate docket number and subject; and

(6) Electronic documents shall be named using the filing party's name, docket number, date of filing, and name of document as part of the document title. Upon final adoption of rules pursuant to chapter 91, the rules of the commission governing submission or filing of electronic documents shall supersede the provisions of this subsection.

(c) No later than July 1, 2013, the public utilities commission shall accept any application, complaint, pleading, brief, or other document required to be filed with the commission pursuant to this chapter as either a paper document or an electronic document.

(d) If a signature is required on any document submitted electronically pursuant to this section, that requirement shall be satisfied by the inclusion of an electronic signature. Chapter 489E shall apply to all electronic documents submitted pursuant to this section.

271-10

271-10 Reports and decisions of commission.

(a) Whenever the public utilities commission inquires into the operations, operating rights, or rates, or directs inquiry and investigation into motor carrier activities regulated under this chapter, and holds public hearing thereon, it shall make a report in writing, on paper or electronically, in respect thereto, which shall state its findings of fact and conclusions of law, together with its decision, order, or requirement in the premises.

(b) All reports issued under subsection (a) shall be entered of record, and a paper or an electronic copy thereof shall be furnished to parties of record in the proceeding.

(c) The commission may provide for the publication of its reports and decisions in a form and manner as may be best adapted for public information and use, and these authorized publications shall be competent evidence of the reports and decisions of the commission therein contained in all courts of this State without any further proof or authentication thereof. The commission may also cause to be printed for early distribution its annual reports.

271-11

271-11 Copies of schedules, tariffs, contracts, etc., kept as public records; evidence. The copies of schedules and classifications and tariffs of rates, fares, and charges, and all contracts, agreements and arrangements between motor carriers filed with the public utilities commission as herein provided, and the statistics, tables, and figures contained in the annual or other reports of carriers made to the commission as required under this chapter shall be preserved as public records in the custody of the commission (except any contract, agreement, or arrangement between a contract carrier by motor vehicle and a shipper shall only be made public as provided in section 271-25), and shall be received as prima facie evidence of what they purport to be for the purpose of investigations by the commission and in all judicial proceedings; and copies of and extracts from any of the schedules, classifications, tariffs, contracts, agreements, arrangements, or reports, made public records as aforesaid, certified by the commission under the commission's seal, shall be received in evidence with like effect as the originals.

271-12

271-12 Applications for certificates of public convenience and necessity.

(a) Except as otherwise provided in this section and in section 271-16, no person shall engage in the business of a common carrier by motor vehicle on any public highway in this State, unless there is in force with respect to such carrier a certificate of public convenience and necessity issued by the public utilities commission authorizing such operation.

(b) Applications for certificates shall be made in writing to the commission, be verified under oath, and shall be in such form and contain such information, and be accompanied by proof of service upon interested parties as the commission shall, by regulation, require.

(c) Subject to section 271-15, a certificate shall be issued to any qualified applicant therefor, authorizing the whole or any part of the operations covered by the application if it is found that the applicant is fit, willing, and able properly to perform the service proposed and to conform to this chapter and the requirements, rules, and regulations of the commission thereunder, and that the proposed service, to the extent to be authorized by the certificate, is or will be required by the present or future public convenience and necessity; otherwise the application shall be denied.

(d) Any certificate issued under this section covering the transportation of property shall be issued as an irregular route certificate and shall specify the island or islands or portion or portions thereof within which service may be rendered. Any certificate covering the transportation of passengers shall specify the service to be rendered and the routes over which, the fixed termini, if any, between which, and the intermediate and off-route points, if any, at which the motor carrier is authorized to operate, and the certificate may include authority to transport in the same vehicle with the passengers, baggage of passengers, express, and also to transport baggage of passengers in a separate vehicle. There shall, at the time of issuance, and from time to time thereafter, be attached to the exercise of the privileges granted by the certificate such reasonable terms, conditions, and limitations as the public convenience and necessity may from time to time require, including terms, conditions, and limitations as to the extensions of the service territory or route or routes of the carriers, and such terms and conditions as are necessary to carry out, with respect to the operations of the carrier, the requirements established by the commission under sections 271-9(a)(1) and 271-9(a)(4), provided that the terms, conditions, or limitations shall not restrict the right of the carrier to add to his or its equipment and facilities in the service territory or over the routes or between the termini as the development of business and the demands of the public shall require.

(e) Any common carrier by motor vehicle transporting passengers under any such certificate may occasionally deviate from the route over which and the fixed termini between which it is authorized to operate under the certificate under such rules and regulations as the commission may prescribe.

271-13

271-13 Permits for contract carriers by motor vehicle.

(a) Except as otherwise provided in this section and in section 271-16, no person shall engage in the business of a contract carrier by motor vehicle over any public highway in this State unless there is in force, with respect to the carrier, a permit issued by the public utilities commission authorizing the person to engage in this business.

(b) Applications for permits shall be made in writing, on paper or electronically, to the commission, be verified under oath, and shall be in a form, contain the information, and be accompanied by proof of service upon interested parties, as the commission shall by rule require.

(c) Subject to section 271-15, a permit shall be issued to any qualified applicant therefor, authorizing in whole or in part the operations covered by the application, if it is found that the applicant is fit, willing, and able to properly perform the service of a contract carrier by motor vehicle, and to conform to this chapter and the lawful requirements and rules of the commission thereunder, and that the proposed operation to the extent authorized by the permit will be consistent with the public interest and the transportation policy declared in this chapter; otherwise, the application shall be denied. In determining whether issuance of a permit will be consistent with the public interest and the transportation policy, the commission shall consider the number of shippers to be served by the applicant, the nature of the service proposed, whether the proposed service can be or is being properly performed by existing common carriers, the effect that granting the permit would have upon the services of the protesting carriers, the effect that denying the permit would have upon the applicant's proposed shipper or shippers, and the changing character of shipper requirements; provided that a permit shall not be issued in any case where it has been established that an existing common carrier is properly performing the proposed service. The commission shall specify in the permit the business of the contract carrier covered thereby and the scope thereof, and it shall attach to it at the time of issuance, and from time to time thereafter the reasonable terms,

conditions, and limitations consistent with the character of the holder of the permit as a contract carrier, including terms, conditions, and limitations respecting the person or persons, their names, the number or class thereof for which the contract carrier may perform transportation service, as may be necessary to assure that the business is that of a contract carrier and within the scope of the permit, and to carry out with respect to the operation of the carrier the requirements established by the commission under sections 271-9(a)(2) and 271-9(a)(4). Any permit covering the transportation of passengers may include authority to transport, in the same vehicle with the passengers, baggage of passengers and also authority to transport baggage of passengers in a separate vehicle; provided that within the scope of the permit and any terms, conditions, or limitations attached thereto, the carrier shall have the right to substitute or add to its equipment and facilities as the development of its business may require; and provided further that no motor carrier shall commence operations under any contract carrier authority granted under this section until it has filed with the commission a certified copy or an electronic copy of a written contract or contracts executed with the shipper or shippers for whom the service is authorized in the permit to be provided, the contract or contracts to be bilateral and impose specific obligations upon both carrier and shipper or shippers, and to set forth all terms and conditions of any transportation agreement obtaining between the motor carrier and the shipper or shippers.

271-14 No proprietary right in highway

271-14 No proprietary right in highway. No certificate or permit issued under this chapter confers any proprietary or property right in the use of the public highways.

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271-16 Temporary authority

271-16 Temporary authority. To enable the provision of service for which there is an immediate and urgent need to a point or points or within a territory having no carrier service capable of meeting the need, the public utilities commission may, in its discretion and without hearings or other proceedings, grant temporary authority for service by a common carrier or a contract carrier by motor vehicle, as the case may be. The temporary authority, unless suspended or revoked for good cause, shall be valid for the time that the commission shall specify, but for no more than a period of one-hundred-twenty days for any one immediate and urgent need. If an application for a certificate of public convenience and necessity or a permit seeking corresponding permanent authority is filed in accordance with applicable laws, regulations, and instructions not later than thirty days after the issuance date of temporary authority, then the commission shall determine at a public hearing held not later than one-hundred-twenty days after the issuance date of temporary authority upon its own motion, or upon motion or upon request by any interested party, whether any temporary operating authority granted under this section shall be continued in force beyond the expiration date specified therein, and until the determination of the application filed by the holder of the temporary operating authority for a certificate of public convenience and necessity or a permit to engage in operations authorized by the temporary operating authority.

271-17 Security for protection of public

271-17 Security for protection of public. No certificate or permit shall be issued to a motor carrier or remain in force unless such carrier complies with such reasonable rules and regulations as the public utilities commission shall prescribe governing the filing and approval of surety bonds, policies of insurance, qualifications as a self-insurer, or other securities or agreements, in such reasonable amounts as the commission may require, conditioned to pay within the amount of the surety agreements moneys finally recovered against the motor carrier for bodily injuries to or the death of any person resulting from the negligent operation, maintenance, or use of motor vehicles under the certificate, or permit or for loss or damage to property of others. The commission may, in its discretion and under such rules and regulations as it shall prescribe, require any such carrier to file a surety bond, policies of insurance, qualifications as a self-insurer, or other securities or agreements in a sum to be determined by the commission to be conditioned upon the carrier making compensation to shippers or consignees for all property belonging to shippers or consignees, and coming into the possession of such carrier in connection with its transportation service. Any common carrier which may be required by law to compensate a shipper or consignee for any loss, damage, or default for which a connecting motor common carrier is legally responsible shall be subrogated to the rights of such shipper or consignee under any such bond, policies of insurance, or other securities or agreements, to the extent of the sum so paid.

271-18 Notes

271-18 Transfer of certificates of public convenience and necessity, contract carrier permits, and carrier property.

(a) For the purpose of the administration and application of subsections (a) and (b), the terms "carrier" includes any motor carrier subject to this chapter, or any carrier subject to the act of any other state or any act of the Congress of the United States under which interstate or foreign commerce by land, sea, or air, is regulated.

(b) No motor carrier shall sell, lease, assign, mortgage, or otherwise dispose of, or encumber the whole or any part of its property necessary or useful in the performance of transportation services for the public or any certificate of public convenience and necessity or permit; nor shall any motor carrier, by any means, directly or indirectly, merge or consolidate its property, certificates of public convenience and necessity or permits, or any part thereof, with any other carrier, without first having secured from the public utilities commission an order authorizing it so to do. Every such sale, lease, assignment, mortgage, disposition, encumbrance, merger, or consolidation, made other than in accordance with the order of the commission authorizing the same is void.

(c) No carrier or person in control of a carrier shall, either directly or indirectly, purchase or acquire, take or hold, any part of the capital stock of any motor carrier organized or existing under or by virtue of the laws of this State without having been first authorized to do so by the commission. Every assignment, transfer of any stock by or through any person to any person, or otherwise, in violation of any of the provisions of this section is void and of no effect, and no transfer shall be made on the books of any motor carrier. Nothing herein shall prevent the holding of stock heretofore lawfully acquired.

(d) Whenever a transaction is proposed under subsection (b) or (c) of this section, the motor carrier or motor carriers, or person or persons, seeking approval thereof shall present an application to the commission in such form as the commission may require and the commission may thereupon act upon the application with or without first holding a public hearing; provided that if requested, it shall afford reasonable opportunity for interested parties to be heard. If the commission finds that subject to such terms and conditions as it shall find to be just and reasonable the proposed transaction will be consistent with the public interests, the commission shall enter an order approving and authorizing the transaction, upon the terms and conditions, and with the modifications, so found to be just and reasonable. In passing upon any transaction under subsection (b) or (c), the commission shall give weight, among other considerations, to the effect of the proposed transaction upon (1) adequate transportation service to the public, (2) other motor carriers, and (3) the employees of any transferring motor carrier.

(e) Nothing in this section shall be construed to require a motor carrier to secure from the commission authority to lease motor vehicle equipment from another motor carrier for the purpose of meeting the requirements of transportation, to execute any conditional sales contract for the purchase of motor vehicle equipment or any note and chattel mortgage on motor vehicle equipment securing the payment of all or any part of the purchase price of motor vehicle equipment; nor shall this section prevent the sale, lease, encumbrance, or other disposition by any motor carrier of property which is not necessary or useful in the performance of its duties to the public, and any disposition of property by a motor carrier shall be conclusively presumed to be property which is not necessary or useful in the performance of its duties to the public as to any purchaser, lessee, or encumbrancer dealing with such property in good faith and for value.

(f) Pending the determination of an application filed with the commission for approval of a consolidation or merger of the properties of two or more motor carriers, or of a purchase, lease, or contract to operate the properties of one or more motor carriers, the commission may, in its discretion and without hearings or other proceedings, grant temporary approval, for a period not exceeding one hundred twenty days or for such additional period as the determination of an application may require, of the operation of the motor carrier properties sought to be acquired by the persons proposing in the pending application to acquire the properties, if it shall appear that failure to grant this temporary approval may result in destruction of or injury to such motor carrier properties sought to be acquired, or to interfere substantially with their future usefulness in the performance of adequate and continuous service to the public.

271-19 Bill

271-19 Suspension, change, and revocation of certificates and permits.

(a) Certificates and permits shall be effective from the date specified therein, and shall remain in effect until suspended or terminated as herein provided. Any certificate or permit, upon application of the holder thereof, in the discretion of the public utilities commission, may be amended or revoked, in whole or in part. The commission, upon complaint or upon its own initiative, after notice and hearing, may suspend or revoke any certificate or permit, in part or in whole, if the holder thereof is found to be in violation of any of the provisions of this chapter; provided that:

(1) A motor carrier's right to engage in transportation by virtue of any certificate or permit may be suspended by the commission immediately without hearing or other proceedings upon the carrier's failure to comply, and until the carrier complies with sections 271-21(a), 271-22(a), 271-17 or Act 20, Special Session Laws of Hawaii 1977, or with any lawful order of the commission; and

(2) The commission shall revoke the certificate or permit of a holder that knowingly and wilfully engages the services of a driver not licensed under part XIII of chapter 286.

(b) Upon written request by a motor carrier and for good cause shown, the public utilities commission may place an active certificate or permit in an inactive status. The certificate or permit may be placed on an inactive status for a period not exceeding twelve months. Prior to the termination of the approved inactive period, the certificate or permit must be reactivated or it shall be declared abandoned and the certificate or permit revoked. The certificate or permit may be reactivated at any time within the approved period by fulfilling the requirements for renewal, including the payment of the appropriate fees. No request for inactive status, the cumulative period of which is in excess of two years, shall be granted by the commission. Unless good cause is shown, no request to transfer a certificate or permit which is on inactive status shall be approved by the commission.

(c) No person whose certificate or permit is revoked shall be eligible to apply for a new certificate or permit until the expiration of two years; provided that a person whose certificate or permit is revoked for knowingly and wilfully engaging the services of a driver not licensed under part XIII of chapter 286 shall not be eligible to apply for a new certificate or permit until the expiration of five years.

(d) A certificate or permit shall be revoked upon the voluntary dissolution of the corporation or partnership in whose name the certificate or permit has been issued. Upon verification with the department of commerce and consumer affairs on the voluntary dissolution of a corporation or partnership, the commission shall issue an order with its findings and revoke the certificate or permit held by the registered certificate or permit holder.

271-20

271-20 Rates, fares and charges of common carriers by motor vehicle.

(a) It shall be the duty of every common carrier of passengers by motor carrier to provide safe and adequate service, equipment, and facilities for the transportation of passengers and to establish, observe, and enforce just and reasonable rates, fares, and charges, and just and reasonable regulations and practices relating thereto, and to the issuance, form, and substance of tickets, the carrying of personal, sample, and excess baggage, the facilities for transportation, and all other matters relating to or connected with the transportation of passengers.

(b) It shall be the duty of every common carrier of property by motor vehicle to provide safe and adequate service, equipment, and facilities for the transportation of property and to establish, observe, and enforce just and reasonable rates, charges, and classifications, and just and reasonable regulations and practices relating thereto, and to the manner and method of presenting, marking, packing, and delivering property for transportation, the facilities for transportation, and all other matters relating to or connected with the transportation of property.

(c) All charges made for any service rendered by any common carrier by motor vehicle in the transportation of passengers or property or in connection therewith shall be just and reasonable, and every unjust and unreasonable charge for such service or any part thereof, is prohibited and declared to be unlawful. It shall be unlawful for any common carrier by motor vehicle to make, give, or cause any undue or unreasonable preference or advantage to any particular person, locality, region, district, island, or description of traffic, in any respect whatsoever; or to subject any particular person, locality, region, district, island, or description of traffic to any unjust discrimination or undue or unreasonable prejudice or disadvantage in any respect whatsoever; provided that this subsection shall not be construed to apply to discrimination, prejudice, or disadvantage to the traffic of any other carrier of whatever description.

(d) Any person, organization, or body politic may make complaint in writing to the public utilities commission that any such rate, fare, charge, classification, rule, regulation, or practice, in effect or proposed to be put into effect, is or will be in violation of this section or of section 271-21. Whenever, after hearing, upon complaint or an investigation of its own initiative, the commission shall be of the opinion that any individual rate, fare, or charge, demanded, charged, or collected by any common carrier or carriers by motor vehicle for transportation, or any classification, rule, regulation, or practice whatsoever of the carrier or carriers, affecting such rate, fare, or charge or the value of the service thereunder, is or will be unjust or unreasonable, or unjustly discriminatory or unduly preferential or unduly prejudicial, it shall determine and prescribe the lawful rate, fare, or charge or the maximum or minimum or maximum and minimum rate, fare, or charge

thereafter to be observed, or the lawful classification, rule, regulation, or practice thereafter to be made effective.

(e) Whenever there is filed with the commission any schedule stating a new rate, fare, charge, or classification for the transportation of passengers or property by a common carrier or carriers by motor vehicle, or any rule, regulation, or practice affecting such rate, fare, or charge, or the value of the service thereunder, the commission may upon complaint of any interested person or upon its own initiative at once and, if it so orders, without answer or other formal pleading by the interested carrier or carriers, but upon reasonable notice, enter upon a hearing concerning the lawfulness of the rate, fare, or charge, or the rule, regulation, or practice, and pending the hearing and the decision thereon the commission, by filing the schedule and delivering to the carrier or carriers affected thereby a statement in writing of its reasons for such suspension, may from time to time suspend the operation of the schedule and defer the use of the rate, fare, or charge, or the rule, regulation, or practice, but not for a longer period than five months beyond the time when it would otherwise go into effect, and after hearing, whether completed before or after the rate, fare, charge, classification, rule, regulation, or practice goes into effect, the commission may make such order with reference thereto as would be proper in a proceeding instituted after it had become effective. If the proceeding has not been concluded and an order made within the period of suspension, the proposed changed rate, fare, or charge, or classification, rule, regulation, or practice, shall go into effect at the end of such period; provided that this subsection shall not apply to any initial schedule or schedules filed by any carrier in bona fide operation when this section takes effect. At any hearing involving a change in a rate, fare, charge, or classification, or in a rule, regulation, or practice, the burden of proof shall be upon the carrier to show that the proposed changed rate, fare, charge, classification, rule, regulation, or practice, is just and reasonable.

(f) In any proceeding to determine the justness or reasonableness of any rate, fare, or charge of any carrier, there shall not be taken into consideration or allowed as evidence or elements of value of the property of the carrier, either goodwill, earning power, or the certificate under which the carrier is operating; and in applying for and receiving a certificate under this [chapter] any carrier shall be deemed to have agreed to the provisions of this subsection on its own behalf and on behalf of all transferees of the certificate.

(g) In the exercise of its power to prescribe just and reasonable rates, fares, and charges for the transportation of passengers or property by common carriers by motor vehicle, and classifications, regulations, and practices relating thereto, the commission shall give due consideration, among other factors, to the effect of rates upon the movement of traffic by the carrier or carriers for which the rates are prescribed; to the need, in the public interest, of adequate and efficient transportation service by the carriers at the lowest cost consistent with the furnishing of the service; and to the need of revenues sufficient to enable the carriers, under honest, economical, and efficient management, to provide the service.

(h) Nothing in this section shall be held to extinguish any remedy or right of action not inconsistent herewith.

271-21

271-21 Tariffs of common carriers by motor vehicle.

(a) Every common carrier by motor vehicle shall file with the public utilities commission, and print, and keep open to public inspection, tariffs showing all the rates, fares, and charges for transportation, and all services in connection therewith, of passengers or property. The rates, fares, and charges shall be stated in terms of lawful money of the United States. The tariffs required by this section shall be published, filed, and posted in such form and manner, and shall contain such information as the commission by regulations shall prescribe; and the commission may reject any tariff filed with it which is not in consonance with this section and with the regulations. Any tariff so rejected by the commission shall be void and its use shall be unlawful.

(b) No common carrier by motor vehicle shall charge or demand or collect or receive a greater or less or different compensation for transportation or for any service in connection therewith between the points enumerated in the tariff than the rates, fares, and charges specified in the tariffs in effect at the time; and no carrier shall refund or remit in any manner or by any device, directly or indirectly, or through any agent, or otherwise, any portion of the rates, fares, or charges so specified, or extend to any person any privileges or facilities for transportation except such as are specified in its tariffs.

(c) No change shall be made in any rate, fare, charge, or classification, or any rule, regulation, or practice affecting the rate, fare, charge, or classification, or the value of the service thereunder, specified in any effective tariff of a common carrier by motor vehicle; except after thirty days' notice of the proposed change filed and posted in accordance with subsection (a) of this section. The notice shall plainly state the change proposed to be made and the time when it will

take effect. The commission may in its discretion and for good cause shown allow the change upon notice less than that herein specified or modify the requirements of this section with respect to posting and filing of tariffs either in particular instances or by general order applicable to special or peculiar circumstances or conditions.

(d) No common carrier by motor vehicle shall engage in the transportation of passengers or property unless the rates, fares, and charges upon which the same are transported by the carrier have been filed and published in accordance with this chapter.

271-22

271-22 Schedules of contract carriers by motor vehicle.

(a) It shall be the duty of every contract carrier by motor vehicle to file and observe reasonable minimum rates and charges for any service rendered or to be rendered in the transportation of passengers or property in connection therewith, and to file and observe reasonable regulations and practices to be applied in connection with the reasonable minimum rates, fares, and charges. It shall be the duty of every contract carrier by motor vehicle to file with the public utilities commission, publish, and keep open for public inspection, in the form and manner prescribed by the commission, schedules containing the actual rates or charges of the carrier for the transportation of passengers or property, and any rule, regulation, or practice affecting the rates or charges and the value of the service thereunder; provided that any contract carrier serving but one shipper having rendered continuous service to the shipper for not less than one year may file reasonable minimum rates and charges unless the commission in any individual case, after hearing, finds it in the public interest to require the filing of actual rates and charges. No contract carrier, unless otherwise provided by this chapter, shall engage in the transportation of passengers or property unless the actual rates or charges for the transportation by the carrier have been published, filed, and posted in accordance with this chapter. Nothing herein provided shall be so construed as to require the carriers to maintain the same rates, rules and regulations for the same services for all shippers served. No reduction shall be made in any such charge either directly or by means of any change in any rule, regulation, or practice affecting the charge or the value of the service thereunder, nor shall any new charge be permitted, except after thirty days' notice of the proposed change or new charge is filed in the aforesaid form and manner; but the commission may, in its discretion and for good cause shown, allow the change upon less notice, or modify the requirements of this subsection with respect to posting and filing of schedules, either in particular instances, or by general order applicable to special or peculiar circumstances or conditions. The notice shall plainly state the change proposed to be made and the time when the change will take effect. No carriers shall demand, charge, or collect compensation for transportation different from the charges filed in accordance with this subsection, as affected by any rule, regulation, or practice so filed, or less than the minimum rate or charge as may be prescribed by the commission from time to time, and it shall be unlawful for any carrier, by the furnishing of special services, facilities, or privileges, or by any other device whatsoever, to charge, accept, or receive compensation different from the actual rates and charges so filed, or less than the minimum charges prescribed; provided that any carrier or carriers, or any class or group thereof, may apply to the commission for relief from this subsection, and the commission may, after hearing, grant such relief to such extent and for such time, and in such manner as in its judgment is consistent with the public interest and the transportation policy declared in this chapter.

(b) Whenever, after hearing, upon complaint or upon its own initiative, the commission finds that any minimum rate or charge of any contract carrier by motor vehicle, or any rule, regulation, or practice of any carrier affecting the minimum rate or charge, or the value of the service thereunder, for the transportation of passengers or property or in connection therewith, contravenes the transportation policy declared in this chapter, or is in contravention of any provision of this chapter, the commission may prescribe such just and reasonable minimum rate or charge, or such rule, regulations, or practice as in its judgment may be necessary or desirable in the public interest and to promote the policy and will not be in contravention of any provision of this chapter. The minimum rate or charge, or the rule, regulation, or practice, so prescribed by the commission, shall give no advantage or preference to any carrier in competition with any common carrier by motor vehicle subject to this chapter, which the commission may find to be undue or inconsistent with the public interest and the transportation policy declared in this chapter and the commission shall give due consideration to the cost of the services rendered by such carriers, and to the effect of the minimum rate or charge, or the rule, regulation, or practice, upon the movement of traffic by the carriers. All complaints shall state fully the facts complained of and the reasons for the complaint and shall be made under oath.

(c) Whenever there is filed with the commission by any contract carrier any schedule stating a charge for a new service or a reduced charge directly, or by means of any rule, regulation, or practice, for the transportation of passengers or

property, the commission may upon complaint of interested persons or upon its own initiative at once and, if it so orders, without answer or other formal pleading by the interested party, but upon reasonable notice, enter upon a hearing concerning the lawfulness of the charge, or rule, regulation, or practice, and pending the hearing and the decision thereon, the commission, by filing with the schedules and delivering to the carrier affected thereby a statement in writing of its reasons for the suspension, may from time to time suspend the operation of the schedule and defer the use of the charge, or rule, regulation, or practice, but not for a longer period than five months beyond the time when it would otherwise go into effect; and after hearing, whether completed before or after the charge, or rule, regulation, or practice goes into effect, the commission may make such order with reference thereto as would be proper in a proceeding instituted after it had become effective. If the proceeding has not been concluded and an order made within the period of suspension, the proposed change in any charge or rule, regulation, or practice shall go into effect at the end of the period; provided that this subsection shall not apply to any initial schedule or schedules filed by any carrier in bona fide operation when this section takes effect. The rule as to burden of proof specified in section 271-20(e) shall apply to this subsection.

271-23

271-23 Bills of lading, shipping documents. The public utilities commission may prescribe for motor carriers the form and content of all bills of lading, freight bills, receipts, or other shipping documents governing the movement of traffic by motor carriers regulated under this chapter, and may prescribe the length of time the same shall be preserved.

271-24

271-24 Recovery of overcharges or undercharges.

(a) All actions by common carriers by motor vehicle for the recovery of their charges, or any part thereof, shall be begun within three years from the time the cause of action accrues, and not after.

(b) For recovery of overcharges, actions shall be begun within three years from the time the cause of action accrues, and not after, subject to subsection (c) of this section, except that if claim for the overcharge has been presented in writing to the carrier within the three-year period of limitation the period shall be extended to include six months from the time notice in writing is given by the carrier to the claimant of disallowance of the claim, or any part or parts thereof specified in the notice.

(c) If on or before the expiration of the three-year period of limitation in subsection (b) a common carrier by motor vehicle begins action under subsection (a) for recovery of charges in respect of the same transportation service, or, without beginning action, collects charges in respect of that service, the period shall be extended to include ninety days from the time the action is begun or the charges are collected by the carrier.

(d) The cause of action in respect of a shipment of property shall, for the purpose of this section, be deemed to accrue upon delivery or tender of delivery thereof by the carrier, and not after.

(e) The term "overcharges" as used in this section means charges for transportation services in excess of those applicable thereto under the tariffs lawfully on file with the commission.

271-25 Accounts, records, and reports

271-25 Accounts, records, and reports.

(a) The public utilities commission may require annual, periodical, or special reports from all motor carriers, prescribe the manner and form in which the reports shall be made, and require from the carriers specific and full, true, and correct answers to all questions upon which the commission may deem information to be necessary. The annual reports shall give an account of the affairs of the carrier in such form and detail as may be prescribed by the commission. The commission may also require any motor carrier to file with it a true copy of any contract, agreement, or arrangement between the carrier and any other carrier or person in relation to any traffic affected by this chapter. The commission shall not, however, make public any contract, agreement, or arrangement between a contract carrier by motor vehicle and a shipper, or any of the terms or conditions thereof, except as a part of the record in a formal proceeding where it considers the action consistent with the public interest; provided that if it appears from an examination of any such contract that it fails to conform to the published schedule of the contract carrier by motor vehicle as required by section 271-22(a), the commission may, in its discretion, make public such of the provisions of the contract as the commission considers necessary to disclose such failure and the extent thereof.

(b) The annual reports shall contain all the required information for the period of twelve months ending on December 31 in each year, unless the commission shall specify a different date, and shall be made out under oath and filed with the

commission within three months after the close of the year for which the report is made, unless additional time be granted in any case by the commission. Such periodical or special reports as may be required by the commission under subsection (a) shall also be under oath, whenever the commission so requires.

(c) The commission may prescribe for motor carriers the classes of property for which depreciation charges may properly be included under operating expenses, and the rate or rates of depreciation which shall be charged with respect to each of the classes of property, classifying the carriers as it may deem proper for this purpose. The commission may, when it deems necessary, modify the classes and rates so prescribed. When the commission shall have exercised its authority under the foregoing provisions of this subsection, motor carriers shall not charge to operating expenses any depreciation charges on classes of property other than those prescribed by the commission, or charge with respect to any class of property a rate of depreciation other than that prescribed therefor by the commission, and no carrier shall include under operating expenses any depreciation charge in any form other than as prescribed by the commission.

(d) The commission may, in its discretion, prescribe the forms of any and all accounts, records, and memoranda to be kept by motor carriers and lessors, including the accounts, records, and memoranda of the movement of traffic, as well as of the receipts and expenditures of moneys. The commission may issue orders specifying the operating, accounting, or financial papers, records, books, blanks, tickets, stubs, correspondence, or documents of motor carriers or lessors as may after a reasonable time be destroyed, and prescribing the length of time the same shall be preserved. The commission or its duly authorized special agents, accountants, or examiners shall at all times have access to and authority, under its order, to inspect and examine any and all lands, buildings, or equipment of motor carriers and lessors and shall have authority to inspect and copy any and all accounts, books, records, memoranda, correspondence, and other documents of carriers and lessors (as defined in this section), and such accounts, books, records, memoranda, correspondence, and other documents of any person controlling, controlled by, or under common control with any such carriers, as the commission deems relevant to the person's relation to or transaction with the carriers. Motor carriers, lessors, and aforesaid persons shall submit their accounts, books, records, memoranda, correspondence, and other documents for the inspection and copying authorized by this subsection, and motor carriers and lessors shall submit their lands, buildings, and equipment for examination and inspection, to any duly authorized special agent, accountant, or examiner of the commission upon demand and display of proper credentials. As used in this subsection, the words "keep" and "kept" mean made, prepared, or compiled, as well as retained; the term "lessor" means a lessor of any right to operate as a motor carrier; and the term "motor carrier" or "lessor" includes a receiver or trustee of any such motor carrier or lessor.

(e) No report by any motor carrier of any accident arising in the course of the operation of such carriers, made pursuant to any requirement of the commission, and no report by the commission of any investigation of any accident, shall be admitted as evidence, or used for any other purpose, in any suit or action for damages growing out of any matter mentioned in the report or investigation.

271-26 Records to be maintained in State

271-26 Records to be maintained in State. Each motor carrier maintaining an office or place of business within this State shall keep therein all books, accounts, papers, and records required by the public utilities commission to be kept within this State. No books, accounts, papers, or records shall be at any time removed from the State except upon such conditions or rules as the commission may prescribe. Motor carriers performing transportation regulated under this chapter which do not maintain an office or place of business within the State shall make books, accounts, papers, and records pertaining to transportation available to the commission at its request at a place designated within this State, for examination by the commission, or in the alternative reimburse the commission for the actual expense of examining the books, accounts, papers, or records at the place outside of the State where these records are kept.

271-26.5

271-26.5 Change of address; responsibility; service of documents. A motor carrier shall have, maintain and operate from a definite place of business in the State and shall display therein the certificate or permit issued by the public utilities commission. The certificate or permit holder shall report any change of address or telephone number to the commission within five business days from the change. Communications, correspondence, service of orders, and other official documents shall be made upon the motor carrier, complainant, and any other party at the last recorded mailing or electronic mail address on file with the commission. Proof of service by certified or registered mail or by electronic transmission to the last known mailing or electronic mail address shall constitute a valid service of any commission's

official document.

271-27 Unlawful operation

271-27 Unlawful operation.

(a) Any person intentionally, knowingly, or recklessly violating any provision of this chapter, or any rule, requirement, or order thereunder, or any term or condition of any certificate or permit for which a penalty is not otherwise provided, shall be guilty of a misdemeanor. In addition, any shipper or consignee located in this State, or any officer, employee, agent, or representative thereof, who intentionally, knowingly, or recklessly engages the services of any person violating any provision of this chapter, or any rule, requirement, or order, or any term or condition of any certificate or permit for which a penalty is not otherwise provided, shall be guilty of a misdemeanor.

(b) Any person, whether carrier, shipper, or consignee, or any officer, employee, agent, or representative thereof, who intentionally, knowingly, or recklessly offers, grants, or gives, or solicits, accepts, or receives any rebate, concession, or discrimination in violation of any provisions of this chapter, or who by means of any false statement or representation or by the use of any false or fictitious bill, bill of lading, receipt, voucher, roll, account, claim, certificate, affidavit, deposition, lease, or bill of sale, or by any other means or device, intentionally, knowingly, or recklessly assists, suffers, or permits any person or persons, natural or artificial, to obtain transportation of passengers or property subject to this chapter for less than the applicable rate, fare, or charge, or who intentionally, knowingly, or recklessly by any such means or otherwise fraudulently seeks to evade or defeat regulation as in this chapter provided for motor carriers, shall be deemed guilty of a misdemeanor.

(c) Any special agent, accountant, or examiner who knowingly and wilfully divulges any fact or information which may come to the special agent's, accountant's, or examiner's knowledge during the course of any examination or inspection made under authority of sections 271-9(a)(4), 271-23, and 271-25, except as the special agent, accountant, or examiner may be directed by the department or by a court or judge thereof, shall be guilty of a misdemeanor.

(d) It shall be unlawful for any motor carrier or any officer, receiver, trustee, lessee, agent, or employee of the carrier, or for any other person authorized by such carrier or person to receive information, knowingly to disclose to, or permit to be acquired by any person other than the shipper or consignee without the consent of the shipper or consignee, any information concerning the nature, kind, quantity, destination, consignee, or routing of any property tendered or delivered to the motor carrier for transportation, which information may be used to the detriment or prejudice of the shipper or consignee, or which may improperly disclose the shipper's or consignee's business transactions to a competitor; and it shall also be unlawful for any person to solicit or knowingly receive any such information which may be so used.

(e) Nothing in this chapter shall be construed to prevent the giving of such information in response to any legal process issued under the authority of any court, or to any officer or agent of the government of the United States or of any state or of any political subdivision of any state, in the exercise of the officer's or agent's power or to any officer or other duly authorized person seeking the information for the prosecution of persons charged with or suspected of crimes or to another carrier, or its duly authorized agents, for the purpose of adjusting mutual traffic accounts in the ordinary course of business of the carriers.

(f) Any motor carrier or any officer, agent, employee, or representative thereof, who wilfully fails or refuses to make a report to the department as required by this chapter, or to make specific and full, true, and correct answer to any question within thirty days from the time it is lawfully required by the department, or to keep accounts, records, and memoranda in the form and manner prescribed by the department, or knowingly and wilfully falsifies, destroys, mutilates, or alters any report, account, record, or memorandum or knowingly and wilfully files with the department any false report, account, record, or memorandum, or knowingly and wilfully neglects or fails to make full, true, and correct entries in the accounts, records, or memoranda of all facts and transactions appertaining to the business of the carrier, or person required under this chapter to keep the same, or knowingly and wilfully keeps accounts, records, or memoranda contrary to the rules, regulations, or orders of the department with respect thereto, shall be deemed guilty of a misdemeanor. As used in this subsection, the words "keep" and "kept" mean made, prepared, or compiled, as well as retained.

(g) Except when required by state law to take immediately before a district judge a person arrested for violation of this chapter, including any rule adopted pursuant to this chapter, any enforcement officer, other than a motor vehicle safety officer employed and assigned, pursuant to section 271-38, by the department to assess civil penalties, upon arresting a person for violation of this chapter, including any rule adopted pursuant to this chapter shall issue to the alleged violator a summons or citation printed in the form hereinafter described, warning the alleged violator to appear and answer to the

charge against the alleged violator at a certain place within seven days after the arrest.

(1) The summons or citation shall be printed in a form comparable to that of other summonses and citations used for arresting offenders and shall include all necessary information. The form and content shall be adopted or prescribed by the district courts.

(2) The original of a summons or citation shall be given to the alleged violator and any other copies distributed in the manner prescribed by the district courts; provided that the district courts may prescribe alternative methods of distribution for the original and any other copies.

(3) Summonses and citations shall be consecutively numbered and any other copies of each shall bear the same number.

(4) Any person who fails to appear at the place and within the time specified in the summons or citation shall be guilty of a misdemeanor.

(5) If any person fails to comply with a summons or citation or fails or refuses to deposit bail as required, the enforcement officer shall cause a complaint to be entered against the person and secure the issuance of a warrant for the person's arrest.

(6) When a complaint is made to any prosecuting officer of a violation of this chapter or any rule, the enforcement officer who issued the summons or citation shall subscribe to it under oath administered by another official whose name has been submitted to the prosecuting officer and who has been designated by the department to administer the same.

(h) Any motor carrier or lessor, or any officer, agent, employee, or representative thereof, who fails or refuses to comply with any provision of this chapter, or any rule, requirement, or order thereunder, and any person located in this State, or any officer, agent, employee, or representative of the person, who engages the services of any motor carrier or lessor, or any officer, agent, employee, or representative thereof, who fails or refuses to comply with any provision of this chapter, or any rule, requirement, or order thereunder, may be assessed a civil penalty for an amount determined by the department subject to this section and payable to the State in a sum:

(1) Up to $1,000 for each offense;

(2) In the case of a continuing violation, not less than $50 and not more than $500 for each additional day during which the failure or refusal continues; and

(3) Up to $5,000 for each fourth or subsequent violation within one calendar year.

(i) Notwithstanding subsection (h), a motor carrier who fails to file, within the prescribed time, a financial report with the department pursuant to its rules may be assessed a civil penalty payable to the State up to the sum of one-sixteenth of one per cent of the gross revenues from the motor carrier's business during the preceding calendar year, if the failure is for not more than one month, with an additional one-sixteenth of one per cent for each additional month or fraction thereof during which the failure continues, but in no event shall the total civil penalty be less than the sum of $50.

(j) In addition to any other remedy available, the department or its enforcement officer, including a motor vehicle safety officer employed and assigned by the department pursuant to section 271-38, may issue citations to persons acting in the capacity of or engaging in the business of a motor carrier within this State, without having a certificate of public convenience and necessity or other authority previously obtained under and in compliance with this chapter and rules adopted, or to any shipper or consignee located in this State, or any officer, employee, agent, or representative thereof who engages the services of those persons.

(1) The citation may contain an order of abatement and an assessment of civil penalties as provided in subsection (h). All penalties collected under this subsection shall be deposited in the treasury of the State. Service of a citation issued under this subsection shall be made by personal service whenever possible or by certified mail, restricted delivery, sent to the last known business or residence address of the person cited.

(2) Any person served with a citation under this subsection may submit a written request to the department for a hearing within twenty days from the receipt of the citation, with respect to the violations alleged, the scope of the order of abatement, and the amount of civil penalties assessed. If the person cited under this subsection notifies the department of the request for a hearing in time, the department shall afford the person an opportunity for a hearing under chapter 91. The hearing shall be conducted by the department, or the department may designate a hearings officer to hold the hearing.

(3) If the person cited under this subsection does not submit a written request to the department for a hearing in time, the citation shall be deemed a final order of the department. The department may apply to the appropriate court for a judgment to enforce the provisions of any final order issued by the department or designated hearings officer pursuant to this subsection, including the provisions for abatement and civil penalties imposed. In any proceeding to enforce the final order, the department need only produce a certified copy of the final order and show that the notice was given and that a hearing was held or the time granted for requesting the hearing has run without a request.

(4) If any party is aggrieved by the decision of the department or the designated hearings officer, the party may appeal, subject to chapter 602, in the manner provided for civil appeals from the circuit courts; provided that the operation of an abatement order shall not be stayed on appeal unless specifically ordered by a court of competent jurisdiction after applying the stay criteria enumerated in section 91-14(c). The sanctions and disposition authorized under this subsection shall be separate and in addition to all other remedies either civil or criminal provided by law. The department may adopt any rules under chapter 91 that may be necessary to fully effectuate this subsection.

271-28 Collection of rates and charges

271-28 Collection of rates and charges. No common carrier by motor vehicle shall deliver or relinquish possession at destination of any freight transported by it until all tariff rates and charges thereon have been paid, except under such rules and regulations as the public utilities commission may from time to time prescribe to govern the settlement of all the rates and charges, including rules and regulations for weekly or monthly settlement, and to prevent unjust discrimination or undue preference or prejudice; provided that this section shall not be construed to prohibit any carrier from extending credit in connection with rates and charges on freight transported for the United States, for any department, bureau, or agency thereof, or for any state or political subdivision thereof.

271-28.5 Motor carrier lien

271-28.5 Motor carrier lien.

(a) In addition to the lien provided by section 490:7-307, a carrier has a lien on freight in its possession for the total amount owed the carrier by the shipper for freightage, charges for services and advances due on freight previously delivered upon the promise of the shipper to pay freightage, charges and advances, as provided in this section.

(b) The lien provided by this section shall not arise:

(1) Unless the carrier has given the shipper and the consignee ten days notice in writing, that failure to pay billed charges may result in a lien on future shipments; or

(2) As to any freight which consists of perishable goods; or

(3) As to any freight, the freight charges for which have been prepaid by the consignee or the intended recipient; or

(4) As to any freight, if the applicable charges were paid to a third party legally obligated to remit the payment to the carrier but the amount due has not been received by the carrier; or

(5) As to any property legally owned by anyone other than the debtor, or as to which the current identity of the owner is unknown.

(c) Except as otherwise provided in this section, the notice and sale provisions of section 490:7-308, shall apply to the sale of property subject to a lien provided by this section.

(d) No sale of property subject to a lien provided by this section may take place for at least thirty-five days from the date that possession of the property is delivered to the carrier but the notice period set forth in section 490:7-308 may run concurrently with the thirty-five-day period provided by this [subsection]. In addition to the notices required by section 490:7-308, the lienholder, at least ten days prior to any sale of the property, shall notify the shipper and the consignee of the property, and each secured party having a perfected security interest in the property, of the date, time and place of the intended sale. This notice shall include the names of both the shipper and the consignee and shall describe the property to be sold.

(e) Any perfected security interest in the property is prior to the lien provided by this section. No sale of the property may be concluded if the amount bid at the sale is not at least equal to the total amount of all outstanding obligations secured by a perfected security interest in the property. If the minimum bid required for the sale of property pursuant to this [subsection] is not received, the lienholder shall promptly release the property to the legal owner upon payment of the current amount for freightage, charges for services and advances due for shipment of that property, not including

amounts due on freight previously delivered. The proceeds of the sale shall be applied as follows:

(1) First, to secured parties having a perfected security interest, in the amounts to which they are respectively entitled.

(2) Second, to the discharge of the lien provided by this section.

(3) The remainder, if any, to the legal owner of the property. In the event of any violation by the lienholder of any provision of this [subsection] the lienholder shall be liable to any secured party for all damages sustained by the secured party as a result thereof plus all expenses reasonably and necessarily incurred in the enforcement of the secured party's rights, including reasonable attorney's fees and costs of suit.

(f) The shipper shall be liable to the consignee for any damage which results from the failure of the property to reach the consignee as scheduled due to the carrier's proper exercise of its lien rights pursuant to this section.

(g) The carrier shall be liable to the consignee for any damage which results from the failure of the property to reach the consignee as scheduled due to the carrier's violation or misuse of any lien obtained under this section. The measure of damages shall be determined as set forth in section 490:2-713.

271-29 Identification of carriers

271-29 Identification of carriers. The public utilities commission is authorized, under such rules and regulations as it shall prescribe, to require the display of suitable identification number or numbers, upon any motor vehicle used in transportation subject to this chapter, and to provide for the issuance of numbers. Any substitution, transfer, or use of any identification number or numbers, except such as may be duly authorized by the commission, is prohibited and shall be unlawful.

271-30

271-30 Allowance to shippers for transportation services. If the shipper of property transported under this chapter, directly or indirectly, renders any service connected with the transportation, or furnishes any instrumentality used therein, the charge and allowance therefor shall be published in tariffs or schedules filed in the manner provided in this chapter and shall be no more than is just and reasonable; and the public utilities commission may, after hearing on a complaint or on its own initiative, determine what is a reasonable charge as the maximum to be paid by the carrier or carriers for the services so rendered or for the use of the instrumentality so furnished, and fix the same by appropriate order.

271-31 Hearings

271-31 Hearings.

(a) All hearings, investigations, and proceedings shall be governed by this section and by rules of practice and procedure adopted by the public utilities commission, and in the conduct thereof, the technical rules of evidence need not be applied. No informality in any hearing, investigation, or proceeding, or in the manner of taking testimony shall invalidate any order, decision or rule made, approved, or confirmed by the commission.

(b) Complaints may be made in writing, on paper or electronically, by the commission on its own motion or by any person or body politic, setting forth any act or thing done, or omitted to be done, by any motor carrier, including any rule, rate, or charge heretofore established or fixed by or for any motor carrier, in violation or claimed to be in violation, of any law or of any order or rule of the commission.

(c) All matters upon which complaint may be founded may be joined in one hearing, and no motion shall be entertained against a complaint for misjoinder of causes of action or grievances or misjoinder or nonjoinder of parties. In any review by the courts of orders or decisions of the commission the same rule shall apply with regard to the joinder of causes and parties as herein provided. The commission shall not be required to dismiss any complaint because of the absence of direct damage to the complainant.

(d) Upon the filing of a complaint, the commission shall cause a copy thereof to be served upon the person or motor carrier complained of. Service in all hearings, investigations, and proceedings pending before the commission may be made upon any person upon whom a summons may be served in any proceeding before the courts of this State, and may be made personally or by mailing in a sealed envelope, registered or certified, with postage prepaid. The commission shall fix the time when and place where a hearing will be had upon the complaint and shall serve notice thereof, not less than ten days before the time set for the hearing, unless the commission finds that public necessity requires that the hearing be held at an earlier date.

(e) At the time fixed for any hearing before the commission or the time to which the hearing has been continued, the complainant and the person complained of, and such persons as the commission allows to intervene, shall be entitled to be heard and to introduce evidence. The commission shall issue process to enforce the attendance of all necessary witnesses. After the conclusion of the hearing, the commission shall make and file its order, containing its decision which shall be based on findings of fact and conclusions of law therein stated. A copy of each order, certified under the seal of the commission, shall be served upon the person complained of, or the person's attorney. The order shall, of its own force, take effect and become operative twenty days after the service thereof, except as otherwise provided, and shall continue in force either for a period designated in it or until changed or abrogated by the commission. If the commission believes that an order cannot be complied with within twenty days, it may prescribe such additional time as in its judgment is reasonably necessary to comply with the order, and may on application and for good cause shown, extend the time for compliance fixed in its order.

(f) A complete record of all proceedings and testimony before the commission on any formal hearing shall be taken down by a reporter appointed by the commission, and the parties shall be entitled to be heard in person or by attorney. In case of an action to review an order or decision of the commission, a transcript of the testimony, together with all exhibits or copies thereof introduced, and of the pleadings, records, and proceedings in the cause, shall constitute the record of the commission, but the party or parties to the proceeding and the commission may stipulate that designated parts of the record need not be transmitted to the appellate court, as provided by the rules of the court.

(g) Any motor carrier may complain on any of the grounds upon which complaints are allowed to be filed by other parties, and the same procedure shall be adopted and followed as in other cases, except that the complaint may be heard ex parte by the commission or may be served upon any party designated by the commission.

(h) The commission may at any time upon notice to the motor carrier affected, and after opportunity to be heard as provided in the case of complaints, rescind, alter, or amend any order or decision made by it. Any order rescinding, altering, or amending a prior order or decision shall, when served upon the motor carrier affected, have the same effect as an original order or decision.

(i) In all collateral actions or proceedings, the orders and decisions of the commission which have become final shall be conclusive.

271-32 Reconsideration and rehearings

271-32 Reconsideration and rehearings.

(a) After any order or decision has been made by the public utilities commission, any party to the proceeding may apply once for reconsideration or a rehearing in respect to any matter determined in the proceeding and specified in the motion for reconsideration or rehearing. The commission may grant the motion if in its judgment sufficient reason is made to appear.

(b) The motion for reconsideration or a rehearing shall be filed within ten days after the decision and order has been served and shall set forth specifically the ground or grounds on which the applicant considers the decision or order to be unlawful. No person shall in any court urge or rely on any ground not so set forth in the motion. If a motion for reconsideration or rehearing is filed from a final decision and order, the commission's order shall be automatically stayed until the commission renders its final determination on the motion; provided that:

(1) No change in any rate, fare, or charge shall go into effect while a motion for reconsideration or rehearing is pending notwithstanding section 271-20(e);

(2) Any motion for reconsideration or rehearing shall be determined and an order issued by the commission within forty-five days from the filing date of the motion for reconsideration or rehearing; and

(3) The commission may set aside the automatic stay in its discretion.

(c) A motion for reconsideration or rehearing shall not excuse any person from complying with and obeying any order or decision, or any requirement of any order or decision of the commission theretofore made, or operate in any manner to stay or postpone the enforcement thereof, except in such cases and upon such terms as the commission by order directs.

(d) If, after reconsideration or rehearing the commission is of the opinion that the original order or decision, or any part thereof, is in any respect unjust or unwarranted, or should be changed, the commission may abrogate, change, or modify it. The order or decision abrogating, changing, or modifying the original order or decision shall have the same force and effect as an original order or decision, but shall not affect any right or the enforcement of any right arising from or by virtue

of the original order or decision unless so ordered by the commission.

(e) An appeal shall lie, subject to chapter 602, from every order made by the commission that is final, or if preliminary, is of the nature defined by section 91-14(a), in the manner provided for civil appeals from the circuit court; provided the order is made after reconsideration or rehearing or is the subject of a motion for reconsideration or rehearing, which the commission has denied. An appeal shall lie, subject to chapter 602, in the manner provided for civil appeals from the circuit courts, only by a person aggrieved in the contested case hearing provided for in this section.

271-33 Revised Statutes

271-33 Appeals. From the order made on an application for reconsideration or rehearing by the public utilities commission under this chapter, an appeal shall lie, subject to chapter 602, in the manner and within the time provided for civil appeals from the circuit courts and by the rules of court; provided that the order is final, or if preliminary, is of the nature defined by section 91-14(a). The appeal, of itself, shall not stay the operation of the order appealed from, but the court may stay the same after a hearing upon a motion therefor and may impose such conditions as it may deem proper as to giving a bond and keeping the necessary accounts or otherwise to secure a restitution of the excess charges, if any, made during the pendency of the appeal, in case the order appealed from is sustained, reversed, or modified in whole or in part.

271-34 Witnesses

271-34 Witnesses.

(a) Each witness who appears by order of the public utilities commission shall receive for the witness' attendance the same fees and mileage allowed by law to a witness in civil cases, which shall be paid by the party at whose request the witness is subpoenaed. When any witness who has not been required to attend at the request of any party is subpoenaed by the commission, the witness' fees and mileage shall be paid from the fund appropriated for the use of the commission in the same manner as other expenses of the commission are paid. Any witness subpoenaed except one whose fees and mileage may be paid from the funds of the commission, may, at the time of service, demand the fee to which the witness is entitled for travel to and from the place at which the witness is required to appear, and one day's attendance. If the witness demands the fees at the time of service, and they are not at that time paid or tendered, the witness shall not be required to appear. All fees or mileage to which any witness is entitled under this section may be collected by action therefor instituted by the person to whom the fees are payable. No witness furnished with free transportation shall receive mileage for the distance the witness may have traveled on such free transportation.

(b) In case of the refusal of any witness to attend or testify or produce any papers required by a subpoena issued by the commission, the commission may file in the circuit court a petition setting forth that due notice has been given of the time and place of attendance of the witness, or the production of the papers, and that the witness has been summoned in the manner prescribed in this section and has failed and refused to attend or produce the papers required by the subpoena, or has refused to answer questions propounded to the witness in the course of the proceeding. The petition shall include a request for an order of the court, compelling the witness to attend and testify or produce the papers before the commission.

(c) Upon the filing of a petition the court shall enter an order directing the witness to appear before the court at a time and place fixed in the order and show cause why the witness has not attended and testified or produced the papers before the commission. The time fixed shall not be more than ten days from the date of the order. A copy of the order shall be served upon the witness. If it appears to the court that the subpoena was regularly issued by the commission, the court shall thereupon enter an order that the witness appear before the commission at the time and place fixed in the order, and testify or produce the required papers, and upon failure to obey the order, the witness shall be dealt with as for contempt of court.

(d) The commission or any party may, in any investigation or hearing before the commission, cause the deposition of witnesses residing within or without the State to be taken in the manner prescribed by law for like deposition in civil actions in the circuit courts of this State and to that end may compel the attendance of witnesses and the production of books, waybills, documents, papers, and accounts.

(e) No person shall be excused from testifying or from producing any book, waybill, document, paper, or account in any investigation or inquiry by or hearing before the commission when ordered to do so, upon the ground that the testimony or evidence, book, waybill, document, paper, or account required of the person may tend to incriminate the person or subject the person to penalty, but no person shall be prosecuted, punished, or subjected to any penalty for or on account of any act, transaction, matter, or things concerning which, under oath, the person has testified or produced documentary

evidence, but no person so testifying shall be exempt from prosecution or punishment for any perjury committed by the person in the person's testimony. Nothing herein shall be construed as in any manner giving to any corporate motor carrier immunity of any kind.

271-35 Agreements between carriers

271-35 Agreements between carriers.

(a) For purposes of this section the term "antitrust laws" means any law of the State previously enacted or hereafter enacted pertaining to unlawful restraints of trade and monopolies.

(b) Any carrier party to an agreement between or among two or more carriers relating to rates, fares, classifications, divisions, allowances, or charges (including charges between carriers and compensation paid or received for the use of facilities and equipment), or rules and regulations pertaining thereto, or procedures for the joint consideration, initiation, or establishment thereof, may, under such rules and regulations as the public utilities commission may prescribe, apply to the commission for approval of the agreement, and the commission shall by order approve any agreement (if approval thereof is not prohibited by subsections (d) or (e)) if it finds that, by reason of furtherance of the transportation policy declared in this chapter, the relief provided in subsection (h) should apply with respect to the making and carrying out of the agreement; otherwise the application shall be denied. The approval of the commission shall be granted only upon such terms and conditions as the commission may prescribe as necessary to enable it to grant its approval in accordance with the standard above set forth in this subsection.

(c) Each conference, bureau, committee, or other organization established or continued pursuant to any agreement approved by the commission under this section shall maintain such accounts, records, files, and memoranda and shall submit to the commission such reports, as may be prescribed by the commission, and all the accounts, records, files, and memoranda shall be subject to inspection by the commission or its duly authorized representatives.

(d) The commission shall not approve under this section any agreement between or among carriers of different classes unless it finds that the agreement is of the character described in subsection

(b) of this section and is limited to matters relating to transportation under joint rates or over through routes; and for purposes of this subsection carriers by aircraft are carriers of one class; carriers by motor vehicles are carriers of one class; carriers by water are carriers of one class.

(e) The commission shall not approve under this section any agreement which establishes a procedure for the determination of any matter through joint consideration unless it finds that under the agreement there is accorded to each party the free and unrestrained right to take independent action either before or after any determination arrived at through such procedure.

(f) The commission is authorized, upon complaint or upon its own initiative without complaint, to investigate and determine whether any agreement previously approved by it under this section, or terms and conditions upon which the approval was granted, is not or are not in conformity with the standard set forth in subsection (b), or whether any such terms and conditions are not necessary for purposes of conformity with the standard, and, after the investigation, the commission shall by order terminate or modify its approval of the agreement if it finds the action necessary to insure conformity with the standard, and shall modify the terms and conditions upon which the approval was granted to the extent it finds necessary to insure conformity with the standard or to the extent to which it finds the terms and conditions not necessary to insure such conformity. The effective date of any order terminating or modifying approval, or modifying terms and conditions, shall be postponed for such period as the commission determines to be reasonably necessary to avoid undue hardship.

(g) No order shall be entered under this section except after interested parties have been afforded reasonable opportunity for hearing.

(h) Parties to any agreement approved by the commission under this section and other persons are, if the approval of such agreement is not prohibited by subsection (d) or (e), relieved from the operation of the antitrust laws with respect to the making of such agreement, and with respect to the carrying out of the agreement in conformity with its provisions and in conformity with the terms and conditions prescribed by the commission.

(i) Any action of the commission under this section in approving an agreement or in denying an application for such approval, or in terminating or modifying its approval of an agreement, or in prescribing the terms and conditions upon which its approval is to be granted, or in modifying such terms and conditions, shall be construed as having effect solely

with reference to the applicability of the relief provisions of subsection (h).

271-36 Fees and charges

271-36 Fees and charges.

(a) Every common carrier by motor vehicle and every contract carrier by motor vehicle shall pay to the commission, in April of each year, a fee equal to one-fourth of one per cent of the gross revenues from the carrier's business during the preceding calendar year, or the sum of $20, whichever is greater. Gross revenues include all revenues received from services connected with or incidental to the transportation of persons or the transportation of property, as defined under section 271-4.

(b) Every common carrier by motor vehicle and every contract carrier by motor vehicle paying a fee under subsection (a) may impose a surcharge to recover the amount paid above one-eighth of one per cent of gross income. The surcharge imposed shall not be subject to the notice, hearing, and approval requirements of this chapter; provided that the surcharge may be imposed by the utility only after thirty days' notice to the public utilities commission. Unless ordered by the public utilities commission, the surcharge shall be imposed only until the conclusion of the carrier's next rate case; provided that the surcharge shall be subject to refund with interest at the public utility's authorized rate of return on rate base if the utility collects more money from the surcharge than actually paid due to the increase in the fee to one-fourth of one per cent.

(c) The commission shall establish fair and reasonable fees for the following applications:

(1) Applications for certificates and permits as provided by sections 271-12 and 271-13;

(2) Applications for extensions of certificates as provided by section 271-12(d);

(3) Applications for temporary certificates and permits as provided by section 271-16; and

(4) Applications for authority to convey property necessary or useful in the performance of duties to the public or to transfer certificates or permits or to purchase motor carrier stock, as provided in section 271-18. The fees charged pursuant to this subsection shall be paid to the commission at the time of submission of the application.

(d) The commission may charge an amount it deems necessary and reasonable to defray the cost of supplying to the carriers and the public the application forms and other forms, schedules, tariffs, copies of rules, and other pamphlets and materials it provides by individual copy or in bulk.

(e) All of the fees and charges collected under this section shall be deposited with the director of finance to the credit of the public utilities commission special fund established under section 269-33.

271-37

271-37 Attorney general; aid in enforcement. Upon written request of the department, the attorney general shall prosecute all violations on behalf of the department for the enforcement of the provisions of this chapter.

271-38 Enforcement

271-38 Enforcement. The department shall assign a motor vehicle safety officer employed by the department to assist in the enforcement of this chapter.

271-39 HRS

271-39 Motor carrier indemnification agreements prohibited.

(a) Any provision in a transportation services contract or agreement that requires a motor carrier to indemnify, defend, or hold harmless or that purports to indemnify, defend, or hold harmless, whether in whole or in part , the indemnitee under the contract or agreement from any claim or liability arising from the negligence or intentional acts or omissions of the indemnitee, shall be deemed void and unenforceable as a matter of law to the extent that the provision seeks to indemnify, defend, or hold harmless the indemnitee for the negligent or intentional acts or omissions of the indemnitee.

(b) For purposes of this section: "Indemnitee" means a person who:

(1) Enters into a transportation services contract or agreement to use the services of a motor carrier, or to permit a motor carrier to enter the person's premises; and

(2) In the contract or agreement, is being, or has the effect of being indemnified, defended, or held harmless from claims or liabilities for that person's negligence or intentional acts or omissions. "Indemnitee" includes an agent, employee,

servant, or independent contractor of the person described in paragraphs (1) and (2) of this definition. "Motor carrier" includes an agent, employee, servant, or independent contractor of the motor carrier. "Transportation services" means:

(1) The transportation of persons or property;

(2) Entry upon property to load, unload, or transport persons or property; or

(3) Providing a service, including the storage of property, incidental to paragraph (1) or (2) of this definition.

Chapter 271G

271G-1 Short title

271G-1 Short title.] This chapter shall be called the Hawaii Water Carrier Law.

271G-2 Declaration of policy

271G-2 Declaration of policy. The legislature of this State recognizes and declares that the transportation of persons and of property, for commercial purposes, by water within the State or between points within the State, constitutes a business affected with the public interest. It is intended by this chapter to provide for fair and impartial regulation of such transportation, so administered as to recognize and preserve the inherent advantages of such transportation, in the interest of preserving for the public the full benefit and use of the waterways consistent with the public safety and the needs of commerce: to promote safe, adequate, economical, and efficient service among carriers, to encourage the establishment and maintenance of reasonable rates and charges for transportation and related accessorial service, without unjust discrimination, undue preference or advantage, or unfair or destructive competitive practices, all to the end of developing, coordinating, and preserving a sound transportation system by water. This chapter shall be administered and enforced with a view to carrying out the above declaration of policy.

271G-3

271G-3 Administration; governing provisions of other acts. This chapter shall be administered by the public utilities commission of the State and the provisions of this chapter and of chapter 269, not inconsistent with this chapter, shall govern its administration; provided that sections 269-16 to 269-28 shall not apply in any respect to the regulation of water carriers.

271G-4

271G-4 Application of chapter, interstate, or foreign commerce. This chapter shall not apply to commerce with foreign nations or to interstate commerce, except insofar as the application is permitted under the Constitution and laws of the United States.

271G-5 Definitions

271G-5 Definitions. As used in this chapter: "Certificate" means a certificate of public convenience and necessity issued under this chapter to common carriers by water. "Chapter" means this Water Carrier Law. "Commission" means the public utilities commission. "Document" includes any application, complaint, pleading, brief, answer, motion, memorandum, declaration, exhibit, certificate of service, and other papers filed by or with the commission. "Enforcement officer" means any person employed and authorized by the commission to investigate any matter on behalf of the commission. "Person" or "persons" means any individual, firm, copartnership, corporation, company, association, or joint stock association; and includes any trustee, receiver, assignee, or personal representative thereof. "Rates" includes rates, fares, tolls, rentals, and charges of whatever kind and nature unless the context indicates otherwise. "Related companies" means companies or persons that directly, or indirectly through one or more intermediaries, control, or are controlled by, or are under common control with, the water carrier. The term "control", in reference to a relationship between any person or persons and another person or persons, includes actual as well as legal control, and indirect as well as direct control. "Transportation of persons" includes every service in connection with or incidental to the safety, comfort, or convenience of persons transported and the receipt, carriage, and delivery of these persons and their baggage. "Transportation of property" includes every service in connection with or incidental to the transportation of property, including in particular its receipt, and delivery, carriage, preservation, and all incidental services affecting these activities. "Vessel" means any watercraft or other artificial contrivance of whatever description that is used, or capable of being used, or intended to be used, as a means of transportation by water. "Water carrier" or "common carrier by water" means any person who holds oneself out to the general public as engaging in the transportation by water of passengers or property for compensation

within the State or between points within the State.

271G-7.5

271G-7.5 Electronic copies of documents.

(a) No later than July 1, 2011, the public utilities commission shall accept from any person who submits a document to the commission the original or one electronic copy of each application, complaint, pleading, brief, or other document required to be filed with the commission pursuant to this chapter, and the consumer advocate shall accept service of one paper or electronic copy of each application, complaint, pleading, brief, or other document filed with the commission.

(b) The commission shall adopt rules pursuant to chapter 91 to effectuate the purposes of this section. Until the final adoption by the commission of rules governing the electronic filing of documents with the commission, the following requirements shall apply to all documents submitted to the commission pursuant to this section; provided that additional requirements with regard to document format may be established by the commission through written guidelines:

(1) Unless otherwise required by this chapter or the guidelines of the commission, each person who submits or files an application, complaint, pleading, brief, or other document shall submit to or file with the commission an original or one electronic copy of each document and shall serve one paper or electronic copy of each document on the consumer advocate;

(2) All paper documents submitted to or filed with the commission shall be printed on one side of the page only and, if practicable, in portrait orientation;

(3) Original paper documents submitted to or filed with the commission shall not be stapled but shall be clipped together or placed in a clearly marked three-ring binder, as appropriate;

(4) All paper documents filed or submitted to the commission shall include appropriately labeled separator pages in addition to tabbed dividers, as applicable;

(5) All confidential documents filed under confidential seal shall be clearly designated in accordance with the requirements of any applicable protective order, and the sealed envelope in which the confidential documents are enclosed shall clearly indicate the appropriate docket number and subject; and

(6) Electronic documents shall be named using the filing party's name, docket number, date of filing, and name of document as part of the document title. Upon final adoption of rules pursuant to chapter 91, the rules of the commission governing submission or filing of electronic documents shall supersede the provisions of this subsection.

(c) No later than July 1, 2013, the public utilities commission shall accept any application, complaint, pleading, brief, or other document required to be filed with the commission pursuant to this chapter as either a paper document or an electronic document.

(d) If a signature is required on any document submitted electronically pursuant to this section, that requirement shall be satisfied by the inclusion of an electronic signature. Chapter 489E shall apply to all electronic documents submitted pursuant to this section.

(e) Communications, correspondence, and service of orders and other official documents shall be made upon the water carrier, complainant, and any other party at the last recorded mailing or electronic mail address on file with the commission. Proof of service by certified or registered mail or by electronic transmission to the last known mailing or electronic mail address shall constitute a valid service of any communication, correspondence, order, or other official document.

271G-8

271G-8 Reports and decisions of commission. Whenever the public utilities commission inquires into the operations, operating rights, rates, safety of operations, or directs inquiry and investigation into water carrier activities regulated under this chapter, and holds public hearing thereon, it shall make a report in writing, on paper or an electronic copy, in respect thereto, that shall state its findings of fact and conclusions of law, together with its decision, order, or requirement in the premises. The provisions of chapter 91 shall apply.

271G-9

271G-9 Copies of schedules, tariffs, contracts, etc., kept as public records; evidence. The copies of schedules and classifications and tariffs or rates, fares, and charges, and all contracts, agreements and arrangements between water carriers filed with the public utilities commission as herein provided, and any reports filed with the commission as required

under this chapter shall be preserved as public records.

271G-10

271G-10 Applications for certificates of public convenience and necessity.

(a) Except as otherwise provided in this section and in sections 271G-6 and 271G-12, no water carrier shall engage in operations between points within the State unless the carrier holds a certificate of public convenience and necessity issued by the public utilities commission authorizing the operation; provided that no new application shall be required for any common carrier by water that is the holder of a certificate of public convenience and necessity issued by the public utilities commission.

(b) Applications for certificates shall be made in writing to the commission, be verified under oath, be presented in a form, contain the information, and be accompanied by proof of service upon interested parties as the commission shall, by rule, require.

(c) The commission shall not approve an application for a certificate or otherwise grant authorization pursuant to an application to operate as a water carrier under this chapter until the commission has given notice and held public hearings conducted in accordance with the procedures under section 271G■23.5.

(d) The commission shall issue a certificate to any qualified applicant, authorizing the whole or any part of the operations proposed in the application only if the commission finds that:

(1) The applicant is fit, willing, and able properly to perform the service proposed and to conform to this chapter and the requirements and rules of the commission; and

(2) The proposed service, to the extent to be authorized by the certificate, is or will be required by the present or future public convenience and necessity.

(e) The commission shall not make a finding of public convenience and necessity or issue an authorization, whether interim, permanent, or otherwise, to operate as a water carrier without the following specific findings supported by evidence in the record:

(1) Existing water carrier services are inadequate to presently service the public or meet demonstrated and quantifiable future demands for service;

(2) The proposed service is designed for and necessary to meet demonstrated and quantifiable unmet public needs for present water carrier service or demonstrated and quantifiable future demands for service;

(3) The proposed service will provide demonstrated and quantifiable benefits to the general public, business community, and the economy of all islands that are entitled to notice under section 271G-23.5, including demonstrated and quantifiable benefits with respect to reliability, affordability, and security of the service line;

(4) The specific, identified benefits of the proposed service outweigh its detrimental impact to the public's interest in maintaining services, including: (A) Economies of scale and scope of current water carriers; (B) Future capital costs of existing water carriers; (C) Ability of existing water carriers to make necessary capital and resource investments; (D) The financial health, stability, and revenue stream of existing water carriers; and (E) The likelihood that existing levels of service will be maintained after the enactment of the proposed service; and

(5) If the commission's finding of public convenience and necessity differs from the recommendation of the consumer advocate, specific findings to address each ground for objection articulated by the consumer advocate. The commission shall not make a finding of public convenience and necessity nor issue a certificate if the evidence in the record indicates that the issuance of the certificate would diminish an existing water carrier's ability to realize its allowed rate of return or if the certificate would allow an applicant to serve only high-margin or high-profit ports or lines of service that are currently served by an existing carrier.

(f) Any water carrier transporting passengers under a certificate issued pursuant to this chapter may occasionally deviate from the route over which it is authorized to operate under the certificate pursuant to the rules of the commission.

(g) The commission shall not issue any certificate that is designated as interim or temporary or that otherwise does not conform to the requirements of this chapter except in response to an emergency situation; provided that an emergency situation shall mean a state of emergency or local state of emergency pursuant to chapter 127A. Any certificate issued pursuant to this subsection shall expire upon the expiration of the state of emergency or local state of emergency or an earlier date determined by the commission in response to prevailing conditions. An extension of a certificate granted

under this subsection beyond the expiration of the state of emergency or local state of emergency or date determined by the commission shall be granted only subject to the notice, hearing, and findings requirements of this chapter.

(h) The commission shall post a link on the front page of the commission's website to a publicly accessible electronic version of each application for a certificate pursuant to this section and to each order of the commission regarding posted applications, including the commission's final decision and order. Links posted under this subsection shall include a short description of the document to which the link refers, shall be active within twenty-four hours of the filing of an application or issuance of an order, and shall remain active for at least thirty days from the filing of the application or the issuance of the order or decision and order.

271G-11 No proprietary right in water

271G-11 No proprietary right in water. No certificate issued under this chapter confers any proprietary or property right in the use of the waterways.

271G-12 Temporary authority

271G-12 Temporary authority. To enable the provision of service for which there is an immediate and urgent need to a point or points or within a territory having no carrier service capable of meeting the need, the public utilities commission may, in its discretion and without hearings or other proceedings, grant temporary authority for such service by a water carrier. The temporary authority, unless suspended or revoked for good cause, shall be valid for such time as the commission shall specify, but for no more than a period of one hundred twenty days for any one immediate and urgent need.

271G-13

271G-13 Security for protection of public. No certificate shall be issued to a water carrier or remain in force unless such carrier complies with such reasonable rules and regulations as the public utilities commission shall prescribe governing the filing and approval of surety bonds, policies of insurance, qualifications as a self-insurer, or other securities or agreements, in such reasonable amounts as the commission may require.

271G-14

271G-14 Transfer of certificates of public convenience and necessity, and carrier property.

(a) For the purpose of the administration and application of subsections (a) and (b), the term "carrier" includes any water carrier subject to this chapter, or any carrier subject to the act of any other state or any act of the Congress of the United States under which interstate or foreign commerce by land, sea, or air, is regulated.

(b) No water carrier shall sell, lease, assign, mortgage, or otherwise dispose of, or encumber the whole or any part of its property necessary or useful in the performance of transportation services for the public or any certificate of public convenience and necessity; nor shall any water carrier, by any means, directly or indirectly, merge or consolidate its property, certificates of public convenience and necessity, or any part thereof, with any other carrier, without first having secured from the public utilities commission an order authorizing it so to do, unless the water carrier is either:

(1) Disposing a fully depreciated asset or property with a zero net book value; provided that the disposal: (A) Is made to an unaffiliated entity; and (B) Results in a zero or net reduction to the water carrier's rate base; or

(2) Donating a fully depreciated asset or property with zero net book value to a charitable or nonprofit organization . Every sale, lease, assignment, mortgage, disposition, encumbrance, merger, or consolidation that requires authorization from the public utilities commission under this subsection and is made other than in accordance with an order of the commission authorizing the same shall be void.

(c) No water carrier shall purchase or acquire, take or hold, any part of the capital stock of any other water carrier organized or existing under or by virtue of the laws of the State, without having been first authorized to do so by the commission. Every assignment or transfer of any stock by or through any person to any person, or otherwise, in violation of any of the provisions of this section is void and of no effect, and no transfer shall be made on the books of any water carrier. Nothing herein shall prevent the holding of stock heretofore lawfully acquired.

(d) Whenever a transaction is proposed under subsection (b) or (c) of this section, the water carrier or water carriers, or person or persons, seeking approval thereof shall present an application to the commission in such form as the commission may require and the commission may thereupon act upon the application with or without first holding a public hearing; provided that if requested, it shall afford reasonable opportunity for interested parties to be heard. If the

commission finds that subject to such terms and conditions as it shall find to be just and reasonable the proposed transaction will be consistent with the public interest, the commission shall enter an order approving and authorizing the transaction, upon the terms and conditions, and with the modifications, so found to be just and reasonable.

(e) Pending the determination of an application filed with the commission for approval of a consolidation or merger of the properties of two or more water carriers, or of a purchase, lease, charter, or contract to operate the properties of one or more water carriers, the commission may, in its discretion and without hearings or other proceedings, grant temporary approval, for a period not exceeding one hundred twenty days or for such additional period as the determination of an application may require, of the operation of the water carrier properties sought to be acquired by the persons proposing in the pending application to acquire the properties, if it shall appear that failure to grant this temporary approval may result in destruction of or injury to such water carrier properties sought to be acquired, or to interfere substantially with their future usefulness in the performance of adequate and continuous service to the public.

271G-15

271G-15 Suspension, change, and revocation of certificates. Certificates shall be effective from the date specified therein, and shall remain in effect until suspended or terminated as herein provided. Any certificate may, upon application of the holder thereof, in the discretion of the public utilities commission, be amended or revoked, in whole or in part, or may upon complaint, or on the commission's own initiative, after notice and hearing, be suspended, changed, or revoked, in whole or in part, for wilful failure to comply with any provisions of this chapter, or with any lawful order, rule, or regulation of the commission promulgated thereunder, or with any term, condition, or limitation of the certificate; provided that no such certificate shall be revoked (except upon application of the holder) unless the holder thereof wilfully fails to comply within a reasonable time, not less than thirty days, to be fixed by the commission, with a lawful order of the commission, made as provided in this chapter, commanding obedience to this chapter, or to the rule or regulation of the commission thereunder, or to the term, condition, or limitation of the certificate or permit, found by the commission to have been violated by the holder; and provided further that the right to engage in transportation by virtue of any certificate or any application filed pursuant to section 271G-10 or by virtue of temporary authority under section 271G-12 may be suspended by the commission, upon reasonable notice of not less than fifteen days to the carrier, but without hearing or other proceedings, for failure to comply, and until compliance, with section 271G-17(a) or with any lawful order, rule, or regulation of the commission promulgated thereunder.

271G-16

271G-16 Rates, fares and charges of common carriers by water.

(a) It shall be the duty of every water carrier of passengers to provide safe and adequate service, equipment, and facilities for the transportation of passengers and to establish, observe, and enforce just and reasonable rates, fares, and charges, and just and reasonable regulations and practices relating thereto, and to the issuance, form, and substance of tickets, the carrying of personal, sample, and excess baggage, the facilities for transportation, and all other matters relating to or connected with the transportation of passengers.

(b) It shall be the duty of every water carrier of property to provide safe and adequate service, equipment, and facilities for the transportation of property and to establish, observe, and enforce just and reasonable rates, charges, and classifications, and just and reasonable regulations and practices relating thereto, and to the manner and method of presenting, marking, packing, and delivering property for transportation, the facilities for transportation, and all other matters relating to or connected with the transportation of property.

(c) All charges made for any service rendered by any water carrier in the transportation of passengers or property or in connection therewith shall be just and reasonable, and every unjust and unreasonable charge for such service or any part thereof, is prohibited and declared to be unlawful. It shall be unlawful for any water carrier to make, give, or cause any undue or unreasonable preference or advantage to any particular person, locality, region, district, island, or description of traffic, in any respect whatsoever; or to subject any particular person, locality, region, district, island, or description of traffic to any unjust discrimination or undue or unreasonable prejudice or disadvantage in any respect whatsoever; provided that this subsection shall not be construed to apply to discrimination, prejudice, or disadvantage to the traffic of any other carrier of whatever description.

(d) Any person or body politic may make complaint in writing to the commission that any such rate, fare, charge, rule, regulation, or practice, in effect or proposed to be put into effect, is or will be in violation of this section. Whenever, after hearing, upon complaint or in an investigation on its own initiative, the commission shall be of the opinion that any

individual rate, fare, or charge, demand, charged, or collected by any common carrier or carriers by water for transportation, or any rule, regulation, or practice whatsoever of the carrier or carriers affecting such rate, fare, or charge or the value of the service thereunder, is or will be unjust or unreasonable, or unjustly discriminatory or unduly preferential or unduly prejudicial, it shall determine and prescribe the lawful rate, fare, or charge or the maximum or minimum or maximum and minimum rate, fare, or charge thereafter to be observed, or the lawful rule, regulation, or practice thereafter to be made effective.

(e) In the exercise of its power to prescribe just and reasonable rates, fares, and charges for the transportation of passengers or property by water carriers, and to prescribe classifications, regulations, and practices relating thereto, the commission shall give due consideration, among other factors, to the effect of rates upon the movement of traffic by the carrier or carriers for which the rates are prescribed; to the need, in the public interest, of adequate and efficient transportation service by the carriers at the lowest cost consistent with the furnishing of the service; and to the need of revenues sufficient to enable the carriers, under honest, economical, and efficient management, to provide the service.

(f) Nothing in this section shall be held to extinguish any remedy or right of action not inconsistent herewith.

271G-17 Tariffs of water carriers

271G-17 Tariffs of water carriers.

(a) Every water carrier shall file with the public utilities commission, and print, and keep open to public inspection, tariffs showing all the rates, fares, and charges for transportation, and all services in connection therewith, of passengers or property. The rates, fares, and charges shall be stated in terms of lawful money of the United States. The tariffs required by this section shall be published, filed, and posted in such form and manner, and shall contain such information as the commission by regulations shall prescribe; and the commission may reject any tariff filed with it which is not in consonance with this section and with the regulations. Any tariff so rejected by the commission shall be void and its use shall be unlawful.

(b) No change shall be made in any rate, fare, charge, or classification, or any rule, regulation, or practice affecting the rate, fare, charge, or classification, or the value of the service thereunder, specified in any effective tariff of a water carrier, except after forty-five days' notice of the proposed change filed and posted in accordance with subsection (a); provided that changes to a fuel surcharge approved by the commission may be made after thirty days' notice of the proposed change filed and posted in accordance with subsection (a). The notice shall plainly state the change proposed to be made and the time when it will take effect. The commission may in its discretion and for good cause shown allow the change upon notice less than that herein specified or modify the requirements of this section with respect to posting and filing of tariffs either in particular instances or by general order applicable to special or peculiar circumstances or conditions.

(c) No water carrier shall engage in the transportation of passengers or property unless the rates, fares, and charges upon which the same are transported by the carrier have been filed and published in accordance with this chapter.

(d) Whenever there is filed with the commission any schedule stating a new rate, fare, or charge, for the transportation of passengers or property by a water carrier or any rule, regulation, or practice affecting such rate, fare, or charge, or the value of the service thereunder, the carrier may on its own initiative, or shall by order of the commission served prior to the effective date of the schedule, concurrently file a pro forma statement of account which shall be prepared under the same form and in the same manner as prescribed by the commission's uniform system of accounts. The commission may upon complaint of any interested person or upon its own initiative at once and, if it so orders, without answer or other formal pleading by the interested carrier or carriers, but upon reasonable notice, enter upon a hearing concerning the lawfulness of the rate, fare, or charge, or the rule, regulation, or practice, and pending the hearing and the decision thereon the commission, by delivering to the carrier or carriers affected thereby a statement in writing of its reasons therefor, may suspend the operation of the schedule and defer the use of the rate, fare, or charge, or the rule, regulation, or practice. From the date of ordering a hearing to investigate the lawfulness of the rate, fare, or charge, the commission shall have up to six months to complete its investigation. If the commission fails to issue a final order within the six-month period then the changes proposed by the carrier shall go into effect. At any hearing involving a change in a rate, fare, charge, or classification, or in a rule, regulation, or practice, the burden of proof shall be upon the carrier to show that the proposed changed rate, fare, charge, classification, rule, regulation, or practice, is just and reasonable.

(e) When a rate increase application is filed, the commission may in its discretion and after public notice, and upon showing by a water carrier of probable entitlement and financial need, authorize temporary increases in rates, fares, and

charges; provided that the commission shall by order require the carrier to keep accurate account in detail of all amounts received by reason of such increase, specifying by whom and in whose behalf such amounts are paid, and upon completion of the hearing and decision by further order require the interested carrier to refund, with interest, to the persons in whose behalf such amounts were paid, such portion of such increased rates or charges by its decision shall be found not justified. The interest to be paid shall be the rate of return authorized in the last general rate case proceedings.

271G-17.5 Issuance of securities

271G-17.5 Issuance of securities.

(a) A water common carrier may, on securing the prior approval of the public utilities commission, and not otherwise:

(1) Enter into vessel leases longer than five years;

(2) Enter into leverage leases for vessels; or

(3) Issue stocks and stock certificates, bonds,

271G-18 Accounts, records, and reports

271G-18 Accounts, records, and reports. The public utilities commission may require annual, periodical, or special reports from all water carriers, prescribe the manner and form in which the reports shall be made, and require from the carriers specific and full, true, and correct answers to all questions upon which the commission may deem information to be necessary.

271G-20 Collection of rates and charges

271G-20 Collection of rates and charges. No water carrier shall deliver or relinquish possession at destination of any freight transported by it until all tariff rates and charges thereon have been paid if such delivery or relinquishment without payment of all such rates and charges has been prohibited or restricted by rules and regulations of the commission, and if so prohibited and restricted, then delivery or relinquishment shall be made only under such rules and regulations as the public utilities commission may from time to time prescribe to govern the settlement of all the rates and charges, including rules and regulations for weekly or monthly settlement, and to prevent unjust discrimination or undue preference or prejudice; provided that this section shall not be construed to prohibit any carrier from extending credit in connection with rates and charges on freight transported for the United States, for any department, bureau, or agency thereof, or for any state or political subdivision thereof.

271G-21

271G-21 Recovery of overcharges or undercharges.

(a) All actions by water carriers or common carriers by water for the recovery of their charges, or any part thereof, shall be begun within three years from the time the cause of action accrues, and not after.

(b) For recovery of overcharges, actions shall be begun within three years from the time the cause of action accrues, and not after, subject to subsection (c) of this section, except that if claim for the overcharge has been presented in writing to the carrier within the three-year period of limitation the period shall be extended to include six months from the time notice in writing is given by the carrier to the claimant of disallowance of the claim, or any part or parts thereof specified in the notice.

(c) If on or before the expiration of the three-year period of limitation in subsection (b) a common carrier by water begins action under subsection (a) for recovery of charges in respect of the same transportation service, or, without beginning action, collects charges in respect of that service, the period shall be extended to include ninety days from the time the action is begun or the charges are collected by the carrier.

(d) The cause of action in respect of a shipment of property shall, for the purpose of this section, be deemed to accrue upon delivery or tender of delivery thereof by the carrier, and not after.

(e) The term "overcharges" as used in this section means charges for transportation services in excess of those applicable thereto under the tariffs lawfully on file with the commission.

271G-22

271G-22 Allowance to shippers for transportation services. If the shipper of property transported under this chapter, directly or indirectly, renders any service connected with the transportation, or furnishes any instrumentality used therein, the charge and allowance therefor shall be published in tariffs or schedules filed in the manner provided in this chapter

and shall be no more than is just and reasonable; and the public utilities commission may, after hearing on a complaint or on its own initiative, determine what is a reasonable charge as the maximum to be paid by the carrier or carriers for the services so rendered or for the use of the instrumentality so furnished, and fix the same by appropriate order.

271G-23 Hearings

271G-23 Hearings.

(a) All hearings, investigations, and proceedings shall be governed by chapter 91 and by rules of practice and procedure adopted by the public utilities commission, and in the conduct thereof, the technical rules of evidence need not be applied; provided that in all evidentiary hearings conducted pursuant to chapter 91 in which a carrier has the burden of justifying the reasonableness of its rates, fares, charges, or classifications, the burden of proof of the carrier in proving the reasonableness of expenditures, contracts, leases, or other transactions between the carrier and corporate affiliates of the carrier shall be satisfied only if the reliable, probative and substantial evidence is clear and convincing. No informality in any hearing, investigation, or proceeding, or in the manner of taking testimony shall invalidate any order, decision or rule made, approved, or confirmed by the commission.

(b) Complaints may be made, in writing, by the commission on its own motion or by any person or body politic setting forth any act or thing done, or omitted to be done by any water carrier, including any rule, regulation, rate, or charge, heretofore established or fixed by or for any water carrier, in violation or claimed to be in violation, of any law or of any order or rule of the commission.

271G-23.5

271G-23.5 Notice of hearing required.

(a) Whenever the commission conducts a public hearing on an application for a certificate pursuant to section 271G-10, the commission shall provide reasonable notice in writing to the applicant for a certificate and to the public on each island that will be affected by the proposed service of the fact of the public hearing and the matter to be considered. Notice pursuant to this section shall be provided at least thirty days before the date fixed by the commission for the public hearing.

(b) Notice provided pursuant to this section shall plainly state the proposed operations, routes, and services of the applicant and the proposed effective date. Notice under this section shall be effective upon compliance with subsection (c); provided that the commission shall retain and make available for public inspection copies of all notices and related documents issued pursuant to this section.

(c) Any public hearing held pursuant to section 271G-10(c) shall be a noticed public hearing or hearings on the island or islands to which the water carrier proposes to provide services or which will be affected by the proposed service. Notice of the hearing, its purpose, and the date, time, and place at which it will open shall be given not less than once in each of three weeks on each island in the county or counties to which the water carrier proposes to provide services or which will be affected by the proposed service. The first notice shall be given not less than twenty-one days before the public hearing and the last notice shall be given not more than two days before the public hearing.

271G-24 Appeals

271G-24 Appeals. From an order of the public utilities commission under this chapter, an appeal shall lie, subject to chapter 602, in the manner provided for civil appeals from the circuit courts and by the rules of court; provided that the order is final, or if preliminary, is of the nature defined by section 91-14(a). The appeal, of itself, shall not stay the operation of the order appealed from, but the court may stay the same after a hearing upon a motion therefor and may impose such conditions as it may deem proper as to giving a bond and keeping the necessary accounts or otherwise to secure a restitution of the excess charges, if any, made during the pendency of the appeal, in case the order appealed from is sustained, revised, or modified in whole or in part.

271G-25 Agreement between carriers

271G-25 Agreement between carriers.

(a) For purposes of this section the term "antitrust laws" means any law of the State previously enacted pertaining to unlawful restraints of trade and monopolies.

(b) Any carrier party to an agreement between or among two or more carriers relating to rates, fares, classifications, divisions, allowances, or charges (including charges between carriers and compensation paid or received for the use of

facilities and equipment), or rules and regulations pertaining thereto, or procedures for the joint consideration, initiation, or establishment thereof, may, under such rules and regulations as the public utilities commission may prescribe, apply to the commission for approval of the agreement, and the commission shall by order approve any agreement, if approval thereof is not prohibited by subsection (c), if it finds that, by reason of furtherance of the transportation policy declared in this chapter, the relief provided in subsection (e) should apply with respect to the making and carrying out of the agreement; otherwise, the application shall be denied.

(c) The commission shall not approve under this section any agreement between or among carriers of different classes unless it finds that the agreement is of the character described in subsection

(b) of this section and is limited to matters relating to transportation under joint rates or over through routes; and for purposes of this subsection carriers by aircraft are carriers of one class; carriers by motor vehicles are carriers of one class; carriers by water are carriers of one class.

(d) The commission is authorized upon complaint or upon its own initiative without complaint, to investigate and determine whether any agreement previously approved by it under this section, or terms and conditions upon which the approval was granted is not or are not in conformity with the standard set forth in subsection (b), or whether any such terms and conditions are not necessary for purposes of conformity with the standard, and, after the investigation, the commission shall by order terminate or modify its approval of the agreement if it finds the action necessary to insure conformity with the standard, and shall modify the terms and conditions upon which the approval was granted to the extent it finds necessary to insure conformity with the standard or to the extent to which it finds the terms and conditions not necessary to insure each conformity. The effective date of any order terminating or modifying approval, or modifying terms and conditions, shall be postponed for such period as the commission determines to be reasonably necessary to avoid undue hardship.

(e) Parties to any agreement approved by the commission under this section and other persons are, if the approval of such agreement is not prohibited by subsection (c), relieved from the operation of the antitrust laws with respect to the making of such agreement, and with respect to the carrying out of the agreement in conformity with the terms and conditions prescribed by the commission.

Chapter 273

273-1 Franchise

273-1 Franchise. The comptroller, by and with the consent of the governor, may enter into contract with any association of persons who may associate themselves together under the general corporation law of the State, and by the general law in relation to corporations and subject to all the provisions thereof, for the purpose of building and operating a railroad or railroads in any part of the State.

273-2 Granting public lands, etc

273-2 Granting public lands, etc. The department of land and natural resources, with the consent of the governor, may grant a right-of-way, not greater than forty feet in width, through all public lands, to any corporation as aforesaid for the purpose of building the railroad or railroads. With like consent and approval, the department may grant the use of such public lands, lying alongside and abutting such right-of-way, as may be reasonably necessary for buildings, stations, depots, or other structures, for railroad purposes only.

273-3 Special powers

273-3 Special powers. For the purposes and subject to the provisions and restrictions of this chapter, the corporation, from time to time, may exercise any of the following powers:

(1) It may enter upon any lands that may adjoin upon the line of any railway that may be authorized by charter to be made, and may bore, dig, cut, trench, embank, and drain, and may remove or lay, take, carry away, and use any earth, gravel, stone, timber, or other things dug or obtained therein or otherwise in the execution of any powers hereafter in this chapter given, and that may be proper for the making, maintaining, altering, repairing, or using of any railway lawfully authorized, or that may obstruct the making, maintaining, altering, repairing, or using of the same;

(2) It may make, in, upon, across, under, or over any such lands, or any street, roads, ways, railroads, tramways, hills, valleys, rivers, canals, watercourses, or waters, any temporary or permanent inclined planes, tunnels, cuttings,

embankments, aqueducts, bridges, roads, ways, passages, conduits, drains, piers, arches, fences, and other work and conveniences as the corporation thinks proper;

(3) It may alter the course of any rivers not navigable, canals, brooks, streams, or watercourses during any times as is necessary for constructing or maintaining tunnels, bridges, or other works over, under, or affecting the same; and may temporarily or permanently alter the course of any rivers or streams, or raise or sink the level of any rivers or streams, streets, roads, or ways, to carry more conveniently the same over or under or by the side of any railway;

(4) It may make drains or conduits into, through, or under any lands adjoining the railway for the purpose of conveying water from or to the railway, and upon the railway, or any lands adjoining or near thereto;

(5) It may make piers, jetties, stations, sidings, wharves, warehouses, tollhouses, and other houses, yards, engines, machinery, signal posts, and other apparatus, works, and conveniences whatsoever connected with the railway as the corporation may think proper, and may from time to time alter, repair, or discontinue any apparatus, works, and conveniences, and substitute others in their stead;

(6) It may fell or remove any timber or other trees being within two hundred feet from either side of the railway that, by their liability to fall or otherwise, might obstruct or injure the railway;

(7) It may also fell or cut down and remove any trees or wood, whether timber or other trees, or scrub or underwood, that, by reason of the line making a curve or otherwise, may obstruct or impede a view of any signal post from any portion of the line within one mile in a right line from any signal post;

(8) It may enter upon and use any existing private road, being a road graveled or formed with stones or other hard material, and not being an avenue or approach to any dwelling house;

(9) It may enter upon and take, purchase, and hold all lands, tenements, and hereditaments as may be required for the purposes of the railway and works connected therewith; and

(10) It may do all other things necessary or convenient for making, maintaining, altering, or repairing and using the railway. Nothing in this chapter shall be construed to authorize any corporation to enter upon or take any tidewaters, nor in any way to hinder, obstruct, or interfere with navigation in or upon any public navigable waters, nor to erect, build, or maintain any pier, jetty, or wharf in, upon, or over any harbor, bay, or river beyond high watermark.

273-4 Compensation to be made

273-4 Compensation to be made. In the exercise of the powers mentioned in section 273-3, the corporation shall do as little damage as can be; and shall make full compensation in the manner provided in chapter 101, to all parties interested for all damage sustained by reason of the exercise of such power.

273-5 Width of land taken

273-5 Width of land taken. The lands to be taken or used for the line of any railway lawfully authorized, shall not exceed one hundred feet in width, except where greater width is necessary for engines or carriages to turn, stand in, or pass each other, or for stations, or for raising embankments, or for crossing valleys or low grades, or for cutting through high grounds, or for the erection or establishment of any fixed or permanent wharf, warehouse, tollhouse, machinery, or other building or erection, or for excavating, removing, or depositing earth or other material.

273-6 Superfluous lands to be sold

273-6 Superfluous lands to be sold. Where lands are acquired by the corporation under the exercise of eminent domain, but are not required for its purposes, the corporation, within the prescribed period, or if no period is prescribed, within ten years after the expiration of the time limited by the charter for the completion of the works, shall absolutely sell and dispose of all superfluous lands and apply the purchase money arising from the sale to the purpose of the charter, and in default thereof, all superfluous lands remaining unsold at the expiration of this period, shall thereupon vest in and become the property of the owners of the lands adjoining thereto in proportion to the extent of their lands respectively adjoining the same.

273-7 Offered to adjoining owners first

273-7 Offered to adjoining owners first. Before the corporation disposes of any superfluous lands, it shall, unless the lands are situated within a town, or are lands built upon, or used for building purposes, first offer to sell the same to the person then entitled to the lands (if any) from which the same were originally severed; or if the person refuses to purchase the same, or cannot, after diligent inquiry, be found, then the like offer shall be made to the person, or to the several

persons whose lands immediately adjoin the lands so proposed to be sold, such persons being capable of entering into a contract for the purchase of the lands; and when more than one person is entitled to the right of preemption, the offer shall be made to these persons in succession, one after another, in such order as the corporation shall think fit.

273-8 Acceptance of offer

273-8 Acceptance of offer. If any such persons are desirous of purchasing such lands, then within six weeks after such offer of sale, they shall signify their desire to purchase the lands, to the corporation; or if they decline such offer, or if for six weeks they neglect to signify their desire to purchase such lands, the right of preemption of every such person so declining or neglecting in respect of the lands included in the offer shall cease; and a declaration in writing made before a justice by some person not interested in the matter in question, stating that the offer was made and was refused or not accepted within six weeks from the time of making the same, or that the person or all the persons entitled to the right of preemption were out of the country, or could not, after diligent inquiry, be found, or were not capable of entering into a contract for the purchase of the lands, shall, in all courts, be sufficient evidence of the facts therein stated.

273-9 Arbitration of price

273-9 Arbitration of price. If any person entitled to such preemption desires to purchase the lands, and the person and the corporation do not agree to the price thereof, then the price shall be ascertained by arbitration. The cost of the arbitration shall be in the discretion of the arbitrators.

273-10 Nature of motive power allowable

273-10 Nature of motive power allowable. All railroad companies authorized under the laws of the State to operate their railroads by steam power may operate their railroads or any portion of the same by electric power, either by overhead or underground wires or by storage batteries, or by such other methods as may be an improvement upon either; or by compressed air; or by such other motive power as the railroad companies may from time to time elect; provided that a part of the railroad may be operated by one motive power while another or other portions thereof may be operated by another or other motive powers.

273-11

273-11 Right to provide same, subject to rights of others. Such railroad companies with the consent of the comptroller may provide, construct and install, maintain, change, and repair such means for the transmission and return of electric, compressed air, or other motive power for such motive purposes along, upon, and over such highways, streets, or roads upon which they have rights of way by franchise as may from time to time be necessary for the operation of the railroads; provided that the railroad companies shall so exercise this right that unnecessary injury or deterioration shall not occur nor be done to the water pipes, sewer pipes, gas pipes, or other property of the State, or of any person and shall save the State, or any person harmless and indemnified from all loss, cost, damage, and expense by reason thereof.

273-12 Railway to be fenced

273-12 Railway to be fenced. The corporation shall fence in the line of railway with a good and sufficient legal fence.

273-13 Bylaws, regulations

273-13 Bylaws, regulations. The corporation may from time to time make bylaws and regulations for the management and control of the railway, and for regulating the traffic thereon; and the bylaws and regulations on being approved by the governor, shall have the force of law. The corporation shall, at all times, cause a copy of the bylaws and regulations to be posted and exhibited at the principal stations on the line of railway.

273-14 Penalty for violating

273-14 Penalty for violating. Any person violating any bylaw or regulation approved in section 273-13, shall be fined not more than $25 and costs; and in default of payment, shall be imprisoned not more than three months.

273-15 Bonds

273-15 Bonds. Any corporation which may be organized, and undertake the building of any railroad or railroads, in pursuance of the authority of this chapter, and in accordance with it, may issue bonds to raise money for the construction of such railroad or railroads, in such sums as may be convenient.

273-16 Aid to public railroads only

273-16 Aid to public railroads only. The aid by this chapter contemplated shall be extended only to railroads of public utility, and not to railroads of mere private or limited convenience.

Chapter 275

275-1 to 275-5 REPEALED

275-1 to 275-5 REPEALED. L 1972, c 9, pt of §1. Previous Vol05_Ch0261-0319 Next

275-6

275-6 Party line; refusal to yield in emergency. Any person who wilfully refuses to immediately relinquish a party line when informed that the line is needed for an emergency call to a fire department or police department or for medical aid or ambulance service, or any person who secures the use of a party line by falsely stating that the line is needed for an emergency call, shall be guilty of a misdemeanor.

275-7 Definitions

275-7 Definitions. "Emergency" as used in sections 275-5 and 275-6 means a situation in which property or human life is in jeopardy and the prompt summoning of aid is essential. "Party line" as used in sections 275-5 and 275-6 means a subscriber's line telephone circuit, consisting of two or more main telephone stations connected therewith, each station with a distinctive ring or telephone number.

275-8 REPEALED

275-8 REPEALED. L 1972, c 9, pt of §1. Previous Vol05_Ch0261-0319 Next

Chapter 277

277-1

277-1 Findings and declaration of necessity. The legislature finds and declares that:

(1) There is a critical problem in establishing convenient and economical means for transporting fuels and other sources of energy from the places of manufacture or storage to distribution areas within the State of Hawaii or the places of consumption;

(2) There would be a maximization of the use of available lands if a state agency were to be authorized to acquire, hold and manage energy corridors consisting of lands or interest therein, thereby controlling the use thereof;

(3) Competition would be fostered and thereby a reduction in cost to consumers would be realized if the State could make available energy corridors as the location for the facilities necessary for the transportation of sources of energy;

(4) The department of transportation is the agency of the State best able to manage and control the energy corridors. The legislature also finds that the acquisition of private property for the aforementioned purposes is necessary, and that such acquisition is for a public use.

277-2 Authorization

277-2 Authorization. The department of transportation shall establish, maintain, operate, manage and control energy corridors throughout the State for the purpose of maximizing the utilization of lands available for use in connection with transporting by pipeline or other means, sources of energy including but not limited to oil, its derivatives and natural gas; provided that the utilization of such energy corridors shall be permissive and not mandatory.

277-3 Acquisition of lands

277-3 Acquisition of lands. The director of transportation in the name of the State and subject to the approval of the governor may for the purposes of this chapter acquire, by purchase or eminent domain, private property in fee simple, or any lesser interest therein, including leases, all property necessary for the establishment, maintenance, operation, management and control of energy corridors.

277-4 Disposition

277-4 Disposition. The director of transportation may dispose of any interests in the lands acquired for the purposes of this chapter by lease or license or by the grant of easements to any person who is engaged in the business of furnishing

or delivering sources of energy, in bulk.

Chapter 279A

279A-1 Statement of purpose

279A-1 Statement of purpose. The legislature finds that continued growth in transport demand and increasing mobility requirements indicate a need for innovative, as well as improved, transportation systems which, while serving local needs, are integrated on a statewide basis. The State Transportation Plan of 1961 is no longer responsive to the needs of the people of Hawaii. A comprehensive, multi-modal statewide transportation planning process should be established which involves all levels of government in a cooperative process to develop coordinated transportation plans. Coordination of such a statewide planning process should be the primary responsibility of the department of transportation. However, to ensure that statewide transportation planning involves the continuing involvement of county governments in the production of a statewide transportation plan, there is a need to establish a statewide transportation council consisting of representatives of the state government and each of the four counties. There is no intent to diminish or pre-empt the existing authorities and responsibilities of county governments for the planning and implementation of transportation systems. It is the purpose of this chapter to provide a means of coordinating the State's existing responsibilities for inter-island and major highway transportation planning and development with counties' responsibilities for intra-island surface transportation system planning and development, in order to facilitate the ultimate production of a statewide transportation plan which optimizes intra-island and inter-island system integration.

279A-2 Statewide transportation plan

279A-2 Statewide transportation plan.

(a) The state department of transportation shall prepare a new statewide transportation plan and shall submit said plan to the legislature in its 1978 session. The legislature shall adopt the plan by resolution. The plan shall be directed toward the ultimate development of a balanced, multi-modal statewide transportation system that serves clearly identified social, economic, and environmental objectives. The statewide transportation plan shall include the following system components:

(1) The national system of interstate and defense highways, and highways within the state highway system;

(2) Airports;

(3) Harbors and water-borne transit;

(4) Surface mass transit systems; and

(5) Major county roads. The department of transportation shall pay particular attention to the interfacing of the various modes of transportation.

(b) The statewide transportation plan shall:

(1) Include projected transportation needs for a six-year period and a schedule of priorities for the construction, modification, and maintenance of various segments of the statewide plan that involve either state-operated systems or county-operated systems that may require state financial assistance for a twenty-year period; and

(2) Comply with county transportation-related plans; county general plans; and all community, development, or community development plans adopted pursuant to the county general plan, to the extent that compliance does not affect the receipt of federal funds.

(c) Both the six-year and twenty-year estimates shall be updated annually.

279A-3 Financial plan

279A-3 Financial plan.] The statewide transportation plan shall include a financial plan for the projected elements of the statewide transportation system, including both those sub-systems which are within the counties' authorities and responsibilities and the sub-systems which are within the State's authorities and responsibilities. In respect to sub-systems planned and to be implemented by the counties, the financial plan will identify those which may involve state financial assistance and will estimate the projected amounts of such assistance. The financial plan shall consider various sources of revenue without regard to any constraints imposed by law on expenditures from such sources necessary to assure adequate financing of the sub-systems and, if necessary, recommend appropriate legislation to the legislature to

secure such financing.

279A-4

279A-4 Statewide transportation council; establishment. To assist and advise the department of transportation in the development of the statewide transportation plan there is hereby established a statewide transportation council consisting of thirteen members. The members of the council shall be the director of transportation; director of business, economic development, and tourism; director of health; director of the office of planning and sustainable development; chairperson of the board of agriculture and biosecurity; planning directors of each of the four counties; and transportation directors of each of the four counties. The members may be represented at council meetings by their designated alternates. The director of the state department of transportation shall submit recommendations to the council for additional ex officio, nonvoting members who, upon the majority vote of the council, shall be invited to serve. The department of transportation shall furnish staff support to the council; such staff may be exempt from chapter 76. The director of transportation shall be the chairperson of the council. All decisions of the council shall be by majority vote unless otherwise provided.

279A-5 Preparation of budget

279A-5 Preparation of budget.] The operations of the council will be financed by funds appropriated by section 79A, Act 218, Session Laws of Hawaii, 1973, as amended by section 9, Act 218, Session Laws of Hawaii, 1974. An annual recommended budget for the council shall be prepared by its chairperson and submitted to the council for approval. Funds may be expended for staff services, administrative and operating costs, travel and per diem costs of council members and staff, hiring of consultants to assist in work program formulation, planning and research, publication of materials, and any other activities necessary and incidental to the effective operations of the council in fulfilling the purposes of this chapter.

279A-6 Work program

279A-6 Work program.] The state department of transportation shall formulate a detailed work program through which the statewide transportation plan mandated by this chapter shall be developed. The work program shall be approved by the council no later than September 1, 1975. The council shall report thereafter annually to the legislature on the progress that has been made to date as measured against the work plan. The work program shall provide for a systematic planning interface among the ongoing planning activities of the counties, the state department of transportation, and the council itself. The work program shall include specific target dates for the provision of identified planning inputs from the responsible state and county functional agencies into the statewide planning process. In determining this schedule, the council shall solicit from the counties their present transportation planning schedules for intra-county systems, and the council's work program shall reflect the counties' existing work product schedule and planning cycles.

279A-8

279A-8 Oahu metropolitan planning organization; effect on funding. The provisions of this chapter do not affect the entitlement of the metropolitan planning organization for the island of Oahu or any other county to unconditionally receive and administer transportation planning funds pursuant to 23 United States Code section 134, as amended.

279A-9 Limitation of transportation units

279A-9 Limitation of transportation units. The council shall be responsible for limiting and curtailing the numbers and kinds of transportation units in the State. The council shall determine, as often as the council deems to be necessary or as required by the legislature, after consultation with the department of traffic and other appropriate departments of the counties, the number, size, and use of transportation units of any kind that may be within the territory of any island of the State at any one time. The council shall make its determination on the basis of preserving, safeguarding, and enhancing the physical and mental health of the residents of the State, and the ecology and environmental quality of the State, and shall take into consideration the need for high priority and vital movement of people and goods. The council shall report its findings to the legislature as soon as its findings are completed.

Chapter 279C

279C-1 HRS

279C-1 Sea level rise; transportation projects. The department of transportation shall plan for sea level rise based upon the latest science, estimates, and recommendations of the Hawaii climate change mitigation and adaptation commission

in all future or amended transportation projects.

279C-2 HRS

279C-2 Carbon concrete standards. All department of transportation highway, harbor, and airport projects shall conform to the applicable carbon concrete standards contained in division 600 of the highways division of the department of transportation's special provisions for standard specifications dated July 10, 2020. The director of transportation may issue an exemption to carbon concrete standards upon a determination that such exemption is necessary or when specific projects require that different procedures are mandated under federal law.

Chapter 279D

279D-1 HRS

279D-1 Statement of purpose. The legislature finds that 23 United States Code sections 134-135 and 49 United States Code sections 5303-5304, as amended, and federal regulations adopted pursuant thereto, and other federal laws require that metropolitan planning organizations be designated based on a minimum population threshold as defined in federal law to act as a decision-making agency and to receive certain funds for the purpose of carrying out a continuing, cooperative, and comprehensive transportation planning process. Metropolitan planning organizations have their own policy board and staff. It is the responsibility of the policy board to make decisions that are the result of the continuing, cooperative, and comprehensive transportation planning process, and the organization's staff support and provide technical resources to the policy board. The continuing, cooperative, and comprehensive planning process is designed to provide both orderly and reasoned metropolitan transportation planning within the framework of federal law, and adequate and informed representation from state and county governments, operators of public transportation receiving federal funds, the public at large, and others as identified in 23 Code of Federal Regulations part 450, subpart C.

279D-2 HRS

279D-2 D efinitions. For purposes of this chapter: "Comprehensive agreement" means the executed agreement between the member jurisdictions or authorities of a metropolitan planning organization concerning the organization and structure of the metropolitan planning organization, the roles and responsibilities of its member jurisdictions or authorities, and the provision of funding and membership dues. "Employees" means an executive director of a metropolitan planning organization, and all staff of a metropolitan planning organization. "Member jurisdiction or authority" means a local or state jurisdiction or a local or regional authority that has entered into a comprehensive agreement to support the metropolitan planning process and that is provided representation on the metropolitan planning organization's policy board. "Metropolitan planning area" means a metropolitan planning area determined under title 23 United States Code section 134, as amended. "Metropolitan planning organization" means a metropolitan planning organization designated or redesignated under 23 United States Code section 134, as amended. "Policy board" means the policy decision-making body of a metropolitan planning organization. "Transportation management area" means a transportation management area identified and designated pursuant to 23 United States Code section 134, as amended.

279D-3 HRS

279D-3 Establishment of metropolitan planning organizations; duties.

(a) Metropolitan planning organizations shall be designated pursuant to 23 United States Code section 134(d)(1) and shall meet all requirements of 23 United States Code sections 134-135 and 49 United States Code sections 5303-5304, as amended, and any federal regulations adopted pursuant thereto.

(b) A metropolitan planning organization shall:

(1) Operate according to executed comprehensive agreements, including any supplemental agreements, between the State, county, and other operators of public transportation receiving federal funds; and

(2) Facilitate and support the continuing, cooperative, and comprehensive transportation planning process between the State, county, and other operators of public transportation receiving federal funds, including the consideration of projects and strategies that support national planning factors as defined in 23 United States Code section 134, regional goals and objectives, and consideration of plans and planning activities of others as they affect transportation.

(c) A metropolitan planning organization may:

(1) Assign to staff members duties not defined or designated by federal law, this chapter, or executive agreement;

(2) Enter into agreements with the State, county, other operators of public transportation receiving federal funds, and other entities as needed to fully comply with all requirements of federal law and this chapter;

(3) Be placed within a state or county agency, as appropriate, for administrative purposes only;

(4) Contract to purchase goods and services, including professional and technical assistance and advice;

(5) Contract for or accept revenues, compensation, proceeds, and gifts or donations or grants in any form from any public agency; and

(6) Contract with other state or local agencies and quasi-public or private organizations for the use of their staff resources to assist the metropolitan planning organization in its functions.

279D-4 HRS

279D-4 Transportation management area metropolitan planning organizations.

(a) Pursuant to 23 United States Code section 134(k), a metropolitan planning organization serving an urban area with a population of 200,000 or more shall be designated a transportation management area.

(b) Pursuant to section 26-35, the transportation management area metropolitan planning organizations shall be attached to the department of transportation for administrative purposes only. The respective policy boards and not the department of transportation shall be responsible for the management of transportation management area metropolitan planning organizations as it pertains to 23 United States Code sections 134-135 and 49 United States Code sections 5303-5304. The various roles and responsibilities of transportation management area metropolitan planning organizations and the department of transportation regarding the administration of the transportation management area metropolitan planning organization may be further defined by agreement between the two entities.

(c) This chapter shall apply to transportation management area metropolitan planning organizations.

(d) Notwithstanding any law to the contrary, transportation management area metropolitan planning organizations shall be exempt from section 26-35, except subsections (a)(7) and (8), and (b).

279D-5 HRS

279D-5 Oahu transportation management area metropolitan planning organization revolving fund.

(a) There is established in the state treasury a revolving fund to be known as the Oahu transportation management area metropolitan planning organization revolving fund to be administered by the department of transportation in accordance with federal law and into which shall be deposited:

(1) Member financial dues;

(2) All revenues from the operations of the Oahu transportation management area metropolitan planning organization;

(3) Appropriations by the legislature out of the state highway fund to the Oahu transportation management area metropolitan planning organization revolving fund;

(4) Federal funds or grants; and

(5) Gifts, grants, and any other moneys made available to the fund.

(b) Except as otherwise provided by federal law, expenditures from the Oahu transportation management area metropolitan planning organization revolving fund may be made; provided that no expenditure shall be made from and no obligation shall be incurred against the revolving fund in excess of the amount standing to the credit of the revolving fund or for any purpose for which the revolving fund may not lawfully be expended. Nothing in sections 37-31 to 37-41 shall require the proceeds of the revolving fund to be reappropriated annually.

(c) The Oahu metropolitan planning organization shall report annually to the legislature no later than twenty days prior to the convening of each regular session beginning with the regular session of 2016 on a detailed accounting of the activities of the revolving fund for the previous year.

279D-6 HRS

279D-6 Metropolitan planning organization policy boards; membership and meetings.

(a) Policy board membership shall be established by comprehensive agreement, including any applicable supplemental agreements and bylaws; provided that a metropolitan planning organization serving a metropolitan planning area within the jurisdiction of any county with a resident population of more than 125,000 but less than 195,000 shall include as

members of its policy board:

(1) At least one member that shall be a resident of the applicable metropolitan planning area and a member of the senate appointed by the president of the senate; and

(2) At least one member that shall be a resident of the applicable metropolitan area and a member of the house of representatives appointed by the speaker of the house of representatives.

(b) As appropriate, any agreement or committee bylaws that establish policy board membership may also include specifications regarding ex officio membership, terms and term limits of members, member alternates, quorum, and other considerations as permitted by law.

279D-7 HRS

279D-7 Staff and funding.

(a) Each policy board shall appoint a full-time executive director of the metropolitan planning organization who shall be independent of state and county agencies, notwithstanding any other law to the contrary. Duties of the executive director may be established by the policy board or in the comprehensive agreement.

(b) A policy board may employ staff as needed. The executive director shall be responsible for the hiring and management of staff. The executive director and staff for a metropolitan planning organization shall not be subject to chapter 76. All other benefits generally applicable to the officers and employees of the State shall apply to staff members of the metropolitan planning organization and be retroactive to the effective date of initial hiring for existing staff.

(c) All employees of a metropolitan planning organization shall be exempt from chapter 76 but shall be eligible to receive the benefits of any state or federal employee benefit program generally applicable to officers and employees of the State.

279D-8 HRS

279D-8 Member financial dues.

(a) The policy board shall identify the member financial dues necessary to sustain the metropolitan planning organization. The member financial dues shall be provided by interagency agreement with the members.

(b) Member financial dues received by a metropolitan planning organization shall be used to fund the unified planning work program.

(c) A policy board may allocate collective financial resources to fund a unified planning work program.

279D-9 HRS

279D-9 Meetings.

(a) Notwithstanding any law to the contrary, meetings of policy boards, advisory committees, or subcommittees shall be subject to part I of chapter 92.

(b) Participation by members of any other board in a meeting of a policy board shall be a permitted interaction as provided in section 92-2.5(i).

(c) Less than a quorum of policy board members may discuss metropolitan planning organization business, without limitation, outside of a duly noticed meeting of the policy board.

(d) A majority of the membership of a policy board or committee of a policy board shall constitute a quorum to do business.

279D-10 HRS

279D-10 Conflict between laws. If a conflict between any provision of this chapter and any federal law or regulation relating to metropolitan planning organizations arises, federal law or regulation shall govern.

279D-11 HRS

279D-11 Annual reports. A metropolitan planning organization shall submit an annual report to the legislature of all activities conducted by the organization during the year immediately preceding the submission of the report. The annual report shall be submitted to the legislature no later than twenty days prior to the convening of each regular session beginning with the regular session of 2016.

Chapter 279G

279G-1 Ridesharing arrangement; defined

279G-1 Ridesharing arrangement; defined. As used in this chapter, "ridesharing arrangement" means the transportation of persons in a motor vehicle where that transportation is incidental to another purpose of the driver. The term includes ridesharing arrangements known as carpools, vanpools, and buspools.

279G-2

279G-2 Liability for promoters of ridesharing arrangements.

(a) For purposes of this section the term "entity" refers to the State, the counties, schools, community organizations, private nonprofit organizations, rideshare coordinators, and employers who encourage participation in ridesharing arrangements.

(b) An entity shall not be liable for injuries to passengers and other persons because the entity provides information, incentives, or otherwise encourages the public, students, or employees to participate in ridesharing arrangements; provided that this section shall not apply if the motor vehicle used in the ridesharing arrangement is owned, leased, or contracted for by the entity.

279G-3 Findings

279G-3 Findings. The legislature finds:

(1) Public and private expenditures will be reduced by increases in ridesharing, particularly in maintenance and construction costs for highways.

(2) Increased energy consumption, air pollution, traffic congestion, and motor vehicle parking constitute a serious problem in the State, particularly in urban areas, and ridesharing is a cost-effective alternative approach for solving these problems.

(3) The increased use of ridesharing will contribute to conservation of fuel, improvement of air quality, and more effective use of existing streets, highways, and parking facilities.

(4) Ridesharing constitutes one of the most cost-effective and energy-efficient means of transportation.

(5) Many employees work in and commute to the downtown area of Honolulu where the problems associated with traffic congestion, parking, energy consumption, and air pollution are greatest.

(6) It is in the public interest and a public purpose for private industry, cities, counties, and the State to encourage people to use alternatives to single occupant motor vehicles, such as ridesharing.

279G-4 Declaration of policy

279G-4 Declaration of policy. It is the policy of this State to encourage commuting to and from work by means other than a motor vehicle occupied by one person.

Chapter 279J

279J-1 HRS

279J-1 Definitions. As used in this chapter: "Department" means the department of transportation. "Digital network" means any online-enabled technology application service, website, or system offered or utilized by a transportation network company that enables prearranged rides with transportation network company drivers. "Director" means the director of transportation. "Prearranged ride" has the same meaning as defined in section 431:10C-701. "Transportation network company" has the same meaning as defined in section 431:10C-701. "Transportation network company driver" has the same meaning as defined in section 431:10C-701. "Transportation network company rider" or "rider" means a person who uses a transportation network company's digital network to connect with a transportation network company driver who provides prearranged rides to the rider in a transportation network company vehicle between destination points chosen by the rider. "Transportation network company vehicle" means a vehicle that is:

(1) Manufactured with seating accommodations for eight or fewer passengers;

(2) Not a semitrailer, tractor-semitrailer combination, truck, or truck-tractor, as those terms are defined in section 286-2;

(3) Used by a transportation network company driver to provide a prearranged ride;

(4) Owned, leased, or otherwise authorized for use by the transportation network company driver; and

(5) Not operating as a taxicab, limousine, or other for-hire vehicle.

279J-2 HRS

279J-2 Relation to other laws; commercial vehicle; for-hire vehicle; registration; exemption. Neither a transportation network company nor transportation network company driver shall be considered a motor carrier under chapter 271. No transportation network company driver shall be required to register a transportation network company vehicle as a commercial or for-hire vehicle.

279J-3 HRS

279J-3 Transportation network company; permit required.

(a) No person shall operate a transportation network company in the State without first having obtained a permit from the director. The application shall be in a form and content as prescribed by the director; provided that any transportation network company operating in the State before January 1, 2023, may continue operating until the director has established a permitting process for existing transportation companies and sets a permitting deadline.

(b) The director shall issue a permit to each applicant that satisfies the requirements for a transportation network company as set forth by the director and shall collect an annual permit fee of up to $25,000 from the applicant prior to the issuance of a permit. The fees collected pursuant to this subsection shall be deposited into the state highway fund established by section 248-8.

279J-4 HRS

279J-4 Fare transparency. A transportation network company's fare structure shall be transparent and visible to a rider before the rider confirms a ride. To satisfy the requirements of this section, a transportation network company shall clearly display:

(1) The fare for the prearranged ride;

(2) The option to receive an estimated fare for the prearranged ride; or

(3) The basis and rate on which the fare is to be calculated, and any additional fees or charges that may apply.

279J-5 HRS

279J-5 Agent for service of process. Any transportation network company operating in the State shall maintain an agent for service of process in the State.

279J-6 HRS

279J-6 Identification of transportation network company drivers and transportation network company vehicles. During a prearranged ride, a transportation network company's digital network shall display a picture of the transportation network company driver and the license plate number of the transportation network company vehicle.

279J-7 HRS

279J-7 Electronic receipt. Following the completion of a prearranged ride, the transportation network company shall transmit an electronic receipt on behalf of the transportation network company driver that includes the following information:

(1) The origin and destination or destinations of the prearranged ride;

(2) The total time and distance of the prearranged ride; and

(3) The total fare paid.

279J-8 HRS

279J-8 Disclosure; limitations; insurance requirements. The requirements of section 431:10C-703 shall apply to transportation network companies and transportation network company drivers.

279J-9 HRS

279J-9 Transportation network company driver requirements.

(a) Prior to allowing an individual to act as a transportation network company driver and accepting a request for a prearranged ride through a transportation network company's digital network:

(1) The individual shall submit an application to the transportation network company that includes the following information: (A) The individual's address; (B) The individual's age; (C) A copy of the individual's valid driver's license; (D) A copy of the applicable motor vehicle registration; (E) A copy of the applicable motor vehicle insurance; and (F) Any other information deemed necessary by the transportation network company;

(2) The transportation network company shall conduct national and local criminal background checks for each applicant and each driver on an annual basis. The criminal background check shall include a review of: (A) A multi-state and multi-jurisdictional criminal records locator or other similar commercial nationwide database with validation (primary source search); and (B) The United States Department of Justice National Sex Offender Public Website; and

(3) The transportation network company shall obtain and review, or have a third-party entity obtain and review, a driving history research report of the individual.

(b) The transportation network company shall not permit an individual to act as a transportation network company driver on its digital network who:

(1) Has more than three moving violations within the prior three years, or one of the following major violations in the prior three years: (A) Driving on a suspended or revoked license; (B) Reckless driving of vehicle; (C) Resisting an order to stop a motor vehicle in the first or second degree; or (D) Resisting arrest;

(2) Within the prior seven years has been: (A) Convicted of any felony; or (B) Convicted of any misdemeanor relating to driving, acts of violence, or sexual offenses;

(3) Is registered on the United States Department of Justice National Sex Offender Public Website or any publicly accessible state sex offender registry;

(4) Does not possess a valid driver's license;

(5) Does not possess proof of a current and valid registration for the motor vehicle used to provide prearranged rides;

(6) Does not possess proof of valid motor vehicle insurance for the transportation network company vehicle; or

(7) Is not at least nineteen years of age.

279J-10 HRS

279J-10 Non-discrimination; accessibility.

(a) The transportation network company shall adopt a policy of non ■ discrimination on the basis of destination, race, color, ancestry, national origin, religious belief or affiliation, sex, disability, age, sexual orientation, or gender identity or expression with respect to riders and potential riders and shall notify transportation network company drivers of the policy.

(b) In addition to any policy established pursuant to subsection (a), transportation network company drivers shall comply with all applicable laws regarding non-discrimination against riders or potential riders on the basis of destination, race, color, ancestry, national origin, religious belief or affiliation, sex, disability, age, sexual orientation, or gender identity or expression.

(c) Transportation network company drivers shall comply with all applicable laws to accommodate service animals. For purposes of this subsection, "service animal" has the same meaning as defined in section 347-2.5.

(d) A transportation network company shall not impose additional charges for providing services to persons with physical disabilities.

279J-11 HRS

279J-11 Audit procedures; complaint investigation; confidentiality of records.

(a) No more than annually, the department shall have the right to visually inspect a sample of records maintained by a transportation network company for the sole purpose of verifying that a transportation network company is in compliance with the requirements of this chapter. The sample shall be chosen randomly by the department in a manner agreeable to both parties. The audit shall take place at a mutually agreed upon location in the State. Any record furnished to the department shall exclude information that could lend to the identification of specific transportation network company drivers or riders.

(b) In response to a specific complaint against any transportation network company driver or transportation network company, the department shall be authorized to inspect records held by the transportation network company that are necessary to investigate and resolve the complaint. The department and transportation network company shall conduct the inspection at a mutually agreed upon location in the State. Any record furnished to the department shall exclude information that could lend to the identification of specific transportation network company drivers or riders, unless the identity of a transportation network company driver or rider is relevant to the complaint.

(c) Any records inspected by the department under this section shall be confidential, shall not be subject to disclosure to a third party by the department without prior written consent of the transportation network company, and shall be exempt from disclosure under chapter 92F. Nothing in this section shall be construed as limiting the applicability of any other exemptions under chapter 92F.

279J-12 HRS

279J-12 Uniform statewide regulation.

(a) This chapter shall apply uniformly throughout the State and to all political subdivisions of the State.

(b) This chapter shall supersede any ordinance or other regulation adopted by a political subdivision that specifically governs transportation network companies, transportation network company drivers, or transportation network company vehicles, including those adopted before January 1, 2023.

279J-13 HRS

279J-13 Rules. The department may adopt rules pursuant to chapter 91 necessary for the purposes of this chapter.

Chapter 279L

279L-1 HRS

279L-1 Definitions. As used in this chapter: "Car-sharing delivery period" means the period of time during which a shared car is being delivered to the location of the car-sharing start time, if applicable, as documented by the governing car-sharing program agreement. "Car-sharing period" means the period of time that commences with the car-sharing delivery period or, if there is no delivery period, that commences with the car-sharing start time and, in either case, ends at the car-sharing termination time. "Car-sharing program agreement" means the terms and conditions applicable to a shared car owner, a shared car driver, and a peer-to-peer car-sharing platform, if applicable, that govern the use of a shared car through a peer-to-peer car-sharing program. "Car-sharing program agreement" does not include a rental agreement as defined in section 437D-3. "Car-sharing start time" means the time the shared car driver obtains operation, use, or control of a shared car through a peer-to-peer car-sharing program. "Car-sharing termination time" means the latest of the following events:

(1) The expiration of the agreed upon period of time established for the use of a shared car according to the terms of the car-sharing program agreement if the shared car is delivered to the location agreed upon in the car-sharing program agreement;

(2) When the shared car is returned to a location as alternatively agreed upon by the shared car owner and shared car driver as communicated through a peer-to-peer car-sharing program;

(3) When a shared car is returned to the location agreed upon in the car-sharing program agreement or alternatively agreed upon by the shared car owner and the shared car driver, as communicated through a peer-to-peer car-sharing program, before the expiration of the period of time established for the use of a shared car according to the terms of the car-sharing program agreement, and the shared car driver notifies the peer-to-peer car-sharing program of the location of the shared car;

(4) When a shared car, during the car-sharing period, cannot safely or legally be operated and the shared car driver notifies the peer-to-peer car-sharing program that the shared car is inoperable and identifies the location of the shared car;

(5) When the shared car driver receives notice of a safety recall affecting the shared car and the shared car driver returns the shared car to the location agreed upon in the car-sharing program agreement, or alternatively agreed upon by the shared car owner and the shared car driver, and the shared car driver notifies the peer-to-peer car-sharing program of the location of the shared car; or

(6) When the shared car owner or the shared car owner's authorized designee takes possession and control of the shared car. "Peer-to-peer car-sharing" means the operation, use, or control of a motor vehicle by an individual other than the motor vehicle's owner through a peer-to-peer car-sharing program. "Peer-to-peer car-sharing", for the purposes of assessing a vehicle surcharge tax, does not mean the business of providing rental motor vehicles to the public as that phrase is used in section 251-3. "Peer-to-peer car-sharing platform" means any person or business that owns or operates a peer-to-peer car-sharing program. "Peer-to-peer car-sharing program" means:

(1) Any person who enables a shared car driver to identify, reserve, or use a shared car owned by a shared car owner; or

(2) Any person who enables a shared car owner to describe, list, or make available a shared car for identification, reservation, or use by a shared car driver. "Peer-to-peer car-sharing program" does not include a transportation network company as defined in section 431:10C-701, a car-sharing organization as defined in section 251-1, any person registered and acting as a travel agency pursuant to chapter 468L, or any person registered and acting as an activity desk pursuant to chapter 468M. "Shared car" means a motor vehicle that is registered pursuant to chapter 286 and is not owned, controlled, operated, maintained, or managed by or registered, directly or indirectly through an affiliate, to the peer-to-peer car-sharing program and is available for sharing through a peer-to-peer car-sharing program. "Shared car" does not include a rental motor vehicle or vehicle as those terms are defined in section 437D-3. "Shared car driver" means an individual who has been authorized to drive the shared car by the shared car owner under a car-sharing program agreement. "Shared car driver" does not include lessee as defined in section 437D-3. "Shared car owner" means the registered owner of a shared car. "Shared car owner" does not include lessor as defined in section 437D-3.

279L-2 HRS

279L-2 Notification of implications of lien. When a car owner registers as a shared car owner on a peer-to-peer car-sharing program and prior to when the shared car owner makes a shared car available for peer-to-peer car-sharing on the peer-to-peer car-sharing program, the peer-to-peer car-sharing program shall notify the shared car owner that, if the shared car has a lien against it, the use of the shared car through a peer-to-peer car-sharing program, including use without physical damage coverage, may violate the terms of the contract with the lienholder.

279L-3 HRS

279L-3 Recordkeeping; use of vehicle in car-sharing. A peer-to-peer car-sharing program shall collect and verify records pertaining to the use of a shared car for each car-sharing program agreement, including:

(1) Dates and times of the car-sharing start time and the car-sharing termination time in the car-sharing program agreement;

(2) Dates and times of the car-sharing start time and car-sharing termination time;

(3) Itemized descriptions and amounts of all fees and costs charged to the shared car driver;

(4) Itemized descriptions and amounts of all fees and costs paid by the shared car driver;

(5) Itemized descriptions and amounts of all fees and costs paid to the shared car owner;

(6) The name and contact information of the shared car owner and the shared car driver; and

(7) The insurance policy number, effective date, coverage, and coverage amounts of each insurance policy that identifies the peer-to-peer car-sharing program, shared car owner, or shared car driver as the insured. The peer-to-peer car-sharing program shall retain the records for a time period of no less than six years. Upon request, the peer-to-peer car-sharing program shall provide the information required by this section and any information relating to the peer-to-peer car-sharing agreement in its possession and control to the shared car owner, shared car owner's insurer, shared car driver, shared car driver's insurer, persons who have sustained injury or property damage involving a shared car, and police and other governmental entities to facilitate accident or claim coverage investigation.

279L-4 HRS

279L-4 Exemption; vicarious liability. Consistent with title 49 United States Code section 30106, a peer-to-peer car-sharing program and shared car owner shall be exempt from vicarious liability under any state or local law that imposes liability solely based upon motor vehicle ownership.

279L-5 HRS

279L-5 Required disclosures and notices. For each shared car participating in a car-sharing program agreement, a peer-to-peer car-sharing program shall:

(1) Provide, prior to the execution of a car-sharing program agreement, the shared car owner and shared car driver with the terms and conditions of the car-sharing program agreement;

(2) Disclose to the shared car driver, prior to the execution of a car-sharing program agreement, all costs or fees that are charged to the shared car driver under the car-sharing program agreement, including all costs or fees for mandatory insurance coverage charged by the peer-to-peer car-sharing program;

(3) Disclose to the shared car owner, prior to the execution of a car-sharing program agreement, all costs or fees that are charged to the shared car owner under the car-sharing program agreement, including fees or costs for mandatory insurance coverage charged by the peer-to-peer car-sharing program;

(4) Provide a twenty-four hour emergency telephone number for a person capable of facilitating roadside assistance for the shared car driver;

(5) Disclose any right of the peer-to-peer car-sharing program to seek indemnification from the shared car owner or shared car driver for economic loss sustained by the peer-to-peer car-sharing program caused by a breach of the car-sharing program agreement; provided that the peer-to-peer car-sharing program shall require the shared car owner and shared car driver to specifically and separately acknowledge notice of the disclosure prior to execution of a car-sharing program agreement;

(6) Disclose that a motor vehicle insurance policy issued to the shared car owner for the shared car or to the shared car driver may not provide a defense or indemnification for any claim asserted by the peer-to-peer car-sharing program; provided that the peer-to-peer car-sharing program shall require the shared car owner and shared car driver to specifically and separately acknowledge notice of the disclosure prior to execution of a car-sharing program agreement;

(7) Disclose that the peer-to-peer car-sharing program's insurance coverage on the shared car owner and shared car driver is in effect only during each car-sharing period and that the shared car may not have insurance coverage for use of the shared car by the shared car driver after the car-sharing termination time; provided that the peer-to-peer car-sharing program shall require the shared car owner and shared car driver to specifically and separately acknowledge notice of the disclosure prior to the execution of a car-sharing program agreement;

(8) Disclose any insurance or protection package costs that are charged to the shared car owner or shared car driver; provided that the peer-to-peer car-sharing program shall require the shared car owner and shared car driver to specifically and separately acknowledge notice of the disclosure prior to the execution of a car-sharing program agreement;

(9) Disclose to the shared car driver any conditions in which the shared car driver is required to maintain a motor vehicle insurance policy as the primary coverage for the shared car; and

(10) Disclose that a shared car owner shall be permitted to obtain insurance that provides coverage for loss of use of a shared car.

279L-6 HRS

279L-6 Driver's license verification and data retention.

(a) A peer-to-peer car-sharing program shall not enter into a car-sharing program agreement with a shared car driver unless the shared car driver:

(1) Holds a driver's license issued under section 286-102 that authorizes the shared car driver to operate vehicles of the class of the shared car;

(2) Is a nonresident who: (A) Has a driver's license issued by the state or country of the driver's residence that authorizes the shared car driver in that state or country to drive vehicles of the class of the shared car; and (B) Is at least the same age as that required of a resident to drive; or

(3) Otherwise is specifically authorized to drive vehicles of the class of the shared car.

(b) A peer-to-peer car-sharing program shall record:

(1) The name and address of the shared car driver; and

(2) The place of issuance and number of the driver's license of the shared car driver and each other person, if any, who will operate the shared car.

279L-7 HRS

279L-7 Responsibility for equipment. A peer-to-peer car-sharing program shall have sole responsibility for any equipment, such as a global positioning system or other special equipment, that is put in or on the shared car to monitor or facilitate the car-sharing transaction, and shall agree to indemnify and hold harmless the shared car owner for any damage to or theft of the equipment during the car-sharing period not caused by the shared car owner. The peer-to-peer car-sharing program shall have the right to seek indemnification from the shared car driver for any loss or damage to the equipment that occurs during the car-sharing period.

279L-8 HRS

279L-8 Motor vehicle safety recalls.

(a) At the time when a vehicle owner registers as a shared car owner on a peer-to-peer car-sharing program, prior to the time when the shared car owner makes a shared car available for peer-to-peer car-sharing on the peer-to-peer car-sharing program and no more than forty-eight hours before the car-sharing start time, the peer-to-peer car-sharing program shall:

(1) Verify that no safety recalls exist for the make and model of the shared car for which repairs have not been made;

(2) Notify the shared car owner of the requirements under subsection (b); and

(3) Not make the shared car available for use through a peer-to-peer car-sharing program if the shared car owner or peer-to-peer car-sharing program has received notice or is aware of a safety recall on the shared car, until the safety repair has been made.

(b) A shared car owner shall:

(1) Remove any shared car listed for use through a peer-to-peer car-sharing program upon receipt of a notice of a safety recall as soon as practicably possible but no longer than seventy-two hours after receipt of notice of a safety recall; and

(2) Notify the peer-to-peer car-sharing program of a safety recall when the shared car is in the possession of a shared car driver so that the peer-to-peer car-sharing program may notify the shared car driver and the shared car may be removed from use until the shared car owner effects the necessary safety recall repair.

279L-9 HRS

279L-9 General excise tax; rental motor vehicle surcharge tax; collection. The activity of peer-to-peer car-sharing shall be subject to general excise tax under chapter 237 and the rental motor vehicle surcharge tax pursuant to section 251-2(a); provided that the peer-to-peer car-sharing program shall be responsible for collecting and remitting any taxes and surcharges to the department of taxation.

279L-10 HRS

279L-10 Relation to other laws. Chapter 437D shall not apply to peer-to-peer car-sharing.

279L-11 HRS

279L-11 Parking; regulation.

(a) The department of transportation may regulate parking utilized by peer-to-peer car sharing at state airports.

(b) The counties may, by ordinance, regulate parking utilized by shared cars.

Title 16 — Intoxicating Liquor

Chapter 281

281-1 I

281-1 Definitions. Whenever used in this chapter, unless otherwise apparent from the context: "Addicted to the excessive use of intoxicating liquor" refers to one who has acquired the habit of using intoxicating liquor excessively to deprive oneself of reasonable self-control, a common drunkard, or a habitual drunkard. "Alcohol" means the product of distillation of any fermented liquid, whether rectified or not, whatever may be the origin thereof, and includes synthetic ethyl alcohol, but not denatured or other alcohol which is considered nonpotable under the customs laws of the United States. "Beer" means any alcoholic beverage containing not less than 0.5 per cent alcohol by volume obtained by the fermentation of any infusion or decoction of malt, wholly or in part, or any substitute, including grain of any kind, bran, glucose, sugar, or molasses. "Beer" includes ale, porter, brown, stout, lager beer, small beer, strong beer, and alcoholic seltzer beverages. "Beer" does not include sake, also known as Japanese rice wine; cooler beverage; or any products of distillation, by whatever name known, that contain distilled spirits, alcoholic spirits, or spirits. "Club" means any organization for objects of a social, patriotic, political, or athletic nature, or the like, but not for pecuniary gain, having a regular membership to all of whom is charged monthly or quarterly dues, employing a full-time steward, and from which organization no person is entitled to or takes, directly or indirectly, any share of the profits thereof. "Club" also means the establishment so operated and the premises thereof; provided the word "club" shall not apply to any organization not in existence for at least one year prior to its application for a license. "Commission" means the liquor commission for the county within which such commission has jurisdiction under this chapter. "Condominium hotel" means an establishment consisting of one or more buildings that includes:

(1) Guest rooms that are units, as defined in section 514B-3, which are used to provide transient lodging for periods of less than thirty days under a written contract with the owner of the apartment or unit in the condominium hotel operation; and

(2) Guest rooms that are units, owned or managed by the condominium hotel operator providing transient lodging for periods of less than thirty days, which are offered for adequate pay to transient guests. A "condominium hotel" does not include a hotel that may be part of a condominium subject to chapter 514B or that does not have guest rooms that are separate units, as defined in section 514B-3. "Condominium hotel operator" means any person who operates a condominium hotel, including but not limited to, a condominium hotel operator registered under section 467-30. "County" means the county in respect of which each commission has jurisdiction under this chapter; provided that in the county of Kalawao liquor may be sold only by such persons and only under such conditions as may be permitted or prescribed from time to time by the department of health. "Elected executive head" means the mayor of each county or the mayor's duly appointed or elected successor. "Gross sales" means the total receipts actually received from the sale of liquor for which the license has been issued without deduction on account of the cost of property sold or expenses of any kind. "Hotel" means an establishment consisting of one or more buildings which contain such total number of rooms as may be prescribed by the commission and in which rooms sleeping accommodations are provided and offered for adequate pay to transient or permanent guests. "Investigator" means any investigator of the commission in each case for the county wherein the commission has jurisdiction. "License" means any license granted under this chapter. "Licensee" includes also all agents, servants, and employees of the holder of a license. "Liquor" or "intoxicating liquor" includes alcohol, brandy, whiskey, rum, gin, okolehao, sake, beer, ale, porter, and wine; and also includes, in addition to the foregoing, any spirituous, vinous, malt or fermented liquor, liquids, and compounds, whether medicated, proprietary, patented, or not, in whatever form and of whatever constituency and by whatever name called, containing one-half of one per cent or more of alcohol by volume, which are fit for use or may be used or readily converted for use for beverage purposes. "Liquor control adjudication board" or "board" means a board established by county charter, within a county, that shall have the jurisdiction to hear and determine complaints or violations of liquor laws and to impose penalties as may be provided in this chapter. "Minibar" means a specified area of a hotel or condominium hotel guest room where a selection of liquors in their original package are kept for sale or consumption in the hotel or condominium hotel guest room. "Minor" means any person below the age of twenty-one years. "Original package" means a package or container as it existed at the time of its delivery by the manufacturer or the wholesale dealer for convenience in transportation and sale. "Partner" means a partner in a general partnership, limited partnership, or limited liability partnership. "Person" means and includes natural

persons, associations, copartnerships, limited liability companies, and corporations, and also includes any agent, servant, and employee of such person. "Premises" or "licensed premises" means the building and property that houses the establishment for which a license has been or is proposed to be issued; provided that in the case of class 12 hotel license, "premises" includes the hotel premises; provided further that in the case of a class 15 condominium hotel license, "premises" includes units, as defined in section 514B-3, that are used to provide transient lodging for periods of less than thirty days under a written contract with the owner or owners of each unit in, and common elements for access purposes as established by the declaration of condominium property regime of, the condominium hotel; and provided further that if an establishment is in a retail shopping complex the businesses of which have formed a merchants association, "premises" means the establishment. As used in this definition, "establishment" means a single physical location where the selling of liquor takes place. "Public place" means any publicly owned property or privately owned property open for public use or to which the public is invited for entertainment or business purposes. "Regulation" means any regulation prescribed by the commission with the approval of the elected executive head of the county for carrying out this chapter. "Restaurant" means a place which is regularly and in a bona fide manner used and kept open for the serving of meals to patrons for compensation and which has suitable kitchen facilities connected therewith, containing the necessary equipment and supplies for cooking an assortment of foods which may be required for ordinary meals. Additionally, at least thirty per cent of the establishment's gross revenue must derive from the sale of foods. "Retail licensee" means any licensee holding a class 2, class 4 through class 16, or class 18 license. "Sell" or "to sell" includes to solicit and receive an order for; to have or keep or offer or expose for sale; to deliver for value or in any other way than purely gratuitously; to peddle; to keep with intent to sell; to traffic in; and the word "sale" includes every act of selling as herein defined. Notwithstanding the provisions above, the delivery of liquor by a licensee's vehicle or the vehicle of a licensee's agent shall be deemed delivery for value. "Seller" includes the agents and employees of a seller; provided that any person shall be deemed to be a seller, who in the State, whether acting as agent or representative of a nonresident principal or otherwise, solicits the placing of or takes, receives, or forwards orders for liquor to be shipped into the State from any place without the State to be delivered to customers, by direct shipment or otherwise. "Standard bar" means any establishment licensed to sell liquor for consumption on the premises, except:

(1) Premises in which a person performs or entertains unclothed or in attire restricted to use by entertainers pursuant to commission regulations; or

(2) Premises in which live entertainment or recorded music is provided. Facilities for dancing by the patrons may be permitted as provided by commission rules; or

(3) Premises in which employees or entertainers consume nonalcoholic beverages while in the company of patrons or sit with patrons pursuant to commission rules. "Under the influence of liquor" means that the person concerned has consumed intoxicating liquor sufficient to impair at the particular time under inquiry the person's normal mental faculties or ability to care for oneself and guard against casualty, or sufficient to substantially impair at the time under inquiry that clearness of intellect and control of oneself which the person would otherwise normally possess. "Wine" means any wine coming within the definition of wine contained in the United States Revenue Act of 1918 (Act of February 24, 1919), and includes sake. "Written" or "writing" includes printing and typewriting. [L Sp 1933, c 40, §1; RL 1935, §2570; am L 1935, c 105, §1; am L 1937, c 211, §2; RL 1945, §7221; am L 1945, c 144, §1; am L 1951, c 223, §1; am L 1955, c 263, §3; RL 1955, §159-1; am L 1957, c 321, §1(a); am L Sp 1959 2d, c 1, §19; am L 1961, c 91, §1; am L 1963, c 172, §2(a), (f); HRS §281-1; am L 1972, c 2, §5; am L 1976, c 87, §1; am L 1980, c 256, §1; gen ch 1985; am L 1986, c 342, §2; am L 1987, c 283, §70; am L 1990, c 171, §1; am L 1991, c 206, §2; am L 1992, c 207, §2; am L 1997, c 57, §1; am L 1998, c 90, §1 and c 249, §1; am L 2001, c 257, §2; am L 2007, c 53, §2; am L 2008, c 28, §22 and c 168, §1; am L 2009, c 184, §2; am L 2014, c 31, §1, c 57, §2, and c 211, §2; am L 2017, c 181, §12; am L 2024, c 9, §1] Revision Note Definition of "elected executive head" revised to conform to charter provisions.

281-2 Excepted articles; penalty

281-2 Excepted articles; penalty. The articles enumerated in this section shall not, after having been manufactured and prepared for the market, be subject to this chapter if they correspond with the following descriptions and limitations, namely:

(1) Denatured alcohol or denatured rum produced and used as provided by laws and regulations now or hereinafter in force;

(2) Medicinal preparations manufactured in accordance with formulas prescribed by The Pharmacopoeia of the United States of America or The National Formulary that are unfit for use for beverage purposes;

(3) Patented, patent and proprietary medicines that are unfit for use for beverage purposes;

(4) Toilet, medicinal, and antiseptic preparations and solutions, that are unfit for use for beverage purposes;

(5) Flavoring extracts and syrups that are unfit for use as a beverage or for intoxicating beverage purposes;

(6) Vinegar and preserved sweet cider;

(7) A food which is a confectionery and contains alcohol of five per cent or less by weight. Any person who manufactures any of the articles mentioned in this section may purchase and possess alcohol for that purpose, but the person shall not sell, use, or dispose of any alcohol otherwise than as an ingredient of the articles authorized to be manufactured therefrom. No more alcohol shall be used in the manufacture of any extract, syrup, or article named in paragraphs (2), (3), and (4) of this section which may be used for beverage purposes than the quantity necessary for extraction or solution of the elements contained therein and for the preservation thereof. Any person who knowingly sells any of the articles mentioned in paragraphs (1), (2), (3), and (4) of this section for beverage purposes or any extract or syrup for intoxicating beverage purposes or who sells any of the same under circumstances from which the seller might reasonably deduce the intention of the purchaser to use them for such purposes shall be guilty of a misdemeanor and upon conviction thereof shall be punished as provided in section 281-102. Whenever it is believed that any article mentioned in this section does not correspond with the descriptions and limitations herein provided, the liquor commission or any inspector or any prosecuting officer may cause an analysis thereof to be made, and if, upon such analysis, it is found that the article does not so correspond, the person who manufactures or sells the same may be prosecuted as a manufacturer or seller of liquor contrary to this chapter. [L Sp 1933, c 40, §74; RL 1935, §2642; RL 1945, §7294; RL 1955, §159-2; HRS §281-2; am L 1972, c 177, §1; gen ch 1985; am L 1988, c 402, §4]

281-3

281-3 Illegal manufacture, importation, or sale of liquor. It shall be unlawful for any person not having a valid license to manufacture or sell any liquor except as otherwise provided in this chapter; provided that the head of any family may produce for family use and not for sale an amount of wine not exceeding two hundred gallons a year, and an amount of beer not exceeding one hundred gallons a year. It shall also be unlawful for any person, not having a valid wholesale license or a valid manufacturer's (including rectifier's) license, to import any liquor from without the State, except as otherwise provided in this chapter. Liquor imported into this State shall come to rest at the warehouse of the manufacturer (including rectifier) or the wholesaler importing the liquor, shall be unloaded into such warehouse, and shall be held in such warehouse for at least forty-eight hours before further sale by such manufacturer (including rectifier) or wholesaler. It shall also be unlawful for any person to label, designate, or sell any liquor using the word "Hawaii", "Hawaiian", "Aloha State", "50th State", "Kauai", "Maui", "Oahu", or "Honolulu" unless such liquor is wholly or partially manufactured in the State, and all of the primary ingredients are wholly rectified or combined in the State of Hawaii in compliance with the Alcohol and Tobacco Tax and Trade Bureau standards. A license shall constitute authority for the licensee to sell only the liquor thereby authorized to be sold by the licensee. [L Sp 1933, c 40, §2; RL 1935, §2571; am L 1935, c 105, §2; am L 1937, c 211, §3; RL 1945, §7222; am L 1951, c 223, §1(2); RL 1955, §159-3; am L 1963, c 50, §1; HRS §281-3; am L 1972, c 95, §1; am L 1980, c 57, §1 and c 199, §1; am L 1981, c 182, §2; am L 1982, c 76, §1; gen ch 1985; am L 1986, c 344, §12; am L 1987, c 141, §1; am L 1990, c 171, §2; am L 2009, c 184, §3] Previous Vol05_Ch0261-0319 Next

281-4

281-4 Liquor consumption on unlicensed premises prohibited, when.

(a) It shall be unlawful for any person who keeps or maintains any restaurant or other premises where food, beverages, or entertainment are provided or brought in by patrons or guests, whether for compensation or not, or to which members of the public or members of an organization resort for food, refreshment, or entertainment and who is not a licensee of the commission under this chapter, to promote, encourage, aid, or permit the consumption of liquor on the premises, except during the hours between 6:00 a.m. and 12:00 a.m. Any premises that desires to operate after 12:00 a.m. until 2:00 a.m. shall obtain a class 17 liquor license under section 281-31(q), and shall be subject to the requirements of this chapter and the rules adopted by the liquor commission of the county in which the premises are located during all hours of operation, except as otherwise provided by law.

(b) It shall be unlawful for any person who is present at any restaurant or other premises where food, beverages, or entertainment are sold, provided, or brought in by patrons or guests, or to which members of the public, or members of an organization, resort for food, refreshment, or entertainment, and which premises are not licensed by the commission

under this chapter, to consume any liquor on the premises, except during the hours between which licensed premises of dispensers are permitted to be open for the transaction of business in the county where the premises are located.

(c) It shall be unlawful for any person who keeps or maintains any restaurant or other premises where food, beverages, or entertainment are provided, or brought in by patrons or guests, whether compensated or not, to sell or provide or allow the consumption of liquor to or for any of the following persons knowing that such person has, or is about to obtain, liquor for consumption by the person on the premises, to wit:

(1) Any minor;

(2) Any person at the time under the influence of liquor;

(3) Any disorderly person;

(4) Any person known to be addicted to the excessive use of liquor; or

(5) Any person, for consumption in any vehicle on the premises; provided that the providing of liquor to or for a minor who has or is about to obtain liquor for consumption by the minor on the premises or allowing the consumption of liquor by a minor shall not be deemed to be a violation of this subsection if, at the time, the person providing or allowing the consumption of liquor was misled by the appearance of the minor and the attending circumstances into honestly believing that such minor was of legal age and the person acted in good faith, and it shall be incumbent upon the person to prove that the person so acted in good faith.

(d) Within the meaning of this section, the word "premises" includes any vessel as well as any place, with or without a structure thereon, and the hours between which licensed premises of dispensers are permitted to be open for the transaction of business shall be deemed to be those during which such dispensers are permitted to keep open their premises for the sale, service, and consumption of liquor, or any of them.

281-5 HRS

281-5 Powdered alcohol.

(a) No person shall consume, purchase, possess, sell, offer for sale, or otherwise distribute powdered alcohol in the State.

(b) Any person who violates this section shall be guilty of a misdemeanor and upon conviction shall be punished as provided in section 281-102.

(c) As used in this section, "powdered alcohol" means a powdered or crystalline substance that contains any amount of alcohol for either direct use or reconstitution.

(d) This section does not apply to the use of powdered alcohol for legal commercial uses or bona fide research purposes by:

(1) A health care provider who uses powdered alcohol for the purpose of conducting scientific research;

(2) A state institution;

(3) The University of Hawaii, or other accredited educational or research institution; or

(4) A pharmaceutical or biotechnology company.

281-11 II

281-11 County liquor commissions and liquor control adjudication boards; qualifications; compensation.

(a) A liquor commission or liquor control adjudication board, consisting of not less than five members, no more than the minimum required for a quorum of whom shall belong to the same political party at the time of appointment, may be created for each of the counties. The elected executive head of each county may nominate, and by and with the advice and consent of the legislative body of the county, shall appoint the members of the commissions and boards. The elected executive head of each county, by and with the advice and consent of the legislative body of the county, may remove from office any of the members. The commission or board shall designate one of its members as chairperson. Each member shall be a citizen of the United States and shall have resided in the county for which appointed for at least three years immediately preceding the date of the member's appointment.

(b) Upon the expiration of the term of each commissioner or board member, the commissioner's or board member's successor shall be appointed for a term to expire five years from the date of the expiration of the preceding term. The tenure in office of every commissioner or board member shall be for the terms provided and until their successors are duly

appointed and qualified. Any vacancy shall be filled by appointment for the remainder of the unexpired term. No person shall be a member of any commission or board who is or becomes engaged, or is directly or indirectly interested in any business for the manufacture or sale of liquor or who advocates or is or becomes a member of, or is identified or connected with, any organization or association which advocates prohibition, or who is an elected officer of the state or county government or who presents oneself as a candidate for election to any public office during the term of the person's appointment hereunder. This provision shall be enforced by the elected executive head of the county by the removal of the disqualified member whenever such disqualifications shall appear.

(c) The amount of compensation and reasonable expenses for travel and other costs necessarily incident to the discharge of the members' duties shall be established by each county. [L Sp 1933, c 40, §3; RL 1935, §2572; am L 1935, c 105, §3; am L 1937, c 211, §4; am L Sp 1941, c 79, §§1, 2; RL 1945, §7223; RL 1955, §159-10; am L 1963, c 172, §2(b); am L 1967, c 127, §1; HRS §281-11; gen ch 1985; am L 1988, c 383, §2; gen ch 1992; am L 1998, c 249, §2; am L 2006, c 48, §5] Previous Vol05_Ch0261-0319 Next

281-11.5

281-11.5 Liquor commission and board attorney. The liquor commission or liquor control adjudication board may hire attorneys to assist it in carrying out its administrative functions under this chapter. The assistance may include providing legal advice and prosecuting and defending legal claims under this chapter or arising in connection with this chapter.

281-12

281-12 Commission and board office. The council of each county shall furnish the liquor commission and the liquor control adjudication board of the county suitable quarters for its meetings, the transaction of its business, and the keeping of its records. The office of the commission and board shall at all times be open for the transaction of its business during its prescribed business hours. [L Sp 1933, c 40, §4; RL 1935, §2573; RL 1945, §7224; RL 1955, §159-11; HRS §281-12; am L 1998, c 249, §4]

281-13 Meetings

281-13 Meetings. Meetings of the liquor commission or the liquor control adjudication board may be held at any time and as often from time to time as the commission or board deems necessary for the proper transaction of its business, upon call of the chairperson or by any other two members of the commission or board. The administrator shall give notice of the meetings as the commission or board may prescribe to the several members, and give any other notice thereof directed by the commission or board. A majority of all the members of the commission or board shall constitute a quorum for the transaction of business, but the affirmative vote of a majority of all of the members shall be necessary to determine any matter before it. [L Sp 1933, c 40, §5; RL 1935, §2574; RL 1945, §7225; am L 1951, c 223, §1(3); RL 1955, §159-12; HRS §281-13; am L 1990, c 171, §4; gen ch 1992; am L 1998, c 249, §5]

281-14 Records

281-14 Records. The liquor commission and liquor control adjudication board shall ensure that complete records are kept of all commission and board meetings, proceedings, and acts with reference to all business pertaining to licenses issued, suspended, and revoked, moneys received as license fees and otherwise, and disbursements by the commission or board or under its authority. Unless otherwise prohibited by law, these records shall be open for examination by the public. The records may be destroyed as provided in section 46-43. [L Sp 1933, c 40, §6; RL 1935, §2575; am L Sp 1941, c 89, §1(a); RL 1945, §7226; RL 1955, §159-13; HRS §281-14; am L 1976, c 55, §1; am L 1990, c 171, §5; am L 1998, c 249, §6]

281-15 Reports, accounts, audit

281-15 Reports, accounts, audit. On or before September 30 of each year the chairperson of the liquor commission shall submit to the elected executive head of the county a full report upon the business and operations of the commission during the preceding year, which year shall be coterminous with the fiscal year of the county, with such other matters of information and comment as the elected executive head may deem appropriate. The elected executive head shall furnish copies thereof to the legislative body of the county and to the fiscal officer of the county. The accounts of the commissions for the several counties shall be regularly examined by the fiscal officer who shall report thereon in writing to the legislative body of the several counties. [L Sp 1933, c 40, §7; RL 1935, §2576; RL 1945, §7227; RL 1955, §159-14; am L 1963, c 172, §2(c); am L 1967, c 171, §1; HRS §281-15; gen ch 1993] Previous Vol05_Ch0261-0319 Next

281-16

281-16 County liquor commission and liquor control adjudication board funds; disposition of realization; payment of expenses. All fees and other moneys collected or received by each liquor commission or liquor control adjudication board under this chapter shall be paid not less than weekly into the general fund of the respective county or a special fund as provided by ordinance. All expenses of the commission or board, including any expenses and compensation of its members and expenses and salaries of its subordinates, shall be paid in the manner provided by ordinance. [L Sp 1933, c 40, §19; RL 1935, §2588; am L 1937, c 211, §11; RL 1945, §7240; RL 1955, §159-15; am L 1959, c 265, §9(d); am L 1963, c 78, §1 and c 172, §2(d); HRS §281-16; am L 1981, c 108, §1; am L 1998, c 249, §7] Previous Vol05_Ch0261-0319 Next

281-17 Jurisdiction and powers

281-17 Jurisdiction and powers.

(a) The liquor commission, within its own county, shall have the jurisdiction, power, authority, and discretion, subject only to this chapter:

(1) To grant, refuse, suspend, and revoke any license for the manufacture, importation, and sale of liquors;

(2) To take appropriate action against a person who, directly or indirectly, manufactures, sells, or purchases any liquor without being authorized pursuant to this chapter; provided that in counties that have established by charter a liquor control adjudication board, the board shall have the jurisdiction, power, authority, and discretion to hear and determine administrative complaints of the director regarding violations of the liquor laws of the State or of the rules of the liquor commission, and impose penalties for violations thereof as may be provided by law;

(3) To control, supervise, and regulate the manufacture, importation, and sale of liquors by investigation, enforcement, and education; provided that any educational program shall be limited to the commission staff, commissioners, liquor control adjudication board members, and licensees and their employees, and shall be financed through the money collected from the assessment of fines against licensees; provided that fine moneys, not to exceed ten per cent a year of fines accumulated, may be used to fund public liquor-related educational or enforcement programs;

(4) From time to time to make, amend, and repeal rules, not inconsistent with this chapter, as in the judgment of the commission are deemed appropriate for carrying out this chapter and for the efficient administration thereof, and the proper conduct of the business of all licensees, including every matter or thing required to be done or which may be done with the approval or consent, by order, under the direction or supervision of, or as prescribed by the commission; which rules, when adopted as provided in chapter 91 shall have the force and effect of law;

(5) Subject to chapter 76, to appoint and remove an administrator, who may also be appointed an investigator and who shall be responsible for the operations and activities of the staff. The administrator may hire and remove hearing officers, investigators, and clerical or other assistants as its business may from time to time require, prescribe their duties and fix their compensation, and engage the services of experts and persons engaged in the practice of a profession, if deemed expedient. Every investigator, within the scope of the investigator's duties, shall have the powers of a police officer;

(6) To limit the number of licenses of any class or kind within the county, or the number of licenses of any class or kind to do business in any given locality, when in the judgment of the commission such limitations are in the public interest;

(7) To prescribe the nature of the proof to be furnished, the notices to be given, and the conditions to be met or observed in case of the issuance of a duplicate license in place of one alleged to have been lost or destroyed, including a requirement of any indemnity deemed appropriate to the case;

(8) To fix the hours between which licensed premises of any class or classes may regularly be open for the transaction of business, which shall be uniform throughout the county as to each class respectively;

(9) To prescribe all forms to be used for the purposes of this chapter not otherwise provided for in this chapter, and the character and manner of keeping of books, records, and accounts to be kept by licensees in any matter pertaining to their business;

(10) To investigate violations of this chapter and, notwithstanding any law to the contrary, violations of the applicable department of health's allowable noise levels, through its investigators or otherwise, to include covert operations, and to report violations to the prosecuting officer for prosecution where appropriate. Investigations of violations of chapter 244D shall be referred to the director of taxation to hear and determine complaints against any licensee;

(11) To prescribe, by rule, the terms, conditions, and circumstances under which persons or any class of persons may be employed by holders of licenses;

(12) To prescribe, by rule, the term of any license or solicitor's and representative's permit authorized by this chapter, the annual or prorated amount, the manner of payment of fees for the licenses and permits, and the amount of filing fees;

(13) To prescribe, by rule, regulations on dancing in licensed premises; and

(14) To prescribe, by rule, the circumstances and penalty for the unauthorized manufacturing or selling of any liquor.

(b) Subject only to this chapter, the commission or board and each member thereof shall have the same powers respecting the administering of oaths, compelling the attendance of witnesses and the production of documentary evidence, and examining the witnesses as are possessed by a circuit court, except that the commission or board and each member thereof shall not be bound by the strict legal rules of evidence. In addition, the commission or board shall have the power to require the production of, and to examine any books, papers, and records of any licensee which may pertain to the licensee's business under the license or which may pertain to a matter at a hearing before the commission or board or to an investigation by the commission or board. The exercise by the commission or board of the power, authority, and discretion vested in it pursuant to this chapter shall be final and shall not be reviewable by or appealable to any court or tribunal, except as otherwise provided in this chapter or chapter 91. [L Sp 1933, c 40, §8; RL 1935, §2577; am L 1935, c 105, §§4, 5; am L 1937, c 211, §5; am L Sp 1941, c 41, §2; RL 1945, §7228; RL 1955, §159-16; am L 1961, c 92, §1; am L 1963, c 172, §2(e); am L 1965, c 31, §1(3) and c 96, §96; HRS §281-17; am L 1969, c 225, §1(a), (b); am L 1973, c 31, §21; am L 1985, c 109, §1; am L 1986, c 344, §13; am L 1987, c 223, §1; am L 1990, c 171, §6; am L 1998, c 249, §8; am L 2000, c 253, §150; am L 2002, c 111, §3; am L 2003, c 3, §8 and c 69, §4; am L 2009, c 184, §4; am L 2012, c 297, §§2, 4; am L 2015, c 136, §1; am L 2022, c 76, §4]

281-18 REPEALED

281-18 REPEALED. L 1979, c 192, §1. Previous Vol05_Ch0261-0319 Next

281-19

281-19 Hearings, attendance, examinations. If any person subpoenaed as a witness to attend before the liquor commission or liquor control adjudication board, or to produce any books, papers, or records called for by the process of the commission or board, fails or refuses to respond thereto, or refuses to answer questions propounded by any member of the commission or board or its counsel material to the matter pending before the commission or board, the circuit court of the circuit within which the licensed premises involved are situated, upon request of the commission or board, shall have power to compel obedience to any process of the commission or board and require the witness to answer questions put to the witness, and to punish, as a contempt of the court, any refusal to comply therewith without good cause shown therefor. False swearing by any witness before the commission or board, shall constitute perjury and be punished as such, and whenever the commission or board is satisfied that a witness has sworn falsely in any hearing or investigation before the commission or board, it shall report the same to the prosecuting officer for prosecution. [L Sp 1933, c 40, §9; RL 1935, §2578; RL 1945, §7229; RL 1955, §159-18; HRS §281-19; gen ch 1985; am L 1998, c 249, §9] Previous Vol05_Ch0261-0319 Next

281-20 General right of inspection

281-20 General right of inspection. Any investigator may, at all times, without notice and without any search warrant or other legal process, visit and have immediate access to every part of the premises of every licensee for the purpose of making any examination or inspection thereof or inquiry into the books and records therein, to ascertain whether all of the conditions of the license and all provisions of this chapter are being complied with by the licensee. [L Sp 1933, c 40, §10; RL 1935, §2579; RL 1945, §7230; RL 1955, §159-19; HRS §281-20; am L 1986, c 344, §14; am L 1990, c 171, §7; am L 2022, c 76, §5] Previous Vol05_Ch0261-0319 Next

281-21

281-21 Service of subpoenas by investigators, police officers, or other law enforcement officers; witnesses' fees. [(a)] Any investigator, police officer, or other law enforcement officer may serve any subpoena issued by the liquor commission, liquor control adjudication board, or administrator. [(b)] Every witness attending or testifying at any hearing of the commission or board in response to a subpoena issued by it or the administrator shall be paid as provided for in section 621-7. If a witness is subpoenaed by direction of the commission, board, or administrator, the witness' fees shall be paid out of any funds which may be set aside for the expenses of the commission or board and, if the witness is

subpoenaed on behalf of any interested party, the witness' fees shall be paid by that party.

281-22 Bill

281-22 Political activities of commission employees.

(a) A commission employee may support, advocate, or aid in the election or defeat of any candidate for public office, or run for public office; provided the employee:

(1) Notifies the commission in writing of the employee's intent to support, advocate, or aid in the election or defeat of a candidate for public office; and

(2) If a candidate for public office, takes a leave of absence in accordance with section 78-23 for a period beginning prior to the initiation of political activities related to the candidacy and ending the day following the general election for the office.

(b) Notwithstanding chapter 11 or any other law to the contrary, no commission employee shall solicit or receive contributions, or receive or transfer money or anything of value from a licensee for the purpose of supporting, advocating, or aiding in the election or defeat of a candidate for public office. Violation of this subsection shall be:

(1) Punishable by summary dismissal of the employee; and

(2) Subject to fines in accordance with section 11-410.

281-31 III

281-31 Licenses, classes.

(a) Licenses may be granted by the liquor commission as provided in this section.

(b) Class 1. Manufacturer license. A license for the manufacture of liquor shall authorize the licensee to:

(1) Manufacture the liquor therein specified;

(2) Sell it in original packages to any wholesaler who holds a license to resell it; and

(3) Sell beer, wine, or other specified liquor manufactured or distilled on the licensee's premises from fruits or other products grown in the State, in any quantity: (A) At wholesale in original packages to any person who holds a license to resell it; and (B) To any person for private use and consumption. Under this license, no liquor shall be consumed on the premises, except as authorized by the commission. Of this class, there shall be the following kinds:

(1) Beer;

(2) Wine;

(3) Alcohol; and

(4) Other specified liquor. It shall be unlawful for any holder of a manufacturer license to have any interest whatsoever in the license or licensed premises of any other licensee. This subsection shall not prevent the holder of a manufacturer license under this chapter or under the law of another jurisdiction from maintaining any interest in the license or licensed premises of a wholesale dealer licensee under this chapter.

(c) Class 2. Restaurant license.

(1) A license under this class shall authorize the licensee to sell liquor specified in this subsection for consumption on the premises; provided that a restaurant licensee, with commission approval, may provide off-premises catering of food and liquor; provided further that the catering activity shall be directly related to the licensee's operation as a restaurant. A license under this class shall also authorize the licensee to sell beer, malt beverages, or cider for off-premises consumption; provided that the licensee has the appropriate kind of license pursuant to paragraph (3); provided further that the beer, malt beverage, or cider is sold in a securely sealed or covered glass, ceramic, or metal container that is sold to or provided by the patron, and each sealed or covered glass, ceramic, or metal container does not exceed a maximum capacity of one-half gallon. A licensee under this class shall be issued a license according to the category of establishment the licensee owns or operates. The categories of establishment shall be as follows: (A) A standard bar; or (B) Premises in which live entertainment or recorded music is provided. Facilities for dancing by the patrons may be permitted as provided by commission rules.

(2) If a licensee under class 2 desires to change the category of establishment the licensee owns or operates, the licensee shall apply for a new license applicable to the category of the licensee's establishment.

(3) Of this class, there shall be the following kinds: (A) General (includes all liquor except alcohol); (B) Beer and wine; and (C) Beer.

(4) A new class 2 license may be issued prior to an establishment commencing operation. An application for a new class 2 license shall include a certification by the applicant that the applicant intends to and shall derive no less than thirty per cent of the establishment's gross revenue from the sale of foods. Notwithstanding section 281-57, the commission may approve at one public hearing and without notice the change to a class 2 restaurant license of a licensee holding a class 5 dispenser license who meets the requirements of a class 2 license.

(d) Class 3. Wholesale dealer license. A license for the sale of liquor at wholesale shall authorize the licensee to import and sell only to licensees or to others who are by law authorized to resell the liquor specified by the license but are not by law required to hold a license; provided that a class 3 licensee may sell samples of liquor back to the manufacturer. Under a class 3 license, no liquor shall be consumed on the premises except as authorized by the commission. Of this class, there shall be the following kinds:

(1) General (includes all liquor except alcohol);

(2) Beer and wine; and

(3) Alcohol. If any wholesale dealer solicits or takes any orders in any county other than that where the dealer's place of business is located, the orders may be filled only by shipment direct from the county in which the wholesale dealer holds the dealer license. Nothing in this subsection shall prevent a wholesaler from selling liquor to post exchanges, ships' service stores, army or navy officers' clubs, or similar organizations located on army or navy reservations, or to any vessel other than vessels performing a regular water transportation service between any two or more ports in the State, or to aviation companies who operate an aerial transportation enterprise subject to chapter 269 and engaged in regular flight passenger services between any two or more airports in the State for use on aircraft, or aviation companies engaged in transpacific flight operations for use on aircraft outside the jurisdiction of the State.

(e) Class 4. Retail dealer license. A license to sell liquor at retail or to class 10 licensees shall authorize the licensee to sell the liquor therein specified in their original packages. A license under this class shall also authorize the licensee to sell beer, malt beverages, or cider in non-original packages; provided that the beer, malt beverage, or cider is sold in a securely sealed or covered glass, ceramic, or metal container that is sold to or provided by the patron, and each sealed or covered glass, ceramic, or metal container does not exceed a maximum capacity of one half-gallon. Under a class 4 license, no liquor shall be consumed on the premises except as authorized by the commission. Of this class, there shall be the following kinds:

(1) General (includes all liquor except alcohol);

(2) Beer and wine; and

(3) Alcohol.

(f) Class 5. Dispenser license.

(1) A license under this class shall authorize the licensee to sell liquor specified in this subsection for consumption on the premises. A licensee under this class shall be issued a license according to the category of establishment the licensee owns or operates. The categories of establishments shall be as follows: (A) A standard bar; (B) Premises in which a person performs or entertains unclothed or in attire restricted to use by entertainers pursuant to commission rules; (C) Premises in which live entertainment or recorded music is provided; provided that facilities for dancing by the patrons may be permitted as provided by commission rules; or (D) Premises in which employees or entertainers are compensated to sit with patrons, regardless of whether the employees or entertainers are consuming nonalcoholic beverages while in the company of the patrons pursuant to commission rules.

(2) If a licensee under class 5 desires to change the category of establishment the licensee owns or operates, the licensee shall apply for a new license applicable to the category of the licensee's establishment.

(3) Of this class, there shall be the following kinds: (A) General (includes all liquor except alcohol); (B) Beer and wine; and (C) Beer.

(g) Class 6. Club license. A club license shall be general only but shall exclude alcohol and shall authorize the licensee to sell liquor to members of the club and to guests of the club enjoying the privileges of membership for consumption only on the premises kept and operated by the club; provided that the license shall also authorize any club member to keep in the member's private locker on the premises a reasonable quantity of liquor owned by the member for the member's own

personal use and not to be sold that may be consumed only on the premises. A club licensee shall be authorized to host charitable functions that are open to the general public only pursuant to commission rules. The categories of establishment shall be as follows:

(1) A standard bar; or

(2) Premises in which live entertainment or recorded music is provided. Facilities for dancing by the patrons may be permitted as provided by commission rules.

(h) Class 8. Transient vessel license. A general license may be granted to the owner of any vessel for the sale of liquor other than alcohol on board the vessel while en route within the jurisdictional limits of the State and within any port of the State. Sales shall be made only for consumption by passengers and their guests on board the vessel. The license shall be issuable in each county where the sales are to be made; provided that the application for the license may be made by any agent representing the owner.

(i) Class 9. Tour or cruise vessel license. A general license may be granted to the owner of any tour or cruise vessel for the sale of liquor other than alcohol on board the vessel while in the waters of the State; provided that sales be made only for consumption by passengers on board while the vessel is in operation outside the port or dock of any island of the State, unless otherwise approved by the county where the license has been issued. The license shall be issuable in the county where the home port of the vessel is situated. If, on any vessel for which no license has been obtained under this chapter, any liquor is sold or served within three miles of the shore of any island of the State, it shall constitute a violation of this chapter. The categories of establishment shall be as follows:

(1) A standard bar; or

(2) Premises in which live entertainment or recorded music is provided. Facilities for dancing by the patrons may be permitted as provided by commission rules.

(j) Class 10. Special license.

(1) A special license may be granted for the sale of liquor for a period not to exceed three days and pursuant to commission rule may be approved by the administrator for fundraising events by nonprofit organizations, political candidates, and political parties; provided that any registered educational or charitable nonprofit organization may sell liquors in their original packages for off-premises consumption; provided further that any social club granted tax-exempt status pursuant to section 501(c)(7) of the Internal Revenue Code of 1986, as amended, may sell wine from the social club's inventory to the club's members for off-premises consumption. Of this class, there shall be the following kinds: (A) General (includes all liquor except alcohol); (B) Beer and wine; and (C) Beer. Liquor sold under a class 10 license shall be consumed on the premises.

(2) Notwithstanding any other section of this chapter to the contrary, the commission shall waive any hearings, fees, notarization of documents, submission of floor plans and other governmental clearances, and other requirements for the issuance of a class 10 license. The class 10 license granted under this subsection for a fundraising event shall include the ability to auction off, at a live or silent auction, liquor in sealed or covered glass, ceramic, or metal containers or services that provide liquor. No criminal history record check under section 281-53.5 or 846-2.7 or any other section of this chapter shall be required. The commission may require proof of liquor liability insurance for the fundraising event and a current list of officers and directors if the applicant is a nonprofit organization.

(k) Class 11. Cabaret license. A cabaret license shall be general only but shall exclude alcohol and shall authorize the sale of liquor for consumption on the premises. A cabaret license shall be issued only for premises where food is served, facilities for dancing by the patrons including a dance floor are provided, and live or amplified recorded music or professional entertainment, except professional entertainment by a person who performs or entertains unclothed, is provided for the patrons; provided that professional entertainment by persons who perform or entertain unclothed shall be authorized by:

(1) A cabaret license for premises where professional entertainment by persons who perform or entertain unclothed was presented on a regular and consistent basis immediately prior to June 15, 1990; or

(2) A cabaret license that, pursuant to rules adopted by the liquor commission, permits professional entertainment by persons who perform or entertain unclothed. A cabaret license under paragraph (1) or (2) authorizing professional entertainment by persons who perform or entertain unclothed shall be transferable through June 30, 2000. A cabaret license under paragraph (1) or (2) authorizing professional entertainment by persons who perform or entertain unclothed shall not be transferable after June 30, 2000, except upon approval by the liquor commission and pursuant to rules

adopted by the commission. Notwithstanding any rule of the liquor commission to the contrary, cabarets in resort areas may be opened for the transaction of business until 4 a.m. throughout the entire week. A cabaret license shall not be issued for any premises located within an apartment mixed use subprecinct within a special improvement or special district in which the economy is primarily based on tourism.

(l) Class 12. Hotel license. A license to sell liquor in a hotel shall authorize the licensee to provide entertainment and dancing on the hotel premises and to sell all liquor except alcohol for consumption on the premises; provided that a hotel licensee, with commission approval, may provide off-premises catering of food and liquor if the catering activity is directly related to the licensee's food service. Procedures such as room service, self-service no-host minibars or similar service in guest rooms, and service at parties in areas that are the property of and contiguous to the hotel are permitted with commission approval. Any licensee who would otherwise fall within the hotel license class but holds a different class of license may be required to apply for a hotel license. If the licensee applies for a change of classification prior to July 30, 1992, the licensee shall not be subject to the requirements of sections 281-52, 281-54, and 281-57 through 281■59. Any licensee holding a class 12 license on May 1, 2007 who would otherwise qualify for a class 15 license may apply to the liquor commission of the county in which the licensee is seeking a change in liquor license for a change to a class 15 license; provided that the licensee shall not be subject to the requirements of section 281-54 and sections 281-57 to 281-60. If a licensee holding a class 12 license on May 1, 2007 applies for a change to a class 15 license, the respective liquor commission shall hold a public hearing upon notice. On the day of hearing or any adjournment thereof, the liquor commission shall consider the application, accept all written or oral testimony for or against the application, and render its decision granting or refusing the application. If the application is denied, the class 12 license shall continue in effect in accordance with law.

(m) Class 13. Caterer license. A general license may be granted to any applicant who serves food as part of their operation for the sale of liquor other than alcohol while performing food catering functions off the premises. No catering service for the sale of liquor shall be performed off the licensee's premises unless prior written notice of the service has been delivered to the office of the liquor commission of the county concerned. The notice shall state the date, time, and location of the proposed event and shall include a written statement signed by the owner or representative of the property that the function will be subject to the liquor laws and to inspection by investigators.

(n) Class 14. Brewpub license. A brewpub licensee:

(1) May sell malt beverages and beer manufactured on the licensee's premises for consumption on the premises;

(2) May sell malt beverages and beer manufactured by the licensee in brewery-sealed packages to class 3 wholesale dealer licensees pursuant to conditions imposed by the county by ordinance or rule;

(3) May sell intoxicating liquor purchased from a class 3 wholesale dealer licensee to consumers for consumption on the licensee's premises. The categories of establishments shall be as follows: (A) A standard bar; or (B) Premises in which live entertainment or recorded music is provided. Facilities for dancing by the patrons may be permitted as provided by commission rules;

(4) May, subject to federal labeling and bottling requirements, sell malt beverages and beer manufactured on the licensee's premises to consumers in brewery-sealed kegs and recyclable or reusable containers and sell malt beverages and beer manufactured on the licensee's premises or purchased from a class 1 manufacturer licensee, a class 3 wholesale dealer licensee, a class 14 brewpub licensee, or a class 18 small craft producer pub licensee to consumers in growlers for off-premises consumption; provided that for purposes of this paragraph, "growler" means a recyclable or reusable container that does not exceed one gallon and is securely sealed on the licensee's premises;

(5) Shall comply with all requirements pertaining to class 4 retail dealer licensees when engaging in the retail sale of malt beverages and beer;

(6) May, subject to federal labeling and bottling requirements, sell malt beverages and beer manufactured on the licensee's premises in brewery-sealed containers directly to class 2 restaurant licensees, class 3 wholesale dealer licensees, class 4 retail dealer licensees, class 5 dispenser licensees, class 6 club licensees, class 8 transient vessel licensees, class 9 tour or cruise vessel licensees, class 10 special licensees, class 11 cabaret licensees, class 12 hotel licensees, class 13 caterer licensees, class 14 brewpub licensees, class 15 condominium hotel licensees, class 18 small craft producer pub licensees, and consumers pursuant to conditions imposed by county ordinances or rules governing class 1 manufacturer licensees and class 3 wholesale dealer licensees;

(7) May conduct the activities under paragraphs (1) to (6) at locations other than the licensee's primary manufacturing premises; provided that: (A) The manufacturing takes place in Hawaii; (B) Each of the other locations:

(i) Operates within the State under the same trade name for the premises; and (ii) Is properly licensed within the county of its operation as a class 1 manufacturer licensee, class 2 restaurant licensee, class 4 retail dealer licensee, class 5 dispenser licensee, class 12 hotel licensee, class 14 brewpub licensee, or class 18 small craft producer pub licensee; (C) The county liquor commission of the county in which the licensee satellite is located shall have jurisdiction of the satellite; and (D) All requirements of the license class of the location shall be in effect as required by the county liquor commission for the satellite licensed premises; and

(8) May allow minors, who are accompanied by a parent or legal guardian of legal drinking age, on the licensee's premises.

(o) Class 15. Condominium hotel license. A license to sell liquor in a condominium hotel shall authorize the licensee to provide entertainment and dancing on the condominium hotel premises and to sell all liquor except alcohol for consumption on the premises; provided that a condominium hotel licensee, with commission approval, may provide off-premises catering; provided further that the catering activity is directly related to the licensee's operation as a condominium hotel. Procedures such as room service, self-service no-host minibars or similar service in apartments, and service at private parties in areas that are the property of and contiguous to the condominium hotel are permitted with commission approval. A condominium hotel licensee shall not sell liquor in the manner authorized by a class 4 retail dealer license. Any licensee who would otherwise meet the criteria for the condominium hotel license class but holds a different class of license may be required to apply for a condominium hotel license.

(p) Class 16. Winery license. A winery licensee:

(1) Shall manufacture not more than twenty thousand barrels of wine on the licensee's premises during the license year;

(2) May sell wine manufactured on the licensee's premises for consumption on the premises;

(3) May sell wine manufactured by the licensee in winery-sealed packages to class 3 wholesale dealer licensees pursuant to conditions imposed by the county by ordinance or rule;

(4) May, subject to federal labeling and bottling requirements, sell wine manufactured on the licensee's premises in winery-sealed kegs and magnums to consumers for off-premises consumption; provided that for purposes of this paragraph, "magnum" means a glass container not to exceed one half-gallon, which may be securely sealed;

(5) May, subject to federal labeling and bottling requirements, sell wine manufactured on the licensee's premises in recyclable containers provided by the licensee or by the consumer which do not exceed one gallon per container and are securely sealed on the licensee's premises to consumers for off-premises consumption;

(6) Shall comply with all rules pertaining to class 4 retail dealer licensees when engaging in the retail sale of wine; and

(7) May sell wine manufactured on the licensee's premises in winery-sealed containers directly to class 2 restaurant licensees, class 3 wholesale dealer licensees, class 4 retail dealer licensees, class 5 dispenser licensees, class 6 club licensees, class 8 transient vessel licensees, class 9 tour or cruise vessel licensees, class 10 special licensees, class 11 cabaret licensees, class 12 hotel licensees, class 13 caterer licensees, class 14 brewpub licensees, class 15 condominium hotel licensees, and class 18 small craft producer pub licensees pursuant to conditions imposed by county planning and public works departments and rules governing class 3 wholesale dealer licensees.

(q) Class 17. Bring-your-own-beverage license. In counties having a population in excess of 500,000, there is established a class 17 license; provided that in a county having a population of 500,000 or less, the respective commission may establish a class 17 license to which this subsection shall apply.

(1) A general license of this class shall authorize the licensee to permit patrons to bring their own liquors for consumption on the premises between the hours of 6:00 a.m. to 2:00 a.m. the following day. A licensee under this class shall be issued a license according to the category of establishment the licensee owns or operates. The categories of establishments shall be as follows: (A) Premises in which recorded music and live entertainment, including karaoke, are provided; or (B) Premises in which recorded music and live entertainment, including karaoke and dancing, are provided.

(2) If a licensee under this class desires to change the category of establishment the licensee owns or operates, the licensee shall apply for a new license applicable to the category of the licensee's establishment.

(3) A licensee under this class shall not be subject to liquor commission rules relating to percentage fees.

(r) Class 18. Small craft producer pub license. A small craft producer pub licensee:

(1) Shall manufacture not more than: (A) Seventy thousand barrels of malt beverages; (B) Twenty thousand barrels of wine; or (C) Seven thousand five hundred barrels of alcohol on the licensee's premises during the license year; provided that for purposes of this paragraph, "barrel" means a container not exceeding thirty-one gallons or wine gallons of liquor;

(2) May sell malt beverages, wine, or alcohol manufactured on the licensee's premises for consumption on the premises;

(3) May sell malt beverages, wine, or alcohol manufactured by the licensee in producer-sealed packages to class 3 wholesale dealer licensees pursuant to conditions imposed by the county by ordinance or rule;

(4) May sell intoxicating liquor purchased from a class 3 wholesale dealer licensee to consumers for consumption on the licensee's premises. The categories of establishments shall be as follows: (A) A standard bar; or (B) Premises in which live entertainment or recorded music is provided. Facilities for dancing by the patrons may be permitted as provided by commission rules;

(5) May, subject to federal labeling and bottling requirements, sell malt beverages manufactured on the licensee's premises to consumers in producer-sealed kegs and recyclable or reusable containers and sell malt beverages manufactured on the licensee's premises or purchased from a class 1 manufacturer licensee, a class 3 wholesale dealer licensee, a class 14 brewpub licensee, or a class 18 small craft producer pub licensee to consumers in growlers for off-premises consumption; provided that for purposes of this paragraph, "growler" means a recyclable or reusable container that does not exceed one gallon, which shall be securely sealed;

(6) May, subject to federal labeling and bottling requirements, sell wine or alcohol manufactured on the licensee's premises in recyclable containers provided by the licensee or by the consumer which do not exceed: (A) One gallon per container for wine; and (B) One liter for alcohol; and are securely sealed on the licensee's premises to consumers for off-premises consumption;

(7) Shall comply with all requirements pertaining to class 4 retail dealer licensees when engaging in the retail sale of malt beverages, wine, and alcohol;

(8) May, subject to federal labeling and bottling requirements, sell malt beverages, wine, and alcohol manufactured on the licensee's premises in producer-sealed containers directly to class 2 restaurant licensees, class 3 wholesale dealer licensees, class 4 retail dealer licensees, class 5 dispenser licensees, class 6 club licensees, class 8 transient vessel licensees, class 9 tour or cruise vessel licensees, class 10 special licensees, class 11 cabaret licensees, class 12 hotel licensees, class 13 caterer licensees, class 14 brewpub licensees, class 15 condominium hotel licensees, class 18 small craft producer pub licensees, and consumers pursuant to conditions imposed by county ordinances or rules governing class 1 manufacturer licensees and class 3 wholesale dealer licensees;

(9) May conduct the activities under paragraphs (1) to (8) at locations other than the licensee's premises; provided that: (A) The manufacturing takes place in Hawaii; (B) Each of the other locations:

(i) Operates within the State under the same trade name for the premises; and (ii) Is properly licensed within the county of its operation as a class 1 manufacturer licensee, class 2 restaurant licensee, class 4 retail dealer licensee, class 5 dispenser licensee, class 12 hotel licensee, class 14 brewpub licensee, or class 18 small craft producer pub licensee; (C) The county liquor commission of the county in which the licensee satellite is located shall have jurisdiction of the satellite; and (D) All requirements of the license class of the location shall be in effect as required by the county liquor commission for the satellite licensed premises; and

(10) May allow minors, who are accompanied by a parent or legal guardian of legal drinking age, on the licensee's premises.

(s) Restaurants, retail dealers, dispensers, clubs, cabarets, hotels, caterers, brewpubs, condominium hotels, bring-your-own-beverage establishments, and small craft producer pubs licensed under class 2, class 4, class 5, class 6, class 11, class 12, class 13, class 14, class 15, class 17, and class 18 shall maintain at all times liquor liability insurance coverage in an amount not less than $1,000,000; provided that convenience minimarts holding a class 4 license shall not be required to maintain liquor liability insurance coverage in that amount. Proof of coverage shall be kept on the premises and shall be made available for inspection by the commission at any time during the licensee's regular business hours. In the event of a licensee's failure to obtain or maintain the required coverage, the commission shall refuse to issue or renew a license or shall suspend or terminate the license as appropriate. No license shall be granted, reinstated, or renewed until after the required insurance coverage is obtained.

(t) It shall be unlawful for any retail licensee except a class 10 licensee to purchase or acquire liquor from any person other than a wholesaler licensed pursuant to this chapter, except as otherwise provided in this section.

(u) Any provision to the contrary notwithstanding:

(1) A patron may remove from any class of licensed premises any portion of wine, liquor, or beer that was purchased on or brought onto the premises of the licensee engaged in meal service for consumption with a meal; provided that the wine, liquor, or beer is recorked or resealed in its original container; and

(2) Licensees engaged in meal service may sell unopened beer, wine, and prepackaged cocktails with food for pick up, delivery, take out, or other means to be consumed off-premises.

(v) Sections 281-57 to 281-60 shall not apply to classes 8, 9, 10, and 13. [L Sp 1933, c 40, §11; RL 1935, §2580; am L 1935, c 105, §§6 to 8; am L 1937, c 211, §6; am L 1939, c 71, §§1, 2 and c 205, pt of §1; RL 1945, §7232; am L 1947, c 148, §1; am L 1955, c 263, §2; RL 1955, §159-30; am L 1961, c 89, §1 and c 90, §1; am L 1965, c 181, §1; am L 1967, c 172, §1; HRS §281-31; am L 1969, c 133, §1 and c 198, §1; am L 1970, c 5, §2; am L 1976, c 87, §2; am L 1978, c 25, §1; am L 1980, c 199, §2; am L 1981, c 60, §1; am L 1982, c 183, §1; am L 1983, c 292, §1; am L 1984, c 269, §1; gen ch 1985; am L 1988, c 383, §3; am L 1990, c 171, §9; am L 1991, c 196, §1; am L 1994, c 174, §2; am L 1995, c 38, §2; am L 1996, c 55, §1; am L 1997, c 57, §2; am L 1998, c 75, §2; am L 1999, c 69, §1; am L 2001, c 55, §11; am L 2002, c 16, §12 and c 49, §2; am L 2004, c 200, §1; am L 2005, c 145, §1; am L 2007, c 53, §§3, 7; am L 2008, c 163, §1 and c 168, §5; am L 2009, c 177, §1 and c 184, §6; am L 2010, c 198, §2; am L 2011, c 138, §1; am L 2012, c 302, §1; am L 2014, c 211, §3; am L 2015, c 227, §1; am L 2018, c 90, §1, c 91, §1, and c 93, §2; am L 2019, c 115, §2; am L 2022, c 89, §1; am L 2023, c 65, §1; am L 2024, c 9, §2]

281-32.3 REPEALED

281-32.3 REPEALED. L 2008, c 168, §18. Previous Vol05_Ch0261-0319 Next

281-32.5

281-32.5 Permits for trade shows or other exhibitions. Notwithstanding any other provision to the contrary, any trade exhibitor, trade organization or other exhibitor shall apply to the liquor commission or agency administrator for the issuance of a permit, without hearings, fees, notarizing of documents, submission of floor plans, and other requirements, to receive liquor from within or outside the State for display and sampling on a not-for-sale basis at trade exhibitions, shows or other exhibitions, subject to such terms and conditions as may be set by the commission.

281-33.1

281-33.1 Individual permits to receive shipments of liquor.

(a) Notwithstanding any other provisions of law, any unlicensed adult person may apply to the liquor commission and be issued, for a nominal fee, except as hereinafter provided, a permit to receive a single shipment of liquor from outside the State, not to exceed five gallons, (19 liters), for use and consumption by the applicant and the applicant's household and not for sale in any form.

(b) In the case of a shipment that the applicant shows is an unsolicited gift, the quantities permitted to be received under subsection (a) shall be limited to 3.2 gallons (12 liters) in total of all kinds of liquor.

(c) In the case of a shipment in respect of which the applicant shows to the liquor commission that the liquor was prior to the date of the application the personal property of the applicant, formed a part of the applicant's household goods, was used and stored outside the State, and was originally acquired (or made by the applicant) outside the State, the quantity of wine, or other liquor capable of aging and originating from grapes or other fruit, which shall be permitted to be received under subsection (a) may exceed the limit there stated if the commission finds that it is reasonable to do so consistent with the intent of this statute to allow persons taking up residency in the State the free movement of their household goods into this State.

(d) In the case of a shipment of wine or beer that is otherwise available in the State, the permit shall not be issued unless the applicant pays a fee equal to the tax that would be imposed by section 244D-4 upon the use of liquor having a wholesale price equal to the price paid or to be paid by the applicant for the wine or beer being shipped, and such fee shall be in lieu of the imposition by section 244D-4 of any tax upon the use of the wine or beer.

(e) Except in the case of applications meeting the requirements of subsection (b), (c), or (d), the permit shall not be issued unless the applicant demonstrates to the satisfaction of the liquor commission that each of the brands to be brought in under the permit is otherwise unavailable in the State.

(f) No more than one permit may be issued pursuant to subsection (a) in respect of any one household in any calendar year, and each applicant shall be required to affirm, under penalty of perjury, that no member of the applicant's household has previously received such a permit in the applicable calendar year.

(g) All such applications and shipments shall be in accordance with regulations promulgated by the liquor commission.

(h) A common carrier to whom the permit is presented is authorized to make delivery of the described shipment to the person named in the permit. Delivery of such a shipment pursuant to the permit shall not be deemed to constitute a sale in this State.

(i) An unlicensed adult shall not be required to obtain a permit under this section to receive shipments of liquor pursuant to section 281-33.6.

281-33.5 REPEALED

281-33.5 REPEALED. L 2006, c 227, §3. Previous Vol05_Ch0261-0319 Next

281-33.6 Bill

281-33.6 Direct shipment of wine by wineries.

(a) Any person holding:

(1) A general excise tax license from the department of taxation; and

(2) Either: (A) A class 1, class 16, or class 18 license to manufacture wine under section 281-31; or (B) A license to manufacture wine issued by another state, may pay any applicable fees and obtain a direct wine shipper permit from the liquor commission of the county to which the wine will be shipped authorizing the holder to directly ship wine to persons in the county pursuant to this section.

(b) The holder of a direct wine shipper permit may sell and annually ship to any person twenty-one years of age or older in the county that issued the permit, no more than six nine-liter cases of wine per household for personal use only and not for resale, and shall:

(1) Ship wine directly to the person only in containers that are conspicuously labeled with the words: "CONTAINS ALCOHOL: SIGNATURE OF PERSON AGE 21 YEARS OR OLDER REQUIRED FOR DELIVERY.";

(2) Require that the carrier of the shipment obtain the signature of any person twenty-one years of age or older before delivering the shipment;

(3) Report no later than January 31 of each year to the liquor commission in each county where a direct wine shipper permit is held, the total amount of wine shipped to persons in the county during the preceding calendar year;

(4) Pay all applicable general excise and gallonage taxes. For gallonage tax purposes, all wine sold under a direct wine shipper permit shall be deemed to be wine sold in the State; and

(5) Be subject to audit by the liquor commission of each county in which a permit is held.

(c) The holder of a license to manufacture wine issued by another state may annually renew a direct wine shipper permit by providing the liquor commission that issued the permit with a copy of the license and paying all required fees. The holder of a class 1, class 16, or class 18 license to manufacture wine under section 281-31 may renew a direct wine shipper permit concurrently with the class 1 license by complying with all applicable laws and paying all required fees.

(d) The sale and shipment of wine directly to a person in this State by a person that does not possess a valid direct wine shipper permit is prohibited. Knowingly violating this law is a misdemeanor.

(e) The liquor [commission] in each county may adopt rules and regulations necessary to carry out the intent and purpose of this section.

281-33.8 HRS

281-33.8 Reporting of shipments by carriers.

(a) Notwithstanding section 281-33, any express carrier company, common or contract carrier, except water carriers as defined and regulated by the Surface Transportation Board of the United States, or other person that transports liquor from outside the State for delivery in the State to any person, except those having a class 1 manufacturer license or class 3 wholesale dealer license, shall prepare and file a monthly report with the liquor commission or liquor control adjudication board of each county. The report shall contain the following information:

(1) The known wine, beer, alcohol, or other liquor shipments made statewide containing the name of the express carrier company, common or contract carrier, or other person making the report;

(2) The period of time covered by the report;

(3) The name and business address of the consignor of the wine, beer, alcohol, or other liquor;

(4) The name and address of each consignee of the wine, beer, alcohol, or other liquor;

(5) The weight of the package delivered to each consignee;

(6) A unique tracking number; and

(7) The date of each delivery.

(b) Reports received by a county liquor commission or liquor control adjudication board under this section shall be subject to chapter 92F.

(c) Any county liquor commission or liquor control adjudication board may provide reports received to any other department or agency.

(d) Upon written request of a county liquor commission or liquor control adjudication board, the information or records supporting the report shall be filed with the requesting liquor commission or liquor control adjudication board within thirty days. Any records containing information relating to reports shall be preserved for three years.

(e) The liquor commission or liquor control adjudication board in each county may adopt rules pursuant to chapter 91 necessary to carry out the purposes of this section.

281-34

281-34 Sham operation under club license; supervision. Whenever the liquor commission is of the opinion that any holder of a club license is not conducting the business under such license in good faith, or that the premises thereof are not continuously kept suitably arranged, furnished, equipped, and actually and reputably operated as a club, or that the apparent or claimed manner of operation of the club as such is only nominal or pretended or amounts to a sham or subterfuge under which liquor is being sold as the principal object of the club, the license may be summarily suspended pending a hearing why it should not be revoked. [L Sp 1933, c 40, §14; RL 1935, §2583; am L 1937, c 211, §9; RL 1945, §7235; RL 1955, §159-33; HRS §281-34] Previous Vol05_Ch0261-0319 Next

281-35 Special conditions; club licenses

281-35 Special conditions; club licenses. [(a)] No liquor shall be sold under a club license to any person not a member of the club nor a guest thereof enjoying the privileges of membership, but a member or a guest enjoying the privileges of membership may purchase liquor for consumption on the premises by the person's own guests. [(b)] The liquor commission may by rule require the keeping and posting of lists of the members of a club, and the keeping and production of records as to membership and the registration of guests enjoying the privileges of membership. [(c)] No liquor shall be sold or kept for sale at any club except by the club itself pursuant to its license. If any liquor is sold or kept on the club premises for sale or barter by any member, employee, or person other than the club itself, the club shall be deemed to be selling without a license. [L Sp 1933, c 40, §16; RL 1935, §2585; RL 1945, §7237; RL 1955, §159-34; HRS §281-35; am L 1990, c 171, §12; am L 2006, c 44, §1; am L 2008, c 168, §7] Previous Vol05_Ch0261-0319 Next

281-35.5 Bill

281-35.5 Special conditions; condominium hotel licenses. A condominium hotel operator shall submit to the commission a copy of the information on the initial application for registration of the condominium hotel operator approved by the real estate commission pursuant to section 467-30, if the condominium hotel operator is required to be registered with the real estate commission. The condominium hotel operator shall maintain for inspection at the condominium hotel by any authorized employee of the commission a list of the units being utilized for transient lodgings from time to time as part of the condominium hotel.

281-36 REPEALED

281-36 REPEALED. L 1997, c 34, §1. Previous Vol05_Ch0261-0319 Next

281-37 Sales of alcohol

281-37 Sales of alcohol. No alcohol shall be sold, bartered, or otherwise furnished by any person whether holding a license to manufacture or sell the same under this chapter or not, except to a person holding a license to resell the same, or to a person holding a purchase permit from the liquor commission to purchase the same. Permits to purchase alcohol may be issued by the commission, without fee or charge therefor, to any person holding a license under the laws of the State to sell poisonous drugs, or to any person who in the opinion of the commission requires the use thereof for pharmaceutical or other purposes in the bona fide treatment of patients of such person, or for rubbing, cleansing, or as a preservative, or for any bona fide scientific purpose, but in no case for use for beverage purposes. On every sale of alcohol the seller, after first being satisfied that the person presenting a permit is the person therein named, shall make a record on the permit and sign the same showing the name of the purchaser, the date, the quantity sold, and the purpose declared as to the intended use thereof. The seller shall also keep a separate record of the same matters. If in any permit there is a prescribed limit as to the quantity purchasable thereunder at any one time or in the aggregate in any given period of time, the permit shall not be honored beyond its terms. The commission, by rules and regulations, where deemed appropriate, may provide for the sale of alcohol upon prescriptions of duly licensed physicians in lieu of the permits above mentioned. [L Sp 1933, c 40, §17; RL 1935, §2586; RL 1945, §7238; RL 1955, §159-36; HRS §281-37; gen ch 1985; am L 1986, c 339, §29] Previous Vol05_Ch0261-0319 Next

281-38 Conditions of licenses

281-38 Conditions of licenses. Every license issued under this chapter shall contain the condition that it is subject to this chapter and any other laws applicable to the business of the licensee, whether in existence at the time of issue of such license or enacted or amended from time to time thereafter, and to all applicable rules and regulations of the liquor commission as the same may exist or be adopted or changed from time to time. [L Sp 1933, c 40, §20; RL 1935, §2589; RL 1945, §7241; RL 1955, §159-38; HRS §281-38] Previous Vol05_Ch0261-0319 Next

281-39

281-39 Place of business; exception; solicitors' and representatives' permits.

(a) A license issued under this chapter shall authorize the doing of the business licensed only at the place described in the license, which shall be known as the licensed premises, except:

(1) In case of a removal with the prior written consent of the liquor commission indorsed on the license, or outside warehousing which may be located off the licensed premises with prior written consent of the liquor commission;

(2) That the units that are used to provide transient lodging under a class 15 license may change from time to time; provided that the condominium hotel operator shall submit quarterly to the commission the list of units being utilized as part of the condominium hotel and maintain a current list pursuant to section 281-35.5 at a condominium hotel for inspection by any authorized employee of the commission; and

(3) Any provision to the contrary notwithstanding, that a licensee holding a class 4 retail dealer license may deliver a customer's purchased liquor to the customer's vehicle located at a nearby curbside or other designated location.

(b) Except for a condominium hotel operator under a class 15 license, no change of premises under any issued license shall be allowed unless the doing of business on the new premises is authorized in the same manner as provided by this chapter for approval of any original premises; provided that the holder of any manufacturer's license or a wholesale dealer's license issued by the commission of any county may, through authorized solicitors or representatives, solicit and take orders for direct shipment of liquor in permitted quantities in any other county.

(c) Any person desiring to act as the authorized solicitor or representative of a manufacturer or wholesale dealer in any county shall make application to the commission of such county in which the person proposes to act for a permit to act as such.

(d) The application shall state the name of the applicant, the applicant's age, residence, and place of business, the name and address of the manufacturer or wholesale dealer the applicant represents and shall be accompanied by a statement from the manufacturer or wholesale dealer to the effect that the applicant has been appointed as its solicitor or representative. All sales and all orders taken for liquor by any such solicitor or representative shall be subject to the rules and regulations of the commission for the county within which the sales are made or orders taken. No solicitor or representative shall be permitted to have, own, or control any liquor for sale. [L Sp 1933, c 40, §21; RL 1935, §2590; am L 1939, c 205, pt of §1; RL 1945, §7242; RL 1955, §159-39; am L 1957, c 321, §1(c); am L 1965, c 31, §1(5); HRS §281-39; am L 1969, c 225, §1(c); am L 1972, c 177, §4; am L 1979, c 4, §1; gen ch 1985; am L 2007, c 53, §4; am L 2008, c 168,

§8; am L 2023, c 65, §2] Previous Vol05_Ch0261-0319 Next

281-39.5 Liquor license prohibited; where

281-39.5 Liquor license prohibited; where.

(a) The liquor commission or agency of each county may deny or restrict the issuance of a liquor license for on-site sale and consumption by the drink to any applicant whose establishment is or would be located within five hundred feet of a public or private elementary, intermediate, or high school, or public playground utilized extensively by minors, as determined by the liquor commission of each county; provided that the liquor commission or agency of each county shall deny the issuance of a liquor license if forty per cent of the:

(1) Registered voters for the area within five hundred feet of the nearest point of the premises for which the license is asked; or

(2) Owners and lessees of record of real estate and owners of record of shares in a cooperative apartment within five hundred feet of the nearest point of the premises for which the license is asked; have duly filed or caused to be filed their protests against granting the license. The distance of five hundred feet shall be measured from the boundary of the school or public playground to the boundary of the applicant's premises. Public or private beaches, and public or private day care centers located in or adjacent to commercial areas shall not be deemed schools or public playgrounds for purposes of this section. The provisions of this section shall not apply to establishments located within areas designated by the appropriate counties for resort purposes, or to hotel or condominium hotel liquor license applicants.

(b) This section shall apply only to the issuance of new liquor licenses for on-site sale and consumption by the drink and not to any renewal of such licenses.

281-40 Unlicensed liquor

281-40 Unlicensed liquor. No licensee shall have or keep any liquor whatever, for sale or consumption, on or in connection with the licensee's licensed premises except as authorized by the licensee's license. Any unauthorized liquor found thereon shall be subject to summary seizure, confiscation, and forfeiture, and may be disposed of as hereinafter provided. [L Sp 1933, c 40, §22; RL 1935, §2591; RL 1945, §7243; RL 1955, §159-40; HRS §281-40; gen ch 1985] Previous Vol05_Ch0261-0319 Next

281-41

281-41 Transfer of licenses; notice of change in officers, directors, and stockholders of corporate licenses, partners of a partnership license, and members or managers of a limited liability company license; penalty.

(a) No license issued under this chapter to an original applicant or to any transferee shall be transferable or be transferred within one year of the issuance or transfer, except for good cause shown to the satisfaction of the liquor commission. A transfer of license shall be for the same class, kind, and category of license. No license issued under this chapter shall be transferable or be transferred except upon written application to the commission by the proposed transferee, and after prior inspection of the premises, reference to, and report by an inspector, and a public hearing held by the commission not less than fourteen days after one publication of notice thereof, but without sending notice of the hearing by mail to persons being the owners or lessees of real estate situated within the vicinity of the premises and without the right to the owners or lessees to protest the transfer of a license. Exceptions are class 5 and 11 licensees who shall comply with the requirements as set forth in sections 281-57 to 281-60. Notwithstanding any provision of this chapter to the contrary, a class 2 license shall be transferrable; provided that the transferee certifies that the transferee intends to and shall derive no less than thirty per cent of the establishment's gross revenue from the sale of foods.

(b) A county may increase the requirements for transfers of class 5, category (1)(B) and (D), and class 11 licenses by ordinance designating one or more areas within the county as special liquor districts and specifying the requirements applicable to transfers of any of these licenses within each district.

(c) For the purpose of this section, "special liquor district" means an area designated by a county for restoration, reservation, historic preservation, redevelopment, rejuvenation, or residential protection, in which development is guided to protect or enhance the physical and visual aspects of the area for the benefit of the community as a whole.

(d) Where a license is held by a partnership, the commission may, notwithstanding any other provision of this section, approve the transfer of the partnership interest, without publication of notice at a public hearing, to any remaining partner or partners, upon the death or withdrawal of a partner of the partnership, or to a trust of which the partner is the trustee.

(e) Where a license is held by a partnership, limited partnership, or limited liability partnership, the admission or withdrawal of a partner, limited partner, or partner of a limited liability partnership shall not be deemed a transfer of the license; provided that the licensee shall, within thirty days from the date of the admission or withdrawal, so notify the commission in writing, stating the name of the partner, limited partner, or partner of a limited liability partnership who has been admitted or withdrawn, and any other information as may be required by the commission. If the commission finds that the partner or limited partner for whom notification is required as specified in this subsection does not meet statutory requirements to hold a license in the partner's or limited partner's own right pursuant to section 281-45, it may, in its discretion, revoke the license or suspend the license until the partner or limited partner is removed or replaced by a partner or limited partner who meets the statutory requirements to hold a license pursuant to section 281-45.

(f) Except as otherwise provided in this section, the same procedure shall be followed in regard to the transfer of a license as is prescribed by this chapter for obtaining a license. Sections 281-51 to 281-60, except where inconsistent with this section, are applicable to the transfers. The word "applicant", as used in sections 281-51 to 281-60, shall include each proposed transferee, and the words, "application for a license or for the renewal of a license", as used in those sections, shall include an application for the transfer of a license.

(g) Upon the hearing, the commission shall consider the application and any objections to the granting thereof and hear the parties in interest. It shall inquire into the propriety of each transfer and determine whether the proposed transferee is a fit person to hold the license. It may approve a transfer or refuse to approve a transfer and the refusal by the commission to approve a transfer shall be final and conclusive, unless an appeal is taken as provided in chapter 91.

(h) If any licensee without prior approval, approval of a temporary license, or approval of a management agreement transfers to any other person the licensee's business for which the licensee's license was issued, either openly or under any undisclosed arrangement, whereby any person, other than the licensee, comes into exclusive possession or control of the business or takes in any partner or associate who would not meet statutory requirements to hold a license pursuant to section 281-45, the commission may in its discretion suspend or cancel the license. For purposes of this subsection, "management agreement" means a written agreement under which a licensee allows a manager to manage and operate the licensee's business on behalf of the licensee.

(i) If the licensee is a corporation or limited liability company, a change in ownership of any outstanding capital stock or membership interest shall not be deemed a transfer of a license; provided that, in the case of a change in ownership of twenty-five per cent or more of the voting capital stock or membership interest or in the case of change in ownership of any number of shares of the stock or membership interest that results in the transferee thereof becoming the owner of twenty-five per cent or more of the outstanding voting capital stock or membership interest, the corporate or limited liability company licensee shall, within thirty days of the date of the transfer, apply for the approval of the transfer from the commission in writing. If the commission finds that the transferee does not meet statutory requirements to hold a license in the transferee's own right pursuant to section 281-45, it shall not approve the transfer. If any transfer is made without the approval of the commission, the commission may in its discretion revoke or suspend the license until it determines that the transferee meets the statutory requirements to hold a license, and if the commission finds that the transferee does not meet the statutory requirements to hold a license, until a retransfer or new transfer of the capital stock or membership interest is made to a person who meets the statutory requirements to hold a license pursuant to section 281-45. In addition, the corporate or limited liability company licensee, if not a publicly-traded company, or an entity ultimately solely owned by a publicly-traded company, shall, within thirty days from the date of election or admission of any officer, director, manager, or member, notify the commission in writing of the name, age, and place of residence of the officer, director, manager, or member, and any other information as may be required by the commission. A publicly-traded corporation or limited liability company, or a corporation or limited liability company ultimately solely owned by a publicly-traded company, shall, within thirty days from the date of election or admission of any replacement of an officer, director, manager, or member designated as a primary decision-maker regarding the purchase and sale of liquor, notify the commission in writing of the name, age, and place of residence of the officer, director, manager, or member. If the commission finds that the officer, director, manager, or member for whom notification is required to be given as specified in this subsection, does not meet statutory requirements to hold a license in the officer's, director's, manager's, or member's own right pursuant to section 281-45, it may in its discretion revoke the license or suspend the license until the officer, director, manager, or member is removed or replaced by a person who meets statutory requirements to hold a license pursuant to section 281-45.

(j) If a licensee closes out the business for which the license is held, during the term for which the license was issued, the licensee shall, within five days from the date of closing the same, give the commission written notice thereof and surrender the licensee's license for cancellation, unless the licensee obtains prior approval from the commission to place its license with the commission for safekeeping. For the purposes of this subsection, "safekeeping" means the holding of a liquor license at the commission office while the licensee is not operating.

(k) The conversion of an entity into any other form of entity or the merger of any entity with any other entity shall not be deemed a transfer of the license; provided that the licensee, within thirty days of the conversion or merger, shall apply for and secure the approval of the commission without any requirement for publication of notice. The foregoing shall not preclude compliance with subsection (e) upon a change in any of the partners or with subsection (i) upon change of any shareholders, officers, directors, managers, or members of any entity occurring concurrently with a conversion or merger. As used in this subsection, "entity" means a corporation, partnership, limited partnership, limited liability partnership, or limited liability company.

(l) Any officer, director, partner, limited partner, manager, or member not designated as a primary decision-maker shall be prohibited from coercing, pressuring, or otherwise unduly influencing the decision of a designated primary decision-maker to engage in any unlawful activity relating to the purchase and sale of liquor. If the commission finds that coercion, pressure, or other undue influence has been placed on a primary decision-maker by any officer, director, manager, or member who is not a designated primary decision-maker, the commission may in its discretion suspend or cancel the license. [L Sp 1933, c 40, §23; RL 1945, §7244; am L 1949, c 301, §1(c); am L 1951, c 223, §1(4); RL 1955, §159-41; am L 1957, c 321, §1(d); am L 1965, c 96, §97; am L 1967, c 119, §1; HRS §281-41; am L 1969, c 207, §1; am L 1971, c 76, §1; am L 1972, c 96, §1; am L 1980, c 256, §2; gen ch 1985; am L 1995, c 142, §1; am L 1998, c 90, §3; am L 2001, c 257, §4; am L 2002, c 120, §2; am L 2006, c 44, §2; am L 2009, c 184, §7; am L 2016, c 12, §1; am L 2017, c 184, §2; am L 2018, c 90, §2; am L 2021, c 66, §1] Previous Vol05_Ch0261-0319 Next

281-42

281-42 Manufacturers and wholesale dealers, special restrictions.

(a) It shall be unlawful for any person holding a manufacturer's license or a wholesale dealer's license to induce the purchases of a retail licensee by:

(1) Acquiring or holding any interest in any license of a retail licensee;

(2) Acquiring any interest in the real or personal property owned, occupied, or used by a retail licensee in the conduct of its business, unless the holding of the interest is permitted under the regulations of the liquor commission or a statement thereof has been filed with the commission and has not been disapproved by the commission;

(3) Furnishing, giving, renting, lending, or selling to a retail licensee any equipment, fixtures, signs, supplies, money, services, or other thing of value, subject to the exceptions contained in subpart D of the "tied house" regulations of the Bureau of Alcohol, Tobacco and Firearms of the United States Treasury Department, [title] 27 Code of Federal Regulations part 6 (1988), as may be amended;

(4) Paying or crediting a retail licensee for any advertising, display, or distribution service, whether or not the advertising, display, or distribution service received is commensurate with the amount paid by the retail licensee; provided that this paragraph shall not prohibit representatives of manufacturers and wholesalers from creating and maintaining displays and point of purchase sales materials, or from stocking shelves and cold boxes;

(5) Guaranteeing any loan or the repayment of any financial obligation of a retail licensee;

(6) Extending credit to the retail licensee for a period of time in excess of thirty days from the date of invoice;

(7) Requiring a retail licensee to take and dispose of any quota of liquor; or

(8) Requiring a retail licensee to purchase one product in order to purchase another product. This includes combination sales if one or more products may be purchased only in combination with other products and not individually; provided that a manufacturer or wholesale dealer shall not be prohibited from selling at a special combination price, two or more kinds or brands of products to a retail licensee if: (A) The retail licensee has an option of purchasing either product at the usual price; and (B) The retail licensee is not required to purchase any product it does not want.

(b) It shall be unlawful for any person holding a manufacturer's or wholesale dealer's license:

(1) To sell any liquor at wholesale prices without invoicing the vendee's license number, except where the vendee, although authorized to resell, is not required by law to hold a license, in which case the invoice shall fully indicate the

vendee's identity; or

(2) To sell any liquor, except for cash or by receiving payment in advance of delivery, to any retail licensee who has not paid in full for all previous purchases of liquor from such manufacturer or wholesaler by the expiration of the thirtieth day from the date of the invoice for such liquor.

(c) In construing subsection (a), the courts and the liquor commission shall follow the rules, regulations, and decisions of the Bureau of Alcohol, Tobacco and Firearms of the United States Treasury Department and the federal courts in interpreting section 5(b) of the Federal Alcohol Administration Act, as the same may be changed from time to time. [L Sp 1933, c 40, §24; RL 1935, §2593; am L 1937, c 211, §12; am L 1939, c 205, pt of §1; RL 1945, §7245; am L 1949, c 301, §1(d); am L 1951, c 223, §1(5); RL 1955, §159-42; HRS §281-42; am L 1971, c 175, §1; gen ch 1985; am L 1990, c 171, §13; am L 2020, c 70, §25] Previous Vol05_Ch0261-0319 Next

281-43 REPEALED

281-43 REPEALED. L 1979, c 192, §3. Previous Vol05_Ch0261-0319 Next

281-44

281-44 Advertisements and signs upon licensed premises.

(a) All licensed premises shall post a sign in or about the premises containing and notifying all customers and other persons of the possible sanctions that may be imposed for operating a vehicle under the influence of an intoxicant under sections 291E-41 and 291E-61. The sign shall be conspicuously positioned in order to be seen by an ordinarily observant person.

(b) The liquor commission may prescribe the character and extent of all other advertisements, posters, or signs which may be posted or maintained in or about the licensed premises. [L Sp 1933, c 40, §25; RL 1935, §2594; am L 1937, c 211, §13; RL 1945, §7246; am L 1949, c 301, §1(e); RL 1955, §159-44; HRS §281-44; am L 1977, c 121, §1; am L 1984, c 143, §1; am L 2001, c 157, §5] Previous Vol05_Ch0261-0319 Next

281-45 No license issued, when

281-45 No license issued, when. No license shall be issued under this chapter:

(1) To any minor or to any person who has been convicted of a felony and not pardoned; provided that the commission may grant a license under this chapter to a corporation or limited liability company that has been convicted of a felony where the commission finds that the corporation's officers, directors, and shareholders of twenty-five per cent or more of outstanding stock meet the statutory requirements to hold a license;

(2) To a corporation the officers and directors of which, or any of them, would be disqualified under paragraph (1) from obtaining the license individually, or a stockholder of which, owning or controlling twenty-five per cent or more of the outstanding capital stock, or to a general partnership, limited partnership, limited liability partnership, or limited liability company whose partner or member holding twenty-five per cent or more interest of which, or any of them would be disqualified under paragraph (1) from obtaining the license individually; provided that for publicly-traded corporations and limited liability companies or corporations or limited liability companies ultimately solely owned by a publicly-traded company, only the officers, directors, managers, or members designated as primary decision-makers shall be considered to determine disqualification under paragraph (1);

(3) Unless the applicant for a license or a renewal of a license, or in the case of a transfer of a license, both the transferor and the transferee, present to the issuing agency a tax clearance certificate from the department of taxation showing that the applicant or the transferor and transferee do not owe the state government any delinquent taxes, penalties, or interest; or that the applicant, or in the case of a transfer of a license, the transferor or transferee, has entered into an installment plan agreement with the department of taxation for the payment of delinquent taxes in installments and that the applicant is or the transferor or transferee is, in the case of a transfer of a license, complying with the installment plan agreement; provided that when the applicant or the transferor or transferee, in the case of a transfer of a license, is validly challenging a tax assessment, penalty, or other proceeding that prevents the issuance of a signed certificate from the appropriate federal or state tax agency, the commission shall issue a license that is valid for the period of time necessary to resolve the challenge;

(4) To an applicant for a class 2, class 4 except for convenience minimarts, class 5, class 6, class 11, class 12, class 13, class 14, class 15, class 17, or class 18 license unless the applicant for issuance of a license or renewal of a license, or in

the case of a transfer of a license, both the transferor and the transferee, present to the issuing agency proof of liquor liability insurance coverage in an amount of $1,000,000; or

(5) To any applicant who has had any liquor license revoked less than two years previous to the date of the application for any like or other license under this chapter. [L Sp 1933, c 40, §26; RL 1935, §2595; RL 1945, §7247; RL 1955, §159-45; am L 1957, c 293, §1 and c 321, §1(e); am L 1965, c 121, §1; HRS §281-45; am L 1982, c 65, §1; am L 1985, c 155, §2; am L 1987, c 223, §2; am L 1990, c 171, §14; am L 1991, c 101, §1; am L 2008, c 168, §9; am L 2009, c 177, §2 and c 184, §8; am L 2010, c 198, §3; am L 2014, c 211, §5; am L 2016, c 12, §2; am L 2017, c 184, §3; am L 2018, c 25, §1; am L 2021, c 66, §2]

281-46 Pool buying

281-46 Pool buying.

(a) No holder of a wholesale dealer's or manufacturer's license shall refuse to sell liquor to two or more licensees pursuant to any pool buying agreement between the licensees which has been filed with the commission having jurisdiction over the licensees; provided that:

(1) The pool buying agreement is in writing and designates one of the licensees as the agent of the others for the purpose of pool buying;

(2) Any order for pool buying from the holder of a manufacturer's or wholesale dealer's license shall be placed by the agent and payment for that order shall be made by the agent;

(3) The holder of a manufacturer's or wholesale dealer's license in selling to the agent shall follow invoice, record keeping, and delivery procedures which are in compliance with this chapter and the rules of the commission of each county having jurisdiction over the seller; and

(4) Each pool buying transaction shall be completed on the day transacted, and where the pool buying agreement is between or among licensees from different counties, the transaction shall be deemed completed when the product has been delivered to a freight forwarder, water carrier or private trucking firm for delivery to the licensees.

(b) As used in this section, "pool buying" means two or more licensees sharing the cost of a single purchase of liquor.

(c) Nothing in this section shall be deemed to exempt any licensee entering into any pool buying agreement from any antitrust laws.

281-47

281-47 Standard bar; music and dancing available. Any standard bar establishment may provide facilities for dancing by patrons, including a dance floor and live or recorded music, if the establishment is located in a commercial district and obtains the approval of the commission to provide such services on a one time trial basis not to exceed ninety days; provided that the music and dancing shall be allowed only during the trial period.

281-51 IV

281-51 Prior inspection. No license shall be issued under this chapter unless and until the liquor commission has caused to be made a thorough inspection of the premises upon which the proposed business is to be conducted and is satisfied as to its fitness and that all other general conditions and proposed methods of operation under the license are such as are suitable for carrying on the business in a reputable way. "In a reputable way" includes among other considerations operating in such a manner that activities within the premises or in such adjacent related outdoor areas such as parking lots or lanais will not create noise in excess of standards contained in state or county noise or vibration codes which intrudes into nearby residential units. [L Sp 1933, c 40, §27; RL 1935, §2596; RL 1945, §7248; RL 1955, §159-50; HRS 281-51; am L 1975, c 55, §2] Previous Vol05_Ch0261-0319 Next

281-52 Public hearing

281-52 Public hearing. No license shall be granted except after a public hearing by the liquor commission upon notice as prescribed in this chapter; provided that sections 281-57 to 281-60 shall not apply to the holder of a restaurant general license, a wholesale general license, a retail general license, or a dispenser's general license, who applies for a different kind of license within the class of the holder's existing license, on the same premises, or to the holder of a cabaret license who applies for a dispenser license of any kind, on the same premises, or to the holder of a dispenser's beer and wine license who applies for dispenser's beer license, on the same premises, or to a licensee whose licensed premises have been demolished and replaced by another building on the same premises and who applies for the same or lesser kind of

the same class of liquor license previously held by the licensee on said premises. [L Sp 1933, c 40, §28; RL 1935, §2597; am L 1939, c 205, pt of §1; RL 1945, §7249; RL 1955, §159-51; am L 1967, c 62, §1; HRS §281-52; am L 1969, c 197, §1; am L 1972, c 149, §1; gen ch 1985; am L 2008, c 168, §10]

281-53

281-53 Application; penalty for false statements. Every application for a license, the renewal of a license, or the transfer of a license shall be in writing, signed, and, except for the renewal of a license, notarized by the applicant, or in the case of a corporation or unincorporated association by the proper officer or officers thereof, or if a partnership by a general partner thereof, or if a limited liability partnership by a partner thereof, or if a member-managed limited liability company by a member thereof, or if a manager-managed limited liability company by a manager thereof, and shall be addressed to the liquor commission, and set forth:

(1) The full name, age, and place of residence of the applicant; if a copartnership, the names, ages, and respective places of residence of all the partners; if a limited liability company, its full name and the names of all its members; if a corporation or joint-stock company, its full name and the names of its officers and directors, and the names of all stockholders owning twenty-five per cent or more of the outstanding capital stock; if a publicly-traded company, or an entity ultimately solely owned by a publicly-traded company, the names of the officers designated as the primary decision-makers regarding the purchase and sale of liquor; and if any other association of individuals, the names, ages, and respective places of residence of its officers and the number of its members;

(2) A particular description of the place or premises where the proposed license is to be exercised, so that the exact location and extent thereof may be clearly and definitely determined therefrom;

(3) The class and kind of license applied for; and

(4) Any other matter or information pertinent to the subject matter, which may be required by the rules of the commission. If any false statement is knowingly made in any application that is not verified by oath, the person or persons signing the application shall be guilty of a misdemeanor and upon conviction thereof shall be punished as provided in section 281-102. [L Sp 1933, c 40, §29; RL 1935, §2598; am L 1937, c 211, §14; RL 1945, §7250; RL 1955, §159-52; am L 1957, c 321, §1(f); am L 1959, c 100, §1; am L 1967, c 167, §1; HRS §281-53; am L 1972, c 177, §5; am L 1990, c 171, §15; am L 1998, c 90, §4; am L 2008, c 168, §11; am L 2016, c 12, §3; am L 2017, c 184, §4; am L 2022, c 76, §6; am L 2024, c 58, §1] Previous Vol05_Ch0261-0319 Next

281-53.5 Bill

281-53.5 County liquor commissions; criminal history record check.

(a) The respective county liquor commissions may request a criminal history record check of an applicant for a liquor license in accordance with section 846-2.7; provided that neither a criminal history record check nor compliance with this section shall be required for the officers and directors of publicly-traded companies or entities ultimately solely owned by a publicly-traded company, who are not designated as primary decision-makers regarding the sale or purchase of liquor; provided further that a county liquor commission of a county with a population of less than five hundred thousand shall not request an officer, director, or board member of a nonprofit organization to be fingerprinted. The criminal history record check, at a minimum, shall require the applicant to disclose whether:

(1) The applicant has been convicted in any jurisdiction of a crime that would tend to indicate the applicant may be unsuited for obtaining a liquor license; and

(2) The judgment of conviction has not been vacated. For the purpose of this section, the criminal history disclosure made by the applicant may be verified by the liquor commission by means of information obtained through the Hawaii criminal justice data center. The applicant shall provide the Hawaii criminal justice data center with personal identifying information that shall include but not be limited to the applicant's name, social security number, date of birth, and gender. This information shall be secured only for the purpose of conducting the criminal history record check authorized by this section.

(b) The applicant shall submit to the liquor commission:

(1) A statement signed under penalty of law as to whether the applicant has ever been convicted of a crime other than a minor traffic violation;

(2) Written consent to request and obtain criminal history record information for verification; and

(3) Permission to be fingerprinted.

(c) The liquor commission shall obtain criminal history record information through the Hawaii criminal justice data center on the applicant. The information obtained shall be used exclusively for the stated purpose for which it was obtained and shall be subject to applicable federal laws and regulations currently or hereafter in effect.

281-54 Filing fees with application

281-54 Filing fees with application. A filing fee in such amount as shall be established by the respective liquor commission shall be paid with any application for an initial issuance of a license or for a transfer of a license. Where a license is granted, the filing fee deposited with the application shall become part payment of the fee required for such license. Where an application is denied or withdrawn, the filing fee paid shall become a realization of the county.

281-55 Reference to investigator

281-55 Reference to investigator. Upon the filing of any application the administrator of the liquor commission shall indorse thereon the date of filing thereof. If no patent disqualification of the applicant or certain valid objection to the granting of the application is apparent initially and if all requirements relative to the filing of the application appear to have been complied with, the application shall be referred to the investigator for investigation. [L Sp 1933, c 40, §30; RL 1935, §2599; RL 1945, §7251; RL 1955, §159-54; HRS §281-55; am L 1975, c 55, §3; am L 1990, c 171, §16] Previous Vol05_Ch0261-0319 Next

281-56 Report by investigator

281-56 Report by investigator.

(a) On every application referred to the investigator under section 281-55, the investigator shall report in writing to the liquor commission and, if the application is for a license of any class other than class 8, class 9, or class 10, the report shall include:

(1) A description of the premises intended to become the licensed premises, and the equipment and surrounding conditions, including the relationship to surrounding residences that may share a common boundary or a common structure with the premises proposed for licensing;

(2) If the application is made by a person who has held a prior license for the same or any other premises within two years past, a statement as to the manner in which the premises have been operated and the business conducted under the previous license;

(3) The locality of any church, chapel, or school, if any, within a distance of five hundred feet from the nearest point of the premises for which the license is proposed to the nearest point of the church, chapel, or school grounds;

(4) The number, position, and distance from the premises, in respect of which a license is applied for, of any other licensed premises of the same class in the neighborhood;

(5) The number of licenses of the same class or kind already issued and being lawfully exercised within the county;

(6) Whether or not the applicant is for any reason disqualified by this chapter from obtaining or exercising a license; and whether or not the applicant has complied with all the requirements of this chapter relative to the making and filing of the applicant's application;

(7) For the next application by the same applicant for a license in the same physical location that was previously denied, refused, or withdrawn, evidence, to be provided by the applicant, of a substantial change in the circumstances that caused the previous denial, refusal, or withdrawal; and

(8) The possible adverse effects the premises, after licensing, may have on the surrounding community if the license application is for premises within a county having a population of five hundred thousand residents or more.

(b) A copy of the report shall be furnished to the applicant not less than forty-eight hours before any hearing is had upon the application. Upon written request, a copy of the report shall be furnished to any requester.

(c) The applicant and any protester may challenge findings contained in the investigator's report before or at any hearing on the application. [L Sp 1933, c 40, §31; RL 1935, §2600; am L 1937, c 211, §15; am L 1939, c 205, pt of §1; am L Sp 1941, c 89, §1(c); RL 1945, §7252; am L 1945, c 217, §1; RL 1955, §159-55; HRS §281-56; am L 1971, c 113, §1; am L 1975, c 55, §4; gen ch 1985; am L 1990, c 171, §17; am L 2001, c 257, §5; am L 2002, c 120, §3; am L 2008, c 168, §12; am L 2022, c 76, §7]

281-57

281-57 Preliminary hearing; notice of public hearing.

(a) Upon the filing of the investigator's report upon any application the liquor commission may hold a preliminary hearing and upon such preliminary hearing it may deny the application. A notice of preliminary hearing on a previously denied, refused, or withdrawn application shall be given seven days before the preliminary hearing to any person who submitted a written request for notice.

(b) If no preliminary hearing is had or if the application is not denied upon a preliminary hearing, the commission shall fix a day for the public hearing of the application (other than an application for an alcohol license or a license in classes 8 to 10 and 13) and shall give public notice of the hearing at least once in each of two consecutive weeks, in the county, the date of the hearing to be not less than forty-five days after the first notice. The notice shall require that all protests or objections against the issuance of the license applied for shall be filed with the administrator of the commission at or before the time of hearing. Before giving the notice the commission shall collect from the applicant the cost of giving the public notice or require a deposit to cover the same.

(c) Immediately upon the commission's fixing a day for the public hearing of the application, the applicant shall mail a notice setting forth the time and place of the hearing on the application to each of the following:

(1) Not less than two-thirds of the owners and lessees of record of real estate and owners of record of shares in a cooperative apartment or to those individuals on the list of owners as provided by the managing agent or governing body of the shareholders association situated within a distance of five hundred feet from the nearest point of the premises for which the license is asked to the nearest point of such real estate or cooperative apartment; provided that in meeting this requirement, the applicant shall mail a notice to not less than three-fourths of the owners and lessees of record of real estate and owners of record of shares in a cooperative apartment situated within a distance of one hundred feet from the nearest point of the premises for which the license is asked. Notice by mail may be addressed to the last known address of the person concerned or to the address as shown in the current real property tax record of the person or the person's agent or representative;

(2) In counties with a population of five hundred thousand or more, not less than two-thirds of the registered voters residing within, and small businesses situated within, a distance of five hundred feet from the nearest point of the premises for which the license is asked; provided that in meeting this requirement, the applicant shall mail notices to not less than three-fourths of the registered voters residing within, and small businesses situated within, a distance of one hundred feet from the nearest point of the premises for which the license is asked. This paragraph shall not apply to applications for class 2, class 4, class 12, and class 15 licenses. A notice sent pursuant to this paragraph shall be addressed to the "occupant" of the residential unit or small business; and

(3) For each condominium project and cooperative apartment within the five hundred-foot area, one notice of the hearing shall be sent by mail addressed "To the Residents, Care of the Manager", followed by the name and address of the condominium or cooperative apartment involved. The notices required under this subsection shall be mailed at least forty-five days prior to the date set for the hearing. No promotional information shall be allowed on, or accompany the notice. Before the hearing, and within seven business days of having mailed the notices, the applicant shall file with the commission an affidavit that the notices have been mailed in compliance with this subsection. In addition to the affidavit (which shall be made available within the same seven-business-day period with proof of having mailed the notices), the applicant shall include both a master list of one hundred per cent of addressees and addresses required by paragraphs (1), (2), and (3), and another mailing list consisting of the portion of addressees and their respective addresses who were mailed the notice purposely needed to meet the requirements of paragraphs (1), (2), and (3). The affidavit, master list, and mailing list shall be made available within seven business days (of the mailing of the notice by the applicant) by the commission for public review upon request. For purposes of this section, "master list" means every owner and lessee who would otherwise be required to receive notice of the public hearing according to the requirement of paragraphs (1), (2), and (3), even if they were not actually included in the two-third or three-fourths requirement (as the case may be) of paragraph (1) or (2), and every condominium project and cooperative apartment qualifying in paragraph (3). When the requirements of this section have not been met, the commission may cancel the hearing or continue the public hearing subject to the provisions of this section.

(d) For purposes of this section, notice to one co-owner and one co-lessee of real estate shall be sufficient notice to all co-owners and all co-lessees of that real estate; and one notice is sufficient to an owner or lessee of multiple parcels; except that one notice shall be sent to each individual unit of a cooperative apartment as provided in this section. [L Sp

1933, c 40, §32; RL 1935, §2601; am L 1935, c 105, §11; RL 1945, §7253; RL 1955, §159-56; am L 1965, c 181, §1 and c 258, §1; HRS §281-57; am L 1975, c 55, §5; am L 1979, c 105, §27; am L 1980, c 256, §3; am L 1982, c 39, §1 and c 296, §1; am L 1984, c 123, §1 and c 269, §4; gen ch 1985; am L 1990, c 171, §18; am L 1994, c 227, §1; am L 1998, c 2, §83; am L 2001, c 257, §6; am L 2007, c 53, §6; am L 2008, c 168, §13; am L 2009, c 184, §9]

281-58 Protests

281-58 Protests. Protests against the granting of a license may be filed by any person. Protests against the granting of a license upon such application, which qualifies for an automatic refusal pursuant to section 281-39.5 or 281-59, may be so filed by any registered voter for the area within five hundred feet of the nearest point at which the applicant proposes to establish or continue the applicant's business under the license applied for, or by any owner or lessee of record of real estate or by any owner of record of a share in a cooperative apartment situated within a distance of five hundred feet from the nearest point of the premises for which the license is asked to the nearest point of such real estate or cooperative apartment. [L Sp 1933, c 40, §33; RL 1935, §2602; RL 1945, §7254; RL 1955, §159-57; HRS §281-58; am L 1972, c 177, §6; am L 1984, c 123, §2; gen ch 1985; am L 2008, c 168, §14] Previous Vol05_Ch0261-0319 Next

281-59 Hearing; rehearing

281-59 Hearing; rehearing.

(a) Upon the day of hearing, or any adjournment thereof, the liquor commission shall consider the application and any protests and objections to the granting thereof, and hear the parties in interest. The liquor commission shall accept all written or oral testimony for or against the application whether the application is denied, refused, or withdrawn. Within ninety days after the hearing, or within one hundred twenty days thereafter if in its discretion the commission extends the ninety days to one hundred twenty days, and gives public notice of same, the commission shall give its decision granting or refusing the application; provided that if a majority of the:

(1) Registered voters for the area within five hundred feet of the nearest point of the premises for which the license is asked; or

(2) Owners and lessees of record of real estate and owners of record of shares in a cooperative apartment within five hundred feet of the nearest point of the premises for which the license is asked, have duly filed or caused to be filed their protests against the granting of the license, or if there appears any other disqualification under this chapter, the application shall be refused. Otherwise, the commission may in its discretion grant or refuse the same. For purposes of defining "a majority of the owners and lessees of record of real estate and owners of record of shares in a cooperative apartment", each property counts only once; provided that roadways shall not be included. A protest submitted by the majority of the co-owners or the majority of the co-lessees of a property shall constitute a protest by all the owners or lessees of record of that property. A protest filed by owners or lessees who own more than one property shall be counted for each property.

(b) The liquor commission shall make available to the applicant and any protester for review before the public hearing, the protest list of those persons who filed a protest or objection to the application; provided that the applicant shall not use the protest list to attempt to influence in any way any protester to withdraw the protest or objection. All applicants and protesters may submit corrections, additions, and subtractions to the master list and the protest list at the public hearing; provided that additions or corrections to the voter registration list shall be certified by the clerk of the county. The liquor commission shall rule on proposed corrections, additions, and subtractions and give reasons for the ruling.

(c) The commission may also, with like discretion:

(1) Grant a license to one person in preference to another, without reference to any priority in the order of filing of the applications; and

(2) Of its own motion, or on the suggestion of any member, or of the investigator take notice of any matter or thing which in the opinion of a majority of its members would be a sufficient objection to the granting of a license; but in such case if the objection is one to which the applicant should be given a reasonable time to answer, a continuance may be granted in the discretion of the commission; provided that in any case where any person affected by such decision petitions the commission for a rehearing of the application and on oath alleges facts and grounds for consideration which were not formerly presented or considered, or any other matter of fact which in the judgment of the commission seems sufficient to warrant a rehearing, such rehearing may be granted by the commission in its discretion upon the publication of notice of rehearing at least seven days before the date of the rehearing. When a rehearing is allowed notice shall be given to the

applicant and to the applicant's opponents, by publication or otherwise as the commission shall direct. [L Sp 1933, c 40, §34; RL 1935, §2603; RL 1945, §7255; RL 1955, §159-58; am L 1957, c 321, §1(g); HRS §281-59; am L 1972, c 177, §7; am L 1984, c 123, §3; gen ch 1985; am L 1990, c 171, §19; am L 1995, c 142, §2; am L 2001, c 257, §7; am L 2008, c 168, §15; am L 2009, c 184, §10]

281-61 Renewals

281-61 Renewals.

(a) Other than for good cause, the renewal of an existing license shall be granted upon the filing of an application; provided that if:

(1) Complaints from the public;

(2) Reports from the commission's investigators; or

(3) Adjudications of the commission or the liquor control adjudication board, indicate that noise created by patrons departing from the premises disturbs residents on the street or of the neighborhood in which the premises are located, or that noise from the premises or adjacent related outdoor areas such as parking lots or lanais exceed standards contained in state or county noise codes or intrudes into nearby residential units, the commission may deny the renewal application or withhold the issuance of a renewed license until corrective measures meeting the commission's approval are taken.

(b) The commission or board, pursuant to section 281-17, at the time of renewal or at any time, may revoke, suspend, or place conditions or restrictions on any license issued under this chapter for the purpose of preventing activities within the licensed premises or adjacent areas that are potentially injurious to the health, safety, and welfare of the public and neighborhood including but not limited to criminal activity, including assault, drug dealing, drug use, or prostitution, upon proper notice to the licensee, and a hearing before the commission pursuant to chapter 91.

(c) The commission or board shall deny renewal of a class 2, class 4, class 5, class 6, class 11, class 12, class 13, class 14, class 15, class 17, or class 18 license if the applicant for renewal fails to present proof of the liquor liability insurance required by section 281-31(s). [L Sp 1933, c 40, §36; RL 1935, §2605; am L 1935, c 105, §12; am L 1937, c 211, §16; am L 1939, c 205, pt of §1; am L Sp 1941, c 89, §1(c); RL 1945, §7257; RL 1955, §159-60; HRS §281-61; am L 1975, c 55, §6; am L 1987, c 256, §1; am L 1990, c 171, §21; am L 1995, c 192, §1; am L 1999, c 39, §1; am L 2008, c 168, §16; am L 2009, c 177, §3; am L 2010, c 198, §4; am L 2014, c 211, §6] Previous Vol05_Ch0261-0319 Next

281-62

281-62 Reduction or increase in area of licensed premises. The liquor commission may, in its discretion, permit the reduction or the increase in the area of the licensed premises of any licensee without publication of notice at a public hearing; provided that, where an increase in premises may significantly impact the public, the commission may require hearings pursuant to sections 281-39.5 and 281-57 to 281-60. Whenever any reduction or increase is permitted, the same shall be endorsed in some appropriate manner upon the license.

281-71 V

281-71 Posting of license. Every license issued and in effect under this chapter shall at all times be conspicuously posted and exposed to view, convenient for inspection, on the licensed premises. For failure thereof the license may be suspended or revoked by the liquor commission or liquor control adjudication board. [L Sp 1933, c 40, §37; RL 1935, §2606; RL 1945, §7259; RL 1955, §159-70; HRS §281-71; am L 1998, c 249, §11] Previous Vol05_Ch0261-0319 Next

281-72 Condition of premises

281-72 Condition of premises. All premises licensed or proposed to be licensed shall be constructed, arranged, furnished, equipped, maintained, and operated in such manner as may be prescribed by the liquor commission. [L Sp 1933, c 40, §38; RL 1935, §2607; RL 1945, §7260; RL 1955, §159-71; HRS §281-72] Previous Vol05_Ch0261-0319 Next

281-73 Quality of liquor; penalty

281-73 Quality of liquor; penalty. No liquor at any time manufactured or sold in the State shall be other than of a pure quality, according to any applicable legal standard therefor under the laws of the United States, unadulterated with any mixture of noxious, deleterious, or poisonous substance. Any person who manufactures or sells any liquor of a quality or character contrary to this section, shall be guilty of a misdemeanor and upon conviction shall be punished as in section 281-102 provided. [L Sp 1933, c 40, §39; RL 1935, §2608; RL 1945, §7261; RL 1955, §159-72; HRS §281-73]

281-74 Labels on containers

281-74 Labels on containers. All persons manufacturing any liquor for sale under this chapter shall securely and permanently attach to every container thereof, as the same is manufactured, a label stating the name of the manufacturer or, in lieu thereof, if the manufacturer does business under another name, stating such name, and stating the kind and quantity of liquor contained therein. Every container containing liquor for sale by any person holding a wholesale or retail license shall have securely and permanently attached to it such a label. In addition to the foregoing requirements, all such labels shall conform in all respects to the then existing federal laws and regulations regarding such labels. Before attaching any label containing the name by which the manufacturer does business, in lieu of the manufacturer's name, the manufacturer shall first register such business name under chapter 482. The manufacturer shall furnish to the liquor commission written confirmation of such registration and such other information as may be deemed necessary or appropriate by the liquor commission to enable it to establish and maintain records to properly identify the manufacturer, its name or names by which it does business and the liquor manufactured. The records so established and maintained shall be available for public inspection. [L Sp 1933, c 40, §40; RL 1935, §2609; am L 1937, c 211, §18; RL 1945, §7262; RL 1955, §159-73; am L 1965, c 94, §1; HRS §281-74; gen ch 1985] Previous Vol05_Ch0261-0319 Next

281-75 Analyses

281-75 Analyses. Whenever the liquor commission or investigator thereof has reason to believe or suspect, on complaint or otherwise, that any liquor being manufactured or which is possessed or kept for sale by any licensee is or may be impure or adulterated or otherwise not conformable to any lawful requirement, the commission or investigator thereof or other person authorized in writing by the commission or by the investigator may secure a sample thereof for analysis. Upon such sample being obtained, as though by ostensible purchase or otherwise, the person procuring the same shall immediately disclose to the licensee the person's office or authority and purpose, and in case the procurer is a person other than the commission or the investigator the procurer shall then deliver to the licensee a copy of the written order for the procurement of the sample. The bottle or other container containing the sample shall then and there be sealed by the procurer thereof before being taken from the premises of the licensee and the licensee may also attach the licensee's seal thereto. The investigator shall cause the sample so obtained to be immediately delivered with the seal or seals unbroken to the state department of health or some competent analyst employed by the commission who shall make an analysis of the liquor and shall send a certified report thereof to the investigator, who shall immediately file the same with the commission's administrator. If the sample analyzed is found pure and unadulterated and conformable with all legal requirements for such liquor, the certificate referred to in the preceding paragraph shall so state, and the commission shall pay to the licensee a sum equal to the value of the sample, and if requested by the licensee the administrator shall furnish the licensee a copy of the analysis. If the certificate of analysis shows the sample to be impure or adulterated or contrary to any legal requirement the licensee shall be prosecuted for selling, or offering for sale, or furnishing forbidden liquor in violation of this chapter. [L Sp 1933, c 40, §41; RL 1935, §2610; RL 1945, §7263; RL 1955, §159-74; am L Sp 1959 2d, c 1, §19; HRS §281-75; gen ch 1985; am L 1990, c 171, §22] Previous Vol05_Ch0261-0319 Next

281-76 Tampering with samples; penalty

281-76 Tampering with samples; penalty. Any person who tampers with any sample of liquor taken for analysis under this chapter shall be fined not more than $2,000 or imprisoned not more than one year, or both. [L Sp 1933, c 40, §42; RL 1935, §2611; RL 1945, §7264; RL 1955, §159-75; HRS §281-76; am L 1990, c 171, §23] Previous Vol05_Ch0261-0319 Next

281-77 Refusal of samples; penalty

281-77 Refusal of samples; penalty. Any licensee who refuses to deliver or accede to the taking of any sample of liquor for analysis upon disclosure of the procurer's authority as provided by section 281-75 shall be fined not more than $2,000. [L Sp 1933, c 40, §43; RL 1935, §2612; RL 1945, §7265; RL 1955, §159-76; HRS §281-77; am L 1990, c 171, §24] Previous Vol05_Ch0261-0319 Next

281-78.5

281-78.5 Practices to promote excessive consumption of liquor; prohibited.

(a) No person licensed to sell liquor for consumption on the premises shall engage in practices which promote excessive consumption of liquor.

(b) The liquor commission shall adopt rules pursuant to chapter 91 to prohibit specific liquor promotion practices which promote excessive consumption of liquor; provided that any rules adopted by the counties related to the stacking of liquor shall specify that:

(1) Stacking of beer shall be defined based on a standard serving size of total volume; and

(2) A standard serving size of beer shall be defined as not exceeding a total volume of thirty-two ounces before a customer at any one time.

(c) Any person who violates this section or any rule adopted by the commission pursuant to this chapter shall be guilty of a violation for each separate offense. Each date of violation shall constitute a separate offense.

281-79

281-79 Entry for examination; obstructing liquor commission operations; penalty. Every investigator shall, and any officer having police power may, at all reasonable times, and at any time whatsoever if there is any reasonable ground for suspicion that the conditions of any license are being violated, without warrant enter into and upon any licensed premises and inspect the same and every part thereof, and any books or records therein, to ascertain whether or not all conditions of the license and all provisions of this chapter are being complied with by the licensee. If any investigator or officer, or any person called by the investigator or officer to the investigator's or officer's aid, is threatened with the use of violence, force, or physical interference or obstacle, or is hindered, obstructed, or prevented by any licensee, the licensee's employees, or any other person from entering into the premises, or whenever any investigator or officer is by any licensee, the licensee's employees, or any other person opposed, obstructed, or molested in the performance of the officer's duty in any respect, the licensee, the licensee's employee, or any other person shall be fined not more than $2,000 or imprisoned not more than one year, or both. Whenever any investigator or officer, having demanded admittance into any licensed premises and declared the investigator's or officer's name and office, is not admitted by the licensee or the person in charge of the premises, it shall be lawful for the investigator or officer to forcibly and in any manner to break into and enter the premises. [L Sp 1933, c 40, §49; RL 1935, §2618; RL 1945, §7267; RL 1955, §159-78; HRS §281-79; gen ch 1985; am L 1986, c 344, §15; am L 1990, c 171, §26; am L 2022, c 76, §8] Previous Vol05_Ch0261-0319 Next

281-80 Arrest

281-80 Arrest. Any investigator or police officer who observes any violation by any person of this chapter or of any rule or regulation of the liquor commission, may forthwith arrest the person without a warrant. Whenever any violation of this chapter or of the regulations of the commission occurs in the presence of any licensee, or any investigator or police officer, upon request of the licensee the police officer or investigator may assist the licensee in arresting any patron for violation thereof. [L Sp 1933, c 40, §50; RL 1935, §2619; am L 1939, c 205, pt of §1; RL 1945, §7268; RL 1955, §159-79; HRS §281-80; am L 1990, c 171, §27] Previous Vol05_Ch0261-0319 Next

281-81 REPEALED

281-81 REPEALED. L 1988, c 383, §7. Previous Vol05_Ch0261-0319 Next

281-82 No action for debt

281-82 No action for debt. No person except a licensed manufacturer or licensed wholesale or retail dealer or his heirs, personal representatives, trustees, or assigns with respect to sales regularly made under his license shall recover by any process of law any debt or demand on account of the sale on credit of any liquor, nor on any note or like obligation given in payment for liquor. [L Sp 1933, c 40, §52; RL 1935, §2621; RL 1945, §7270; RL 1955, §159-81; HRS §281-82; am L 1976, c 200, pt of §1] Previous Vol05_Ch0261-0319 Next

281-83 REPEALED

281-83 REPEALED. L 1986, c 344, §16; L 1989, c 149, §1. Previous Vol05_Ch0261-0319 Next

281-84

281-84 Exclusion of intoxicated person from premises; penalty. Every person who, being under the influence of liquor, enters any premises licensed for the sale of liquor, or being under the influence of liquor there remains after having been requested by the licensee or any person in the licensee's employ to leave the premises, shall be guilty of a misdemeanor and upon conviction thereof shall be punished as in section 281-102 provided. [L Sp 1933, c 40, §53; RL 1935, §2622; RL

1945, §7272; RL 1955, §159-83; HRS §281-84; gen ch 1985]

281-85

281-85 Prize, gift, premium, and other inducement.

(a) Unless otherwise provided by this chapter, it shall be unlawful for any person to offer or to provide any intoxicating liquor as a prize or inducement at any public amusement, public gathering or place open to the public.

(b) It shall be unlawful for any person acting as agent or representative of a nonresident principal or for any licensee directly or indirectly, or through any subsidiary or affiliate, to give any premium or free goods of intoxicating liquor or other merchandise in connection with the sale of any intoxicating liquor; or to offer or to provide any premium or free goods of intoxicating liquor in connection with the sale of other merchandise.

(c) No retail dealer and no licensee who is authorized to sell liquor for consumption on the licensee's premises shall solicit or accept, either directly or indirectly, a premium or free goods of any nature in connection with the retail dealer's or licensee's purchase of liquor from a manufacturer or wholesale dealer.

281-91 VI

281-91 Revocation or suspension of license; hearing. The liquor commission or liquor control adjudication board may revoke any license at any time issued, or suspend the right of the licensee to use the licensee's license, or assess and collect a penalty, or reprimand the licensee, either for the violation of any condition of the license or of any provisions of this chapter or of any rule applicable thereto, or upon the conviction in a court of law of the licensee of any violation of this chapter or of any other law relative to the licensee's license or the proper exercise thereof, or of any violation of law in any other respect on account whereof the commission or board may deem the licensee to be an unfit or improper person to hold a license, or for any other cause deemed sufficient by the commission or board. In every case where it is proposed to revoke or suspend the exercise of any license or assess and collect a penalty for any cause other than a conviction at law of the licensee as above specified, the licensee shall be entitled to notice and hearing in conformity with chapter 91, the notice to be given at least five days before the hearing, except that any special license shall be subject to summary revocation for any violation of or evidence of intent to violate the proper exercise thereof, without hearing before the commission or board. At the hearing, before final action is taken by the commission or board, the licensee shall be entitled to be heard in person or through counsel and shall be given a full and fair opportunity to present any facts showing that the alleged cause or causes for the proposed action do not exist, or any reasons why no penalty should be imposed. The testimony taken at the hearing shall be under oath and recorded stenographically, or by machine, but the parties shall not be bound by the strict rules of evidence; certified copies of any transcript and of any other record made of or at the hearing shall be furnished to the licensee upon the licensee's request and at the licensee's expense. Any order of revocation, suspension, fine, or reprimand imposed by the commission or board upon the licensee shall be in addition to any penalty that might be imposed upon the licensee upon the licensee's conviction at law for any violation of this chapter. No licensee shall be subject to both the penalty assessed and collected by the commission or board and to revocation or suspension of license. The amount of penalty assessed and collected by the commission or board from any licensee for any particular offense shall not exceed the sum of $5,000. Whenever the service of any order or notice shall be required by this section, the service shall be made in the following manner: in the case of any violation based upon the personal observation of any investigator, a written notice of the violation shall be given to the licensee or the licensee's registered manager in active charge of the premises, or by serving a certified copy of the notice or order upon the holder of the license wherever the holder may be found in the circuit wherein the holder is licensed, or, if the holder cannot be found after diligent search, by leaving a certified copy thereof at the holder's dwelling house or usual place of abode with some person of suitable age and discretion residing therein; and if the holder of the license cannot be found after diligent search, and service cannot be made, then service may be made by posting a certified copy of the notice or order in a conspicuous place on the licensed premises and depositing another certified copy thereof in the certified mail of the United States post office, postage prepaid, addressed to the holder of the license at the holder's last known residence address; provided that in the case of a partnership, corporation, unincorporated association, or limited liability company, service may be made upon any partner, officer, or member thereof. [L Sp 1933, c 40, §55; RL 1935, §2624; am L Sp 1941, c 89, §1(f); RL 1945, §7275; am L 1949, c 314, §1; RL 1955, §159-90; am L 1957, c 321, §1(h); am L 1965, c 96, §98; HRS §281-91; am L 1976, c 87, §5; gen ch 1985; am L 1987, c 223, §3; am L 1990, c 171, §29; am L 1998, c 90, §5 and c 249, §12; am L 2022, c 45, §2] Previous Vol05_Ch0261-0319 Next

281-92 Appeals

281-92 Appeals. Any licensee aggrieved by any order assessing or providing for the collection of a penalty, or by any order suspending or revoking any license, may appeal therefrom in the manner provided in chapter 91 to the circuit court of the circuit in which the liquor commission or liquor control adjudication board making the order has jurisdiction and the judgment of the court shall be subject to review, subject to chapter 602, in the manner provided for civil appeals from the circuit courts. [L Sp 1941, c 41, §1; RL 1945, §7276; am L 1951, c 280, §1; RL 1955, §159-91; am L 1965, c 96, §99; HRS §281-92; am L 1979, c 149, §2; am L 1980, c 232, §11; am L 1998, c 249, §13; am L 2004, c 202, §35; am L 2006, c 94, §1; am L 2010, c 109, §1] Rules of Court Appeal to circuit court, see HRCP rule 72; appeals, see Hawaii Rules of Appellate Procedure. Previous Vol05_Ch0261-0319 Next

281-93 Reports to prosecuting officers

281-93 Reports to prosecuting officers. When the revocation or suspension of any license is by reason of any violation of law the liquor commission or the administrator shall report the facts to the prosecuting officer for prosecution. [L Sp 1933, c 40, §56; RL 1935, §2625; RL 1945, §7277; RL 1955, §159-92; HRS §281-93; am L 1998, c 249, §14] Previous Vol05_Ch0261-0319 Next

281-94 Forfeiture of fee paid

281-94 Forfeiture of fee paid. If any license is revoked or canceled by the liquor commission or liquor control adjudication board, the fee paid for the license or any unexpended portion thereof shall be forfeited to the county. [L Sp 1933, c 40, §57; RL 1935, §2626; RL 1945, §7278; RL 1955, §159-93; HRS §281-94; am L 1998, c 249, §15; am L 2006, c 44, §3] Previous Vol05_Ch0261-0319 Next

281-95 Bankruptcy, insolvency, death

281-95 Bankruptcy, insolvency, death. If a licensee becomes a legally adjudicated bankrupt, or makes an assignment for the benefit of the licensee's creditors, or dies, before the expiration of the term of the licensee's license, the licensee's trustee in bankruptcy, assignee, or personal representative, as the case may be, may, with the consent of the liquor commission, continue to exercise the license for the purpose of closing the affairs of the estate; but if not so continued within forty-five days the commission shall cancel the license. If a mortgage on the premises covered by a license is foreclosed before the expiration of the term of the license, the mortgagee, or the mortgagee's authorized representative or a duly appointed commissioner of sale may, with the consent of the commission, continue to exercise the license or continue it in effect for the purpose of completing a sale of the premises under the foreclosure proceedings. Notwithstanding any rule or regulation of the commission to the contrary, the payment of any renewal fee for a license issued for the premises involved in foreclosure proceedings or additional fee accrued on the basis of gross sales made under such a license may be withheld until sale of the premises has been completed. [L Sp 1933, c 40, §58; RL 1935, §2627; RL 1945, §7279; RL 1955, §159-94; am L 1959, c 207, §1; HRS §281-95; am L 1976, c 87, §6 and c 200, pt of §1; gen ch 1985] Previous Vol05_Ch0261-0319 Next

281-96 Cancellation

281-96 Cancellation. If the use of the premises covered by any license becomes lost to the licensee by reason of being sold under foreclosure proceedings, or a civil execution, or other legal process, or for any other cause, which shall force a cessation of the business of the licensee thereon under the license (other than by a revocation or suspension of the licensee's license), the liquor commission may cancel or suspend the license unless the liquor commission has approved the safekeeping of the license pursuant to section 281-41(j). [L Sp 1933, c 40, §59; RL 1935, §2628; RL 1945, §7280; RL 1955, §159-95; HRS §281-96; am L 1976, c 87, §7; gen ch 1985; am L 1990, c 171, §30; am L 2017, c 184, §6] Previous Vol05_Ch0261-0319 Next

281-97

281-97 When sale without license authorized. In case a license is revoked or canceled or not renewed, the licensee may with the permission of and upon the conditions set by the liquor commission sell intoxicating liquors then in the licensee's possession within sixty days, or within such additional time allowed by the commission, unless under this chapter the same are seized or forfeited. Any bank, trust company, or financial institution owning or possessing intoxicating liquor which was acquired by the bank, trust company, or financial institution in the ordinary course of its business, may sell the intoxicating liquor with the permission of and upon conditions set by the commission. Any person acting as personal representative, or guardian of a licensee's estate, or any receiver, assignee for benefit of creditors, trustee in bankruptcy, may sell the stock of intoxicating liquor with the permission of and upon conditions set by the commission, except as

otherwise provided in this chapter. Any insurance company, or any common carrier acting as an insurer for losses to persons shipping intoxicating liquor, may take possession of and sell the intoxicating liquor, the containers of which have been damaged by fire or otherwise, with the permission of and upon conditions set by the commission. Any person in possession of a stock of lawfully acquired intoxicating liquor under a foreclosure proceeding, proceedings for enforcement of a lien, civil execution, or under any other proceeding or process, may sell such intoxicating liquor with the permission of and upon conditions set by the commission. [L Sp 1933, c 40, §60; RL 1935, §2629; RL 1945, §7281; am L 1951, c 223, §1(12); RL 1955, §159-96; HRS §281-97; am L 1972, c 177, §8; am L 1976, c 200, pt of §1; gen ch 1985] Previous Vol05_Ch0261-0319 Next

281-101 VII

281-101 Unlicensed manufacture or sale of liquor; penalty.

(a) If any person, acting in person or by or through any agent, servant, or employee, manufactures any liquor, either directly or indirectly, or upon any pretense or by any subterfuge, except as authorized pursuant to this chapter, the person shall be fined not more than $2,000 or imprisoned not more than one year, or both.

(b) If any person, acting in person or by or through any agent, servant, or employee, sells any liquor, either directly or indirectly, or upon any pretense or by any subterfuge, except as authorized pursuant to this chapter, the person shall be guilty of a class C felony. [L Sp 1933, c 40, §62; RL 1935, §2630; RL 1945, §7282; RL 1955, §159-100; HRS §281-101; gen ch 1985; am L 1990, c 171, §31; am L 2019, c 15, §2]

281-101.4

281-101.4 Hearing, illegal manufacture, importation, or sale of liquor. The liquor commission or liquor control adjudication board may assess and collect a penalty, or reprimand a person for not having a valid license to manufacture or sell any liquor in violation of this chapter or of any rule or regulation applicable thereto. In every case where the administrator elects to conduct proceedings under this section where it is proposed to assess and collect a penalty from a person for not having a valid license to manufacture or sell any liquor in violation of this chapter or of any rule or regulation applicable thereto, that person shall be entitled to notice and hearing in conformity with chapter 91. At the hearing, before final action is taken by the commission or board, the person shall be entitled to be heard in person or through counsel and shall be given a full and fair opportunity to present facts showing that the alleged cause or causes for the proposed action do not exist, or any reason why no penalty should be imposed. The testimony taken at the hearing shall be under oath and recorded stenographically, or by machine, but the parties shall not be bound by the strict rules of evidence; certified copies of any transcript and of any other record made of or at the hearing shall be furnished to a person upon that person's request and at that person's expense. Any order, reprimand, or penalty imposed by the commission or board upon a person for not having a valid license to manufacture or sell any liquor in violation of this chapter or of any rule or regulation applicable thereto shall be in addition to any penalty that might be imposed upon that person's conviction in a court of law for any violation of this chapter. The amount of penalty assessed and collected by the commission or board from any person under this section for not having a valid license to manufacture or sell any liquor shall not exceed the sum of $2,000 for each charge. Whenever the service of any order or notice shall be required by this section, the service shall be made in the following manner: in the case of any violation based upon the personal observation of any investigator, a written notice of the violation shall be given to the person charged with a violation within a reasonable period of time after the alleged violation occurred, the person charged shall be requested to acknowledge receipt of the alleged violation, or, if the person cannot be found after diligent search, by leaving a certified copy thereof at the person's dwelling house or usual place of abode with some person of suitable age and discretion residing therein; and if the person cannot be found after diligent search, and service cannot be made, then service may be made by depositing another certified copy thereof in the certified mail of the United States post office, postage prepaid, addressed to the person at the person's last known residence address; provided, that in the case of a partnership, corporation, unincorporated association, or limited liability company, service may be made upon any partner, officer, or member thereof.

281-101.5

281-101.5 Prohibitions involving minors; penalty.

(a) Any adult who provides or purchases liquor for consumption or use by a person under twenty-one years of age shall be guilty of the offense under section 712■1250.5.

(b) No minor shall consume or purchase liquor and no minor shall consume or have liquor in the minor's possession or custody in any public place, public gathering, or public amusement, at any public beach or public park, or in any motor vehicle on a public highway; provided that notwithstanding any other law to the contrary, this subsection shall not apply to:

(1) Possession or custody of liquor by a minor in the course of delivery, pursuant to the direction of the minor's employer lawfully engaged in business necessitating the delivery;

(2) Possession, custody, or consumption of liquor by a minor in connection with the minor's authorized participation in religious ceremonies requiring such possession, custody, or consumption; or

(3) Any person between the ages of eighteen and twenty, who is participating in a controlled purchase as part of a law enforcement activity or a study authorized by the department of health to determine the level of incidence of liquor sales to minors.

(c) No minor shall falsify any identification or use any false identification or identification of another person or of a fictitious person for the purpose of buying or attempting to buy liquor or for the purpose of obtaining employment to sell or serve liquor on licensed premises.

(d) Any person under age eighteen who violates this section shall be subject to the jurisdiction of the family court. Any person age eighteen to twenty-one who violates subsection (b) or (c) shall be guilty of a petty misdemeanor. The court shall order that any person under twenty-one years of age found to be in violation of this section shall have, in addition to any other disposition or sentencing provision permitted by law, the person's license to operate a motor vehicle, or the person's ability to obtain a license to operate a motor vehicle, suspended as follows:

(1) For licensed drivers, the driver's license shall be suspended for not less than one hundred and eighty days with exceptions to allow, at the discretion of the sentencing court, driving to and from school, school-sponsored activities, and employment;

(2) For persons with a provisional license, the provisional license shall be suspended for not less than one hundred and eighty days with exceptions to allow, at the discretion of the sentencing court, driving to and from school, school-sponsored activities, and employment;

(3) For persons with an instruction permit, the instruction permit shall be suspended for not less than one hundred and eighty days with exceptions to allow, at the discretion of the sentencing court, driving to and from school, school-sponsored activities, and employment; or

(4) For persons not licensed to drive, eligibility to obtain a driver's license, provisional license, or instruction permit shall be suspended until the age of seventeen or for one hundred and eighty days, at the discretion of the court; and

(5) Chapter 571 notwithstanding, in any case where a person under the age of eighteen violates this section, the family court judge may suspend the driver's license, provisional license, or instruction permit, or suspend the eligibility to obtain a driver's license, provisional license, or instruction permit in accordance with this section; provided that the requirement to provide proof of financial responsibility pursuant to section 287-20 shall not be based upon a sentence imposed under paragraphs (1) and (2). In addition, all persons whether or not licensed, found to be in violation of this section shall be sentenced to seventy-five hours of community service work, and an eight to twelve hour program of alcohol education and counseling the costs of which shall be borne by the offender or the offender's parent or guardian.

(e) As used in this section, "consume" or "consumption" includes the ingestion of liquor.

281-102 Other offenses; penalty

281-102 Other offenses; penalty. If any person violates this chapter or any rule or regulation in effect by authority of this chapter, whether in connection therewith a penalty is referred to or not, for which violation no penalty is specifically prescribed, the person shall be imprisoned not more than six months or fined not more than $1,000, or both. [L Sp 1933, c 40, §63; RL 1935, §2631; am L Sp 1941, c 89, §1(g); RL 1945, §7283; RL 1955, §159-101; am L 1957, c 164, §1; HRS §281-102; am L 1971, c 79, §2; gen ch 1985; am L 1990, c 171, §32] Previous Vol05_Ch0261-0319 Next

281-103 REPEALED

281-103 REPEALED. L 1988, c 383, §8. Previous Vol05_Ch0261-0319 Next

281-104

281-104 Investigators, employees, counsel for. Whenever any investigator or other employee of the liquor commission shall be prosecuted for any crime or sued in any civil cause for acts done in the performance of the investigator's or

employee's duty as an investigator or employee, the investigator or employee shall be represented and defended in:

(1) The criminal proceeding by an attorney to be employed and paid by the commission; and

(2) The civil cause by the corporation counsel or county attorney of the county in which the investigator or employee is serving or, if permitted under the appropriate county charter, by an outside attorney to be employed and paid for by the commission.

281-105

281-105 Determination whether acts were in scope of duty. The determination of whether the acts of an investigator or other employee of the liquor commission, when the investigator or other employee is being prosecuted or sued, were done in the performance of the investigator's or other employee's duty, so as to entitle the investigator or other employee to be represented by the county attorney or corporation counsel of the county or city and county of the commission in question, or by an attorney employed and paid by the commission shall be made by the commission of the county after consultation with the county attorney or corporation counsel who may make a recommendation to the commission in respect thereof if the county attorney or corporation counsel so desires, and such determination shall be conclusive for such purpose only.

281-106

281-106 Prosecutions not to exclude other remedies affecting license or goods. The provisions in this chapter for the imposition upon any licensee of the penalties by fine or imprisonment for any violation of this chapter or of any rule or regulation made hereunder having the force of law shall be in addition to and independent of any other right of the liquor commission or the liquor control adjudication board under this chapter to effect a suspension or revocation of the license of the licensee and shall also be in addition to and independent of any proceeding to effect the forfeiture of any liquor or other property belonging to the licensee as contemplated by this chapter. [L Sp 1933, c 40, §65; RL 1935, §2633; RL 1945, §7285; RL 1955, §159-103; HRS §281-106; am L 1998, c 249, §18] Previous Vol05_Ch0261-0319 Next

281-107 Presumptive evidence

281-107 Presumptive evidence. In any prosecution under this chapter, the fact that any person engaged in any kind of business holds or is required to hold, a license from the government of the United States to manufacture or sell intoxicating liquors or that the person has or keeps in or about the person's place of business or is required to have or keep in or about the person's place of business, a receipt or a stamp showing payment of a special tax levied under the laws of the United States upon the business of manufacturing or selling intoxicating liquors shall be held and deemed competent evidence that such person is manufacturing or selling such liquors or is keeping the same for sale. [L Sp 1933, c 40, §66; RL 1935, §2634; RL 1945, §7286; RL 1955, §159-104; HRS §281-107; gen ch 1985; am L 1987, c 144, §1] Previous Vol05_Ch0261-0319 Next

281-108 Search warrants; seizure

281-108 Search warrants; seizure. If any person makes complaint, supported by oath, before any district or circuit judge, setting forth facts sufficient to show probable cause that any liquor is being manufactured or kept or deposited for sale or distribution contrary to law within the judge's jurisdiction in any house, premises, or place, or that any such liquor is lodged or contained in any vehicle for transportation by land, water, or air, the judge shall issue a warrant, directed to any sheriff, chief of police, police officer, or investigator, commanding the sheriff, chief of police, police officer, or investigator to search the premises, place, or vehicle described in the complaint. If any intoxicating liquor is found therein under circumstances warranting the belief of the officer that it is being manufactured or is intended for sale or distribution contrary to law, the officer acting under the warrant shall seize and convey the liquor and any land vehicle in which the same is found to some place of security and keep the same until final action is had thereon. When, in case of any entry, it is found that liquor is there being manufactured contrary to this chapter the officer may likewise seize and convey the same to some place of security and keep it until final action is had thereon. [L Sp 1933, c 40, §67; RL 1935, §2635; RL 1945, §7287; RL 1955, §159-105; HRS §281-108; am L 1970, c 188, §39; gen ch 1985; am L 1989, c 211, §10; am L 1990, c 171, §35 and c 281, §11]

281-109 Seizure without warrant

281-109 Seizure without warrant.

(a) If any investigator or police officer has information which causes the investigator or police officer to believe that liquor is kept or deposited in any place mentioned in section 281-108, except a dwelling house, or is kept or concealed in any conveyance, container, baggage, or clothing which is in course of transportation along any highway, for sale or distribution contrary to law, and if the investigator or police officer has reason to believe that the delay which would be necessitated by the procurement of a search warrant would result in the loss, destruction, or concealment of the evidence of the violation of law, the investigator or police officer may forthwith, without such warrant, search the suspected place, vehicle, or container; and if the investigator or police officer there finds liquor and other evidence under circumstances warranting the belief that it is intended for sale or distribution contrary to law, the investigator or police officer shall seize and convey the same, including any vehicle in which the same is found, to some place of security, and keep the same until final action is had thereon. The investigator or police officer shall forthwith, after the seizure, make written complaint under oath, setting forth the facts before a judge having competent jurisdiction.

(b) Any evidence seized and conveyed may be kept until final action is had thereof. Should the introduction of a copy or picture of the seized evidence be permitted under the Hawaii rules of evidence, the original evidence may be returned to the appropriate party after such evidence is copied or photographed. [L Sp 1933, c 40, §68; RL 1935, §2636; RL 1945, §7288; RL 1955, §159-106; HRS §281-109; am L 1970, c 188, §39; gen ch 1985; am L 1990, c 171, §36]

281-110 Arrest; abetters

281-110 Arrest; abetters. The owner, keeper, and any person having the custody of any liquor or property seized as provided in sections 281-108 and 281-109 shall be forthwith arrested without necessity of warrant and brought before the judge having jurisdiction in the premises. If the owner or keeper of the liquor seized is unknown to the investigator or police officer making the seizure, or if no person is found in the apparent possession or custody of the same, the investigator or police officer may arrest and bring before the court the owner or occupant of the building, place, or premises, or the driver, operator, or other person in charge of the conveyance in which the liquor is found, if such person is known or can be ascertained. Any person who has knowingly engaged in, aided, assisted, or abetted the manufacture, obtaining, keeping, or sale of such liquor contrary to law, or has been privy thereto, or has knowingly permitted the use of any place, building, premises, or conveyance for such unlawful purpose, shall be guilty of a misdemeanor and be punished as provided in section 281-102. [L Sp 1933, c 40, §69; RL 1935, §2637; RL 1945, §7289; RL 1955, §159-107; HRS §281-110; am L 1970, c 188, §39; am L 1990, c 171, §37] Previous Vol05_Ch0261-0319 Next

281-111

281-111 Condemnation of property or liquor; disposition. Any still, plant, or other equipment shown to have been used for the manufacture of liquor in violation of this chapter and any liquor manufactured or sold in violation of this chapter shall be subject to summary seizure as herein provided or to subsequent seizure, and may be condemned and adjudged forfeited to the State, in addition to any penalty separately provided for the violation, the same to be enforced by appropriate legal proceedings in the name of the State. All property and liquor condemned and forfeited pursuant to this section may be ordered by the court having jurisdiction to be wholly or partially destroyed or to be sold, wholly or partially, for the account of the county wherein the same were seized; provided that the court may order any of the liquor, if suitable, to be delivered to the department of health for distribution to any public institution for use therein for medicinal purposes. The order of the court with respect to property or liquor condemned and forfeited pursuant to this section shall be effectively executed by the sheriff or the sheriff's deputy, or by the chief of police or the chief of police's deputy, or by any police officer, or by the commission's administrator, or by any investigator, within the time as may be fixed in the order but not exceeding sixty days. If any person, whether or not an officer or employee of the State or any county, takes, disposes of, or uses, in any manner or to any extent, any of the property or liquor otherwise than as provided in this section, the person shall be guilty of a misdemeanor and upon conviction thereof shall be punished as provided in section 281-102. [L Sp 1933, c 40, §70; RL 1935, §2638; RL 1945, §7290; RL 1955, §159-108; am L Sp 1959 2d, c 1, §19; HRS §281-111; am L 1970, c 188, §39; gen ch 1985; am L 1989, c 211, §10; am L 1990, c 171, §38 and c 281, §11; am L 2020, c 70, §27] Previous Vol05_Ch0261-0319 Next

281-112 REPEALED

281-112 REPEALED. L 1988, c 383, §9. Previous Vol05_Ch0261-0319 Next

281-113 Claims

281-113 Claims. If the owner or possessor of any property or liquor seized under this chapter appears and makes claim to the same, the owner or possessor shall file with the court, before whom the proceedings are pending, the owner's or possessor's claim in writing, setting forth the owner's or possessor's interest therein, and the reason why it should not be adjudged forfeited. The owner or possessor shall also give bond in favor of the State sufficient in amount and sureties, approved by such court, conditioned that such claim will be diligently prosecuted and that if it is decided against the owner or possessor the owner or possessor will pay the costs awarded against the owner or possessor. If the judgment is against the claimant, the property and liquor and all containers thereof shall be adjudged forfeited and disposed of as provided in this chapter and judgment shall be rendered against the claimant for all costs of the proceedings incurred after the filing of the claimant's claim. [L Sp 1933, c 40, §72; RL 1935, §2641; RL 1945, §7292; RL 1955, §159-110; HRS §281-113; am L 1970, c 188, §39; gen ch 1985] Previous Vol05_Ch0261-0319 Next

281-114 Appeals

281-114 Appeals. An appeal shall be allowed to any claimant of property or liquor seized as aforesaid from the judgment of the court in the same manner as appeals are allowed in other cases before such tribunals. If the claimant fails to appear and prosecute diligently the claimant's appeal, or fails to secure a reversal of the judgment in the appellate court, the judgment appealed from shall be carried out. [L Sp 1933, c 40, §73; RL 1935, §2642; RL 1945, §7293; RL 1955, §159-111; HRS §281-114; am L 1970, c 188, §39; gen ch 1985] Previous Vol05_Ch0261-0319 Next

281-121 VIII

281-121 to 281-124 REPEALED. L 1988, c 314, §1. Previous Vol05_Ch0261-0319 Next

Title 17 — Motor and Other Vehicles

Chapter 286

286-1 I

286-1 Short title. This chapter may be cited as the "Hawaii Highway Safety Act".

286-2 Definitions

286-2 Definitions. The following terms whenever used and referred to in this chapter shall have the following meanings unless a different meaning is clearly apparent from the context: "Aftermarket motorcycle frame" means a frame that is manufactured to replace the frame of a motorcycle that was certified by its manufacturer to be in compliance with all applicable Federal Motor Vehicle Safety Standards as of the date of manufacture, or the frame of a homemade motorcycle that was manufactured not for profit by a person who built the motorcycle as a hobby. "Alcohol" means the product of distillation of any fermented liquid, whether rectified or not, whatever may be the origin thereof, and includes ethyl alcohol as well as synthetic ethyl alcohol, but not denatured or other alcohol which is considered not potable under the customs laws of the United States. "Alcohol concentration" means the concentration of alcohol in a person's blood or breath. When expressed as a percentage, the term means:

(1) The number of grams of alcohol per 100 milliliters of blood; or

(2) The number of grams of alcohol per 210 liters of breath. "Bicycle" means:

(1) A device propelled solely by human power upon which any person may ride, having two tandem wheels sixteen inches in diameter or greater, and including any device generally recognized as a bicycle though equipped with two front or two rear wheels; or

(2) A low-speed electric bicycle, as defined under title 15 United States Code section 2085. "Bus" means every motor vehicle designed for carrying more than ten passengers and used for the transportation of persons. "Chief of police" means the chief of police of each county. "Commercial driver's license" (CDL) means a license issued in accordance with the requirements of this chapter to an individual which authorizes the individual to drive a class of commercial motor vehicle. "Commercial driver's license information system" (CDLIS) means the information system established pursuant to the Federal Commercial Motor Vehicle Safety Act of 1986 (Title XII, Public Law 99-570) to serve as a clearinghouse and depository of information pertaining to the licensing and identification of commercial motor vehicle drivers and the disqualification of such drivers from driving commercial motor vehicles. "Commercial motor vehicle" means a motor vehicle or combination of motor vehicles used in commerce to transport passengers or property:

(1) If the vehicle has a gross combination weight rating of 26,001 or more pounds inclusive of a towed unit(s) with a gross vehicle weight rating of more than 10,000 pounds;

(2) If the vehicle has a gross vehicle weight rating of 26,001 or more pounds;

(3) If the vehicle is designed to transport sixteen or more occupants, including the driver; or

(4) If the vehicle, regardless of size, is used in the transportation of hazardous materials, as defined in this section. "Controlled substance" means any substance so classified under section 102(6) of the Controlled Substance Act (21 United States Code §802(6)), and includes all substances listed on schedules I through V of 21 Code of Federal Regulations, Part 1308, as they may be revised from time to time. "Conviction" means an unvacated adjudication of guilt, or a determination that a person has violated or failed to comply with the law in a court of original jurisdiction or by an administrative proceeding, an unvacated forfeiture of bail or collateral deposited to secure the person's appearance in court, a plea of guilty or nolo contendere accepted by the court, the payment of a fine or court cost, or violation of a condition of release without bail, regardless of whether the penalty is rebated, suspended, or probated. "Director" means the state director of transportation. "Director of finance" means the director of finance of each county. "Drive" means to drive, operate, or be in physical control of a motor vehicle in any place open to the general public for purposes of vehicular traffic. "Driver" means every person who drives, operates, or is in actual physical control of a motor vehicle in any place open to the general public for purposes of vehicular traffic or who is exercising control over or steering a vehicle being towed or pushed by a motor vehicle. "Driver's license" means any license to operate a motor vehicle issued under the laws of this State. "Driving instructor" means every person who, for compensation, instructs another person in the rudiments and mechanics of the operation of a motor vehicle. "Electric foot scooter" means a device:

(1) Weighing less than seventy-five pounds;

(2) With two or three wheels;

(3) With handlebars;

(4) With either: (A) A floorboard that can be stood upon while riding; or (B) A seat or saddle for the use of the rider and stationary footrests;

(5) That is powered by an electric motor or human power; and

(6) Whose maximum speed, with or without human propulsion on a paved level surface, does not exceed fifteen miles per hour. "Electric foot scooter" does not include foot-powered scooters that do not have a motor. "Employee" means any driver of a commercial motor vehicle, including full time, regularly employed drivers; casual, intermittent, or occasional drivers; and leased drivers and independent, owner-operator contractors (while in the course of operating a commercial motor vehicle) who are either directly employed by or under lease to an employer. "Examiner of drivers" means the person or persons appointed under section 286-101. "Executive officer" means the mayor of each county. "Farm tractor" means every motor vehicle designed and used primarily as a farm implement for drawing plows, mowing machines, and other implements of husbandry. "Felony" means any offense under state or federal law that is punishable by death or imprisonment for a term exceeding one year. "Flood damage" means damage caused to any electrical, computerized, or mechanical component, or interior of a vehicle that has been submerged in water to the point that water has entered the passenger compartment or engine. "Foreign jurisdiction" means any jurisdiction other than a state of the United States. "Gross combination weight rating" means the value specified by the manufacturer as the loaded weight of a combination (articulated) vehicle. In the absence of a value specified by the manufacturer, gross combination weight rating shall be determined by adding the gross vehicle weight rating of the power unit and the total weight of the towed unit and any load thereon. "Gross vehicle weight rating" means the value specified by the manufacturer as the loaded weight of a single vehicle. "Hazardous materials" means any material that has been designated as hazardous under Title 49 United States Code section 5103 and is required to be placarded under Subpart F of Part 172, Title 49, Code of Federal Regulations, or any quantity of a material listed as a select agent or toxin in Title 42 Code of Federal Regulations Part 73. "Highway" means the entire width between the boundary lines of every way publicly maintained when any part thereof is open to the use of the public for purposes of vehicular travel. "Identification card" means a document made or issued under part [XVI] that, when completed with information concerning a particular individual, is intended solely for the purposes of civil identification. "Intoxicating liquor" includes alcohol, brandy, whiskey, rum, gin, okolehao, sake, beer, ale, porter, and wine; and also includes, in addition to the foregoing, any spirituous, vinous, malt or fermented liquor, liquids, and compounds, whether medicated, proprietary, patented, or not, in whatever form and of whatever constituency and by whatever name called, containing one-half of one per cent or more of alcohol by volume, which are fit for use or may be used or readily converted for use for beverage purposes. "Intrastate commerce" means trade, traffic, or transportation between two places in the State that originates and terminates within the State. "Intrastate driver" means a driver, not less than nineteen years of age, engaged in intrastate commerce, except in the transportation of passengers in a school vehicle, as defined in section 286-181, or in the transportation of hazardous materials, as defined in section 286-2. "Legal owner" includes a person who holds unencumbered title to a vehicle or is a secured party under a security interest in a vehicle. "Moped" means a device upon which a person may ride that has:

(1) Two or three wheels in contact with the ground;

(2) A motor having a maximum power output capability measured at the motor output shaft, in accordance with SAE International standards, of two horsepower (one thousand four hundred ninety-two watts) or less and, if it is a combustion engine, a maximum piston or rotor displacement of 3.05 cubic inches (fifty cubic centimeters) and that will propel the moped, unassisted, on a level surface at a maximum speed no greater than thirty miles per hour; and

(3) A direct or automatic power drive system that requires no clutch or gear shift operation by the moped driver after the drive system is engaged with the power unit. "Moped" does not include an electric foot scooter. "Motorcycle" means:

(1) Every motor vehicle that has a handlebar and seating that requires the operator to straddle or sit astride on it and is designed to travel on no more than three wheels in contact with the ground, but excludes a farm tractor and a moped; or

(2) Every motor vehicle that has a steering wheel or handlebar and seating that does not require the operator to straddle or sit astride on it, is designed to travel on three wheels in contact with the ground, and is called an autocycle, which is certified by the manufacturer to comply with all applicable Federal Motor Vehicle Safety Standards as of the date of manufacture. "Motor scooter" means:

(1) Every motor vehicle that has a handlebar and seating that requires the operator to straddle or sit astride on it and is designed to travel on no more than three wheels in contact with the ground, but excludes a farm tractor; or

(2) Every motor vehicle that has a steering wheel and seating that does not require the operator to straddle or sit astride on it, and is designed to travel on three wheels in contact with the ground, called an autocycle, which is certified by the manufacturer to comply with all applicable Federal Motor Vehicle Safety Standards as of the date of manufacture, with a motor that produces no more than five horsepower, but excludes a moped. "Motor vehicle" means every vehicle which is self-propelled and every vehicle which is propelled by electric power but which is not operated upon rails, but excludes a moped. "Neighborhood electric vehicle" means a self-propelled electrically powered motor vehicle to which all of the following apply:

(1) The vehicle is emission free;

(2) The vehicle is designed to be and is operated at speeds of twenty-five miles per hour or less;

(3) The vehicle has four wheels in contact with the ground;

(4) The vehicle has a gross vehicle weight rating of less than three thousand pounds; and

(5) The vehicle conforms to the minimum safety equipment requirements as adopted in the Federal Motor Vehicle Safety Standard No. 500, Low Speed Vehicles (49 C.F.R. 571.500). "Out-of-service order" means a declaration by an authorized enforcement officer of a federal, state, Canadian, Mexican, or local jurisdiction that a driver, commercial motor vehicle, or motor carrier operation is out-of-service pursuant to title 49 Code of Federal Regulations sections 386.72, 392.5, 392.9a, 395.13, or 396.9, or title 49 United States Code section 31106(b)(2), or compatible laws, or the North American Standard Out-of-Service Criteria. "Owner" or "registered owner" includes a legal owner of a vehicle where there is no security interest held by anyone on the vehicle, a buyer under a purchase money security interest, or a debtor under any security interest. "Passenger car" means every motor vehicle, except motorcycles and motor scooters, designed for carrying ten passengers or less and used for the transportation of persons. "Pole trailer" means every vehicle without motive power designed to be drawn by another vehicle and attached to the towing vehicle by means of a reach or pole, or by being boomed or otherwise secured to the towing vehicle, and ordinarily used for transporting long or irregularly shaped loads such as poles, pipes, or structural members capable, generally, of sustaining themselves as beams between the supporting connections. "Rebuilt vehicle" means any vehicle which has been declared a total loss by an insurer and has been rebuilt or repaired to operate on public highways. For the purpose of this definition, a vehicle is a total loss only if there is material damage, including flood damage, to the vehicle's electronics, frame, unitized structure, or suspension system, and the projected cost of repairing the damage exceeds the market value of the vehicle at the time of the incident causing it to be declared a total loss. "Reconstructed vehicle" means a vehicle that is registered to be operated on a public highway, and that is:

(1) Assembled from new or used parts by a person other than a recognized manufacturer of new vehicles;

(2) Modified to the extent that the identity of the vehicle's make, model, or type is obscured by material changes in its appearance; or

(3) Modified by the removal, addition, alteration, or substitution of other than original replacement essential parts, including the vehicle's body, power train, steering system, suspension system, exhaust system, intake system, or bumper system; excluding ordinary body repair that does not change the exterior structure of the vehicle. The term does not include a special interest vehicle or a motorcycle. "Rental or U-drive motor vehicle" means a motor vehicle which is rented or leased or offered for rent or lease for a period of six months or less. "Semitrailer" means a trailer so constructed that a substantial part of its weight rests upon the truck-tractor by which it is drawn. "Special interest vehicle" means a vehicle of any age that, because of its significance, is being collected, preserved, restored, or maintained by a collector. The term includes a street rod vehicle and a street rod replica vehicle, as those terms are defined in section 286-26.5; a vehicle manufactured before 1968; and a vehicle manufactured after 1967 to resemble a vehicle manufactured before 1968. "State", except where reference is clearly to another state, territory, or possession of the United States, means the State of Hawaii. "Third party examiner" means a driver's license examiner who is qualified and has been certified by the State to examine applicants for category (4) licenses under section 286-102(b) and commercial driver licenses. "Title state or county" means any state or any county in any state which issues certificates of title and registration and notes, liens, and other encumbrances thereon. "Tractor-semitrailer combination" means a truck-tractor in use together with a semitrailer. "Trailer" means a vehicle designed for carrying persons or property and for being drawn by a motor vehicle. "Truck" means a motor vehicle designed, used, or maintained primarily for the transportation of property. "Truck-tractor" means a

truck designed and used primarily for drawing other vehicles and not so constructed as to carry a load to other than a part of the weight of the vehicle and load so drawn. "Truck-trailer combination" means a truck in use together with a trailer. "United States" means the fifty states and the District of Columbia. "Vehicle" means every device in, upon, or by which any person or property is or may be transported or drawn upon a highway, but excludes devices moved by human power or devices used exclusively upon stationary rails or tracks and mopeds. "Vehicle identification number" means the unique series of letters and numerals assigned to a vehicle either by the vehicle manufacturer or incomplete vehicle manufacturer as required by federal law, or by the county director of finance to identify a reconstructed vehicle, special interest vehicle, or motorcycle.

286-3 Powers and duties of the governor

286-3 Powers and duties of the governor. The governor, in addition to other duties and responsibilities conferred upon the governor by the Constitution and laws of the State, may contract and do all other things necessary in behalf of the State to promote traffic safety. To that end the governor shall coordinate the activities of the State and its counties. The governor may delegate duties and functions conferred upon the governor by this chapter to the director of transportation appointed under the authority of section 26-31 who shall also be designated as the governor's highway safety representative.

286-4 REPEALED

286-4 REPEALED. L Sp 1977 1st, c 20, §10. Previous Vol05_Ch0261-0319 Next

286-4.1 Medical advisory board

286-4.1 Medical advisory board.

(a) There is established within the office of the state director of transportation for administrative purposes a medical advisory board consisting of not fewer than five physicians licensed to practice in the State. The members of the board shall be appointed by the governor as provided in section 26-34, except as otherwise provided by this section. The board shall consist of physicians with an interest in one or more of the following:

(1) Psychiatry;

(2) Neurology;

(3) Orthopedics;

(4) Ophthalmology or optometry;

(5) Endocrinology;

(6) Geriatrics; or

(7) Addiction medicine. The members of the board shall serve without compensation but shall be reimbursed for expenses, including travel expense, actually incurred in the performance of their duties under this chapter.

(b) The duties of the board shall include:

(1) The development of a system for medically evaluating persons who an examiner of drivers has reason to believe have mental or physical conditions that might impair their driving ability; and

(2) The furnishing of advice to the examiners of drivers respecting medical criteria and vision standards for motor vehicle drivers.

286-5

286-5 State highway safety and modernization council.

(a) There is established the Hawaii highway safety and modernization council. The council shall be chaired on an annually rotating basis by a member appointed by the president of the senate and a member appointed by the speaker of the house of representatives. In addition to the member appointed by the president of the senate and member appointed by the speaker of the house of representatives, the following or their designated representatives shall be members of the council: the chief justice, the attorney general, the director of health, the superintendent of education, the executive director of the state public charter school commission, the president of the University of Hawaii, the chairperson of the University of Hawaii at Manoa department of urban and regional planning, the co-chairpersons of the Hawaii climate change mitigation and adaptation commission, the director of the office of planning and sustainable development, the chief energy officer of the Hawaii state energy office, an additional two members appointed by the president of the senate and speaker of the house of representatives, respectively, the chairperson of each of the county highway safety councils

established under section 286-6, and not more than twelve other persons who shall be appointed by the governor for a three-year term as follows:

(1) One member from an organization representing senior citizens;

(2) One member from an organization representing bicyclists;

(3) One member from an organization having a focus on micro-mobility;

(4) One member from an organization having a focus on transportation, planning, and improvement;

(5) One member from an organization having a focus on reducing the cost of transportation for low-income communities;

(6) One member from an organization representing labor and construction;

(7) One member from an organization representing trucking and cargo carriers;

(8) One member from an organization having a focus on the electrification of transportation;

(9) One member from an organization having a focus on expanding trees and foliage and reducing urban heat;

(10) One member from an organization representing the automobile manufacturing industry; and

(11) Up to two members on the basis of their interest in transportation safety and related state goals.

(b) The state highway safety and modernization council shall:

(1) Review programs, projects, plans, and strategies related to improving safety in ground transportation in the department of transportation;

(2) Ensure transparency and oversight in programs, projects, decisions, and spending related to ground transportation in the department of transportation ;

(3) Establish metrics and benchmarks for the department of transportation to ensure progress on state goals related to ground transportation, safety, and other related goals;

(4) Review projects in development and make recommendations for how each project might be improved, if warranted, to better meet state goals, before project plans and designs are finalized;

(5) Provide direction to the department of transportation and make recommendations to the legislature as necessary to ensure progress on state goals related to ground transportation, safety, and other related goals;

(6) Advise the governor, legislature, and public on matters relating to the programs, activities, projects, outcomes, and recommendations of the State in the field of transportation safety; and

(7) Submit an annual report to the department of transportation that reflects the work, responsibilities, and recommendations of the council.

(c) The members of the council shall serve without pay but shall be entitled to reimbursement for necessary expenses while attending meetings and while in discharge of their duties.

286-6

286-6 County traffic or highway safety councils. There is established in each county a county traffic or highway safety council. The respective county councils may make appropriations to meet the necessary expenses of their respective traffic or highway safety councils. The following or their designated representatives shall be members of a county traffic or highway safety council: the mayor; the chief of police; the prosecuting attorney, corporation counsel, or county attorney; the traffic engineer, chairperson of the traffic commission or safety program coordinator; and not more than fifteen other persons residing in the county who shall be appointed by the mayor on the basis of their interest in highway safety and their knowledge of local conditions. The county traffic or highway safety council shall advise the mayor on matters relating to highway safety.

286-7 County highway safety programs

286-7 County highway safety programs. Whenever it is determined by the governor to be in the public interest, the governor may delegate highway safety programs or portions thereof to the counties; provided that the program of each county is approved by the governor. Delegations under this section shall be made by gubernatorial proclamation.

286-7.5 HRS

286-7.5 Vision Zero. The department of transportation and the county transportation departments shall adopt a Vision Zero policy that seeks to prevent and ultimately eliminate all traffic fatalities through a combination of engineering, enforcement, education, and emergency response strategies that focus on equity .

286-8 Rules and regulations

286-8 Rules and regulations. In order to decrease the deaths, injuries, damage, and losses resulting from highway traffic accidents, the state director of transportation shall, subject to the requirements of chapter 91, adopt rules and regulations dealing with: identification and surveillance of accident locations; highway design, construction, and maintenance; traffic control devices; pedestrian safety; police traffic services; and debris hazard control and clean up. Any person conducting construction, maintenance, surveying, or other work on or adjacent to any public street or highway or any street where traffic regulations are imposed by state or county authority who violates the rules and regulations governing the use of traffic control devices at such work sites shall, in addition to any other penalty imposed by law, be fined not more than $1,000 or imprisoned not more than one year, or both.

286-9

286-9 Facilities for physically handicapped persons.] The state director of transportation, under the director's authority dealing with highway design, construction, and maintenance and the director's authority dealing with pedestrian safety, shall provide that appropriate facilities be constructed at certain street locations for the use of physically handicapped persons.

286-10 Arrest or citation

286-10 Arrest or citation. Except when required by state law to take immediately before a district judge a person arrested for violation of any provision of this chapter, including any rule adopted pursuant to this chapter, any person authorized to enforce the provisions of this chapter, hereinafter referred to as enforcement officer, upon arresting a person for violation of any provision of this chapter, including any rule adopted pursuant to this chapter shall issue to the alleged violator a summons or citation printed in the form hereinafter described, warning the alleged violator to appear and answer to the charge against the alleged violator at a certain place and at a time within seven days after such arrest. The summons or citation shall be printed in a form comparable to the form of other summonses and citations used for arresting offenders and shall be designed to provide for inclusion of all necessary information. The form and content of such summons or citation shall be adopted or prescribed by the district courts. The original of a summons or citation shall be given to the alleged violator and the other copy or copies distributed in the manner prescribed by the district courts; provided that the district courts may prescribe alternative methods of distribution of the original and any other copy. Summonses and citations shall be consecutively numbered and the carbon copy or copies of each shall bear the same number. Any person who fails to appear at the place and within the time specified in the summons or citation issued to the person by the enforcement officer upon the person's arrest for violation of any provision of this chapter, including any rule adopted pursuant to this chapter, shall be guilty of a misdemeanor. If any person fails to comply with a summons or citation issued to such person, or if any person fails or refuses to deposit bail as required, the enforcement officer shall cause a complaint to be entered against such person and secure the issuance of a warrant for the person's arrest. When a complaint is made to any prosecuting officer of the violation of any provision of this chapter, including any rule adopted hereunder, the enforcement officer who issued the summons or citation shall subscribe to it under oath administered by another official of the department of transportation whose name has been submitted to the prosecuting officer and who has been designated by the director to administer the same.

286-11 HRS

286-11 REPEALED. L 2015, c 131, §5. Previous Vol05_Ch0261-0319 Next

286-12

286-12 All-terrain vehicle; utility-terrain vehicle; permitted use.

(a) All-terrain vehicles and utility-terrain vehicles may be operated on a street, as defined in section 291C-1; provided that the all-terrain vehicle or utility-terrain vehicle is:

(1) Used as farm equipment, or used by a city, county, or state worker while acting within the scope of that person's official duties;

(2) Operated by a person who holds a current category

(3) driver's license under section 286-102 or a commercial driver's license under part XIII;

(3) Driven on streets that are no more than two lanes, with posted speed limits of no more than thirty-five miles per hour;

(4) Used to travel between properties zoned for agriculture, or used by a city, county, or state worker while acting within the scope of that person's official duties to travel between properties under the jurisdiction of the city, county, or State;

(5) Used in counties with populations of less than five hundred thousand residents; and

(6) Driven on streets during daylight hours; provided further that while in operation, any operator and passenger of an all-terrain vehicle or utility-terrain vehicle shall wear a safety helmet with a securely fastened chin strap that meets the specifications and requirements established by rules adopted by the director.

(b) For purposes of this section: "All-terrain vehicle" means a motor vehicle that:

(1) Is designed for off-highway operation by a single operator carrying no more than one passenger, if so designed as provided in paragraph (5) of this definition;

(2) Is fifty inches or less in width;

(3) Has an unladen weight of nine hundred pounds or less;

(4) Is suspended on three or more tires;

(5) Has a single seat designed to be straddled by the operator, or a single seat designed to be straddled by the operator and a seat for not more than one passenger sitting behind the operator; and

(6) Has handlebars for steering control. "Farm equipment" refers to any kind of machinery used on a farm to help with farming, including but not limited to a tractor, cultivator, plow, all-terrain vehicle, or utility-terrain vehicle. "Utility-terrain vehicle" means a motor vehicle that:

(1) Is designed to be operated off highway;

(2) Is sixty inches or less in width;

(3) Has an unladen weight of one thousand three hundred pounds or less;

(4) Is suspended on four to six tires;

(5) Has a steering wheel for steering control;

(6) Is equipped with roll-over protection;

(7) Accommodates one driver and one passenger sitting side-by-side; and

(8) Is equipped with seat belts for driver and passenger protection.

(c) Any person who violates this section shall be fined $250 for each violation.

(d) All-terrain vehicles and utility-terrain vehicles used as farm equipment shall be regulated as farm equipment and not as motor vehicles.

(e) All-terrain vehicles and utility-terrain vehicles used by a city, county, or state worker while acting within the scope of that person's official duties shall not be regulated as motor vehicles.

286-16 [PART IA

286-16 Powers and duties. The director of transportation shall prescribe uniform standards and procedures for motor vehicle inspection, driver licensing, and registration, including the form and content of records to be maintained for the registration of vehicles and for the licensing of drivers. [L Sp 1977 1st, c 20, pt of §8] Previous Vol05_Ch0261-0319 Next

286-17 Enforcement

286-17 Enforcement. The director of transportation shall have such powers and duties of enforcement of statutes and of rules adopted by the director as are necessary to implement this part. The director may delegate the enforcement of this part to the county executive officers. [L Sp 1977 1st, c 20, pt of §8; gen ch 1985] Previous Vol05_Ch0261-0319 Next

286-18 Rules

286-18 Rules. The director of transportation shall adopt rules pursuant to chapter 91 necessary for the purposes of this part. [L Sp 1977 1st, c 20, pt of §8] Previous Vol05_Ch0261-0319 Next

286-21 II

286-21 Vehicles and mopeds without required equipment or in unsafe condition. No person shall drive or cause to move on any highway any motor vehicle, moped, trailer, semitrailer, or pole trailer, or any combination thereof, unless the equipment thereon is in good working order and adjustment as required in this part and does not endanger the driver or other occupant or any person upon the highway.

286-22

286-22 Inspection by officers of the police department.

(a) The chief of police or any police officer of any county may, at any time when the chief of police or police officer has reasonable cause to believe that a vehicle or moped is unsafe or not equipped as required by law, require the owner or driver of the vehicle or moped to submit the vehicle or moped to an inspection or make the necessary corrections or repairs.

(b) If the vehicle or moped is found to be in an unsafe condition or if any required part or equipment is not present or if any required part or equipment is present but not in proper repair, the officer shall issue a citation to the owner or driver stating the reasons that the vehicle or moped is deemed unsafe or is not equipped as required and shall require that a new certificate of inspection as provided in section 286-26 be obtained within five days or that the defect be cured.

(c) If upon inspection, the chief of police or any police officer determines that any vehicle or moped is in such unsafe condition as to constitute a menace to the public or is not equipped as required and cannot reasonably be restored to a safe condition as required in this part, the chief of police or police officer shall remove the sticker which signifies the certificate of inspection and inform the director of finance who shall immediately suspend the registration of the vehicle or moped and give notice of the suspension to its owner. Whenever the director of finance has suspended the registration of any vehicle or moped under this part, the owner of the vehicle or moped shall immediately surrender and forward to the director of finance the certificate of registration and the license plates last issued upon registration of the vehicle for the current year.

(d) Any person aggrieved by this section shall have the right to a hearing before a district judge of the circuit in which the person is cited within five days. The judge shall determine whether the chief of police or any police officer reasonably performed the chief of police's or police officer's duties hereunder and shall make any appropriate order.

286-23 Responsibility for compliance

286-23 Responsibility for compliance.

(a) Every owner or driver, upon receiving a citation as provided in section 286-22(b), shall comply therewith and shall within five days secure an official certificate of inspection or make the necessary corrections or repairs, or the driver may request a hearing as provided in section 286-22(d).

(b) No person shall operate any vehicle or moped after receiving a citation with reference thereto as provided in section 286-22(b), except that if the driver is authorized to do so by the police officer, the driver may return the vehicle or moped to the driver's residence or place of business or the residence or place of business of the owner of the vehicle or moped, or to an automotive repair shop, if within a distance of twenty miles, until a certificate of inspection is obtained or the necessary corrections or repairs are made.

286-24

286-24 Registered owner's responsibility; registration plates as prima facie evidence as to the fault of the registered owner. In any proceeding for violation of this part, the registered owner of a vehicle shall be deemed responsible for the unsafe condition of the vehicle.

286-25

286-25 Operation of a vehicle or moped without a certificate of inspection. Whoever operates, permits the operation of, causes to be operated, or parks any vehicle or moped on a public highway without a current official certificate of inspection, issued under section 286-26, shall be fined not more than $100.

286-26 Certificates of inspection

286-26 Certificates of inspection.

(a) The following vehicles shall be certified as provided in subsection (e) once every year:

(1) Trucks, truck-tractors, semitrailers, and pole trailers having a gross vehicle weight rating of more than 10,000 pounds;

(2) Buses;

(3) Rental or U-drive motor vehicles two years of age or older;

(4) Taxicabs; and

(5) Mopeds. Ambulances shall be certified as provided in subsection (e) once every six months.

(b) All other vehicles, including motorcycles, mopeds, trailers, semitrailers, and pole trailers having a gross vehicle weight rating of 10,000 pounds or less, and antique motor vehicles as defined in section 249-1, except those in subsections (c) and (d), shall be certified as provided in subsection (e) every twelve months; provided that any vehicle to which this subsection applies, except a moped, shall not require inspection within two years of the date on which the vehicle was first sold.

(c) Any vehicle or moped that has been involved in an accident shall be certified as provided in subsection (e) before it is operated again if:

(1) It is determined by a police officer or an insurer that the vehicle's or moped's equipment has been damaged so as to render the vehicle or moped unsafe; or

(2) It is rebuilt or restored.

(d) Every vehicle or moped shall be certified prior to the issuance of a temporary or permanent registration by the director of finance and prior to the transfer of any registration; provided that this requirement shall not apply to a subsequent transfer of registration in a vehicle or moped that carries a current certificate of inspection.

(e) Upon application for a certificate of inspection to be issued for a vehicle or moped, an inspection as prescribed by the director under subsection (g) shall be conducted on the vehicle or moped. If the vehicle or moped is found to be in safe operating condition, including adhering to head lamp requirements and specifications pursuant to section 291-25(a), as applicable, and is not equipped with a muffler or exhaust system that fails to comply with section 291-24 or 291-24.5, as applicable, a certificate of inspection shall be issued upon payment of a fee to be determined by the director. The certificate shall state the effective date, termination date, name of the issuing insurance carrier, policy number of the motor vehicle insurance identification card for the inspected motor vehicle as specified by section 431:10C-107 or state the information contained in the proof of insurance card as specified by section 431:10G-106, and the odometer reading of the vehicle on the date of inspection. A sticker, authorized by the director, shall be affixed to the vehicle or moped at the time a certificate of inspection is issued. An inspection sticker that has been lost, stolen, or destroyed shall be replaced without reinspection by the inspection station that issued the original inspection sticker upon presentation of the current certificate of inspection; provided that the current certificate of inspection and inspection sticker shall not have expired at the time the replacement is requested. The director shall adopt rules to determine the fee for replacement of lost, stolen, or destroyed inspection stickers.

(f) The operator of an official inspection station shall pay, from the fee in subsection (e), an amount to be determined by rules adopted pursuant to chapter 91 to the director of transportation. This amount shall be expended only for administration and enforcement of the periodic motor vehicle inspection program. The funds collected pursuant to this subsection shall be deposited into the highway special fund.

(g) The director of transportation shall adopt necessary rules for the administration of inspections and the issuance of certificates of inspection; provided that the rules shall:

(1) At a minimum, require inspections to ensure that a vehicle or moped is not equipped with a muffler or exhaust system that fails to comply with section 291-24 or 291-24.5, as applicable; and

(2) Include head lamp requirements that adhere to the specifications pursuant to section 291-25(a), as applicable .

(h) This section shall not apply to:

(1) Any motor vehicle that is covered by part XI, governing safety of motor carrier vehicle operation and equipment; provided that the rules adopted pursuant to part IA impose standards of inspection at least as strict as those imposed under subsection (g) and that certification is required at least as often as provided in subsections (a), (b), (c), and (d);

(2) Aircraft servicing vehicles that are being used exclusively on lands set aside to the department of transportation for airport purposes; and

(3) Tractor trucks, forklifts, and top picks being used as marine terminal equipment temporarily moving in or between terminals at: (A) Sand Island and along Sand Island Parkway and Sand Island Access Road; (B) Kalanianaole Avenue

between Kuhio Street and Kahanu Street, abutting Hilo Harbor; (C) Kawaihae-Mahukona Road abutting Kawaihae Harbor; (D) East Kaahumanu Avenue between Hobron Avenue and Kane Street, abutting Kahului Harbor; and (E) Waipaa Road abutting Nawiliwili Harbor.

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

286-26.5 Special interest vehicles

286-26.5 Special interest vehicles.

(a) As used in this section: "Collector" means an owner of one or more vehicles, including parts vehicles, who collects, purchases, acquires, trades, or disposes of a vehicle or its parts, for the owner's own use, to preserve, restore, and maintain the vehicle or another vehicle for hobby or historical purposes. "Parts vehicle" means a vehicle that is owned by a collector to furnish parts for the restoration or maintenance of a special interest vehicle. "Street rod replica vehicle" means a vehicle that was assembled from a manufactured kit, either as:

(1) A complete kit to construct a new vehicle consisting of a prefabricated body and chassis;

(2) Components manufactured before 1968; or

(3) Components manufactured after 1967 to resemble a vehicle manufactured before 1968; and that has been modified in its body style or design through the use of nonoriginal or reproduction components, such as the frame, engine, drive train, suspension, or brakes, in a manner that does not adversely affect its safe performance as a motor vehicle or render the vehicle unlawful for use on public highways. "Street rod vehicle" means a vehicle that was:

(1) Manufactured before 1968; or

(2) Manufactured after 1967 to resemble a vehicle manufactured before 1968; and that has been modified in its body style or design through the use of nonoriginal or reproduction components, such as the frame, engine, drive train, suspension, or brakes, in a manner that does not adversely affect its safe performance as a motor vehicle or render the vehicle unlawful for use on public highways. The term does not include a motorcycle, an antique vehicle, or a restored vehicle.

(b) If a street rod vehicle was manufactured before 1968 and has been modified in body style or design, the make and year of the vehicle shall be the year the vehicle most nearly resembles. If a street rod vehicle was manufactured after 1967 to resemble a vehicle manufactured before 1968, the body type of the vehicle shall be street rod vehicle or "STRD".

(c) A state vehicle identification number shall be issued to a street rod vehicle that was manufactured after 1967 to resemble a vehicle manufactured before 1968, when no vehicle identification number is present on the vehicle; when more than one vehicle identification number is present on the vehicle; or when the vehicle identification number is absent from the body or frame, or both, of the vehicle. The state vehicle identification number shall be assigned by the director of finance of the county in which the vehicle resides; provided that not more than one hundred vehicle identification numbers shall be issued annually. To obtain a state vehicle identification number under this subsection, the owner of a street rod vehicle that was manufactured after 1967 to resemble a vehicle manufactured before 1968 shall provide:

(1) A title of ownership from the previous owner of the vehicle's body or frame;

(2) A bill of sale or invoices for all major parts used in the modification of the vehicle; and

(3) A weight certificate issued by a state-certified scale for the actual weight of the vehicle.

(d) Notwithstanding any other law to the contrary:

(1) Street rod vehicles and street rod replica vehicles shall be equipped with the following equipment: (A) Hydraulic service brakes on all wheels; (B) Sealed beam or halogen headlights; (C) Turn signals and a turn signaling switch; (D) Safety glass or lexan windshield; (E) Electric or vacuum windshield wiper located in front of the driver; (F) Standard or DOT/SAE-approved tail lights; (G) A parking brake that operates on at least two wheels on the same axle; and (H) Seat belt assembly as provided in section 291-11.6;

(2) Street rod vehicles and street rod replica vehicles shall be equipped in such a manner that no part of a vehicle, other than the vehicle's tires, will make contact with the surface of a flat highway when the vehicle is operated on the same;

(3) Bumpers, hoods, door handles, and fenders shall be optional equipment on street rod vehicles and street rod replica vehicles; and

(4) Bumpers, hoods, door handles, and fenders shall be optional equipment on vehicles manufactured before 1968, and on vehicles manufactured after 1967 to resemble a vehicle manufactured before 1968. In the event of a conflict between this subsection and equipment requirements specified in chapters 286, 291 and 291C, this subsection shall control.

(e) If a street rod replica vehicle was assembled from a manufactured kit as a complete kit to construct a new vehicle consisting of a prefabricated body and chassis, the year of the vehicle shall be the year the vehicle resembles as reflected on the manufacturer's certificate of origin. If a street rod replica vehicle was assembled from a manufactured kit as components manufactured before 1968 or components manufactured after 1967 to resemble a vehicle manufactured before 1968, the year of the vehicle shall be the year the vehicle resembles as reflected on the manufacturer's certificate of origin. The certificate of title for a street rod replica vehicle shall be for the make and year the vehicle resembles, and the body type of the vehicle shall be street rod vehicle replica (STRD-RPLC).

(f) The state vehicle identification number of a street rod replica vehicle that was assembled from a manufactured kit as a complete kit to construct a new vehicle consisting of a prefabricated body and chassis shall be taken from the manufacturer's certificate of origin. The state vehicle identification number shall be assigned by the director of finance of the county in which the vehicle resides; provided that not more than one hundred vehicle identification numbers shall be issued annually. The state vehicle identification number of a street rod replica vehicle that was assembled from a manufactured kit as components manufactured before 1968 or components manufactured after 1967 to resemble a vehicle manufactured before 1968, shall be taken from the manufacturer's certificate of origin or provided by the director of finance of the county in which the vehicle resides. To obtain a state vehicle identification number under this subsection, the owner of a street rod replica vehicle shall provide:

(1) Ownership documents from the manufacturer of the kit or components;

(2) All shipping and freight documents for the kit or components; and

(3) A weight certificate issued by a state-certified scale for the actual weight of the vehicle.

(g) A state vehicle identification number shall be issued to a street rod replica vehicle when the vehicle identification number is absent from the body or frame, or both, of the vehicle; or when the vehicle identification number is absent from the manufacturer's certificate of origin. The state vehicle identification number shall be assigned by the director of finance of the county in which the vehicle resides; provided that not more than one hundred vehicle identification numbers shall be issued annually.

286-27

286-27 Permits to operate official inspection stations.

(a) The department of transportation, referred to in this section and sections 286-28 and 286-29 as "the department", shall be responsible for issuing permits for and furnishing instructions and all forms to official inspection stations. The stations shall operate in the manner directed by the department pursuant to standards established by the director of transportation.

(b) Application for an official inspection permit shall be made upon an official form and shall be granted only when the department is satisfied that the station is equipped properly and has competent personnel to make the required inspections. Before issuing a permit, the department shall require the applicant to file proof that the applicant has, in effect, a liability insurance policy, issued to the applicant by an insurance company authorized to do business in the State, insuring against the liability of the applicant and any of the applicant's employees in minimum amounts as follows: comprehensive public liability insurance in the amount of $10,000 for one person and $20,000 for one accident and comprehensive property damage insurance of $5,000; provided that the director of transportation by rules may establish higher limits; provided that the proof of insurance need not be filed by an applicant who shall inspect only vehicles owned by the applicant; and provided further that the proof of insurance need not be filed by instrumentalities of the United States.

(c) Official inspection stations in this State shall be exempt from liability arising from the destruction of property or injury to persons caused by special interest vehicles; provided that the official inspection station:

(1) Meets the requirements of subsection (b); and

(2) Exercises due diligence in inspecting special interest vehicles in accordance with applicable standards for motor vehicle and equipment safety for special interest vehicles.

(d) A permit for an official station shall not be assigned or transferred or used at any location other than that designated by the department and every permit shall be posted in a conspicuous place at the location designated.

(e) The counties shall provide for the necessary administrative and enforcement services.

(f) The counties shall be reimbursed the costs incurred in providing the services under subsection (e).

286-28 Fines

286-28 Fines. The department shall supervise and cause inspections to be made of official inspection stations and shall issue a fine, in an amount determined by the department by rule, to a station that it finds is not properly conducting inspections. After three violations, the permit issued to the station pursuant to section 286-27 shall be subject to suspension or revocation. The department shall maintain and post at its office lists of all stations holding permits and those whose permits have been suspended or revoked.

286-29

286-29 Improper representation as official inspection station. Any person who shall in any manner represent that the business operated at any location is an official inspection station without a permit issued by the department under section 286-27, or any person other than a person operating an inspection station under a permit granted by the department who issues a certificate of inspection shall be fined not more than $1,000 or imprisoned not more than one year, or both.

286-30 False certificates

286-30 False certificates. Any person who makes, issues, or knowingly uses any imitation or counterfeit of an official certificate of inspection, or any person who displays or causes or permits to be displayed upon any vehicle any certificate of inspection knowing the same to be issued for another vehicle or issued without an inspection having been made or issued without authority as provided herein shall be fined not more than $1,000 or imprisoned not more than thirty days, or both.

286-31 HRS

286-31 Vehicle inspector; certification; renewal.

(a) The director shall supervise and certify all inspectors authorized to conduct vehicle safety inspections at official inspection stations. The director shall:

(1) Determine minimum standards and application criteria for inspectors;

(2) Administer written and performance examinations for all applicants;

(3) Issue official inspector certificates;

(4) Monitor inspection activities of inspectors; and

(5) Conduct investigations of reported or suspected improper inspection activities.

(b) Inspector certificates shall expire four years from the date of issuance, unless revoked or suspended by the director.

(c) Recertification of inspectors shall follow the application process for initial certification.

286-41 III

286-41 Application for registration; full faith and credit to current certificates; this part not applicable to certain equipment.

(a) Every owner of a motor vehicle that is to be operated upon the public highways shall, for each vehicle owned, except as herein otherwise provided and except as provided in section 286-42(c), apply to the director of finance of the county where the vehicle is to be operated, for the registration thereof. If a vehicle is moved to another county and is to be operated upon the public highways of that county, the existing certificate of registration shall be valid until its expiration date, at which time the owner shall apply to the director of finance of the county in which the vehicle is then located for the registration of the vehicle, whether or not the owner is domiciled in the county or the owner's principal place of business is in that county, except that this provision shall not apply to vehicles that are temporarily transferred to another county for a period of not more than three months.

(b) Application for the registration of a vehicle shall be made upon the appropriate form furnished by the director of finance and shall contain the name, occupation, and address of the owner and legal owner; and, if the applicant is a

member of the United States naval or military forces, the applicant shall give the organization and station. All applications shall also contain a description of the vehicle, including: the name of the maker; the type of fuel for the use of which it is adapted, such as gasoline, diesel oil, liquefied petroleum gas, or battery electricity; the serial or motor number; the date first sold by the manufacturer or dealer; a further description of the vehicle as is called for in the form; and other information as may be required by the director of finance, to establish legal ownership. A person applying for initial registration of a neighborhood electric vehicle shall certify in writing that a notice of the operational restrictions applying to the vehicle as provided in section 291C-134 are contained on a permanent notice attached to or painted on the vehicle in a location that is in clear view of the driver.

(c) If the vehicle to be registered is specially constructed, reconstructed, or rebuilt; is a special interest vehicle; or is an imported vehicle, this fact shall be stated in the application and upon the registration of the special interest motor vehicle and imported motor vehicle, which has been registered until that time in any other state or county, and the owner shall surrender to the director of finance the certificates of registration or other evidence of a form of registration as may be in the applicant's possession or control. The director of finance shall grant full faith and credit to the currently valid certificates of title and registration describing the vehicle, the ownership thereof, and any liens noted thereon, issued by any title state or county in which the vehicle was last registered. The acceptance by the director of finance of a certificate of title or of registration issued by another state or county, as provided in this subsection, in the absence of knowledge that the certificate is forged, fraudulent, or void, shall be a sufficient determination of the genuineness and regularity of the certificate and of the truth of the recitals therein, and no liability shall be incurred by any officer or employee of the director of finance by reason of so accepting the certificate.

(d) The owner of every motor vehicle of the current, previous, and subsequent year model bought out-of-state, subsequently brought into the State, and subject to the use tax under chapter 238 shall provide with the application for registration proof of payment of the use tax pursuant to requirements established by the department of taxation. No registration certificate shall be issued without proof of payment of the use tax.

(e) Notwithstanding any other law to the contrary, the director of finance of the county in which the application for registration is sought shall not require proof of insurance as a condition to satisfy the requirements of this part. This subsection shall apply only to the initial registration of any motor vehicle.

(f) Any motor carrier, as defined in section 286-201, that has not resolved any outstanding federal operations out-of-service order issued by the United States Secretary of Transportation shall not complete an initial registration of a motor carrier vehicle until all federal operations out-of-service orders are resolved.

(g) The provisions of this part requiring the registration of motor vehicles shall not apply to:

(1) Special mobile equipment;

(2) Implements of husbandry temporarily drawn, moved, or otherwise propelled upon the public highways;

(3) Aircraft servicing vehicles that are being used exclusively on lands set aside to the department of transportation for airport purposes; and

(4) Tractor trucks, flatbed trucks, forklifts, and top picks being used as marine terminal equipment temporarily moving in or between terminals at: (A) Sand Island and along Sand Island Parkway and Sand Island Access Road; (B) Kalanianaole Avenue between Kuhio Street and Kahanu Street, abutting Hilo Harbor; (C) Kawaihae-Mahukona Road abutting Kawaihae Harbor; (D) East Kaahumanu Avenue between Hobron Avenue and Kane Street, abutting Kahului Harbor; (E) Waapa Road abutting Nawiliwili Harbor; (F) Nimitz Highway, between 8:30 a.m. and 3:00 p.m., and between 6:30 p.m. and 5:30 a.m.; (G) Sand Island Access Road and Forrest Avenue, including all roadways abutting pier accessways; provided that vehicles abide by the speed limit and keep up with the flow of traffic; (H) Auiki Street, abutting Kapalama Container Terminal; (I) Malakole Street, abutting Barbers Point; and (J) Hanua Street, abutting Barbers Point; provided that an escort vehicle is present.

286-42 County finance director's duties

286-42 County finance director's duties.

(a) The county director of finance shall examine and to the best of the director's ability determine the genuineness and regularity of every registration and transfer of registration of a vehicle pursuant to this part to ensure that every certificate issued for a vehicle contains true statements of the ownership of the vehicle and to prevent the registration of a vehicle by any person not entitled to the vehicle. The director of finance may require any applicant to furnish information, in addition

to that contained in the application, that is necessary to satisfy the director of finance of the truth and regularity of the application. The director of finance may accept any county certificate of title issued for a vehicle as prima facie evidence of ownership for registration and transfer of registration. The director may issue vehicle identification numbers for reconstructed vehicles, special interest vehicles, or motorcycles that do not have vehicle identification numbers if the director determines that the requirements of this section have been met. The county director of finance may register a motorcycle with an aftermarket motorcycle frame, using the number of the frame as issued by the manufacturer of the frame, the vehicle identification number on the certification label, or a vehicle identification number assigned by the director of finance. A bill of sale and Manufacturer's Statement of Origin for the frame, engine, and transmission must be presented and retained as a part of the permanent county registration records. If a Manufacturer's Statement of Origin is not available for the engine and transmission due to the use of a used or reconstructed engine, transmission, or both, then a bill of sale or other proof of ownership, satisfactory to the director of finance must be presented. Except for motorcycles that are built on an aftermarket motorcycle frame, special interest vehicles, and reconstructed vehicles, any motor vehicle or device that is not certified by the manufacturer to be in compliance with all applicable Federal Motor Vehicle Safety Standards as of the date of [manufacture] shall not be registered.

(b) For the purpose of registering standard makes and body types of new passenger motor vehicles the director of finance may accept the certificate of any licensed motor vehicle dealer certifying to the weight and identification of such vehicle. The director of finance of any county may accept the certificate of the director of finance of any other county as to weight and identification of any such vehicle.

(c) The director of finance may enter into a contract with car dealerships and motor vehicle rental companies for the registration of new and used motor vehicles consistent with any statute, ordinance, or provision of any applicable collective bargaining agreement. The director of finance may adopt rules pursuant to chapter 91 as may be necessary for the application, bonding, and procedural requirements of the contractor.

(d) In the event the director of finance is not satisfied as to the ownership of any vehicle sought to be registered, unless the applicant presents satisfactory evidence to the director of finance of the applicant's ownership of the vehicle and as to any liens thereon, the director of finance may accept from the applicant a bond in such form as may be determined by the director of finance in an amount equal to the retail value of the vehicle. The bond and the deposit thereof shall be conditioned to protect the director of finance and any subsequent purchaser of the vehicle or person acquiring any lien thereon or the successor in interest of any such person against any loss or damage on account of any defect in or undisclosed encumbrance upon the right, title, and interest of the applicant in and to the vehicle. Any such interested person shall have a right of action to recover on any such bond for any breach of the conditions for which the same was deposited. The aggregate liability of the surety to all such persons shall in no event exceed the amount of the bond and interest thereon, plus a reasonable attorney's fee to be allowed by the court incurred to procure the recovery under the bond. The bond shall (unless suit has been instituted thereon) be returned and surrendered at the end of three years.

(e) The county finance director, upon being notified by the designated county department that a vehicle is a special interest vehicle, shall cause that fact to be shown upon the registration and title certificates for that vehicle.

286-43 Defacing serial numbers, etc

286-43 Defacing serial numbers, etc., of motor vehicles. It shall be unlawful for any person to wilfully deface, destroy, or alter the serial number, a component part number, or identification mark of any vehicle, so placed or stamped on any vehicle by the manufacturer for the purpose of identifying the vehicle or its component parts, nor shall any person place or stamp any serial, motor, or other number or mark upon a vehicle, except one assigned thereto by the director of finance. This section does not prohibit the restoration by an owner of an original motor, or other mark or number, when the restoration is authorized in writing by the director of finance, nor prevent any manufacturer from placing in the ordinary course of business, numbers or marks upon new motor vehicles or new parts thereof.

286-44

286-44 Unlawful to possess certain motor vehicles, parts, etc.; forfeiture.

(a) It shall be unlawful for any person to possess a motor vehicle, a motor block, or any part thereof, knowing that the motor number, serial number, or manufacturer's number, placed on the same by the manufacturer for the purpose of identification, has been changed, altered, erased, or mutilated, for the purpose of changing the identity of the motor vehicle, motor, motor block, or any part thereof. All such motor vehicles, motor blocks, or parts from which the manufacturer's identification number has been removed, defaced, or altered shall be forfeited to the county where found

and if not identified may be sold at public auction or destroyed. If identified, all persons having an interest in the motor vehicle, motor block, or part shall be notified, there shall be assigned a new registration number, and the motor vehicle, motor block, or part shall be returned to the owner entitled to possession.

(b) The chief of police of each county or officers of the county police who are permanently assigned to conduct vehicle theft investigations may immediately inspect, during normal business hours or whenever the dealer or dealer's agents or employees are otherwise present, any records required by chapter 286, 289, or 445 and any articles described in such records that the police reasonably believe are stolen goods, limited to the purpose of establishing rightful title or registration of vehicles or identifiable vehicle components in order to determine rightful ownership or possession, on the premises of:

(1) Any motor vehicle repair dealer required to be licensed under chapter 437B; or

(2) Any person licensed pursuant to sections 289-2 and 289-3 to engage in the business of purchasing or selling used motor vehicle parts or accessories, or wrecking, salvaging, or dismantling motor vehicles for the purpose of reselling the parts or accessories thereof. As used in this section, "identifiable vehicle component" means any component of a motor vehicle, including motor block or part that can be distinguished from other similar components by a serial number or other unique distinguishing number, sign, or symbol. Whenever possible, inspections conducted pursuant to this subsection shall be conducted at a time and in a manner so as to minimize any interference with, or delay of, business operations.

286-44.5 Salvage certificate

286-44.5 Salvage certificate.

(a) An application for a salvage certificate shall be accompanied by a fee in an amount determined by the director of finance and shall contain:

(1) The name and address of the applicant;

(2) A description of the vehicle being salvaged; and

(3) Any further information reasonably required by the director of finance.

(b) A salvage certificate shall authorize the holder of the certificate to possess, transport but not drive upon a highway, and transfer ownership in a salvage vehicle.

(c) A salvage certificate shall contain the word "salvage" on the face of the certificate and shall be made upon forms prescribed by the director of finance.

286-45 Bill

286-45 Records of county finance director. The director of finance shall file each application received and register the vehicle therein described in a record or book to be kept by the director of finance under the following headings:

(1) Vehicle registration number;

(2) Name of owner; and

(3) Vehicle identification number. The director of finance may microfilm vehicle registration and ownership records which are a year old and may discard the original records. The director of finance may discard vehicle registration and ownership records which are older than six years.

286-46

286-46 Tax lien and encumbrance record.

(a) The director of finance shall keep a book or record to be known as the "tax lien and encumbrance record" in which the following information shall be entered:

(1) Notices of liens for internal revenue taxes payable to the United States and certificates of release thereof;

(2) Notices of liens, taxes, or judgments payable to the State or county and certificates of release thereof;

(3) Notices of seizure in accordance with law of any registered motor vehicle upon any writ of attachment, execution, or other process issued under authority of law;

(4) Notices of restraining order or other order affecting the registration of any registered motor vehicle;

(5) Notice of any proceeding or action affecting the title of a registered motor vehicle or the interest of the owner or legal owner thereof; and

(6) Notice of release of any of the foregoing.

(b) With the exception of delinquent taxes and penalties imposed by section 249-10, the record shall show the year, month, day, hour, and minute at which the notice has been filed with the director of finance, shall show the nature and kind of lien or encumbrance claimed, the amount of tax or other claim, with interest, penalties, and costs, and shall identify the registered motor vehicles affected by the lien or encumbrance, and shall contain such further information as the director of finance may require. The record shall be a public record and may be arranged in such manner as the director of finance determines. The interest of the owner or the legal owner in the motor vehicle shall not be deemed to be affected until the notice referred to in subsection (a)(1) to (5) has been filed with the director of finance in such form as the director of finance shall prescribe for entry in the tax lien and encumbrance record; provided the director of finance may require the payment of delinquent taxes and penalties as a condition precedent to the vehicle's renewal, registration, or transfer of ownership; provided further that a taxpayer may enter into a payment plan with the director of taxation in lieu of paying a tax delinquency in full, in which case an entry in the tax lien and encumbrance record shall be avoided. The director of finance shall charge a fee of $5 for each entry made in the tax lien and encumbrance record, which shall be deposited in the general fund; provided that state and county agencies shall not be charged a fee for any entry made in the tax lien and encumbrance record if the state or county agency provides to the director of finance the license plate number or vehicle identification number of the vehicle to be flagged. Nothing in this section shall be deemed to alter or amend any statute relating to tax liens or the enforcement thereof.

286-47.2

286-47.2 Certificate of trailer registration. Upon the registration of a trailer, the director of finance shall issue a certificate of registration to the owner, dealer, or manufacturer of the trailer. The certificate shall meet the following requirements:

(1) It shall contain upon the face thereof, the date it was issued, the license plate number assigned to the vehicle, the vehicle identification number of the vehicle, the name and address of the registered owner of the vehicle, and such description of the registered vehicle as may be required by the director of finance. If any of the information subsequently proves to be incorrect due to a typographical error, the dealer, manufacturer, or owner of the trailer shall notify the director of finance of the error by a written certificate stating the reasons for and nature of the error and the correction that should be made on the certificate of registration. Upon receipt of such notification by the director of finance, the certificate of registration shall be corrected accordingly so long as the correction does not constitute a change of the vehicle originally registered. A fee shall be paid to the director of finance for each instance of correction of the registration records. The fee charged for each instance of correction of the registration records shall be established by the county's legislative body.

(2) In addition to the requirements provided for in paragraph (1), the face of the certificate of registration shall contain endorsement lines for the transfer of interest of the registered owner of the trailer.

(3) Every owner of a trailer, except for those trailers owned by a company or person operating under the jurisdiction of the public utilities commission, shall carry the certificate of registration with the trailer and shall present the certificate at the request of a police officer. This requirement to carry the certificate of registration with the trailer shall not apply when the certificate is removed for the purpose of application for renewal, transfer of registration, or to record a change in the registration.

(4) The director of finance shall not issue a certificate of ownership for a trailer nor record any liens upon or legal ownership to the trailer.

286-47.5

286-47.5 Notice of change of address or name; penalty.

(a) If the address of a registered owner of a motor vehicle is changed from that stated on the application or the certificate of registration, the registered owner shall, within thirty days after the change, notify the appropriate county director of finance, in writing, of the change, stating the registered owner's old and new addresses.

(b) If the name of a registered owner of a motor vehicle is changed from that shown on the application or the certificate of registration or certificate of ownership, the registered owner shall, within thirty days after the change, notify the appropriate county director of finance, in writing, of the change and shall submit together with the notice, the certificate of ownership, the current year's certificate of registration, if any has been issued to the registered owner, and proof of the change of name. Upon receipt of the certificate of ownership, certificate of registration, if any, and satisfactory proof of

the change of name, the county director of finance shall issue a new certificate of ownership and certificate of registration. The charge for the issuance of a new certificate of ownership and certificate of registration shall be as provided by law except that in the case of individual owners, no charge shall be made.

(c) For the purposes of this section, the following terms shall have the following meanings: "Individual owners" excludes corporate owners of motor vehicles. "Registered owner" includes an applicant for registration of a motor vehicle the processing of whose application has not been completed by the issuance of a certificate of registration and a certificate of ownership.

(d) Any person who violates this section shall be fined not more than $25.

286-48

286-48 Certificates of ownership of salvaged motor vehicles.

(a) Whenever a motor vehicle subject to registration under this part is sold as salvage or conveyed to an insurance company, in the ordinary course of business or as the result of a total loss insurance settlement where the insurance company receives the certificates of registration and ownership, the purchaser or, if an insurance company its authorized agent, shall within ten days from the purchase, or the settlement of the insurance loss, forward the motor vehicle's endorsed certificate of ownership or other evidence of title, certificate of registration, license plates, and an application for a salvage certificate as provided for in section 286-44.5, to the director of finance. If the certificate of registration or one or both license plates are lost, an affidavit, duly notarized and signed by the party responsible for the compliance of this section stating that the party has no knowledge of the location of the certificate of registration or the license plates, shall be filed with the director of finance of the county having jurisdiction over the vehicle. In any event the certificate of ownership or other evidence of title shall be forwarded to the director of finance.

(b) Upon receipt of the certificate of ownership, certificate of registration, license plates, and application for a salvage certificate, the director of finance shall issue a salvage certificate in the name of the purchaser or insurance company.

(c) Upon resale of the salvage vehicle, the seller or, if the seller is an insurance company, its authorized agent shall transfer the salvage certificate and issue a bill of sale to the purchaser which shall be on a form prescribed by the director of finance. The seller shall notify the purchaser, in writing, of the requirements of this chapter regarding the recertification of salvage vehicles. The seller shall sell the salvage vehicle only to a person licensed pursuant to chapter 437B, sections 289-4, or 445-232, or any person who executes an affidavit which states whether or not the salvage vehicle would be used to construct a rebuilt vehicle as defined in section 286-2 and that if the salvage vehicle is to be rebuilt, the purchaser will register the rebuilt vehicle as required by this chapter.

(d) In the event the salvage vehicle is rebuilt so as to be capable of again operating on the highways of this State, the motor vehicle shall not be licensed for such operation, nor shall the ownership thereof be transferred until there is submitted to the director of finance:

(1) The prescribed bill of sale;

(2) An appropriate application for registration of the rebuilt or restored motor vehicle along with the salvage certificate and a certificate of inspection signed by the registered or certified motor vehicle repair dealer who is bonded as required by section 437B-26, and who rebuilt the vehicle, attesting that the original recognized vehicle manufacturer's established repair procedures or specifications and allowable tolerances for the particular model and year were utilized and adhered to; and

(3) Any other document and fee required by the director of finance. The counties may, by ordinance, establish the fee to be charged for the inspection of rebuilt motor vehicles.

(e) Whenever a certificate of registration and certificate of ownership is issued for a motor vehicle with respect to which a salvage certificate has been previously issued, the new certificates shall conform to the requirements of section 286-47 and:

(1) Bear the words "Rebuilt Vehicle"; and

(2) Appear in such a manner as to distinguish them from the certificate of registration and certificate of ownership for motor vehicles other than rebuilt or restored motor vehicles.

(f) In the event a total loss insurance settlement between an insurance company and its insured or a claimant for property damage caused by its insured results in the retention of the salvage vehicle by the insured or claimant, as the case may be, then in such event, the insurance company or its authorized agent shall notify, within ten days from the date of

settlement, the director of finance of such retention by its insured or claimant, as the case may be, and shall notify its insured, or claimant as the case may be, in writing, of the requirements of this chapter regarding the recertification of salvage vehicles. The notification shall be on a form prescribed by the director of finance.

286-49

286-49 Registration of vehicles under two or more names. Unless otherwise specifically stated by a written document, any vehicle registered in the names of two or more persons shall be presumed to be owned in joint tenancy.

286-50

286-50 Registration of vehicle located outside State; correction of errors; fee for correcting errors.

(a) The director of finance of a county shall not accept an application for registration of any vehicle under this part unless the vehicle at the time of application is to be operated on the public highways of that county as required under section 286-41 or, if the vehicle is not within the State, the vehicle is currently registered in the State in the name of a bona fide resident of the State. However, the director of finance shall accept and grant an application and issue number plates for a new unlicensed vehicle which is not within the State when the application is accompanied by a written certificate signed by the seller, who shall be a person licensed to sell new motor vehicles under chapter 437, giving the name and local address of the seller and the purchaser and a description of the vehicle, including a statement of the weight thereof, and, when the vehicle identification numbers of such new vehicle are not available, a statement of such fact, and also by a written certificate of the purchaser giving the purchaser's name, the purchaser's local address and permanent residence, and the name of the seller, a full description of the vehicle, and a statement that the use tax payable thereon has been paid or that the same will be paid within sixty days of the arrival of the vehicle in the State. One copy of the application when granted shall be furnished by the director of finance to the director of taxation. In a case where the vehicle identification numbers of the new vehicle are not available at the time of the application, the dealer shall certify to the vehicle identification numbers thereof upon receipt of the numbers from the factory or manufacturer, which certificate the director of finance shall enter in the director of finance's registration records. Within sixty days after arrival in the State of any such vehicle, unless the same has been shown in the application or subsequent certification, the dealer shall furnish to the director of finance a certificate of the dealer, identifying the vehicle by the vehicle identification numbers or other description, and evidence of arrival in the State of any such vehicle, which information the director of finance shall enter in the director of finance's registration records. If the vehicle identification numbers of the vehicle, as given in the dealer's certificate of the vehicle identification numbers, subsequently prove to be erroneous on account of error in the information received by the dealer from the factory or manufacturer, or for any other reason, the dealer shall notify the director of finance of the error by a written certificate of the dealer stating the reasons for the nature of the error and the correction which should be made in the registration records; and upon receipt of the dealer's certificate by the director of finance, the registration records shall be corrected accordingly. A fee of $3 shall be paid by the dealer and collected by the director of finance for each instance of correction of the registration records.

(b) Notwithstanding the first paragraph of subsection (a), the director of finance shall accept and grant an application, and issue number plates, when the vehicle, although not within the State, is to be registered in the name of bona fide residents of the State, and the application is accompanied by:

(1) A written certificate setting forth the name, local address of the applicant; the name and business address of the seller; a full description of the vehicle, including a manufacturer's statement of the weight thereof, and the vehicle identification numbers verified by a law enforcement agency; and such other information as may be required by the director of finance;

(2) A copy of the bill of sale and such other documents as may be required by the director of finance, to establish legal ownership; and

(3) A written statement signed by the applicant stating that the use tax payable thereon will be paid within sixty days of the arrival of the vehicle in the State. The applicant shall be responsible for supplying to the director of finance all information relative to the correct vehicle identification numbers, and the payment of correction fees, in the same manner and to the same extent as is required hereinabove of a dealer. One copy of the application, when granted, shall be furnished by the director of finance to the state director of taxation. No tax or other fees required by law in connection with the registration of a vehicle not within the State at the time of the application shall be refundable.

286-51 Registration, expense

286-51 Registration, expense.

(a) The certificate of registration for each motor vehicle in the counties of the State shall be renewed on a staggered basis as established by each county. The director of finance of each county may adopt rules to carry out the purposes stated in this section and shall expend the funds from the director's operating funds as may be necessary for these purposes; provided that if the director has ascertained as of the date of the application that:

(1) The registered owner has not deposited or paid bail with respect to any summons or citation issued to the registered owner for stopping, standing, or parking in violation of traffic ordinances within the county;

(2) The registered owner of a motor carrier vehicle, as defined in section 286-201, has not resolved any outstanding federal operations out-of-service orders issued by the United States Secretary of Transportation; or

(3) The registered owner has outstanding charges and fines owed to the county relating to the disposition of an abandoned vehicle, including for costs related to towing, storage, processing, and disposal, the director may require, as a condition precedent to the renewal, that the registered owner deposit or pay bail with respect to all such summonses or citations, resolve all federal operations out-of-service orders, or pay all outstanding charges and fines relating to the disposition of the abandoned vehicle. The payment of all outstanding charges or fines relating to the disposition of the abandoned vehicle shall not be a condition precedent to the transfer if the abandoned vehicle was stolen or taken from the registered owner without permission or authorization and a police report for the abandoned vehicle is filed within a period of time, to be determined by the director of finance of each county, after discovery of the abandoned vehicle. The certificates of registration issued hereunder shall show, in addition to all information required under section 286-47, the serial number of the tag or emblem and shall be valid during the registration year only for which they are issued. Any certificate of registration belonging to a motor carrier shall be suspended or revoked when that motor carrier has been issued any federal operations out-of-service orders by the United States Secretary of Transportation and that certificate of registration shall remain suspended or revoked until all the federal operations out-of-service orders are resolved. The certificates of ownership need not be renewed annually but shall remain valid as to any interest shown therein until canceled by the director of finance as provided by law or replaced by new certificates of ownership as hereinafter provided.

(b) This part shall be administered by the director of finance in conjunction with the requirements of sections 249-1 to 249-13 and shall entail no additional expense or charge to the person registering the ownership of a motor vehicle other than as provided by this section or by other laws; provided that for each new certificate of ownership issued by the director of finance under section 286-52, the director of finance may charge a fee which shall be deposited in the general fund. The fees charged to issue a new certificate of ownership shall be established by the county's legislative body. Notwithstanding any other law to the contrary, an additional fee of not more than $2 for each certificate of registration for all motor vehicles may be established by ordinance and collected annually by the director of finance of each county, to be used and administered by each county:

(1) For the purpose of beautification and other related activities of highways under the ownership, control, and jurisdiction of each county;

(2) To defray the additional cost in the disposition and other related activities of abandoned or derelict vehicles as prescribed in chapter 290. For the purposes of this paragraph, other related activities shall include but need not be limited to any and all storage fees that are negotiated between each county and a towing company contracted by the county to remove and dispose of abandoned or derelict vehicles; and

(3) To mitigate and address the impacts of tourism-related traffic congestion. The $2 fee established pursuant to this subsection for certificates of registration for all motor vehicles may be increased by ordinance up to a maximum of $10. The moneys so assessed and collected shall be placed in a revolving fund entitled, "the highway beautification, abandoned vehicle, and tourism-related traffic congestion revolving fund".

286-51.5

286-51.5 Junking of nonrepairable vehicle. Any owner of a vehicle, whether it is currently registered or not currently registered, which is incapable of safe operation for use on the public highway and which has no resale value except as a source of parts or scrap only, or which the owner irreversibly designates as a source of parts or scrap, may junk the vehicle upon presenting to the director of finance a signed statement of fact of the junking together with such other relevant facts as may be required by the director of finance, and the signed certificate of title. All nonrepairable vehicles that are junked under this section shall never again be titled or registered.

286-52

286-52 Procedure when title or interest of vehicle transferred; delivery of certificate mandatory; complete defense.

(a) Upon a transfer of the title or interest of a legal owner in or to a vehicle registered under this part, the person whose title or interest is to be transferred and the transferee shall write their signatures with pen and ink upon the certificate of ownership issued for the vehicle, together with the addresses of the person whose title or interest is to be transferred and the transferee in the appropriate spaces provided upon the certificate. The signature of the person whose title or interest is to be transferred and signature of the transferee shall each serve as an attestation by that respective party that the information provided on the certificate is correct. Any person who provides false or fraudulent information under this subsection shall be fined no less than $500 and no more than $1,000.

(b) Within thirty calendar days thereafter, the transferee shall forward the certificate of ownership so endorsed to the director of finance who shall file the same; provided that if the recorded lien holder does not have an office in the State, the applicable period shall be sixty days. Whenever a transferee fails to comply with these provisions, the director of finance shall charge a fee of $50, in addition to the fee provided in section 286-51, for a new certificate of ownership.

(c) Subsection (b), requiring a transferee to forward the certificate of ownership after endorsement to the director of finance, shall not apply to the transferee of a vehicle who was not intending to and does not drive the vehicle or permit the vehicle to be driven upon the public highways, but the transferee, upon transferring the transferee's interest or title to another, shall give notice of the transfer to the director of finance and endorse the certificate of ownership to the new legal owner and the certificate of registration to the new owner. If the director of finance has ascertained as of the date of the application that the registered owner has not deposited or paid bail with respect to any summons or citation issued to the registered owner for stopping, standing, or parking in violation of traffic ordinances within the county or has outstanding charges and fines owed to the county relating to the disposition of an abandoned vehicle under the registered owner, including for costs related to towing, storage, processing, and disposal , the director may require, as a condition precedent to the transfer, that the registered owner deposit or pay bail with respect to the summons or citations or pay all outstanding charges and fines relating to the disposition of the abandoned vehicle; provided that payment of all outstanding charges and fines relating to the disposition of the abandoned vehicle shall not be a condition precedent to the transfer if the abandoned vehicle was stolen or taken from the registered owner without permission or authorization and a police report for the abandoned vehicle is filed within a period of time, to be determined by the director of finance of each county, after discovery of the abandoned vehicle.

(d) The director of finance shall, upon receipt of the certificate of ownership properly endorsed, register the vehicle, and shall issue to the owner and legal owner entitled thereto by reason of the transfer a new certificate of registration and the certificate of ownership, respectively, in the manner and form hereinabove provided for original registration.

(e) Until the director of finance has issued the new certificate of registration and certificate of ownership as provided in subsection (d), delivery of the vehicle shall be deemed not to have been made and title thereto shall be deemed not to have passed, and the intended transfer shall be deemed to be incomplete and not to be valid or effective for any purpose, notwithstanding any provision of the Uniform Commercial Code; provided that a security interest in a motor vehicle shall be perfected as provided in the Uniform Commercial Code, section 490:9-311 and that the validity, attachment, priority, and enforcement of the security interest shall be governed by Article 9 of the Uniform Commercial Code.

(f) In the event of the transfer by operation of law of the title or interest of a legal owner in and to a vehicle registered under this part, as upon inheritance, devise, bequest, order in bankruptcy, insolvency, execution sale, repossession upon default in performance of the terms of a lease or executory sales contract, or otherwise than by the voluntary act of the person whose title or interest is so transferred, the certificate of ownership shall be signed upon the spaces provided by the personal representative, receiver, trustee, sheriff, or other representative, or successor in interest of the person whose title or interest is so transferred in lieu of that person. Every personal representative, receiver, trustee, sheriff, or other representative or successor hereinabove referred to shall file with the director of finance a notice of any transfer by sale, lease, or otherwise by the person, of the vehicle, together with evidence satisfactory to the director of finance of all facts entitling the person to make the transfer. Upon notice given to the director of finance that transfer by operation of law of the title or interest of a legal owner or a registered owner has been effected pursuant to any provision of law, the director of finance shall send to the legal owner or the registered owner or both a notice by registered mail of the action and requesting the delivery to the director of finance of the certificate of ownership or the certificate of registration, as the case may be, within ten days after date of mailing of the notice, and any person who refuses or neglects to deliver the same to the director of finance pursuant to the notice shall be guilty of a misdemeanor and punished as provided in section

286-61.

(g) Nothing in the foregoing subsections shall prevent a legal owner from assigning the title or interest in or to a vehicle registered under this part to another legal owner at any time without the consent of and without affecting the interest of the holder of the certificate of registration thereof. Upon filing with the director of finance a certificate of ownership endorsed by the legal owner and a transferee of legal ownership, the director of finance shall, regardless of whether the certificate of registration has expired, enter the name of the new legal owner upon the records of the director's office and shall forthwith issue a new certificate of ownership to the new legal owner in the form for original registration. Upon so doing, the director of finance shall send to the registered owner a notice by mail of the action.

(h) Any person who refuses or neglects to deliver a certificate of ownership to a transferee entitled thereto under this part shall be punished as provided in section 286-61.

(i) Every dealer, upon transferring a motor vehicle, whether by sale, lease, or otherwise, shall immediately give notice of the transfer to the director of finance upon the official form provided by the director of finance. Each notice shall contain the date of the transfer, the names and addresses of the transferor and transferee, and a description of the vehicle as may be called for in the official form.

(j) Every person, other than a dealer, upon transferring a motor vehicle, whether by sale, lease, or otherwise, shall within ten days give notice of the transfer to the director of finance upon the official form provided by the director of finance. Every notice shall contain the date of transfer, the names and addresses of the transferor and transferee, and a description of the vehicle as may be called for in the official form. Any person who violates this subsection shall be fined no more than $100.

(k) Whenever the registered owner of any motor vehicle or any licensed dealer has given notice to the director of finance of a transfer of the title or interest in the motor vehicle, as provided in subsection (i) or (j), and has delivered the certificate of ownership bearing the transferor's signature to the transferee as required by subsection (a), the transferor shall be relieved from any liability, civil or criminal, from the date the transferor delivers the motor vehicle into the transferee's possession, which the transferor might otherwise subsequently incur by reason solely of being the registered owner of the vehicle.

(l) A licensed dealer who has forwarded a properly endorsed certificate of ownership to the director of finance shall be relieved of any civil liability from the date the transferor delivers the motor vehicle into the transferee's possession, which the transferor might otherwise subsequently incur by reason solely of being the registered owner of the vehicle; provided that a specific written authorization to forward the certificate has been obtained from the transferee.

(m) Any person who falsely or fraudulently gives notice to the director of finance of a transfer of title or interest in a motor vehicle shall be subject to the penalty provided in section 286-61.

(n) Any organization that receives a motor vehicle as a charitable donation shall be deemed, upon receipt of the motor vehicle, to be a transferee for purposes of this section and shall be subject to all of the applicable rights, responsibilities, and liabilities of a transferee under this section.

(o) Proof by the transferor that the transferor has filed the notice form in subsection (i) or (j) shall serve as a complete defense to any action brought against the transferor for an act or omission, civil or criminal, arising from the use, operation, or abandonment of the vehicle by another person after the transferor's filing of the notice form; provided that a copy of the form shall serve as proof of the filing of the form.

(p) A transferor who submits false or fraudulent information to complete the provisions of this section requiring action by the transferor shall be fined not less than $500 and not more than $1,000.

286-52.4 Bill

286-52.4 Terminal rental adjustment clause; vehicle leases.] In the case of motor vehicles or trailers, notwithstanding any other provision of law, a transaction does not create a sale or security interest merely because it provides that the rental price is permitted or required to be adjusted under the agreement, either upward or downward, by reference to the amount realized upon sale or other disposition of the motor vehicle or trailer.

286-52.5

286-52.5 Procedure when registration of a trailer transferred.

(a) Upon transfer of registered ownership in or to a trailer, the person whose interest is to be transferred and the transferee shall write their signatures with pen and ink upon the certificate of registration issued for the trailer, together with the address of the transferee in the appropriate space provided upon the certificate.

(b) Within thirty calendar days of the transfer of registered ownership of a trailer, the transferee shall forward the certificate of registration to the director of finance who shall file the certificate. Whenever a transferee fails to comply with this section, the director of finance shall charge the transferee a fee of $50, in addition to the fee provided in this section, for the issuance of a new certificate of registration.

(c) If the director of finance has ascertained as of the date of the application that the registered owner has not deposited or paid bail with respect to any summons or citation issued to the registered owner for stopping, standing, or parking in violation of traffic ordinances within the county or has outstanding charges and fines owed to the county relating to the disposition of an abandoned vehicle under the registered owner, including for costs related to towing, storage, processing, and disposal , the director may require, as a condition precedent to the transfer, that the registered owner deposit or pay bail with respect to all such summonses or citations or pay all outstanding charges and fines relating to the disposition of the abandoned vehicle; provided that payment of all outstanding charges and fines relating to the disposition of the abandoned vehicle shall not be a condition precedent to the transfer if the abandoned vehicle was stolen or taken from the registered owner without permission or authorization and a police report for the abandoned vehicle is filed within a period of time, to be determined by the director of finance of each county, after discovery of the abandoned vehicle.

(d) The director of finance, upon receipt of the certificate of registration properly endorsed, shall register the trailer and shall issue to the owner thereof by reason of the transfer a new certificate of registration in the manner and form provided for original registration.

(e) Until the director of finance has issued the new certificate of registration as provided in subsection (d), delivery of such trailer shall be deemed not to have been made and registration thereto shall be deemed not to have passed, and the intended transfer shall be deemed to be incomplete and not to be valid or effective for any purpose.

(f) In the event of the transfer by operation of law in or to a trailer registered under section 286-47.2, as upon inheritance, devise, or bequest, order in bankruptcy, or insolvency, execution sale, repossession upon default in performance of the terms of a lease or executory sales contract, or otherwise than by the voluntary act of the person whose interest is to be transferred, the certificate of registration shall be signed upon the spaces provided by the personal representative of, or successor in interest of the person whose registered ownership or interest is so transferred in lieu of such person. Every personal representative, receiver, trustee, sheriff, or other personal representative hereinabove referred to shall file with the director of finance a notice of any transfer by sale, lease, or otherwise by the person, of any such trailer, together with evidence satisfactory to the director of finance of all facts entitling such representative to make the transfer.

(g) Any person who refuses or neglects to deliver a certificate of registration to a transferee entitled thereto under this section, shall be punished as provided in section 286-61.

(h) Every dealer or manufacturer, upon transferring a trailer, whether by sale, lease, or otherwise, shall immediately give notice of the transfer to the director of finance upon the official form provided by the director of finance. Every such notice shall contain the date of transfer, the names and addresses of the transferor and transferee, and such description of the trailer as may be called for in the official form.

(i) Every person, other than a dealer or manufacturer, upon transferring a trailer, whether by sale, lease, or otherwise, shall within ten days give notice of the transfer to the director of finance upon the official form provided by the director of finance. Every notice shall contain the date of transfer, the names and addresses of the transferor and transferee, and such description of the trailer as may be called for in the official form. Any person who violates this subsection shall be fined not more than $100.

(j) Whenever the registered owner of any trailer or any dealer or manufacturer has given notice to the director of finance of a transfer of the registered ownership to the trailer, as provided in subsections (h) and (i), and has delivered the certificate of registration bearing the transferor's signature to the transferee as required by subsection (a), the transferor shall be relieved from liability, civil or criminal, which the transferor might subsequently incur by reason of being the registered owner of the trailer.

(k) A dealer or manufacturer who has forwarded a properly endorsed certificate of registration to the director of finance shall be relieved of any civil liability, only if, in addition to the requirement of subsection (j), the dealer or manufacturer obtains from the transferee a specific written authorization to forward the certificate.

(l) Any person who falsely or fraudulently gives notice to the director of finance of a transfer of registered ownership to a trailer shall be subject to the penalty provided in section 286-61.

(m) The director of finance may charge a fee which shall be deposited in the general fund for each new certificate of registration issued. The fee charged to issue a new certificate of registration shall be established by the county's legislative body.

286-53 Dealers in new motor vehicles

286-53 Dealers in new motor vehicles.

(a) A manufacturer of or dealer in new motor vehicles having an established place of business, owning any such new vehicles and operating them upon the public highways, in lieu of registering each such new vehicle, may make application upon an official form provided for that purpose to the director of finance for a permanent number plate.

(b) Every new vehicle owned or controlled by the manufacturer or dealer, and permitted to be registered under a permanent number plate shall be regarded as registered thereunder until the vehicle is sold and the sale has been recorded by the director of finance.

(c) The director of finance shall, upon receipt of the application, or thereafter, furnish to the manufacturer or dealer:

(1) Permanent number plates which shall be attached to new motor vehicles which are used by the applicant only for demonstration of the new motor vehicles to customers upon the public highways if requested by the applicant. The price of each permanent number plate shall be established by the director of finance under chapter 91. Each permanent number plate shall display upon it the number which is assigned to the applicant and a different letter or number to differentiate it from other plates furnished to the applicant. Permanent number plates which are detached from a new motor vehicle which has been sold may be used on another new motor vehicle; and

(2) Temporary motor vehicle plates, if the applicant is a new motor vehicle dealer, which plates shall be blank except for an area on the lower right corner which shall be utilized for validation of the temporary plates. The validation shall not be reproducible by any person other than the director of finance, or director of finance of another county if an agreement is made to utilize a uniform validation, shall signify the official status of the temporary number plate, and be designed to be visible from a distance of two feet. The directors of finance of any two or more counties may agree to utilize a uniform designation to be placed upon the temporary number plate. The director of finance shall establish the material used for the temporary number plate and a charge by rule under chapter 91 for each temporary number plate.

(d) Whenever the design of the number plates issued under chapter 249 is changed, the new motor vehicle dealer shall apply to the director of finance for the most current permanent number plates. Before issuing the current permanent number plates, the director of finance shall require each applicant to return the permanent number plates issued previously. If any permanent number plates issued previously have been lost or destroyed, the manufacturer or dealer who applies for the permanent number plates shall certify in writing to the director of finance that the permanent number plates have been lost or destroyed and that if any lost permanent number plates are found, they shall be returned forthwith to the director of finance. Upon receipt of the certificate, the director of finance shall issue an equal number of the most current permanent number plates as have been certified to be lost or destroyed.

(e) Whenever a new motor vehicle dealer sells a new motor vehicle to a person, the new motor vehicle dealer shall detach the permanent number plate issued under subsection (c) from that new motor vehicle and replace it with one temporary number plate. The temporary number plate shall be attached to the rear of the vehicle in the same location as required for number plates under section 249-7. The new motor vehicle dealer shall print only the following upon the temporary number plate:

(1) The date that is thirty working days after the date the new owner takes possession of the motor vehicle, which date shall be placed in the middle of the temporary number plate in numbers not less than four inches in height;

(2) The name and address of the new owner;

(3) The name and address of the new motor vehicle dealer;

(4) The serial number of the new motor vehicle; and

(5) The date the new motor vehicle owner took possession of the motor vehicle. Any temporary number plate upon which is placed any drawings, pictures, or words other than what is required by paragraphs (1) through (5), shall be invalid. The information required by paragraphs (3) through (5) shall be printed in the upper left corner of the temporary number plate. The temporary number plate shall be valid through the date listed in paragraph (1). Any person who operates a motor

vehicle with an expired temporary number plate shall be fined not more than $500. Any new motor vehicle dealer who prepares an invalid temporary number plate shall be fined not more than $500.

(f) No manufacturer or dealer shall permit the operation of any motor vehicle owned or controlled by the manufacturer or dealer upon any public highway, unless permanent number plates assigned to the manufacturer or dealer are attached thereto, in the manner specified in this part; provided that the new vehicles may be operated without permanent number plates attached thereto on the initial continuous movement from the place of entry of the vehicle into this State to the warehouse, storeroom, salesroom, or other place of business selected by the manufacturer or dealer.

(g) Every manufacturer or dealer, upon the sale, lease, or other transfer by the manufacturer or dealer of a new vehicle registered under a general distinguishing number, as herein provided, shall forthwith give notice of the transfer to the director of finance upon the appropriate official form, stating the date of the transfer, a description of the vehicle, the name and post office address of the transferee, and certifying that temporary number plates have been provided for the motor vehicle of the transferee. Following the transfer, if application for registration has been made by or on behalf of the transferee, the vehicle may be operated until duly registered by the director of finance under chapter 249 and this chapter or until the expiration of the temporary number plates whichever occurs sooner.

(h) The director of finance may, at the director's discretion, grant a temporary permit to operate a vehicle, a registration for which has been applied for.

(i) For the purposes of this section: "New motor vehicle dealer" means a dealer licensed under chapter 437 to engage in the business of selling new motor vehicles or used motor vehicles at wholesale or retail or both. "New motor vehicles" means motor vehicles of the current model year, immediate past model year, or the next model year that have not been sold or registered by the manufacturer or dealer. "Permanent number plate" means a number plate furnished to a manufacturer or dealer under subsection (c)(1) for a motor vehicle that is similar to the number plate issued under section 249-7 and that allows the motor vehicle to be operated on the public highways. "Temporary number plate" means the number plate furnished to a new motor vehicle dealer under subsection (c)(2).

286-53.1

286-53.1 Boat dealers; trailers without plates. Notwithstanding any other law to the contrary, a manufacturer of or a dealer in boats having an established place of business in the State may move a boat trailer without license number plates upon the public highways during the initial continuous movement of the boat trailer and any boat being transported on the trailer from its point of entry into the State to a storage, display, or sales area selected by the manufacturer or dealer.

286-53.5

286-53.5 Permanent registration of fleet vehicles.

(a) Notwithstanding any other law to the contrary, the registered owner or lessee of a fleet of twenty-five or more vehicles consisting of commercial motor vehicles, commercial trailers, or passenger automobiles may apply to the director of finance of the county in which the vehicles are to be operated, for permanent license plates, decals, and registration cards; provided that the vehicle shall not be registered in any other state.

(b) The application for initial issuance of permanent registration shall be filed in such form as the director of finance shall require. Upon initial application and payment of the required fees, the director of finance shall issue a distinguishing license plate or decal which indicates the vehicle has been registered under this section.

(c) Upon submission of the renewal of registration form and payment of normally required fees, the license plates, decals, and registration cards issued pursuant to this section for the vehicle shall remain valid; provided that a fleet vehicle registered under this section may be deleted from such identified fleet upon notification of the director of finance by the registered owner on the proper form, and if the distinguishing license plates, decals, and registration cards issued for the vehicle are surrendered. Failure to comply with the preceding sentence shall require payment by the fleet owner of fees due for registration of the vehicle as though the vehicle remained part of the fleet. Display of the distinguishing license plate or decal and registration card shall constitute prima facie evidence that the vehicle is currently registered. The registered owner or lessee of any vehicle registered pursuant to this section shall display in a conspicuous place on both the right and the left side of each vehicle, the name, trademark, or logo of the company. The display of the name, trademark, or logo shall be printed in sharp contrast to the background of the vehicle and shall be of such size, shape, and color as to be readily identifiable during daylight hours from a distance of fifty feet.

(d) Each director of finance shall adopt rules pursuant to chapter 91 for the application, payment of fees, fleet additions or deletions, and cancellation of distinguishing plates or decals and registration card issued to a vehicle of a fleet owner.

286-53.6 Fleet vehicles, fees

286-53.6 Fleet vehicles, fees. Renewal fees for permanent registration of fleet vehicles pursuant to section 286-53.5 shall be paid pursuant to a schedule which shall be established by the director of finance. The fees determined to be due and owing under this section and section 286-53.5 shall be a lien upon all vehicles of the applicant subject to registration under this chapter, whether or not they are fleet vehicles.

286-54 Out-of-state vehicle permit

286-54 Out-of-state vehicle permit. The owner of a motor vehicle which has been duly registered for the current year in another state or country and in accordance with the laws thereof, may, in lieu of registering the vehicle as otherwise required by this part, apply to the director of finance for the registration thereof as provided in this section. The owner shall, within thirty days after commencing to operate the vehicle or causing or permitting it to be operated within the State, apply to the director of finance for the registration thereof upon the appropriate official form stating therein the name and home address of the owner and the temporary address, if any, of the owner while within the State, the registration number of the vehicle as assigned thereto by the state or country, together with a description of the motor vehicle that may be called for in the form and other statements of facts that may be required by the director of finance. The director of finance shall file every application received and register the vehicle therein described and shall issue to the owner a registration certificate of a distinctive form containing the date of its issue, a brief description of the vehicle, and a statement that the owner has procured registration of the vehicle. No owner of a motor vehicle which has been duly registered for the current year in another state or country shall operate any vehicle or cause or permit to be operated upon the public highways, either before or while it is registered under this section, unless there is at all times displayed thereon the current registration number plates assigned to the vehicle by the other state or country, nor unless the certificate of registration is kept within the vehicle for which it is registered, or in the event the vehicle is a motorcycle, carry the certificate of registration in a convenient receptacle attached to the vehicle. The director of finance shall also furnish the owner with an emblem bearing a serial number with the words "VEHICLE PERMIT" and the date of expiration of the emblem to be placed on the rear bumper in plain sight of the vehicle, or when issued to a motorcycle emblem to be placed on rear fender. Every certificate of registration issued pursuant to this section shall be valid for the unexpired portion of the current license number plates assigned to the vehicle in accordance with the law of the other state or country; provided that in no case shall a certificate be issued to exceed a twelve-month period. Whenever a vehicle is registered under this section, the sum of $5 shall be assessed against the owner of the vehicle to defray the administrative costs incurred by the county. Subsequent changes in the amount of the administrative costs shall be established by the county's legislative body.

286-55 Certificates lost or mutilated

286-55 Certificates lost or mutilated. If any certificate of registration or certificate of ownership is lost, mutilated, or becomes illegible, the person to whom the same has been issued shall immediately make application for and may obtain a duplicate thereof upon furnishing satisfactory information to the director of finance and upon payment of a fee, which fee shall be established by the county's legislative body. When a certificate of ownership is lost, damaged, mutilated or stolen, the director of finance shall provide to a qualified applicant an application form for a duplicate certificate of ownership. The names and addresses of the transferor and transferee shall be written in the application form and the same, together with the last issued certificate of registration, the fee for the duplicate certificate of ownership, plus the transfer fee, shall be filed with the director of finance.

286-56 Official cars

286-56 Official cars. All motor vehicles owned by any foreign government or by a consul or other official representative thereof, or by the United States government, or by the State or any political subdivision thereof, shall be registered as herein required by the person having the custody thereof, and the custodian shall display official registration by distinguishing marks thereon which shall be furnished by the director of finance, free of charge, and where motor vehicles are owned by the State or any of its municipal subdivisions, the motor vehicle shall bear the inscription provided for in sections 105-6 to 105-8.

286-56.5

286-56.5 Special license plates for consul or official representative of foreign or territorial government. Notwithstanding any other law to the contrary, any consul or official representative of a foreign government or territory of the United States of America, duly licensed and holding an exequatur issued by the Department of State of the United States of America, may be furnished at no cost special license plates by the director of finance on such conditions as may be necessary on a vehicle used on official consular business, provided that upon application for special license plates a consul or official representative shall be given the option of using license plates issued by the consul's or official representative's government. Before such plates shall be considered as special license plates, they shall be registered and the appropriate fees paid to the county for the issuance. The special license plates shall be securely fastened to the vehicle in lieu of the regulation number plates; provided that the tag or emblem, issued each year, shall be affixed to the special license plates in the manner provided for in section 249-7. Whenever the consul or official representative transfers or assigns the consul's or official representative's interest in or title in the vehicle to which the special license plates were issued, the consul or official representative shall immediately surrender the special license plates to the director of finance.

286-57

286-57 Unlawful removal of motor vehicles from State.

(a) It shall be unlawful for any person to remove, attempt to remove, cause to be removed, or assist in so doing, any motor vehicle registered pursuant to this part from the State to any other place away from the State, unless the person is the legal owner of the vehicle or has first obtained written authorization from the legal owner of the vehicle.

(b) No person owning or having control of any vessel, airplane, or other means of transportation, and no agent or employee of the person, shall transport any vehicle from the State to any other place away from the State, or accept any vehicle for the transportation, or deliver any bill of lading, order, or other written instrument authorizing the transportation, unless the person requesting the transportation:

(1) Produces a certificate of ownership and a current certificate of registration showing that the person is the legal owner of the vehicle; or

(2) Produces, if the person is not the legal owner of the vehicle, a current certificate of registration showing that the person is the registered owner of the vehicle and, in addition, obtains the written consent of the legal owner of the vehicle to the transportation.

(c) No person owning or having control of any vessel, airplane, or other means of transportation, and no agent or employee of the person, shall transport any used vehicle between the counties or from the State to any other place away from the State, unless, in addition to any other requirements, the person records by physical inspection the vehicle identification number (VIN) of the vehicle and maintains a record of the transporting of the vehicle along with the description and vehicle identification number (VIN) for a period of not less than three years.

(d) This section shall not apply to any motor vehicle rental company as defined in section 431:9A-141 that periodically ships in quantities of ten vehicles or more.

(e) Records maintained as required above, and all other records and receipts relating to the exportation of vehicles shall be available for inspection by the federal, state, or county police agencies during normal business hours.

286-58

286-58 Appeal from finance director's decision. Whenever any person is aggrieved by any decision of any county director of finance under this part, the person may appeal from the decision of the director of finance to the district court of the circuit in which the county is situated, by filing with the court, within twenty days after the decision, or within such additional time as may have been consented to in writing by the director of finance, an informal notice of appeal setting forth the name of the appellant, the circumstances attending the decision, a general statement as to the ruling appealed from, the date of the decision, and a description of the motor vehicle involved, with the serial or motor number or both, if available. A copy of the notice shall be served upon, or mailed, postage prepaid, by registered mail with request for return receipt, to the director of finance within two days after the date of the filing with the court. Informalities in the notice shall not invalidate the notice, and the notice may be amended for good cause shown to the satisfaction of the court.

286-59 Appeal; procedure

286-59 Appeal; procedure. Upon appeal, the district court shall hold a hearing de novo, and shall have power to enter such judgment or order as in its reasonable judgment may be warranted by all of the circumstances. In making the

judgment or order, the court may waive defects or irregularities in the current or previous registrations which, in its opinion, have been satisfactorily explained on the part of the appellant, or may order registration of the vehicle subject to reasonable conditions to be then or thereafter, within a reasonable time fixed by the court, complied with by the appellant, upon noncompliance with which conditions the director of finance may cancel such registration. The conditions may include the furnishing of a bond in a reasonable amount, to be fixed by the court, to insure compliance with other conditions or to indemnify the director of finance and any other person in the event it is thereafter held or found that the registration was wrongful. Any certificate of registration issued subject to any such condition shall bear thereon an appropriate notation referring to the condition or the words "conditional registration". A copy of the court's order as to the conditional registration shall be served upon the director of finance and retained in the file relating to the registration, and shall constitute notice to the world of the condition therein stated, provided the certificate of registration contains a notation of conditional registration as hereinabove provided.

286-60 Rules of procedure; costs; appeal

286-60 Rules of procedure; costs; appeal. The supreme court may prescribe rules of procedure relating to the appeals and hearings before the district courts. An appeal shall lie from the judgment or order of the district court to the intermediate appellate court, subject to chapter 602. The rules shall provide for informal procedure and for minimizing expense and delay to litigants therein. The costs upon such appeal to the district court shall be $1, which may be waived by the court for good cause shown. No costs shall be chargeable against the county director of finance.

286-61 Penalty

286-61 Penalty. Any person who violates sections 286-41, 286-42, 286-44.5 to 286-56.5, and 286-58 to 286-60 shall be fined not less than $5 nor more than $1,000; provided that any corporate owner of a motor vehicle who fails to register a motor vehicle as required by section 286-41(a) following a transfer of the vehicle between counties shall be fined $1,000 for each violation. Any person who violates section 286-43, 286-44, or 286-57 shall be fined not less than $5 and not more than $1,000 or imprisoned not more than one year, or both.

286-62 Special license plates authorized

286-62 Special license plates authorized. Any owner of a passenger motor vehicle, who is a resident of the State, and who holds an unrevoked and unexpired amateur radio station license, other than novice, issued by the Federal Communications Commission, upon application, accompanied by proof of ownership of the amateur radio station license, may be issued a special license plate for the owner's passenger motor vehicle as provided in sections 286-63 to 286-69.

286-63

286-63 Shape, size and color of plates; how affixed. The special license plate shall be similar in shape, size and color to the regulation passenger motor vehicle number plate prescribed by law, and shall bear the official amateur radio call letters of the applicant, as assigned by the Federal Communications Commission. The special license plate shall be securely fastened to the passenger motor vehicle in lieu of the regulation number plate; provided that the regulation tag or emblem issued each year shall be affixed to the passenger motor vehicle or the special license plate in the manner provided in section 249-7.

286-64

286-64 Regulation plates to be surrendered. Upon the issuance of the special license plates, the regulation number plates originally issued in the registration of the passenger motor vehicles shall be surrendered to the administrator of the county emergency management agency who shall retain the plates as long as the special license plates are attached to the passenger motor vehicle.

286-65

286-65 Surrender, transfer, and disposal of special plates. Upon the transfer of ownership of the passenger motor vehicle, or upon the expiration or revocation of the amateur radio station license, the holder of the special license plates shall surrender them to the administrator of the county emergency management agency who shall retain the plates as long as they are valid. The regulation number plates shall be securely fastened to the passenger motor vehicle as provided in section 249-7. Upon reapplication, an amateur radio station licensee may be reissued the licensee's special license plates as provided in this part at no additional cost.

286-66 Director in charge

286-66 Director in charge. The director of [Hawaii] emergency management shall be responsible for processing all applications for the special license plates and shall make all necessary arrangements for the purchase and issuance thereof. The administrator of the county emergency management agency shall assist the director of [Hawaii] emergency management in the administration of this part, which includes but is not limited to, the receipt of applications, the collection and payment of fees, the issuance of special license plates, the transmittal of the list of special license plates issued together with the names and addresses to whom issued to the director of [Hawaii] emergency management and the respective chief of police and the respective licensing officer of each county, and any other duties as may be prescribed by the director of [Hawaii] emergency management. The chief of police and licensing officer of each county shall keep a record of the list of special license plates issued together with the names and addresses to whom issued in their respective office and may discard the list when it is more than six years old.

286-67 Fees

286-67 Fees. Any applicant applying for the special license plates shall pay to the administrator of the county emergency management agency an amount equal to the cost of the plates plus administrative costs of furnishing the special license plates. The fees for the special license plates shall be determined by the director of [Hawaii] emergency management.

286-68 Interpretation of part

286-68 Interpretation of part. Sections 286-62 to 286-69 are supplementary to any statute of the State regarding automobile number or license plates and nothing herein shall be construed as abridging or amending such laws except as herein provided for the use of the special license plates in lieu of the regulation number plates prescribed by law.

286-69 Penalty

286-69 Penalty. Any person who violates any provisions of sections 286-62 to 286-68 shall be fined not more than $50.

286-71 HRS

286-71 Autocycles.

(a) Every autocycle, as described in paragraph (2) of the definition of "motorcycle" in section 286-2, operated in this State shall first be registered as a motor vehicle as provided in section 286-41.

(b) No person shall operate an autocycle on a public street, road, or highway in this State unless the person possesses a valid type 3 driver's license pursuant to section 286-102(b)(3) and the autocycle has been duly registered pursuant to subsection (a).

(c) Occupants in an autocycle not equipped with a front windshield shall use eye protection.

(d) All occupants in an autocycle shall comply with the seat belt requirements under section 291-11.6.

(e) All dealers, sellers, lessors, and rental agencies shall be required to disclose the following, if true, regarding each autocycle offered for sale, lease, or rent, as applicable:

(1) The autocycle does not meet the Federal Motor Vehicle Safety Standards for passenger vehicles and light trucks;

(2) The autocycle is not equipped with airbags; and

(3) Autocycle rollover protection has not been certified to protect an occupant from injury in the event of a rollover; therefore, the use of a department of transportation certified safety helmet is recommended when operating an autocycle.

286-72 HRS

286-72 License plate flipping devices; prohibited.

(a) No person shall operate a motor vehicle with, possess, purchase, install, sell, offer for sale, or otherwise distribute a license plate flipping device. This section shall apply to any motor vehicle operated on public roadways in the State, regardless of the jurisdiction of registration. Each act described in this subsection shall constitute a separate and distinct violation, regardless of whether multiple acts occur simultaneously or are committed in connection with other violations.

(b) Notwithstanding any other provisions of this chapter, any person who violates this section shall be fined no less than $750 but no more than $1,000 for each separate violation. Each instance of a violation shall constitute a separate offense.

(c) For the purposes of this section, "license plate flipping device" means a manual, electric, or mechanical device designed or adapted to be installed on a motor vehicle that:

(1) Switches between two or more license plates for the purpose of allowing a motor vehicle operator to change the license plate displayed on the vehicle; or

(2) Hides a license plate from view by flipping the license plate so that the plate number is not visible.

286-73 HRS

286-73 Obstruction of a license plate; prohibited. The use of any cover or shield installed over a vehicle's license plate, regardless of transparency or intent, shall be prohibited. Any person who violates this section shall be fined no less than $500 and no more than $1,000 for each offense. Each day of violation shall constitute a separate offense. For the purposes of this section, "cover" or "shield" means any device, material, or film—whether clear, tinted, mirrored, reflective, or otherwise that is installed over or affixed to a license plate, and is intended to alter or interfere with the visibility, legibility, or identification of the license plate by law enforcement or traffic enforcement systems.

286-81 IV

286-81 Motorcycle, motor scooter, moped, etc.; protective devices.

(a) No person shall operate a motorcycle or motor scooter, on any highway in the State unless the person and any passenger the person carries on the motorcycle or motor scooter wears:

(1) Safety glasses, goggles, or a face shield, in the case of a motorcycle or motor scooter that is not equipped with windscreens or windshields; and

(2) Any other protective devices, other than a safety helmet, required by rules adopted by the director. For the purpose of meeting the requirements of this subsection, a required device shall meet the specifications and requirements established by rules adopted by the director.

(b) Notwithstanding subsection (a), no person shall operate a moped or motor scooter leased from a rental company on any roadway in the State unless the person wears a safety helmet, which shall be provided by the rental company unless the person provides the person's own safety helmet; provided that this subsection shall not apply to persons who possess a valid license under this chapter to operate a motorcycle or an equivalent license issued from another state. To meet the requirements of this subsection, the safety helmet shall meet the specifications and requirements established by rules adopted by the director.

(c) In addition to the requirements of subsection (b), no person shall lease or rent a motorcycle or motor scooter to another person unless the person furnishes:

(1) Safety glasses, goggles, or a face shield, in the case of a motorcycle or motor scooter that is not equipped with windscreens or windshields; and

(2) Any other protective devices required by the rules adopted by the director for the use of the person or persons intending to operate or ride as a passenger on the motorcycle or motor scooter; provided that any person to whom a motorcycle or motor scooter is leased or rented may furnish for the person's own use the protective devices required by this part. For the purposes of meeting the requirements of this subsection, a required device shall meet the specifications and requirements established by rules adopted by the director.

(d) No person shall sell, offer for sale, or furnish any safety helmet, safety glasses, goggles, face shield, windscreen, windshield, or other protective devices represented to meet the requirements of this part unless the device meets the specifications and requirements established by rules adopted by the director.

(e) No person less than eighteen years of age shall operate or ride as a passenger on a motorcycle or motor scooter on any highway in the State unless the person wears a safety helmet securely fastened with a chin strap.

(f) A safety helmet shall not be required for any person who operates or rides as a passenger on a motorcycle or motor scooter; provided that the motorcycle or motor scooter:

(1) Has three wheels;

(2) Is powered by an electric motor;

(3) Has a roll bar, roll cage, or full body enclosed cab; and

(4) Has a seat belt assembly or a child restraint system for the driver and passenger; and the operator and passenger uses the seat belt or child restraint system pursuant to sections 291-11.5 and 291-11.6.

286-81.5 HRS

286-81.5 Leased or rented moped or motor scooter; flag required. No person shall lease or rent a moped or motor scooter to another person unless the moped or motor scooter is equipped with a safety flag that shall extend not less than five feet above the ground and be permanently affixed to the rear of the moped or motor scooter. The safety flag shall be triangular in shape with an area of not less than thirty square inches. The safety flag and the pole that secures the flag to the moped or motor scooter shall be fluorescent orange in color.

286-82 Penalty

286-82 Penalty. Whoever violates this part shall be fined not more than $1,000.

286-83

286-83 Sales of motor vehicle equipment; approval and identification required; prohibitions on use.

(a) On and after January 1, 1972, no person shall display for sale, sell, or offer for sale for use in or upon, or as part of the equipment of a motor vehicle, trailer, semitrailer, or pole trailer any head lamp, auxiliary or fog lamp, rear lamp, signal lamps, or reflector, which reflector is required by law, or any glazing material, hydraulic brake fluid, or seat belt assembly as defined in section 291-11.6, unless the device is of a type that has been submitted to the director of transportation and approved by the director. This subsection shall not apply to equipment in actual use on May 25, 1971, or replacement parts therefor, except seat belt assemblies required under section 286-26.5(d).

(b) No person shall display for sale, sell or offer for sale for use in, upon, or as part of the equipment of a motor vehicle, trailer, semitrailer, or pole trailer any device mentioned in this section unless the device bears thereon or, where applicable, upon the container in which it is sold, the trademark or name under which it is approved so as to be legible when installed.

(c) No person shall use in or upon a motor vehicle, trailer, semitrailer, or pole trailer any device mentioned in this section unless the device has been submitted to and approved by the director of transportation, or exempted by subsection (a).

286-84 Revocation of approval

286-84 Revocation of approval. When the director of transportation has reason to believe that a device approved under section 286-83 as being sold commercially does not comply with the requirements of section 286-83, the director may, after giving thirty days' previous notice to the person who has received the approval for the device in this State, conduct a hearing upon the question of compliance of the approved device. After the hearing the director shall determine whether the approved device meets the requirements of section 286-83. If the device does not meet the requirements of section 286-83, the director shall give notice to the person who has received the approval for the device in this State. If at the expiration of ninety days after such notice, the person who has received the approval for the device has failed to satisfy the director that the device as thereafter to be sold meets the requirements of section 286-83, the director shall suspend or revoke the approval issued therefor until or unless the device is resubmitted to and retested by an authorized testing agency and is found to meet the requirements of section 286-83, and may require that all such devices sold since the notification following the hearing be replaced with devices that do comply with the requirements of section 286-83. The director may at the time of retest purchase in the open market and submit to the testing agency one or more sets of such approval devices, and if such device upon retest fails to meet the requirements of section 286-83, the director may refuse to renew the approval of the device.

286-85

286-85 Reconstructed vehicles, approval required.

(a) No person shall operate a reconstructed vehicle upon a public highway unless it has been inspected and certified by the designated county agency as meeting the specifications and requirements established in rules and regulations adopted by the state director of transportation.

(b) This section shall not apply to any vehicle which is subject to the rules and regulations of the public utilities commission governing safety of operation and equipment.

(c) Each county through its chief executive officer, shall designate a county department, whose responsibilities shall include the inspection of reconstructed vehicles and the issuance of permits to operate reconstructed vehicles pursuant to standards established by the state director of transportation.

(d) The state director of transportation shall adopt rules pursuant to chapter 91, establishing the fees an inspector may charge for the inspection of a reconstructed vehicle.

(e) The department designated pursuant to subsection (c) shall identify to the county director of finance every vehicle that has been inspected and approved as a reconstructed vehicle.

(f) This section shall not apply to any privately owned reconstructed vehicle in a county with a population of less than 500,000.

(g) This section shall be inoperative from January 1, 2022, to July 31, 2025.

286-86 HRS

286-86 Counterfeit air bags.

(a) No person shall intentionally or knowingly manufacture, import, install, reinstall, distribute, sell, or offer for sale any counterfeit supplemental restraint system component, nonfunctional air bag, or air bag that does not meet federal safety requirements as provided in title 49 Code of Federal Regulations section 571.208, with the intent that such device replace an air bag in any air-bag-required motor vehicle .

(b) No person shall intentionally or knowingly sell, offer for sale, install, or reinstall in an air-bag-required motor vehicle any device that causes the air-bag-required motor vehicle's diagnostic systems to fail to warn that:

(1) An air bag is not installed; or

(2) The air-bag-required motor vehicle is equipped with: (A) A counterfeit supplemental restraint system component; (B) A nonfunctional air bag; or (C) An air bag that does not meet federal safety requirements as provided in title 49 Code of Federal Regulations section 571.208.

(c) For purposes of this section, an installation or reinstallation shall not be deemed to have occurred until the work is complete.

(d) A violation of this section is a class C felony.

(e) The remedies prescribed in this section are cumulative and in addition to any other remedies provided by law.

(f) As used in this section: "Air bag" means an air-bag-required motor vehicle inflatable occupant restraint system device that is part of a supplemental restraint system. "Air-bag-required motor vehicle" means every vehicle that is required under title 49 Code of Federal Regulations section 571.208 to have an air bag installed. "Counterfeit supplemental restraint system component" means a replacement supplemental restraint system component, including but not limited to an air bag, that displays a mark identical or substantially similar to the genuine mark of an air-bag-required motor vehicle manufacturer or a supplier of parts to the manufacturer of an air-bag-required motor vehicle without authorization from that manufacturer or supplier, respectively. "Nonfunctional air bag" means a replacement air bag that meets any of the following criteria:

(1) The air bag was previously deployed or damaged;

(2) The air bag has an electric fault that is detected by the air-bag-required motor vehicle's air bag diagnostic systems when the installation procedure is completed and the air-bag-required motor vehicle is returned to the customer who requested the work to be performed or when ownership is intended to be transferred;

(3) The air bag includes a part or object, including but not limited to a supplemental restraint system component, installed in an air-bag-required motor vehicle to mislead the owner or operator of the air-bag-required motor vehicle into believing that a functional air bag has been installed; or

(4) The air bag is subject to the prohibitions of title 49 United States Code section 30120(j). "Supplemental restraint system" means a passive inflatable air-bag-required motor vehicle occupant crash protection system designed for use in conjunction with active restraint systems as described in title 49 Code of Federal Regulations section 571.208. A supplemental restraint system includes one or more air bags and all components required to ensure that an air bag works as designed by the air-bag-required motor vehicle manufacturer, including:

(1) The air bag operates in the event of a crash; and

(2) The air bag is designed in accordance with federal air-bag-required motor vehicle safety standards for the specific make, model, and year of the air-bag-required motor vehicle in which it is or will be installed.

286-91 V

286-91 to 286-97 REPEALED. L 1996, c 67, §4. Previous Vol05_Ch0261-0319 Next

286-101 VI

286-101 Designation of examiner of drivers. The chief executive of each county shall designate one or more persons, residing in the county, each of whom shall be a competent operator of motor vehicles, to be known as the examiner of drivers, and whose duty it shall be to examine into the qualifications and fitness of any person desiring to secure or to renew a license to operate a motor vehicle as provided in this part.

286-101.5 HRS

286-101.5 Reciprocal licensing privileges.

(a) The director may grant reciprocal licensing privileges to any person eighteen years of age or older who holds a license from another country or state, thereby allowing the examiner of drivers to waive examination requirements under section 286-108(c)(3), if:

(1) That jurisdiction has procedures in place to verify the validity of the driver's licenses it issues;

(2) That jurisdiction has granted a waiver of all or any part of the driver's license examination requirements for Hawaii licensed drivers applying for a driver's license in that jurisdiction; and

(3) The director determines that the standards of that jurisdiction for licensing operators of motor vehicles correspond substantially to those of this State.

(b) The director shall publish on the department of transportation's public internet site a list of the countries for which reciprocal operating privileges have been extended and those that have been withdrawn. The most recent list shall be transmitted to the courts, county prosecuting attorneys, and county police chiefs.

(c) The director may require an applicant for reciprocal licensing privileges to provide translation of the license and documents from the other jurisdiction if the license and documents are in languages other than Hawaiian or English.

(d) The director may adopt rules pursuant to chapter 91 necessary for the purposes of this section.

286-102 Licensing

286-102 Licensing.

(a) No person, except one:

(1) Exempted under section 286■105;

(2) Who holds an instruction permit under section 286■110;

(3) Who holds a limited purpose driver's license, limited purpose provisional driver's license, or limited purpose instruction permit under section 286-104.5;

(4) Who holds a provisional license under section 286■102.6;

(5) Who holds a commercial driver's license issued under section 286■239; or

(6) Who holds a commercial driver's license instruction permit issued under section 286■236, shall operate any category of motor vehicles listed in this section without first being appropriately examined and duly licensed as a qualified driver of that category of motor vehicles.

(b) A person operating the following category or combination of categories of motor vehicles shall be examined as provided in section 286-108 and duly licensed by the examiner of drivers:

(1) Mopeds;

(2) Motorcycles, except for autocycles as described in paragraph (2) of the definition of "motorcycle" in section 286-2, and motor scooters;

(3) Passenger cars of any gross vehicle weight rating, buses designed to transport fifteen or fewer occupants, trucks and vans having a gross vehicle weight rating of eighteen thousand pounds or less, and autocycles as described in paragraph (2) of the definition of "motorcycle" in section 286-2; and

(4) All of the motor vehicles in category (3) and any vehicle that is not a commercial motor vehicle. A school bus, small bus, motorcoach, or van operator shall be properly licensed to operate the category of vehicles that the operator operates as a school bus, small bus, motorcoach, or van and shall comply with the standards of the department of transportation as provided by rules adopted pursuant to section 286-181.

(c) No person shall receive a driver's license without surrendering to the examiner of drivers all valid driver's licenses and all valid identification cards in the person's possession. All licenses and identification cards so surrendered shall be shredded; provided that with the exception of driver's licenses issued by any Canadian province, a foreign driver's license may be returned to the owner after being invalidated pursuant to issuance of a Hawaii license; provided further that the examiner of drivers shall notify the authority that issued the foreign license that the license has been invalidated and returned because the owner is now licensed in this State; and provided further that all commercial driver's licenses that are surrendered shall be shredded. No person shall be permitted to hold more than one valid driver's license at any time.

(d) Before issuing a driver's license, the examiner of drivers shall complete a check of the applicant's driving record to determine whether the applicant is subject to any disqualification under section 286-240, or any license suspension, revocation, or cancellation, and whether the applicant has a driver's license from more than one state or jurisdiction. The record check shall include but is not limited to the following:

(1) A check of the applicant's driving record as maintained by the applicant's state or jurisdiction of licensure;

(2) A check with the commercial driver license information system;

(3) A check with the National Driver Register; and

(4) If the driver is renewing a commercial driver's license for the first time after September 30, 2002, a request for the applicant's complete driving record from all states where the applicant was previously licensed to drive any motor vehicle over the last ten years; provided that a notation is made on the driving record confirming the check has been made and the date it was done.

(e) Notwithstanding sections 291E-61.6 and [291E-44.5], in addition to other qualifications and conditions by or pursuant to this part, the right of an individual to hold a motor vehicle operator's license or permit issued by the county is subject to the requirements of section 576D-13. Upon receipt of certification from the child support enforcement agency pursuant to section 576D-13 that an obligor or individual who owns or operates a motor vehicle is not in compliance with an order of support as defined in section 576D-1 or has failed to comply with a subpoena or warrant relating to a paternity or child support proceeding, the examiner of drivers shall suspend the license and right to operate motor vehicles and confiscate the license of the obligor. The examiner of drivers shall not reinstate an obligor's or individual's license until the child support enforcement agency, the office of child support hearings, or the family court issues an authorization that states the obligor or individual is in compliance with an order of support or has complied with a subpoena or warrant relating to a paternity or child support hearing. The licensing authority may adopt rules pursuant to chapter 91 to implement and enforce the requirements of this section.

286-102.3 Bill

286-102.3 Commercial drivers under the age of twenty-one. A person is qualified to drive commercially in the State in intrastate commerce if the person:

(1) Is at least nineteen years of age;

(2) Is in compliance with title 49 Code of Federal Regulations, part 390-396, subpart B, except section 391.11(b)(1) in the case of an intrastate driver involved in intrastate commerce in the State;

(3) Only operates a category 3 vehicle as defined in section 286-102(b)(3);

(4) Shall not transport hazardous materials as defined in section 286-2, nor passengers in a school vehicle as defined in section 286-181; and

(5) Has had a category 3 state driver's license for the two years immediately preceding driving commercially under this section, with the following conditions: (A) Has not had any license suspended, revoked, or canceled; and (B) Has not had any conviction for:

(i) Speeding excessively involving any speed of fifteen miles per hour or more above the speed limit; (ii) Driving recklessly, as defined by state or local law or regulation, including but not limited to offenses of driving a motor vehicle in wilful or wanton disregard for the safety of person or property; (iii) Making improper or erratic traffic lane changes; (iv) Following the vehicle ahead too closely; or

(v) Violating state or local law relating to motor vehicle traffic control, excluding parking violations, arising in connection with a fatal accident.

286-102.5 Bill

286-102.5 Military Selective Service Act; Selective Service System registration.

(a) Qualified applicants for a motor vehicle [driver's] license pursuant to section 286-107 or 286-108 or an instruction permit pursuant to section 286-110 shall be registered with the United States Selective Service System in compliance with Title 50 United States Code Appendix section 453, as amended.

(b) Every qualified applicant identified in subsection (a) shall be required to authorize the examiner of drivers to:

(1) Collect the necessary personal information required for registering the qualified applicant with the United States Selective Service System; and

(2) Electronically transmit the information to the Selective Service System pursuant to subsection (d) for purposes of registering the qualified applicant with the United States Selective Service System.

(c) The examiner of drivers shall notify all qualified applicants identified in subsection (a) that by submitting an application, the qualified applicant is consenting to registration with the United States Selective Service System, if so required by federal law.

(d) The examiner of drivers shall collect from a qualified applicant the necessary personal information required for registering the qualified applicant with the United States Selective Service System. The examiner of drivers shall transmit the necessary personal information of the qualified applicant in an electronic format to the United States Selective Service System to register the qualified applicant.

(e) For purposes of this section, "qualified applicant" means male United States citizens and immigrants at least eighteen years of age but less than twenty-six years of age.

286-102.6 Bill

286-102.6 Provisional license for persons under the age of eighteen.

(a) A person may be granted a provisional license to drive passenger cars of any gross vehicle weight rating, buses designed to transport fifteen or fewer occupants, and trucks and vans having a gross vehicle weight rating of fifteen thousand pounds or less if the person:

(1) Is at least sixteen years of age but under the age of eighteen;

(2) Holds an instruction permit and has held the permit for a period of at least one hundred eighty days and there is no pending proceeding that might result in the suspension or revocation of the instruction permit; and

(3) Satisfactorily completes all requirements of sections 286-108 and 286-109.

(b) The provisional license shall entitle the provisional licensee to drive the class of motor vehicles specified in subsection (a) upon the roadways of the State; provided that:

(1) The provisional licensee shall have the provisional license in the provisional licensee's immediate possession while driving;

(2) All occupants of the motor vehicle shall be restrained by safety belts or a child passenger restraint system as required under sections 291-11.5 and 291-11.6;

(3) The provisional licensee shall not transport more than one person under the age of eighteen, unless the person is, with respect to the provisional licensee: (A) A household member; or (B) A household member's foster or hanai child, without being accompanied and supervised by a licensed driver who is the provisional licensee's parent or guardian; and

(4) Except as provided in subsection (c), whenever the provisional licensee is driving between the hours of 11:00 p.m. and 5:00 a.m., a licensed driver who is the provisional licensee's parent or guardian and is licensed to operate the same category of motor vehicle as the licensee, shall be in the motor vehicle and shall occupy the passenger seat beside the licensee.

(c) A provisional licensee may drive between the hours of 11:00 p.m. and 5:00 a.m. without a licensed parent or guardian in the motor vehicle under the following conditions:

(1) The provisional licensee is traveling to or from the provisional licensee's place of employment, operation of the motor vehicle is necessary for this purpose, and the provisional licensee keeps in the provisional licensee's possession a signed

statement from the employer containing the employer's name, address, telephone number, and verification of employment and work hours; or

(2) The provisional licensee is traveling to or from a school-authorized activity of the provisional licensee, operation of a motor vehicle is necessary for this purpose, and the provisional licensee keeps in the provisional licensee's possession a signed statement from a parent or guardian containing the parent's or guardian's name, address, and telephone number, and verification that operation of the motor vehicle by the provisional licensee is necessary to travel to or from the school-authorized activity; provided that the provisional licensee shall not transport more than one person under the age of eighteen between the hours of 11:00 p.m. and 5:00 a.m. without being accompanied and supervised by a licensed driver who is the provisional licensee's parent or guardian.

(d) If the provisional licensee violates any of the requirements of subsection (b) or (c):

(1) For a first violation of any requirement, the provisional license shall be suspended for a period of three months by a district court or family court judge. If the person's provisional license is suspended, the person shall not be eligible for reissuance of the provisional license or issuance of a driver's license until: (A) The person is eighteen years of age; or (B) Three months have elapsed since the date of suspension, whichever is sooner, and the person has otherwise satisfied the requirements of this chapter; and

(2) For a second or any subsequent violation of any requirement, the provisional license shall be revoked for six months by a district court or family court judge. If the person's provisional license is revoked, the person shall not be eligible for reissuance of the provisional license or issuance of a driver's license until: (A) The person is eighteen years of age; or (B) Six months have elapsed since the date of revocation, whichever is sooner, and the person has otherwise satisfied the requirements of this chapter. Suspension or revocation of a provisional license pursuant to this subsection shall be exempt from proof of financial responsibility requirements under section 287-20.

(e) If the provisional licensee is adjudicated of an offense relating to the operation of a motor vehicle other than the requirements of subsection (b) or (c):

(1) For a first adjudication, the provisional license shall be suspended or revoked by a district court or family court judge, in addition to any other penalties that may be prescribed by law. If the person's provisional license is suspended or revoked, the person shall not be eligible for reissuance of the provisional license or issuance of a driver's license until: (A) The person is eighteen years of age; or (B) Six months have elapsed since the date of suspension or revocation, whichever is sooner, and the person has otherwise satisfied the requirements of this chapter; and

(2) For a second or any subsequent adjudication, the provisional license shall be revoked for one year by a district court or family court judge, in addition to any other penalties that may be prescribed by law. If the person's provisional license is revoked, the person shall not be eligible for reissuance of the provisional license or issuance of a driver's license until: (A) The person is eighteen years of age; or (B) One year has elapsed since the date of revocation, whichever is later, and the person has otherwise satisfied the requirements of this chapter.

(f) A provisional licensee may be issued a driver's license in accordance with this chapter if the provisional licensee:

(1) Has satisfactorily held a provisional license for at least six months or has attained the age of eighteen, whichever comes first;

(2) Has no pending proceeding that might result in the suspension or revocation of the license;

(3) Is at least seventeen years of age; and

(4) Has satisfactorily complied with all requirements of this chapter.

(g) If not suspended or revoked, the provisional license shall expire on the date of the provisional licensee's nineteenth birthday.

(h) The fee for a provisional license shall be set in accordance with section 286■111.

(i) This section shall not apply to the licensing of:

(1) An emancipated minor; and

(2) Motorcycle or motor scooter drivers.

(j) For the purposes of this section, "household member" shall have the same meaning as defined in section 291E-1.

(k) Notwithstanding any other provisions, for the purposes of this section, the district court and family court shall notify the driver's license examiner of all persons under the age of eighteen who have pending violations or proceedings that might

result in the suspension or revocation of the provisional license, and any pending adjudication of an offense relating to the operation of a motor vehicle.

286-103

286-103 Restrictions on driver's license; rules and regulations. The examiner of drivers may adopt rules and regulations restricting the use of a driver's license in any manner the examiner of drivers may deem necessary for the safety and welfare of the traveling public and may impose restrictions with respect to the type of equipment or special mechanical control devices required on the motor vehicle operated by the licensee appropriate to the driving ability of the licensee. Any restrictions shall be indicated on the license issued.

286-104

286-104 Which persons shall not be licensed. The examiner of drivers shall not issue any license to any person:

(1) Whose license has been suspended by a court of competent jurisdiction during the suspension period, nor to any person whose license has been revoked until the expiration of one year after the date of the revocation, or until the expiration of the period of revocation specified by law, whichever is greater, except as provided under sections 286-102.6(d) and 286-102.6(e) for suspensions and revocations of a provisional license; nor to any person who, while unlicensed, has within two years been convicted of operating a vehicle under the influence of an intoxicant or, prior to January 1, 2002, of driving under the influence of alcohol or drugs;

(2) Who is required by this part to take an examination, unless the person has successfully passed the examination;

(3) Who is required under the motor vehicle financial responsibility laws of this State to deposit proof of financial responsibility and who has not deposited the proof;

(4) Who the examiner of drivers has good cause to believe would not be able to operate a motor vehicle with safety upon the highways by reason of physical or mental disability;

(5) Who is under eighteen years of age; provided that a person: (A) Who is fifteen years and six months of age may be granted an instruction permit; (B) Who is at least sixteen and less than eighteen years of age may be granted a provisional license upon satisfying the requirements of section 286-102.6; (C) Who is at least seventeen and less than eighteen years of age may be granted a license upon satisfying the requirements of section 286-102.6, which license may be suspended or revoked by a judge having jurisdiction over the holder of the license. Upon revocation of the license, the person shall not be eligible to operate a motor vehicle on the highway until the person is eighteen years of age and has again satisfied the requirements of sections 286-108 and 286-109; or (D) Who is an emancipated minor may be granted a license upon satisfaction of all requirements of this chapter applicable to persons eighteen years of age or older;

(6) Who is not in compliance with section 286-102.5; or

(7) Who does not submit proof, satisfactory to the director, that the applicant's presence in the United States is authorized by federal law. The director shall adopt rules in accordance with chapter 91 that provide for standards of proof and for exemptions from this requirement. Any person denied a license under this or any other section of this part shall have a right of appeal as provided in section 286-129.

286-104.5 HRS

286-104.5 Limited purpose driver's license, limited purpose provisional driver's license, and limited purpose instruction permits.

(a) Notwithstanding section 286-104(7) to the contrary, every person who submits an application for a driver's license, provisional driver's license, or instruction permit that satisfies the requirements of this chapter except for the applicant's inability or refusal to provide satisfactory proof of authorized presence in the United States under federal law shall be issued a limited purpose driver's license, a limited purpose provisional driver's license, or a limited purpose instruction permit that is uniquely identified in compliance with the REAL ID Act of 2005 upon satisfactory proof to the examiner of drivers of the applicant's identity and residency in the State. The examiner of drivers shall accept various types of documentation for the purpose of establishing the applicant's identity and residency in the State, which may be established by more than one document. Acceptable documentation includes:

(1) A valid, unexpired consular identification document issued by a consulate from the applicant's country of citizenship or a valid, unexpired passport from the applicant's country of citizenship;

(2) An original birth certificate or other proof of age, as designated by the examiner of drivers;

(3) A current home utility bill, lease, or rental agreement, or deed or title to real property in the State, as designated by the examiner of drivers;

(4) A United States Department of Homeland Security Form I-589, Application for Asylum and for Withholding of Removal;

(5) An official school or college transcript that includes the applicant's date of birth or a foreign school record that is sealed and includes a photograph of the applicant at the age the record was issued;

(6) An official school or college identification card that includes the applicant's full name and a photograph of the applicant at the time the identification was issued;

(7) A United States Department of Homeland Security Form I-20 or Form DS-2019;

(8) A United States Customs and Immigration Services Deferred Action for Childhood Arrival Approval Letter ;

(9) A valid identification card for health benefits;

(10) A valid identification card for an assistance or social services program;

(11) A current voter registration card issued by the State;

(12) A wage stub issued in the last six months;

(13) An income tax return filed in the last two years;

(14) A social security card;

(15) One of the following documents which, if in a language other than English, shall be accompanied by a certified translation or an affidavit of translation into English: (A) Marriage license or divorce certificate; (B) Foreign federal electoral photo card issued on or after January 1, 1991; (C) Foreign student identification card; or (D) Foreign driver's license; or

(16) Other proof of Hawaii residency as designated by the director.

(b) Except as otherwise provided in this subsection, every application under this section shall be made upon the form and in the manner required by section 286-111 and shall be accompanied by the fee established for non-limited purpose licenses or permits pursuant to section 286-111. The examiner of drivers shall not require any applicant under this section to furnish information regarding the applicant's eligibility or ineligibility for a social security number. The examiner shall not disclose the identity of any applicant who does not provide a social security card or social security number.

(c) Every limited purpose driver's license, limited purpose provisional driver's license, and limited purpose instruction permit issued pursuant to this section shall on its face and machine readable zone bear the phrase, "Not acceptable for official federal purposes", and on its reverse bear the phrase, "This license is issued only as a license to drive a motor vehicle. It does not establish eligibility for employment, voter registration, or public benefits", and be of a unique design or color indication that clearly distinguishes them from the State's compliant driver's licenses, provisional driver's licenses, and instruction permits. If the United States Department of Homeland Security determines that limited purpose licenses or permits issued pursuant to this section do not satisfy the requirements of title 6 Code of Federal Regulations section 37.71, adopted pursuant to section 202 of the REAL ID Act of 2005, Public Law 109-13, the examiner of drivers, under the direction of the department, shall modify the limited purpose licenses and permits issued pursuant to this section only to the extent necessary to satisfy the requirements of the federal law.

(d) Every limited purpose driver's license and limited purpose provisional driver's license shall expire in accordance with section 286-106, and every limited purpose instruction permit shall expire in accordance with section 286-110.

(e) A limited purpose driver's license or limited purpose provisional driver's license may be renewed in accordance with section 286-107 and reactivated in accordance with section 286■107.5. A limited purpose instruction permit may be renewed in accordance with section 286-110.

(f) It shall be a violation of law to discriminate against a person because the person applied for, was denied, was issued, holds, or presents a limited purpose driver's license, limited purpose provisional driver's license, or limited purpose instruction permit.

(g) A limited purpose license or limited purpose instruction permit issued pursuant to this section shall not be used to consider a person's citizenship or immigration status as a basis for a criminal investigation, arrest, or detention.

(h) Documents and information collected pursuant to an application for, denial of, or issuance of a limited purpose driver's license, limited purpose provisional driver's license, or limited purpose instruction permit shall be confidential and shall not

be disclosed by the examiner of drivers or the department except as required by law.

(i) The director shall adopt rules in accordance with chapter 91 to implement this section.

286-106.5

286-106.5 Expiration of licenses; out-of-country active duty military personnel and dependents. Notwithstanding section 286-106, the expired driver's license of a member of any component of the United States armed forces who is on active federal service, or the member's dependent if the dependent accompanied the member, and whose driver's license expired while the member was deployed outside the United States, shall remain valid for ninety days after the service member's return to the United States.

286-107 License renewals; procedures and requirements

286-107 License renewals; procedures and requirements.

(a) The examiner of drivers may accept an application for a renewal of a driver's license made not more than six months prior to the date of expiration. If, however, the renewal is not applied for within ninety days after the expiration of the license, the applicant for renewal shall be treated as an applicant for a new license and examined as provided in section 286-108.

(b) Except as otherwise provided in subsection (c), an applicant for a renewal of a driver's license under this section, or the reactivation of an expired license under section 286-107.5(a), shall appear in person before the examiner of drivers and the examiner of drivers shall administer such physical examinations as the state director of transportation deems necessary to determine the applicant's fitness to continue to operate a motor vehicle.

(c) Any person who holds a category (1), (2), or (3) license issued under this part may apply for a renewal of the license online via any electronic or digital means provided by the examiner of drivers, or by mail, if the person is not disqualified from renewing the license under subsection (a) except as provided under subsection (h). The applicant's request to have the license renewed by mail must be received by the examiner of drivers within ninety days after the expiration of the license or it shall be treated as an application for reactivation of an expired license under section 286-107.5. The examiner of drivers shall, upon receipt of the request, furnish the applicant with all necessary forms and instructions. An application for renewal made by electronic or digital means or by mail pursuant to this subsection shall be accompanied by a statement from a licensed physician, physician assistant, or advanced practice registered nurse certifying that the applicant was examined by the licensed physician, physician assistant, or advanced practice registered nurse no more than six months before the expiration date of the applicant's license and that the applicant was found by the examination to have met the physical requirements established by the state director of transportation for the renewal of licenses. The application for renewal by electronic or digital means or by mail shall also be accompanied by:

(1) A notarized statement of the applicant certifying that the applicant does not possess any valid license to operate the same or similar category or categories of motor vehicles, issued by another licensing authority (unless the license is concurrently surrendered); and

(2) Any other information as may be required by the examiner of drivers that is reasonably necessary to confirm the identity of the applicant and the applicant's fitness to continue to operate a motor vehicle.

(d) An applicant for a renewal of the applicant's driver's license, whether applying pursuant to subsections (b) or (c), shall pay the fee determined by the council of the appropriate county. Payment of the fee shall be by certified check or money order, tendered together with the application.

(e) No driver's license shall be renewed by the examiner of drivers unless:

(1) The examiner of drivers is satisfied of the applicant's fitness to continue to operate a motor vehicle;

(2) The fee required by subsection (d) is tendered together with the application for renewal;

(3) The applicant complies with section 286-102.5; and

(4) The examiner of drivers is satisfied that the applicant does not have outstanding charges and fines relating to the disposition of an abandoned vehicle .

(f) No driver's license shall be renewable by electronic or digital means or by mail:

(1) For more than two consecutive renewals, regardless of whether the license expires, as provided under section 286-106, on the eighth or fourth birthday after issuance ; or

(2) Sixteen years have lapsed since the applicant had appeared in person; provided that this subsection shall not apply to a resident military person or that person's immediate family if the resident military person resides outside the State on official military orders.

(g) Notwithstanding subsection (a), any applicant for a renewal of a driver's license who is a member of any component of the United States armed forces and who is on active federal service outside of the State at the time the applicant's license should be renewed, may file an application for a renewal of the driver's license, which shall be accompanied by verification of federal active service outside the State as required by the examiner of drivers, within ninety days of the applicant's return to the State or discharge from hospitalization. The examiner of drivers may waive the reactivation fee otherwise required by section 286-107.5.

(h) The state director of transportation shall adopt rules and regulations pursuant to chapter 91, necessary for the purposes of this section, including rules and regulations governing the effect to be given to convictions for violations of traffic laws of a foreign jurisdiction, upon license renewal procedures.

286-107.5

286-107.5 Reactivation of expired license; fees; road test waived.

(a) Unless revoked or suspended, and except as provided in subsection (b), all drivers' licenses expired under section 286-106 may be reactivated by the licensee in accordance with the requirements and procedures set forth for the renewal of licenses under section 286-107(b). No person seeking reactivation of an expired license under this subsection shall be required to undergo reexamination of the person's driving skills under section 286-108. The examiner of drivers shall require the holder of an expired license to pay a reactivation fee of $5 for each thirty-day period, or fraction thereof, that has elapsed after the ninety-day grace period.

(b) Any driver's license not reactivated under subsection (a) within one year of the indicated date of expiration shall be invalid. The examiner of drivers shall examine all applicants whose licenses have been declared invalid under this subsection in accordance with the licensing procedures established under sections 286-108 and 286-110.

286-108 Examination of applicants

286-108 Examination of applicants.

(a) Except as provided in section 286-107.5(a), the examiner of drivers shall examine every applicant for a driver's license, except as otherwise provided in this part. The examination shall include a test of:

(1) The applicant's eyesight and any further physical examination that the examiner of drivers finds necessary to determine the applicant's fitness to operate a motor vehicle safely upon the highways;

(2) The applicant's ability to understand highway signs regulating, warning, and directing traffic;

(3) The applicant's knowledge of the rules of the road based on the traffic laws of the State and the traffic ordinances of the county where the applicant resides or intends to operate a motor vehicle; provided that the examination shall specifically test the applicant's knowledge of the provisions of section 291C-121.5 and section 291C-137; and

(4) The actual demonstration of ability to exercise ordinary and reasonable control in the operation of a motor vehicle. The examinations shall be appropriate to the operation of the category of motor vehicle for which the applicant seeks to be licensed and shall be conducted as required by the director. The examiner of drivers shall require every applicant to comply with section 286-102.5. The examiner of drivers may waive the actual demonstration of ability to operate a motorcycle or motor scooter for any person who furnishes evidence, to the satisfaction of the examiner of drivers, that the person has completed the motorcycle education course approved by the director in accordance with section 431:10G-104. For the purposes of this section, the term "applicant" does not include any person reactivating a license under section 286-107.5(a).

(b) The examiner of drivers shall require proof from every applicant under the age of eighteen that the applicant has completed a driver education program and a behind-the-wheel driver training course certified by the director of transportation. The examiner of drivers shall not examine any applicant for a provisional license who is sixteen through seventeen years of age unless the applicant holds and has held a valid instruction permit under section 286-110, for a period of no fewer than one hundred eighty days. If the applicant's instruction permit has expired and a new instruction permit was issued within thirty days of its expiration, the examiner of drivers may examine the applicant without requiring an additional one hundred eighty day period.

(c) The examiner of drivers may waive the written or oral examination required under subsection (a)(2) and (3) and the actual demonstration of ability to operate a motor vehicle for any person who:

(1) Is at least eighteen years of age and who possesses a valid driver's license issued to the applicant in any other state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, American Samoa, Guam, a province of the Dominion of Canada, or the Commonwealth of the Northern Mariana Islands for the operation of vehicles in categories 1 through 3 of section 286-102;

(2) Has completed the same requirements as set forth in section 286-102.6(f) in another state and possesses a valid provisional license from that state; or

(3) Is at least eighteen years of age and who possesses a valid driver's license issued to the applicant in any jurisdiction for which the director has granted reciprocal licensing privileges in accordance with section 286-101.5 for the operation of vehicles in category (3) of section 286-102(b).

(d) As part of the examination required by this section, the applicant for a driver's license shall produce and display a valid motor vehicle or liability insurance identification card for the motor vehicle required by sections 431:10C-107 and 431:10G-106, when the applicant demonstrates the ability to operate a motor vehicle to the satisfaction of the examiner of drivers. If no valid motor vehicle or liability insurance identification card is displayed, the examiner of drivers shall not issue a driver's license to the applicant.

286-108.4 [§286-108

286-108.4 Driver education and behind-the-wheel driver training program.] The director of transportation is directed to establish and certify a statewide driver education program and behind-the-wheel driver training program, to include the number of course hours, curriculum, and certification of teachers and third-party examiners. The director of transportation is also directed to set a cost for the programs to enable the programs to be self-sufficient. The director of transportation shall adopt rules pursuant to chapter 91 necessary for the purposes of this [section].

286-108.5 REPEALED

286-108.5 REPEALED. L 1989, c 320, §7; L 1990, c 342, §16. Previous Vol05_Ch0261-0319 Next

286-109

286-109 General provision governing the issuance of licenses.

(a) Upon payment of the required fee and upon demonstrating the ability to operate a certain category or categories of motor vehicles to the satisfaction of the examiner of drivers, an applicant for a driver's license shall be issued a single license of a design approved by the director of transportation upon which is made a notation of:

(1) The person's full legal name, date of birth, gender designation, residence address, and license number;

(2) The category or categories of motor vehicles the applicant may operate;

(3) Any restrictive provisions to which the license is subject;

(4) Veteran status, if desired by the applicant; provided that the notation shall be on the front of the license and shall not include any designation other than the term "veteran"; and

(5) When the license is issued to a person under twenty-one years of age, a statement, in clearly legible print that shall contrast with the other information appearing on the license, which indicates the date on which the person will attain the age of twenty-one years. As used in this subsection: "Gender designation" includes the options of F, M, or X. "Veteran" means any person who served in any of the uniformed services of the United States, including veterans of the Korean conflict and persons who served in the armed forces of the Republic of Korea, who fought under the command of the United Nations led by the United States, during the Korean conflict and are currently United States citizens, and was discharged under conditions other than dishonorable.

(b) The examiner of drivers shall not issue or renew any driver's license using the driver's social security number on the driver's license.

(c) Statutes of limitations and other provisions of this chapter notwithstanding, no driver's license or instruction permit shall be issued or renewed under this section, where the examiner of drivers is notified by the district judge, traffic, emergency period, and fireworks violations bureaus of the district courts, or the judge of the circuit court that the applicant has failed to respond to a traffic citation or summons, or failed to appear in court after an arrest for the violation of any

traffic laws of a county, this chapter or chapter 286G, 287, 290, 291, or 291C, or of any motor vehicle insurance laws under article 10C of chapter 431, or of any motorcycle or motor scooter insurance laws under article 10G of chapter 431, and the same remains delinquent and outstanding, or the applicant, has as of the time of the application, failed to comply in full with all orders of the court; provided that this subsection shall not apply to outstanding and delinquent payments pursuant to chapter 291D; provided further that the district court with whose order an applicant has failed to comply in full, may approve the issuance or renewal of a driver's license or instruction permit other than a commercial driver's license upon conditions imposed by the court for the satisfaction of the outstanding court order and any other conditions as may be imposed by the court, if one or more of the following conditions are met:

(1) The applicant is gainfully employed in a position that requires driving and will be discharged if the applicant is unable to drive; or

(2) The applicant has no access to alternative transportation and therefore must drive to work; provided further that if the applicant has failed to comply in full with orders of the district court of more than one circuit, the applicant shall obtain the approval of the district court of each circuit in which the applicant has an outstanding court order before a driver's license or instruction permit may be issued or renewed under this subsection. A driver's license or instruction permit issued or renewed under this subsection shall be subject to immediate suspension by the court upon the applicant's failure to remain in full compliance with all conditions imposed by the court for the issuance or renewal of the driver's license or instruction permit. The examiner of drivers may place an indication of restriction upon a driver's license or instruction permit issued or renewed under this subsection. Proof of financial responsibility under section 287-20 shall not apply to the issuance or renewal of driver's licenses or instruction permits under this subsection.

286-109.4

286-109.4 Designation of advance health-care directive. On the application form for any driver's license or license renewal, the examiner of drivers shall ask the applicant to designate whether the applicant has an advance health-care directive. The examiner of drivers shall issue or renew a license bearing the designation "advance health-care directive", a symbol, or an abbreviation thereof, for those applicants who have so indicated. "Advance health-care directive" means an individual instruction in writing, a living will, or a durable power of attorney for health care decisions. No specific medical treatment information shall be imprinted on the driver's license.

286-109.5 Designation of anatomical gift

286-109.5 Designation of anatomical gift. The examiner of drivers shall design and implement a system to request anatomical gift information from all applicants for a driver's license or license renewal, at the time of application, including a method of directly imprinting on a license an applicant's designation of whether the applicant wishes to be an organ donor. The request shall elicit whether the applicant wishes to be an organ donor in the event of the applicant's death.

286-109.6

286-109.6 Limited access to driver's license anatomical gift data. The examiner of drivers shall adopt rules pursuant to chapter 91 to allow an organ procurement organization twenty-four-hour telephone access to the driver's license database information, solely for the purpose of determining whether a driver has indicated a willingness to be an organ donor pursuant to section 286-109.5. As used in this section, "organ procurement organization" shall have the same meaning as procurement organization in section 327-2.

286-109.7 Bill

286-109.7 Organ and tissue education fee. Notwithstanding any other law to the contrary, beginning July 1, 2000, a donation of $1, in addition to any other fees under this chapter, may be collected upon designation by an individual or entity from each certificate of registration by the director of finance of each county to be deposited on a quarterly basis into the organ and tissue education special fund pursuant to section 327-24. The counties may retain a portion of the $1 donation as an administrative fee to cover the cost of collecting, accounting for, and depositing the balance into the organ and tissue education special fund. The retention shall not exceed $0.20 for each $1 collected.

286-110 Instruction permits

286-110 Instruction permits.

(a) Any person aged fifteen years and six months or more who, except for the person's lack of instruction in operating a motor vehicle, would be qualified to obtain a driver's license issued under this part may apply for a temporary instruction

permit or a limited purpose instruction permit at the office of the examiner of drivers in the county in which the applicant resides; provided that the applicant complies with section 286-102.5.

(b) No person shall be issued a motorcycle instruction permit unless the person successfully completes a basic motorcycle rider course approved by the department of transportation.

(c) The examiner of drivers shall examine every applicant for an instruction permit. The examination shall include tests of the applicant's:

(1) Eyesight and other physical or mental capabilities to determine if the applicant is capable of operating a motor vehicle;

(2) Understanding of highway signs regulating, warning, and directing traffic; and

(3) Knowledge of the traffic laws, ordinances, or regulations of the State and the county where the applicant resides or intends to operate a motor vehicle.

(d) If the examiner of drivers is satisfied that the applicant is qualified to receive an instruction permit, the examiner of drivers shall issue the permit entitling the applicant, while having the permit in the applicant's immediate possession, to drive a motor vehicle upon the highways for a period of one year; provided that:

(1) An applicant who is registered in a driver training course shall be issued a temporary instruction permit for the duration of the course and the termination date of the course shall be entered on the permit; and

(2) If the applicant is a legal immigrant, the permit shall expire no later than the applicant's authorized period of stay in the United States. A person who is not licensed to operate the category of motor vehicles to which the driving training course applies shall not operate a motor vehicle in connection with the driving training course without a valid temporary instruction permit unless it is a motorcycle that is being used for training purposes on an enclosed state certified training range as provided under administrative rules.

(e) Except when operating a motor scooter or motorcycle, the holder of an instruction permit shall be accompanied by a person who is twenty-one years of age or older and licensed to operate the category of motor vehicles in which the motor vehicle that is being operated belongs. The licensed person shall occupy a passenger seat beside the permit holder while the motor vehicle is being operated; provided that if the holder of the instruction permit is under the age of eighteen years and is driving between the hours of 11:00 p.m. and 5:00 a.m.:

(1) A licensed driver who is the permit holder's parent or guardian shall occupy a passenger seat beside the driver while the motor vehicle is operated, unless the permit holder is an emancipated minor;

(2) The licensed driver shall be licensed to operate the same category of motor vehicles as the motor vehicle being operated by the holder of the instruction permit; and

(3) All occupants of the motor vehicle shall be restrained by a seat belt assembly or a child passenger safety restraint system as required under sections 291-11.5 and 291-11.6, notwithstanding any other law to the contrary.

(f) No holder of a temporary instruction permit shall operate a motorcycle or a motor scooter during hours of darkness or carry any passengers.

(g) No holder of a category 1 or 2 temporary instruction permit shall have the permit renewed, nor shall the holder be issued another temporary instruction permit for the same purpose, unless the holder has taken the examination for a category 1 or 2 license at least once before the expiration of the temporary instruction permit. If the holder of a temporary instruction permit fails to meet the requirements of this section, the holder shall not be permitted to apply for another category 1 or 2 temporary instruction permit for a period of three months. Nothing in this subsection shall affect the right and privilege of any holder of a category 1 or 2 temporary instruction permit to obtain a temporary instruction permit or driver's license for the operation of any other type of motor vehicle.

(h) The examiner of drivers may accept an application for renewal of an instruction permit no more than thirty days before or ninety days after the expiration date of the instruction permit, whereupon the applicant for renewal of an instruction permit shall be exempt from subsection (c)(2) and (3). If an application for renewal of an instruction permit is not made within ninety days after the expiration date of the permit, the applicant shall be treated as applying for a new instruction permit and examined in accordance with subsection (c).

(i) Notwithstanding any other law to the contrary, the examiner of drivers may issue an instruction permit to an applicant with a disability who has completed a medical review with this State, and as a condition to licensure is required to pass a road test, but has failed the road test on the applicant's first attempt. The instruction permit issued under this subsection

may be renewed no more than thirty days before or ninety days after the expiration date of the instruction permit upon receiving an updated medical report. Subsection (c)(2) and (3) shall not apply to the issuance or renewal of an instruction permit issued under this subsection. For the purposes of this subsection, "applicant with a disability" means an applicant who the examiner of drivers has reasonable cause to believe may have a mental or physical infirmity or disability that would make it unsafe to operate a motor vehicle pursuant to section 286-119(a)(1) and has been medically evaluated by the medical advisory board established pursuant to section 286-4.1.

286-111

286-111 Application for license, provisional license, instruction permit, limited purpose driver's license, limited purpose provisional driver's license, or limited purpose instruction permit; fees.

(a) Every application for an instruction permit, provisional license, driver's license, limited purpose driver's license, limited purpose provisional driver's license, or limited purpose instruction permit shall be made upon a form furnished by the examiner of drivers and shall be verified by the applicant before a person authorized to administer oaths. The examiner of drivers and officers serving under the examiner may administer the oaths without charge. Each application for an instruction permit for a category (1), (2), (3), or (4) license shall be accompanied by a fee to be determined by the council of each county, and each application for a provisional license or driver's license shall be accompanied by the fee, unless the applicant has already paid the fee upon application for an instruction permit in the same county, in which event no fee shall be charged. An additional fee to be determined by the council of each county shall be charged and collected upon the issuance of a provisional license or driver's license. All of the foregoing fees shall become county realizations.

(b) The director shall establish by rule a standard fee for all driver's license applicants who require verification through the federal system that their presence in the United States is authorized by federal law. The fees collected shall become state realizations and be deposited into the state highway fund. The State shall reimburse the counties all costs of verification through the federal system. The amount of reimbursement shall be determined by the director of transportation.

(c) The director of transportation shall establish a fee schedule for all commercial driver's licensing examinations. The fees collected for a commercial driver's license shall become state realizations and shall be deposited in the state highway fund. The State shall reimburse the counties all costs for administering the commercial driver's licensing program. The amount of reimbursement shall be determined by the director of transportation.

(d) Every application shall state the full name, date of birth, gender designation, occupation, veteran status if applicable (including veterans of the Korean conflict and persons who served in the armed forces of the Republic of Korea, who fought under the command of the United Nations led by the United States, during the Korean conflict and are currently United States citizens) and desired by the applicant, social security number if the applicant is eligible for a social security number, the residence address, and business address, if any, of the applicant, shall briefly describe the applicant, and shall state whether the applicant has theretofore been licensed as a driver, and, if so, when and in what state or country, and whether any such license has ever been suspended or revoked, or whether an application has ever been refused, and if so, the date of and reason for the suspension, revocation, or refusal. The examiner of drivers shall not require documentation for an applicant's selection of gender designation or an applicant's request for an amendment to a gender designation other than the applicant's self-certification of their chosen gender designation; provided that the examiner of drivers shall not be prohibited from requiring documentation that may incidentally show an applicant's birth sex category if the documentation is necessary to establish that the applicant is legally entitled to a license. For purposes of this subsection, "gender designation" shall have the same meaning as in section 286-109(a).

(e) Except as provided in section 286-104.5, if the applicant is not eligible to receive a social security number, the applicant shall submit, in lieu of providing proof of social security number pursuant to subsection (d):

(1) A United States Social Security Administration letter stating that the applicant is ineligible to obtain a social security number; and

(2) Either: (A) A government-issued photo identification document; or (B) Other identification documents as deemed acceptable by the director.

(f) An application for a driver's license shall include the voter registration application required under section 11-15.7.

286-111.5 HRS

286-111.5 Voter registration.

(a) A qualified applicant for a new or renewed motor vehicle driver's license shall automatically be registered to vote with the clerk of the appropriate county upon completion of the driver's license application and application for voter registration as required in section 11-15.7 if the qualified applicant makes a choice to register to vote on the application form. If already registered to vote, the qualified applicant shall be offered the opportunity to decline any changes being made to their name and address for voter registration purposes.

(b) The submission of the application for voter registration together with the license or permit application shall be deemed to authorize the examiner of drivers to collect and transmit the information necessary to register the qualified applicant as a voter if the applicant made such a choice or to make changes to the qualified applicant's voter registration information unless the applicant declined such changes. The examiner of drivers shall electronically transmit the necessary information to the clerk of the county in which the qualified applicant resides, election officials, and the online voter registration system pursuant to section 11-15.7(c). The examiner of drivers shall not transmit any information necessary to register a qualified applicant as a voter if the applicant made a choice not to be registered to vote nor transmit any information necessary to make changes to the qualified applicant's voter registration information if the applicant declined such changes. The examiner of drivers shall not transmit any information related to a voter application or changes to the applicant's voter registration information if the applicant presents a document demonstrating a lack of United States citizenship.

(c) For the purposes of this section, "qualified applicant" means a person who qualifies to register as a voter by law.

286-112

286-112 Application of minors; liability of parents or guardian.

(a) The application of any person under the age of eighteen years for an instruction permit, provisional license, or driver's license shall be signed and verified before a person authorized to administer oaths by the appropriate one of the following:

(1) If both the father and mother of the applicant have custody of the applicant, by both the father and mother of the applicant;

(2) If only one parent has custody of the applicant, by the custodial parent;

(3) If neither parent has custody of the applicant, and the applicant has a custodial guardian or has custodial guardians, by the custodial guardian or by all the custodial guardians; provided that the director of human services, or the director's designee, shall sign and verify the application of any applicant who is under foster care; provided further that the department of human services shall not have any liability in the event that the foster child is involved in a motor vehicle accident or a lawsuit arising as a result of the foster child's driving; or

(4) If neither parent has custody of the applicant, and the applicant has no custodial guardian, by an employer of the applicant or by any responsible person who is willing to assume the obligation imposed under this part upon a person signing the application of a minor.

(b) Any negligence or misconduct of a minor under the age of eighteen years when driving a motor vehicle upon a highway shall be imputed to the person who has signed the application of the minor for a permit, provisional license, or license, which person shall be jointly and severally liable with the minor for any damages caused by the minor's negligence or misconduct.

(c) A nonresident minor shall be accorded all the privileges and be subjected to all the regulatory restrictions as are by this part provided for resident minors.

286-113 Release from liability

286-113 Release from liability. Any person who has signed the application of a minor for an instruction permit, provisional license, or driver's license may file with the examiner of drivers a verified written request that the permit, provisional license, or license of the minor be canceled, together with the permit, provisional license, or license issued. Upon receipt of the request, the examiner of drivers shall cancel the permit, provisional license, or license of the minor and the person who signed the application of the minor shall be relieved from the liability imposed under this part for any subsequent negligence or wilful misconduct of the minor in operating a motor vehicle. Nothing herein shall be construed to limit the liability of parents for the torts of their child as provided in chapter 577.

286-114

286-114 Revocation of license, provisional license, or instruction permit upon death of person signing minor's application. The examiner of drivers upon receipt of satisfactory evidence of the death of a person who signed the application of a minor for an instruction permit, provisional license, or a license shall cancel the permit, provisional license, or license and shall not issue a new permit, provisional license, or license until a new application duly signed and verified is made as required by this part. Upon canceling the permit, provisional license, or license, the examiner of drivers shall notify the minor to surrender the permit, provisional license, or license. If the death occurs after the minor has reached majority, this section shall not apply.

286-115 REPEALED

286-115 REPEALED. L 1970, c 164, §1(4). Previous Vol05_Ch0261-0319 Next

286-116

286-116 License, insurance identification card, possession, exhibition.

(a) Every licensee shall have a valid driver's license in the licensee's immediate possession at all times, and a valid motor vehicle or liability insurance identification card applicable to the motor vehicle operated as required under section 431:10C-107 and section 431:10G-106, when operating a motor vehicle, and shall display the same upon demand of a police officer. Every police officer or law enforcement officer when stopping a vehicle or inspecting a vehicle for any reason shall demand that the driver or owner display the driver's or owner's driver's license and insurance identification card. Upon demand, the driver or owner may display the driver's or owner's electronic motor vehicle insurance identification card on a mobile electronic device, as defined in section 291C-137. For the purposes of this section, when a person uses a mobile electronic device to display an electronic motor vehicle insurance identification card to a police officer or law enforcement officer, the officer may only view the electronic motor vehicle insurance identification card and shall be otherwise prohibited from viewing any other content on the mobile electronic device. Whenever a person presents a mobile electronic device pursuant to this section, that person assumes all liability for any damage to the mobile electronic device. No person charged with violating this section shall be convicted if the person produces in court, or proves from the proper official or other records that the person was the holder of a driver's license or a motor vehicle or liability insurance identification card and policy conforming to article 10C and article 10G of chapter 431 or a certificate of self-insurance issued by the insurance commissioner pursuant to section 431:10C-107 and section 431:10G-103, theretofore issued to the person and valid at the time of the person's arrest.

(b) At any time a law enforcement officer finds a motor vehicle in operation by a driver not in possession of the motor vehicle or liability insurance identification card required under section 431:10C-107 and section 431:10G-106, the officer shall issue a citation with the earliest possible date for court appearance in every instance.

(c) In all instances in which a citation shall be issued under subsection (b), whenever the driver cited is not found to be the registered owner of the motor vehicle under operation, the citation shall also be issued to the driver as the owner's agent and to the registered owner of the motor vehicle. Whenever the registered owner of any motor vehicle permits any person to operate the registered owner's motor vehicle, the registered owner appoints, designates, and constitutes the driver the registered owner's agent for all purposes under this section and section 431:10C-107, section 431:10G-106, and section 805-13.

(d) The operation of any motor vehicle required to be licensed on a highway by a driver, whether or not licensed, who knows, or has reason to believe, that the motor vehicle is not insured in compliance with article 10C and article 10G of chapter 431, shall constitute a violation of this chapter.

(e) Any registered owner of any motor vehicle required to be licensed, who directly or indirectly permits the operation of such motor vehicle on any highway at any time the motor vehicle is not insured in compliance with article 10C and article 10G of chapter 431, shall be guilty of a violation of this chapter. The registered owner shall, in all cases, be presumed to know whether a motor vehicle is insured in compliance with article 10C and article 10G of chapter 431.

286-116.5

286-116.5 Notice of change of address or name; penalty.

(a) If the residence address of an applicant for, or a holder of, a driver's license is changed from that stated in the application or in the license issued to the applicant or holder, the person shall, within thirty days after such change in address, notify the examiner of drivers in writing of the person's old and new residence addresses and the number of any license then held by the person.

(b) If the name of an applicant for, or a holder of, a driver's license is changed from that shown on the applicant's or holder's application or license, the person shall, within thirty days after the change of name, notify the examiner of drivers in writing of the person's former name and the new name and of the number of any permit or license then held by the person. The examiner of drivers may require the person to file satisfactory proof of the change of name.

(c) Any person who violates this section shall be fined not more than $25.

286-117

286-117 Duplicate permits, provisional licenses, and licenses. [(a)] The holder of an instruction permit, provisional license, or driver's license may upon payment of the reasonable cost of its issuance obtain a duplicate; provided that the holder shall surrender the original permit, provisional license, or license or furnish satisfactory proof of loss or destruction of the same. [(b)] The chief of police or a police officer shall notify a holder that the holder's permit, provisional license, or license is illegible and that the holder shall within ten days surrender the holder's permit, provisional license, or license and apply for a duplicate. Upon failure to comply with a notice to surrender an illegible permit, provisional license, or license and apply for a duplicate, the person to whom the permit or license is issued shall be subject to the penalties in section 286■136.

286-118

286-118 Records to be kept by the examiner of drivers. The examiner of drivers shall file every application for a license received by the examiner and shall maintain suitable indexes containing, in alphabetical order:

(1) All applications denied with a note on each as to the reason for the denial;

(2) All applications granted;

(3) The name of every licensee whose license has been suspended or revoked by a court of competent jurisdiction with a note after each such name as to the reasons for such action. The examiner of drivers shall also file all accident reports and abstracts of court records of convictions received by the examiner under the traffic laws and regulations of the State or any political subdivision thereof, and in connection therewith the examiner shall maintain convenient records or make suitable notations in order that an individual record of each licensee, the traffic accidents in which the licensee has been involved, and other pertinent data may be readily ascertainable and available for the consideration of the examiner of drivers upon any application for a renewal of license and at other suitable times. The examiner of drivers may dispose of any records accumulated under this section whenever the examiner deems it advisable.

286-118.5 HRS

286-118.5 License revoked for operating a vehicle under the influence of an intoxicant; eligibility for license renewal.

(a) Notwithstanding any other law to the contrary, any person arrested for a violation of section 291E-61 or 291E-61.5 after December 31, 2010, whose license is revoked pursuant to this part or section 291E-61, and who otherwise qualifies for a permit under section 291E-44.5 or 291E-61, may apply for a renewal or reactivation of a driver's license as provided in section 286-107 or 286-107.5.

(b) A person may apply for relicensing under subsection (a); provided that:

(1) The license renewal or reactivation shall be for the sole purpose of obtaining or extending a permit issued pursuant to section 291E-44.5 or 291E-61;

(2) No physical driver's license shall be issued to the person; and

(3) The driver's license shall expire as provided in section 286-106 or upon the end of the revocation period, whichever occurs first.

(c) A holder of a valid ignition interlock permit may take any tests necessary to apply for relicensing no sooner than thirty days prior to expiration of the revocation period; provided that the driver's license shall not be issued until the completion of the revocation period.

286-119

286-119 Authority of examiner of drivers to suspend or revoke licenses.

(a) The examiner of drivers may suspend any driver's license without hearing when the examiner:

(1) Has reasonable cause to believe that the licensee is incompetent to operate the type of motor vehicle for which the licensee holds a license or is afflicted with mental or physical infirmities or disabilities which would make it unsafe for the

licensee to operate a motor vehicle of the type for which the licensee is licensed; or

(2) Is notified by the appropriate county director of finance that the licensee has outstanding charges and fines relating to the disposition of an abandoned vehicle, as provided pursuant to section 290-13.

(b) When the examiner of drivers suspends a license under this section, the examiner shall immediately notify the licensee and afford the licensee a hearing. After the hearing, the examiner of drivers may rescind the suspension, or the examiner may suspend the license for a further period or revoke the license. Any person whose license has been suspended or revoked under this section may appeal under section 286-129.

286-120

286-120 Authority of examiner of drivers to cancel licenses. The examiner of drivers may cancel any driver's license if the examiner determines that the licensee was not entitled to it, failed to give the required or correct information in the licensee's application, or committed fraud in making the licensee's application or in obtaining the license. Upon cancellation, the licensee shall surrender the licensee's license to the examiner of drivers.

286-121

286-121 Suspending or revoking privileges of nonresident and reporting convictions, suspensions, and revocations.

(a) The privilege of driving a motor vehicle on the highways of this State given to a nonresident hereunder shall be subject to suspension or revocation in like manner and for like cause as a driver's license issued hereunder may be suspended or revoked.

(b) The examiner of drivers is further authorized, upon receiving a record of the conviction in this State of a nonresident for any motor vehicle offense, to forward a certified copy of such record to the motor vehicle administrator in the state wherein the person so convicted is a resident.

(c) When a nonresident's operating privilege is suspended or revoked, the examiner of drivers shall forward a certified copy of the record of such action to the motor vehicle administrator in the state wherein such person resides.

286-122

286-122 Suspension of a license; surrender.

(a) Every person whose license or driving privilege has been suspended pursuant to this part or any traffic law or regulation of the State or any county, shall surrender the person's license to the examiner of drivers or the court, as is appropriate, which agency shall take custody of the license during the period of suspension.

(b) The examiner of drivers may suspend or revoke the license of any resident of this State or the privilege of a nonresident to drive a motor vehicle in this State upon receiving notice of the conviction of that person in another state, or within this State or another state by the federal government, of an offense therein which, if committed within the jurisdiction of this State, would be grounds for the suspension or revocation of the driver's license or privilege. The examiner of drivers may give the same effect to conduct of a resident in another state as is provided by the laws of this State had such conduct occurred in this State. Any person whose license or driving privilege has been so suspended or revoked shall immediately return the person's license or permit to the examiner of drivers.

(c) Any resident or nonresident whose driver's license or privilege to operate a motor vehicle in this State has been suspended or revoked as provided in this chapter shall not operate a motor vehicle in this State under a license or permit issued by any other jurisdiction or otherwise during such suspension or after such revocation until a new license is obtained when and as permitted under this chapter.

286-123

286-123 Record of conviction forwarded to examiner of drivers. The record of any conviction resulting in the revocation or suspension of any person's license for a violation of this part or any traffic law or regulation of the State or county shall be forwarded by the court to the examiner of drivers of the county in which the court is located.

286-124

286-124 Mandatory revocation of license by a court. Any court of competent jurisdiction shall forthwith revoke the license of any driver upon a conviction of the driver of manslaughter or for negligent homicide in the first or second degrees resulting from the operation of a motor vehicle. The period of revocation shall be determined by the court at sentencing.

286-125

286-125 Discretionary revocation or suspension of license by a court. In addition to the provisions for mandatory revocation of a license set forth in section 286-124, any court of competent jurisdiction may, in its discretion, revoke or suspend the license of any driver convicted of any felony in the commission of which a motor vehicle is used, or convicted of a violation of this part or of any traffic law or regulation of the State or any political subdivision thereof involving a vehicle in motion.

286-126

286-126 Period of suspension or revocation. Unless otherwise provided by law, a court of competent jurisdiction shall not suspend a license for a longer period than five years; and when a court has revoked a license, the person whose license was revoked may not apply for, and the examiner of drivers may not grant, a new driver's license until the expiration of the period of revocation determined by the court.

286-127 REPEALED

286-127 REPEALED. L 1970, c 164, §1(5). Previous Vol05_Ch0261-0319 Next

286-128

286-128 Evaluation of nonresident driving privileges; reports of outside convictions; reports of convictions by courts-martial or United States commissioners.

(a) Nonresident privilege of driving a motor vehicle. The privilege of driving a motor vehicle on the highways of this State and the several counties, given to a nonresident under the laws of this State, shall be subject to suspension by the district judge in like manner, and for like cause, the same as a driver's license issued by this State may be suspended.

(b) Reports of outside convictions; recording against drivers. The district judges of each county shall enter into reciprocal agreements with the proper agency of any other county and the governor of the State may enter into such agreements with any state or territory for the purpose of reporting convictions or bail forfeitures in such county, state, or territory by a person holding a driver's license in such county, state, or territory. Such convictions or bail forfeitures in such county, state, or territory of a violation therein which if committed in this State would be a violation of the traffic laws of this State or the ordinances of the several counties, shall be recorded against a driver the same as if the conviction or bail forfeiture had been made in the State.

(c) Reports of convictions by courts-martial or United States commissioners; recording against drivers. Convictions by courts-martial of any of the various branches of the armed forces of the United States or by a United States commissioner of a violation either on or off government property which, if committed in this State, would be a violation of the traffic laws of this State or the ordinances of the several counties, may be recorded against a driver the same as if the conviction had been in the courts of this State.

(d) Upon determination and order by a district judge that a person has violated traffic laws of the State or ordinances of its counties with such frequency as to indicate a disrespect for such laws or ordinances and a disregard for the safety of other persons on the highways within a twelve-month period, the licensee shall report in person for a review of the licensee's driving record with the judge as directed by the judge if the licensee is present in court. If the licensee is not present in court when the district judge makes a determination and order that the licensee has violated traffic laws of the State or ordinances of its counties with such frequency as to indicate a disrespect for such laws or ordinances and a disregard for the safety of other persons on the highways within a twelve-month period and is directed to report in person for a review of the licensee's driving record, then the clerk of the district court shall notify the licensee in writing by certified mail, return receipt requested, to addressee only, that the licensee is directed to report in person, within fifteen days after receipt of the notice to report, for a review of the licensee's driving record with the judge. At the review, the judge may order a licensee who has violated traffic laws of the State or ordinances of its counties with such frequency as to indicate a disrespect for such laws or ordinances and a disregard for the safety of other persons on the highways within a twelve-month period to attend a course of instruction in driving retraining by a designated driver instructor or driver training school. Any person who fails to report in person for a review of the person's driving record with the judge as required by this subsection or who fails to attend a course of instruction in driver retraining pursuant to the order of the judge as required by this subsection shall be fined not more than $100 or shall have the person's license suspended not more than one year, or both.

286-129 Appeal to circuit court

286-129 Appeal to circuit court. Any applicant who has been refused a license after at least three examinations, or who has been refused any examination, and every licensee whose license has been suspended, revoked, or canceled by the examiner of drivers, may appeal from such refusal, suspension, revocation, or cancellation to the circuit court of the circuit in which the applicant or licensee resides by filing a notice of appeal in such court within thirty days after being notified of the refusal, suspension, revocation, or cancellation. The appeal shall not operate as a stay to the order or decision appealed from. The appeal shall be subject to such procedure and rules as may be prescribed by the court and the decision of the court shall be final except as otherwise provided in chapter 91.

286-130

286-130 No operation under foreign license during revocation or suspension in this State. Any resident or nonresident whose driver's license or right or privilege to operate a motor vehicle in this State has been suspended or revoked shall not operate a motor vehicle in this State under a license, permit, or registration certificate issued by any other jurisdiction or otherwise during the suspension or after the revocation until a new license issued by the examiner of drivers is obtained when and as permitted by law.

286-131 Unlawful use of license

286-131 Unlawful use of license. No person shall:

(1) Display or permit to be displayed or have in the person's possession any canceled, revoked, suspended, fictitious, or fraudulently altered driver's license;

(2) Lend the person's driver's license to any other person or knowingly permit the use thereof by another;

(3) Display or represent as one's own any driver's license not issued to the person;

(4) Fail or refuse to surrender to the examiner of drivers, upon the examiner's lawful demand, any driver's license that has been suspended, revoked, or canceled;

(5) Use a false or fictitious name in any application for a driver's license or knowingly make a false statement or knowingly conceal a material fact, or otherwise commit a fraud in any such application; or

(6) Use or have in the person's possession any reproduction, imitation, or facsimile of any driver's license or any identification with the appearance of a driver's license.

286-132

286-132 Driving while license suspended or revoked. Except as provided in section 291E-62, no resident or nonresident whose driver's license, right, or privilege to operate a motor vehicle in this State has been canceled, suspended, or revoked may drive any motor vehicle upon the highways of this State while the license, right, or privilege remains canceled, suspended, or revoked.

286-133

286-133 Unlawful to permit unauthorized person to drive. Except as provided in section 291E-67, no person shall authorize or knowingly permit a motor vehicle or moped owned by that person or under that person's control to be driven upon any highway by any person who is not authorized under law to drive the motor vehicle or moped.

286-134 Employing unlicensed driver

286-134 Employing unlicensed driver. No person shall employ as a driver of a certain category of motor vehicle any person who is not licensed under this part to operate that category of motor vehicle.

286-135 Renting motor vehicle to another

286-135 Renting motor vehicle to another. Every person renting a motor vehicle to another shall keep a record of the registration number of the motor vehicle so rented, the name and address of the person to whom the vehicle is rented, the number of the license of the latter person, and the date and place when and where the license was issued. The record shall be open to inspection by any police officer or the examiner of drivers or the examiner's representative.

286-136 Penalty

286-136 Penalty.

(a) Any person who violates section 286-102, 286-122, 286-130, 286-131, 286-132, 286-133, or 286-134 shall be penalized as follows:

(1) For a first offense, or any offense not preceded within a five-year period for the same offense, the person shall pay a fine of no more than $1,000 or serve a term of imprisonment of no more than thirty days, or both;

(2) For an offense that occurs within five years of a prior conviction for the same offense, the person shall pay a minimum fine of $500 and a maximum fine of $1,000, or serve a term of imprisonment of no more than one year, or both; or

(3) For an offense that occurs within five years of two or more prior convictions for the same offense, the person shall be guilty of a class C felony; provided that the court, as part of the person's sentencing, may order that the vehicle used by the person in the commission of the offense be subject to forfeiture under chapter 712A.

(b) Any person who violates any other section in this part shall be fined no more than $1,000.

(c) Notwithstanding subsections (a) and (b), a minor under the age of eighteen under the jurisdiction of the family court who is subject to this section shall either lose the right to drive a motor vehicle until the age of eighteen or be subject to a fine of $500.

(d) Any person subject to a fine under this section and who fails to timely pay the fine shall be given an opportunity to petition the court to demonstrate that the person's nonpayment or inability to pay is not wilful; provided that if the person petitions the court, the court shall make an individualized assessment of the person's ability to pay based upon the totality of the circumstances, including the person's disposable income, financial obligations, and liquid assets; provided further that if the court determines that the person's nonpayment or inability to pay is not wilful, the court may enter an order that allows additional time for payment; reduces the amount of each installment; revokes the fee or fine, or unpaid portion thereof, in whole or in part; or converts any outstanding fine to community service.

286-137 District courts to keep records

286-137 District courts to keep records. The district court of each circuit shall keep, maintain, and control or shall otherwise provide for the keeping, maintaining, and controlling of proper and accurate records of each conviction or bail forfeiture or any other disposition of each violation of licensee coming within this part. The district court of each circuit shall also establish procedures for the accounting, control, and disposition of each traffic citation, notice, or summons used or issued, whether the use or issuance of the same is authorized by the court or by any other governmental agency under applicable laws or ordinances, which may include the keeping of an accurate citation, notice, or summons control ledger or form in a numerical, chronological, or other accountable manner.

286-138

286-138 Prohibiting "fixing" of tickets and providing penalties therefor; nolle prosequi by prosecuting attorney only by motion and approval of court.

(a) It shall be unlawful for any person, including any government official or employee of the State or county, to "fix", "void", change, modify, adjust, tamper with, or otherwise dispose of any traffic citation, notice, or summons. Nothing in this subsection shall be construed to affect the powers of the judges of the several courts in the exercise of their judicial functions. Any person who intentionally or knowingly violates this subsection shall be guilty of a class C felony; except that the person shall be fined not less than $1,000 and not more than $10,000. Any government official or employee of this State or any county who violates this subsection shall be summarily discharged from the official's or employee's office or employment.

(b) No nolle prosequi shall be entered in any case involving a violation of the traffic laws or ordinances of the State or of the several counties and no case or any charge arising therefrom shall be stricken, amended, or reduced, except by consent of the court upon motion of the prosecuting attorney stating the reasons therefor. The court may deny the motion if it deems the reasons insufficient.

286-139 Preferred insurance rate

286-139 Preferred insurance rate. Insurers may provide preferential insurance rates to those persons who have favorable records to their credit.

286-140 REPEALED

286-140 REPEALED. L 1975, c 113, §13. Previous Vol05_Ch0261-0319 Next

286-151 VII

286-151 to 286-163 REPEALED. L 2000, c 189, §28. Previous Vol05_Ch0261-0319 Next

286-171 VIII

286-171 Statewide traffic records system.

(a) There is established a statewide traffic records system. The state director of transportation shall be responsible for the administration and operation of the system and for this purpose shall adopt necessary rules and regulations pursuant to chapter 91.

(b) The statewide traffic records system shall include all traffic records of the violation bureaus of the district courts, the circuit courts, the police departments, the county [directors of finance], the department of health, and the department of education and all dispositions pertaining to administrative license revocation proceedings conducted by the administrative director of the courts.

286-172 Bill

286-172 Furnishing of information.

(a) Subject to authorization granted by the chief justice with respect to the traffic records of the violations bureaus of the district courts and of the circuit courts, the director of transportation shall furnish information contained in the statewide traffic records system in response to:

(1) Any request from a state, a political subdivision of a state, or a federal department or agency, or any other authorized person pursuant to rules adopted by the director of transportation under chapter 91;

(2) Any request from a person having a legitimate reason, as determined by the director, as provided under the rules adopted by the director under paragraph (1), to obtain the information for verification of vehicle ownership, traffic safety programs, or for research or statistical reports;

(3) Any request from a person required or authorized by law to give written notice by mail to owners of vehicles; or

(4) Any request from the chief energy officer of the Hawaii state energy office to track the number and type of vehicles in use and the effectiveness of efforts to increase the efficiency and diversify the fuel needs of Hawaii's transportation sector.

(b) Any person requesting information contained in the statewide traffic records system under subsection (a)(2) shall file an affidavit with the director stating the reasons for obtaining the information and making assurances that the information will be used only for such reasons, that individual identities will be properly protected, and that the information will not be used to compile a list of individuals for the purposes of any commercial solicitation by mail or otherwise, or the collection of delinquent accounts or any other purpose not allowed or provided for by the rules.

(c) The information provided to any person qualifying to receive information under subsection (a)(2) shall be provided for a fee and under such conditions as set by the director pursuant to rules adopted by the director under chapter 91. The director shall require the person receiving the information to file with the director a corporate surety bond in favor of the State in the penal sum of not more than $70,000, conditioned upon the full and faithful compliance of the person receiving the information with the terms and conditions of the affidavit and the conditions set by the director. Any person otherwise qualified to receive information under subsection (a)(2) and who complies with the provisions of this section may receive all the information in the motor vehicle registration file if the person either provides information to or performs recalls on behalf of manufacturers of motor vehicles as authorized by the federal government or as deemed necessary by a manufacturer in order to protect the public health, safety, and welfare or to make a free correction of a manufacturing deficiency.

(d) Any person receiving information pursuant to subsection (a)(2) or (3) shall hold harmless the State and any agency thereof from all claims for improper use or release of such information.

286-181 [PART IX

286-181 Pupil transportation safety.

(a) As used in this section "school vehicle" means any publicly or privately owned motor vehicle used to transport pupils to and from a school, as defined in section 302A-901, school functions, or school-related events, except:

(1) A motor vehicle used for the transportation of pupils attending schools above the twelfth grade or pupils over eighteen years of age;

(2) A privately-owned passenger vehicle when the transportation is provided without compensation of any kind;

(3) A motor vehicle used for the transportation of pupils together with other passengers as a part of the regularly scheduled operation of a mass transit system; or

(4) A privately-owned motor vehicle when the transportation is provided by a community association or a nonprofit corporation, duly incorporated with the department of commerce and consumer affairs, which operates for the purpose of promoting recreation, health, safety, ridesharing, or social group functions.

(b) The department of transportation shall grant exemptions for the use of vehicles other than school vehicles, including motorcoaches, small buses, and vans, when the department finds that compliance with this section is:

(1) Impractical due to the unavailability of school vehicles; or

(2) Impractical due to economic factors. No exemption shall be granted for the qualifications of individuals driving a bus as defined in section 286-2 and the individuals shall meet school vehicle driver qualifications.

(c) The exemptions in subsection (b) shall be granted:

(1) To the department of education to administer to department schools based on criteria developed by the departments of transportation and education; provided that the department of education shall submit a report to the department of transportation at the end of each school year on the extent to which these exemptions were used;

(2) To the state public charter school commission to administer public charter schools based on criteria developed by the departments of transportation and education; provided that the state public charter school commission shall submit a report to the department of transportation at the end of each school year on the extent to which these exemptions were used;

(3) To a board of independent schools, which is registered with the department of commerce and consumer affairs, to administer to private schools utilizing criteria developed by the departments of transportation and education; provided that the board shall submit a report to the department of transportation at the end of each school year on the extent to which these exemptions were utilized;

(4) For the transport of pupils to and from school functions or school-related activities, for transportation to and from a school, and for transportation to and from designated drop off locations and pick up locations established by the department of education, in consultation with the department of transportation;

(5) Only when each pupil being transported has obtained a written statement from the pupil's parent or legal guardian waiving the State's liability; and

(6) In accordance with the procedures and criteria established by rules of the department of transportation.

(d) Notwithstanding any law to the contrary, the department of transportation may grant exemptions for the use of vehicles other than school vehicles, including the use of motorcoaches, small buses, and vans that may not meet school bus regulations but shall otherwise meet vehicle requirements and qualifications set forth in chapter 19-143, Hawaii Administrative Rules, for school bus services, when an adult staff chaperone escorts students being transported between designated locations off-campus and designated locations on-campus, when the department of transportation finds that compliance with this section is impossible or impractical; provided that an adult staff chaperone provided by the department of education escorts students being transported between designated off-campus and designated on-campus locations; provided further that no exemption shall be granted for the qualifications of individuals driving a bus as defined in section 286-2 and the individuals shall meet school vehicle driver qualifications.

(e) The department of transportation shall adopt safety rules and standards relating to school vehicles, equipment, and drivers, including but not limited to:

(1) School vehicle and school vehicle equipment design, construction, and identification;

(2) School vehicle driver qualification and training as required by law;

(3) School vehicle operation;

(4) School vehicle maintenance and maintenance records;

(5) Special school vehicle safety inspections;

(6) Criteria for passenger loading and unloading safety areas; and

(7) Procedures and criteria for the granting of exemptions permitted under subsections (b), (c), and (d); provided that the rules and standards shall permit the use of small buses, vans, or motorcoaches for the transportation of pupils of a public or private day care center, child care facility, headstart program, preschool, kindergarten, elementary, or secondary

school, including any special school for children in the State with an accompanying adult staff chaperone escort provided by the department of education for students transported between designated locations off-campus and designated locations on-campus or of school pupils and school staffs to and from school-related activities.

(f) The department of education shall adopt necessary rules governing passenger conduct, passenger safety instruction, and disciplinary procedures for the enforcement of the rules applicable to passengers on school vehicles operated by or under contract with the State. Any pupil who fails to comply with any rule adopted pursuant to this subsection shall not be subject to section 286-10 but shall be subject to discipline in accordance with rules adopted by the department.

(g) Any person operating a school vehicle who fails to comply with any rule adopted pursuant to this section shall be fined not more than $500 or imprisoned not more than six months, or both.

(h) The director of transportation, or any officer, employee, or representative of the department of transportation appointed by the director shall be responsible for the enforcement of any safety rules and standards adopted pursuant to subsection (e). The director of transportation may request that the executive officers of each county and any other state agency having responsibility relative to pupil transportation provide additional enforcement of any rule adopted by the department of transportation.

(i) As used in subsection (b), a school vehicle is unavailable when it:

(1) Is being used during a specific time for contracted school-related transportation to and from school or related destinations;

(2) Fails that day's inspection and has not been repaired;

(3) Is already in transportation service; or

(4) Is committed for transportation service.

286-191 X

286-191 REPEALED. L 1989, c 185, §3. Previous Vol05_Ch0261-0319 Next

286-201 XI

286-201 Definitions. As used in this part unless the context otherwise requires: "Director" means the director of transportation. "Gross vehicle weight rating" means the value specified by the manufacturer as the loaded weight of a single vehicle. When there is no value specified by the manufacturer as the loaded weight of a single vehicle, the value shall be determined in accordance with rules adopted by the director. "Motor carrier" as used in this part means any person who owns a motor vehicle used in, or engages in the transportation of persons or property by motor vehicle on the public highways in the furtherance of any commercial, industrial, or educational enterprise. "Motor carrier vehicle" means any motor vehicle or vehicle, including integrally mounted equipment and specially constructed motorized equipment, used by a motor carrier to transport passengers or property on the public highways. [L Sp 1977 1st, c 20, pt of §1; am L 1979, c 119, §2; am L 1980, c 27, §2 and c 232, §13] Revision Note Numeric designations deleted and definitions rearranged pursuant to §23G-15.

286-202

286-202 General duties and powers of the director. The general duties and powers of the director shall be:

(1) To establish rules promoting the safety of operations, motor vehicle and equipment of motor carriers; provided that the maximum hours of service to be performed by an operator of a motor carrier vehicle shall be determined by the director based on conditions existing in the State or in particular sections of the State and shall be compatible with those prescribed by the Federal Motor Carrier Safety regulations of the United States Department of Transportation.

(2) To coordinate the various motor carrier safety programs in the State including the formulation of statewide standards as necessary.

(3) To develop and implement, on a priority basis, a recordkeeping and information system for the motor carrier safety program.

(4) To develop standards relating to the qualification of motor carrier vehicle drivers.

(5) To establish standards for continuous driver training and periodic evaluation of the driver performance of motor carrier vehicle drivers.

(6) To establish standards for motor carrier vehicle safety inspection, motor carrier vehicle inspection stations, and motor carrier vehicle inspection personnel.

(7) To revise and update the standards relating to motor carrier vehicle maintenance and establish a system for the enforcement of such standards.

(8) To develop the standards for size and weight of vehicles, including motor carrier vehicles, pursuant to chapter 291.

(9) To establish standards for the issuance of special permits to carry oversized and overweight loads on the highway.

(10) To establish standards for the transportation of hazardous materials on the highways.

(11) To develop comprehensive rules governing the modification of motor carrier vehicles which will at any time be operated upon the highway.

(12) To review and approve all plans and specifications for construction in the State or modification of motor carrier vehicles which will at any time be operated upon the highway.

(13) To adopt rules pursuant to chapter 91 necessary for the purposes of this part.

(14) To investigate all motor carrier vehicle accidents under this part resulting in death of a human being or other accidents as the director determines necessary to advance the motor carrier safety program. [L Sp 1977 1st, c 20, pt of §1; am L 1989, c 320, §6; am L 1990, c 342, §16] Previous Vol05_Ch0261-0319 Next

286-202.5 Driver improvement program

286-202.5 Driver improvement program.

(a) Every employer who employs a commercial motor vehicle driver who drives a motor vehicle with a gross vehicle weight rating in excess of ten thousand pounds shall provide for every such driver a driver improvement program. This program shall provide a system for continuous driver evaluation and annual driver safety courses approved by the director. For drivers with five years of continuous employment with one employer, this requirement shall be at least once every two years. Every job placement center through which a driver who drives a motor vehicle with a gross vehicle weight rating in excess of ten thousand pounds is employed on a casual or sporadic basis, and not as a regularly employed driver for any one employer, shall be responsible for providing the driver improvement program for all its drivers, who drive a motor vehicle with a gross vehicle weight rating in excess of ten thousand pounds. For purposes of this subsection only, "job placement center" means any place where persons may register for purposes of employment, and the dispatching of those persons to various jobs as they become available. Any employer or job placement center that violates this subsection shall be fined not more than $500.

(b) Every regularly or casually employed driver of a motor vehicle with a gross vehicle weight rating in excess of ten thousand pounds shall attend the driver improvement program provided by the driver's employer or job placement center. The director shall adopt rules pursuant to chapter 91 necessary for the purposes of this subsection, including but not limited to rules governing attendance. Any driver who does not fulfill the appropriate driver improvement attendance requirement shall be fined not more than $100.

(c) The counties may furnish real property, facilities on that property, and other equipment in furtherance of this section. A county may allow the use of that property or other county property to a third party examiner who has entered into an agreement with the county on terms that it deems proper and reasonable.

286-202.6

286-202.6 Marking of motor carrier vehicles.

(a) In addition to the requirements in title 49 Code of Federal Regulations section 390.21, every motor carrier vehicle shall be marked as specified in subsections (b), (c), and (d).

(b) The marking shall display the following information:

(1) The name or trade name of the motor carrier or company operating the motor carrier vehicle;

(2) If the name of any person other than the operating motor carrier or company appears on the motor carrier vehicle, the information required by paragraph (1) shall be displayed and preceded by the words "operated by";

(3) The gross vehicle weight, gross vehicle weight rating, or gross combination weight rating; and

(4) Other identifying information may be displayed on the motor carrier vehicle if it is not inconsistent with the information required by this subsection.

(c) The marking shall:

(1) Appear on both sides of the motor carrier vehicle;

(2) Be in letters that contrast sharply in color with the background on which the letters are placed;

(3) Be readily legible during daylight hours, from a distance of fifty feet (15.24 meters) while the motor carrier vehicle is stationary; and

(4) Be kept and maintained in a manner that retains the legibility required by paragraph (3).

(d) The marking may be painted or permanently affixed on the motor carrier vehicle.

(e) A motor carrier or company operating a motor carrier vehicle under a rental agreement having a term in excess of thirty calendar days shall meet the requirements of this section.

286-202.8 Bill

286-202.8 Mudguards; protective devices.

(a) A commercial motor vehicle shall not be operated on the public highways unless the vehicle is equipped with fenders, covers, or other devices, including flaps or splash aprons, to minimize the spray or splash of water or mud to the rear of the vehicle.

(b) Violation of this section shall be subject to a fine of $50, notwithstanding section 286-206.

286-203 Enforcement

286-203 Enforcement. For purposes of the enforcement of this part, the director of transportation shall have any powers of enforcement as may be necessary to implement this part. The director may delegate the enforcement of this part to county executive officers. For the purpose of the safety, welfare, and health of the general public, and the safe transportation of hazardous materials and waste on any public highway, and the enforcement of this part and of all rules adopted pursuant to this part, the director, persons appointed by the director, and the county executive officers to whom powers of enforcement are delegated may:

(1) Inspect lands, buildings, freight, and equipment of motor carriers;

(2) Stop and inspect freight and equipment of motor carriers and the military on any public highway; and

(3) Inspect shipping papers and hazardous waste manifests of motor carriers and persons subject to this part. Every state and county officer charged with enforcement of laws and ordinances shall assist in the enforcement of this part and of all rules adopted pursuant to this part and issue citations for violations as appropriate. [L Sp 1977 1st, c 20, pt of §1; gen ch 1985; am L 1986, c 299, §1; am L 2020, c 70, §31]

286-204 Accounts, records, and reports

286-204 Accounts, records, and reports.

(a) The director may require annual, periodic, or special reports from all motor carriers, prescribe the manner and form in which the reports shall be made, and require from the carriers specific and full, true, and correct answers to all questions which the director may deem necessary for the safety regulation of motor carrier vehicles.

(b) The director may prescribe the forms of any and all records and memoranda to be maintained by motor carriers as related to safety of motor carrier operations. The director or the director's duly authorized representative shall at all reasonable times and places have access to and authority, under the director's or representative's order, to inspect and examine any and all equipment of motor carriers and shall have authority to inspect and copy any and all books, records, memoranda, and other documents as are related to the safety of motor carrier operations.

(c) Each motor carrier operating vehicles in the State shall keep all records and reports required by this section at an office or place of business located within the State. [L Sp 1977 1st, c 20, pt of §1; gen ch 1985] Previous Vol05_Ch0261-0319 Next

286-204.5 Bill

286-204.5 Vehicle identification card.

(a) A motor carrier shall file with the director a form prescribed by the director containing a description of the commercial motor vehicle registered to the motor carrier. There shall be one form per vehicle. The form shall be filed when:

(1) The original application for a safety clearance is filed with the director;

(2) A new commercial motor vehicle is placed in service;

(3) A commercial motor vehicle is withdrawn from service; and

(4) New state license plates are issued for a commercial motor vehicle; provided that the form shall be filed not more than five days, including weekends and holidays, after the issuance of the plates.

(b) Upon the filing under subsection (a), the director shall issue a motor vehicle identification card for that commercial motor vehicle. The card shall contain information sufficient to identify the owner of the vehicle and other information deemed necessary by the director.

(c) A motor carrier shall inform the director, by filing a form prescribed by the director, of when a commercial motor vehicle registered to the motor carrier is disposed of, transferred, sold, or otherwise taken out of service by that carrier. The motor carrier shall surrender the vehicle identification card to the director with the filing of the form by affixing the card thereto.

286-205 Reports as evidence

286-205 Reports as evidence. Any report by any motor carrier of any accident occurring in the course of its operation, made pursuant to any requirement of the director or any other lawful authority, and any report by the director or any police department of any such vehicle accident, may be admitted as evidence in any suit or action for damages growing out of any matter mentioned in the report or investigation. [L Sp 1977 1st, c 20, pt of §1] Previous Vol05_Ch0261-0319 Next

286-206 Penalty

286-206 Penalty. Unless indicated otherwise, any motor carrier or any agent, employee, or representative thereof, who wilfully and knowingly fails, neglects or refuses to perform any act required by this part or by rules adopted by the director under this part shall be fined not more than $2,000 for each separate offense. Each date of violation shall constitute a separate offense. An action to impose or collect the penalty provided in this section shall be considered a civil action. [L Sp 1977 1st, c 20, pt of §1] Previous Vol05_Ch0261-0319 Next

286-208 REPEALED

286-208 REPEALED. L 2022, c 84, §1. Previous Vol05_Ch0261-0319 Next

286-209

286-209 Safety inspection of motor carrier vehicles.

(a) Motor carrier vehicles, including but not limited to trucks, truck-tractors, semitrailers, trailers, or pole trailers, having a gross vehicle weight rating of more than ten thousand pounds, motor carrier vehicles having a gross vehicle weight rating of ten thousand pounds or less which transport passengers in the furtherance of a commercial enterprise, including car rental transport vehicles, and motor carrier vehicles used in transporting material found by the United States Secretary of Transportation to be hazardous under 49 U.S.C. section 5103 and transported in a quantity requiring placarding under 49 C.F.R., subtitle B, chapter I, subchapter C, shall be inspected and certified annually.

(b) The director shall adopt rules pursuant to chapter 91 for motor carrier vehicle safety inspections, the issuance of certificates of safety inspection, the affixing of motor carrier vehicle safety inspection decals, and the acceptance of certificates of safety inspection issued in other jurisdictions.

(c) The director shall collect a fee of $1.50 for each motor carrier vehicle safety inspection decal issued by motor carrier vehicle inspection stations. All moneys collected shall be paid into the state highway fund.

(d) A fee of no more than $12 shall be charged by a motor carrier inspection station for each safety inspection performed.

(e) For the purposes of this section, "car rental transport vehicles" means motor carrier vehicles used to transport customers to or from car rental sites. [L Sp 1977 1st, c 20, pt of §1; am L 1985, c 246, §1 and c 274, §1; am L 2002, c 138, §2; am L 2005, c 3, §1; am L 2007, c 43, §1; am L 2010, c 14, §2] Previous Vol05_Ch0261-0319 Next

286-210

286-210 Operation of a motor carrier vehicle without a safety inspection decal. Whoever operates, permits the operation of, causes to be operated, or parks any motor carrier vehicle on a public highway without a current motor carrier vehicle safety inspection decal, issued under section 286-209, shall be fined $100 for each day of the violation. [L Sp 1977 1st, c 20, pt of §1; am L 1993, c 214, §9] Previous Vol05_Ch0261-0319 Next

286-211

286-211 Permits to operate official inspection stations.

(a) The director shall issue permits for and furnish instructions and all forms to official inspection stations. The stations shall operate pursuant to standards established by the director.

(b) Application for an official inspection station permit shall be made upon an official form and shall be granted only when the director is satisfied that the station is properly equipped and has competent personnel to make the required inspections. Before issuing a permit, the director shall require the applicant to file proof that the applicant has, in effect, a liability insurance policy, issued to the applicant by an insurance company, authorized to do business in the State, insuring against the liability of the applicant and any of the applicant's employees, in minimum amounts as follows: comprehensive public liability insurance in the amount of $10,000 for one person and $20,000 for one accident and comprehensive property damage insurance of $5,000; provided that the director may, by rules, set higher limits; provided further that the proof of insurance need not be filed by an applicant who inspects only vehicles owned by the applicant; provided further that the proof of insurance need not be filed by instrumentalities of the United States.

(c) A permit for an official inspection station shall not be assigned or transferred or used at any location other than that designated by the director and every permit shall be posted in a conspicuous place at the location so designated.

(d) A permit for an official inspection station shall be suspended or revoked, or renewal thereof shall be refused by the director, upon a third or subsequent wilful violation within a period of eighteen months of any rule requiring an official inspection station to ensure a vehicle or moped is not equipped with a muffler or exhaust system that fails to comply with section 291-24 or 291-24.5, as applicable. [L Sp 1977 1st, c 20, pt of §1; gen ch 1985; am L 2025, c 172, §2] Previous Vol05_Ch0261-0319 Next

286-212

286-212 Suspension or revocation of permits. The director shall supervise and cause inspections to be made of official inspection stations and shall suspend or revoke and require the surrender of the permit issued to a station which the director finds is not properly conducting inspections. The director shall maintain and post at the department lists of all stations holding permits and those whose permits have been suspended or revoked. [L Sp 1977 1st, c 20, pt of §1; gen ch 1985] Previous Vol05_Ch0261-0319 Next

286-213

286-213 Improper representation as official inspection station. Any person who in any manner represents that the business operated at any location is an official inspection station without a permit issued by the director under section 286-211, or any person other than a person operating an inspection station under a permit granted by the director who issues a certificate of inspection shall be fined not more than $1,000 or imprisoned not more than one year, or both. [L Sp 1977 1st, c 20, pt of §1] Previous Vol05_Ch0261-0319 Next

286-214 False certificates

286-214 False certificates. Any person who makes, issues, or knowingly uses any imitation or counterfeit of an official certificate of inspection, or any person who displays or causes or permits to be displayed upon any vehicle any certificate of inspection knowing the same to be issued for another vehicle or issued without an inspection having been made or issued without authority as provided herein shall be fined not more than $1,000 or imprisoned not more than one year, or both. [L Sp 1977 1st, c 20, pt of §1] Previous Vol05_Ch0261-0319 Next

286-215 Fees and charges

286-215 Fees and charges. The director shall establish fair and reasonable fees for applications for approval of plans and specifications for construction or modification of a motor vehicle or class of motor vehicles in Hawaii which will at any time be operated upon the highways as provided in section 286-202(12). [L Sp 1977 1st, c 20, pt of §1; am L 1978, c 159, §5] Previous Vol05_Ch0261-0319 Next

286-216 Fines, fees and charges

286-216 Fines, fees and charges. All moneys collected under this part shall be paid into the state highway fund and shall be expended for the purpose of this part. [L Sp 1977 1st, c 20, pt of §1] Previous Vol05_Ch0261-0319 Next

286-217 HRS

286-217 Shipping container chassis; out-of-state registration; safety inspection; validity.

(a) Notwithstanding any law to the contrary, a shipping container chassis that holds a valid certificate of vehicle registration from another state and is used for transporting shipping containers shall be eligible to obtain a certificate of safety inspection and a safety inspection decal pursuant to section 286-209.

(b) Notwithstanding any law to the contrary, a valid certificate of registration issued for a shipping container chassis from another state shall be valid in the State until the certificate of registration expires in the issuing state; provided that the shipping container chassis is used for transporting shipping containers; provided further that if the shipping container chassis is issued a certificate of vehicle safety inspection pursuant to subsection (a), the out-of-state registration shall be valid in the State for one year from the date of the vehicle safety inspection.

286-221 XII

286-221 Definitions. As used in this part, unless the context otherwise requires: "Hazardous material" means a substance or material which has been determined by the United States Secretary of Transportation to be capable of posing an unreasonable risk to health, safety, and property when transported in commerce, and which has been so designated. The term includes hazardous substances, hazardous wastes, infectious substances, medical wastes, marine pollutants, elevated temperature materials, and materials that meet the defining criteria for hazard classes and divisions in Title 49, Code of Federal Regulations, Part 173. "Hazardous materials incident" means an occurrence or likely occurrence or potential of a spill, release, leakage, dumping, or loss of control of a hazardous material during the course of transportation in commerce including loading, unloading, or temporary storage. "Hazardous substance" means any material, including its mixtures and solutions, defined under Title 49, Code of Federal Regulations, Part 171. "Hazardous waste" means any material designated in Title 40, Code of Federal Regulations, Part 261 and which are subject to the hazardous waste manifest requirements of Title 40, Code of Federal Regulations, Part 262. "Infectious substance" means a viable microorganism, or its toxin, which causes or may cause disease in humans and animals, or which is further described as an infectious substance in Title 49, Code of Federal Regulations, Part 173. "Medical waste" means for transportation purposes, shipments of medical waste material generated in the diagnosis, treatment, or immunization of human beings and animals, in research pertaining thereto, in the production or testing of biologicals, or which are further described as regulated medical waste in Title 49, Code of Federal Regulations, Part 173.

286-222 General powers

286-222 General powers.

(a) The department of transportation may regulate the transportation of hazardous materials by motor carrier in commerce.

(b) The department shall annually adopt the hazardous material regulations established by the United States Department of Transportation and published in Title 49, Code of Federal Regulations, Parts 107, 171 to 173, inclusive, and Parts 177, 178, and 180. All other rules adopted by the State and political subdivisions thereof shall be consistent therewith.

(c) Any hazardous material which meets the federal and state criteria of a hazardous material must be handled and transported according to the appropriate requirements of the federal hazardous materials regulations and the additional requirements in this part.

286-223 Scope

286-223 Scope §286-223 Scope.

(a) The federal rules establish minimum standards and must be complied with when transporting a hazardous material by motor carrier in commerce.

(b) Transport shall be deemed to include any operation incidental to the whole course of carriage by motor carrier from shippers point of origin to final destination, including storage incidental to transportation while under active shipping papers and prior to the hazardous material reaching the ultimate consignee.

(c) No person shall transport any hazardous material outside the confines of the person's facility or other location of storage or use, or offer or deliver any hazardous materials to a motor carrier for transportation in commerce, nor shall any motor carrier accept any hazardous materials for transport, without compliance with the applicable requirements of the hazardous material rules adopted by the department, including those relating to packaging of hazardous materials, marking and labeling of packages, preparation and carriage of shipping papers or manifests, handling, loading, and

unloading packages, placarding of the transporting vehicle, training of employees, inspection of motor carrier vehicles, and motor carrier accident and hazardous materials incident reporting.

(d) No person in the course of transportation in commerce, shall spill, dump, deposit, or cause the release of a hazardous material upon a public highway, street, or the surrounding or connecting property, including but not limited to, storm drains, gutters, harbors, waterways, canals, lakes, and ocean shorelines, without immediately taking action to stop the spread of the material or remove the same or cause the same to be removed. If such person fails to comply with this subsection, the governmental agency responsible for the maintenance of the highway, street, or property on which the material was deposited may remove such materials and collect, by civil action, if necessary, the actual cost of the removal operation and repair of damage to the affected facility or property from the person responsible as stated in this subsection.

286-224 Inspections

286-224 Inspections.

(a) Any shipment or transport of hazardous materials by motor vehicle in commerce of which vehicle placarding or a shipping paper or manifest is required by the hazardous materials regulations adopted by the State, is subject to inspection by persons appointed by the director of transportation to enforce the safe transportation of hazardous materials in commerce and by those state and county officers charged with the enforcement of laws and ordinances adopted pursuant to this part.

(b) All carriers and persons that use a highway or street to transport hazardous materials in commerce shall afford the director of transportation, persons designated by the director, and those persons designated by the county executive officers, reasonable opportunity to enter and inspect freight containers, and motor vehicles, to review and document deficiencies on shipping papers and manifests, and to inspect other places incidental to the transshipment of hazardous materials by motor carrier vehicles.

286-225

286-225 Hazardous materials incident reporting.

(a) Any employee of the motor carrier, the driver, handlers, and loaders, and any employees of state and county governments shall report hazardous materials incidents as follows:

(1) Upon becoming aware of or observing the potential or actual spill, leakage, or loss of control of a hazardous material, shall immediately, or as soon as possible, notify the nearest police or fire department and make a report of the situation. This incident reporting requirement does not relieve a carrier or shipper of the responsibility to notify the United States Department of Transportation, state department of health, or local emergency planning committee of certain hazardous materials incidents.

(2) Whenever an infectious substance shipment is lost, stolen, or suspected or known to be leaking from its containment packaging, shall immediately, or as soon as possible, notify the state department of health, and the Centers for Disease Control [and Prevention] in Atlanta, Georgia, and make a report of the situation.

(3) Spillage or loss of control of a regulated medical waste shipment in commerce shall be reported immediately, or as soon as possible to the state department of health.

(b) Whenever possible, the incident report should include:

(1) The name and telephone number of the person calling in the report;

(2) The name of the carrier;

(3) Type of vehicle involved;

(4) Injuries or fatalities connected with the incident, if any;

(5) The location and time of the incident;

(6) The duration of a chemical release into the environment, if known;

(7) A description of hazards involved to include the chemical name or identity of any substance released;

(8) Hazardous materials classification, markings, and information on labels and placards affixed on packages, containers or vehicles; and

(9) Emergency actions taken including evacuation to minimize hazardous effects to public health, safety, and property.

(c) A copy of any written notification required under Title 49, Code of Federal Regulations, Part 171 shall be provided to the state director of transportation.

286-226 Routes

286-226 Routes. The intrastate shipment of explosives of any quantity that would require placarding of the transporting motor vehicle by the rules adopted pursuant to this part, shall not take place without first giving the police department and the fire department of the county in which the explosives are to be transported a forty-eight hour minimum advance notice. This advance notice shall be in writing and indicate the quantity and type of explosive material being shipped, the date and time of the shipment, and the route over which the explosive shipment will travel. This provision does not apply to the military during the period of an emergency or disaster proclaimed by the President, the governor, or a county mayor.

286-227 Penalty

286-227 Penalty.

(a) Any person who violates this part or any rule adopted pursuant to this part shall be subject to a civil penalty of not more than $10,000 for each violation. Each day the violation continues shall constitute a separate offense. An action to impose or collect the penalty provided in this section shall be considered a civil action.

(b) Any person who wilfully violates this part shall be subject to a criminal penalty of not more than $25,000 for each violation, imprisonment for a term not to exceed five years, or both.

286-231 XIII

286-231 Definitions. As used in this part unless the context otherwise requires: "Commercial driver's license downgrade" means:

(1) Authorization to change a driver's self-certification pursuant to title 49 Code of Federal Regulations section 383.71, to interstate, but operating exclusively in transportation or operation excepted from the Federal Motor Carrier Safety Regulations as provided in title 49 Code of Federal Regulations sections 390.3(f), 391.2, 391.62, and 398.2(b);

(2) Authorization to change a driver's self-certification pursuant to title 49 Code of Federal Regulations section 383.71, to intrastate only if the driver qualifies under the State's physical qualification requirements for intrastate only;

(3) Authorization to change a driver's self-certification pursuant to title 49 Code of Federal Regulations section 383.71, to intrastate, but operating exclusively in transportation or operations excepted from all or part of the state driver qualification requirements; or

(4) Removing the commercial driver's license privilege from the driver's license. "Commercial driver's license information system driver record" means the electronic record of an individual commercial driver license driver's status and history stored by the state of record as part of the commercial driver's license information system established under title 49 United States Code section 31309. "Disqualification" means any of the following three actions:

(1) The suspension, revocation, or cancellation of a commercial driver's license by the state or jurisdiction of issuance;

(2) Any withdrawal of a person's privileges to drive a commercial motor vehicle by a state or other jurisdiction as the result of a violation of state or local law relating to motor vehicle traffic control (other than parking, vehicle weight, or vehicle defect violations); or

(3) A determination by the Federal Motor Carrier Safety Administration that a person is not qualified to operate a commercial motor vehicle under Title 49, Code of Federal Regulations Part 391. "Driving a commercial motor vehicle while under the influence of an intoxicant" means committing any one or more of the following acts in a commercial motor vehicle:

(1) Driving a commercial motor vehicle while the person's alcohol concentration is 0.04 or more grams of alcohol per two hundred ten liters of breath or 0.04 or more grams of alcohol per one hundred milliliters or cubic centimeters of blood;

(2) Driving under the influence of an intoxicant pursuant to section 291E-61; or

(3) Refusing to undergo such testing as required by any state or jurisdiction in the enforcement of section 383.51(b) or 392.5(a)(2) of title 49 Code of Federal Regulations. "Employer" means any person, including the United States, a state or a political subdivision of a state, who owns or leases a commercial motor vehicle or assigns a person to drive a commercial motor vehicle. "Endorsement" means an authorization on an individual's commercial driver's license or

commercial learner's permit required to permit the individual to operate certain types of commercial motor vehicles. "Fatality" means the death of a person as a result of a motor vehicle accident. "Imminent hazard" means the existence of a condition that presents a substantial likelihood that death, serious illness, severe personal injury, or a substantial endangerment to health, property, or the environment may occur before the reasonably foreseeable completion date of a formal proceeding begun to lessen the risk of such death, illness, injury, or endangerment. "Noncommercial motor vehicle" means a motor vehicle or combination of motor vehicles not defined by the term "commercial motor vehicle (CMV)" under section 286-2. "Non-domiciled commercial driver's license" means a commercial driver's license issued by a state under either of the following two conditions:

(1) To an individual domiciled in a foreign country meeting the requirements of title 49, Code of Federal Regulations section 383.23(b)(1); or

(2) To an individual domiciled in another state meeting the requirements of title 49, Code of Federal Regulations section 383.23(b)(2). "Non-domiciled commercial learner's permit" means a commercial learner's permit issued by a state under either of the following two conditions:

(1) To an individual domiciled in a foreign country meeting the requirements of title 49 Code of Federal Regulations section 383.23(b)(1); or

(2) To an individual domiciled in another state meeting the requirements of title 49 Code of Federal Regulations section 383.23(b)(2). "Out-of-service order" means a declaration by an authorized enforcement officer of a federal, state, Canadian, Mexican, or local jurisdiction that a driver, a commercial motor vehicle, or a motor carrier operation is out-of-service pursuant to Section 386.72, 392.5, 395.13, or 396.9 of title 49, Code of Federal Regulations, or compatible laws, or the North American Uniform Out-of-Service Criteria, which can be obtained from the Commercial Vehicle Safety Alliance. "School bus" means a commercial motor vehicle used to transport pre-primary, primary, or secondary school students from home to school, from school to home, or to and from school-sponsored events, but does not include a bus, as defined under section 286-2, used as a common carrier as defined under section 271-4. "Serious traffic violation" means conviction of any of the following offenses when operating a commercial motor vehicle, except for weight, defect, and parking violations:

(1) Excessive speeding involving any single offense for any speed of fifteen miles per hour or more above the posted speed limit;

(2) Reckless driving or driving a commercial motor vehicle in disregard of the safety of persons or property, including but not limited to offenses of driving a commercial motor vehicle in wilful or wanton disregard for the safety of persons or property;

(3) Improper or erratic traffic lane changes;

(4) Following a vehicle ahead too closely;

(5) A violation of any state or local law relating to motor vehicle traffic control, other than a parking violation, arising in connection with a fatal traffic accident;

(6) Driving a commercial motor vehicle without obtaining a commercial learner's permit or a commercial driver's license;

(7) Driving a commercial motor vehicle without a commercial learner's permit or a commercial driver's license in the driver's possession; provided that this paragraph shall not apply to a citation issued under, or an offense disposed of pursuant to section 286-116(a) or a substantially similar provision of law in another state;

(8) Driving a commercial motor vehicle without the proper class or endorsements of commercial driver's license or commercial learner's permit for the specific vehicle group being operated or for the passengers or type of cargo being transported;

(9) Texting while driving in violation of a state or county law or ordinance; or

(10) Using a mobile electronic device in violation of a state or a county law or ordinance. "Tank vehicle" means any commercial vehicle that is designed to transport any liquid or gaseous materials within a tank or tanks having an individual rated capacity of more than one hundred nineteen gallons and an aggregate rated capacity of one thousand gallons or more that is either permanently or temporarily attached to the vehicle or the chassis. A commercial motor vehicle transporting an empty storage container tank, not designed for transportation with a rated capacity of one thousand gallons or more that is temporarily attached to a flatbed trailer is not considered a tank vehicle. "Texting" means manually entering alphanumeric text into, or reading text from, an electronic device, and includes short message service; e-mailing;

instant messaging; a command or request to access a world wide web page; pressing more than a single button to initiate or terminate a voice communication using a mobile telephone; and engaging in any other form of electronic text retrieval or entry, for present or future communication. "Texting" does not include:

(1) Reading, selecting, or entering a telephone number, an extension number, or voicemail retrieval codes and commands into an electronic device for the purpose of initiating or receiving a phone call or using voice commands to initiate or receive a telephone call;

(2) Inputting, selecting, or reading information on a global positioning system or navigation system or pressing a single button to initiate or terminate a voice communication using a mobile telephone; or

(3) Using a device capable of performing multiple functions, including fleet management systems, dispatching devices, smart phones, citizens band radios, and music players, for a purpose that is not otherwise prohibited.

286-232

286-232 Limitation on number of driver's licenses. No person who drives a commercial motor vehicle may have more than one driver's license.

286-233 Notification requirements

286-233 Notification requirements.

(a) Any driver of a commercial motor vehicle holding a commercial driver's license or a commercial learner's permit issued by this State who is convicted of violating any state law or local ordinance relating to motor vehicle traffic control in any other state, or federal, provincial, territorial, or municipal laws of Canada or Mexico, other than parking violations, in any type of motor vehicle, shall notify the examiner of drivers in the manner specified by the director within thirty days of the date of conviction. Any driver of a commercial motor vehicle holding a commercial driver's license or a commercial learner's permit issued by this State, who is convicted of violating any state law or local ordinance relating to motor vehicle traffic control in this or any other state, or federal, provincial, territorial, or municipal laws of Canada or Mexico, other than parking violations, in any type of motor vehicle, shall notify the person's current employer in writing of the conviction within thirty days of the date of conviction.

(b) Each commercial driver whose driver's license or permit is suspended, revoked, or canceled by any state, who loses the privilege to drive a commercial motor vehicle in any state for any period, or who is disqualified from driving a commercial motor vehicle for any period, shall notify the person's current employer of the suspension, revocation, or cancellation before the end of the business day following the day the driver received notice of the suspension, revocation, cancellation, or disqualification.

(c) The written notice to the examiner of drivers and current employer as required by subsection (a) shall contain the following information:

(1) Driver's full name;

(2) Driver's license number;

(3) Date of conviction;

(4) Each specific criminal or other offense, or serious traffic violation of state or local law relating to motor vehicle traffic control, of which the person was convicted, and any suspension, revocation, or cancellation of driving privileges which resulted from that conviction;

(5) Indication whether the violation was in a commercial motor vehicle;

(6) Location of offense; and

(7) Driver's signature.

(d) Each person who drives a commercial motor vehicle and applies for employment as a commercial motor vehicle driver shall provide the employer, at the time of the application, with the following information for the ten years preceding the date of application:

(1) A list of the names and addresses of the applicant's previous employers for which the applicant was a driver of a commercial motor vehicle;

(2) The dates between which the applicant drove for each employer; and

(3) The reason for leaving each employer. The applicant shall certify that all information furnished is true and complete. An employer may require an applicant to provide additional information.

286-234 Employer responsibilities

286-234 Employer responsibilities.

(a) Each employer shall require the applicant to provide the information specified in section 286-233.

(b) No employer shall knowingly allow, require, permit, or authorize a driver to drive a commercial motor vehicle:

(1) During any period in which the driver has a driver's license or permit suspended, revoked, or canceled by a state, has lost the privilege to drive a commercial motor vehicle in a state, or has been disqualified from driving a commercial motor vehicle;

(2) During any period in which the driver has more than one driver's license;

(3) During any period in which the driver, or the commercial motor vehicle the driver is driving, or motor carrier operation, is subject to an out-of-service order;

(4) During any period in which the driver does not have a current commercial learner's permit or commercial driver's license or does not have the proper class, restrictions, and endorsements; or

(5) In violation of a federal, state, or local law or regulation pertaining to railroad-highway grade crossings.

(c) Any employer who violates subsection (a) or (b)(1) or (2) shall for a first conviction be fined no more than $100; for conviction of a second offense committed within one year after the date of the prior conviction, the employer shall be fined no more than $300; and for conviction of a third or subsequent offense committed within two years after the date of the second conviction, the employer shall be fined no more than $1,000.

(d) Any employer who is convicted of a violation of subsection (b)(3) shall be subject to a civil penalty of no less than $6,974 or more than $38,612.

(e) Any employer who is convicted of a violation of subsection (b)(4) shall be subject to a civil penalty of no more than $10,000.

(f) Any employer who is convicted of a violation of subsection (b)(5) shall be subject to a civil penalty of no more than $20,017.

286-235

286-235 Commercial driver's license required.

(a) No person shall drive a commercial motor vehicle unless the person holds a valid commercial driver's license and valid applicable endorsements and restrictions for the vehicle the person is driving, except when driving under a commercial learner's permit and accompanied by the holder of a valid commercial driver's license for the vehicle being driven.

(b) No person shall operate a commercial motor vehicle without a commercial driver's license in such person's possession.

(c) No person shall drive a commercial motor vehicle while the person's driver's license or permit is suspended, revoked, or canceled, or while subject to a disqualification.

(d) No person shall drive a commercial motor vehicle in violation of an out-of-service order.

286-235.5 Persons exempt from licensure

286-235.5 Persons exempt from licensure. The following persons shall be exempt from licensure under this part:

(1) Individuals who operate commercial motor vehicles for military purposes. This exception is limited to active-duty military personnel, members of the military reserves, members of the national guard on active duty, including personnel on full-time national guard duty, personnel on part-time national guard training, and national guard military technicians (civilians who are required to wear military uniforms), and active-duty United States Coast Guard personnel. This exception is not applicable to United States reserve technicians; and

(2) Federal, state, and county firefighters, and law enforcement officers who drive federal, state, or county fire trucks, including fire pumpers, aerial ladder trucks, and elevated platform trucks, or authorized emergency vehicles; provided that they are trained by the federal, state, or county government and the commercial motor vehicles are equipped with audible

and visual signals and are not subject to normal traffic regulation. For purposes of this paragraph, "authorized emergency vehicle" shall have the same meaning as in section 291C-1.

286-236

286-236 Commercial driver's license qualification standards.

(a) No person shall be issued a commercial driver's license unless that person:

(1) Meets the qualification standards of title 49 Code of Federal Regulations, part 391, subparts B and E;

(2) Has passed a knowledge and driving skills test for driving a commercial motor vehicle that complies with minimum federal standards established by federal regulation enumerated in title 49 Code of Federal Regulations, part 383, subparts G and H;

(3) Has Hawaii as the state of domicile as defined in title 49 Code of Federal Regulations section 383.5; and

(4) Has satisfied all other requirements of the Commercial Motor Vehicle Safety Act of 1986, Public Law 99-570, title XII, in addition to other requirements imposed by state law or federal regulation. The tests shall be prescribed by the director and administered by the respective county examiner of drivers. The test examiners shall communicate with the applicant only in English during the skills test. As of January 30, 2012, the examiner of drivers shall verify that the medical certification status of a driver who self-certified according to title 49 Code of Federal Regulations section 383.71(b)(1)(i), non-excepted interstate, is certified. If a driver submits a current medical examiner's certificate, the examiner of drivers shall date-stamp the certificate and post all required information to the commercial driver's license information system pursuant to title 49 Code of Federal Regulations section 383.73(b)(5) and in accordance with title 49 Code of Federal Regulations section 383.73(o). A person who is not physically qualified to drive under title 49 Code of Federal Regulations section 391.41(b)(1) or (2) and who is otherwise qualified to drive a motor vehicle may be granted an intrastate waiver by the director. The process for granting intrastate waivers shall be the same as that for interstate waivers in title 49 Code of Federal Regulations section 391.49; provided that the intrastate waiver requests shall be submitted to the director.

(b) The examiner of drivers may waive the driving skills test specified in this section for a commercial driver's license applicant who meets the requirements of title 49 Code of Federal Regulations section 383.77 or 383.123(b).

(c) A commercial driver's license or commercial learner's permit, including a provisional or temporary license or permit, shall not be issued to a person while the person is subject to a disqualification from driving a commercial motor vehicle, or while the person's driver's license is suspended, revoked, or canceled in any state; or while the person holds a driver's license issued by any other state unless the person first surrenders that license.

(d) A commercial learner's permit may be issued to an individual who holds a valid driver's license, is at least eighteen years of age, meets the qualification standards of title 49 Code of Federal Regulations, part 391, subparts B and E, and has passed the written tests required for the desired class of a commercial driver's license.

(e) The commercial learner's permit shall not be valid for a period in excess of one hundred eighty days from the date that the applicant passes the general and all required endorsement knowledge tests; provided that, if the applicant is not required to take a knowledge test, the period shall start when the permit is issued. When driving a commercial motor vehicle, the holder of a commercial learner's permit shall be accompanied by a person with a valid commercial driver's license to operate that category of commercial motor vehicle with the proper endorsements. The licensed person shall occupy the seat beside the individual for the purpose of giving instruction in driving the commercial motor vehicle. The commercial learner's permit may be renewed no more than an additional one hundred eighty days without requiring the commercial learner's permit holder to retake the general or endorsement knowledge tests, and the applicant requalifies meeting the requirements of subsection (d). The commercial learner's permit holder is eligible to take the commercial driver's license skills test no earlier than fourteen days after obtaining the permit.

(f) The examiner of drivers may waive the knowledge and skills tests specified in this section for any person who is at least twenty-one years of age and who possesses a valid commercial driver's license issued by any state of the United States, Mexico, or a province of Canada that issues licenses in accordance with the minimum federal standards for the issuance of commercial driver's licenses. The examiner of drivers shall accept the test scores of a Hawaii commercial learner's permit holder who completes training in another state in the United States and is tested in compliance with federal motor carrier safety regulations by that state in association with the training. The testing state shall electronically transmit in a secure manner the skills test results directly to the examiner of drivers, and if the applicant passed, and

meets all other requirements, a Hawaii commercial driver's license shall be issued. To retain a hazardous materials endorsement, the applicant shall pass the knowledge test for a hazardous materials endorsement and be determined by the federal Transportation Security Administration not to pose a security risk warranting denial of the endorsement.

(g) Every applicant shall successfully complete the commercial driver's license general knowledge test before being issued a commercial learner's permit. A driver holding a valid commercial driver's license who seeks an upgrade for which a skills test is required shall also pass the appropriate knowledge test before obtaining a commercial learner's permit. Beginning February 7, 2022, except for a driver holding a valid commercial driver's license or commercial learner's permit that was obtained before February 7, 2022, every applicant shall complete the entry-level driver training requirements as specified in title 49 Code of Federal Regulations part 380, subpart F, and be verified with the Federal Motor Carrier Safety Administration Training Provider Registry before taking the skills test for a class A or class B commercial driver's license, passenger endorsement, or school bus endorsement, and before taking the knowledge test for a hazardous materials endorsement.

(h) Beginning November 18, 2024, the examiner of drivers shall not issue, renew, transfer, or upgrade a commercial driver's license; renew the hazardous materials endorsement; or issue, renew, or upgrade a commercial learner's permit; if the results of a query to the Federal Motor Carrier Safety Administration's Drug and Alcohol Clearinghouse is that the driver is prohibited from operating a commercial motor vehicle.

286-236.5

286-236.5 Renumbered as §286-102.3. Previous Vol05_Ch0261-0319 Next

286-237 REPEALED

286-237 REPEALED. L 2006, c 130, §11. Previous Vol05_Ch0261-0319 Next

286-238

286-238 Application for commercial driver's license [or commercial learner's permit].

(a) The application for a commercial driver's license or commercial learner's permit shall include the following with respect to the applicant:

(1) Certifications including those required by title 49 Code of Federal Regulations section 383.71(a), except that this certification applies to both intrastate and interstate drivers;

(2) The names of all states where the applicant has previously been licensed to drive any type of motor vehicle during the previous ten years; and

(3) A ny other information required by section 286■111. The applicant shall produce proof of residency to show the applicant's state of domicile as defined in title 49 Code of Federal Regulations section 383.5.

(b) When a licensee's name, mailing, business, or residence address is changed, a notification of the change shall be given as provided in section 286-116.5.

(c) No person who has been domiciled in this State for thirty days or more may drive a commercial motor vehicle under the authority of a commercial driver's license issued by another jurisdiction.

286-238.2 Bill

286-238.2 Commercial learner 's permit.

(a) A commercial learner's permit shall be tamperproof; be marked with the words "commercial learner's permit" or "CLP" displayed prominently; include a statement that it is not valid for driving a commercial motor vehicle unless presented with the underlying commercial driver's license or non-commercial driver's license; and shall include but not be limited to the following with respect to the licensee:

(1) The full name and current mailing, residential, and business addresses;

(2) A physical description including sex and height;

(3) Date of birth;

(4) Signature;

(5) The date of issuance and the date of expiration of the permit; and

(6) The driver's state license number. The commercial learner's permit shall not contain a photograph, digitized image, or other visual representation of the driver.

(b) A commercial learner's permit may be issued for the following vehicle categories:

(1) Category A – Any combination of vehicles with a gross combination weight rating of twenty-six thousand one pounds or more; provided that the gross vehicle weight rating of the vehicles being towed is in excess of ten thousand pounds;

(2) Category B – Any single vehicle with a gross vehicle weight rating of twenty-six thousand one pounds or more, or any such vehicle towing a vehicle not in excess of ten thousand pounds; and

(3) Category C – Any single vehicle or combination of vehicles that meets neither the definition of category A nor that of category B, but that is either: (A) Designed to transport sixteen or more passengers; or (B) Used in the transportation of hazardous materials that require the vehicle to comply with title 49 Code of Federal Regulations, part 172, subpart F.

(c) A commercial learner's permit may be issued with any one or more of the following endorsements and restrictions:

(1) "P" – Authorizes driving passenger carrying vehicles; a commercial learner's permit holder with a " P " endorsement is prohibited from operating a commercial motor vehicle carrying passengers, other than federal or state auditors and inspectors, test examiners, other trainees, and the commercial driver's license holder accompanying the commercial learner's permit holder; this endorsement is vehicle class specific;

(2) "N" – Authorizes driving tank vehicles; a commercial learner's permit holder with an " N " endorsement may only operate with an empty tank vehicle and is prohibited from operating any tank vehicle that previously contained hazardous materials that has not been purged of all residue;

(3) "S" – Authorizes driving school buses; a commercial learner's permit holder with an " S " endorsement is prohibited from operating a commercial motor vehicle carrying passengers, other than federal or state auditors and inspectors, test examiners, other trainees, and the commercial driver's license holder accompanying the commercial learner's permit holder; this endorsement is vehicle class specific;

(4) "P" – Restricts the driver from carrying passengers other than federal or state auditors and inspectors, test examiners, other trainees, and the commercial driver's license holder accompanying the commercial learner's permit holder; or

(5) "X" – Restricts the driver from carrying cargo in a commercial motor vehicle tank and prohibits operating any tank vehicle that previously contained hazardous materials that has not been purged of any residue.

(d) If the commercial learner's permit is a non-domiciled commercial learner's permit, it must contain the prominent statement that the permit is a " non-domiciled commercial learner's permit " , or " non-domiciled CLP " , as appropriate; the word " non-domiciled " shall be conspicuously and unmistakably displayed, but may be noncontiguous with the words " commercial learner's permit " , or " CLP " .

(e) Before issuing a commercial learner's permit, the examiner of drivers shall complete a check of the applicant's driving record as provided in section 286-239(d) or (g).

286-238.5 Bill

286-238.5 REPEALED. L 2014, c 72, §8. Previous Vol05_Ch0261-0319 Next

286-239 Commercial driver's license

286-239 Commercial driver's license.

(a) Commercial driver's licenses may be issued with the following categories:

(1) Category A – Any combination of vehicles with a gross combination weight rating of twenty-six thousand one pounds or more; provided that the gross vehicle weight rating of the vehicles being towed is in excess of ten thousand pounds;

(2) Category B – Any single vehicle with a gross vehicle weight rating of twenty-six thousand one pounds or more, or any such vehicle towing a vehicle not in excess of ten thousand pounds; and

(3) Category C – Any single vehicle or combination of vehicles that meets neither the definition of category A nor that of category B, but that is either: (A) Designed to transport sixteen or more passengers, including the driver; or (B) Used in the transportation of hazardous materials which requires the vehicle to comply with title 49 Code of Federal Regulations part 172, subpart F .

(b) Commercial drivers' licenses may be issued with any one or more of the following endorsements and restrictions:

(1) "E" – Restricts the driver to vehicles not equipped with any manual transmission;

(2) "H" – Authorizes the driver to drive a vehicle transporting hazardous materials;

(3) "K" – Restricts the driver from operating in interstate commerce as defined in title 49 Code of Federal Regulations section 390.5;

(4) "L" – Restricts the driver to vehicles not equipped with air brakes;

(5) "M" – Restricts the driver from operating a class A passenger vehicle;

(6) "N" – Authorizes driving tank vehicles;

(7) "N" – Restricts the driver from operating a class A and B passenger vehicle;

(8) "O" – Restricts the driver to non-tractor trailer commercial motor vehicles;

(9) "P" – Authorizes driving vehicles carrying passengers;

(10) "Q" – Restricts the driver from operating a commercial motor vehicle in excess of eighteen thousand pounds gross vehicle weight rating;

(11) "R" – Restricts the driver to operating a commercial motor vehicle on Lanai and Molokai only;

(12) "S" – Authorizes driving school buses;

(13) "T" – Authorizes driving double and triple trailers;

(14) "V" – Indicates there is information about a medical variance on the commercial driver's license information system driver record;

(15) "X" – Represents a combination of hazardous materials and tank vehicle endorsements; and

(16) "Z" – Restricts the driver to vehicles not equipped with full air brakes.

(c) The holder of a valid commercial driver's license may drive all vehicles in the category for which the license is issued, and all lesser categories of vehicles except motorcycles and except vehicles which require an endorsement, unless the proper endorsement appears on the license.

(d) Before issuing a commercial driver's license, the examiner of drivers shall complete a check of the applicant's driving record to determine whether the applicant is subject to any disqualification under section 286-240, or any license suspension, revocation, or cancellation under state law, and whether the applicant has a driver's license from more than one state or jurisdiction. The record check shall be made no earlier than twenty-four hours prior to the initial issuance or transfer and no sooner than ten days before renewals and upgrades of a commercial driver's license. The record check shall include but is not limited to the following:

(1) A check of the applicant's driving record as maintained by the applicant's state of licensure;

(2) A check with the commercial driver's license information system;

(3) A check with the National Driver Register; and

(4) A request for the applicant's complete driving record from all states where the applicant was previously licensed to drive any motor vehicle over the last ten years. This check is only required for drivers renewing a commercial driver's license for the first time after September 30, 2002; provided that a notation is made on the driver's record confirming the check has been made and the date it was done.

(e) Within ten days after issuing a commercial driver's license, the examiner of drivers, in the following situations, shall provide the operator of the commercial driver's license information system with all information obtained by the examiner that is necessary to identify the licensee:

(1) The issuance of each commercial driver's license;

(2) The notation of any changes in driver identification information; and

(3) The notation of any changes to the driver's driving record relating to the transfer of a commercial driver's license from one state to another.

(f) Commercial driver's licenses shall expire as follows:

(1) An initial or renewed commercial driver's license with a hazardous materials endorsement shall expire no later than five years from its date of issuance, except if the licensee is seventy-two years of age or older. The expiration date of a commercial driver's license with a hazardous materials endorsement shall be the same expiration date as the hazardous materials endorsement. If the licensee is seventy-two years of age or older, the initial or renewed commercial driver's

license with a hazardous materials endorsement shall not exceed two years; and

(2) All other initial commercial driver's licenses shall be valid for not more than an eight-year period, expiring on the driver's birthday. All other renewed licenses shall be valid for not more than an eight-year period from the expiration date of the previous valid license. With the exception of a commercial driver's license with a hazardous materials endorsement, the commercial driver's license shall expire on the next birthday of the licensee occurring not more than eight years after the date of issuance of the license unless sooner revoked, suspended, or canceled; provided that, unless sooner revoked, suspended, or canceled, the license shall expire on the second birthday of the licensee following the issuance of the license if at that time the licensee is seventy-two years of age or older.

(g) When applying for renewal of a commercial driver's license, the applicant shall complete the required application form and provide updated information and required certifications. If the applicant desires to retain a hazardous materials endorsement, the knowledge test for a hazardous materials endorsement shall also be taken and passed by the applicant. The examiner of drivers shall complete a check of the applicant's driving record as required under subsection (d).

286-239.5

286-239.5 Reactivation of expired commercial driver's license; fees; road test waived.

(a) Unless revoked or suspended, and except as provided in subsection (b), any commercial driver's license that has expired under section 286-239 or rules adopted pursuant to section 286-246 may be reactivated by the licensee in accordance with the requirements and procedures set forth for the renewal of commercial drivers' licenses under section 286-239(g). No person seeking reactivation of an expired commercial driver's license under this subsection shall be required to undergo reexamination of the person's driving skills under section 286-236. The examiner of drivers shall require the holder of an expired commercial driver's license to pay a reactivation fee of $5 for each thirty-day period, or fraction thereof, that has elapsed after a ninety-day grace period.

(b) Any commercial driver's license not reactivated under subsection (a) within one year of the indicated date of expiration shall be invalid. The examiner of drivers shall examine an applicant whose commercial driver's license has been declared invalid under this subsection in accordance with the licensing procedures established under sections 286-236 and 286-239.

286-240

286-240 Disqualification, cancellation, and downgrade.

(a) The examiner of drivers shall disqualify any person from driving a commercial motor vehicle for a period of no less than one year if convicted of a first violation of:

(1) Driving a motor vehicle under the influence of alcohol, a controlled substance, or any drug that impairs driving ability;

(2) Driving a commercial motor vehicle while the alcohol concentration of the driver's blood is 0.04 or more grams of alcohol per two hundred ten liters of breath or 0.04 or more grams of alcohol per one hundred milliliters or cubic centimeters of blood;

(3) Refusing to submit to a test to determine the driver's alcohol concentration while driving a motor vehicle as required under sections 286-243 and 291E-11;

(4) Using a motor vehicle in the commission of any felony;

(5) Leaving the scene of an accident involving the motor vehicle driven by the person;

(6) Unlawful transportation, possession, or use of a controlled substance while on duty;

(7) Driving a commercial motor vehicle when, as a result of prior violations committed while operating a commercial motor vehicle, the driver's commercial driver's license or commercial learner's permit is revoked, suspended, or canceled, or the driver is otherwise disqualified from operating a commercial motor vehicle; or

(8) Causing a fatality through the operation of a commercial motor vehicle, including through the commission of the crimes of manslaughter and negligent homicide in any degree.

(b) The examiner of drivers shall disqualify any person for a period of no less than three years for any conviction of a violation of any offense listed in subsection (a) that is committed while a hazardous material required to be placarded under title 49 Code of Federal Regulations, part 172, subpart F, is being transported.

(c) The examiner of drivers shall disqualify any person from driving a commercial motor vehicle for life if the person is convicted two or more times for any of the offenses listed in subsection (a).

(d) The examiner of drivers shall disqualify any person from driving a commercial motor vehicle for life if the person uses a motor vehicle in the commission of any felony involving the manufacturing, distributing, or dispensing of a controlled substance, or possession with intent to manufacture, distribute, or dispense a controlled substance.

(e) The examiner of drivers shall disqualify any person from driving a commercial motor vehicle for a period of no less than sixty days if the person is convicted of two serious traffic violations, or one hundred twenty days if the person is convicted of three serious traffic violations; provided that the violations are committed in a commercial motor vehicle and arise from separate incidents occurring within a three-year period. The one hundred twenty-day disqualification period required for a third conviction within three years of a serious traffic violation, as defined in section 286-231, shall be in addition to any other previously imposed period of disqualification. The disqualification periods specified in this subsection shall also apply to offenses committed while operating a noncommercial motor vehicle only if the conviction for the offense results in the revocation, cancellation, or suspension of the driver's license.

(f) The examiner of drivers shall disqualify any person from driving a commercial motor vehicle or from resubmitting an application for a period of no less than sixty days if the examiner of drivers finds that a commercial driver's license or commercial learner's permit holder or applicant for a commercial driver's license or commercial learner's permit has falsified information or failed to report or disclose required information either before or after issuance of a commercial driver's license or commercial learner's permit.

(g) If the examiner of drivers receives credible information that a commercial driver ' s license or commercial learner ' s permit holder is suspected, but has not been convicted, of fraud related to the issuance of the commercial driver ' s license or commercial learner ' s permit, the examiner of drivers shall require the driver to re-take the skills or knowledge tests or both. Within thirty days of receiving notification from the examiner of drivers that re-testing is necessary, the affected commercial driver ' s license or commercial learner ' s permit holder shall make an appointment or otherwise schedule to take the next available test:

(1) If the commercial driver ' s license or commercial learner ' s permit holder fails to make an appointment within thirty days, the examiner of drivers shall disqualify the commercial driver ' s license or commercial learner ' s permit indefinitely until the applicant reapplies; or

(2) If the driver fails either the knowledge or skills test or does not take the test, the examiner of drivers shall disqualify the commercial driver ' s license or commercial learner ' s permit indefinitely until the applicant reapplies. Once a commercial driver ' s license or commercial learner ' s permit holder ' s commercial driver ' s license or commercial learner ' s permit has been disqualified, the driver or learner shall reapply for a commercial driver ' s license or commercial learner ' s permit under state procedures applicable to all commercial driver ' s license or commercial learner ' s permit applicants.

(h) The examiner of drivers shall invalidate the commercial driver ' s license or commercial [learner ' s] permit of a person who has been convicted of fraud relating to the issuance of that commercial driver ' s license or commercial learner ' s permit, as well as the application of a person so convicted who seeks to renew, transfer, or upgrade the fraudulently obtained commercial driver ' s license or commercial learner ' s permit for a period of no less than one year.

(i) The examiner of drivers shall disqualify any person from driving a commercial motor vehicle for a period of no less than one hundred eighty days and no more than one year for a first violation, for at least two years and no more than five years for a second violation, and at least three years and no more than five years for a third or subsequent violation of a driver or vehicle out-of-service order committed in a commercial motor vehicle transporting non-hazardous materials arising from separate incidents occurring within a ten-year period.

(j) The examiner of drivers shall disqualify any person from driving a commercial motor vehicle for a period of no less than one hundred eighty days and no more than two years for a first violation and for at least three years and no more than five years for any subsequent violation of a driver or vehicle out-of-service order committed in a commercial motor vehicle transporting hazardous materials required to be placarded under title 49 Code of Federal Regulations, part 172, subpart F, or designed to transport sixteen or more occupants including the driver; provided that each violation arises from separate incidents occurring within a ten-year period.

(k) The examiner of drivers shall disqualify any person from driving a commercial motor vehicle for a period of no less than sixty days if the person is convicted of a first violation, no less than one hundred twenty days if the person is convicted of a second violation during any three-year period, and no less than one year if the person is convicted of a

third or subsequent violation during any three-year period of a federal, state, or local law or regulation pertaining to one of the following six offenses at a railroad-highway grade crossing:

(1) For all drivers who are not required to always stop, failing to slow down and check that the tracks are clear of an approaching train;

(2) For all drivers who are not required to always stop, failing to stop before reaching the crossing, if the tracks are not clear;

(3) For all drivers who are always required to stop, failing to stop before driving onto the crossing;

(4) For all drivers, failing to have sufficient space to drive completely through the crossing without stopping;

(5) For all drivers, failing to obey a traffic control device or the directions of an enforcement official at the crossing; or

(6) For all drivers, failing to negotiate a crossing because of insufficient undercarriage clearance.

(l) The examiner of drivers shall disqualify any person from driving a commercial motor vehicle if the driver's driving is determined to constitute an imminent hazard, as defined in section 286-231 and in accordance with the provisions of title 49 Code of Federal Regulations section 383.52.

(m) Beginning January 30, 2014, if a driver fails to provide the examiner of drivers with the certification required under title 49 Code of Federal Regulations section 383.71(b)(1) or a current medical examiner's certificate if the driver self-certifies according to title 49 Code of Federal Regulations section 383.71(b)(1)(i) that the driver is operating in non-excepted interstate commerce as required by title 49 Code of Federal Regulations section 383.71(h), the examiner of drivers shall mark the commercial driver's license information system driver record as not-certified and initiate a commercial driver's license downgrade.

(n) The examiner of drivers shall permanently disqualify any person from driving a commercial motor vehicle for life without the possibility of reinstatement if the person uses a commercial motor vehicle in the commission of any felony involving severe forms of trafficking in persons.

(o) Beginning November 18, 2024, the State shall, upon receiving notification from the Federal Motor Carrier Safety Administration's Drug and Alcohol Clearinghouse that a commercial driver's license or commercial learner's permit holder is prohibited from operating a commercial motor vehicle, begin the process to downgrade the commercial driver's license or commercial learner's permit. The downgrade shall be completed and recorded on the commercial driver's license information system driver record within sixty days of the State's receipt of the notification as stated in title 49 Code of Federal Regulations section 383.73(q).

(p) As used in this section: "Commercial sex act " means any sex act on account of which anything of value is given to or received by any person. "Severe forms of trafficking in persons" means either sex trafficking in which a commercial sex act is induced by force, fraud, or coercion, or in which the person induced to perform the act has not attained eighteen years of age; the recruitment, harboring, transportation, provision, obtaining, patronizing, or soliciting of a person for the purpose of a commercial sex act; or the recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery.

286-241

286-241 Notification of disqualification, suspension, revocation, cancellation, marking medical certification status as not-certified, or downgrading of commercial driver's licenses or permits.

(a) After disqualifying a person, or suspending, revoking, canceling, or marking a medical certification status as not-certified for a commercial driver's license or commercial learner's permit, the examiner of drivers shall update all records to reflect that action within ten days. Any disqualification imposed in accordance with section 286-240(l) and transmitted by the Federal Motor Carrier Safety Administration shall become a part of the driving record. After suspending, revoking, or canceling a non-domiciled commercial driver's license or commercial learner's permit, the examiner of drivers shall notify the licensing authority of the state that issued the commercial driver's license or commercial learner's permit within ten days. The notification shall include information regarding any disqualification and the violation or violations that resulted in the disqualification, revocation, suspension, or cancellation.

(b) Beginning January 30, 2012, the examiner of drivers, within ten calendar days of the expiration of a commercial driver's license driver's medical certification status or the expiration or rescission of a medical variance, shall change the medical certification status of that driver to not-certified.

(c) Beginning January 30, 2012, within ten calendar days of receiving information from the Federal Motor Carrier Safety Administration regarding issuance or renewal of a medical variance for a driver, the examiner of drivers shall update the commercial driver's license information system driver record to include the medical variance information provided by the Federal Motor Carrier Safety Administration.

(d) Beginning January 30, 2012, if a driver's medical certification or medical variance expires or if the Federal Motor Carrier Safety Administration notifies the examiner of drivers that a driver's medical variance was removed or rescinded, the examiner of drivers shall:

(1) Notify the commercial driver's license holder of the holder's not-certified medical certification status and that the commercial driver's license privilege will be removed from the driver's license unless the driver submits a current medical certificate or medical variance; and

(2) Initiate procedures for downgrading the license; provided that the commercial driver's license downgrade shall be completed and recorded within sixty days of the driver's medical certification status becoming not-certified to operate a commercial motor vehicle.

(e) Beginning January 30, 2014, if a driver fails to provide the examiner of drivers with the certification required by title 49 Code of Federal Regulations section 383.71(b)(1) or a current medical examiner's certificate if the driver self-certifies according to title 49 Code of Federal Regulations section 383.71(b)(1)(i) that the driver is operating in non-excepted interstate commerce as required by title 49 Code of Federal Regulations section 383.71(h), the examiner of drivers shall mark the commercial driver's license information system driver record as not-certified and initiate a commercial driver's license downgrade.

286-241.4

286-241.4 Authority of examiner of drivers to suspend, revoke, cancel, mark the medical certification status as not-certified, or downgrade commercial driver's license or permit.

(a) The examiner of drivers may suspend, revoke, cancel, mark the medical certification status as not-certified, or downgrade any commercial driver's license or commercial learner's permit without a hearing when the examiner of drivers has probable cause to believe that the licensee or permittee is disqualified under section 286■240.

(b) The examiner of drivers shall deny or suspend any commercial driver's license or commercial learner's permit pursuant to the terms of section 576D-13 when the examiner of drivers receives certification from the child support enforcement agency that the licensee or permittee is not in compliance with an order of support as defined in section 576D-1 or has failed to comply with a subpoena or warrant relating to a paternity or child support proceeding. Both the licensee or permittee and the licensee's or permittee's employer shall be notified of the denial or suspension.

(c) Upon suspension, revocation, or cancellation of the commercial driver's license or commercial learner's permit, the driver's license or learner's permit shall be surrendered to the examiner of drivers by the licensee or permittee.

(d) Unless otherwise provided by law, the licensing authority shall reinstate, renew, or approve the license only upon receipt of an authorization from the child support enforcement agency, the office of child support hearings, or the family court.

286-241.5 Notification and hearing

286-241.5 Notification and hearing. When the examiner of drivers suspends, revokes, or cancels a commercial driver's license or a commercial learner's permit under section 286-241.4(a), the examiner of drivers shall immediately notify the licensee or permittee and afford the licensee or permittee an opportunity for a hearing.

286-241.6 Appeal to circuit court

286-241.6 Appeal to circuit court. Any suspension, revocation, or cancellation of a commercial driver's license under section 286-241.4 may be appealed to the circuit court in which the applicant or licensee resides by filing a notice of appeal in that court within thirty days after being notified of the suspension, revocation, or cancellation. The appeal shall not operate as a stay to the order or decision appealed from. The appeal shall be subject to procedures and rules as may be prescribed by the court and the decision of the court shall be final except as otherwise provided in chapter 91.

286-242

286-242 Commercial drivers prohibited from operating with any alcohol in their body.

(a) Notwithstanding any other provision of this chapter, a person may not drive a commercial motor vehicle while having any alcohol in that person's body.

(b) A person who drives a commercial motor vehicle with an alcohol concentration of 0.01 or more grams of alcohol per two hundred ten liters of breath or with 0.01 or more grams of alcohol per one hundred milliliters or cubic centimeters of blood or who refuses to take a test as provided by section 286-243 shall be issued a twenty-four-hour out-of-service order. The driver shall also be placed out-of-service for twenty-four hours if the results of a blood test are not immediately available.

(c) It is unlawful for any person with an alcohol concentration of 0.04 or more grams of alcohol per two hundred ten liters of breath or with 0.04 or more grams of alcohol per one hundred milliliters or cubic centimeters of blood to drive a "commercial motor vehicle", as defined in section 286-2. Any person who violates this provision shall be subject to the penalties as provided in section 286-249.

286-243

286-243 Implied consent requirements for commercial motor vehicle drivers.

(a) A person who drives a commercial motor vehicle within this State is deemed to have given consent to submit to a test or tests, approved by the director of health, of that person's blood or breath for the purpose of determining that person's alcohol concentration or the presence of controlled substances, or both.

(b) A test or tests may be administered at the direction of a law enforcement officer who, after lawfully stopping or detaining the commercial motor vehicle driver, has probable cause to believe that the driver was driving a commercial motor vehicle while having in the person's body alcohol, a controlled substance, or any drug which impairs driving.

(c) A person requested to submit to a test as provided in subsection (a) shall be warned by the law enforcement officer requesting the test that a refusal to submit to the test will result in:

(1) The officer immediately issuing a twenty-four hour out-of-service order under section 286-242; and

(2) The person being disqualified from operating a commercial motor vehicle for at least a one-year period under section 286-240.

(d) If the driver refuses testing, or submits to a test that indicates an alcohol concentration of 0.04 or more grams of alcohol per two hundred ten liters of breath or 0.04 or more grams of alcohol per one hundred milliliters or cubic centimeters of blood, the law enforcement officer shall submit an affidavit to a district judge of the circuit in which the driver was stopped or detained stating that the test was authorized pursuant to subsection (a) and that the driver refused to submit to testing, or submitted to a test that indicates an alcohol concentration of 0.04 or more grams of alcohol per two hundred ten liters of breath or 0.04 or more grams of alcohol per one hundred milliliters or cubic centimeters of blood.

(e) A hearing to determine the truth and correctness of an affidavit of a law enforcement officer submitted under subsection (d) shall be scheduled to commence before a district judge within twenty days after the affidavit is filed or as soon thereafter as is practicable. The State shall be represented at the hearing by the prosecuting attorney of the county in which the alleged violation occurred. The district judge shall hear and determine:

(1) Whether the law enforcement officer who stopped or detained the driver had probable cause to believe that the driver had been either driving or in actual physical control of a commercial motor vehicle, while having any alcohol in the driver's body;

(2) Whether the driver was lawfully stopped or detained;

(3) Whether the law enforcement officer informed the driver of the sanctions of section 286-240;

(4) Whether the driver submitted to a test or tests of the driver's breath or blood or refused to be tested; and

(5) If the driver submitted to a test or tests, whether the driver's alcohol concentration was 0.04 or more grams of alcohol per two hundred ten liters of breath or 0.04 or more grams of alcohol per one hundred milliliters or cubic centimeters of blood. The amount of alcohol found in the driver's blood within three hours after the time of the alleged violation as shown by chemical analysis or other analytical techniques of the defendant's blood or breath shall be competent evidence that the defendant was under the influence of intoxicating liquor at the time of the alleged violation. Nothing in this section shall be construed as limiting the introduction of relevant evidence of a person's blood alcohol content obtained more than three hours after an alleged violation; provided that the evidence is offered in compliance with the Hawaii rules of evidence. If the judge finds the statements contained in the affidavit are true, the judge shall disqualify the driver from

driving a commercial motor vehicle as provided by section 286-240.

286-244

286-244 Notification of traffic convictions.

(a) Whenever a person who holds a commercial driver's license or a commercial learner's permit from another state is convicted of a violation of any state or county law relating to motor vehicle traffic control, other than a parking violation, in any type of vehicle, the examiner of drivers shall notify the licensing or permitting entity in the state where the driver is licensed or permitted of this conviction within the time period specified in subsection (c).

(b) Whenever a person who does not hold a commercial driver's license or a commercial learner's permit but is licensed to drive by another state is convicted of a violation in a commercial motor vehicle of any state or county law relating to motor vehicle traffic control, other than a parking violation, the examiner of drivers shall notify the licensing entity in the state where the driver is licensed of this conviction within the time period specified in subsection (c).

(c) The notification of a traffic violation conviction shall be made within thirty days of the conviction. Beginning on September 30, 2008, the notification shall be made within ten days of the conviction.

286-245

286-245 Driving record information to be recorded and furnished.

(a) Whenever a person is convicted of a moving traffic violation based on a statute, ordinance, or rule, fails to appear for a hearing, trial, or other court or administrative proceeding on the moving traffic violation, or fails to pay a fine or court cost ordered for a moving violation, the state judiciary shall forward to the examiner of drivers the record of the conviction. The record of conviction shall include whether the offender was operating a commercial motor vehicle at the time of the offense, whether the offender was transporting hazardous materials requiring placarding under title 49 Code of Federal Regulations part 172, subpart F, the citation date, the conviction date, the citation number, the court in which the conviction occurred, and the offenses for which the person has been convicted. No record of conviction transmitted and maintained in the statewide traffic records system shall be used for purposes other than the licensing of drivers, including any record of:

(1) Driving a motor vehicle under the influence of alcohol, a controlled substance, or any drug that impairs driving ability;

(2) Driving a commercial motor vehicle while the alcohol concentration of the driver's blood is 0.04 or more grams of alcohol per two hundred ten liters of breath or 0.04 or more grams of alcohol per one hundred milliliters or cubic centimeters of blood;

(3) Refusing to submit to a test to determine the driver's alcohol concentration while driving a motor vehicle as required under sections 286-243 and 291E-11;

(4) Using a motor vehicle in the commission of any felony;

(5) Leaving the scene of an accident involving the motor vehicle driven by the person;

(6) Unlawful transportation, possession, or use of a controlled substance while on duty;

(7) Driving a commercial motor vehicle if, as a result of prior violations committed while operating a commercial motor vehicle, the driver's commercial learner's permit or commercial driver's license has been revoked, suspended, or canceled, or the driver has been otherwise disqualified from operating a commercial motor vehicle; or

(8) Causing a fatality through the operation of a commercial motor vehicle, including in the commission of the crimes of manslaughter and negligent homicide in any degree.

(b) Within ten days of an in-state conviction and within ten days of the receipt of notice of an out-of-state conviction, the examiner of drivers shall record and maintain as part of the driver's record:

(1) All convictions, disqualifications, and other licensing actions for violations in this State and out-of-state, of any law relating to motor vehicle traffic control, other than a parking violation, committed in any type of vehicle, by a holder of a commercial learner's permit or a commercial driver's license; and

(2) All convictions, disqualifications, and other licensing actions for violations in this State and out-of-state, of any law relating to motor vehicle traffic control, other than a parking violation, committed while the driver was operating a commercial motor vehicle and was required to have a commercial learner's permit or commercial driver's license.

(c) No commercial learner's permit or commercial driver's license driver's conviction for any violation in any type of motor vehicle of a state or local traffic control law, except a parking violation, shall be expunged or subject to deferred imposition of judgment nor shall an individual be allowed to enter into a diversion program that would prevent the conviction from appearing on the driver's driving record, whether the driver was convicted for an offense committed in this State or another state.

(d) The state judiciary and the examiner of drivers shall make available to the greatest extent possible information from any driver's record required for enforcement of this section to the users designated in subsection (f) or their authorized agent, within ten days of:

(1) Receiving the conviction or disqualification information from another state; or

(2) Receiving the conviction information for a violation occurring in this State.

(e) All convictions, disqualifications, and other licensing actions for violations shall be retained on each driver's record for at least three years or longer if required under title 49 Code of Federal Regulations section 384.231(d).

(f) Only the following users or their authorized agents may obtain a driver's record:

(1) States may receive all information regarding any driver's record;

(2) The Secretary of Transportation may receive all information regarding any driver's record;

(3) A driver may receive only information related to that driver's record; and

(4) A motor carrier employer or prospective motor carrier employer may receive all information regarding an employee driver's driving record, or the driving record of a prospective employee driver; provided that the request is made by the driver.

(g) The traffic, emergency period, and fireworks violations bureaus of the district courts, upon request, shall furnish users designated in subsection (f) with a certified driver record listing all convictions, disqualifications, and licensing actions in this State and notification of any action received from other states that are recorded and maintained by the examiner of drivers. The traffic, emergency period, and fireworks violations bureaus shall collect a fee for requests by users designated in subsection (f)(3) and (4), not to exceed $9, of which $5 shall be deposited into the general fund, $2 shall be deposited into the judiciary computer system special fund, and $2 shall be deposited into the highway fund.

(h) Beginning January 30, 2012, the examiner of drivers shall:

(1) Post on the commercial driver's license information system and maintain as part of the driver's record the driver's self-certification of type of driving under title 49 Code of Federal Regulations section 383.71(a)(1)(ii);

(2) Retain for at least three years after the date of issuance the original or a copy of the medical certificate of any driver required to provide documentation of physical qualification;

(3) Post within ten calendar days the information from the medical examiner's certificate to the commercial driver's license information system driver record, including: (A) The medical examiner's name; (B) The medical examiner's telephone number; (C) The date of issuance of the medical examiner's certificate; (D) The medical examiner's license number and the state that issued it; (E) The medical examiner's number issued by the national registry of medical examiners as required under title 49 United States Code section 31149(d); (F) The driver's medical certification status as certified or not-certified; (G) The expiration date of the medical examiner's certificate; (H) The existence of any medical variance on the medical certificate, such as an exemption or skill performance evaluation; (I) Any restrictions including corrective lenses, hearing aids, or a requirement to have possession of an exemption letter or skill performance evaluation certificate while on duty; and (J) The date the medical examiner's certificate information was posted to the commercial driver's license information system driver record; and

(4) Record the commercial driver's license downgrade within sixty days of the driver's medical certification status becoming not-certified to operate a commercial driver's license.

286-246 Authority to make rules

286-246 Authority to make rules. The director may adopt rules under chapter 91 necessary to carry out this part.

286-247 Authority to enter agreements

286-247 Authority to enter agreements. The director may enter into or make agreements, arrangements, or declarations to carry out the purposes of this part.

286-248 Reciprocity

286-248 Reciprocity. Notwithstanding any law to the contrary, a person may drive a commercial motor vehicle if the person has a commercial driver's license or a non-domiciled commercial learner's permit issued by any state, Mexico, or province or territory of Canada that issues licenses in accordance with the minimum federal standards for the issuance of commercial motor vehicle driver's licenses, for training purposes, and is accompanied by the holder of a valid commercial driver's license for the vehicle being driven, if the person's driver's license or commercial learner's permit is not suspended, revoked, or canceled; and if the person is not disqualified from driving a commercial motor vehicle, or subject to an out-of-service order.

286-249 Penalty

286-249 Penalty.

(a) Any person who drives a commercial motor vehicle in the State without a valid commercial driver's license or commercial learner's permit, or while the person's driving privileges are suspended, revoked, or canceled, or while disqualified from driving a commercial motor vehicle, shall be:

(1) Disqualified from driving a commercial motor vehicle for a period of not less than one year and up to life;

(2) Fined not less than $500 but not more than $1,000; and

(3) Imprisoned not more than one year; provided that the court shall have discretion to impose either a fine or imprisonment, or both.

(b) A driver who is convicted of violating an out-of-service order shall be subject to a civil penalty of no less than $3,861 for a first conviction and no less than $7,723 for a second or subsequent conviction, in addition to the driving disqualification of subsection (a)(1) and section 286-240(i) and (j).

(c) Any person convicted under or found in violation of section 286-242(a) shall be fined not more than $200.

(d) Notwithstanding subsection (a)(2), any person convicted under or found in violation of section 286-242(c) shall be fined not more than $500.

286-251 XIV

286-251 to 286-266 REPEALED. L 2000, c 189, §29.

286-271 [PART XV

286-271 Interisland shipping of vehicles; proof required.

(a) Except as provided in subsection (b), a legal owner of a vehicle shall not ship that vehicle interisland in this State unless the legal owner first presents to the carrier the legal owner's current certificate of registration showing that the person is the registered owner of the vehicle, identification, and proof of motor vehicle insurance. If the registered owner of the vehicle is not the legal owner of the vehicle, the registered owner shall present to the carrier, the registered owner's current certificate of registration, identification, and proof of motor vehicle insurance. Duplicate copies of the current registration and proof of motor vehicle insurance shall be acceptable for commercial vehicles as defined in section 286-47(b)(2). An authorized agent of the legal or registered owner may ship the vehicle by presenting the current certificate of registration, identification, proof of motor vehicle insurance, and a notarized letter from the registered or legal owner authorizing the shipment. For an unrecorded owner pending a lawful transfer, a certificate of ownership signed by the previous owner may be submitted for the current certificate of registration for a vehicle purchased within thirty days of shipping. A facsimile of proof of motor vehicle insurance from an insurance company may be accepted for a vehicle purchased within thirty days of shipping. Presentation of proof of motor vehicle insurance shall not be required for:

(1) Unlicensed propelled vehicles that are not intended for on-road use;

(2) New unregistered vehicles shipped with a bill of lading; or

(3) Vehicles owned by the federal, state, or county government.

(b) A legal owner of a damaged vehicle shall not ship that vehicle interisland in this State for repair, disposal, or salvage unless the legal owner first presents to the carrier the legal owner's current certificate of registration showing that the person is the registered owner of the vehicle or a car dealer's license. For an unrecorded owner pending a lawful transfer, a certificate of ownership signed by the previous owner may be acceptable for a vehicle purchased within thirty days of shipping. A registered owner of the vehicle who is not the legal owner of the vehicle must present a current

certificate of registration.

(c) Any legal or registered owner who violates this section shall be fined not more than $100.

(d) The carrier shall record by physical inspection the vehicle identification number (VIN) of the vehicle and maintain a record of the transporting of the vehicle along with the description of the vehicle for a period of not less than three years.

(e) This section shall not apply to:

(1) Any motor vehicle rental company as defined in section 431:9A-141 that periodically ships in quantities of ten vehicles or more;

(2) Licensed dealers who periodically ship in quantities of ten vehicles or more, or whose primary business is the auction of insurance salvage vehicles;

(3) Except for a lessee of a rental motor vehicle under paragraph (4), drivers of vehicles transported by any water carrier authorized by the public utilities commission to transport vehicles interisland; provided that the driver presents identification, a current certificate of registration for the vehicle, and proof of motor vehicle insurance. The interisland water carrier shall keep a record of transporting the vehicle by recording the vehicle identification number and retaining the information for three years after the date of travel; or

(4) A lessee of a rental motor vehicle; provided that: (A) The rental motor vehicle is transported by any water carrier authorized by the public utilities commission to transport vehicles interisland; (B) The water carrier has a written agreement with the owner of the rental motor vehicle; and (C) The water carrier records and retains the information required under subsections (d) and (f). For purposes of this subsection, "lessee" and "rental motor vehicle" have the same meanings as those terms are defined in section 437D-3.

(f) The records maintained as required by this section and all other records and receipts relating to the transportation of vehicles shall be available for inspection by the federal, state, or county law enforcement agencies, and financial institutions during normal business hours.

286-301 HRS

286-301 Issuance of identification card or temporary card.

(a) To obtain an identification card from the examiner of drivers, an individual shall complete an application pursuant to section 286-303.

(b) The examiner of drivers, upon receipt of the application by any individual who is a resident or a temporary resident of this State, shall issue an identification card to that individual upon receipt of any appropriate fee established pursuant to section 286-309.

(c) The identification card shall be similar in size, shape, and design to a driver's license, but shall not entitle the individual to whom it is issued to operate a motor vehicle.

(d) The issuance of an identification card pursuant to this section shall not place upon the State of Hawaii or any agency any liability for the misuse or the acceptance of the identification card as valid identification, which shall be left entirely to the discretion of any individual to whom such card is presented.

286-301.5 HRS

286-301.5 Non-compliant identification cards.

(a) Every person who submits an application for an identification card that is unable to appear in person before the examiner of drivers to be photographed or present new source documents in person at least every sixteen years shall be issued a non■compliant identification card that is uniquely identified as not being in compliance with the REAL ID Act of 2005. The applicant shall authorize to the examiner of drivers a person who has power of attorney of the applicant who shall present satisfactory proof to the examiner of drivers of the applicant's identity, date of birth, social security number, legal presence, primary care provider certificate, and residency in the State.

(b) Every application under this section shall be made upon the form and in the manner required by section 286-303 and shall be accompanied by the fee established for compliant identification cards pursuant to section 286-309.

(c) Every non-compliant identification card issued pursuant to this section shall on its face and in a machine readable zone bear the phrase, "Not acceptable for official federal purposes", and be of a unique design or color indication that clearly distinguishes the card from the State's compliant identification cards. If the United States Department of

Homeland Security determines that non-compliant identification cards issued pursuant to this section do not satisfy the requirements of title 6 Code of Federal Regulations section 37.71, the examiner of drivers, under the direction of the department of transportation, shall modify the non-compliant identification cards issued pursuant to this section only to the extent necessary to satisfy the requirements of the federal law.

(d) Every non-compliant identification card shall expire in accordance with section 286-306.

(e) A non-compliant identification card may be renewed or replaced in accordance with section 286-306.

(f) The director shall adopt rules in accordance with chapter 91 to implement this section.

286-301.6 HRS

286-301.6 Limited purpose identification cards.

(a) Every person who submits an application for an identification card that satisfies the requirements of this part except for the applicant's inability or refusal to provide satisfactory proof of authorized presence in the United States under federal law shall be issued a limited purpose identification card that is uniquely identified as being not in compliance with the REAL ID Act of 2005. The examiner of drivers shall accept various types of documentation for the purpose of establishing the applicant's identity and residency in the State, which may be established by more than one document. Acceptable documentation includes:

(1) A valid, unexpired consular identification document issued by a consulate from the applicant's country of citizenship or a valid, unexpired passport from the applicant's country of citizenship;

(2) An original birth certificate or other proof of age, as designated by the examiner of drivers;

(3) A current home utility bill, lease, or rental agreement, or deed or title to real property in the State, as designated by the examiner of drivers;

(4) A United States Department of Homeland Security Form I-589, Application for Asylum and for Withholding of Removal;

(5) An official school or college transcript that includes the applicant's date of birth or a foreign school record that is sealed and includes a photograph of the applicant at the age the record was issued;

(6) An official school or college identification card that includes the applicant's full name and a photograph of the applicant at the time the identification was issued;

(7) A United States Department of Homeland Security Form I-20 or United States Department of State Form DS-2019;

(8) A United States Citizenship and Immigration Services Deferred Action for Childhood Arrival approval letter;

(9) A valid identification card for health benefits;

(10) A valid identification card for an assistance or social services program;

(11) A current voter registration card issued by the State;

(12) A wage stub issued in the six months immediately preceding submittal of the applicable application;

(13) An income tax return filed in the two years immediately preceding submittal of the applicable application;

(14) A social security card;

(15) One of the following documents which, if in a language other than English, shall be accompanied by a certified translation or an affidavit of translation into English: (A) Marriage license or divorce certificate; (B) Foreign federal electoral photo card issued on or after January 1, 1991; (C) Foreign student identification card; or (D) Foreign driver's license;

(16) A prison identification, certificate of discharge, or order of parole issued by the department of corrections and rehabilitation, or a printout prepared by the department of corrections and rehabilitation with the applicant's photograph, name, and date of birth; or

(17) Other proof of Hawaii residency as designated by the director.

(b) Every application under this section shall be made upon the form, and in the manner, required by section 286-303 and be accompanied by the fee established for non-limited purpose identification cards pursuant to section 286-309. The examiner of drivers shall not:

(1) Require any applicant under this section to furnish information regarding the applicant's eligibility or ineligibility for a social security number; or

(2) Disclose the identity of any applicant who does not provide a social security card or social security number.

(c) Every limited purpose identification card issued pursuant to this section shall on its face and in a machine readable zone bear the phrase, "Not acceptable for official federal purposes"; be of a unique design or color indication that clearly distinguishes the limited purpose identification card from the State's federally compliant identification cards; and on its reverse bear the phrase, "This identification card is issued only for state identification purposes. It does not establish eligibility for employment, voter registration, or public benefits". If the United States Department of Homeland Security determines that any limited purpose identification card issued pursuant to this section does not satisfy the requirements of title 6 Code of Federal Regulations section 37.71, the examiner of drivers, under the direction of the department of transportation, shall modify the limited purpose identification card issued pursuant to this section; provided that the limited purpose identification card shall only be modified to the extent necessary to satisfy the requirements of the federal law.

(d) Every limited purpose identification card shall expire in accordance with section 286-306.

(e) A limited purpose identification card may be renewed in accordance with section 286-306.

(f) It shall be a violation of law to discriminate against a person because the person applied for, was denied, was issued, holds, or presents a limited purpose identification card.

(g) A limited purpose identification card issued pursuant to this section shall not be used to consider a person's citizenship or immigration status as a basis for a criminal investigation, arrest, or detention.

(h) Documents and information collected pursuant to an application for, denial of, or issuance of a limited purpose identification card shall be confidential and shall not be disclosed by the examiner of drivers or the department of transportation except as required by law.

(i) A person in possession of a REAL ID document shall be ineligible for a limited purpose identification card.

(j) The director shall adopt rules in accordance with chapter 91 to implement this section.

286-302 HRS

286-302 Oaths and investigations. The examiner of drivers and each authorized subordinate may administer oaths and require and take oral or written statements under oath of any individual in connection with any information required under this part or any rule under part VI and this part.

286-303 HRS

286-303 Application for identification card.

(a) Application for the identification card shall be made in person by any adult or minor. In the case of a minor under the age of fourteen years, the application shall be made on the minor's behalf by the parent, or by another individual in loco parentis of the minor who can provide proof of guardianship. In the case of an incompetent individual, the application shall be made by the individual having the custody or control of or maintaining the incompetent individual. A non■compliant identification card shall be issued in accordance with section 286-301.5 for applications not made in person.

(b) Application for renewal of an identification card issued after November 1, 1998, for an individual eighty years of age or older may be done by mailing in or electronically submitting a completed application and fee, if there is no change in name and citizenship status. The director shall adopt rules to allow for renewal by mail or electronic methods for individuals with physical or intellectual disabilities for whom application in person presents a serious burden. For an individual who has a letter from a licensed primary care provider certifying that a severe disability causes the individual to be homebound, the director shall adopt rules allowing for application for renewal of an identification card under this section by means other than in-person appearance. A non-compliant identification card shall be issued in accordance with section 286-301.5 for renewal applications not made in person.

(c) Every application for an identification card or duplicate of an identification card shall be made on a form developed by the director and furnished by the examiner of drivers, signed by the applicant, and signed by the applicant's parent or guardian if the applicant is under eighteen years of age. The application shall contain the following information:

(1) Name and complete address, including the number and street name, of the applicant's permanent residence;

(2) The applicant's occupation and any pertinent data relating thereto;

(3) The applicant's citizenship status;

(4) The applicant's veteran status if applicable and desired by the applicant;

(5) The applicant's date and place of birth;

(6) General description of the applicant, including the applicant's gender designation, height, weight, hair color, and eye color;

(7) The applicant's left and right index fingerprints or, if clear impressions cannot be obtained, other identifying imprints as specified by rules of the director;

(8) The social security number of the applicant; and

(9) A digitized frontal photograph of the applicant's full face. Each applicant shall present documentary evidence as required by the examiner of drivers of the applicant's age and identity, and the applicant shall swear or affirm that all information given is true and correct; provided that an applicant shall not be required to provide documentation to prove the applicant's gender designation other than the applicant's self-certification of their chosen gender designation; provided further that documentation that may incidentally show an applicant's birth gender may be required if necessary to establish that the applicant is legally entitled to an identification card. For purposes of this subsection, "gender designation" shall have the same meaning as in section 286-109(a).

(d) The application also shall state whether the applicant has an advance health-care directive. If the applicant has an advance health-care directive, the identification card shall bear the designation "AHCD".

(e) An application for an identification card from the examiner of drivers shall include the voter registration application required under section 11-15.7.

(f) The examiner of drivers shall maintain a suitable, indexed record of all applications.

(g) For the purpose of this section, "AHCD", which stands for "advance health-care directive", means an individual instruction in writing, a living will, or a durable power of attorney for health care decisions.

286-303.5 HRS

286-303.5 Voter registration.

(a) A qualified applicant for a new, renewal, or duplicate identification card shall automatically be registered to vote with the clerk of the appropriate county upon completion of an application for identification card and the application for voter registration as required by section 11-15.7 if the qualified applicant makes a choice to be registered to vote. If already registered to vote, the qualified applicant shall be offered the opportunity to decline any changes being made to their name and address for voter registration purposes.

(b) The submission of the application for voter registration together with the application for the identification card shall be deemed to authorize the examiner of drivers to collect and transmit the information necessary to register the qualified applicant as a voter if the applicant made such a choice or to make changes to the qualified applicant's voter registration information unless the applicant declined such changes. The examiner of drivers shall electronically transmit the necessary information to the clerk of the county in which the qualified applicant resides, election officials, and the online voter registration system pursuant to section 11-15.7(c). The examiner of drivers shall not transmit any information necessary to register a qualified applicant as a voter if the applicant made a choice not to be registered to vote nor transmit any information necessary to make changes to the qualified applicant's voter registration information if the applicant declined such changes. The examiner of drivers shall not transmit any information related to a voter application or changes to the applicant's voter registration information if the applicant presents a document demonstrating a lack of United States citizenship.

(c) For the purposes of this section, "qualified applicant" means a person who qualifies to register as a voter by law.

286-304 HRS

286-304 Procedure . (a) All information required by section 286-303 shall be obtained by employees of the examiner of drivers as provided for by rules of the director and by individual interviews with the applicant for the identification card or parent, individual in loco parentis, or guardian, as shown by letters of guardianship. Every applicant or individual providing information on behalf of any applicant under part VI and this part shall answer truthfully all questions, furnish all information within the possession or knowledge of the individual that may be asked or required by the employee within the scope of the requirements of this part, and submit to the examiner of drivers all information and supporting documentation

required by rules of the director.

(b) Special provisions may be made by rules adopted by the director.

(c) The examiner of drivers may require an applicant, or any individual providing information on behalf of an applicant, to furnish original or certified copies of documents to establish or corroborate the information required to establish identity under this part and may, by rules, set forth what documents will be required to support or corroborate certain information.

(d) For a person who qualifies as homeless pursuant to section 346-361, the examiner of drivers shall accept a signed sworn statement from a member of a victim services organization, an attorney, a member of the clergy, correctional institution staff, a medical or other health professional from whom the person has sought services, or a verification letter from a homeless service provider as documentary evidence of the person's address.

286-305 HRS

286-305 Contents and characteristics; form.

(a) Each identification card issued by the examiner of drivers shall display a distinguishing number assigned to the cardholder, and shall display the following inscription: "HAWAII IDENTIFICATION CARD"

(b) The examiner of drivers, after obtaining the fingerprint of the applicant as provided in this part and after obtaining the information required by or pursuant to this part, shall issue to each applicant an identification card in a form and with identifying information that the director deems necessary and appropriate, including a notation of veteran status, if desired by the applicant, on the front of the card where applicable; provided that such notation shall not include any designation other than the term "veteran". As used in this subsection, "veteran" means any person who served in any of the uniformed services of the United States and was discharged under conditions other than dishonorable.

(c) The identification card shall not display the cardholder's social security number.

(d) The identification card shall be designed to prevent its reproduction or alteration without ready detection.

(e) The identification card for individuals under twenty-one years of age shall have characteristics prescribed by the examiner distinguishing it from that issued to a individual who is twenty-one years of age or older.

286-306 HRS

286-306 Expiration; renewal; replacement.

(a) Every identification card issued under this part, whether an original or a renewal, shall bear an expiration date that shall be the date and month of the individual's birthday eight years after the year of issuance; provided that if the individual is a legal nonimmigrant, the certificate shall bear an expiration date that is the same as the expiration date on the individual's arrival-departure record, CBP Form I-94. A cardholder may renew the cardholder's identification card within six months before the day on which it expires by filing an application in accordance with section 286-303 and paying the prescribed fee [established] by rules of the director.

(b) If an identification card is lost, destroyed, stolen, or mutilated, the individual to whom the identification card was issued may obtain a duplicate by paying the fee established by rules of the director and by:

(1) Furnishing suitable proof of the loss, destruction, or mutilation to the examiner; and

(2) Filing an application and presenting documentary evidence under section 286-303. Any individual who loses an identification card and, after obtaining a duplicate, finds the original, shall immediately surrender the original to the examiner.

(c) The examiner of drivers shall cancel any identification card upon determining that the identification card was obtained unlawfully, issued in error, or altered. The examiner also shall cancel a REAL ID compliant identification card that is surrendered to the examiner of drivers after the cardholder has obtained a duplicate or replacement REAL ID compliant identification card, or if a REAL ID-compliant driver's license has been previously issued.

(d) No agent of the State or its political subdivisions shall condition the granting of any benefit, service, right, or privilege upon the possession by any individual of an identification card. Nothing in this section shall preclude any publicly operated or franchised transit system from using an identification card for the purpose of granting benefits or services of the system. No individual shall be required to apply for, carry, or possess an identification card.

286-307 HRS

286-307 Identification cards not to be altered; duties of holder; lost certificates.

(a) No individual, except agents of the examiner acting pursuant to the authority of law, shall alter, deface, or destroy any identification card. Except as specifically authorized by this section or the rules of the director, no cardholder shall loan or give the individual's identification card to any other individual, and no individual shall use the identification card of any other individual.

(b) Any individual whose identification card is stolen or otherwise lost, altered, defaced, or destroyed, may at any time apply for a duplicate identification card. The duplicate shall be issued by the examiner of drivers upon being satisfied as to the loss, alteration, defacing, or destruction. In the case of an altered or defaced identification card, the identification card, if available, shall be surrendered by the cardholder and canceled by the examiner.

(c) Any individual finding or coming into possession of the identification card of any other individual shall promptly return or deliver the same to the owner thereof, the examiner of drivers that issued it, or any law enforcement officer.

286-308 HRS

286-308 Correction or alteration of records and identification cards in cases of error or subsequent changes concerning names, citizenship, description, etc.

(a) A cardholder who, after receiving an identification card, has a change in one or more of the following:

(1) Name, legally changed by marriage, divorce, adoption, legitimization, order of the lieutenant governor, or other legal means;

(2) Citizenship status;

(3) Address; or

(4) Individual in charge of the cardholder (in the case of a minor or incompetent individual), within thirty days after the change, shall report the change, submit supporting documents, and present the cardholder's identification card to the examiner. The examiner of drivers, upon being furnished with satisfactory proof as to the change, and receiving payment of the fee, shall cancel the identification card and issue a new identification card bearing the new name, citizenship status, or address of the cardholder, making appropriate notation of the facts upon the records of the examiner.

(b) If any error has been made in any item of information contained in the records of the examiner of drivers or on the identification card concerning any cardholder, the examiner of drivers or the cardholder, upon application and upon provision of evidence satisfactory to the examiner that an error has been committed, may correct the error and, in such case, shall make appropriate changes or notations stating the error and the correct information in the records of the examiner of drivers and on the identification card.

(c) If any item of the cardholder's personal information was originally correct, but will change after issuance of the identification card and the examiner of drivers finds the change material, the examiner of drivers may register the change and alter the records and identification card to conform thereto, upon receipt of satisfactory evidence of the change and approval of the examiner.

286-309 HRS

286-309 Rules. For the purpose of carrying out this part, the director, pursuant to chapter 91, shall adopt rules including rules assessing reasonable fees for the services provided under this part. The rules shall:

(1) Authorize the examiner of drivers to waive any fee in cases of extreme hardship and provide criteria for determining whether a waiver is warranted; and

(2) Direct the examiner of drivers to waive all fees for the issuance of an original or renewal identification card for any individual who is homeless; provided the individual's homeless status is corroborated by a verification letter issued by a homeless service provider.

286-310 HRS

286-310 Forms. The director may prepare, prescribe, and furnish, in conformity with this part, forms for questionnaires, notices, fingerprint cards or forms, certificates of identification, instructions, and all other forms necessary or proper for the prompt, efficient, and adequate execution of the functions of the examiner of drivers set forth in this part.

286-311 HRS

286-311 Custody and use of records; confidential information.

(a) All information and records acquired by the examiner of drivers under this part shall be confidential; provided that the examiner may transmit voter registration information as required under sections 11-15.7, 286-111.5, 286-303.5, 286-111, and 286-303. All information and records shall be maintained in an appropriate form and in an appropriate office in the custody and under the control of the examiner. The information shall be available only to authorized individuals under restrictions as the director shall prescribe. The examiner may dispose of any application or identification card, or information or record relating to the application or identification card, that does not include a social security number, without regard to chapter 94, whenever, in the examiner's discretion, retention of the information or record is no longer required or practicable.

(b) No officer or employee of the examiner of drivers shall divulge any information concerning any cardholder acquired from the records of the examiner or acquired in the performance of any of the officer's or employee's duties under part VI and this part to any individual not authorized to receive the same pursuant to part VI and this part. No individual acquiring from the records any information concerning any cardholder shall divulge the information to any individual not so authorized to receive the same.

286-312 HRS

286-312 Civil identification card fee special fund. There is established in the state treasury a special fund to be known as the civil identification card fee special fund. The fund shall consist of all fees assessed for the processing and issuance of identification cards. The fund shall be used for the purposes of the identification card program. The fund shall be administered by the director. The fund shall be held separate and apart from all other moneys, funds, and accounts in the state treasury. Interest and investment earnings credited to the assets of the fund shall become a part of the fund. Any balance remaining in the fund at the end of any fiscal year shall be carried over to the next fiscal year.

286-313 HRS

286-313 Reimbursement to counties. The counties shall be reimbursed the incremental costs incurred in the administration of this part. The amount of reimbursement shall be determined by the director of transportation.

Chapter 286C

286C-2 Definitions

286C-2 Definitions.]

(a) For the purpose of the Driver License Compact:

(1) "Licensing authority" means the examiner of drivers of each county.

(2) "Compact administrator" means the state director of transportation.

(b) The licensing authority shall furnish to the appropriate authorities of any other party state any information or documents reasonably necessary to facilitate the administration of Articles III, IV, and V of the compact.

Chapter 286G

286G-1 Definitions

286G-1 Definitions. As used in this chapter: "Conviction" includes, in the case of a minor, not only a conviction of the offense but also an adjudication of delinquency by a family court, and any disposition of the case which involves an admission on the commission of the offense. "Driver", "owner", "parking", "standing", "stopping", and "vehicle" have the meanings defined by section 291C-1.

286G-2 Driver education and training fund

286G-2 Driver education and training fund. There is established in the state treasury a special fund to be known as the driver education and training fund. All driver education assessments collected pursuant to this chapter shall be deposited in the driver education and training fund to be expended by the administrative director of the courts for driver education and training programs administered by the judiciary, subject to part III of chapter 37 to the extent that the same applies to appropriations for the judiciary.

286G-3 Driver education assessments

286G-3 Driver education assessments.

(a) A driver education assessment of $7 shall be levied on a finding that a violation of a statute or county ordinance relating to vehicles or their drivers or owners occurred, except for:

(1) Offenses relating to stopping (when prohibited), standing, or parking;

(2) Offenses relating to registration; and

(3) Offenses by pedestrians.

(b) Driver education assessments of:

(1) $100 shall be levied on persons convicted under section 291E-61 or 291E-61.5 to defray costs of services provided by the driver education and training program;

(2) $50 shall be levied on persons required to attend a child passenger restraint system safety class under section 291-11.5; and

(3) $75 shall be levied on persons convicted under section 291C-105 to defray costs of services provided by the driver education and training program.

(c) The driver education assessments levied by subsections (a) and (b) shall be paid for each violation in addition to any fine imposed by the court, and regardless of whether a fine is suspended; provided that the driver education assessment of $100 levied on a person convicted under section 291E-61 or 291E-61.5 may be waived by the court if the court determines that the person is unable to pay the driver education assessment.

(d) The amount of each driver education assessment levied by subsections (a) and (b) shall be transmitted by the clerk of the court for deposit in the driver education and training fund.

Chapter 287

287-1 Definitions

287-1 Definitions. As used in this chapter: "Administrator" means the chief of police of each county or the director of finance of each county and their authorized subordinates charged with the responsibility of administering this chapter; "Driver" means every person who is in actual physical control of a motor vehicle; "Judgment" means any judgment, order, or decree which has become final by expiration without appeal of the time within which an appeal might have been perfected, or by final affirmation on appeal, rendered by a court of competent jurisdiction of the United States or any territory or state thereof upon a cause of action arising out of the ownership, maintenance, or use of any motor vehicle for damages, including damages for care and loss of services, because of bodily injury to or death of any person, or for damages because of injury to or destruction of property, including the loss of use thereof, or upon a cause of action on an agreement of settlement for such damages; "Legal owner" has the same meaning prescribed by section 286-2; "License" means any license or permit issued or recognized under chapter 286 to operate motor vehicles; "Motor vehicle" has the meaning prescribed by section 286-2 and includes trailers and semitrailers designed for use by such vehicles, but does not include road rollers, farm tractors, tractor cranes, power shovels, and well drillers; "Nonresident" means every person who is not a resident of the State; "Nonresident's operating privilege" means the privilege conferred upon a nonresident by laws of the State pertaining to the operation by the nonresident of a motor vehicle, or the use of a motor vehicle owned by the nonresident in this State; "Owner" or "registered owner" has the meaning prescribed by section 286-2 to the term "owner"; "Proof of financial responsibility" means proof of ability to respond in damages for liability, on account of accidents occurring subsequent to the effective date of such proof, arising out of the ownership, maintenance, or use of a motor vehicle, in the amounts prescribed by section 294-10(a); "Registration" means the certificate of registration issued pursuant to chapter 286; "State" except in reference to the State of Hawaii means any state, territory, or possession of the United States, the District of Columbia, or any province of the Dominion of Canada.

287-2

287-2 Administrator to administer chapter; appeal to circuit court.

(a) The administrator shall administer and enforce this chapter and make rules and regulations consistent herewith and necessary for its administration and shall provide for hearings upon request of any person aggrieved by orders or acts of the administrator under this chapter. The rules and regulations shall be as nearly uniform throughout the State as the circumstances permit, but the fact of nonuniformity shall not of itself be sufficient to make unenforceable any rule or

regulation, otherwise lawful, promulgated hereunder.

(b) Any order or act of any administrator pursuant to the authority given by this chapter or by rules or regulations hereunder, shall be subject to appeal to the circuit court of the circuit in which the order or act has been entered or done, which shall have jurisdiction to affirm, vacate, and modify, in whole or in part, any such order or act. Any person aggrieved may file an appeal therefrom in the office of the clerk of the circuit court within thirty days after the effective date of the order or act. The appeal shall not operate to suspend the order or act unless for cause satisfactory to the court and upon such conditions as may be imposed by the court, the court shall otherwise order. The administrator upon service of a copy of the appeal shall forthwith transmit to the clerk of court a transcript of the papers filed with the administrator and a certified transcript of the evidence, if any, adduced. Upon the filing of the transcript, the appeal shall be at issue, and upon the application of either party, may be advanced and assigned for hearing at the earliest possible date to determine whether the action of the administrator is in accordance with law. The prosecuting officer and the legal advisor of the county shall render assistance to the administrator upon the administrator's request in enforcing and carrying out this chapter and in prosecuting and defending proceedings hereunder.

287-3

287-3 Furnishing of operating records.

(a) The traffic, emergency period, and fireworks violations bureaus of the district courts, upon request, shall furnish any person a certified abstract of the bureaus' record, if any, of any person relating to all alleged moving violations and any convictions resulting therefrom, arising from the operation of a motor vehicle and any administrative license revocation pursuant to chapter 291E, part III and chapter 286, part XIV, as it was in effect on or before December 31, 2001. The traffic, emergency period, and fireworks violations bureaus may collect a fee, not to exceed $20, of which $18 shall be deposited into the general fund and $2 shall be deposited into the judiciary computer system special fund.

(b) Notwithstanding any provision to the contrary, all alleged moving violations as well as any convictions resulting therefrom or any administrative license suspension pursuant to chapter 291A shall not be included in a certified abstract of the bureaus' record.

287-4 Report required following accident

287-4 Report required following accident. The driver of every motor vehicle which is in any manner involved in an accident within this State in which any person is killed or injured or in which damage to the property of any one person, including the driver, to an apparent extent in excess of $3,000 is sustained shall at the earliest practical time, and in any event within twenty-four hours after the accident, report the matter in writing or in person to the chief of police. The report, the form of which shall be prescribed by the chief of police and administrator, shall contain information to enable the administrator to determine whether the requirements for the deposit of security under sections 287-5 and 287-6 are inapplicable by reason of the existence of insurance or other exceptions specified in this chapter. If the driver is physically incapable of making the report, any other occupant in the vehicle at the time of the accident capable of making the report shall make or cause to be made the report not made by the driver, and the registered owner of the motor vehicle involved in the accident shall, unless the report is filed, within ten days after learning of the accident make the report. The driver, occupant, and registered owner shall furnish such additional relevant information as the chief of police or administrator shall require. If the reports required hereunder are made pursuant to any ordinance or other provision or requirement of law, no additional report, except as specifically provided herein, shall be required hereby.

287-5

287-5 Security required unless evidence of insurance. If twenty days after the receipt of a report of a motor vehicle accident within this State which has resulted in bodily injury or death or damage to property of any one person in excess of $3,000, the administrator does not have on file evidence satisfactory to the administrator that the person who would otherwise be required to file security under section 287-6 has been released from liability, or has been finally adjudicated not to be liable, or has executed a duly acknowledged written agreement providing for the payment of an agreed amount in installments with respect to all claims for injuries or damages resulting from the accident, the administrator shall determine the amount of security which is sufficient in the administrator's judgment to satisfy any judgment or judgments for damages resulting from the accident as may be recovered against each driver or owner. This section shall be applicable to each driver or owner notwithstanding that the administrator determines that the amount of security required hereunder shall as to any such driver or owner be less than $3,000.

287-6 Suspension of license

287-6 Suspension of license. The administrator shall suspend the license or permit of each driver and the license of the registered owner of the motor vehicle in any manner involved in the accident and if the driver is a nonresident, any privilege of operating the motor vehicle within the State shall cease, and if the owner of the motor vehicle is a nonresident, the privilege of the use within the State of any motor vehicle owned by the nonresident shall also cease, unless the driver or owner or both have satisfied the requirements of section 287-5 or have deposited security in the sum determined by the administrator. Notice of the suspension shall be sent by the administrator to the driver and registered owner and the nonresident owner not less than ten days prior to the effective date of the suspension and shall state the amount required as security. Where erroneous information is given the administrator with respect to the matters set forth in [paragraph] (1), (2), or (3) of section 287-7, the administrator shall take appropriate action as hereinbefore provided within sixty days after receipt by the administrator of correct information with respect to those matters.

287-7 Exceptions

287-7 Exceptions. Sections 287-5 and 287-6 shall not apply under the conditions stated in section 287-8 nor:

(1) To the driver or registered owner if the registered owner had in effect at the time of the accident an automobile liability policy with respect to the motor vehicle involved in the accident;

(2) To the driver, if not the registered owner of the motor vehicle if there was in effect at the time of the accident an automobile liability policy or bond with respect to the driver's operation of motor vehicles not owned by the driver;

(3) To the driver or registered owner if the liability of the operator or registered owner for damages resulting from such action is, in the judgment of the administrator, covered by any other form of liability insurance policy or bond;

(4) To any person qualifying as a self-insurer under section 287-42, or to any driver of a motor vehicle for the self-insurer where the self-insurer is responsible for the acts of the driver. No automobile liability policy or bond shall be effective under this section unless issued by an insurance company or surety company authorized to do business in the State, except that if the motor vehicle is registered elsewhere than in this State at the effective date of the policy or bond, or the most recent renewal thereof, the policy or bond shall not be effective under this section unless the insurance company or surety company, if not authorized to do business in the State, executes a power of attorney authorizing the insurance commissioner to accept service on its behalf of notice of process in any action upon the policy or bond arising out of the action; provided every such policy or bond is subject to a limit, exclusive of interest and costs, of not less than the liability coverages stated in section 294-10(a).

287-8

287-8 Further exceptions to requirement of security. The requirements as to security and suspension of sections 287-5 and 287-6 shall not apply:

(1) To the driver or the registered owner of a motor vehicle involved in an accident where no injury or damage was caused to the person or property of anyone other than the driver or registered owner;

(2) To the driver or the registered owner of the motor vehicle legally parked at the time of accident;

(3) To the driver of a motor vehicle involved in an accident during the normal scope of that person's employment;

(4) To the registered owner of the motor vehicle if at the time of the accident the vehicle was being operated without the registered owner's permission, express or implied, or was parked by a person who had been operating the motor vehicle without such permission; nor

(5) If prior to the date the administrator would otherwise suspend the license or permit under section 287-6, there is filed with the administrator evidence satisfactory to the administrator that the driver who would otherwise have to file security has been released from liability or been finally adjudicated not to be liable or has executed a duly acknowledged written agreement providing for the payment of an agreed amount in installments, with respect to all claims for injuries or damages resulting from the accident.

287-9 Duration of suspension

287-9 Duration of suspension. The license and permit suspended as provided in section 287-6 shall remain suspended and shall not be renewed nor shall any new license or permit be issued to the person whose license or permit is suspended until:

(1) The person whose license or permit is suspended deposits or there is deposited on the person's behalf the security required under section 287-6;

(2) Two years have elapsed following the date of the suspension and evidence satisfactory to the administrator has been filed with the administrator that during that period no action for damages arising out of the accident has been commenced; or

(3) Pursuant to section 287-8(5), evidence satisfactory to the administrator has been filed with the administrator of a release of the driver from liability, or a final adjudication of nonliability of the driver, or a duly acknowledged written agreement; provided that if there is any default in the payment of any installment under any duly acknowledged written agreement, then upon notice of the default, the administrator shall immediately suspend the license of the person defaulting on the agreement, and the license shall not be restored until: (A) The person deposits and thereafter maintains security as required under section 287-6 in an amount as the administrator may then determine; or (B) Two years have elapsed following the date when the security was required and during that period no action has been instituted for enforcement of the agreement.

287-10

287-10 Application to nonresidents and unlicensed drivers. In case the driver involved in an accident within the State has no license or permit, the driver shall not be allowed a license or permit until the driver has complied with the requirements of this chapter to the same extent that would be necessary if at the time of the accident the driver held such a license or permit.

287-11 Form and amount of security

287-11 Form and amount of security. The security required under this chapter shall be in such form and in such amount as the administrator may require but in no case in excess of the limits specified in section 287-7 in reference to the acceptable limits of a policy or bond. The person depositing security shall specify in writing the person or persons on whose behalf a deposit is made and, at any time while the deposit is in the custody of the administrator or the treasurer or director of finance of the county, the person depositing it may, in writing, amend the specification of the person or persons on whose behalf deposit is made to include an additional person or persons; provided that a single deposit of security shall be applicable only on behalf of persons required to furnish security because of the same accident. The administrator may reduce the amount of security ordered in any case within six months after the date of the accident, if in the administrator's judgment the amount ordered is excessive and the excess deposited over the reduced amount ordered shall be returned to the depositor or the depositor's personal representative forthwith notwithstanding section 287-12.

287-12

287-12 Custody, disposition, and return of security. Security deposited in compliance with the requirements of this chapter shall be placed by the administrator in the custody of the county treasurer or director of finance and shall be applicable only to the payment of a judgment or judgments rendered against the person or persons on whose behalf the deposit was made, for damages arising out of the accident in question in an action, begun not later than one year after the date of the accident or within one year after the date of deposit of any security under section 287-9(3), and the deposit or any balance thereof shall be returned to the depositor or the depositor's personal representative when:

(1) Pursuant to section 287-8(5), evidence satisfactory to the administrator has been filed with the administrator that there has been a release from liability, or a final adjudication of nonliability, or the execution of a duly acknowledged written agreement; or

(2) After the expiration of one year from the date of the accident or from the date of deposit of any security under section 287-9(3), the administrator is given reasonable evidence that there is no pending action and no judgment rendered in the action left unpaid. The security deposited shall not be subject to any attachment or execution unless the attachment or execution arises out of a suit for damages as described in this section.

287-13 REPEALED

287-13 REPEALED. L 1974, c 75, §2. Previous Vol05_Ch0261-0319 Next

287-14

287-14 Matters not to be evidence in civil court. Neither the report required by section 287-4, the action taken by the administrator pursuant to this chapter, the findings of the administrator upon which the action is based, nor the security

filed as provided in this chapter shall be referred to in any way or be any evidence of the negligence or due care of either party at the trial of any action to recover damages.

287-15 Report of nonpayment of judgments

287-15 Report of nonpayment of judgments. Whenever any person fails within sixty days to satisfy any judgment upon the written request of the judgment creditor or the judgment creditor's attorney, the clerk of the court or the judge of a court which has no clerk in which any such judgment is rendered shall forward to the administrator immediately after the expiration of the sixty days a certified copy of the judgment. If the defendant named in any certified copy of a judgment reported to the administrator is a nonresident, the administrator shall transmit a certified copy of the judgment to the official in charge of the issuance of licenses and registration certificates of the state of which the defendant is a resident.

287-16

287-16 Suspension for nonpayment of judgment; exceptions. The administrator, upon the receipt of a certified copy of the judgment shall forthwith suspend the license of any person against whom such judgment was rendered, except as hereinafter otherwise provided in this section and in section 287-19. If the judgment creditor consents in writing, in such form as the administrator may prescribe, that the judgment debtor be allowed a license, the same may be allowed by the administrator, in the administrator's discretion, for six months from the date of the consent and thereafter until the consent is revoked in writing, notwithstanding default in the payment of the judgment, or of any installments thereof prescribed in section 287-19, provided the judgment debtor furnished proof of financial responsibility.

287-17

287-17 Suspension to continue until judgments paid and proof given. The license shall remain so suspended and shall not be renewed, nor shall any such license be thereafter issued in the name of the person, including any such person not previously licensed, unless and until every such judgment is stayed, satisfied in full or to the extent hereinafter provided, and until the person gives proof of financial responsibility subject to the exceptions stated in sections 287-16 and 287-19.

287-18

287-18 Payment sufficient to satisfy requirements. Judgments herein referred to shall, for the purpose of this chapter only, be deemed satisfied:

(1) When $25,000 is credited upon any judgment or judgments rendered in excess of that amount because of accidental harm sustained by any one person as a result of any one accident applicable to each person sustaining accidental harm; or

(2) When $10,000 is credited upon any judgment or judgments rendered in excess of that amount because of injury to or destruction of property of others as a result of any one accident. Payments made in settlement of any claims because of bodily injury, death, or property damage arising from a motor vehicle accident shall be credited in reduction of the amounts provided for in this section.

287-19

287-19 Installment payment of judgment; default.

(a) A judgment debtor upon due notice to the judgment creditor may apply to the court in which the judgment was rendered for the privilege of paying the judgment in installments and the court, in its discretion and without prejudice to any other legal remedies which the judgment creditor may have, may for the purposes of this chapter only so order and fix the amounts and times of payment of the installments.

(b) The administrator shall not suspend a license and shall restore any license suspended following nonpayment of a judgment, when the judgment debtor gives proof of financial responsibility and obtains such an order permitting the payment of the judgment in installments, and while the payment of any installment is not in default.

(c) If the judgment debtor fails to pay any installment as specified by the court order, then upon notice of the default, the administrator shall forthwith suspend the license of the judgment debtor until the judgment is satisfied as provided in this chapter.

287-20

287-20 Proof of financial responsibility required upon conviction of certain offenses.

(a) Whenever a driver's license has been suspended or revoked:

(1) Pursuant to section 291E-65 or part III of chapter 291E, except as provided in section 291E-41(f);

(2) Upon a conviction of any offense pursuant to law, except where the conduct giving rise to the instant offense is also a violation of part III of chapter 291E and a requirement to furnish and maintain proof of financial responsibility has already been imposed pursuant to that part; or

(3) In the case of minors, pursuant to part V of chapter 571, the license shall not at any time thereafter be issued to the person whose license has been suspended or revoked, nor shall the person thereafter operate a motor vehicle, unless and until the person has furnished and thereafter maintains proof of financial responsibility; provided that this section shall not apply to a license suspended or revoked pursuant to section 291E-61(b)(1) or 291E-64(b)(1), any conviction of a moving violation, any administrative license suspension pursuant to chapter 291A, or the first conviction within a five-year period for driving without a valid motor vehicle insurance policy. This subsection shall not apply to a suspension or revocation of a provisional license under section 286-102.6(d).

(b) Whenever by reason of a conviction of, or adjudication under part V of chapter 571 by reason of, any of the offenses listed in this subsection, under the laws of the State or ordinances of any county, a court of competent jurisdiction has discretion to revoke or suspend a driver's license but does not revoke or suspend the license, the administrator nevertheless, after the expiration of thirty days from the date of conviction or adjudication, shall suspend the license and shall keep the license suspended, and the person so convicted or adjudicated shall not thereafter operate a motor vehicle, unless and until the person so convicted or adjudicated furnishes and thereafter maintains proof of financial responsibility. The offenses referred to are:

(1) Reckless or inattentive driving, operating a vehicle while under the influence of an intoxicant, driving while under the influence of intoxicating liquor, driving while under the influence of drugs, and driving while that person's license has been suspended or revoked, and operating a vehicle after license and privilege to operate a vehicle have been suspended or revoked, except when a person's license has been suspended or revoked for the first conviction of driving without a motor vehicle insurance policy; and

(2) Conviction or adjudication under part V of chapter 571 by reason of any moving violation offense involving a motor vehicle if the motor vehicle is in any manner involved in an accident in which any person is killed or injured, or in which damage to property results to an apparent extent in excess of $3,000 and there are reasonable grounds for the administrator to believe that the defendant is at fault.

(c) If any person, at any time of conviction of, or adjudication under part V of chapter 571 by reason of, any of the offenses in this section, does not hold a valid driver's license, no license shall at any time thereafter be issued to the person unless and until the person furnishes and thereafter maintains proof of financial responsibility, unless otherwise specified in this section.

287-21 Alternate methods of giving proof

287-21 Alternate methods of giving proof. Proof of financial responsibility when required under this chapter with respect to a motor vehicle or with respect to a person who is not the owner of a motor vehicle may be given by filing:

(1) A certificate of insurance as provided in section 287-22 or 287-23; or

(2) A bond as provided in section 287-35; or

(3) A certificate of deposit of money or securities as provided in section 287-36; or

(4) A certificate of self-insurance, as provided in section 287-42, supplemented by an agreement by the self-insurer that, with respect to accidents occurring while the certificate is in force, the self-insurer will pay the same judgments and in the same amounts that an insurer would have been obligated to pay under an owner's motor vehicle liability policy if it had issued such a policy to the self-insurer.

287-22 Certificate of insurance as proof

287-22 Certificate of insurance as proof. Proof of financial responsibility may be furnished by filing with the administrator the written certificate of any insurance carrier duly authorized to do business in the State certifying that there is in effect a motor vehicle liability policy for the benefit of the person or persons required to furnish proof of financial responsibility. The certificate shall give the effective date of the motor vehicle liability policy, which date shall be the same as the effective date of the certificate, and shall designate by explicit description or by appropriate reference all motor vehicles covered thereby, unless the policy is issued to a person who is not the owner of a motor vehicle.

287-22.1

287-22.1 Certificate of insurance as proof; mandatory, when. Any person required to show proof of financial responsibility pursuant to section 287-20(a)(3) shall show proof by filing a certificate of insurance pursuant to section 287-22, or, if the person is a nonresident, section 287-23.

287-23

287-23 Certificate furnished by nonresident as proof.

(a) The nonresident owner of a motor vehicle not permanently registered in the State may give proof of financial responsibility by filing with the administrator a written certificate or certificates of an insurance carrier authorized to transact business in the state in which the motor vehicle or motor vehicles described in the certificate is registered or if the nonresident does not own a motor vehicle, then in the state in which the insured resides, provided the certificate otherwise conforms with this chapter, and the administrator shall accept the same upon condition that the insurance carrier complies with the following provisions with respect to the policy so certified:

(1) The insurance carrier shall execute a power of attorney authorizing the insurance commissioner to accept service on its behalf of notice of process in any action arising out of a motor vehicle action in the State;

(2) The insurance carrier shall agree in writing that such policies shall be deemed to conform with the laws of the State relating to the terms of motor vehicle liability policies issued herein.

(b) If any insurance carrier not authorized to transact business in the State, which has qualified to furnish proof of financial responsibility, defaults in any such undertakings or agreements, the administrator shall not thereafter accept as proof any certificate of the carrier whether theretofore filed or thereafter tendered as proof, so long as such default continues.

287-24

287-24 Motor vehicle liability policy defined. A "motor vehicle liability policy" as used in this chapter means an owner's or a driver's policy of liability insurance, certified as provided in section 287-22 or section 287-23 as proof of financial responsibility, and issued, except as otherwise provided in section 287-23, by an insurance carrier duly authorized to transact business in the State, to or for the benefit of the person named therein as insured.

287-25 Owner's policy requirements

287-25 Owner's policy requirements. An owner's policy of liability insurance:

(1) Shall designate by explicit description or by appropriate reference all motor vehicles with respect to which coverage is thereby to be granted;

(2) Shall insure the person named therein and any other person, as insured, using any such motor vehicle or motor vehicles with the express or implied permission of the named insured, against loss from the liability imposed by law for damages arising out of the ownership, maintenance, or use of the motor vehicle or motor vehicles within the State and such other places as the policy provides, subject to limits exclusive of interest and costs, with respect to each such motor vehicle, as follows: $10,000 because of bodily injury to or death of one person in any one accident, and subject to such limit for one person, $20,000 because of bodily injury to or death of two or more persons in any one accident, and $5,000 because of injury to or destruction of property of others in any one accident.

287-26 Driver's policy requirements

287-26 Driver's policy requirements. A driver's policy of liability insurance shall insure the person named as insured therein against loss from the liability imposed upon the person by law for damages arising out of the use by the person of any motor vehicle not owned by the person, within the same territorial limits and subject to the same limits of liability as are set forth above with respect to an owner's policy of liability insurance.

287-27

287-27 Contents of motor vehicle liability policy. Every motor vehicle liability policy shall state the name and address of the named insured, the coverage afforded by the policy, the premium charged therefor, the policy period, and the limits of liability, and shall contain an agreement or be endorsed that insurance is provided thereunder in accordance with the coverage defined in this chapter as respects bodily injury and death or property damage, or both, and is subject to all the provisions of this chapter.

287-28

287-28 Liabilities which need not be covered. A motor vehicle liability policy need not insure any liability under chapter 386 relating to workers' compensation nor any liability on account of bodily injury to or death of an employee of the insured while engaged in the employment, other than domestic, of the insured, or while engaged in the operation, maintenance, or repair of any such motor vehicle nor any liability for damage to property owned by, rented to, in charge of, or transported by the insured.

287-29

287-29 General provisions governing liability policies. Every motor vehicle liability policy shall be subject to the following provisions which need not be contained therein:

(1) The liability of the insurance carrier with respect to the insurance required by this chapter shall become absolute whenever injury or damage covered by the motor vehicle liability policy occurs; the policy may not be canceled or annulled as to such liability by any agreement between the insurance carrier and the insured after the occurrence of the injury or damage; no statement made by the insured or on the insured's behalf and no violation of the policy shall defeat or void the policy;

(2) The satisfaction by the insured of a judgment for such injury or damage shall not be a condition precedent to the right or duty of the insurance carrier to make payment on account of such injury or damage;

(3) The insurance carrier shall have the right to settle any claim covered by the policy, and if the settlement is made in good faith, the amount thereof shall be deductible from the limits of liability specified in section 287-25(2);

(4) The policy, the written application therefor, if any, and any rider or endorsement which does not conflict with this chapter shall constitute the entire contract between the parties.

287-30 Excess coverage permitted

287-30 Excess coverage permitted. Any policy which grants the coverage required for a motor vehicle liability policy may also grant any lawful coverage in excess of or in addition to the coverage specified for a motor vehicle liability policy and the excess or additional coverage shall not be subject to this chapter. With respect to a policy which grants such excess or additional coverage the term "motor vehicle liability policy" shall apply only to that part of the coverage which is required by this chapter.

287-31

287-31 Reimbursement of insurer; proration of insurance. Any motor vehicle liability policy may provide that the insured shall reimburse the insurance carrier for any payment the insurance carrier would not have been obligated to make under the terms of the policy except for this chapter. Any motor vehicle liability policy may provide for the prorating of the insurance thereunder with other valid and collectible insurance.

287-32

287-32 Combining policies and issuing binders to meet requirements. The requirements for a motor vehicle liability policy may be fulfilled by the policies of one or more insurance carriers which policies together meet such requirements. Any binder issued pending the issuance of a motor vehicle liability policy shall be deemed to fulfill the requirements for such a policy.

287-33

287-33 Notice of cancellation or termination of certified policy. When an insurance carrier has certified a motor vehicle liability policy under section 287-22 or a policy under section 287-23, the insurance so certified shall not be canceled or terminated until at least ten days after a notice of cancellation or termination of the insurance so certified is filed in the office of the administrator, except that such a policy subsequently procured and certified shall, on the effective date of its certification, terminate the insurance previously certified with respect to any motor vehicle designated in both certificates.

287-34

287-34 Chapter not to affect other policies.

(a) This chapter shall not be held to apply to or affect policies of automobile insurance against liability which may now or hereafter be required by any other law of this State, and such policies, if they contain an agreement or are endorsed to conform to the requirements of this chapter, may be certified as proof of financial responsibility under this chapter.

(b) This chapter shall not be held to apply to or affect policies insuring solely the insured named in the policy against liability resulting from the maintenance or use by persons in the insured's employ or on the insured's behalf of motor vehicles not owned by the insured.

287-35 Bond as proof

287-35 Bond as proof.

(a) Proof of financial responsibility may be evidenced by the bond of a surety company duly authorized to transact business within the State, or a bond with at least two individual sureties each owning real estate within the State, and together having equities equal in value to at least twice the amount of the bond, which real estate shall be scheduled in the bond approved by the insurance commissioner, which bond shall be conditioned for payment of the amounts specified in section 294-10(a). The bond shall be filed with the administrator and shall not be cancelable except after ten days' written notice to the administrator. The bond shall constitute a lien in favor of the State upon the real estate so scheduled of any surety, which lien shall exist in favor of any holder of a final judgment against the person who has filed the bond, for damages, including damages for care and loss of services, because of bodily injury to or death of any person, or for damages because of injury to or destruction of property, including the loss of use thereof, resulting from the ownership, maintenance, use, or operation of a motor vehicle after the bond was filed upon the filing of notice to that effect and the filing of a certified copy of the final judgment in the office of the registrar of conveyances.

(b) If such a judgment, rendered against the principal on the bond is not satisfied within sixty days after it has become final, the judgment creditor may, for the judgment creditor's own use and benefit and at the judgment creditor's sole expense, bring an action or actions in the name of the State against the company or persons executing the bond, including an action or proceeding to foreclose any lien that may exist upon the real estate of a person who has executed the bond, such action to conform as near as may be with the procedure for the foreclosure of mortgages.

287-36 Money or bonds as proof

287-36 Money or bonds as proof.

(a) Proof of financial responsibility may be evidenced by the certificate of the administrator that the person named therein has deposited with the administrator $25,000 in cash or bonds. The administrator shall not accept any such deposit and issue a certificate therefor unless accompanied by evidence that there are no unsatisfied judgments of any character against the depositor in the county where the depositor resides.

(b) The deposit shall be held by the administrator to satisfy, in accordance with this chapter any execution on a judgment issued against such person making the deposit, for damages, including damages for care and loss of services, because of bodily injury to or death of any person, or for damages because of injury to or destruction of property, including the loss of use thereof, resulting from the ownership, maintenance, use, or operation of a motor vehicle after the deposit was made. Money or bonds so deposited shall not be subject to attachment or execution unless the attachment or execution arises out of a suit for damages as aforesaid.

287-37 Owner may give proof for others

287-37 Owner may give proof for others. Whenever any person required to give proof of financial responsibility hereunder is or later becomes a driver in the employ of any owner, or is or later becomes a member of the immediate family or household of the owner, the administrator shall accept proof given by the owner in lieu of proof by the other person to permit the other person to operate a motor vehicle for which the owner has given proof as herein provided. The administrator shall designate the restrictions imposed by this section on the face of such person's license.

287-38 Substitution of proof

287-38 Substitution of proof. The administrator shall consent to the cancellation of any bond or certificate of insurance or the administrator shall return any money or securities to the person entitled thereto upon the substitution and acceptance of other adequate proof of financial responsibility pursuant to this chapter.

287-39 Other proof may be required

287-39 Other proof may be required. Whenever any proof of financial responsibility filed under this chapter no longer fulfills the purposes for which required, the administrator shall, for the purpose of this chapter, require other proof as required by this chapter and shall suspend the license and registration or the nonresident's operating privilege pending the filing of such other proof.

287-40

287-40 Duration of proof; when proof may be canceled or returned.

(a) Upon request, the administrator shall consent to the immediate cancellation of any bond or certificate of insurance, return to the person entitled thereto any money or bonds deposited pursuant to this chapter as proof of financial responsibility, or waive the requirement of filing proof, in any of the following events:

(1) At any time after three years from the date the proof was required when, during the three-year period preceding the request, the administrator has not received record of a conviction that would require or permit the suspension or revocation of the license or nonresident's operating privilege of the person by or for whom the proof was furnished;

(2) In the event of the death of the person on whose behalf the proof was filed or the permanent incapacity of the person to operate a motor vehicle; and

(3) If the person who has given proof surrenders the person's license to the administrator.

(b) Notwithstanding subsection (a), the administrator shall not consent to the cancellation of any bond or the return of any money or bonds if any action for damages upon a liability covered by the proof is then pending or any judgment upon any such liability is then unsatisfied, or if within one year immediately preceding the request the person who has filed the bond or deposited the money or bonds has been involved as a driver or owner in any motor vehicle accident resulting in injury or damage to the person or property of others. An affidavit of the applicant as to the nonexistence of such facts, or that the applicant has been released from all of the applicant's liability, or has been finally adjudicated not to be liable, for the injury or damage, shall be sufficient evidence thereof in the absence of evidence to the contrary in the records of the administrator.

(c) Whenever any person whose proof has been canceled or returned under subsection (a)(3) applies for a license or registration within a period of three years from the date proof was originally required, the application shall be refused unless the applicant reestablishes the proof for the remainder of the three-year period.

287-41 Surrender of license on violation

287-41 Surrender of license on violation. Any person whose license has been suspended as herein provided, or whose policy of insurance or bond, when required under this chapter, has been canceled or terminated, or who neglects to furnish other proof upon request of the administrator shall immediately surrender the person's license to the administrator. If any person fails to surrender to the administrator the license as provided herein, the administrator shall forthwith direct any police or other peace officer to secure possession thereof and return the same to the administrator.

287-42 Self-insurers

287-42 Self-insurers.

(a) Any person in whose name more than twenty-five motor vehicles are registered may qualify as a self-insurer by obtaining a certificate of self-insurance issued by the administrator as provided in subsection (b) of this section.

(b) The administrator may, in the administrator's discretion, upon the application of such a person, issue a certificate of self-insurance when the administrator is satisfied that the person is possessed and will continue to be possessed of ability to pay judgments obtained against such person.

(c) Upon not less than five days' notice and a hearing pursuant to the notice, the administrator may upon reasonable grounds cancel a certificate of self-insurance. Failure to pay any judgment within thirty days after the judgment has become final shall constitute a reasonable ground for the cancellation of a certificate of self-insurance.

287-43 Assigned risk plans

287-43 Assigned risk plans. The insurance commissioner may approve any reasonable plan for the equitable apportionment among insurance companies authorized to issue automobile liability policies in the State of applicants for such policies and for motor vehicle liability policies who are in good faith entitled to but are unable to procure such policies through ordinary methods. When any such plan has been approved after consultation with the insurance companies all insurance companies authorized to do business in the State shall subscribe thereto and participate therein. Any applicant for any such policy, any policy insured under any such plan, and any insurance company affected may appeal to the insurance commissioner from any ruling or decision of the manager or committee designated under the plan to operate the plan. Any person aggrieved by any order or act of the insurance commissioner may file an appeal therefrom either in the office of the clerk of the circuit court of the first circuit, or if the appellant is a resident of any other circuit, either in the

first circuit or in the circuit in which the appellant resides within thirty days after the effective date of the order or act in the same manner as is provided in section 287-2. The insurance commissioner shall transmit to the clerk of the court the papers referred to in section 287-2 and the attorney general shall render assistance to the insurance commissioner upon the insurance commissioner's request.

287-44 Penalties

287-44 Penalties.

(a) Any person convicted of a violation of section 287-41 shall be fined not more than $1,000 or imprisoned not more than one year, or both. Any person convicted of a violation of any other section in this chapter shall be fined not more than $1,000.

(b) The administrator shall have the right to suspend the license of any person failing to make any report required hereunder until the report has been filed and for such further period not to exceed thirty days as the administrator may fix.

(c) Any person who gives information required in a report or otherwise as provided for in section 287-4, knowing or having reason to believe that the information is false, or who forges or, without authority, signs any evidence of proof of financial responsibility, or who files or offers for filing any such evidence of proof knowing or having reason to believe that it is forged or signed without authority, shall be fined not more than $1,000 or imprisoned not more than one year, or both.

(d) Any person whose license has been suspended or revoked under this chapter and who during the suspension or revocation drives any motor vehicle upon any highway or knowingly permits any motor vehicle to be operated by another upon any highway except as permitted under this chapter shall be fined not more than $500 or imprisoned not more than six months, or both.

(e) Any person failing to surrender the person's license as required by section 287-41 shall be fined not more than $500 or imprisoned not more than six months, or both.

287-45 Exceptions

287-45 Exceptions. This chapter, except for section 287-20 shall not apply with respect to any motor vehicle owned by the United States, this State, or any political subdivision thereof; nor, except for sections 287-4 and 287-37, with respect to any motor vehicle which is subject to the requirements of chapter 288.

287-46

287-46 Chapter supplemental to traffic ordinances and motor vehicle laws. This chapter shall in no respect be considered as a repeal of any ordinance relating to traffic or motor vehicles, except as herein provided, or the state law relating thereto, but shall be construed as supplemental thereto.

287-47 Other relief available

287-47 Other relief available. Nothing in this chapter shall be construed as preventing the plaintiff in any action from obtaining relief upon process provided by any provision of law.

287-48

287-48 Application of chapter to suspensions and revocations prior to January 1, 1950. Notwithstanding any provision herein to the contrary, the administrators of the several counties may accept the prescribed proof of financial responsibility from any person whose license has been suspended or revoked on account of a conviction based on an offense occurring prior to January 1, 1950, and who now applies for the issuance of a license. Upon acceptance of such proof, the duration, cancellation, or return thereof shall be governed by section 287-40. The administrators may also waive the requirement of furnishing such proof if the person mentioned in the preceding paragraph, for a period of three years prior to the person's application for a license, has not been convicted of any additional offense or offenses which would require or permit the suspension or revocation of a license.

Chapter 288

288-1 Application of chapter

288-1 Application of chapter. This chapter shall not be applicable to any common carrier subject to section 269-21.

288-2 Definitions

288-2 Definitions. As used herein: "Motor vehicle common carrier of passengers" means and includes every corporation, joint stock association, person, individual, firm, association of persons, lessee, trustee, receiver, or personal representative appointed by any court, owning, controlling, operating, or managing any motor vehicle, directly or indirectly, for public use in the transportation of passengers for compensation over any public street or highway within any of the several counties of the State; "Policy of insurance" or "insurance" includes the certificate referred to in sections 288-3 and 288-4.

288-3

288-3 Common carriers of passengers to be insured. It shall be unlawful for any motor vehicle common carrier of passengers to operate upon or use the public streets or highways of the several counties until it has filed with the treasurer or director of finance of the county in which it is to operate the written certificate of any insurer duly authorized to do business in the State certifying that there is in effect a policy of liability insurance for the benefit of the carrier.

288-4 Conditions of policy

288-4 Conditions of policy. The policy of insurance shall insure the common carrier named therein against loss from the liability imposed by law for damages arising out of the operation of the common carrier, the limits of which policy of insurance shall not be less than the standard public liability limit of $5,000 for bodily injury to or death of any one person in any one accident and subject to such limitation for one person, not less than $10,000 for bodily injuries to or death of two or more persons in any one accident, and not less than $5,000 for liability for damage to property of others for any one accident. Before the certificate referred to in section 288-3 is filed, the insurer shall file a copy of the form of policy of insurance referred to in the certificate with the treasurer or director of finance of each county in which any such certificate is filed.

288-5

288-5 Bond in lieu of insurance, allowed when. In lieu of the policy of insurance, any common carrier who has exhausted all reasonable means of securing the foregoing insurance but has been refused the same, may deposit with the treasurer or director of finance a surety bond, payable to the county in which it is to operate, in the principal sum of $5,000, with adequate sureties justifying thereon pursuant to section 78-20, and approved by the county auditor or director of finance. If the surety or sureties on the bond are other than a surety company authorized to do business under the laws of the State, there shall be not more than four such sureties who shall severally justify in such amounts as, taken together, will aggregate the full amount of the bond. In the case of such other sureties the auditor or director of finance shall require that the sureties shall also severally deposit with the auditor or director of finance bonds, stocks, or other negotiable securities, or execute and deliver to the auditor or director of finance a deed or deeds of trust of real property, all of such character as are satisfactory to the auditor or director of finance, each surety to furnish such security to the full cash value of one hundred per cent of the amount for which the surety has so justified; provided that if there be but one personal surety the one personal surety shall so justify for the full amount of the bond. The bond shall be conditioned on the payment, up to the sum of $5,000, of any final judgment procured against the common carrier for the death of or personal injury to any person or persons or loss or damage to property of another or any accident or omission connected with the operation of the common carrier.

288-6 Bond prerequisite to license

288-6 Bond prerequisite to license. No license shall be issued in any county under section 445-222 unless and until the applicant therefor deposits with the treasurer or director of finance of the county a policy of insurance or a bond as hereinabove described.

288-7

288-7 Cancellation of insurance, revocation of license. The policy of insurance or bond shall be subject to cancellation only after ten days' written notice filed with the treasurer or director of finance of the county, or upon surrender of the license issued for the vehicle involved under section 445-222, or upon the filing of a substitute policy of insurance or bond complying with this chapter. Upon cancellation of any such policy of insurance or bond without the filing of a substitute therefor the county treasurer or director of finance shall immediately recall, confiscate, and cancel the license issued under section 445-222 for the vehicle involved.

288-8 Penalty

288-8 Penalty. Any person who violates this chapter shall be fined not more than $1,000 or imprisoned not more than one year, or both.

Chapter 289

289-1 Definitions

289-1 Definitions. As used in this chapter: "Business" includes any activities engaged in by any person or organization or caused to be engaged in by the person or it for the object of gain, benefit, or advantage, either direct or indirect. "Catalytic converter" means a device that is incorporated in a motor vehicle's exhaust system and contains a catalyst for converting pollutant gas emissions into less harmful emissions, regardless of whether the device has been removed from a motor vehicle's exhaust system. "Director of finance" means the director of finance of each county. "Engaged in business", "engaging in business", and equivalent expressions mean commencing, conducting, or continuing in, holding oneself out by advertising, or any other means of being in a business, as well as liquidating a business when the liquidator thereof holds oneself out to be conducting the business. However, making or negotiating a casual or isolated sale or purchase is not engaging in business, but the sale or negotiation for the purchase by any person, during any period of one year, of more than three used motor vehicle parts or accessories (except as an incident to the established business of a licensed seller) shall be presumptive evidence that the person negotiating for, or effecting such sale or purchase is engaging in the business of selling or negotiating the purchase of used motor vehicle parts or accessories and that, if unlicensed pursuant to this chapter, the person negotiating for, or effecting such sale or purchase is violating section 289-2 of this chapter. "Motor vehicle" means every vehicle which is self-propelled. "Retail", "sale at retail", "retail sale", and equivalent expressions, mean the act or attempted act of selling a used motor vehicle part or accessory to a person for use as a consumer. "Sale", "selling", and equivalent expressions, mean the act or attempted act, either as principal or an agent or in any capacity whatsoever, of selling, bartering, exchanging, or otherwise disposing of, or negotiating, or offering, or attempting to negotiate, the sale, purchase, or exchange of, or any interest in, a used motor vehicle part or accessory. "Used motor vehicle part or accessory" means a motor vehicle part or motor vehicle accessory which has been the subject of prior sale at retail, either individually or attached to a motor vehicle as a component part or accessory thereof. "Wholesale", "sale at wholesale", "wholesale sale", and equivalent expressions mean any sale other than a retail sale.

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289-2 Unlicensed person not to engage in business. It shall be unlawful for any person or organization, not duly licensed under this chapter, to engage in the business of:

(1) Purchasing or selling used motor vehicle parts or accessories; or

(2) Engaging in the business of wrecking, salvaging, or dismantling motor vehicles for the purpose of reselling the parts or accessories thereof.

289-3 Application for a license

289-3 Application for a license.

(a) Any person desiring to engage in any business described in section 289-2 shall file an application for a license therefor with the director of finance. The application for a license shall be made on the form prescribed by the director of finance and shall contain the following information:

(1) Name of applicant and location of principal place of business;

(2) The kind or nature of the business or businesses enumerated in section 289-2 which is to be conducted;

(3) Name or style under which the business is to be conducted;

(4) Name and address of each owner or partner, and, if a corporation, the names of the officers and directors;

(5) Address of each place of business at which the business is to be conducted;

(6) A statement showing whether or not the applicant has previously applied for a license under this chapter and the result of the application, and whether or not the applicant has ever been the holder of such a license which was revoked or suspended;

(7) If the applicant is a corporation or copartnership, a statement showing whether or not any of the partners, employees, officers, or directors has been refused such a license, or has been the holder of such a license which was revoked or

suspended.

(b) Prior to the expiration of a license issued under this chapter, in lieu of an application for any renewal of a license as required herein, the director of finance may accept a verified certificate signed by the licensee showing that there has been no change, or no change with specified exceptions, since the last filing of an application in respect to:

(1) Personnel of owners, partners, officers, or directors;

(2) Location of offices, or principal place of business; and

(3) That no proceeding is pending for the suspension or revocation of the licensee's existing license.

(c) A fee of $10 shall accompany each application for a license.

289-4 Issuance of license

289-4 Issuance of license. The director of finance shall file each application received by the director of finance with the required fee and, when satisfied that the applicant, if an individual, or each of the partners or principal officers of the applicant, if a partnership or corporation, is of good moral character and that the applicant, so far as can be ascertained, has complied with and will comply with this chapter and the laws of the State relating to registration of motor vehicles, shall issue to the applicant a license permitting the applicant to engage in the business described in the applicant's application, at the address or addresses therein specified until June 30 next following the date of issuance of the license unless sooner terminated, suspended, or revoked. All applications for renewal of license shall be filed on or before June 30 of each year together with the applicable fees.

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289-5 Suspension and revocation of license. The director of finance shall suspend or revoke a license, upon notice and reasonable opportunity to be heard by the licensee, if the director of finance finds:

(1) The license was fraudulently procured or erroneously issued; or

(2) The licensee or any partner or principal officer of the licensee, if a partnership or a corporation, has failed to comply with this chapter or the laws of the State relating to the registration of motor vehicles; or

(3) The licensee has been guilty of a fraudulent act in connection with selling or otherwise dealing in a wrecked or rebuilt motor vehicle or in dealing in used motor vehicle parts or accessories; or

(4) The licensee has been convicted of a felony or misdemeanor involving moral turpitude, and not pardoned; or

(5) In case the licensee is a corporation, partnership, trust, or other business association, the director of finance may revoke or suspend the license in the event the director of finance finds that any officer, director, trustee, employee, or partner of the licensee has been guilty of any act or omission which would be cause for revoking or suspending a license issued to such officer, director, trustee, employee, or partner as an individual; or the director of finance's findings may be based on facts contained in the application, or any other information the director of finance may have, or both.

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289-7 Director of finance to maintain records. The director of finance shall promulgate, pursuant to chapter 91, the rules and regulations necessary for the carrying out of this chapter and also prescribe the forms for the applications, licenses, and other documents mentioned herein, and shall create and maintain in the director of finance's office an appropriate filing system to accommodate the records required to be filed with the director of finance by this chapter.

289-8 Penalties

289-8 Penalties.

(a) Whoever violates any of the provisions of this chapter or any lawful rule or regulation promulgated by the director of finance under authority of this chapter, for the violation of which no penalty is provided by law, shall be fined not less than $25 nor more than $500.

(b) Any person who violates section 289-2, 289-9, or 289-10 shall be guilty of a class C felony.

289-9 HRS

289-9 Statement required; catalytic converter.

(a) Every licensee, before the purchase of a catalytic converter within the State, shall obtain a written statement signed by the seller certifying that the seller has the lawful right to sell and dispose of the catalytic converter. This statement

shall also contain the:

(1) Seller ' s name, business or residence address, and occupation;

(2) Description, including serial numbers and other identifying marks, when practical, of every catalytic converter;

(3) Amount paid to the seller;

(4) Date, time, and place of the sale; and

(5) License plate number of any vehicle used to deliver the property to the place of purchase.

(b) The seller shall provide a copy of a receipt that describes, with particularity:

(1) The exact item that is being offered for sale;

(2) The name of the person who issued the receipt;

(3) The date of sale of the item before the item's being offered to the licensee; and

(4) The price, if any, of the item when obtained by the seller.

(c) If a receipt is not available, the seller shall provide to the licensee a notarized declaration that describes with particularity:

(1) The exact item that is being offered for sale;

(2) The name of the person who sold or otherwise transferred the item to the seller;

(3) The date of sale of the item; and

(4) The price, if any, of the item when obtained by the seller.

(d) If the seller does not provide a copy of the receipt or the notarized declaration as required by subsection (b) or (c), respectively, the licensee shall not purchase the catalytic converter, in whole or in part, and shall report the attempted sale to the applicable county police department.

(e) Upon purchase of any catalytic converter, in whole or in part, the licensee shall take one or more separate photographs of each individual catalytic converter offered for sale.

(f) The licensee shall require the seller to verify the seller's identity by presenting a valid photo identification card or driver's license issued by a federal or state government agency authorized to issue valid identification. The licensee shall:

(1) Take a photograph of the seller; and

(2) Make a photocopy of the photo identification card or driver's license of the seller.

(g) The licensee shall keep at the licensee's place of business:

(1) The signed written statement required by subsection (a);

(2) The receipt or notarized declaration required by subsection (b) or (c);

(3) Photographs required by subsection (e); and

(4) The photograph of the seller and a photocopy of the seller's photo identification card or driver's license required by subsection (f), for a period of three years after the date of purchase. The statement, receipt or notarized declaration, photographs of each individual catalytic converter offered for sale, and photograph of the seller and photocopy of the seller's photo identification may be examined at any time by the director of finance, chief of police, attorney general, prosecuting attorney, or their designees.

(h) Every licensee, when the licensee purchases a catalytic converter within the State , shall attach a tag to the catalytic converter that shall include the year, make, model, license plate number, and vehicle identification number of the vehicle from which the catalytic converter was removed and the name of the seller. The licensee shall report the purchase to the applicable county police department, the record of which shall be maintained in the police department's database. The licensee shall maintain possession of the purchased catalytic converter for a period of sixty days before selling, exchanging, recycling, or otherwise disposing of the catalytic converter.

289-10 HRS

289-10 Payment for catalytic converter purchased by licensee; check; mailing. If a licensee purchases a catalytic converter, payment for the catalytic converter shall be made by check payable to the seller. At the time of sale of the catalytic converter, the seller shall present to the licensee a valid photo identification card or driver's license of the seller

issued by a federal or state government agency authorized to issue valid identification. The check may be mailed to the address shown on the identification, or the licensee may arrange for the check to be picked up personally by the seller at the place of business of the licensee.

Chapter 290

290-1 [PART I

290-1 Disposition by counties of certain abandoned vehicles.

(a) The counties shall cause vehicles that have been abandoned to be taken into custody within ten business days of abandonment. For the purposes of this subsection, a vehicle is "abandoned" if it is defined to be abandoned by an ordinance of the county in which the vehicle is located; provided that the ordinance shall provide a minimum distance and timeframe in which a vehicle must be moved after the initial inspection in order to not be classified as being abandoned. If the vehicle has not moved the minimum distance within the specified timeframe as required by the county ordinance after the initial inspection, the agency designated to carry out the functions and requirements of this section shall provide notice that the vehicle must be moved the minimum distance within the specified timeframe or the vehicle shall be classified as abandoned and subject to removal as provided by this chapter. In the absence of such an ordinance, a vehicle is "abandoned" if it is left unattended for a continuous period of more than twenty-four hours and it is unlawfully parked on any public highway or other public property or private lands defined as a setback, shoulder, easement, or right of way that is adjacent to or part of a public highway. The mayors of the several counties may designate an agency within their counties to carry out the functions and requirements of this section. For the purposes of this subsection, "agency" means any office, department, or other governmental unit of the county.

(b) The Hawaii public housing authority may cause vehicles that have been abandoned on any public housing property owned, managed, or administered by the Hawaii public housing authority to be taken into custody and disposed of. For the purposes of this subsection, a vehicle is "abandoned" if it is left unattended for a continuous period of more than twenty-four hours after a notice is conspicuously posted on the vehicle that the vehicle is subject to disposal pursuant to this subsection.

(c) At the request of the landowner, a county may cause vehicles to be taken into custody and disposed of that have been abandoned on roads for which dedication to the State or county is pending. For purposes of this subsection, a vehicle is deemed abandoned if it is left unattended for a continuous period of more than twenty-four hours after a notice is conspicuously posted on the vehicle stating that the vehicle is subject to disposal pursuant to this subsection.

290-2 Notice to owner

290-2 Notice to owner.

(a) Upon taking custody of any abandoned vehicle, a written notice shall immediately be sent by registered or certified mail to the legal and registered owner of the vehicle at the address on record at the vehicle licensing division. The notice shall contain a brief description of the vehicle, the location of custody, and intended disposition of the vehicle if not repossessed within ten days after the mailing of the notice, or in the case where the address of the registered owner on record at the vehicle licensing division is an out-of-state address, within twenty business days after the mailing of the notice. A notice need not be sent to a legal or registered owner or any person with an unrecorded interest in the vehicle whose name or address cannot be determined. Absent evidence to the contrary, a notice shall be deemed received by the legal or registered owner five days after the mailing.

(b) The county agency designated by the mayor to carry out the functions and requirements of section 290-1 and this section shall adopt rules pursuant to chapter 91 regarding notification of vehicle owners.

(c) For purposes of this section, "business days" shall exclude Saturdays, Sundays, and state holidays.

290-3 Public auction

290-3 Public auction. If the vehicle is not repossessed within the time limits provided in section 290-2, the vehicle may be disposed of by public auction, through oral tenders, or by sealed bids, after public advertisement has been made once in a newspaper of general circulation; provided that the public auction shall not be held less than five days after the publication has been made. Where no bid is received, the vehicle may be either sold by negotiation, disposed of or sold as junk, or donated to any governmental agency.

290-4 Repossession by person entitled

290-4 Repossession by person entitled. Any person entitled to the vehicle may repossess the same prior to the date of public auction upon payment of all towing, handling, storage, appraisal, advertising, and any other expenses incurred in connection with the vehicle. If the person claiming the vehicle is not the legal or registered owner, the person may repossess the vehicle upon paying the foregoing expenses and posting adequate security not to exceed the value of the vehicle. The security, if not forfeited, shall be returned two years from receipt.

290-5

290-5 Waiver of public auction requirements. The requirements of public auction may be waived when the value of any vehicle is less than $1,000 as determined by the director of finance or authorized representative or the vehicle is:

(1) Missing major components or so materially damaged as to render the vehicle inoperable; and

(2) The registration period has expired for the vehicle. In that event, the vehicle, after public advertisement has been made pursuant to section 1-28.5, may be disposed of in the same manner as when a vehicle is put up for public auction and for which no bid is received.

290-6 Effect of transfer of title

290-6 Effect of transfer of title. The transfer of title and interest by sale hereunder shall be considered a transfer by operation of law and shall be governed by provisions applicable thereto; provided that in the event the certificate of ownership or registration is unavailable, the bill of sale executed by the authorized county officer is satisfactory evidence authorizing the transfer of such title or interest.

290-7 Disposition of proceeds

290-7 Disposition of proceeds. All proceeds from the sale of vehicles shall be deposited into the general fund of the county. The legal or registered owner is entitled to recover the excess of the proceeds from the sale over expenses, if the claim is filed with the county within one year from the execution of the sales agreement. The registered owner shall receive priority of payment to the extent of the registered owner's lien on the vehicle. The county may file a claim within the same period against the legal or registered owner or person with an unrecorded interest for the deficiencies between the sale proceeds and expenses.

290-8 Derelict vehicle

290-8 Derelict vehicle. A vehicle shall be deemed a derelict vehicle by the administrative head of the county agency designated to carry out section 290-1, or by the executive director or a representative of the executive director of the Hawaii public housing authority in the case of a vehicle that has been abandoned on property owned, managed, or administered by the authority, if a part has been removed or material damage to the vehicle has rendered the vehicle inoperable and one of the following conditions exists:

(1) The vehicle is registered for the current registration period and the registered and legal owners no longer reside at the addresses on record with the county director of finance;

(2) The vehicle has been registered for the current or previous registration period and the registered and legal owners disclaim ownership, or a notice of transfer has been submitted by the registered and legal owners and recorded with the director of finance and the new owner has not transferred the title or registration into the new owner's name within thirty days of release;

(3) The vehicle identification number and license plates have been removed so as to nullify efforts to locate or identify the current registered and legal owners;

(4) The vehicle has not been registered for the previous twelve month period; or

(5) The vehicle registration records of the county director of finance contain no record that the vehicle has ever been registered in the county. Prior to authorizing the removal of a derelict vehicle, the administrative head of the county agency designated to carry out section 290-1 or the executive director or a representative of the executive director of the Hawaii public housing authority in the case of vehicles that have been abandoned on property owned, managed, or operated by the authority, shall notify the county chief of police only if the vehicle is reported stolen or otherwise needed for police investigation.

290-9 Disposition of derelict vehicle

290-9 Disposition of derelict vehicle. A derelict vehicle may be immediately disposed of or sold as junk without having to comply with the requirements of section 290-2 and 290-5.

290-10 Disposition of unclaimed vehicle

290-10 Disposition of unclaimed vehicle. Whenever a county ordinance authorizes the police or other agency designated by the mayor of the county to remove and store vehicles, a vehicle removed and stored under authority of such ordinance may be deemed to have been abandoned for the purposes of this chapter if not claimed within twenty-four hours by a person entitled to possession. Such vehicle may be disposed of in accordance with this chapter for the disposition of abandoned vehicles.

290-11 Vehicles left unattended on private and public property; sale or disposition of abandoned vehicles

290-11 Vehicles left unattended on private and public property; sale or disposition of abandoned vehicles §290-11 Vehicles left unattended on private and public property; sale or disposition of abandoned vehicles.

(a) Notwithstanding any other provision of this chapter, any vehicle left unattended on private or public property without authorization of the owner or occupant of the property, may be towed away at the expense of the vehicle owner, by order of the owner, occupant, or person in charge of the property; provided that there is posted a notice prohibiting vehicles to park on the property without authorization. The notice shall clearly state, in not less than two-inch high, light reflective letters on a contrasting background, that the vehicle parked without authorization will be towed and held at the expense of the vehicle owner, as well as the name, address, and a telephone number of the facility where the vehicle will be towed and held. The notice shall be of such size and be placed in a location that is clearly visible to the driver of a vehicle approaching any individual marked or unmarked parking space; provided that where an entire parking lot consists of restricted parking spaces, placement of the notice at each entrance of the parking lot shall suffice.

(b) Towing companies engaged by the owner, occupant, or person in charge of the property shall:

(1) Charge not more than $75 for a tow, or $85 for a tow using a dolly, plus a mileage charge of $7.50 per mile towed and $25 per day or fraction thereof for storage for the first seven days and $20 per day thereafter. In the case of a difficult hookup, a towing surcharge of $30 shall apply. When the tow occurs between the hours of six o'clock p.m. and six o'clock a.m., from Monday through Thursday and from six o'clock p.m. Friday to six o'clock a.m. Monday, the towing company shall be entitled to an overtime charge of $15. The charges listed in this paragraph shall be the only charges tow companies are authorized to charge vehicle owners; provided that if the tow involves an overturned vehicle, the towing company shall be entitled to an additional charge of no more than $35. For purposes of this paragraph, "difficult hookup" shall mean an above or below ground hookup in a multilevel facility;

(2) If the vehicle is in the process of being hooked up, meaning up to the point when the tow truck is driving away, and the vehicle owner appears on the scene, the tow company shall release the vehicle to the vehicle owner at a location that ensures the safety of all persons and property involved, regardless of whether the release occurs on the scene or if the vehicle must be removed from the scene to be safely released; provided that no fee will be charged to the vehicle owner under this paragraph;

(3) Determine the name of the legal owner and the last registered owner of the vehicle from the department of transportation or the county department of finance. The legal owner and the last registered owner shall be notified in writing at the address on record with the department of transportation or with the county department of finance by registered or certified mail of the location of the vehicle, together with a description of the vehicle, within a reasonable period not to exceed fifteen days following the tow. The notice shall state: (A) The maximum towing charges and fees allowed by law; (B) The telephone number of the consumer information service of the department of commerce and consumer affairs; and (C) That if the vehicle is not recovered within thirty days after the mailing of the notice, the vehicle shall be deemed abandoned and will be sold or disposed of as junk. Where the legal owner and the last registered owner have not been notified pursuant to this paragraph, the vehicle may be recovered by the vehicle owner from the towing company without paying tow or storage fees. The notice need not be sent to a legal owner or last registered owner or any person with an unrecorded interest in the vehicle whose name or address cannot be determined. Absent evidence to the contrary, a notice shall be deemed received by the legal owner or last registered owner five days after the mailing;

(4) Provide, when a vehicle is recovered by the vehicle owner the vehicle owner with a receipt stating: (A) The maximum towing charges and fees allowed by law; and (B) The telephone number of the consumer information service of the department of commerce and consumer affairs; and

(5) Accept payment by the vehicle owner for charges under paragraph (1) by cash, credit card, and debit card; provided that no towing company shall direct an individual to use an on-site automated teller machine in lieu of accepting payment by credit card and debit card.

(c) When a vehicle is not recovered within thirty days after the mailing of the notice, it shall be deemed abandoned and the owner of the towing company, or the owner of the towing company's authorized representative, after one public advertisement in a newspaper of general circulation in the State, may negotiate a sale of the vehicle or dispose of it as junk.

(d) The authorized seller of the vehicle shall be entitled to the proceeds of the sale to the extent that compensation is due the authorized seller for services rendered in respect to the vehicle, including reasonable and customary charges for towing, handling, storage, and the cost of the notices and advertising required by this part. Any remaining balance shall be forwarded to the legal owner or last registered owner of the vehicle if the legal owner or last registered owner can be found. If the legal owner or last registered owner cannot be found at the address on record at the department of transportation or the county department of finance, the balance shall be deposited with the State's unclaimed property program administered by the department of budget and finance and shall be paid out to the legal owner or last registered owner of the vehicle if a proper claim is filed therefor within one year from the execution of the sales agreement. If no claim is made within the year allowed, the money shall become a state realization.

(e) The transfer of title and interest by sale under this part is a transfer by operation of law, pursuant to the requirements under section 286-52(f).

(f) Notwithstanding any law or ordinance to the contrary, including subsection (h) and section 46-20.5, any towing company engaged in towing in a county with a population greater than five hundred thousand shall offer towing services to consumers twenty-four hours per day every day of the week. The towing services shall include the release of vehicles kept in storage to an insurer, vehicle owner or a designated representative.

(g) Any person who violates any provision of this section shall be deemed to have:

(1) Engaged in an unfair or deceptive act or practice in the conduct of any trade or commerce within the meaning of section 480-2 and subject to penalties and remedies under chapter 480; and

(2) Furnished services without a license within the meaning of section 487-13 and subject to penalties and remedies under chapter 487.

(h) This section shall not apply to a county that has adopted ordinances regulating towing operations.

(i) As used in this section: "Hooked up" means completely and securely attached and fastened to the tow truck by means of clamps, couplings, straps, tow bars, and other mechanical devices that are specifically designed to prevent the vehicle from dropping off or detaching from the tow truck in any way or otherwise shifting in any manner. "Scene" means the location of the vehicle while it is in the process of being hooked up, or the location where it was hooked up, and anywhere within a fifty foot radius of that location. "Vehicle owner" means any person, other than the towing company, who has possession of or any other interest in the vehicle, including but not limited to the legal or last registered owner of the vehicle, the insurance company insuring the vehicle, the person renting the vehicle pursuant to chapter 437D or any other law authorizing a person to operate the vehicle, or any person in possession of the key or remote keyless ignition system device to the vehicle. "Vehicle parked without authorization" means any vehicle left unattended on private or public property that is not parked in compliance with the notice required by subsection (a). "Vehicle parked without authorization" shall not include:

(1) A vehicle otherwise parked in compliance with the notice required by subsection (a) where the vehicle owner has prepaid for parking and placed a payment receipt, placard, or permit anywhere on or in the vehicle and the payment receipt, placard, or permit is visible from outside the vehicle; or

(2) A vehicle otherwise parked in compliance with the notice required by subsection (a) where the vehicle owner has received authorization from an owner, occupant, or person in charge of the property and placed the placard, permit, or written authorization, if any, anywhere on or in the vehicle and the placard, permit, or written authorization is visible from the outside of the vehicle.

290-12

290-12 Leaving abandoned or derelict vehicles. The registered owner of an abandoned vehicle, as defined in section 290-1, or a derelict vehicle, as defined in section 290-8, found on any roadway, alley, street, way, lane, trail, bridge, or

highway or other public property or on private property without authorization of the owner or occupant shall be fined not more than $1,000; provided that the registered owner shall not be fined if the abandoned or derelict vehicle has been stolen or taken from the registered owner without permission or authorization.

290-13 HRS

290-13 Abandoned vehicles; prohibition on transfer; suspension, revocation, or prohibition of renewal of driver's license; notification.

(a) The county director of finance shall deny issuance of a certificate of registration, in accordance with section 286-51, and prohibit completion of any transfer of ownership, in accordance with sections 286-52 and 286-52.5, of an abandoned vehicle whose registered owner has outstanding charges and fines relating to the disposition of the abandoned vehicle, including for costs related to towing, storage, processing, and disposal.

(b) The county director of finance shall notify the appropriate county examiner of drivers of any registered owners of abandoned vehicles in the county who have outstanding charges and fines relating to the disposition of an abandoned vehicle. The county examiner of drivers shall then suspend, revoke, or prohibit the renewal of the registered owner's driver's license in accordance with sections 286-107 and 286-119.

290-21 II

290-21 Disposition of vehicles by persons in motor [vehicle] repair business. When any person abandons a motor vehicle upon the premises of a motor vehicle repair business, the owner of the business or the owner's authorized representative may sell or dispose of the vehicle in accord with this part.

290-23 Sale or disposition of vehicle

290-23 Sale or disposition of vehicle. When a vehicle is abandoned, the owner of the vehicle repair business, or the owner's authorized representative, after one public advertisement in a newspaper of general circulation in the State, may negotiate a sale of the vehicle or dispose of it as junk.

290-24 Disposition of proceeds

290-24 Disposition of proceeds. The authorized seller of the vehicle shall be entitled to the proceeds of the sale to the extent that compensation is due the authorized seller for services rendered in respect of the vehicle, including reasonable and customary charges for towing, handling, storage, and the cost of the notices and advertising required by this part. Any remaining balance shall be forwarded to the legal or registered owner of the vehicle if the legal or registered owner can be found. If the legal or registered owner cannot be found, the balance shall be deposited with the director of finance of the State and shall be paid out to the legal or registered owner of the vehicle if a proper claim is filed therefor within one year from the execution of the sales agreement. If no claim is made within the year allowed, the money shall become a state realization.

290-25 Effect of transfer of title

290-25 Effect of transfer of title. The transfer of title and interest by sale under this part is a transfer by operation of law; provided that if the certificate of ownership or registration is unavailable, a bill of sale executed by an authorized seller is satisfactory evidence authorizing the transfer of the title or interest.

290-41 [PART III

290-41 Notice to police department. Before a vehicle is towed by any business engaged in towing vehicles, the owner of the towing business or the owner's designated representative shall notify the police department of the county by telephone to determine if the police department of the county has any investigative interest in that vehicle, describing the vehicle, the place from which it is to be towed, and such other information as the police department requires to be furnished. If the vehicle is towed and not claimed within forty-eight hours from the time the vehicle is towed, a written notification, containing the same information, shall immediately be sent to the police department by the owner of the business or the owner's designated representative.

290-42 Disposition of license plates

290-42 Disposition of license plates. Whoever shall abandon a vehicle, or having attained custody of an abandoned vehicle, disposes of, or conveys it as junk shall remove and transmit any license plates on such vehicle to the county agency charged with carrying out the functions and requirements of this chapter. The county agency receiving the license

plates shall provide for the destruction of the plates. Violation of this section shall be a misdemeanor.

290-45 Penalties

290-45 Penalties. Whoever violates any of the provisions of this chapter or any lawful rule adopted by the director of finance under authority of this chapter, for the violation of which no penalty is provided by law, shall be fined not less than $150 nor more than $500.

290-46 HRS

290-46 Abandoned vehicles; repeat offender; penalty. A person who is the registered owner of a vehicle that was deemed abandoned or derelict pursuant to this chapter shall be subject to a fine for each vehicle as follows:

(1) For the third violation, a fine of $750; and

(2) For a fourth or subsequent violation, a fine of $1,000.

Chapter 291

291-1 I

291-1 [NEW] Definitions. As used in this part: "Intoxicating liquor" means the same as the term is defined in section 281-1. "Public street, road, or highway" includes the entire width, including berm or shoulder, of every road, alley, street, way, lane, trail, highway, bikeway, bridge, when any part thereof is open for use by the public, including any bicycle lane, bicycle path, bikeway, controlled-access highway, laned roadway, roadway, or street, as defined in section 291C-1, and any public highway, as defined in section 264-1. "Scenic lookout" includes any area within or adjoining a public street, road, or highway which is intended for use by motorists as a stopping or parking area attendant to the enjoyment of the surrounding scenery or a view.

291-2 [OLD] REPEALED

291-2 [OLD] REPEALED. L 1971, c 150, §3. §291-2 Reckless driving of vehicle or riding of animals; penalty. Whoever operates any vehicle or rides any animal recklessly in disregard of the safety of persons or property is guilty of reckless driving of vehicle or reckless riding of an animal, as appropriate, and shall be fined not more than $1,000 or imprisoned not more than thirty days, or both. [PC 1869, c 26, §1; am L 1907, c 68, §1; RL 1925, §4388; RL 1935, §6280; am L 1941, c 116, §1; RL 1945, §11701; RL 1955, §311-1; HRS §291-1; am L 1976, c 149, §1; am L 1977, c 162, §1; ren L 1986, c 171, §1; am L 1998, c 287, §2]

291-3 REPEALED

291-3 REPEALED. L 1971, c 150, §3. Previous Vol05_Ch0261-0319 Next

291-3.1

291-3.1 Consuming or possessing intoxicating liquor while operating motor vehicle or moped.

(a) No person shall consume any intoxicating liquor while operating a motor vehicle or moped upon any public street, road, or highway.

(b) No person shall possess, while operating a motor vehicle or moped upon any public street, road, or highway, any bottle, can, or other receptacle containing any intoxicating liquor which has been opened, or a seal broken, or the contents of which have been partially removed.

(c) Any person violating this section shall be fined not more than $2,000 or imprisoned not more than thirty days, or both.

291-3.2

291-3.2 Consuming or possessing intoxicating liquor while a passenger in a motor vehicle.

(a) No person shall consume any intoxicating liquor while a passenger in any motor vehicle or on any moped upon any public street, road, or highway.

(b) No person shall possess, while a passenger in a motor vehicle or on a moped upon any public street, road, or highway, any bottle, can, or other receptacle containing any intoxicating liquor which has been opened, or a seal broken, or the contents of which have been partially removed.

(c) Any person violating this section shall be guilty of a petty misdemeanor.

291-3.3

291-3.3 Storage of opened container containing intoxicating liquor or consumption at scenic lookout.

(a) No person shall keep in a motor vehicle, or on a moped when such vehicle or moped is upon any public street, road, or highway or at any scenic lookout, any bottle, can, or other receptacle containing any intoxicating liquor which has been opened, or a seal broken, or the contents of which have been partially removed or fully removed, unless such container is kept in the trunk of the vehicle, or kept in some other area of the vehicle not normally occupied by the driver or passengers, if the vehicle is not equipped with a trunk. A utility or glove compartment shall be deemed to be within the area occupied by the driver and passengers.

(b) No person shall consume any intoxicating liquor at any scenic lookout.

(c) Subsection (a) shall not apply to a recreational or other vehicle not having a separate trunk compartment.

(d) Any person violating this section shall be guilty of a violation.

291-3.4

291-3.4 Exceptions; consumption or possession of intoxicating liquor while a passenger in a motor vehicle, storage of opened container containing intoxicating liquor. Sections 291-3.2 and 291-3.3 shall not apply to a motor vehicle for hire which has been issued a certificate of public convenience or necessity, 1-7 passenger classification by the public utilities commission so long as the motor vehicle has a barrier between the driver and the passengers sufficient to prevent intoxicating liquor from being passed between them and only the passengers behind the barrier consume the intoxicating liquor.

291-4 to 291-4

291-4 to 291-4.5 REPEALED. L 2000, c 189, §§30 to 33.

291-4.6

291-4.6 Driving after license suspended or denied for noncompliance with an order of support; penalties.

(a) No person whose driver's license has been suspended, denied, or otherwise restricted pursuant to section 576D-13 shall operate a motor vehicle upon the public streets, roads, or highways of this State while the person's license remains suspended or denied.

(b) Any person convicted of violating this section shall be sentenced as follows:

(1) For a first offense, or any offense not preceded within a five-year period by a conviction under this section: (A) A term of imprisonment at least three consecutive days but not more than thirty days; (B) A fine not less than $250 but not more than $1,000; and (C) License suspension or denial shall continue until written authorization of compliance is issued by the child support enforcement agency, the office of child support hearings, or the family court; and

(2) For an offense which occurs within five years of a prior conviction under this section: (A) Thirty days' imprisonment; (B) A fine of $1,000; and (C) License suspension or denial shall continue until written authorization of compliance pursuant to section 576D-13 [is] issued by the child support enforcement agency, the office of child support hearings, or the family court.

291-5 to 291-7 REPEALED

291-5 to 291-7 REPEALED. L 2000, c 189, §§34 to 36. Previous Vol05_Ch0261-0319 Next

291-8

291-8 Freight on motor cars; projection of, prohibited. It shall be unlawful for any person driving, operating, or in charge of any motor car or truck used for the transportation of passengers, to carry or permit to be carried any baggage or freight on the motor car or truck in such manner that the same or any part thereof projects beyond the extreme width of the motor car or truck.

291-9 Freight; on running board

291-9 Freight; on running board. No person shall carry on the running board of any motor car or truck used for the transportation of passengers any baggage, freight, or packages which project in any way beyond the running board, or which will cause the doors of the motor car or truck to be blocked so that the passengers therein have not free access to the same.

291-10 Penalty

291-10 Penalty. Any person violating any of the provisions of sections 291-8 and 291-9 shall be fined not less than $5 nor more than $150.

291-11

291-11 Riders and passengers under seven years of age on motorcycles and motor scooters prohibited; penalty.

(a) It shall be unlawful for any driver of a motorcycle or motor scooter to carry as a passenger or to permit to ride thereon any person under the age of seven years.

(b) A driver of a motorcycle or motor scooter shall be permitted to carry as a passenger or permit to ride thereon any person under the age of seven years; provided that the motorcycle or motor scooter:

(1) Has three wheels;

(2) Is powered by an electric motor;

(3) Has a full body enclosed cab; and

(4) Has a seat belt assembly or a child restraint system for the driver and passenger; and the operator and passenger uses the seat belt or child restraint system pursuant to sections 291-11.5 and 291-11.6.

(c) A motorcycle or motor scooter driver who violates this section shall be fined not more than $200.

291-11.5 Child passenger restraints

291-11.5 Child passenger restraints.

(a) Except as otherwise provided in this section, no person operating a motor vehicle on a public highway in the State shall transport a child under ten years of age except under the following circumstances:

(1) If the child is under two years of age, the person operating the motor vehicle shall ensure that the child is properly restrained in a rear-facing child passenger restraint system with harness that meets federal motor vehicle safety standards at the time of its manufacture;

(2) If the child is two years of age or older, but less than four years of age, the person operating the motor vehicle shall ensure that the child is properly restrained in a rear-facing or forward-facing child passenger restraint system with harness that meets federal motor vehicle safety standards at the time of its manufacture;

(3) If the child is four years of age or older but less than ten years of age, the person operating the motor vehicle shall ensure that the child is properly restrained in a child passenger restraint system with harness or booster seat that meets federal motor vehicle safety standards at the time of its manufacture; except as provided in paragraph (4); or

(4) If the child is seven years of age or older but less than ten years of age, the person operating the motor vehicle shall be exempt from restraining the child in a child passenger restraint system with harness or booster seat that meets federal motor vehicle safety standards at the time of manufacture if the child is correctly restrained by a lap and shoulder seat belt assembly; provided that the child is over four feet and nine inches in height.

(b) Operators of the following motor vehicles shall be exempt from the requirements of this section: emergency, commercial, and mass transit vehicles. Further exemptions from this section may be established by the department of transportation pursuant to rules adopted under chapter 91.

(c) Violation of this section shall be considered an offense as defined under section 701-107(5) and shall subject the violator to the following penalties:

(1) For a first conviction, the person shall: (A) Be fined not more than $100; (B) Be required by the court to attend a child passenger restraint system safety class approved by the judiciary's division of driver education; provided that:

(i) The class may include video conferences as determined by the administrator of the division of driver education as an alternative method of education; and (ii) The class shall not exceed four hours; (C) Pay a $50 driver education assessment as provided in section 286G-3; (D) Pay a $10 surcharge to be deposited into the neurotrauma special fund; and (E) Pay up to a $10 surcharge to be deposited into the trauma system special fund if the court so orders;

(2) For a conviction of a second offense committed within three years of any other conviction under this section, the person shall: (A) Be fined not less than $250 but not more than $500; (B) Be required by the court to attend a child passenger restraint system safety class not to exceed four hours in length approved by the judiciary's division of driver education if the person has not previously attended such a class; (C) Pay a $50 driver education assessment as provided

in section 286G-3 if the person has not previously attended a child passenger restraint system safety class approved by the judiciary's division of driver education; (D) Pay a $10 surcharge to be deposited into the neurotrauma special fund; and (E) Pay up to a $10 surcharge to be deposited into the trauma system special fund if the court so orders; and

(3) For a conviction of a third or subsequent offense committed within three years of any other conviction under this section, the person shall: (A) Be fined not less than $500 but not more than $800; (B) Be required by the court to attend a child passenger restraint system safety class not to exceed four hours in length approved by the judiciary's division of driver education if the person has not previously attended such a class; (C) Pay a $50 driver education assessment as provided in section 286G-3 if the person has not previously attended a child passenger restraint system safety class approved by the judiciary's division of driver education; (D) Pay a $10 surcharge to be deposited into the neurotrauma special fund; and (E) Pay up to a $10 surcharge to be deposited into the trauma system special fund if the court so orders.

(d) As used in this section: "Commercial vehicle" means any motor vehicle that is being used for the transportation of persons for hire, compensation, or profit. "Emergency vehicle", "mass transit vehicle", "restrained", and "seat belt assembly" shall have the same meaning as provided in section 291-11.6.

291-11.6

291-11.6 Mandatory use of seat belts, when, penalty.

(a) Except as otherwise provided by law, no person shall operate a motor vehicle upon any public highway unless the person is restrained by a seat belt assembly and all passengers in the front or back seat of the motor vehicle are restrained by a seat belt assembly or are restrained pursuant to section 291-11.5 if they are under ten years of age.

(b) The passengers of the following motor vehicles shall be exempt from the requirements of this section: emergency and mass transit vehicles. Further exemptions from this section may be established by rules adopted by the department of transportation pursuant to chapter 91.

(c) No person shall be guilty of violating this section if:

(1) The person is in a motor vehicle that is not required to be equipped with a seat belt assembly under any federal motor vehicle safety standard unless the vehicle is in fact equipped with a seat belt assembly;

(2) The person not restrained by a seat belt assembly is in a vehicle in which the number of persons exceeds the number of seat belt assemblies available in the vehicle or the number of seat belt assemblies originally installed in the vehicle, whichever is greater; provided that all available seat belt assemblies are being used to restrain passengers;

(3) The person not restrained by a seat belt assembly has a condition that prevents appropriate restraint by the seat belt assembly; provided that the condition is duly certified by a physician, a physician assistant, or an advanced practice registered nurse who shall state the nature of the condition and the reason the restraint is inappropriate;

(4) The person not restrained by a seat belt assembly is operating a taxicab or other motor vehicle used in performing a bona fide metered taxicab service that is regulated under chapter 269 or by county ordinance and is carrying passengers in the vehicle in the course of performing taxicab services; or

(5) Otherwise exempted by rules adopted by the department of transportation pursuant to chapter 91.

(d) This section shall not be deemed to change existing laws, rules, or procedures pertaining to a trial of a civil action for damages for personal injuries or death sustained in a motor vehicle accident.

(e) A person who fails to comply with the requirements of this section:

(1) Shall be subject to: (A) A fine of $45 for each violation; and (B) A surcharge of $10 that shall be deposited into the neurotrauma special fund; and

(2) May be subject to a surcharge of up to $10 that shall be deposited into the trauma system special fund.

(f) As used in this section: "Emergency vehicle" means an ambulance, a firefighting or rescue vehicle, or a police vehicle while on duty. "Mass transit vehicle" means a bus, including a school bus (but excluding a charter or sightseeing service bus) with a gross vehicle weight rating that is over 10,000 pounds, whether publicly or privately owned, that provides service to the general public or provides special service on a regular or continuing basis. "Restrained" means that the seat belt assembly is worn as it was designed and intended to be worn. "Seat belt assembly" means the seat belt assembly that is required to be in the motor vehicle under any federal motor vehicle safety standard issued pursuant to Public Law 89-563, the National Traffic and Motor Vehicle Safety Act of 1966, as amended, unless original replacement seat belt

assemblies are not readily available. If replacement assemblies are not readily available, seat belts of federally approved materials with similar protective characteristics may be used. Replacement seat belt assemblies shall be permanently marked by the belt manufacturer indicating compliance with all applicable federal standards.

291-12 Inattention to driving

291-12 Inattention to driving. Whoever operates any vehicle negligently as to cause a collision with, or injury or damage to, as the case may be, any person, vehicle or other property shall be fined not more than $500 or imprisoned not more than thirty days, or both, and may be subject to a surcharge of up to $100, which shall be deposited into the trauma system special fund.

291-13

291-13 Traffic laws apply to persons driving mopeds. Every person driving a moped upon a roadway shall be granted all of the rights and shall be subject to all of the duties applicable to the driver of a vehicle under this chapter except as to the special provisions of this part and except as to those provisions of this chapter which by their nature can have no application.

291-14

291-14 Pickup trucks; passenger restrictions.

(a) No person shall stand in the bed or load-carrying area of any motor vehicle commonly known as a pickup truck while the vehicle is in operation. No operator of any pickup truck shall operate the vehicle with a passenger seated in the bed or load-carrying area of the vehicle unless:

(1) There is no seating available in the cab of the vehicle;

(2) The side racks of the vehicle are securely attached and the tailboard or tailgate is securely closed;

(3) Every passenger in the bed or load-carrying area of the vehicle is seated on the floor and does not attempt to control unlashed cargo.

(b) This section shall not apply to persons or corporations operating a business or businesses that serve the public, who or which are subject to the jurisdiction, supervision, and regulations prescribed by state agencies or departments nor to their agents or employees when engaged in the business of such persons or corporations.

(c) No operator of any pickup truck may operate the vehicle with any passenger twelve years of age or under in the bed or load-carrying area of the vehicle, unless one of the following applies:

(1) An emergency exists that threatens the life of the passenger being transported in the bed or load-carrying area of the vehicle; or

(2) The vehicle is being operated in parades, caravans, or exhibitions which are officially authorized or otherwise permitted by law.

(d) Any person who violates this section shall be subject to a fine of $25 for each violation; provided that any person who violates subsection (c) shall be subject to a fine of $50 for each separate violation.

(e) As used in this section, "pickup truck" means a light truck that has a cab on the front part of the vehicle covering the driver's seat and an open bed behind the cab designed primarily to transport property or cargo, with sides and a tailgate to retain the contents within the confines of the bed, and has a maximum gross vehicle weight rating (GVWR) of 11,000 pounds or less.

291-15 Trauma system surcharge

291-15 Trauma system surcharge.

(a) In addition to any other civil penalties ordered by the court, a person who violates any offense under this part may be ordered to pay a trauma system surcharge, provided that:

(1) The maximum of which may be $10 if the violator is not already required to pay a trauma system surcharge pursuant to the violation of the offense; and

(2) The maximum of which may be $100 if the violation is an offense under section 291-12.

(b) The surcharge shall not be ordered when the court determines that the defendant is unable to pay the surcharge.

(c) The person shall pay the surcharge to the clerk of the court. The surcharge shall be deposited with the state director of finance who shall transmit the surcharge to the trauma system special fund pursuant to section 321-22.5.

291-16 HRS

291-16 Safe routes to school program surcharge.

(a) In addition to any other civil penalties ordered by the court, a person who violates any provision under this part shall be ordered to pay a safe routes to school program surcharge of $10.

(b) The person shall pay the surcharge to the clerk of the court. The surcharge shall be deposited with the director of finance who shall credit the surcharge to the safe routes to school program special fund established under section 291C■4.

291-17 HRS

291-17 Mobile electronic devices; use while operating a commercial motor vehicle prohibited.

(a) No person with a commercial driver's license shall use a mobile electronic device, including using the mobile electronic device for texting as defined under section 286-231, while operating a commercial motor vehicle, as defined under section 286-2.

(b) The use of a mobile electronic device for the sole purpose of making a "911" emergency communication shall be an affirmative defense to this section.

(c) The following persons shall be exempt from the provisions of subsection (a):

(1) Emergency responders using a mobile electronic device while in the performance and scope of their official duties;

(2) Drivers using two-way radios while in the performance and scope of their work-related duties and who are operating motor carrier vehicles as defined in section 286-201; and

(3) Drivers holding a valid amateur radio operator license issued by the Federal Communications Commission and using a half-duplex two-way radio.

(d) Any person who is convicted of violating subsection (a) shall be fined not more than $2,750 in addition to the driving disqualification of section 286-240(e).

(e) As used in this section: "Emergency responders" means any firefighters, emergency medical technicians, mobile intensive care technicians, emergency management workers, police officers, and federal and state law enforcement officers. "Mobile electronic device" means any handheld or other portable electronic equipment recognized by the citing officer or other witness to be capable of providing wireless or data communications, or both, between two or more persons or of providing amusement, including but not limited to a cellular phone, text messaging device, paging device, personal digital assistant, laptop computer, video game, or digital photographic device, or any device to input, write, send, receive, or read text, but does not include any equipment installed in a commercial motor vehicle for the purpose of providing audio, navigation, or emergency assistance to the operator of the commercial motor vehicle or video entertainment to the passengers in the rear seats of the commercial motor vehicle. A "two-way radio" or Private Land Mobile Radio System as defined by title 47 of the Code of Federal Regulations, part 90, when used for business purposes, shall not be considered to be a "mobile electronic device". "Operate a commercial motor vehicle" means to drive or assume actual physical control of a commercial motor vehicle upon a public way, street, road, or highway in the State. "Texting" means the same as defined under [section] 286-231. "Use or using a mobile electronic device" means holding a mobile electronic device while operating a commercial motor vehicle.

291-18 HRS

291-18 Intentional release of exhaust emissions prohibited; penalty.

(a) No person shall cause a diesel- or gas-powered vehicle to discharge clearly visible smoke, soot, or other exhaust emissions onto another person or motor vehicle when modifications to a vehicle's parts are adjusted to bypass pollution controls, or the vehicle is equipped with defeat devices, including electronic programmers or tuners to adjust fuel and timing settings while also turning off certain emission controls that are designed to inhibit the release of visible exhaust.

(b) This section shall not apply to:

(1) Drag racing events that are organized by government or private entities and either sanctioned by an official hot rod association or held on a track sanctioned by an official hot rod association;

(2) Military events;

(3) Community events; and

(4) Parade events.

(c) Any person who violates this section shall be fined no less than $500.

291-21 II

291-21 REPEALED. L 1971, c 150, §3. Previous Vol05_Ch0261-0319 Next

291-21.3 Definitions

291-21.3 Definitions. As used in this chapter: "Flatrack" means an open-sided platform mounted on a chassis without motive power designed to be drawn by a motor vehicle and used to carry property. "FMVSS" means the Federal Motor Vehicle Safety Standards. "Glazing material" means any glass, plastic, or like material, manufactured for use in or on a vehicle, including but not limited to windshields, window openings, or interior partitions. "Light transmittance" means the ratio of the amount of total visible light, expressed in percentages, which is allowed to pass through the product or material, including the glazing material, to the amount of total visible light falling on the product or material and the glazing material. "Sun screening devices" means products or materials used or designed to be used in conjunction with glazing materials for the purpose of reducing the effects of the sun, including, but not limited to tinting films and perforated sun screening materials, but excluding louvered materials.

291-21.5

291-21.5 Regulation of motor vehicle sun screening devices; penalty.

(a) No person shall operate, permit the operation of, cause to be operated, or park any motor vehicle on a public highway if the glazing material of the motor vehicle:

(1) Does not meet the requirements of the Federal Motor Vehicle Safety Standards 205 in effect at the time of its manufacture; or

(2) Is used in conjunction with sun screening devices not exempted from this section by subsection (e).

(b) No person shall install, mount, adhere, affix, or use any sun screening device or combination of devices in conjunction with the glazing material of a motor vehicle:

(1) That does not meet the requirements of the Federal Motor Vehicle Safety Standards 205 in effect at the time of the glazing material's manufacture except as provided in this section; and

(2) With mirrored or high reflective finishes that produce a red, yellow, amber, or blue appearances as viewed from the exterior of the motor vehicle. Any person who violates this section shall be liable for the removal of any sun screening device applied contrary to this section.

(c) A safety inspection required under section 286-26 shall include a test to ensure that the glazing material and any sun screening devices meet the requirements specified in this section.

(d) Notwithstanding subsection (e), all drivers and passengers of motor vehicles with applied tint shall fully roll down their windows when stopped by a law enforcement officer at a traffic stop. This subsection shall not apply to individuals unable to do so due to physical disability or mechanical failure; provided that the driver communicates or cooperates through other means reasonably available. A driver's or passenger's failure to comply with this subsection may be cited as a noncriminal traffic infraction.

(e) This section shall not apply to:

(1) Rearview mirrors;

(2) Adjustable nontransparent sun visors that are mounted forward of the side windows and are not attached to the glazing material;

(3) Signs, stickers, or other materials that are displayed in a seven-inch square in the lower corner of the windshield farthest removed from the driver or signs, stickers, or other materials that are displayed in a five-inch square in the lower corner of the windshield nearest the driver;

(4) Rear trunk lid handle or hinges;

(5) Window wipers and window wiper motors;

(6) Transparent sun screening film materials that are installed, affixed, or applied along the top edge of the windshield so long as the materials do not encroach upon the AS-1 portion of the windshield as provided by Federal Motor Vehicle Safety Standard 205 or no lower than four inches below the top of the windshield, when measured from the middle point of the bottom edge of the top windshield moulding if no AS-1 markings can be found in the left or right upper margin of the windshield;

(7) Sun screening devices for front side wing vents and windows that, when used in conjunction with the glazing material, have a light transmittance of no less than thirty-five per cent plus or minus six per cent;

(8) Sun screening devices for front side windows and wing windows necessary for driving visibility that are adjacent to the driver and necessary for driving that, when used in conjunction with the glazing material, have a light transmittance of no less than thirty-five per cent plus or minus six per cent;

(9) Rear windows, including the rear windshield on sedans, vans, minivans, trucks, buses, or other motor vehicles; and side windows to the rear of the driver on sedans, vans, minivans, trucks, or buses; provided that the vehicles are equipped with rearview mirrors on both sides;

(10) Privacy drapes, curtains, or blinds, or any combination, installed on the interior of motor homes; or

(11) Transparent sun screening materials, when applied to the AS-1 portion of the windshield, that meet the requirements of Federal Motor Vehicle Safety Standard 205.

(f) Any person who violates this section shall be fined:

(1) No less than $300 and no more than $550 for each separate offense if the person is the owner of the motor vehicle that is in violation; and

(2) No less than $700 and no more than $1,200 for each separate offense if the person or business entity is the installer of any sun screening device that does not meet the requirements of this section. The installer shall also reinstall sun protective devices that comply with this section, free of charge, or reimburse the motor vehicle owner for the cost of installing sun protective devices by another installer that comply with this section. The receipt from the installer in the possession of the person in the motor vehicle at the time of the issuance of the citation shall be prima facie evidence of the identity of the installer. The installer shall issue a certificate to the vehicle owner at the time the sunscreen device is installed certifying that the device complies with law. Failure of an installer to issue the required certificate shall be considered a violation of this section. The certificate shall be stored in the motor vehicle at all times. The absence of the certificate in the vehicle at the time of citation shall constitute prima facie evidence of installer noncompliance.

(g) The department of transportation may adopt rules pursuant to chapter 91 to establish standard criteria or visual references for the enforcement of tint color and reflectivity prohibitions.

291-22

291-22 Regulation of exhaust pipe and muffler. It shall be unlawful for any person to drive upon the public highways any motor scooter, as defined in section 286-2, the exhaust pipe or muffler of which has been so changed from the factory design as to increase the volume or audibility of the explosions within the motor thereof.

291-23 Penalty

291-23 Penalty.

(a) Violation of any of the provisions of section 291-22 shall subject the violator to the following penalties:

(1) For a first violation, the person shall be fined not more than $100;

(2) For a second violation committed within five years of any other violation under section 291-22, the person shall be fined not more than $300; and

(3) For a violation of a third or subsequent offense committed within five years of any other violation under section 291-22, the person shall be fined not more than $900.

291-24

291-24 Motorcycles and mopeds, noisy mufflers; penalty.

(a) Every motorcycle and moped moving under its own power on a public highway shall at all times be equipped with a muffler in constant operation to prevent any excessive or unusual noise and no such muffler or exhaust system shall be equipped with a cutout, bypass, or similar device. No person shall modify the exhaust system of a motorcycle or a moped

in a manner which will amplify or increase the noise emitted by the motor of such motorcycle or moped above that emitted by the muffler originally installed on the motorcycle or moped except a motorcycle or moped that:

(1) Has three wheels;

(2) Is powered by an electric motor;

(3) Has a full body enclosed cab; and

(4) Has a seat belt assembly or a child restraint system for the driver and passenger; shall not be required to be equipped with a muffler.

(b) As used in this section, "muffler" means a device consisting of a series of chambers or baffle plates, or other mechanical design, for the purpose of receiving exhaust gas from the engine of the motorcycle or moped, and being effective in reducing noise.

(c) Whoever violates this section shall be fined not more than $150.

291-24.5 Motor vehicle muffler

291-24.5 Motor vehicle muffler.

(a) No person shall use on a public highway, sell, offer for sale, alter, or install a muffler, including but not limited to a cut-out, bypass, or similar device, that will noticeably increase the noise emitted by a motor vehicle above that emitted by the vehicle as equipped from the factory.

(b) Except as provided in section 291-24.4, any violation of this section shall be enforceable by police officers. Violation of this section shall subject the violator to the following penalties:

(1) For a first violation, or any violation not preceded within a three-year period for a violation under this section, the person shall be fined not more than $150;

(2) For a second violation committed within three years of any other violation under this section, the person shall be fined not more than $350; and

(3) For a violation of a third or subsequent offense committed within three years of any other violation under this section, the person shall be fined not more than $950. Any person who violates the provisions of this section may be issued a summons or citation for the violation.

291-24.6 Motor vehicle alarm systems

291-24.6 Motor vehicle alarm systems.

(a) "Motor vehicle alarm system" means any device that is designed or used for the detection of an unauthorized entry into a motor vehicle, or for alerting others to the commission of an unlawful act, or both, and that emits a sound when activated.

(b) If a motor vehicle alarm system installed in a motor vehicle is activated and emits a sound for more than five continuous minutes, the registered owner of the motor vehicle shall be fined not more than $100; provided that after the third violation within a five-year period, the fine shall be:

(1) $250 for the fourth violation;

(2) $375 for the fifth violation; and

(3) $500 for a sixth or subsequent violation.

(c) An offense under this section shall be a violation for which a police officer shall issue a summons or citation to the registered owner of the vehicle.

291-25

291-25 Lights for motor vehicles, motorcycles, motor scooters, motorized bicycles.

(a) From thirty minutes after sunset until thirty minutes before sunrise, every motor vehicle moving upon any public highway shall carry at the front thereof at least two lighted head lamps which shall display white lights of equal candle power. The head lamps shall be securely mounted, not less than twenty-two inches nor more than fifty-four inches above the road surface when measured to the head lamp center, on a rigid part of the vehicle designed specifically for head lamp installation by the manufacturer, and so arranged, adjusted, and constructed that, when the motor vehicle is fully loaded, any pair of headlights under the conditions of use shall produce a light sufficient to reveal any person, vehicle, or

substantial object on the highway straight ahead of the motor vehicle for a distance of two hundred feet. The light when measured at a distance of one hundred feet directly in front of the motor vehicle, and at a height of sixty inches above the level surface on which the motor vehicle stands, shall not exceed two thousand four hundred apparent candle power, nor shall this candle power be exceeded at a greater height than sixty inches. When measured at a distance of one hundred feet ahead of the motor vehicle and seven feet or more to the left of the axis of the same, and at a height of sixty inches above the level surface on which the motor vehicle stands, the light shall not exceed eight hundred apparent candle power.

(b) During the time specified in subsection (a), every motorcycle, motor scooter, or motorized bicycle while moving on a public highway shall carry, at the front thereof, at least one lighted headlight which shall give a light of such power and so distributed as provided in subsection (a); provided that any motorcycle, motor scooter, or motorized bicycle with a side car or similar contrivance attached shall, in addition to the foregoing required light, carry on the side car or similar contrivance a lighted lamp visible from a point at least two hundred feet ahead of the vehicle. Any headlight required by this subsection shall display white light and shall be securely mounted, not less than twenty-four inches nor more than fifty-four inches above the road surface when measured to the headlight's center on a rigid part of the vehicle designed specifically for installation of a light by the manufacturer. [RL 1945, pt of §11707; am L 1953, c 260, §1; RL 1955, §311-7; HRS §291-25; am L 1985, c 105, §2; am L 2007, c 7, §2] Previous Vol05_Ch0261-0319 Next

291-26 Testing lights

291-26 Testing lights. All devices or adjustments used in connection with lights upon motor vehicles to enable the same to comply with this chapter, shall not be used until approved by the chief of police or the chief of police's authorized subordinate of the county wherein the vehicle is registered. The cost of testing any device shall be borne by the person submitting the same; provided that this cost shall not exceed the sum of $50. No person shall drive, operate, or propel a motor vehicle without an approved device or adjustment upon its headlights unless the headlights have been tested and approved by the chief of police or the chief of police's authorized subordinate of the county wherein the vehicle is registered. The cost of testing shall be borne by the person offering the same for test as provided in this section. [RL 1945, pt of §11707; RL 1955, §311-8; HRS §291-26; gen ch 1985] Previous Vol05_Ch0261-0319 Next

291-27 REPEALED

291-27 REPEALED. L 1974, c 133, §7. Previous Vol05_Ch0261-0319 Next

291-28 Lights for loads

291-28 Lights for loads. In any case where a vehicle is loaded with any material in such a manner that any portion of the load extends toward the rear four feet or more beyond the rear of the bed or body of the vehicle, there shall be displayed at the extreme end of the load, at the times and under the conditions hereinbefore specified, in addition to the ordinary rear or tail light hereinbefore required to be displayed on the vehicle, a red light plainly visible under ordinary atmospheric conditions at least two hundred feet from the rear; provided that at other times while the vehicle is upon the public highway, a red flag or cloth not less than sixteen inches square shall be displayed at the extreme rear of the load. [RL 1945, pt of §11707; RL 1955, §311-10; HRS §291-28] Previous Vol05_Ch0261-0319 Next

291-29 Lights for other vehicles

291-29 Lights for other vehicles. All vehicles other than those specified in section 291-25 shall during the time mentioned in such section when upon the public highway, carry a lighted light on the extreme width of each side so arranged that a light from the lamps shall be visible in every direction at least two hundred feet. [RL 1945, pt of §11707; RL 1955, §311-11; HRS §291-29; am L 1979, c 105, §29] Previous Vol05_Ch0261-0319 Next

291-30 Spotlights

291-30 Spotlights. No spotlight shall be used in any city, town, or village, and no spotlight shall be so used as to shine in the eyes of the drivers of approaching passing vehicles, and when used every spotlight shall be turned off not less than two hundred feet from an approaching vehicle. [RL 1945, pt of §11707; RL 1955, §311-12; HRS §291-30] Previous Vol05_Ch0261-0319 Next

291-31

291-31 Tail lights on vehicles, motorcycles and motor scooters.

(a) From thirty minutes after sunset to thirty minutes before sunrise, at any time while a vehicle, other than a bicycle, motorcycle or motor scooter, is operated on any public highway, there shall be displayed at the rear thereof at least two tail lights, spaced as far apart as practicable, which shall display red lights visible not less than two hundred feet from the rear thereof; provided that vehicles manufactured prior to 1968 originally equipped with a single tail light assembly need only display a single tail light; and where a registration number plate is required by law to be carried on the rear thereof, the same shall be illuminated by a white light in such manner that the registration number thereon can be plainly distinguished at a distance of not less than fifty feet from the rear thereof.

(b) From thirty minutes after sunset to thirty minutes before sunrise, at any time while a motorcycle or motor scooter is operated on any public highway, there shall be displayed at the rear thereof, a tail light which shall display a red light visible not less than two hundred feet from the rear thereof; and if a registration number plate is required by law to be carried on the rear of the motorcycle or motor scooter, the same shall be illuminated by a white light in such manner that the registration number thereon can be plainly distinguished at a distance of not less than fifty feet from the rear thereof. [RL 1945, pt of §11707; RL 1955, §311-13; HRS §291-31; am L 1984, c 125, §1]

291-31.5

291-31.5 Blue lights prohibited for motor vehicles, motorcycles, motor scooters, bicycles, electric foot scooters, and mopeds.

(a) No person shall knowingly operate, affix or cause to be affixed, display, or possess any lamp, reflector, or illumination device that appears to be the color blue, or colors blue and red, upon any motor vehicle, motorcycle, motor scooter, bicycle, electric foot scooter, or moped, except for:

(1) County law enforcement vehicles authorized and approved by the chief of police of the county in which the vehicle is operated;

(2) Department of law enforcement vehicles with blue and red lamps, reflectors, or illumination devices authorized and approved by the director of law enforcement; or

(3) Department of land and natural resources division of conservation and resources enforcement vehicles with blue and red lamps, reflectors, or illumination devices authorized and approved by the chairperson of the board of land and natural resources. This prohibition shall not apply to factory-installed instrument illumination.

(b) Any violation of this section shall be punished by a fine not exceeding $1,000, or by imprisonment not exceeding one year, or both.

291-32 Penalties

291-32 Penalties.

(a) The use or operation of any motor vehicle not equipped with lights in conformity with sections 291-25 to 291-31 upon the public highways is prohibited during the period specified in section 291-25(a).

(b) Whoever violates any of the provisions of this section, or of sections 291-25 to 291-31, shall be fined not more than $10. Each violation shall be deemed a separate offense, and a subsequent violation of the same provision within a one-year period shall be subject to twice the fine imposed upon the prior conviction therefor.

291-33

291-33 Projections on face of wheels prohibited.

(a) There shall not be operated or moved upon any public road, street, or highway within the State, any vehicle, motor vehicle, or other power vehicle the face of the wheels of which are fitted or equipped with flanges, ribs, clamps, cleats, lugs, chains, spikes or other projections, other than rubber blocks, destructive to the road surfaces. This provision applies to all rings or flanges upon guiding or steering wheels of such vehicles but shall not be construed to prevent the use of:

(1) Ordinary detachable tire or skid chains; or

(2) Studded snow tires on either the Mauna Kea access road above Hale Pohaku or on any other road within the Mauna Kea Science Reserve leased to the University of Hawaii.

(b) This section shall not apply to traction engines, tractors, or other vehicles of the tracklaying type when the portions of the movable tracks in contact with the roadway surface present plane surfaces of sufficient area to prevent damage thereto.

291-34

291-34 Size of vehicles; width, height, and length.

(a) Width. No motor vehicle or other power vehicle having an overall width greater than nine feet, including load, shall be operated or moved upon any public road, street, or highway within the State, except as hereinafter provided.

(b) Height. No motor vehicle or other power vehicle having an overall height greater than fourteen feet, including load, shall be operated or moved upon any public road, street, or highway within the State except as hereinafter provided; and provided further that no motor vehicle or other power vehicle shall be operated under or through any bridge or other highway structure if the height of the motor vehicle or other power vehicle exceeds the posted height for the bridge or other highway structure.

(c) Length:

(1) No single motor vehicle or other power vehicle having a total overall length greater than forty-five feet, including load, shall be operated or moved upon any public road, street, or highway within the State, except as provided in this subsection;

(2) No truck-tractor and semitrailer having a total overall length greater than sixty-five feet, including load, shall be operated or moved upon any public road, street, or highway, other than interstate highways and certain qualifying federal aid highways as designated by the director of transportation, within the State, except as provided in this subsection; provided that: (A) For truck-tractors and semitrailers used for agricultural purposes and public utilities maintenance and service vehicles, the total combined length of the truck-tractor and semitrailer or public utility maintenance and service vehicle shall not exceed sixty-five feet in length; (B) The length of the semitrailer shall not exceed forty-eight feet in length; and (C) The length of an articulated bus for public transit purposes shall not exceed eighty-two feet in length, and shall not consist of more than three units;

(3) No combination of motor vehicles or other power vehicles coupled together shall consist of more than two units and no combination of vehicles having a total overall length greater than sixty-five feet, including load, shall be operated or moved upon any public road, street, or highway other than interstate highways and certain qualifying federal aid highways as designated by the director of transportation, within the State, except as provided in this subsection. A truck-tractor and semitrailer shall be regarded as a single unit when determining the number of units in a combination;

(4) No motor vehicle, self-propelled construction or farm equipment, trailer, or semitrailer shall be operated upon any public road, street, or highway within the State if it is carrying or otherwise has projecting to the front or rear, a load, boom, mast, or other projecting structure or attachment unless: (A) With respect to self-propelled construction or farm equipment:

(i) The length of the equipment measured on a horizontal axis, including the projection, is not greater than forty-five feet; (ii) The projection is either held securely in place or is controlled by the driver or an operator; (iii) The projection does not obstruct the driver's vision; (iv) The projection does not impair the driver's ability to control the equipment;

(v) The projection beyond the front tires is at least seven feet above the roadway surface; and (vi) The projection does not extend more than four feet past the extremity of the piece of equipment, or if it extends more than four feet, an escort vehicle is provided by the owner or operator either to the front or to the rear of the projection to call attention to the projection; or (B) With respect to a motor vehicle, or a motor vehicle with attached trailer or semitrailer:

(i) The overall length of a motor vehicle including the projection, is not greater than forty-five feet or the overall length of the motor vehicle with attached trailer or semitrailer, including the projection, is not greater than sixty feet except that this limitation on a motor vehicle with attached trailer or semitrailer, including the projection, shall not be applicable on interstate highways and certain qualifying federal aid highways, as designated by the director of transportation; (ii) The projection is either held securely in place or is controlled by the driver or an operator; (iii) The projection does not obstruct the driver's vision; (iv) The projection does not impair the driver's ability to control the equipment;

(v) The projection beyond the front tires is at least seven feet above the roadway surface; and (vi) The projection does not extend more than four feet past the extremity of the trailer or semitrailer, or, if it extends more than four feet, an escort vehicle is provided by the owner or operator either to the front or to the rear of the projection to call attention to the projection;

(5) The limitations in this subsection upon length shall not apply to vehicles transporting pipe, poles, timbers, reinforcing steel, structural steel, or other objects of a structural nature that cannot be readily dismembered; provided that when

transported by night every vehicle shall be equipped with a sufficient number of clearance lamps upon the extreme ends of any projecting load to clearly mark the dimensions of the load.

291-35

291-35 Gross weight, axle, and wheel loads. No motor vehicle or other power vehicle or combination of those vehicles equipped wholly with pneumatic tires shall be operated or moved upon any public road, street, or highway within the State if the vehicle or combination of vehicles has a total gross weight (including vehicle and load), an axle load, or a wheel load in excess of the limits set forth in this section; provided that the maximum gross weight, axle loads, and wheel loads allowed under this section shall be inapplicable when its application would adversely affect the receipt of federal funds for highway purposes; provided further that no vehicle or combination of vehicles shall be operated on or moved over any bridge or other highway structure if the total gross weight, including vehicle and load, exceeds the posted maximum gross load limitation for the bridge or other highway structure.

(1) The total gross weight, in pounds, imposed on any public road, street, or highway within the State by any group of two or more consecutive axles, on a vehicle or combination of vehicles shall not exceed the following when the distance between the first and last axles of the group under consideration is: (A) Forty inches or less, the weight imposed shall not exceed twenty thousand pounds; and (B) More than forty inches but no more than ninety-six inches, the weight imposed shall not exceed thirty-four thousand pounds. This grouping of two consecutive axles shall be known as tandem axle.

(2) The total gross weight, in pounds, imposed on any public road, street, or highway within the State by any group of two or more consecutive axles, on a vehicle or combination of vehicles shall not exceed that resulting from application of the formula: W = 500 (LN/(N-1) + 12N + 36) when the distance between the first and last axles of the group under consideration is over ninety-six inches and where W = maximum weight in pounds carried on any group of two or more axles computed to the nearest five hundred pounds, L = Distance in feet between the extremes of any group of two or more consecutive axles, to the nearest foot, and N = Number of axles in the group under consideration; provided that two consecutive sets of tandem axles may carry a gross load of thirty-four thousand pounds each providing the overall distance between the first and last axles of the consecutive sets of tandem axles is thirty-six feet or more and provided also that the overall gross weight does not exceed eighty thousand pounds.

(3) No vehicle or combination of vehicles shall be used or operated on any public road, street, or highway within the State with: (A) A load upon any single or tandem axle or combination of axles that exceeds the carrying capacity of the axles specified by the manufacturer; or (B) A total weight in excess of its designed capacity as indicated by its designed gross vehicle weights or gross combination weights.

(4) The total gross weight imposed upon the public road, street, or highway by any single axle shall not exceed twenty thousand pounds. For the purpose of this section, axles placed in the same transverse plane and spaced forty inches or less apart shall be considered as one axle.

(5) The total gross weight imposed upon the public road, street, or highway by any one wheel, either single or dual mounting, shall not exceed ten thousand pounds.

(6) The director of transportation, in the case of state highways, or the county engineer, in the case of county roads and streets, may place and maintain signs to limit the gross weight of a vehicle or combination of vehicles traveling over a bridge or other highway structure in the interest of public safety when it is determined through engineering investigation and analysis that the theoretical load carrying capacity of the bridge or structure is less than the maximum gross vehicular weight allowed by this chapter. In determining the weight limits and in posting the weight limit signs, the director or the county engineer need not comply with rulemaking provisions of chapter 91; provided that if any person objects to the weight limits, the person may object to the rule as provided in chapter 91.

291-35.1 Regulation of bumper height

291-35.1 Regulation of bumper height. Maximum bumper heights of motor vehicles shall be determined by the weight category of gross vehicle weight rating (GVWR) as measured from a level surface to the highest point on the bottom of the bumper. Maximum heights are as follows: Gross Vehicle Weight Rating Front Rear Passenger vehicles 22 inches 22 inches 4,500 lbs. and under 29 inches 29 inches 4,501 lbs. to 7,500 lbs. 33 inches 33 inches 7,501 lbs. to 10,000 lbs. 35 inches 35 inches For any vehicle with bumpers or attaching components which have been modified or altered from the original manufacturer's design to conform with the maximum bumper height requirements of this section, the bumper height shall be measured from a level surface to the bottom of the bumper. The vehicle frame rail, measured from a level surface to the bottom of the vehicle frame rail, shall not exceed the attached

bumper height. The maximum distance between vehicle body to vehicle frame rail shall not exceed three inches. The distance between the vehicle body to vehicle frame rail shall be measured from the vehicle body mount seat to the vehicle frame rail mount seat. "Bumper", for purposes of this section means a horizontal load bearing protective system installed on a motor vehicle which is constructed of sturdy materials that will not shatter or split upon moderate impact and provides adequate protection against damages to the front and rear external lighting and reflective devices, hood, trunk, doors, painted surfaces, cooling system, exhaust system, and other components during a low speed impact. Any vehicle that exceeds the Vehicle Equipment Safety Commission - Regulation 12 recommended bumper height, based on the gross vehicle weight rating, shall be equipped with an audible reverse warning system. The audible reverse warning system is not required on any open cab vehicle with a distance of less than four feet from the rear of the driver's seating position to the rear most part of the vehicle body.

291-36 Exceptions

291-36 Exceptions.

(a) The director of transportation, in the case of state highways, or the county engineer, in the case of county roads and streets, may, upon application in writing, issue a written permit authorizing the applicant to operate or move a vehicle or combination of vehicles, self-propelled construction or farm equipment, marine terminal equipment as referenced in section 286-26(h)(3), or special mobile equipment of dimensions or weights, including loads or both, which exceed the limits set in sections 291-34 and 291-35.

(b) The director of transportation, in the case of state highways, or the county engineer, in the case of county roads and streets, may issue a permit authorizing the applicant to operate vehicles or combinations of vehicles which exceed the limits set forth in section 291-35 when carrying products from the place where they are harvested or stored to the place where they are processed or used.

(c) The application for any such permit shall specifically describe the vehicle or combination of vehicles, the self-propelled construction or farm equipment, the marine terminal equipment as referenced in section 286-26(h)(3), the load to be operated or moved, the particular highways over which the permit to operate is requested, and whether such permit is requested for a single trip or for continuous operation.

(d) The director of transportation or county engineer may if the director of transportation or county engineer determines that adequate precautions will be taken to protect persons and property issue the permit and may in the permit limit the number of trips, establish seasonal or other time limitations during which the permit is valid, prescribe conditions as to route, equipment, speed, escort vehicles, safety measures, or otherwise limit or prescribe conditions of operation under such permit to assure against injury to person and undue damage to the road foundations, surfaces, or structures. The issuing authority may also require such undertaking or other security as may be deemed necessary to protect the highways and bridges from damage, or to provide indemnity for any injury resulting from such operation. The permit shall be valid for the period specified or unless sooner revoked by the issuing authority.

(e) Every such permit shall be carried in the vehicle or combination of vehicles, self-propelled construction or farm equipment, or marine terminal equipment as referenced in section 286-26(h)(3), to which it refers and shall be open to inspection of any peace officer or traffic officer or employee charged with the care or protection of the highways; provided that in the case of annual permits, this requirement may be met where a copy of the permit is carried in the vehicle, and the original permit is readily available for inspection from the operator's offices in the county of issuance.

(f) The owner of any vehicle or combination of vehicles, self-propelled construction or farm equipment, or marine terminal equipment as referenced in section 286-26(h)(3) found operating in violation of the terms or conditions of any permit or over sections of the highway not covered by the permit shall be subject to the penalties provided in section 291-37.

(g) The restrictions of sections 291-34 and 291-35 shall not apply to the operation of motor vehicles on roads now under the control of the counties where a private individual or corporation actually maintains the county road or roads under an agreement in writing filed with the respective county or city council. The agreement shall also provide that the individual or corporation shall repair all damages caused to such roads by vehicles or other self-propelled equipment belonging to or under the control of the individual or corporation and upon failure of the individual or corporation to repair such road or roads as provided in such agreement, the county may repair such damages and charge the cost thereof to and collect the same from the individual or corporation.

(h) Nothing in this chapter shall prevent motor vehicles with a width of greater than nine feet, including load, from crossing any public road, street, or highway within the State.

(i) No provision herein shall be so construed as to prevent the passage of ordinances by any county which impose restrictions more severe in nature.

(j) A fee shall be charged for each permit issued by the director of transportation as follows:

(1) Single trip permit for loads less than 1.35 times the allowable load or less than 14 feet in width..... $ 5.

(2) Continuous trip permit for loads less than 1.35 times the allowable load or less than 14 feet in width..... $10.

(3) Overweight permit in excess of 1.35 times the allowable load..... $25.

(4) Oversize permit for width in excess of 14 feet.... $25. Such fee shall be deposited in the State's account for special funds for highways.

(k) Notwithstanding any law to the contrary, no permit shall be required for any vehicle or combination of vehicles used in agricultural operations or activities which only crosses any public road, street, or highway within the State at locations approved by the director of transportation, in the case of state highways, or the county engineer, in the case of county roads and streets; provided that:

(1) The owners of vehicles transporting agricultural products and equipment shall construct and maintain structurally suitable pavement sections at each crossing;

(2) These owners shall provide for the cleaning and removal of all debris and mud generated by their operation;

(3) The maximum length of vehicles transporting agricultural products shall be limited to not more than eighty feet; and

(4) The maximum length of vehicles, including load, used in transporting agricultural equipment shall be limited to not more than one hundred feet.

291-37 Penalties

291-37 Penalties.

(a) Any person who omits to perform any of the acts required by, or who commits any of the acts prohibited by, sections 291-2 to 291-33, or any rules adopted to enforce those sections, shall be guilty of a violation and shall be fined not less than $25 nor more than $1,800, except as otherwise provided. Any person who omits to perform any of the acts required by, or who commits any of the acts prohibited by, section 291-34, 291-35, or 291-36 shall be fined in accordance with the following:

(1) For excess weight of up to 100 pounds, the minimum fine for a violation shall be $250;

(2) For excess weight greater than 100 pounds, the fine for a violation shall be an additional $0.11 per pound. Example: A truck is cited for weighing 15,000 pounds in excess of the gross weight limit; the fine is $250 + (15,000-100)*$0.11 = $1,889; and

(3) The fines in paragraphs (1) and (2) shall be applied to each axle and wheel group violation in addition to a gross vehicle weight violation as applicable. If the excess dimension is: The fine shall be: Up to 5 feet $ 50 Over 5 feet and up to 10 feet 100 Over 10 feet and up to 15 feet 150 Over 15 feet 200 For the purposes of this section, "person" means the driver of the vehicle unless the driver is an employee in the scope and course of employment, in which case "person" means the employer of the driver. In the case of the transportation of a sealed container or transportation by flatrack, "person" means the individual or company the cargo is consigned to or the individual or company located in the State shipping the cargo. The consignee or the shipper shall not be cited if the power units' drive axle group is overweight, and the weight is not more than that allowed for a tandem axle with any applicable tolerances. All penalties imposed and collected for violations of sections 291-33 to 291-36 shall be paid into the state highway fund. The department of transportation shall institute a system where the fine, based on the provisions in this subsection, may be mailed in when the citation or penalty is not to be contested. This system shall include an ability for the owner of the vehicle or combination of vehicles to request the operator be held harmless and the citation be transferred to that owner of the vehicle or combination of vehicles.

(b) When a vehicle or combination of vehicles including load is found to be in violation of any provision contained in sections 291-33 to 291-36, and the operator of such vehicle or combination of vehicles is a subordinate or employee, the courts shall take judicial notice of this relative subordinate position and, conditions warranting, hold the operator harmless and impose the applicable penalties against the owner of the vehicle or combination of vehicles. The owner of the vehicle or combination of vehicles shall mean persons or officers of firms or corporations, who owns the transporting vehicle or who operates the vehicle under a bona fide lease agreement.

291-38 REPEALED

291-38 REPEALED. L 1976, c 45, §3. Previous Vol05_Ch0261-0319 Next

291-39 Enforcement

291-39 Enforcement.

(a) For the purpose of the enforcement of sections 291-33 to 291-36, the powers of police officers are conferred upon the director of transportation and any motor carrier safety officer. Every police officer and motor carrier safety officer shall enforce compliance with sections 291-33 to 291-36, with the technical assistance of the department of transportation. In the enforcement of sections 291-34 to 291-36 such officers may require the driver of a vehicle to stop and submit to:

(1) The measurement of the dimensions of the vehicle and load;

(2) The examination of the certificate of weight; and

(3) The weighing of vehicles and load by means of either wheel load weighers, axle load scales, or vehicle scales, if the scales are within two miles of the place where the vehicle is stopped.

(b) The department of transportation is authorized to provide the necessary technical assistance to police officers and motor carrier safety officers to determine compliance or noncompliance with sections 291-34 to 291-36. Whenever the department of transportation determines that the size or weight of a vehicle does not comply with sections 291-34 to 291-36, the police officers or motor carrier safety officers may require the driver to move the vehicle to a suitable place and to remain there until the vehicle and load are brought into compliance with the limits prescribed by this chapter. If any of the load must be removed from the vehicle in order to comply with sections 291-34 to 291-36, the removal and all risks caused by or resulting from the removal shall be the responsibility of the owner or operator of the vehicle.

(c) Police officers and motor carrier safety officers shall issue citations to any person violating sections 291-33 to 291-36.

(d) The driver of any vehicle who fails or refuses to stop and submit the vehicle and load to measuring or weighing when directed by a police officer or motor carrier safety officer or who fails or refuses to otherwise comply with this section, shall be fined as provided in section 291-37.

291-51 III

291-51 Definitions. As used in this part, the following terms have the following meanings: "Access aisle" means the area that is adjacent to a parking space reserved for a person with a disability and that is to be used exclusively by that person for the purpose of entering and exiting a vehicle. "Certificate of disability" means a medical statement issued by a licensed practicing physician, physician assistant, or advanced practice registered nurse that verifies that a person is disabled, limited, or impaired in the ability to walk. " Disability and communication access board" means the disability and communication access board established by chapter 348F. "Disability parking permit" means a removable windshield placard, special license plate, temporary removable windshield placard, or disabled paid parking exemption permit. "Disabled paid parking exemption permit" means a permit to be displayed on a dashboard or contained elsewhere on the vehicle, a code, or a two-sided, hanger style placard that indicates that the individual to whom the permit, code, or placard is issued pursuant to this part is licensed to drive a motor vehicle and not able to reach or operate a parking meter or unattended pay station because of a physical disability. "International symbol of access" means the symbol adopted by Rehabilitation International in 1969 at its Eleventh World Congress on Rehabilitation of the Disabled. "Invalid disability parking permit" means an expired or voided removable windshield placard, temporary removable windshield placard, special license plates, or disabled paid parking exemption permit. "Issuing agency" means the disability and communication access board. "Parking space reserved for persons with disabilities" means a public or private parking space, including the access aisle, designated for the use of a person with a disability that is designed and constructed in compliance with the requirements of the federal Americans with Disabilities Act of 1990, as amended, and related rules and guidelines, and is marked with a sign designating the parking space as reserved for persons with disabilities. "Person with a disability" means a person with a disability that limits or impairs the ability to walk, and who, as determined by a licensed practicing physician, physician assistant, or an advanced practice registered nurse:

(1) Cannot walk two hundred feet without stopping to rest, and who has been diagnosed with: (A) An arthritic, neurological, orthopedic, renal, vascular, or oncological condition; (B) Lung disease to such an extent that the person's forced (respiratory) expiratory volume for one second, when measured by spirometry, is less than one liter, or the arterial oxygen tension is less than sixty mm/hg on room air at rest; or (C) A cardiac condition to the extent that the person's functional limitations are classified in severity as Class III or Class IV according to the standards set by the American

Heart Association; and

(2) Because of a condition identified in paragraph (1): (A) Cannot walk two hundred feet under the person's own power without stopping to rest; (B) Cannot walk without the use of, or assistance from, a brace, cane, crutch, another person, prosthetic device, wheelchair, or other assistive device; or (C) Uses portable oxygen. "Private entity" means a private owner or lessee of a parking facility or site where invitation to the general public is expressed or implied. "Private parking" means a privately owned parking facility or site where invitation to the general public is expressed or implied. "Public entity" means the State or any of its counties. "Public parking" means a parking facility or site under state or county jurisdiction. "Removable windshield placard" means a two-sided, hanger-style placard issued under this part to a person with a disability who presents a certificate of disability that verifies that the applicant's disability is expected to last for at least six years. "Sign designating the parking space as reserved for persons with disabilities" means a sign which contains:

(1) The words, "Reserved Parking";

(2) The international symbol of access;

(3) Words indicating that the space is reserved for parking by persons with disabilities who have valid placards or special license plates; and

(4) The maximum fine for parking illegally in the space. "Special license plate" means a license plate that displays the international symbol of access:

(1) In a color that contrasts to the background; and

(2) In the same size as the letters or numbers on the plate. "Temporary removable windshield placard" means a two-sided, hanger-style placard issued under this part to a person with a disability who presents a certificate of disability that verifies the person's disability in monthly increments, which shall not exceed six months.

291-51.3 Bill

291-51.3 Reimbursement to counties; agreement with counties to provide permits . The State shall reimburse the counties for the unit cost of providing a removable windshield placard or a temporary removable windshield placard on behalf of the State. The reimbursement rate paid to the counties for providing removable windshield placards, temporary removable windshield placards, special license plates, and identification cards shall be established pursuant to section 291-56; provided that a county may retain any fees charged for a transaction.

291-51.4 Bill

291-51.4 Fraudulent verification of an applicant as a person with a disability; penalty. A physician, physician assistant, or advanced practice registered nurse who fraudulently verifies that an applicant is a person with a disability to enable the person to represent to the issuing agency that the person is qualified to obtain a disability parking permit shall be guilty of a petty misdemeanor. Each fraudulent verification shall constitute a separate offense.

291-51.5 Special license plates

291-51.5 Special license plates. Upon application by a person with a disability, the issuing agency shall issue special license plates for the vehicle registered in the applicant's name if the vehicle is primarily used to transport that person. The fee for the issuance of special license plates shall not exceed the fee charged for similar license plates for the same class vehicle.

291-51.6 Issuance of temporary removable windshield placards

291-51.6 Issuance of temporary removable windshield placards. The issuing agency shall issue one temporary removable windshield placard to each applicant who requests and presents a certificate of disability that verifies the duration of the applicant's disability in monthly increments, which shall not exceed six months, and upon payment of a fee to the issuing agency. Upon request of an applicant who was previously issued one temporary removable windshield placard, a second temporary removable windshield placard shall be issued to that applicant upon verification of the applicant's disability.

291-51.7 Reciprocity

291-51.7 Reciprocity. The State, counties, and private property owners shall recognize disability parking permits that have been issued by authorities of other states and countries, for the purpose of identifying persons permitted to:

(1) Utilize parking spaces reserved for persons with disabilities; or

(2) Exercise other parking privileges afforded by the State, counties, or private property owners for the benefit of persons with disabilities.

291-52 Issuance of removable windshield placard

291-52 Issuance of removable windshield placard. The issuing agency shall issue one removable windshield placard to each applicant who presents a certificate of disability that verifies that the applicant's disability is expected to last for at least six years. The removable windshield placard shall expire six years after the date of its issuance.

291-52.2 HRS

291-52.2 Issuance of a disabled paid parking exemption permit. The issuing agency shall issue one disabled paid parking exemption permit to each applicant who presents a certificate of disability that verifies that the applicant is licensed to drive a motor vehicle and that the applicant cannot reach or operate parking meters or unattended pay stations because of the applicant's physical disability. The disabled paid parking exemption permit shall have the same expiration as the removable windshield placard, temporary removable windshield placard, or special license plates issued to the applicant.

291-52.5 Bill

291-52.5 Issuance of identification card. The issuing agency shall issue one identification card at the same time it issues a disability parking permit to a person with a disability.

291-52.6 Bill

291-52.6 Replacement of a removable windshield placard, disabled paid parking exemption permit, or identification card. A removable windshield placard, temporary removable windshield placard, disabled paid parking exemption permit, or identification card shall be replaced upon:

(1) Submittal to the issuing agency of a completed application for a removable windshield placard, temporary removable windshield placard, disabled paid parking exemption permit, or identification card to the issuing agency; and

(2) Payment of a fee.

291-52.7 Bill

291-52.7 Fraudulent manufacture or alteration, sale, issuance, or use of disability parking permits and identification cards. Any person who fraudulently manufactures or alters a disability parking permit or identification card for personal use, sale, or issuance to another person to circumvent the issuance requirements of this part, or any person who uses a fraudulently manufactured or altered disability parking permit or identification card to circumvent the issuance requirements of this part, shall be guilty of a misdemeanor. The fraudulent manufacture or alteration of each disability parking permit and of each identification card for personal use, sale, or issuance or is otherwise used in violation of this section shall constitute a separate offense.

291-53 Nontransferability; penalty

291-53 Nontransferability; penalty. The disability parking permit shall not be used by anyone other than the person with a disability to whom it is issued unless it is being used in connection with the transport of the person with a disability. An unauthorized person using the disability parking permit to obtain the special parking privileges authorized under this part or otherwise afforded by the State or counties, shall be guilty of a traffic infraction under chapter 291D and fined no less than $250 nor more than $500.

291-53.2 HRS

291-53.2 Sale or purchase. Only a state or county issuing agency may offer for sale a disability parking permit and no person may purchase a disability parking permit except from a state or county issuing agency. Any person who sells or purchases a disability parking permit in violation of this section shall be guilty of a misdemeanor. The sale or purchase of each disability parking permit in violation of this section shall constitute a separate offense.

291-53.3 HRS

291-53.3 Confiscation. A disability parking permit may be confiscated by a law enforcement officer or a commissioned volunteer enforcement officer of a county law enforcement agency for:

(1) Fraudulent manufacture or alteration pursuant to section 291-52.7;

(2) Any unauthorized use pursuant to section 291-53;

(3) Display of an invalid disability parking permit; or

(4) Selling or purchasing a disability parking permit pursuant to section 291-53.2. For the purposes of this section, "commissioned volunteer enforcement officer" means a civilian volunteer commissioned by a county chief of police to act as an enforcement officer for limited purposes as determined by the county chief of police.

291-54

291-54 Display of removable windshield placards; temporary removable windshield placards; and disabled paid parking exemption permit . The placard or disabled paid parking exemption permit shall be displayed in such a manner that it may be viewed from the front and rear of the vehicle by hanging it from the front windshield rearview mirror of a vehicle when the placard or disabled paid parking exemption permit is in use. If the design or condition of the rearview mirror, or the design or condition of the placard or disabled paid parking exemption permit precludes hanging the placard or disabled paid parking exemption permit in a secure manner, the placard or disabled paid parking exemption permit shall be displayed on the dashboard.

291-55 Metered parking privileges

291-55 Metered parking privileges. [Section effective until June 30, 2021. For section effective July 1, 2021, see below.] Any vehicle displaying special license plates, a removable windshield placard, or a temporary removable windshield placard issued under this part shall be permitted to park, without payment of metered parking fees, in any metered parking space for a maximum of two-and-a-half hours or the maximum amount of time the meter allows, whichever is longer. All parking fees not specifically exempted under this part shall remain in effect.

291-56

291-56 Rules . The disability and communication access board shall adopt rules under chapter 91 to carry out the purposes of this part, including rules for:

(1) The issuance, renewal, confiscation, revocation, and suspension of disability parking permits;

(2) Decertification, reciprocity, and the replacement of disability parking permits and identification cards;

(3) The design of disability parking permits and identification cards;

(4) The establishment of transaction fees for removable windshield placards, temporary removable windshield placards, and disabled paid parking exemption permits ;

(5) Signage and marking of parking spaces;

(6) Reimbursement rates to the counties; and

(7) Penalties.

291-57 Parking spaces reserved for persons with disabilities; penalties

291-57 Parking spaces reserved for persons with disabilities; penalties.

(a) Any person who uses a parking space reserved for persons with disabilities who:

(1) Fails to properly display a disability parking permit;

(2) Displays an invalid disability parking permit;

(3) Uses a disability parking permit that was not issued to that person or to any passengers occupying the vehicle in the parking space; or

(4) With or without a disability parking permit: (A) Parks in an access aisle; or (B) Obstructs the ingress or egress to a parking space reserved for a person with a disability, shall be guilty of a traffic infraction under chapter 291D, be fined not less than $250 nor more than $500, and pay any costs incurred by the court related to assessing the fine; provided that a person with a disability who has been issued a valid disability parking permit that is currently in effect, and who has failed to display the disability parking permit while parking in a space reserved for persons with disabilities, shall pay a fine of not less than $25 nor more than $100 and any costs incurred by the court related to assessing the fine. In addition to any other applicable penalties and fines, any person who violates this subsection shall be assessed an additional state reserved parking space enforcement fine of $100; provided that a person with a disability who has been issued a valid disability parking permit that is currently in effect, and who has failed to display the disability parking permit while parking

in a space reserved for persons with disabilities, shall not be assessed the state reserved parking space enforcement fine. The state reserved parking space enforcement fine shall be enforced and collected by the district courts. Fifty per cent of all fines collected shall be deposited into the state general fund and fifty per cent of all fines collected shall be deposited into the safe routes to school program special fund established pursuant to section 291C-4.

(b) Any person who uses a parking space reserved for persons with disabilities and refuses or fails to present an identification card issued under this chapter or the rules adopted thereunder to an enforcement officer upon request shall be guilty of a traffic infraction under chapter 291D, be fined not less than $250 nor more than $500, and pay any costs incurred by the court related to assessing the fine. In addition to any other applicable penalties and fines, any person who violates this subsection shall be assessed an additional state reserved parking space enforcement fine of $100. The state reserved parking space enforcement fine shall be enforced and collected by the district courts. Fifty per cent of all fines collected shall be deposited into the state general fund and fifty per cent of all fines collected shall be deposited into the safe routes to school program special fund established pursuant to section 291C-4.

(c) Any citation issued under this chapter may be mailed to the violator pursuant to section 291C-165(b).

291-58 Bill

291-58 Requirement to provide parking for persons with disabilities; penalty. Beginning July 1, 2002, any public or private entity that provides a parking space reserved for persons with disabilities shall comply with this part and any administrative rules adopted under this part. A private entity that fails to comply with this section shall be fined not less than $250 nor more than $500 for each separate offense. Each day of violation shall constitute a separate offense. Any action taken to impose or collect any penalty provided for in this section shall be considered a civil action.

291-59 Bill

291-59 Enforcement. Notwithstanding any law to the contrary, and in addition to any other authority provided by law that is not inconsistent with the purposes of this part:

(1) A law enforcement officer may access the property of a private entity to enforce the provisions of this part; and

(2) A commissioned volunteer enforcement officer may access the property of a private entity during normal business hours of the entity to enforce the provisions of this part; provided that the private entity's parking lot contains a parking space reserved for persons with disabilities.

291-60 HRS

291-60 Costs. Beginning July 1, 2023, all costs associated with the statewide parking for persons with disabilities program shall be paid using moneys appropriated from the accessible parking special account established pursuant to section 348F-7.5.

291-61 HRS

291-61 Requirement to provide parking for persons with disabilities; ordinances to enforce.

(a) Each county may adopt ordinances to:

(1) Enforce the design and construction requirements of this part, and any administrative rules adopted pursuant to this part, pertaining to the provision of parking spaces and access to parking spaces reserved for persons with disabilities, including but not limited to the number, location, design, and signage of these parking spaces; and

(2) Establish penalties for failure to comply with ordinances adopted pursuant to this section.

(b) An official appointed by a county may enter the property of a place of public accommodation to enforce any applicable ordinances adopted pursuant to this section.

(c) For the purposes of this section, "place of public accommodation" has the same meaning as in section 489-2.

291-71 HRS

291-71 Designation of parking spaces for electric vehicle charging systems.

(a) Places of public accommodation with at least one hundred parking spaces available for use by the general public shall have at least one parking space equipped with an electric vehicle charging system located anywhere in the parking structure or lot; provided that no parking space designated for electric vehicles shall displace or reduce accessible stalls required by the Americans with Disabilities Act Accessibility Guidelines; provided further that no vehicle shall be permitted

to park in a parking space equipped with an electric vehicle charging system while not actively charging. Spaces shall be designated, clearly marked, and the exclusive designation enforced. Owners of multiple parking facilities within the State may designate and electrify fewer parking spaces than required in one or more of their owned properties; provided that the scheduled requirement is met for the total number of aggregate spaces on all of their owned properties. Nothing in this section shall prohibit the owners of parking structures or lots from charging a fee for the use of an electric vehicle charging system.

(b) Effective January 1, 2022, each new electric vehicle charging system installed or placed in service pursuant to this section shall be at least a level 2 charging station that is network-capable.

(c) Electric vehicle charging systems shall be maintained in working order.

(d) As used in this section: "Electric vehicle" means:

(1) A neighborhood electric vehicle as defined in section 286-2;

(2) A vehicle, with four or more wheels, that draws propulsion energy from a battery with at least four kilowatt hours of energy storage capacity that can be recharged from an external source of electricity; or

(3) A fuel cell electric vehicle. "Electric vehicle charging system" means a system that:

(1) Is capable of providing electricity from a non-vehicle source to charge the batteries of one or more electric vehicles;

(2) Meets recognized standards, including standard SAE J1772 of SAE International; and

(3) Is designed and installed in compliance with article 625 of the National Electrical Code; provided that the term shall not include facilities or systems for refueling the hydrogen storage tank of a fuel cell electric vehicle. "Fuel cell electric vehicle" means a zero-emission electric vehicle that uses a fuel cell to convert hydrogen gas and oxygen into electricity that is used in a vehicle powertrain for propulsion. "Level 2 charging station" shall have the same meaning as "alternating current Level 2 charging station" in section 269-72. "Place of public accommodation" has the same meaning as that provided in section 489-2.

291-72 HRS

291-72 Parking spaces reserved for electric vehicles and electric vehicle charging systems; penalties.

(a) Any person who parks a non-electric vehicle in a space designated and marked as reserved for electric vehicles or parks any vehicle in a parking space equipped with an electric vehicle charging system while not actively charging shall:

(1) Be guilty of a traffic infraction under chapter 291D;

(2) Be fined not less than $50 nor more than $100; and

(3) Pay any costs incurred by the court related to assessing the fine; provided that a fine shall not be imposed on a person who parks in a space designated and marked as reserved for electric vehicles if the electric vehicle charging system is visibly inoperable or broken, as determined by an enforcement officer upon visual inspection. The enforcement officer shall document the inoperability of the charging system in their report. In addition to any other applicable penalties and fines, any person who violates this subsection shall be assessed an additional state reserved parking space enforcement fine of $50. The state reserved parking space enforcement fine shall be enforced and collected by the district courts. Fifty per cent of all fines collected shall be deposited into the state general fund and fifty per cent of all fines collected shall be deposited into the safe routes to school program special fund established pursuant to section 291C-4.

(b) Any citation issued under this section may be mailed to the violator pursuant to section 291C-165(b).

(c) Notwithstanding any law to the contrary, and in addition to any other authority provided by law that is not inconsistent with this section:

(1) A law enforcement officer may access the property of a private entity to enforce the provisions of this part; and

(2) A commissioned volunteer enforcement officer may access the property of a private entity to enforce the provisions of this section; provided that the private entity's parking lot contains a parking space required by section 291-71.

291-73 HRS

291-73 Ordinances to enforce authorized.

(a) Each county may adopt ordinances to enforce the requirements of section 291-71, including the establishment of penalties for failure to comply with the requirements of that section or maintain electric vehicle charging systems in

working order.

(b) Any official appointed by a county may enter the property of a place of public accommodation to enforce any applicable ordinances adopted pursuant to this section.

(c) For the purposes of this section, "place of public accommodation" has the same meaning as in section 489-2.

Chapter 291A

291A-1 Enactment of compact

291A-1 Enactment of compact. The Nonresident Violator Compact is hereby enacted into law and entered into with all other jurisdictions legally joining herein in the form substantially as follows: NONRESIDENT VIOLATOR COMPACT ARTICLE I. FINDINGS AND DECLARATION OF POLICY

(a) The party states find that:

(1) Under present procedures, a nonresident motorist who is arrested in a state other than the nonresident's home state must either post collateral or bond to secure appearance for trial at some later date, or, if unable to post such collateral or bond, the nonresident is taken into custody until collateral or bond is posted or taken directly to court for arraignment to be held. The purpose of this requirement is to obviate the difficulty of ensuring compliance with the terms of a traffic citation by the nonresident who, if permitted to continue on the nonresident's way after receiving such citation, could return to the nonresident's home state and disregard with impunity the nonresident's duty under the terms of the citation.

(2) A motorist receiving a traffic citation in the motorist's home state is permitted, except for certain violations, to accept the citation from the officer at the scene of the violation and to immediately continue on the motorist's way after being instructed to comply with the terms of the citation.

(3) The practice described in paragraph (1) causes unnecessary inconvenience and, at times, causes a hardship for the motorist who is unable at the time to post collateral, furnish a bond, stand trial, or pay the fine and thus is compelled to remain in custody until some arrangement can be made.

(4) The arrest of a nonresident motorist for a motor vehicle violation is presently consuming an undue amount of law enforcement time.

(b) It is the policy of each of the party states to:

(1) Promote compliance with the laws, ordinances, and administrative rules relating to the operation of motor vehicles by their operators in each of the jurisdictions where such operators drive motor vehicles.

(2) Make the reciprocal recognition of the right of motorists of the party states to accept a citation without delay in all traffic violation cases in which such procedure is permitted whether the motorist is a resident or a nonresident of the state in which the arrest was made.

(3) Maximize effective utilization of law enforcement personnel and assist the court systems in the efficient disposition of traffic violations.

(4) Consider an operator who ignores or refuses a citation from a party state to be an unfit or irresponsible person to hold a license to drive. ARTICLE II. DEFINITIONS As used in this compact:

(a) "Citation" means any citation, summons, ticket, or other document issued by a police officer for violation of a traffic law, ordinance, rule, or regulation which requires the motorist to respond.

(b) "Collateral" means any bond, cash, or other security deposited to secure an appearance for trial following the issuance by an arresting officer of a citation for a traffic violation.

(c) "Compact administrator" means the administrative director of the courts or designee.

(d) "Driver's license" means any license to operate a motor vehicle issued under the laws of the home state.

(e) "Home state" means the state that has issued and has the power to suspend or revoke the use of the license or permit to operate a motor vehicle.

(f) "Issuing state" means the state in which the traffic citation was issued to the motorist.

(g) "Licensing authority" means the administrative director of the courts or designee.

(h) "Motorist" means the driver of a motor vehicle operating in a party state other than the home state.

(i) "Nonresident" means a driver who holds a license issued by a party state other than the state in which the citation was issued.

(j) "Personal recognizance" means a signed agreement by a nonresident that the nonresident will comply with the terms of the citation issued to the nonresident.

(k) "State" means a state, territory, or possession of the United States, the District of Columbia, or the Commonwealth of Puerto Rico, Provinces of Canada, or other countries. ARTICLE III. PROCEDURE FOR ISSUING STATE

(a) An officer making an arrest or citing a nonresident for a traffic violation shall issue a citation as appropriate to all motorists who are residents of the party states and shall not, subject to the exceptions noted in subsection (b) of this Article, require such motorist to post collateral or bond to secure appearance for trial, but may accept such motorist's personal recognizance that the motorist will comply with the terms of the citation.

(b) No motorist shall be entitled to receive a citation under the terms of subsection (a) of this Article, nor shall any police officer issue such citation under the same terms, in the event the offense for which the citation is issued shall be one of the following:

(1) An offense for which the issuance of a citation in lieu of a hearing or the posting of collateral, bail, or bond is prohibited by law or court policy; or

(2) An offense, for which the revocation of the motorist's license would be required upon conviction or forfeiture of collateral.

(c) Upon the failure of any nonresident to comply with the terms of a traffic citation, the arresting officer or other appropriate official may obtain a warrant for arrest or summons for appearance in court and shall report the failure to the licensing authority of the state in which the arrest was made or the citation for a traffic violation was issued. If the State of Hawaii is the issuing state, the arresting officer or other appropriate official shall report this failure to the compact administrator. The report shall clearly identify the person arrested or cited; describe the violation, specifying the section of the traffic law, ordinance, rule, or regulation violated; indicate the location of the offense; and describe the vehicle, and its license number. The report shall be signed by the arresting officer or other appropriate official. ARTICLE IV. PROCEDURE FOR HOME STATE

(a) Upon receipt of the report as described in Article III, the licensing authority of the state in which the arrest was made or a citation for a traffic violation was issued shall transmit an official copy of the record of the report to the licensing authority of the home state. If the State of Hawaii is the home state, the licensing authority of the state in which the arrest was made or a citation for a traffic violation was issued shall transmit an official copy of the record of the report to the compact administrator. If the State of Hawaii is the issuing state, the compact administrator shall transmit an official copy of the record of the report to the licensing authority of the home state.

(b) Upon receipt of a certification of noncompliance from the state in which the arrest was made or a citation for a traffic violation was issued, the licensing authority of the home state shall notify the motorist and immediately initiate license suspension proceedings against such motorist. The order of suspension shall indicate the reason for the order and shall notify the motorist that the motorist's license shall remain suspended until satisfactory evidence has been furnished to the authority issuing such order of compliance with the terms of the citation.

(c) A copy of any suspension order issued under this Article shall be furnished to the licensing authority of the state in which the arrest was made or a citation for a traffic violation was issued. If the State of Hawaii is the issuing state, a copy of any suspension order issued under this Article shall be furnished to the compact administrator.

(d) If the laws of a home state do not provide for offenses or violations denominated or described in precisely the words employed in the state from which a certification of noncompliance is received, the home state shall construe the denomination and descriptions appearing in the laws of such state as being applicable to and identifying those offenses or violations of a substantially similar nature. ARTICLE V. APPLICABILITY OF OTHER LAWS Except as expressly required by provisions of this compact, nothing contained herein shall be construed to affect the right of any party state to apply any of its other laws relating to the licenses to drive to any person or circumstance, nor to invalidate or prevent any driver license agreement or other cooperative arrangement between a party state and a nonparty state. ARTICLE VI. COMPACT ADMINISTRATOR AND INTERCHANGE OF INFORMATION

(a) The motor vehicle administrator of each party state shall be the administrator of this compact for their state. For the State of Hawaii, the administrative director of the courts or designee shall be the administrator of this compact. The administrators, acting jointly, shall have the power to formulate all necessary and proper procedures for the exchange of

information under this compact.

(b) The administrator of each party state shall furnish to the administrator of each other party state any information or documents reasonably necessary to facilitate the administration of this compact. ARTICLE VII. ENTRY INTO FORCE AND WITHDRAWAL

(a) This compact shall enter into force and become effective as to any state when it has enacted the same into law.

(b) Any party state may withdraw from this compact by enacting a statute repealing the same, but no such withdrawal shall take effect until six months after the executive head of the withdrawing state has given notice of the withdrawal to the executive heads of all other party states. No withdrawal shall affect the validity or applicability by the licensing authorities of states remaining party to the compact of any report of conviction prior to the withdrawal. ARTICLE VIII. EXCEPTIONS The provisions of this compact shall not apply to parking violations, highway weight limit violations, and violations of law governing the transportation of hazardous materials. ARTICLE IX. CONSTRUCTION AND SEVERABILITY This compact shall be liberally construed so as to effectuate the purposes thereof. The provisions of this compact shall be severable and if any phrase, clause, sentence, or provision of this compact is declared to be contrary to the constitution of any party state or of the United States or the applicability thereof to any government, agency, person, or circumstance is held invalid, the validity of the remainder of this compact and the applicability thereof to any government, agency, person, or circumstance shall not be affected thereby. If this compact shall be held contrary to the constitution of any state party thereto, the compact shall remain in full force and effect as to the remaining states and in full force and effect as to the state affected as to all severable matters.

Chapter 291C

291C-1 I

291C-1 Definitions. As used in this chapter: "Alley" means a street or highway intended to provide access to the rear or side of lots or buildings and not intended for the purpose of through vehicular traffic. "Arterial street" means any United States or state numbered route, controlled-access highway, or other major radial or circumferential street or highway designated by counties within their respective jurisdictions as part of a major arterial system of streets or highways. "Authorized emergency vehicle" includes fire department vehicles, police vehicles, ambulances, ocean safety vehicles, law enforcement vehicles, conservation and resources enforcement vehicles, and office of the state fire marshal vehicles authorized and approved pursuant to section 291-31.5 that are publicly owned and other publicly or privately owned vehicles designated as such by a county council. "Bicycle" means:

(1) A vehicle propelled solely by human power upon which any person may ride, having two tandem wheels, and including any vehicle generally recognized as a bicycle though equipped with two front or two rear wheels except a toy bicycle; or

(2) A low-speed electric bicycle, as defined under title 15 United States Code section 2085. "Bicycle lane" means that portion of any highway which has been set aside for the preferential or exclusive use of bicycles. "Bicycle path" means any facility set aside for the preferential or exclusive use of bicycles and physically separated from a highway. "Bicycle route" means any highway that is designated to be shared by bicycles and pedestrians or motor vehicles, or both. "Bikeway" means a bicycle lane, bicycle path, or bicycle route, or any traffic control device, shelter, parking facility, or other support facility to serve bicycles and persons using bicycles. "Bodily injury" means physical pain, illness, or any impairment of physical condition. "Bus" means every motor vehicle designed for carrying more than ten passengers and used for the transportation of persons; and every motor vehicle, other than a school bus or a taxicab, designed and used for the transportation of persons for compensation. "Business district" means the territory contiguous to and including a highway when within any six hundred feet along such highway there are buildings in use for business or industrial purposes, including but not limited to hotels, banks, or office buildings, and public buildings which occupy at least three hundred feet of frontage on one side or three hundred feet collectively on both sides of the highway. "Controlled-access highway" means every highway, street, or roadway in respect to which owners or occupants of abutting lands and other persons have no legal right of access to or from the same except at such points only and in such manner as may be determined by the public authority having jurisdiction over such highway, street, or roadway. "Crosswalk" means:

(1) That part of a roadway at an intersection included within the connections of the lateral lines of the sidewalks on opposite sides of the highway measured from the curbs or, in the absence of curbs, from the edges of the traversable roadway; or

(2) Any portion of a roadway at an intersection or elsewhere distinctly indicated for pedestrian crossing by lines or other markings on the surface. "Dangerous wheels" means any wheel, wheel cover, hubcap, lug nut cover or cap, prong, or any ornamentation affixed to any of the aforementioned items that extends at least four inches beyond the portion of the wheel rim that extends furthest away from the vehicle and that may cause injury or property damage by minimal contact with a person or object. "Driver" means every person who drives or is in actual physical control of a vehicle. "Electric foot scooter" means a device:

(1) Weighing less than seventy-five pounds;

(2) With two or three wheels;

(3) With handlebars;

(4) With either: (A) A floorboard that can be stood upon while riding; or (B) A seat or saddle for the use of the rider and stationary footrests;

(5) That is powered by an electric motor or human power; and

(6) Whose maximum speed, with or without human propulsion on a paved level surface, does not exceed fifteen miles per hour. "Electric foot scooter" does not include foot-powered scooters that do not have a motor. "Electric personal assistive mobility device" means a self-balancing, two-wheeled, non-tandem-wheeled device, designed to transport only one person, using an electric propulsion system that limits the maximum speed of the device to twelve and a half miles per hour or less. "Highway" means the entire width between the boundary lines of every way publicly maintained and those private streets, as defined in section 46-16, over which the application of this chapter has been extended by ordinance, when any part thereof is open to the use of the public for purposes of vehicular travel. "House trailer" means:

(1) A trailer or semitrailer which is designed, constructed, and equipped as a dwelling place, living abode, or sleeping place (either permanently or temporarily) and is equipped for use as a conveyance on streets and highways; or

(2) A trailer or a semitrailer whose chassis and exterior shell is designed and constructed for use as a house trailer, as defined in paragraph (1), but which is used instead permanently or temporarily for the advertising, sales, display, or promotion of merchandise or services, or for any other commercial purpose except the transportation of property for hire or the transportation of property for distribution by a private carrier. "Intersection" means the area embraced within the prolongation or connection of the lateral curb lines, or, if none, then the lateral boundary lines of the roadways of two highways which join one another at, or approximately at, right angles, or the area within which vehicles traveling upon different highways joining at any other angle may come in conflict. Where a highway includes two roadways thirty feet or more apart, then every crossing of each roadway of such divided highway by an intersecting highway shall be regarded as a separate intersection. In the event such intersecting highway also includes two roadways thirty feet or more apart, then every crossing of two roadways of such highways shall be regarded as a separate intersection. The junction of an alley with a street or highway shall not constitute an intersection. "Laned roadway" means roadway which is divided into two or more clearly marked lanes for vehicular traffic. "Moped" means a device upon which a person may ride that has:

(1) Two or three wheels in contact with the ground;

(2) A motor having a maximum power output capability measured at the motor output shaft, in accordance with SAE International standards, of two horsepower (one thousand four hundred ninety-two watts) or less and, if it is a combustion engine, a maximum piston or rotor displacement of 3.05 cubic inches (fifty cubic centimeters) and that will propel the device, unassisted, on a level surface at a maximum speed no greater than thirty miles per hour; and

(3) A direct or automatic power drive system that requires no clutch or gear shift operation by the moped driver after the drive system is engaged with the power unit. "Moped" does not include an electric foot scooter. "Motorcycle" means every motor vehicle having a seat or saddle for the use of the rider and designed to travel on not more than three wheels in contact with the ground but excludes a farm tractor and a moped. "Motor scooter" means:

(1) Every motor vehicle that has a handlebar and seating that requires the operator to straddle or sit astride on it and is designed to travel on no more than three wheels in contact with the ground, but excludes a farm tractor; or

(2) Every motor vehicle that has a steering wheel and seating that does not require the operator to straddle or sit astride on it, and is designed to travel on three wheels in contact with the ground, called an autocycle, which is certified by the manufacturer to comply with all applicable Federal Motor Vehicle Safety Standards as of the date of manufacture, with a motor that produces no more than five horsepower, but excludes a moped. "Motor vehicle" means every vehicle which is self-propelled and every vehicle which is propelled by electric power but not operated upon rails but excludes a moped.

"Neighborhood electric vehicle" means a self-propelled electrically powered motor vehicle to which all of the following apply:

(1) The vehicle is emission free;

(2) The vehicle is designed to be and is operated at speeds of twenty-five miles per hour or less;

(3) The vehicle has four wheels in contact with the ground;

(4) The vehicle has a gross vehicle weight rating of less than three thousand pounds; and

(5) The vehicle conforms to the minimum safety equipment requirements as adopted in the Federal Motor Vehicle Safety Standard No. 500, Low Speed Vehicles (49 C.F.R. 571.500). "Official traffic-control devices" mean all signs, signals, markings, and devices not inconsistent with this chapter placed or erected by authority or with the consent of a public body or official having jurisdiction, for the purpose of regulating, warning, or guiding traffic. "Owner" means a person, other than a lien holder, having the property in or title to a vehicle. The term includes a person entitled to the use and possession of a vehicle subject to a security interest in another person, but excludes a lessee under a lease not intended as security. "Park" or "parking" means the standing of a vehicle, whether occupied or not, otherwise than temporarily for the purpose of and while actually engaged in loading or unloading merchandise or passengers. "Pedestrian" means any person afoot, in an invalid chair, or in a vehicle propelled by a person afoot. "Police officer" means every officer authorized to direct or regulate traffic or to make arrests for violations of traffic regulations. "Private road or driveway" means every way or place in private ownership and used for vehicular travel by the owner and those having express or implied permission from the owner, but not by other persons. "Railroad" means a carrier of persons or property upon cars operated upon stationary rails. "Railroad sign or signal" means any sign, signal, or device erected by authority of a public body or official or by a railroad and intended to give notice of the presence of railroad tracks or the approach of a railroad train. "Railroad train" means a steam engine, electric or other motor, with or without cars coupled thereto, operated upon rails. "Residence district" means the territory contiguous to and including a highway not comprising a business district when the property on the highway for a distance of three hundred feet or more is in the main improved with residences or residences and buildings in use for business. "Right-of-way" means the right of one vehicle or pedestrian to proceed in a lawful manner in preference to another vehicle or pedestrian approaching under such circumstances of direction, speed, and proximity as to give rise to danger of collision unless one grants precedence to the other. "Roadway" means that portion of a highway improved, designed, or ordinarily used for vehicular travel, exclusive of the berm or shoulder. In the event a highway includes two or more separate roadways the term "roadway" as used herein refers to any such roadway separately but not to all such roadways collectively. "Safety zone" means the area or space officially set apart within a roadway for the exclusive use of pedestrians and which is protected or is so marked or indicated by adequate signs as to be plainly visible at all times while set apart as a safety zone. "School bus" means every motor vehicle as defined in section 286-181 and any regulations promulgated pursuant thereto by the department of education. "Serious bodily injury" means bodily injury which creates a substantial risk of death or which causes serious, permanent disfigurement, or protracted loss or impairment of the function of any bodily member or organ. "Sidewalk" means that portion of a street between the curb lines, or the lateral lines of a roadway, and the adjacent property lines, intended for use of pedestrians. "Stand" or "standing" means the halting of a vehicle, whether occupied or not, otherwise than temporarily for the purpose of and while actually engaged in receiving or discharging passengers. "Stop" when required means complete cessation from movement. "Stop" or "stopping" when prohibited means any halting even momentarily of a vehicle, whether occupied or not, except when necessary to avoid conflict with other traffic or in compliance with the directions of a police officer or traffic-control sign or signal. "Street" means the entire width between boundary lines of every way publicly maintained when any part thereof is open to the use of the public for purposes of vehicular travel. "Substantial bodily injury" means bodily injury that causes:

(1) A major avulsion, laceration, or penetration of the skin;

(2) A chemical, electrical, friction, or scalding burn of second degree severity;

(3) A bone fracture;

(4) A serious concussion; or

(5) A tearing, rupture, or corrosive damage to the esophagus, viscera, or other internal organs. "Through highway" means every highway or portion thereof on which vehicular traffic is given preferential right-of-way, and at the entrances to which vehicular traffic from intersecting highways is required by law to yield the right-of-way to vehicles on such through highway in obedience to a stop sign, yield sign, or other official traffic-control device, when such signs or devices are

erected as provided by law. "Toy bicycle" means every device propelled solely by human power upon which any person may ride, having two tandem wheels, including any device generally recognized as a bicycle though equipped with two front or two rear wheels, which has a seat height of not more than twenty-five inches from the ground when the seat is adjusted to its highest position; or a scooter or similar device regardless of seat height. "Traffic" means pedestrians, ridden or herded animals, vehicles, and other conveyances either singly or together while using any highway for purposes of travel. "Traffic-control signal" means any device, whether manually, electrically, or mechanically operated, by which traffic is alternately directed to stop and permitted to proceed. "Urban district" means the territory contiguous to and including any street which is built up with structures devoted to business, industry, or dwelling houses situated at intervals of less than one hundred feet for a distance of a quarter of a mile or more. "Vehicle" means every device in, upon, or by which any person or property is or may be transported or drawn upon a roadway or highway, including mopeds and bicycles, but excluding toy bicycles, devices other than bicycles moved by human power, and devices used exclusively upon stationary rails or tracks.

291C-2 Trauma system surcharge

291C-2 Trauma system surcharge.

(a) In addition to any other civil penalties ordered by the court, a person who violates any offense under this part may be ordered to pay a trauma system surcharge, provided that:

(1) The maximum of which may be $10 if the violator is not already required to pay a trauma system surcharge pursuant to the violation of the offense;

(2) The maximum of which may be $100 if the violation is an offense under sections 291C-12.6, 291C-13, 291C-14, 291C-15, 291C-16, 291C-103, 291C-104, or 291C-105;

(3) The maximum of which may be $500 if the violation is an offense under section 291C-12; and

(4) The maximum of which may be $250 if the violation is an offense under section 291C-12.5.

(b) The surcharge shall not be ordered when the court determines that the defendant is unable to pay the surcharge.

(c) The person shall pay the surcharge to the clerk of the court. The surcharge shall be deposited with the state director of finance who shall transmit the surcharge to the trauma system special fund pursuant to section 321-22.5.

291C-3 HRS

291C-3 State and county safe routes to school programs; coordinators; grants; reports.

(a) There is established, within the department of transportation, a safe routes to school program that shall, among other things, enhance traffic safety around Hawaii's schools, enable and encourage children to walk and bicycle to school, and make bicycling and walking to school a safer and more appealing transportation alternative. Beginning July 1, 2024, the program shall be responsible for developing and publishing goals and performance measures in coordination with the safe routes to school advisory committee and providing technical assistance to counties and community organizations in support of projects and programs that advance state and county goals.

(b) There is created, within the department of transportation, the position of safe routes to school program coordinator. The safe routes to school program coordinator shall provide a central point of contact for the safe routes to school program.

(c) A county designated office, through the county safe routes to school program coordinator, and in consultation with the department of education, department of health, and Hawaii Association of Independent Schools, shall provide safe routes to school funds for school-based and community-based workshops and infrastructure and non-infrastructure projects that will reduce vehicular traffic and congestion, encourage walking and bicycling, and promote health and safety around Hawaii's schools.

(d) The department of transportation shall expend funds from the safe routes to school program special fund in coordination with the safe routes to school advisory committee to be used for the implementation of the safe routes to school program plan and projects pursuant to section 291C-6(b)(2) and (3). No later than twenty days prior to the convening of each regular session, each county shall submit to the legislature an annual report on the status and progress of its county safe routes to school program, including an accounting of all grants provided through the program and a timeline for future grant awards.

(e) Implementation of the county safe routes to school program shall take into consideration the need to:

(1) Fill a permanent, full-time position of safe routes to school coordinator within the county designated office;

(2) Maximize the participation of school officials and stakeholder groups in the community;

(3) Work in conjunction with county designated safe routes to school stakeholders and train volunteer facilitators for school-based workshops and community-based projects, including flexible training schedules;

(4) Train potential grant requestors and stakeholder groups in federal and state requirements necessary for procurement, contracts, design, and construction; and

(5) Allocate not less than ten per cent and not more than thirty per cent of safe routes to school funds for non-infrastructure-related activities or activities to encourage walking and bicycling to school, public awareness campaigns, student sessions on bicycle and pedestrian safety, or other non-infrastructure activities.

(f) The safe routes to school advisory committee established pursuant to section 291C-6 shall develop a streamlined process for the safe routes to school program that meets federal and state requirements, simplifies the grant proposal application process, and expedites release of funding after completion of school-based and community- based projects for infrastructure and non-infrastructure.

(g) The safe routes to school advisory committee established pursuant to section 291C-6 shall submit to the legislature an annual report of the status and progress of the safe routes to school program, including an accounting of all grants provided through the program and a timeline for future grant awards, no later than twenty days prior to the convening of each regular session.

291C-4 HRS

291C-4 Safe routes to school program special fund; establishment. There shall be established in the state treasury the safe routes to school program special fund, into which shall be deposited:

(1) Assessments collected for speeding in a school zone, pursuant to section 291C-104;

(2) Safe routes to school program surcharges collected in accordance with sections 291-16 and 291C-5;

(3) Moneys collected from state reserved parking space enforcement fines pursuant to sections 291-57 and 291-72; [(4)] The surcharge collected pursuant to section 249-37; and [(5)] Fines collected for street parking restrictions pursuant to section 291C-116.

291C-5 HRS

291C-5 Safe routes to school program surcharge. (a) In addition to any other civil penalties ordered by the court, a person who violates any provision under part X shall be ordered to pay a safe routes to school program surcharge of $10 if the violator is not already required to pay a safe routes to school program surcharge for the violation.

(b) The person shall pay the surcharge to the clerk of the court. The surcharge shall be deposited with the director of finance who shall transmit the surcharge to the safe routes to school program special fund established under section 291C-4.

291C-6 HRS

291C-6 Safe routes to school advisory committee.

(a) There is established within the planning branch of the highways division of the department of transportation for administrative purposes a safe routes to school advisory committee to advise the State on strategies to ensure that each child in the State is able to safely bike, walk, or roll to school.

(b) The safe routes to school advisory committee shall:

(1) Develop a comprehensive, statewide safe routes to school plan that shall include: (A) Goals, strategies, and performance metrics that ensure accountability for improving safety, active transportation mode share, community investment in supportive programming, and infrastructure quality, pursuant to sections 286-7.5 and 264-142; (B) Methods to ensure stability and consistency of the safe routes to school program special fund that shall provide for infrastructure projects and continuity of existing programmatic (non-infrastructure) work; (C) Recommendations to streamline and facilitate efforts by communities to apply for and implement projects pursuant to sections 286-7.5, 264-142, and 291C-3; and (D) Identification of, and recommendations for, additional funding, planning, and programming that are inclusive and equitable pursuant to sections 286-7.5 and 264-142;

(2) Beginning July 1, 2024, ensure distribution of moneys accrued in the safe routes to school program special fund, prioritizing continuity of existing programming;

(3) Beginning July 1, 2024, review project proposals and select priority projects within one mile of any school or place of learning, pursuant to sections 286-7.5, 264-142, and 291C-3, to be funded through the safe routes to school program or otherwise be prioritized and implemented by the department;

(4) Submit annual reports on the activities and recommendations of the safe routes to school program to the governor and legislature no later than December 31 of each year; and

(5) Meet no less than monthly.

(c) The safe routes to school advisory committee shall consist of the following members or their designees:

(1) One member to be appointed by the president of the senate and one member to be appointed by the speaker of the house of representatives, who shall chair the advisory committee annually on a rotating basis;

(2) The department of transportation's safe routes to school program coordinator;

(3) The deputy director of the department of transportation's highways division;

(4) One member representing the physical activity and nutrition section of the department of health's chronic disease prevention and health promotion division;

(5) The superintendent of education;

(6) The co-chairs of the Hawaii climate change mitigation and adaptation commission;

(7) One member representing the Hawaii state energy office;

(8) One member representing the Hawaii state council on developmental disabilities;

(9) One member representing each county agency with jurisdiction over transportation;

(10) One member representing an organization with a focus on bicycling to be appointed by the governor, pursuant to section 26-34, for a three-year term;

(11) One member representing an organization with a focus on senior citizens and their families to be appointed by the governor, pursuant to section 26-34, for a three-year term;

(12) One member representing an organization that understands the ways families with young children navigate through the State to be appointed by the governor, pursuant to section 26-34, for a three-year term;

(13) One member representing an organization with a focus on public health and mobility to be appointed by the governor, pursuant to section 26-34, for a three-year term;

(14) One member representing an organization with a focus on transportation equity and mobility to be appointed by the governor, pursuant to section 26-34, for a three-year term; and

(15) The chairs of the house of representatives standing committee and the senate standing committee with primary jurisdiction over transportation, who shall serve as non-voting, ex-officio members. The chair of the committee may request the participation or input of members of the public; experts in the field; and county, state, or federal officials or others as necessary.

(d) Members of the safe routes to school advisory committee shall serve without compensation but shall be reimbursed for expenses, including travel expenses, necessary for the performance of their duties.

(e) No member of the safe routes to school advisory committee shall be subject to chapter 84 solely because of the member's service on the committee.

291C-7 HRS

291C-7 High-risk and dangerous corridors and intersections.

(a) The department of transportation and county transportation agencies having jurisdiction over roads, highways, and similar infrastructure shall:

(1) Define and regularly perform evaluations to identify high-risk or dangerous corridors and intersections, based on relevant statistics including crashes, injuries, fatalities, or similar measures; and

(2) Develop and prioritize for implementation plans to address safety and allow access for all users in each corridor or intersection identified as high-risk or dangerous.

(b) When rehabilitation or other changes to a high-risk or dangerous corridor or intersection are planned or implemented by the department of transportation or county transportation agency, priority shall be given to changes that maximize safety and provide access to separated or protected infrastructure that separates vehicles from pedestrians, persons on bicycles and mobility devices, and other vulnerable users.

291C-8 HRS

291C-8 County police officer authority. Each county police officer may enforce this chapter for any violation of this chapter that occurs on any federal, state, or county street, roadway, or highway.

291C-11 II

291C-11 Provisions of part apply throughout State. This part applies upon highways and elsewhere throughout the State.

291C-12

291C-12 Collisions involving death or serious bodily injury.

(a) The driver of any vehicle involved in a collision resulting in serious bodily injury to or death of any person shall immediately stop the vehicle at the scene of the collision or as close thereto as possible but shall then forthwith return to and in every event shall remain at the scene of the collision until the driver has fulfilled the requirements of section 291C-14. Every stop shall be made without obstructing traffic more than is necessary.

(b) Any person who violates subsection (a) shall be guilty of a class B felony.

(c) The license or permit to drive and any nonresident operating privilege of the person so convicted shall be revoked.

(d) For any violation under this section, a surcharge of $500 shall be imposed, in addition to any other penalties, and shall be deposited into the neurotrauma special fund.

(e) For any violation under this section, a surcharge of up to $500 may be imposed, in addition to other penalties, which shall be deposited into the trauma system special fund.

291C-12.5

291C-12.5 Collisions involving substantial bodily injury.

(a) The driver of any vehicle involved in a collision resulting in substantial bodily injury to any person shall immediately stop the vehicle at the scene of the collision or as close thereto as possible but shall then forthwith return to and in every event shall remain at the scene of the collision until the driver has fulfilled the requirements of section 291C-14. Every stop shall be made without obstructing traffic more than is necessary.

(b) Any person who violates subsection (a) shall be guilty of a class C felony.

(c) For any violation under this section, a surcharge of $250 shall be imposed, in addition to any other penalties, and shall be deposited into the neurotrauma special fund.

(d) For any violation under this section, a surcharge of up to $250 may be imposed, in addition to other penalties, which shall be deposited into the trauma system special fund.

291C-12.6

291C-12.6 Collisions involving bodily injury.

(a) The driver of any vehicle involved in a collision resulting in bodily injury to any person shall immediately stop the vehicle at the scene of the collision or as close thereto as possible but shall then forthwith return to and in every event shall remain at the scene of the collision until the driver has fulfilled the requirements of section 291C-14. Every stop shall be made without obstructing traffic more than is necessary.

(b) Any person who violates subsection (a) shall be guilty of a misdemeanor.

(c) For any violation under this section, a surcharge of $100 shall be imposed, in addition to any other penalties, and shall be deposited into the neurotrauma special fund.

(d) For any violation under this section, a surcharge of up to $100 may be imposed, in addition to other penalties, which shall be deposited into the trauma system special fund.

291C-13

291C-13 Collisions involving damage to vehicle or property. The driver of any vehicle involved in a collision resulting only in damage to a vehicle or other property that is driven or attended by any person shall immediately stop the vehicle at the scene of the collision or as close thereto as possible, but shall forthwith return to, and in every event shall remain at, the scene of the collision until the driver has fulfilled the requirements of section 291C-14. Every stop shall be made without obstructing traffic more than is necessary. For any violation under this section, a surcharge of up to $100 may be imposed, in addition to other penalties, which shall be deposited into the trauma system special fund.

291C-14

291C-14 Duty to give information and render aid.

(a) The driver of any vehicle involved in a collision resulting in injury to or death of any person or damage to any vehicle or other property that is driven or attended by any person shall give the driver's name, address, and the registration number of the vehicle the driver is driving, and shall upon request and if available exhibit the driver's license or permit to drive to any person injured in the collision or to the driver or occupant of or person attending any vehicle or other property damaged in the collision and shall give the information and upon request exhibit the license or permit to any police officer at the scene of the collision or who is investigating the collision and shall render to any person injured in the collision reasonable assistance, including the carrying, or the making of arrangements for the carrying, of the person to a physician, surgeon, or hospital for medical or surgical treatment if it is apparent that treatment is necessary, or if the carrying is requested by the injured person; provided that if the vehicle involved in the collision is a bicycle, the driver of the bicycle need not exhibit a license or permit to drive.

(b) In the event that none of the persons specified is in condition to receive the information to which they otherwise would be entitled under subsection (a), and no police officer is present, the driver of any vehicle involved in the collision after fulfilling all other requirements of section 291C-12, 291C-12.5, or 291C-12.6, and subsection (a), insofar as possible on the driver's part to be performed, shall forthwith report the collision to the nearest police officer and submit thereto the information specified in subsection (a).

(c) For any violation under this section, a surcharge of up to $100 may be imposed, in addition to other penalties, which shall be deposited into the trauma system special fund.

291C-15

291C-15 Duty upon striking unattended vehicle or other property. The driver of any vehicle which collides with or is involved in a collision with any vehicle or other property that is unattended resulting in any damage to the other vehicle or property shall immediately stop and shall then and there either locate and notify the operator or owner of the vehicle or other property of the driver's name, address, and the registration number of the vehicle the driver is driving or shall attach securely in a conspicuous place in or on the vehicle or other property a written notice giving the driver's name, address, and the registration number of the vehicle the driver is driving and shall without unnecessary delay notify the nearest police officer. Every stop shall be made without obstructing traffic more than is necessary. For any violation under this section, a surcharge of up to $100 may be imposed, in addition to other penalties, which shall be deposited into the trauma system special fund.

291C-16 Immediate notice of collision

291C-16 Immediate notice of collision.

(a) The driver of a vehicle involved in a collision resulting in injury or death of any person or total damage to all property to an apparent extent of $3,000 or more shall immediately by the quickest means of communication give notice of the collision to the nearest police officer. If sent to the site of the collision, a responding police officer shall file a written report if it appears at the time that the collision has resulted in the injury or death of any person, or total damage to all property to an apparent extent of $3,000 or more.

(b) Whenever the driver of a vehicle is physically incapable of giving an immediate notice of a collision as required in subsection (a) and there was another occupant in the vehicle at the time of the collision capable of doing so, the occupant shall make or cause to be given the notice not given by the driver.

(c) For any violation under this section, a surcharge of up to $100 may be imposed, in addition to other penalties, which shall be deposited into the trauma system special fund.

291C-17 Written reports of accidents

291C-17 Written reports of accidents. Written reports of accidents by drivers, owners, and occupants of vehicles involved in accidents shall be furnished in compliance with the requirements of chapter 287.

291C-18 False reports

291C-18 False reports. No person shall give information in oral or written reports as required in this part or in chapter 287 knowing or having reason to believe that such information is false.

291C-19 Garages to report

291C-19 Garages to report. The person in charge of any garage or repair shop to which is brought any motor vehicle that shows evidence of having been involved in a collision of which written report must be made by the driver as provided in chapter 287, or struck by any bullet, shall report to the police department, within twenty-four hours after the motor vehicle is received by the garage or repair shop, giving the vehicle identification number, registration number, and the name and address of the owner or driver of the vehicle.

291C-20

291C-20 Disclosure of traffic collision reports.

(a) Any traffic collision report required under this chapter shall be made without prejudice to the person required to report information concerning the collision and shall be for the confidential use of the police department, except that the department shall, upon request, disclose the record, to any person directly concerned in the traffic collision or having a proper interest therein, including:

(1) The driver or drivers involved, or the employer, parent, or legal guardian thereof;

(2) The authorized representative of any person involved in the collision;

(3) Any person injured in the collision;

(4) The owners of vehicles or property damaged in the collision;

(5) Any law enforcement agency; and

(6) Any court of competent jurisdiction.

(b) Any person who may sue because of death resulting from a collision shall be deemed a party directly concerned.

(c) In the event of a conflict between this section and any other law, including sections 286-171 and 286-172 and chapter 92F, this section shall control.

291C-21 OF THE ROAD

291C-21 Provisions of parts III to XIV refer to vehicles upon the highways; exceptions. The provisions of parts III to XIV relating to the operation of vehicles refer exclusively to the operation of vehicles upon highways except, where a different place is specifically referred to in a given section.

291C-22 REPEALED

291C-22 REPEALED. L 1978, c 222, §8. Previous Vol05_Ch0261-0319 Next

291C-23 Obedience to police officers

291C-23 Obedience to police officers. It shall be a petty misdemeanor for any person to wilfully fail or refuse to comply with any lawful order or direction of any police officer invested by law with authority to direct, control, or regulate traffic.

291C-24

291C-24 Persons riding animals or driving animal-drawn vehicles. Every person riding an animal or driving any animal-drawn vehicle upon a roadway shall be granted all of the rights and shall be subject to all of the duties applicable to the driver of a vehicle by this chapter, except those provisions of this chapter which by their very nature can have no application.

291C-25

291C-25 Persons working on highways; exceptions. Unless specifically made applicable, the provisions of this chapter except those contained in part XI shall not apply to persons, teams, motor vehicles, and other equipment while actually engaged in work upon the surface of a highway but shall apply to such persons and vehicles when traveling to or from

such work.

291C-26 Authorized emergency vehicles

291C-26 Authorized emergency vehicles.

(a) The driver of an authorized emergency vehicle, when responding to an emergency call or when in the pursuit of an actual or suspected violator of the law or when responding to but not upon returning from a fire alarm and vehicles used by police officers while in the performance of a police function, may exercise the privileges set forth in this section, but subject to the conditions herein stated.

(b) The driver of an authorized emergency vehicle may:

(1) Park or stand irrespective of the provisions of this chapter;

(2) Proceed past a red or stop signal or stop sign, but only after slowing down as may be necessary for safe operation;

(3) Exceed the maximum speed limits so long as the driver does not endanger life or property;

(4) Disregard regulations governing direction of movement or turning in specified directions;

(5) Drive on the shoulder and median of roadways; and

(6) Drive in controlled-access roadways, highways, and facilities.

(c) The exemptions granted in subsection (b) to an authorized emergency vehicle shall apply only when the vehicle is making use of authorized audible and visual signals; provided that use of an authorized audible signal shall not be required if it is not reasonably necessary under the circumstances. This subsection shall not apply to police vehicles.

(d) The foregoing provisions shall not relieve the driver of an authorized emergency vehicle from the duty to drive with due regard for the safety of all persons, nor shall those provisions protect the driver from the consequences of the driver's reckless disregard for the safety of others.

291C-27 HRS

291C-27 Emergency vehicle stopped for emergencies; duty of approaching vehicle.

(a) A driver of a vehicle that is approaching an emergency vehicle that is stopped for an emergency, investigation of a possible traffic violation, rendering assistance to a police officer, or other official duties, as indicated by the flashing emergency lights of the stopped emergency vehicle, shall:

(1) Slow down to a reasonable and prudent speed that is safe under the circumstances of an emergency road situation ahead. Reasonableness and prudence shall take into account weather conditions, road conditions, and vehicular and pedestrian traffic in the immediate area. If necessary, the driver shall come to a complete stop before making a lane change under paragraph (2); and

(2) Make a lane change into the adjacent lane if necessary and if it is safe to do so, or if possible, to two lanes over which leaves one lane between the driver and the emergency vehicle.

(b) As used in this section, "emergency vehicle" means a police or fire department vehicle, ocean safety vehicle, emergency medical services vehicle, freeway service patrol vehicle, sheriff division vehicle, Hawaii emergency management agency vehicle, county emergency management vehicle, civil defense vehicle, department of transportation harbors division vehicle, department of land and natural resources division of conservation and resources enforcement vehicle, or a tow truck.

(c) Violation of subsection (a) shall not be subject to section 287-20, relating to furnishing proof of financial responsibility. A violation of subsection (a) shall constitute a violation if no death or injury results from the violation. If a death or injury occurs and is attributable to the driver of the vehicle for a violation of subsection (a), then the driver shall instead be charged under section 707-702.5 for negligent homicide in the first degree; section 707-703 for negligent homicide in the second degree; section 707-704 for negligent homicide in the third degree; section 707-705 for negligent injury in the first degree; or section 707-706 for negligent injury in the second degree, as applicable.

291C-31 IV

291C-31 Obedience to and required traffic-control devices.

(a) The driver of any vehicle shall obey the instructions of any official traffic-control device applicable thereto placed in accordance with law, unless otherwise directed by a traffic or police officer, subject to the exceptions granted the driver of

an authorized emergency vehicle in this chapter.

(b) No provision of this chapter for which signs are required shall be enforced against an alleged violator if at the time and place of the alleged violation an official sign is not in proper position and sufficiently legible to be seen by an ordinarily observant person. Whenever a particular section does not state that signs are required, the section shall be effective even though no signs are erected or in place.

(c) Whenever official traffic-control devices are placed in position approximately conforming to law, such devices shall be presumed to have been so placed by the official act or direction of lawful authority, unless the contrary shall be established by competent evidence.

(d) Any official traffic-control device placed pursuant to law and purporting to conform to the lawful requirements pertaining to such devices shall be presumed to comply with the requirements of this chapter, unless the contrary is established by competent evidence.

291C-32 Traffic-control signal legend

291C-32 Traffic-control signal legend.

(a) Whenever traffic is controlled by traffic-control signals exhibiting different colored lights, or colored lighted arrows, successively one at a time or in combination, only the colors green, red, and yellow shall be used, except for special pedestrian signals carrying a word or symbol legend, and the lights shall indicate and apply to drivers of vehicles and pedestrians as follows:

(1) Green indication: (A) Vehicular traffic facing a circular green signal may proceed straight through or turn right or left unless prohibited by a sign at the place. But vehicular traffic, including vehicles turning right or left, shall yield the right-of-way to other vehicles and to pedestrians lawfully within the intersection or an adjacent crosswalk at the time the signal is exhibited. (B) Vehicular traffic facing a green arrow signal, shown alone or in combination with another indication, may cautiously enter the intersection only to make the movement indicated by the arrow or to make other movement that is permitted by other indications shown at the same time. The vehicular traffic shall yield the right-of-way to pedestrians lawfully within an adjacent crosswalk and to other traffic lawfully using the intersection. (C) Unless otherwise directed by a pedestrian-control signal as provided in section 291C-33, pedestrians facing any green signal, except when the sole green signal is a turn arrow, may proceed across the roadway within any marked or unmarked crosswalk.

(2) Steady yellow indication: (A) Vehicular traffic facing a steady yellow signal is thereby warned that the related green movement is being terminated or that a red indication will be exhibited immediately thereafter when vehicular traffic shall not enter the intersection. (B) Pedestrians facing a steady yellow signal, unless otherwise directed by a pedestrian-control signal as provided in section 291C-33, are thereby advised that there is insufficient time to cross the roadway before a red indication is shown and no pedestrian shall then start to cross the roadway.

(3) Steady red indication: (A) Vehicular traffic facing a steady red signal alone shall stop at a clearly marked stop line or, if none, before entering the crosswalk on the near side of the intersection or, if none, then before entering the intersection and shall remain standing until an indication to proceed is shown, except as provided in subparagraphs (B) and (C). (B) The driver of a vehicle that is stopped in obedience to a steady red indication may make a right turn but shall yield the right-of-way to pedestrians and other traffic proceeding as directed by the signal at the intersection, except that counties by ordinance may prohibit any right turn against a steady red indication, which ordinance shall be effective when a sign is erected at the intersection giving notice thereof. (C) The driver of a vehicle on a one-way street that intersects another one-way street on which traffic moves to the left shall stop in obedience to a steady red indication but may then make a left turn into the one-way street, but shall yield right-of-way to pedestrians proceeding as directed by the signal at the intersection, except that counties by ordinance may prohibit any left turn against a steady red indication, which ordinance shall be effective when a sign is erected at the intersection giving notice thereof. (D) Unless otherwise directed by a pedestrian-control signal as provided in section 291C-33, pedestrians facing a steady red signal alone shall not enter the roadway.

(b) In the event an official traffic-control signal is erected and maintained at a place other than an intersection, the provisions of this section shall be applicable except as to those provisions which by their nature can have no application. Any stop required shall be made at a sign or marking on the pavement indicating where the stop shall be made, but in the absence of any such sign or marking the stop shall be made at the signal.

(c) Whenever traffic is controlled by traffic-control signals exhibiting different colored lights, or colored lighted arrows, successively one at a time or in combination, and actively monitored by an official photo red light imaging detector system, all registered owners of all motor vehicles in vehicular traffic at the intersection shall be held strictly liable for the motor vehicle's compliance with the traffic-control signal, to the extent that registered owners may be cited and held accountable for non-compliance via civil traffic infractions pursuant to chapter 291J. The traffic-control signal lights shall apply to the registered owners of motor vehicles as follows:

(1) Steady red indication: (A) Vehicular traffic facing a steady red signal alone shall stop at a clearly marked stop line or, if none, before entering the crosswalk on the near side of the intersection or, if none, then before entering the intersection and shall remain standing until an indication to proceed is shown, except as provided in subparagraphs (B) and (C). (B) Vehicular traffic that is stopped in obedience to a steady red indication may make a right turn but shall yield the right-of-way to pedestrians and other traffic proceeding as directed by the signal at the intersection, except that counties by ordinance may prohibit any right turn against a steady red indication, which ordinance shall be effective when a sign is erected at the intersection giving notice thereof. (C) Vehicular traffic on a one-way street that intersects another one-way street on which traffic moves to the left shall stop in obedience to a steady red indication but may then make a left turn into the one-way street, but shall yield right-of-way to pedestrians proceeding as directed by the signal at the intersection, except that counties by ordinance may prohibit any left turn against a steady red indication, which ordinance shall be effective when a sign is erected at the intersection giving notice thereof.

(2) To the extent a registered owner's motor vehicle fails to comply with any other law or ordinance related to traffic-control signals, including subsection (a)(1) or (2), the registered owner of a motor vehicle shall not be held strictly liable unless otherwise provided by law.

(d) For purposes of this section, a pedestrian is lawfully within an intersection or adjacent crosswalk when any part or extension of the pedestrian, including any part of the pedestrian's body, wheelchair, cane, crutch, or bicycle, is beyond the curb or the edges of the traversable roadway or moves onto the roadway within an intersection or crosswalk.

291C-33 Pedestrian-control signals

291C-33 Pedestrian-control signals. Whenever special pedestrian-control signals exhibiting the words "Walk" or "Don't Walk", the symbols of a walking person or an upraised palm, or a countdown timer are in place, such signals shall indicate as follows:

(1) Walk or Walking Person. Pedestrians facing such signal may proceed across the roadway in the direction of the signal and shall be given the right-of-way by the drivers of all vehicles;

(2) Don't Walk or Upraised Palm. No pedestrian shall start to cross the roadway in the direction of such signal, whether flashing or steady, but any pedestrian who has partially completed the pedestrian's crossing on the Walk or Walking Person signal shall complete the crossing to a sidewalk or safety island while the Don't Walk or Upraised Palm signal is showing; and

(3) Countdown timer. If the pedestrian-control signal is equipped with a countdown timer, no pedestrian shall start to cross the roadway in the direction of such signal once the countdown begins, but any pedestrian who has partially completed the pedestrian's crossing when the countdown begins shall complete the crossing to a sidewalk or safety island before the countdown timer ends.

291C-34 Flashing signals

291C-34 Flashing signals.

(a) Whenever an illuminated flashing red or yellow signal is used in a traffic sign or signal it shall require obedience by vehicular traffic as follows:

(1) Flashing Red (stop signal). When a red lens is illuminated with rapid intermittent flashes, drivers of vehicles shall stop at a clearly marked stop line, but if none, before entering the crosswalk on the near side of the intersection, or if none, then at the point nearest the intersecting roadway where the driver has a view of approaching traffic on the intersecting roadway before entering the intersection, and the right to proceed shall be subject to the rules applicable after making a stop at a stop sign.

(2) Flashing Yellow (caution signal). When a yellow lens is illuminated with rapid intermittent flashes, drivers of vehicles may proceed through the intersection or past such signal only with caution.

(b) This section shall not apply at railroad grade crossings. Conduct of drivers of vehicles approaching railroad grade crossings shall be governed by the rules as set forth in section 291C-91.

291C-35 Lane-direction-control signals

291C-35 Lane-direction-control signals. When lane-direction-control signals are placed over the individual lanes of a street or highway, vehicular traffic may travel in any lane over which a green signal is shown, but shall not enter or travel in any lane over which a red signal is shown.

291C-36

291C-36 Display of unauthorized signs, signals, or markings.

(a) Except as provided in subsection (c), no person shall place, maintain, or display upon or in view of any highway any unauthorized sign, signal, marking, or device which purports to be or is an imitation of or resembles an official traffic-control device or railroad sign or signal, or which attempts to direct the movement of traffic, or which hides from view or interferes with the effectiveness of an official traffic-control device or any railroad sign or signal.

(b) No person shall place or maintain nor shall any public authority permit upon any highway any traffic sign or signal bearing thereon any commercial advertising.

(c) This section shall not be deemed to prohibit the erection upon private property adjacent to highways of signs giving useful directional information and of a type that cannot be mistaken for official signs, nor the placement on privately owned highways, by the owners of the highways, of signs, of a design and at places approved by the county official responsible for traffic control.

(d) Every prohibited sign, signal, or marking is declared to be a public nuisance and the authority having jurisdiction over the highway is empowered to remove the same or cause it to be removed without notice.

291C-37

291C-37 Interference with official traffic-control devices or railroad signs or signals. No person shall, without lawful authority, attempt to or in fact alter, deface, injure, knock down, or remove any official traffic-control device or any railroad sign or signal or any inscription, shield, or insignia thereon, or any other part thereof.

291C-38 Bill

291C-38 Longitudinal traffic lane markings.

(a) Traffic lane markings shall be yellow, white or red in color. Black may be used in combination with these colors where the pavement itself does not provide sufficient contrast.

(b) Lane markings shall conform to the following concepts:

(1) White lines indicate the separation of lanes of traffic flowing in the same direction.

(2) Yellow lines indicate the separation of lanes of traffic flowing in opposing directions or the left boundary of a traffic lane at a particularly hazardous location.

(3) Red markings indicate a roadway that shall not be entered or used by the viewer of those markings.

(4) Broken lines are permissive in character.

(5) Solid lines are restrictive in character.

(6) A wider line indicates a greater degree of emphasis.

(7) Double lines indicate maximum restriction.

(8) Markings which require visible emphasis at night shall be reflectorized.

(c) Longitudinal traffic lane markings shall have the following applications:

(1) A broken white line is used to indicate the edge of the traffic lane where travel is permitted in the same direction on both sides of the line and may be crossed by vehicular traffic when the crossing can be made with safety.

(2) A broken yellow line is used to indicate the left edge of a traffic lane where traffic on the other side of the line moves in the opposite direction and may be crossed by vehicular traffic only when overtaking or passing a vehicle proceeding in the same direction or when executing a left turn and then only if the movement can be made with safety and does not interfere with traffic moving in the opposite direction.

(3) A solid white line is used to indicate the edge of the traffic lane where travel in the same direction is permitted on both sides of the line but where movement from lane to lane is considered to be hazardous. A solid white line may be crossed only in unusual circumstances and then only with great care. A double width solid white line is used to emphasize a greater degree of hazard.

(4) A solid white line is also used to indicate the right edge of the pavement.

(5) A double solid white line is used to indicate the edges of traffic lanes where travel in the same direction is permitted on both sides of the double line but where movement from lane to lane is considered to be dangerous. The crossing of a double solid white line by vehicular traffic is prohibited.

(6) A solid yellow line is used to indicate the left edge of a traffic lane where overtaking and passing on the left is prohibited. The crossing of a solid yellow line by vehicular traffic is prohibited except when the crossing is part of a left turn movement.

(7) A solid yellow line is also used to indicate the left edge of each roadway of a divided street or highway.

(8) A double solid yellow line is used to indicate the separation between lanes of traffic moving in opposite directions. The crossing of a double solid yellow line by vehicular traffic is prohibited except when the crossing is part of a left turn movement.

(9) A double line consisting of a broken yellow line and a solid yellow line is used to indicate a separation between lanes of traffic moving in opposite directions and vehicular traffic adjacent to the broken line is permitted to overtake or pass if the movement can be made with safety and does not interfere with traffic moving in the opposite direction. The crossing of this double line by vehicular traffic adjacent to the solid line is prohibited except when the crossing is part of a left turn movement.

(10) A double broken yellow line is used to indicate the edge of a reversible traffic lane where the direction of the vehicular traffic may be changed from time to time.

(11) A dotted line is used to indicate the extension of a line through an intersection or interchange. It shall be the same color as the line it extends. The crossing of a dotted line by vehicular traffic is subject to the same prohibitions and exceptions as are applicable to the line it extends.

(12) A solid white line when supplemented by official signs or pavement markings, is used to indicate the separation of bicycle lanes from lanes of vehicular traffic flowing in the same direction. Except as allowed under section 291C-123, vehicles other than bicycles shall be prohibited from operating in a bicycle lane.

291C-39 HRS

291C-39 Traffic control devices; uniform standards and specifications. The department of transportation, after consultation with the counties, shall adopt rules pursuant to chapter 91 prescribing uniform standards and specifications for all official traffic control devices installed pursuant to this chapter, including stop signs, yield signs, speed limit signs, railroad warning approach signs, street name signs, crossing signs, any lines or markings on a roadway, and any other sign or marking required or authorized by the Federal Highway Administration's Manual on Uniform Traffic Control Devices, as amended.

291C-41 V

291C-41 Drive on right side of roadway; exceptions.

(a) Upon all roadways of sufficient width, a vehicle shall be driven upon the right half of the roadway, except as follows:

(1) When overtaking and passing another vehicle proceeding in the same direction under the rules governing the movement;

(2) When an obstruction exists making it necessary to drive to the left of the center of the highway; provided that any person so doing shall yield the right-of-way to all vehicles traveling in the proper direction upon the unobstructed portion of the highway within the distance constituting an immediate hazard;

(3) Upon a roadway divided into three marked lanes for traffic under the rules applicable thereon; or

(4) Upon a roadway designated and signposted for one-way traffic.

(b) Upon all roadways, any vehicle proceeding at less than the normal speed of traffic at the time and place and under the conditions then existing shall be driven in the right-hand lane then available for traffic, or as close as practicable to the

right-hand curb or edge of the roadway, except when overtaking and passing another vehicle proceeding in the same direction or when preparing for a left turn at an intersection or into a private road or driveway.

(c) Upon any roadway having four or more lanes for moving traffic and providing for two-way movement of traffic, no vehicle shall be driven to the left of the center line of the roadway, except when authorized by official traffic-control devices designating certain lanes to the left side of the center of the roadway for use by traffic not otherwise permitted to use the lanes, or except as permitted under subsection (a)(2). This subsection shall not be construed to prohibit the crossing of the center line in making a left turn into or from an alley, private road, or driveway.

(d) Upon any two-lane roadway providing for two-way movement of traffic, any vehicle proceeding at ten miles per hour or more below the posted speed limit where overtaking or passing another vehicle is not possible or permitted, and a line of five or more vehicles is following immediately behind, shall move off the roadway at the nearest safe location where sufficient space exists for trailing vehicles to overtake or pass the vehicle, unless doing so would result in an unsafe situation.

291C-42

291C-42 Passing vehicles proceeding in opposite directions. Drivers of vehicles proceeding in opposite directions shall pass each other to the right, and upon roadways having width for not more than one line of traffic in each direction each driver shall give to the other at least one-half of the main-traveled portion of the roadway as nearly as possible.

291C-43

291C-43 Overtaking a vehicle or bicycle on the left. The following rules shall govern the overtaking and passing of vehicles or bicycles proceeding in the same direction, subject to those limitations, exceptions, and special rules hereinafter stated:

(1) The driver of a vehicle overtaking another vehicle proceeding in the same direction shall pass to the left thereof at a safe distance and shall not again drive to the right side of the roadway until safely clear of the overtaken vehicle.

(2) The driver of a vehicle passing or overtaking a bicyclist proceeding in the same direction shall allow at least three feet of separation between the right side of the driver's vehicle, including all mirrors or other protuberances, and the left side of the bicyclist, and shall not again drive to the right side of the roadway until safely clear of the overtaken bicycle.

(3) Except when overtaking and passing on the right is permitted, the driver of an overtaken vehicle shall give way to the right in favor of the overtaking vehicle on audible signal and shall not increase the speed of the driver's vehicle until completely passed by the overtaking vehicle.

291C-44

291C-44 When overtaking on the right is permitted.

(a) The driver of a vehicle may overtake and pass upon the right of another vehicle only under the following conditions:

(1) When the vehicle overtaken is making or about to make a left turn;

(2) Upon a street or highway with unobstructed pavement not occupied by parked vehicles of sufficient width for and with lanes marked for two or more lines of moving vehicles in each direction;

(3) Upon a one-way street, or upon any roadway on which traffic is restricted to one direction of movement, where the roadway is free from obstructions and of sufficient width for two or more lines of moving vehicles.

(b) The driver of a vehicle may overtake and pass another vehicle upon the right only under conditions permitting such movement in safety. In no event shall such movement be made by driving off the pavement or main-traveled portion of the roadway.

291C-45

291C-45 Limitations on overtaking on the left. No vehicle shall be driven to the left side of the center of the roadway in overtaking and passing another vehicle proceeding in the same direction unless authorized by this part and unless such left side is clearly visible and is free of oncoming traffic for a sufficient distance ahead to permit the overtaking and passing to be completely made without interfering with the operation of any vehicle approaching from the opposite direction or any vehicle overtaken. In every event the overtaking vehicle must return to an authorized lane of travel as soon as practicable and in the event the passing movement involves the use of a lane authorized for vehicles approaching from the opposite direction, before coming within two hundred feet of any approaching vehicle.

291C-46

291C-46 Further limitation on driving on left of center of roadway.

(a) No vehicle shall be driven to the left side of the roadway under the following conditions:

(1) When approaching or upon the crest of a grade or a curve in the highway where the driver's view is obstructed within such distance as to create a hazard in the event another vehicle might approach from the opposite direction;

(2) When approaching within one hundred feet of or traversing any intersection or railroad grade crossing;

(3) When the view is obstructed upon approaching within one hundred feet of any bridge, viaduct, or tunnel.

(b) The foregoing limitations shall not apply upon a one-way roadway, nor under the conditions described in section 291C-41(a)(2), nor to the driver of a vehicle turning left into or from an alley, private road, or driveway.

291C-47 No-passing zones

291C-47 No-passing zones.

(a) The director of transportation is authorized to and the counties by ordinance with respect to highways under their respective jurisdictions may establish no-passing zones where overtaking and passing or driving to the left of the roadway would be especially hazardous and shall by appropriate signs or markings on the highway establish or indicate the beginning and the end of a no-passing zone and may place intermediate signs establishing or indicating the continued existence of a no-passing zone. Signs or markings placed by the director of transportation establishing the zone and signs or markings indicating the zone established by ordinance shall be clearly visible to an ordinarily observant person and every driver of a vehicle shall obey the directions thereof.

(b) Where signs or markings are in place to define a no-passing zone as set forth in subsection (a) no driver shall at any time drive on the left side of the roadway within such no-passing zone or on the left side of any pavement striping designed to mark such no-passing zone throughout its length.

(c) This section does not apply under the conditions described in section 291C-41(a)(2), nor to the driver of a vehicle turning left into or from an alley, private road, or driveway.

291C-48

291C-48 One-way roadways and rotary traffic islands.

(a) The director of transportation and the counties with respect to highways under their respective jurisdictions may designate any highway, roadway, part of a roadway, or specific lanes upon which vehicular traffic shall proceed in one direction at all or such times as shall be indicated by official traffic-control devices.

(b) Upon a roadway so designated for one-way traffic, a vehicle shall be driven only in the direction designated at all or such times as shall be indicated by official traffic-control devices.

(c) A vehicle passing around a rotary traffic island shall be driven only to the right of the island.

291C-49

291C-49 Driving on roadways laned for traffic. Whenever any roadway has been divided into two or more clearly marked lanes for traffic the following rules in addition to all others consistent herewith shall apply.

(1) A vehicle shall be driven as nearly as practicable entirely within a single lane and shall not be moved from the lane until the driver has first ascertained that such movement can be made with safety.

(2) Upon a roadway which is divided into three lanes and provides for two-way movement of traffic, a vehicle shall not be driven in the center lane except when overtaking and passing another vehicle traveling in the same direction when the center lane is clear of traffic within a safe distance, or in preparation for making a left turn or where the center lane is at the time allocated exclusively to traffic moving in the same direction that the vehicle is proceeding and such allocation is designated by official traffic-control devices.

(3) Official traffic-control devices may be erected directing specified traffic to use a designated lane or designating those lanes to be used by traffic moving in a particular direction regardless of the center of the roadway and drivers of vehicles shall obey the directions of every such sign.

(4) Official traffic-control devices may be installed prohibiting the changing of lanes on sections of roadway and drivers of vehicles shall obey the directions of every such device.

291C-50 Following too closely

291C-50 Following too closely.

(a) The driver of a vehicle shall not follow another vehicle more closely than is reasonable and prudent, having due regard for the speed of such vehicles and the traffic upon and the condition of the highway.

(b) The driver of a motor truck or motor vehicle drawing another vehicle when traveling upon a roadway outside of a business or residence district and which is following another motor truck or motor vehicle drawing another vehicle shall, whenever conditions permit, leave sufficient space so that an overtaking vehicle may enter and occupy such space without danger, except that this shall not prevent a motor truck or motor vehicle drawing another vehicle from overtaking and passing any like vehicle or other vehicle.

(c) Motor vehicles being driven upon any roadway outside of a business or residence district in a caravan or motorcade whether or not towing other vehicles shall be so operated as to allow sufficient space between each such vehicle or combination of vehicles so as to enable any other vehicle to enter and occupy such space without danger. This provision shall not apply to funeral processions.

291C-51 Driving on divided highways

291C-51 Driving on divided highways. Whenever any highway has been divided into two or more roadways by leaving an intervening space or by a physical barrier or clearly indicated dividing section so constructed as to impede vehicular traffic, every vehicle shall be driven only upon the right-hand roadway unless directed or permitted to use another roadway by official traffic-control devices or police officers. No vehicle shall be driven over, across, or within any such dividing space, barrier, or section, except through an opening in such physical barrier or dividing section or space or at a cross-over or intersection as established, unless specifically prohibited by public authority.

291C-52 Restricted access

291C-52 Restricted access. No person shall drive a vehicle onto or from any controlled-access roadway except at such entrances and exits as are established by public authority.

291C-53

291C-53 Restrictions on use of controlled-access roadway or highway.

(a) The director of transportation by rules adopted in accordance with chapter 91, and the counties by ordinance, may regulate or prohibit the use of any controlled-access roadway or highway within their respective jurisdictions by any class or kind of traffic which is found to be incompatible with the normal and safe movement of traffic. Persons operating motorcycles which are otherwise permitted on a controlled-access roadway or highway shall be permitted to use any high occupancy vehicle lane designated on such roadway or highway. For the purposes of this subsection, "high occupancy vehicle lane" means a designated lane of a laned roadway where the use of such designated lane is restricted to vehicles carrying at least the minimum number of persons designated by the director of transportation as indicated on official signs and other official traffic-control devices, and to other vehicles as provided by rules adopted in accordance with chapter 91, or by county ordinance. Notwithstanding any law to the contrary, no person shall operate a neighborhood electric vehicle on any controlled-access roadway or highway.

(b) The director of transportation or a county adopting any such prohibition shall erect and maintain official traffic-control devices on the controlled-access roadway or highway on which such prohibitions are applicable and when in place no person shall disobey the restrictions stated on such devices.

291C-54 HRS

291C-54 REPEALED. L 2018, c 218, §9. Previous Vol05_Ch0261-0319 Next

291C-55 HRS

291C-55 Oversized commercial vehicles; prohibition from using left lane.

(a) Upon any roadway having three or more lanes for traffic moving in the same direction, no commercial vehicle weighing ten thousand pounds or more shall be driven in the far left lane unless:

(1) The commercial vehicle is able to maintain speed with existing traffic flow; and

(2) The commercial vehicle is in the process of overtaking and passing another vehicle proceeding in the same direction under the rules governing such movement.

(b) This section shall not apply to commercial vehicles occupying the left lane for the purpose of turning left or exiting, or preparing to turn left or exit.

(c) For the purposes of this section, "commercial vehicle" shall have the same meaning as in section 291-11.5. "Commercial vehicle" does not include buses or van pools operated by the counties.

291C-61 VI

291C-61 Vehicle approaching or entering intersection.

(a) When two vehicles approach or enter an intersection from different highways at approximately the same time, the driver of the vehicle on the left shall yield the right-of-way to the vehicle on the right.

(b) The right-of-way rule declared in subsection (a) is modified at through highways and otherwise as stated in this chapter.

291C-62 Vehicle turning

291C-62 Vehicle turning. The driver of a vehicle intending to turn within an intersection or into an alley, private road, or driveway shall yield the right-of-way to any vehicle, bicycle, or person approaching from the opposite direction or proceeding in the same direction when such vehicle, bicycle, or person is within the intersection or so close thereto as to constitute an immediate hazard.

291C-63

291C-63 Vehicle entering stop or yield intersection.

(a) Preferential right-of-way at an intersection may be indicated by stop signs or yield signs.

(b) Except when directed to proceed by a police officer or traffic-control signal, every driver of a vehicle approaching a stop intersection indicated by a stop sign shall stop at a clearly marked stop line, but if none, before entering the crosswalk on the near side of the intersection, or if none, then at the point nearest the intersecting roadway where the driver has a view of approaching traffic on the intersecting roadway before entering the intersection. After having stopped, the driver shall yield the right-of-way to any vehicle which has entered the intersection from another highway or which is approaching so closely on the other highway as to constitute an immediate hazard during the time when such driver is moving across or within the intersection.

(c) The driver of a vehicle approaching a yield sign shall in obedience to such sign slow down to a speed reasonable for the existing conditions and, if required for safety to stop, shall stop at a clearly marked stop line, but if none, before entering the crosswalk on the near side of the intersection, or if none, then at the point nearest the intersecting roadway. After slowing or stopping, the driver shall yield the right-of-way to any vehicle in the intersection or approaching on another highway so closely as to constitute an immediate hazard during the time such driver is moving across or within the intersection; provided that if such a driver is involved in a collision with a vehicle in the intersection, after driving past a yield sign without stopping, the collision shall be deemed prima facie evidence of the driver's failure to yield right-of-way.

291C-64

291C-64 Vehicle entering highway from private road or driveway. The driver of a vehicle about to enter or cross a highway (including bicycle lane or bicycle path) from an alley, building, private road, or driveway or from any public or private property other than a highway that is adjacent to the highway, shall yield the right-of-way to all vehicles or bicycles approaching on the highway (including bicycle lane or bicycle path) to be entered.

291C-65

291C-65 Operation of vehicles on approach of authorized emergency vehicles.

(a) Except as otherwise provided by county ordinance, upon the immediate approach of an authorized emergency vehicle making use of audible and visual signals, the driver of every other vehicle shall yield the right-of-way and shall immediately drive to a position clear of any intersection and parallel to, and as close as possible to, the right hand edge or curb of the highway or the nearest edge or curb when the highway has multiple lanes or when the highway is a divided highway or one-way street and shall stop and remain in such position until the authorized emergency vehicle is passed, except as otherwise directed by a police officer.

(b) This section shall not operate to relieve the driver of an authorized emergency vehicle from the duty to drive with due regard for the safety of all persons using the highway.

291C-71 VII

291C-71 Pedestrian obedience to traffic-control devices and traffic regulations.

(a) A pedestrian shall obey the instructions of any official traffic-control device specifically applicable to the pedestrian, unless otherwise directed by a police officer.

(b) Pedestrians shall be subject to traffic and pedestrian-control signals as provided in sections 291C-32 and 291C-33.

(c) At all other places, pedestrians shall be accorded the privileges and shall be subject to the restrictions stated in this chapter.

291C-72

291C-72 Pedestrians' right-of-way in crosswalks.

(a) The driver of a vehicle shall stop for a pedestrian who is crossing the roadway within a crosswalk when the pedestrian is either:

(1) Upon the half of the roadway upon which the vehicle is traveling; or

(2) Approaching the vehicle so closely from the opposite half of the roadway as to be in danger, and shall not proceed until the pedestrian has passed the vehicle and the driver can safely proceed. For purposes of this section, "a pedestrian who is crossing the roadway within a crosswalk" occurs when any part or extension of the pedestrian, including any part of the pedestrian's body, wheelchair, cane, crutch, or bicycle, is beyond the curb or edges of the traversable roadway and moves onto the roadway within an intersection or crosswalk.

(b) No pedestrian shall suddenly leave a curb or other place of safety and walk or run into the path of a vehicle which is so close that it is impossible for the driver to yield.

(c) Subsection (a) shall not apply under the conditions stated in section 291C-73(b).

(d) Whenever any vehicle is stopped at a marked crosswalk or at any unmarked crosswalk at an intersection to permit a pedestrian to cross the roadway, the driver of any other vehicle approaching from the rear shall not overtake and pass the stopped vehicle.

(e) Every person who violates this section shall be subject to the following penalties:

(1) For a first infraction, or any infraction not preceded within one year by a prior violation of this section, a fine of $150;

(2) For an infraction that occurs within one year of a prior violation of this section, a fine of $300 and revocation of the person's driver's license and privilege to operate a vehicle for a period of ninety days; and

(3) For an infraction that occurs within two years of two prior violations of this section, and for the fourth and each additional infraction of this section, regardless of when committed, a fine of $1,000, and revocation of the person's driver's license and privilege to operate a vehicle for a period of one hundred eighty days.

291C-73 Crossing at other than crosswalks

291C-73 Crossing at other than crosswalks.

(a) Every pedestrian crossing a roadway at any point other than within a marked crosswalk or within an unmarked crosswalk at an intersection shall yield the right-of-way to all vehicles upon the roadway.

(b) Any pedestrian crossing a roadway at a point where a pedestrian tunnel or overhead pedestrian crossing has been provided shall yield the right-of-way to all vehicles upon the roadway.

(c) Between adjacent intersections at which traffic-control signals are in operation, pedestrians shall not cross at any place except in a marked crosswalk.

(d) No pedestrian shall cross a roadway intersection diagonally unless authorized by official traffic-control devices; and, when authorized to cross diagonally, pedestrians shall cross only in accordance with the official traffic-control devices pertaining to the crossing movements.

(e) Every person who violates this section shall be fined $100.

291C-74 Drivers to exercise due care

291C-74 Drivers to exercise due care. Notwithstanding other provisions of this chapter, every driver of a vehicle shall exercise due care to avoid colliding with any pedestrian upon any roadway and shall give warning by sounding the driver's horn when necessary and shall exercise proper precaution upon observing any child or any obviously confused or

incapacitated person upon a roadway.

291C-75

291C-75 Pedestrians to use right half of crosswalks. Pedestrians shall move, whenever practicable, upon the right half of crosswalks.

291C-76 Pedestrians on roadways

291C-76 Pedestrians on roadways.

(a) Where sidewalks are provided it shall be unlawful for any pedestrian to walk along and upon an adjacent roadway, bicycle lane, or bicycle path.

(b) Where sidewalks are not provided any pedestrian walking along and upon a highway shall, when practicable, walk only on the left side of the roadway or its shoulder facing traffic which may approach from the opposite direction.

291C-77

291C-77 Pedestrians soliciting rides, business, or attention of motorist.

(a) Except as otherwise provided by county ordinance, no person shall stand in, walk along, or otherwise occupy a portion of a highway for the purpose of soliciting a ride, employment, business, or contributions from the occupant of any vehicle.

(b) No person shall stand on or in proximity to a street or highway for the purpose of soliciting the watching or guarding of any vehicle while parked or about to be parked on a street or highway.

291C-78

291C-78 Driving through safety zone prohibited. No vehicle shall at any time be driven through or within a safety zone.

291C-79

291C-79 Pedestrians' right-of-way on sidewalks. The driver of a vehicle emerging from or entering an alley, building, private road, or driveway shall yield the right-of-way to any pedestrian approaching on any sidewalk extending across the alley, building entrance, road, or driveway.

291C-81 VIII

291C-81 Required position and method of turning at intersections. The driver of a vehicle intending to turn at an intersection shall do so as follows:

(1) Right turns. Both the approach for a right turn and a right turn shall be made as close as practicable to the right-hand curb or edge of the roadway.

(2) Left turns. The driver of a vehicle intending to turn left at any intersection shall approach the intersection in the extreme left-hand lane lawfully available to traffic moving in the direction of travel of such vehicle, and, after entering the intersection, the left turn shall be made so as to leave the intersection in a lane lawfully available to traffic moving in such direction upon the roadway being entered. Whenever practicable the left turn shall be made in that portion of the intersection to the left of the center of the intersection.

(3) The director of transportation and the counties in their respective jurisdictions may cause official traffic-control devices to be placed within or adjacent to intersections and thereby require and direct that a different course from that specified in this section be traveled by vehicles turning at an intersection, and when such devices are so placed no driver of a vehicle shall turn a vehicle at an intersection other than as directed and required by such devices.

291C-82

291C-82 Turning so as to proceed in the opposite direction.

(a) No vehicle shall be turned so as to proceed in the opposite direction upon any curve, or upon the approach to or near the crest of a grade, where such vehicle cannot be seen by the driver of any other vehicle approaching from either direction within five hundred feet.

(b) In addition to the prohibition in subsection (a), the director of transportation is authorized to and the counties may by ordinance with respect to highways under their respective jurisdictions prohibit the turning of any vehicle so as to proceed in the opposite direction on the highway at any location where such turning would be dangerous to those using the

highway or would unduly interfere with the free movement of traffic.

(c) The director of transportation and the counties by ordinance with respect to the highways under their respective jurisdictions shall place signs which are clearly visible to an ordinarily observant person prohibiting the turning of a vehicle to proceed in the opposite direction. The signs shall be official signs and no person shall turn any vehicle in violation of the restrictions stated on such signs.

291C-83 Starting parked vehicle

291C-83 Starting parked vehicle. No person shall start a vehicle which is stopped, standing, or parked unless and until such movement can be made with reasonable safety.

291C-84

291C-84 Turning movements and required signals.

(a) No person shall turn a vehicle at an intersection unless the vehicle is in proper position upon the roadway as required in section 291C-81, or turn a vehicle to enter a private road or driveway, or otherwise turn a vehicle from a direct course or move right or left upon a roadway unless and until such movement can be made with reasonable safety. No person shall so turn any vehicle without giving an appropriate signal in the manner hereinafter provided.

(b) A signal of intention to turn right or left when required shall be given continuously during not less than the last one hundred feet traveled by the vehicle before turning; provided that for a bicycle or moped, such signal shall be given continuously during not less than the last one hundred feet traveled by the bicycle or moped before turning, and shall be given when the bicycle or moped is stopped waiting to turn; and further provided that a signal by hand and arm need not be given continuously by the driver of a bicycle or moped if the hand is needed in the braking, control, or operation of the bicycle or moped.

(c) No person shall stop or suddenly decrease the speed of a vehicle without first giving an appropriate signal in the manner provided herein to the driver of any vehicle immediately to the rear when there is opportunity to give such signal.

(d) The signals provided for in section 291C-85(b) shall be used to indicate an intention to turn, change lanes, or start from a parked position and shall not be flashed on one side only on a parked or disabled vehicle, or flashed as a courtesy or "do pass" signal to operators of other vehicles approaching from the rear.

291C-85

291C-85 Signals by hand and arm or signal lamps.

(a) Any stop or turn signal when required herein shall be given either by means of the hand and arm or by signal lamps, except as otherwise provided in subsection (b).

(b) Any motor vehicle in use on a highway shall be equipped with, and required signal shall be given by, signal lamps when the distance from the center of the top of the steering post to the left outside limit of the body, cab, or load of such motor vehicle exceeds twenty-four inches, or when the distance from the center of the top of the steering post to the rear limit of the body or load thereof exceeds fourteen feet. The latter measurement shall apply to any single vehicle, also to any combination of vehicles.

291C-86

291C-86 Method of giving hand-and-arm signals. All signals herein required given by hand and arm shall be given from the left side of the vehicle in the following manner and such signals shall indicate as follows:

(1) Left turn--hand and arm extended horizontally.

(2) Right turn--hand and arm extended upward, except bicyclists may signal using the right hand and arm extended horizontally from the right side of the bicycle.

(3) Stop or decrease speed--hand and arm extended downward.

291C-91 IX

291C-91 Obedience to signal indicating approach of train.

(a) Whenever any person driving a vehicle approaches a railroad grade crossing under any of the circumstances stated in this section, the driver of the vehicle shall stop within fifty feet but not less than fifteen feet from the nearest rail of the railroad, and shall not proceed until the train has passed. The foregoing requirements shall apply when:

(1) A clearly visible electric or mechanical signal device gives warning of the immediate approach of a railroad train;

(2) A crossing gate is lowered or when a human flagperson gives or continues to give a signal of the approach or passage of a train;

(3) A railroad train approaching within approximately fifteen hundred feet of the highway crossing emits a signal audible from that distance and the railroad train, by reason of its speed or nearness to the crossing, is an immediate hazard;

(4) An approaching railroad train is approximately within fifteen hundred feet of the crossing and is plainly visible and is in hazardous proximity to the crossing.

(b) No person shall drive any vehicle through, around, or under any crossing gate or barrier at a railroad crossing while the gate or barrier is closed or is being opened or closed.

291C-92

291C-92 All vehicles must stop at certain railroad grade crossings. The director of transportation and the counties are authorized to designate particularly dangerous highway grade crossings of railroads and to erect stop signs thereat. When such stop signs are erected, the driver of any vehicle shall stop within fifty feet but not less than fifteen feet from the nearest rail of such railroad and shall proceed only if no train is approaching. If a train is approaching, and is approximately within fifteen hundred feet of the crossing, the driver must not proceed until after the train has passed.

291C-93

291C-93 Certain vehicles must stop at all railroad crossings.

(a) The driver of any motor vehicle carrying passengers for hire, or of any school bus carrying any school child, or of any vehicle carrying explosive substances or flammable liquids as a cargo or part of a cargo, before crossing at grade any track or tracks of a railroad, shall stop such vehicle within fifty feet but not less than fifteen feet from the nearest rail of such railroad, and while so stopped shall listen and look in both directions along the track for any approaching train, and for signals indicating the approach of a train, except as hereinafter provided, and if a train is approaching, and is approximately within fifteen hundred feet of the crossing, shall not proceed until after the train has passed. After stopping as required herein and determining that no train is approaching, the driver of any such vehicle shall cross only in such gear of the vehicle that there will be no necessity for changing gears while traversing the crossing and the driver shall not shift gears while crossing the track or tracks.

(b) No stop need be made at any such crossing where a police officer or a traffic-control signal directs traffic to proceed.

(c) This section shall not apply at street-railway grade crossings within a business or residence district.

291C-94

291C-94 Emerging from alley, driveway, or building. The driver of a vehicle emerging from an alley, building, private road, or driveway or from any public or private property other than a highway that is adjacent to a bicycle lane, bicycle path, sidewalk, or sidewalk area shall stop the vehicle immediately prior to driving onto the bicycle lane, bicycle path, sidewalk, or sidewalk area extending across the alley, building entrance, road, or driveway, or such public or private property, or in the event there is no bikeway or sidewalk area, shall stop at the point nearest the street to be entered where the driver has a view of approaching traffic thereon.

291C-95 Overtaking and passing school bus

291C-95 Overtaking and passing school bus.

(a) Whenever a school bus is stopped on a highway or road in a residential area with its visual signals actuated as described in subsection (g), the driver of any motor vehicle on the same highway or road in a residential area in the lane occupied by the school bus and all lanes adjacent to the lane occupied by the school bus, regardless of the direction of traffic in those lanes, shall stop the driver's vehicle not less than twenty feet from the school bus and shall not proceed until the school bus resumes motion and the visual signals are turned off.

(b) Subsection (a) shall not apply to a vehicle when the school bus and the vehicle are on different roadways; except that where a highway or road in a residential area has been divided into two or more lanes by an intervening space, a physical barrier, or a clearly indicated dividing section, subsection (a) shall apply to all drivers of motor vehicles in all lanes on the same side as a school bus which is stopped with visual signals actuated as required under subsection (c).

(c) The driver of the school bus shall actuate the visual signals described in subsection (g) only when the school bus is stopped for the purpose of receiving or discharging school children.

(d) The front and rear of every school bus shall be marked with the words "SCHOOL BUS" in plainly visible letters not less than eight inches in height and strokes not less than three-fourths of an inch in width.

(e) No vehicle, other than a school bus, shall display a "SCHOOL BUS" sign.

(f) When a school bus is being operated upon a highway for purposes other than as an incident to the transportation of children, all marking thereon indicating "SCHOOL BUS" shall be covered or concealed.

(g) The visual signals actuated as required under subsection (c) shall consist of four red signal lamps meeting the following requirements:

(1) Two lamps shall face forward and two shall face the rear;

(2) The two forward lamps shall flash alternately and shall be mounted at the same level, but as high and as widely spaced as practical;

(3) The two rear lamps shall flash alternately and shall be mounted at the same level but as high and as widely spaced as practical; and

(4) Each of the lamps shall be of sufficient intensity as to be plainly visible at a distance of five hundred feet in normal sunlight and shall be capable of being actuated from the driver's seat by a single switch.

(h) Any person who violates this section shall be fined not more than $500 or sentenced to perform community service, or both; provided that any person who violates subsection (a) on a state highway shall be fined not more than $1,000 or sentenced to perform community service, or both.

291C-101 X

291C-101 Basic rule. No person shall drive a vehicle at a speed greater than is reasonable and prudent and having regard to the actual and potential hazards and conditions then existing. Consistent with the foregoing, every person shall drive at a safe and appropriate speed when approaching and crossing an intersection or railroad grade crossing, when approaching and going around a curve, when approaching a hill crest, when traveling upon any narrow or winding roadway, and when special hazards exist with respect to pedestrians or other traffic, or by reason of weather or highway conditions.

291C-102

291C-102 Noncompliance with speed limit prohibited.

(a) A person violates this section if the person drives:

(1) A motor vehicle at a speed greater than the maximum speed limit other than provided in section 291C■105; or

(2) A motor vehicle at a speed less than the minimum speed limit, where the maximum or minimum speed limit is established by county ordinance or by official signs placed by the director of transportation on highways under the director's jurisdiction.

(b) If the maximum speed limit is exceeded by more than ten miles per hour, a surcharge of $10 shall be imposed, in addition to any other penalties, and shall be deposited into the neurotrauma special fund.

291C-103 Racing on highways

291C-103 Racing on highways.

(a) Except as provided in section 291C-149, no person shall drive any vehicle in any race, speed competition or contest, drag race or acceleration contest, test of physical endurance, exhibition of speed or acceleration, or for the purpose of making a speed record, and no person shall in any manner participate in any race, competition, contest, test, or exhibition prohibited by this section.

(b) Any person who violates this section, except in the case of an exhibition of speed or acceleration, shall be fined not more than $500 or imprisoned not more than six months, or both. Any person who violates this section by way of an exhibition of speed or acceleration shall be fined not more than $500 or be sentenced to perform community service, or both.

(c) Any person who violates this section while operating a vehicle at a speed exceeding the posted speed limit by thirty miles per hour or more shall be subject to a fine of not more than $2,000, a term of imprisonment of not more than one year, or both; provided that the following additional penalties shall also apply:

(1) For an offense that occurs within five years of a prior conviction, a one-year license suspension;

(2) For an offense that occurs within five years of two prior convictions: (A) A three-year license suspension; and (B) A vehicle owned by the defendant and used in the commission of the offense which has been used in at least two prior offenses that resulted in convictions may be ordered by the court to be subject to forfeiture under chapter 712A; and

(3) For all offenses under this section, a surcharge of up to $100 may be deposited in the trauma system special fund if the court so orders.

(d) As used in this section: "Drag race" means the operation of two or more vehicles from a point side by side at accelerating speeds in a competitive attempt to outdistance each other, or the operation of one or more vehicles over a common selected course, from the same point to the same point, for the purpose of comparing the relative speeds or power of acceleration of the vehicle or vehicles within a certain distance or time limit. "Exhibition of speed or acceleration" means the sudden acceleration of a vehicle resulting in the screeching of the vehicle's tires that is done to intentionally draw the attention of persons present toward the vehicle. "Racing" means the use of one or more vehicles in an attempt to outgain, outdistance, or prevent another vehicle from passing, to arrive at a given destination ahead of another vehicle or vehicles, or to test the physical stamina or endurance of drivers over long distance driving routes.

291C-104

291C-104 Speeding in a school zone or construction area . (a) No person shall drive a motor vehicle at a speed greater than the maximum speed limit established pursuant to subsection (b) within a school zone or a construction area; provided that if the person drives a motor vehicle at a speed greater than thirty miles an hour or more over the maximum speed limit established in subsection (b), or over eighty miles per hour or more in a school zone or a construction zone, the provisions of section 291C-105 shall control. Appropriate law enforcement personnel may enforce the maximum speed limits established for school zones and construction areas.

(b) Section 291C-102 notwithstanding, the director of transportation and the counties, in their respective jurisdictions, shall establish maximum speed limits for school zones and construction areas and shall require the owner, general contractor, or other person responsible for construction to provide proper signs in construction areas. The director of transportation shall place official signs in school zones. Signs posted pursuant to this subsection shall be plainly visible at all times under ordinary traffic conditions.

(c) Any person who violates this section shall be fined $250, may be charged with a surcharge of up to $100 to be deposited into the trauma system special fund, and, where the violation involves speeding in a school zone, shall be charged with a surcharge of $25 to be deposited into the safe routes to school program special fund.

(d) For purposes of this section: "Construction area" includes any area in which there is occurring the installation, construction, or demolition of connections for streets, roads, driveways, concrete curbs and sidewalks, structures, drainage systems, landscaping, or grading within the highway rights-of-way, including aboveground and underground utility work, excavation and backfilling of trenches or other openings in state highways, the restoration, replacement, or repair of the base course, pavement surfaces, highway structures, or any other highway improvements. "School zone" means every street and all public property in the vicinity of a school as designated by the department of transportation and the counties, in their respective jurisdictions.

(e) The director shall adopt rules pursuant to chapter 91 as may be necessary to implement this section.

291C-105 Bill

291C-105 Excessive speeding.

(a) No person shall drive a motor vehicle at a speed exceeding:

(1) The applicable state or county speed limit by thirty miles per hour or more; or

(2) Eighty miles per hour or more irrespective of the applicable state or county speed limit.

(b) For the purposes of this section, "the applicable state or county speed limit" means the maximum speed limit established:

(1) By county ordinance;

(2) By official signs placed by the director of transportation on highways under the director's jurisdiction; or

(3) Pursuant to section 291C-104 by the director of transportation or the counties for school zones and construction areas in their respective jurisdictions.

(c) Any person who violates subsection (a) shall be guilty of a petty misdemeanor and shall be sentenced as follows without the possibility of probation or suspension of sentence:

(1) For a first offense not preceded by a prior conviction for an offense under subsection (a) in the preceding five years: (A) A fine of not less than $500 and not more than $1,000; (B) Thirty-day prompt suspension of license and privilege to operate a vehicle during the suspension period, or the court may impose, in lieu of the thirty-day prompt suspension of license, a minimum fifteen-day prompt suspension of license with absolute prohibition from operating a vehicle and, for the remainder of the thirty-day period, a restriction on the license that allows the person to drive for limited work-related purposes; (C) Attendance in a course of instruction in driver retraining; (D) A surcharge of $25 to be deposited into the neurotrauma special fund under section 321H-4; (E) A surcharge of not more than $100 to be deposited into the trauma system special fund under section 321-22.5, if the court so orders; (F) An assessment for driver education pursuant to section 286G-3; and (G) Either one of the following:

(i) Thirty-six hours of community service work; or (ii) Not less than forty-eight hours and not more than five days of imprisonment; and

(2) For an offense that occurs within five years of a prior conviction for an offense under subsection (a): (A) A fine of not less than $750 and not more than $1,000; (B) Prompt suspension of license and privilege to operate a vehicle for a period of thirty days with an absolute prohibition from operating a vehicle during the suspension period; (C) Attendance in a course of instruction in driver retraining; (D) A surcharge of $25 to be deposited into the neurotrauma special fund under section 321H-4; (E) A surcharge of not more than $100 to be deposited into the trauma system special fund under section 321-22.5, if the court so orders; (F) An assessment for driver education pursuant to section 286G-3; and (G) Either one of the following:

(i) Not less than one hundred twenty hours of community service work; or (ii) Not less than five days but not more than fourteen days of imprisonment of which at least forty-eight hours shall be served consecutively.

(d) Notwithstanding subsection (c), any person who violates subsection (a) within five years of two prior convictions for the same offense shall be guilty of a misdemeanor and shall be sentenced as follows without the possibility of probation or suspension of sentence:

(1) A mandatory minimum jail sentence of thirty days;

(2) Revocation of license and privilege to operate a vehicle for a period of not less than ninety days but not more than six months;

(3) Attendance in a course of instruction in driver retraining;

(4) A surcharge of $25 to be deposited into the neurotrauma special fund under section 321H-4;

(5) A surcharge of not more than $100 to be deposited into the trauma system special fund under section 321-22.5, if the court so orders;

(6) An assessment for driver education pursuant to section 286G-3; and

(7) That the vehicle used in the commission of the offense be subject to forfeiture under chapter 712A, if the court so orders.

291C-106 HRS

291C-106 Speed limit for Daniel K. Inouye highway. Notwithstanding any other law to the contrary, the speed limit for the Daniel K. Inouye highway shall be sixty miles per hour beginning at mile marker 12; provided that the speed limit shall be forty-five miles per hour or any other speed limit as determined pursuant to sections 291C-102, 291C-104, or 291C-105, beginning at the Pohakuloa training area and ending one-half mile east of the Mauna Kea county park entrance.

291C-107 HRS

291C-107 Speed limits; factors to consider.

(a) The department of transportation or a county shall consider the following factors when setting a maximum speed limit pursuant to section 291C-102:

(1) An engineering study conducted for the road whose maximum speed limit is being set, which shall include an analysis of the current speed distribution of free-flowing vehicles; provided that this paragraph shall not apply when the department of transportation or any county reduces a maximum speed limit within: (A) One mile of a school; and (B) Ten miles per hour of the current speed limit for that road;

(2) For sections of highways with residential or commercial areas or schools immediately adjacent to the roadway, the department of transportation or a county shall, to the extent practicable, consider guidance provided by the National Association of City Transportation Officials; provided that nothing in this paragraph shall be construed to supersede any applicable federal standards or requirements; and

(3) Any other factors prescribed by the Federal Highway Administration's Manual on Uniform Traffic Control Devices, as amended.

(b) As used in this section, "engineering study" means a survey of highway and traffic conditions in accordance with methods determined by the department of transportation for use by state and local authorities. An engineering study shall consider the following factors:

(1) Roadway characteristics including but not limited to shoulder condition grade, alignment, sight distance, and lane widths;

(2) Roadside development and environment, including the following: (A) Number and types of side road access including signalized or unsignalized intersections; (B) Pedestrian activity and facilities; (C) Parking practices and activity; and (D) Type of bicycle accommodations and facilities;

(3) Motor vehicle crashes resulting in deaths or injuries; and

(4) Prevailing speeds as determined by traffic engineering measurements.

291C-108 HRS

291C-108 Noncompliance with maximum speed limit under automated speed enforcement system.

(a) Whenever a motor vehicle travels through a location actively monitored by an automated speed enforcement system, all registered owners of all motor vehicles in vehicular traffic shall be held strictly liable for their motor vehicle's compliance with the maximum speed limit, to the extent that registered owners may be cited and held accountable for their motor vehicle traveling at a speed not less than five miles per hour over the posted maximum speed limit, via civil traffic infractions pursuant to chapter 291L. The department may increase the minimum speed threshold for issuance of a citation pursuant to administrative rules adopted pursuant to chapter 91.

(b) In the event a registered owner is cited pursuant to chapter 291L, and the driver of the motor vehicle is cited pursuant to another section in this part for the same incident, the citation issued pursuant to chapter 291L shall be dismissed.

(c) If the maximum speed limit is exceeded by more than ten miles per hour, an additional surcharge of $10 shall be imposed, and shall be deposited into the neurotrauma special fund.

(d) If the motor vehicle is traveling at a speed exceeding:

(1) The maximum speed limit by thirty miles per hour or more; or

(2) Eighty miles per hour or more irrespective of the maximum speed limit, the registered owner shall pay a fine of $250.

(e) To the extent a registered owner's motor vehicle fails to comply with any other law or ordinance related to traffic-control signals, the registered owner of a motor vehicle shall not be held strictly liable unless otherwise provided by law.

(f) For purposes of this section, "maximum speed limit" means the maximum speed limit established by county ordinance or by official signs placed by the director of transportation on highways under the director's jurisdiction.

291C-111 XI

291C-111 Noncompliance with stopping, standing, or parking requirements.

(a) With respect to highways and property under their respective jurisdictions, the director of transportation shall be authorized to and the counties by ordinance may prohibit or restrict the stopping, standing, or parking of vehicles where the stopping, standing, or parking is dangerous to those using the highway or where the stopping, standing, or parking of vehicles would unduly interfere with the free movement of traffic; provided that the violation of any law or any ordinance, regardless of whether established under this or any other section, prohibiting or restricting the stopping, standing, or

parking of vehicles shall constitute a traffic infraction. The counties may issue traffic infractions for violations of any law prohibiting or restricting the stopping, standing, or parking of vehicles on all highways and county property. The counties shall not provide any other penalty, civil or criminal, or any other charge, in the form of rental or otherwise, in place of or in addition to the fine to be imposed by the district court for any violation of any ordinance prohibiting or restricting the stopping, standing, or parking of vehicles. This section shall not be construed as prohibiting the authority of the director of transportation or the counties to allow the stopping, standing, or parking of motor vehicles at a "T-shaped" intersection on highways under their respective jurisdictions; provided that the stopping, standing, or parking of motor vehicles is not dangerous to those using the highway or where the stopping, standing, or parking of motor vehicles would not unduly interfere with the free movement of traffic. The appropriate police department or their designee, and county or prosecuting attorney of the various counties shall enforce any law or ordinance prohibiting or restricting the stopping, standing, or parking of vehicles, including but not limited to the issuance of parking tickets. Any person committing a violation of any law or ordinance, regardless of whether established under this or any other section, prohibiting or restricting the stopping, standing, or parking of vehicles shall be subject to a fine to be enforced and collected by the district courts of this State and to be deposited into the state general fund for state use.

(b) The director of transportation, the counties, and owners of private highways, with the consent of the county official responsible for traffic control with respect to highways under their respective jurisdictions, shall place signs or curb markings that are clearly visible to an ordinarily observant person prohibiting or restricting the stopping, standing, or parking of vehicles on the highway; provided that any sign or curb marking shall not be required to restrict parking within twenty feet of a crosswalk or intersection in accordance with section 291C-116. The signs or curb markings shall be official signs and markings, and no person shall stop, stand, or park any vehicle in violation of the restrictions stated on the signs or markings except as otherwise provided by law.

(c) Any person committing a violation of any law or ordinance prohibiting or restricting the stopping, standing, or parking of vehicles on state highways or designated county highways shall be charged, in addition to any other applicable penalties and fines, a state highway enforcement program surcharge of $200 to be enforced and collected by the district courts and to be deposited into the state highway fund; provided that fifty per cent of each surcharge collected shall be disbursed to the police department of the county in which the violation occurred.

291C-111.5 HRS

291C-111.5 State highway enforcement program; establishment; annual reports.

(a) There is established the state highway enforcement program within the department of transportation for administrative purposes. The purpose of the state highway enforcement program is to enable the State and counties, in consultation with the director of transportation, to:

(1) Enforce violations for illegal parking under section 291C-111(c); and

(2) Provide for parking management-related improvements.

(b) Implementation of the state highway enforcement program shall include partnering with law enforcement, other state departments, other county agencies, and community groups to increase health and safety along state highways.

(c) The director of transportation shall submit an annual report to the legislature on the status and progress of the state highway enforcement program, including an update of all moneys deposited into and expended from the state highway fund, on behalf of the state highway enforcement program no later than twenty days prior to the convening of each regular session.

291C-112

291C-112 Certain uses of parked vehicles prohibited between 6:00 p.m. and 6:00 a.m.; definition; exceptions.

(a) No person shall use any vehicle for purposes of human habitation, whether or not the vehicle is designed or equipped for that purpose, while the vehicle is parked on any roadway, street, or highway or other public property between the hours of 6:00 p.m. and 6:00 a.m. or while the vehicle is parked on private property without authorization of the owner or occupant authorizing both the parking of the vehicle there and its use for purposes of human habitation.

(b) As used in this section "purposes of human habitation" includes use as a dwelling place, living abode, or sleeping place.

(c) This section does not apply to the parking of vehicles and their use for purposes of human habitation in parks, camps, and other recreational areas in compliance with law and applicable rules and regulations, or under emergency conditions

in the interest of vehicular safety.

(d) The department of health shall promulgate rules and regulations, pursuant to chapter 91, necessary for the administration of this section.

291C-113

291C-113 Ordinances regulating use of vehicles for purposes of human habitation. Each of the counties may enact and enforce ordinances regulating the use of vehicles for purposes of human habitation. Upon each of the counties enacting an ordinance pertaining to the use of vehicles for purposes of human habitation, then so far as that county is concerned, the ordinance shall have full force and effect, and shall supersede section 291C-112 until the ordinance is repealed or otherwise made invalid.

291C-114 Parking on sidewalks

291C-114 Parking on sidewalks. The director of transportation is authorized to and the counties by ordinance may with respect to highways under their respective jurisdictions prohibit or restrict the stopping, standing, or parking of vehicles on sidewalks.

291C-115 Bill

291C-115 Wheel boots prohibited.

(a) It shall be unlawful for a person or entity, including any county police department, to apply or cause to be applied, a wheel boot to a motor vehicle located on any public or private street, roadway, or highway, as applicable, or on any public or private property, as applicable.

(b) For purposes of this section, "wheel boot" includes a tire lock, denver boot, wheel clamp, or wheel immobilizer.

(c) Any person, entity, or police department violating this section shall be fined $100 for each application of a wheel boot.

291C-116 HRS

291C-116 Street parking restrictions.

(a) No vehicle shall be parked abutting the curb or edge of a vehicle travel way within twenty feet of a crosswalk or intersection, regardless of the presence or absence of official signs or curb markings; provided that any vehicle may be parked within the designated buffer zone if the vehicle is:

(1) An authorized emergency vehicle performing the functions under section 291C-26;

(2) An official federal, state, or county vehicle in the performance of its duty;

(3) A stalled or broken vehicle;

(4) Assisting a stalled or broken vehicle;

(5) Yielding to an authorized emergency vehicle pursuant to section 291C-65; or

(6) Otherwise authorized by law.

(b) Any person who violates this section shall be subject to a fine of not more than $50 for each violation. Each day a violation occurs shall constitute a separate offense.

(c) All fines collected pursuant to this section shall be deposited into the safe routes to school program special fund established under section 291C-4.

291C-121 XII

291C-121 Unattended motor vehicle. No person driving or in charge of a motor vehicle shall permit it to stand unattended without first stopping the engine, locking the ignition, removing the key from the ignition, effectively setting the brake thereon and, when standing upon any grade, turning the front wheels to the curb or side of the highway.

291C-121.5

291C-121.5 Leaving a child unattended in a motor vehicle.

(a) Notwithstanding chapter 571 or any other law to the contrary, a person violates this section if the person, being the operator or an adult passenger of a motor vehicle, leaves the motor vehicle for five minutes or longer when an unattended child is inside the vehicle, regardless of whether the operator or adult passenger is charged with the care or custody of the child.

(b) Any law enforcement officer, firefighter, or rescue team personnel who observes a child left unattended in a motor vehicle and determines that the unattended child is in physical danger, or poses a danger to others, may use whatever means are reasonably necessary to protect the child or others and remove the child from the motor vehicle. If the person who left the motor vehicle with an unattended child inside cannot be located within a reasonable time, the law enforcement officer, firefighter, or rescue team personnel, upon removing the child from the motor vehicle, shall immediately report the matter to a police officer, as defined under section [587A-4], who may assume protective custody of the child without a court order and without the consent of the child's family.

(c) Law enforcement officers, firefighters, and rescue team personnel shall not be liable in any civil action to any party for any act performed in good faith under this section.

(d) As used in this section: "Child" means a person under the age of nine. "Rescue team personnel" means physicians, basic life support personnel, advanced life support personnel, surgeons, nurses, volunteers, or employees of the owners or operators of a hospital or authorized emergency vehicle who have been trained in basic or advanced life support and have been charged by the owners or operators of the hospital or authorized emergency vehicle with providing life support and resuscitation to persons who are in immediate danger of loss of life in cases of emergency. "Unattended" means leaving a child:

(1) Alone in a motor vehicle; or

(2) In a motor vehicle with a minor under the age of twelve.

291C-122 Limitations on backing

291C-122 Limitations on backing.

(a) The driver of a vehicle shall not back it unless such movement can be made with safety and without interfering with other traffic.

(b) The driver of a vehicle shall not back it upon any shoulder or roadway of any controlled-access highway.

291C-123

291C-123 Driving or parking upon bikeway ; parking penalty.

(a) No person shall drive any vehicle other than a bicycle, electric foot scooter, or moped upon a bicycle lane or bicycle path, except upon a permanent or authorized temporary driveway, or park any vehicle upon a bicycle lane or bicycle path; provided that any vehicle may be driven or parked in a bicycle lane or bicycle path as applicable if:

(1) It is in the process of executing a legal turn, lane change, or parking maneuver;

(2) It is an authorized emergency vehicle performing the functions under section 291C-26;

(3) It is an official federal, state, or county vehicle in the performance of its actual duty;

(4) It is a stalled or broken vehicle;

(5) It is necessary to assist a stalled or broken vehicle;

(6) It is necessary to yield to an authorized emergency vehicle pursuant to section 291C-65; or

(7) It is otherwise provided by law.

(b) Any person violating the parking prohibition in subsection (a) shall be fined $200. Fines collected pursuant to this section shall be deposited into the state highway fund.

291C-124

291C-124 Obstruction to driver's view or driving mechanism.

(a) No person shall drive a vehicle when it is so loaded, or when there are in the front seat such a number of persons, exceeding three, as to obstruct the view of the driver to the front or sides of the vehicle, or as to interfere with the driver's control over the driving mechanism of the vehicle.

(b) While operating a motor vehicle, no person shall hold in the person's lap, or allow to be in the driver's immediate area, any person, animal, or object which interferes with the driver's control over the driving mechanism of the vehicle.

(c) No passenger in a vehicle shall ride in such position as to interfere with the driver's view ahead or to the sides, or to interfere with the driver's control over the driving mechanism of the vehicle.

291C-125

291C-125 Opening and closing vehicle doors. No person shall open the door of a motor vehicle on the side available to moving traffic unless and until it is reasonably safe to do so, and can be done without interfering with, or causing immediate hazard to the movement of other traffic, nor shall any person leave a door open on the side of a vehicle available to moving traffic for a period of time longer than necessary to load or unload passengers.

291C-126 Riding in house trailers

291C-126 Riding in house trailers. No person or persons shall occupy a house trailer while it is being moved upon a public highway.

291C-127 Coasting prohibited

291C-127 Coasting prohibited. The driver of any motor vehicle when traveling upon a down grade shall not coast with the gears or transmission of the vehicle in neutral or with the clutch disengaged.

291C-128

291C-128 Following emergency vehicle prohibited. The driver of any vehicle other than one on official business shall not follow any emergency vehicle traveling in response to an emergency closer than five hundred feet or drive or park such vehicle within five hundred feet of where the emergency vehicle has stopped in answer to a fire alarm.

291C-129 Crossing fire hose

291C-129 Crossing fire hose. No vehicle shall be driven over any unprotected hose of a fire department when laid down on any street, private road, or driveway, to be used at any fire or alarm of fire, without the consent of the fire department official in command.

291C-130

291C-130 Slow moving vehicle emblem required; penalty.

(a) Any vehicle, or combination of vehicles, designed to operate at a speed of twenty-five miles per hour or less, including a neighborhood electric vehicle, and traveling on a public highway, except when guarded by a flagperson or a flare, or unless provided by ordinance, shall display a triangular slow moving vehicle emblem meeting ASAE Standard S276.2 as developed by the American Society of Agricultural Engineers, mounted on the rear of the vehicle, or combination of vehicles, base down and at a height of not less than three nor more than five feet from the ground to base.

(b) The use of the emblem on any vehicle, other than a vehicle designed to operate at a speed of twenty-five miles per hour or less, or on a stationary object on a public highway is prohibited.

(c) Any person who violates this section shall be fined not more than $500.

291C-130.5 HRS

291C-130.5 Dangerous wheels; prohibited. No person shall operate a vehicle, trailer, or semi-trailer equipped with dangerous wheels.

291C-131

291C-131 Spilling loads on highways; penalties.

(a) No vehicle shall be moved on any highway, unless the vehicle is so constructed, covered, or loaded as to prevent any of its load other than clear water or feathers from live birds from dropping, sifting, leaking, blowing, spilling, or otherwise escaping therefrom, except that sand may be dropped for the purpose of securing traction, or water or other substance may be sprinkled on a highway in cleaning or maintaining the highway.

(b) No vehicle shall be driven or moved on any highway when any load thereon is not entirely within the body of the vehicle; provided that this prohibition shall not apply if the load is securely fastened by means of clamps, ropes, straps, cargo nets, or other suitable mechanical device to prevent such load from dropping onto the highway or from shifting in any manner and, further, no vehicle shall be operated on any highway with any load thereon projecting beyond the extreme width of the vehicle.

(c) Vehicles carrying agricultural produce from fields during harvesting shall be exempt from the requirements of this section but the owner of the vehicle must provide for the reasonable removal of all such produce spilled or dropped on the highway.

(d) No vehicle shall be driven or moved on any highway with any load if the load is not entirely covered by a cargo net, tarpaulin, canopy, or other material designed to cover the load to prevent the load from escaping from the vehicle, where the load consists partially or entirely of loose paper, loose rubbish, plastics, empty cartons, dirt, sand, or gravel.

(e) Vehicles transporting a granular load consisting of dirt, sand, or gravel on any highway shall not be required to cover their granular load if the granular load does not extend, at its peak, above any point on a horizontal plane equal in height to the top of the side, front, or rear part of the cargo container area that is the least in height.

(f) No vehicle shall be driven or moved on any highway with a load consisting of rocks, stones, or boulders if the load, at its peak, extends above any point on a horizontal plane equal in height to the top of the side, front, or rear part of the cargo container area that is the least in height.

(g) Violation of this section shall be considered an offense as defined in section 701-107(5), shall not be subject to the provisions of chapter 291D, and shall subject the owner or driver of the vehicle, or both, to the following penalties without possibility of probation or suspension of sentence:

(1) For a first violation, by a fine of not less than $250 and not more than $500.

(2) For a second violation involving a vehicle or driver previously cited under this section within one year: (A) Suspension of the vehicle registration or suspension of the license of the driver, or both, for not less than five working days but not more than ten working days; and (B) A fine of not less than $500 and not more than $750.

(3) For a third or subsequent violation involving a vehicle or driver previously cited under this section within one year: (A) Suspension of the vehicle registration or suspension of the license of the driver, or both, for a period of thirty calendar days; and (B) A fine of not less than $750 and not more than $1,000. In imposing a fine under this subsection, the court, in its discretion, may apportion payment of the fine between the driver of the vehicle and the owner of the vehicle according to the court's determination of the degree of fault for the violation. For the purposes of this subsection, a truck-trailer combination and tractor-semitrailer combination, as they are defined in section 286-2, shall be considered as one vehicle.

291C-132 Littering from vehicles

291C-132 Littering from vehicles.

(a) No person shall throw, place, or drop litter from a vehicle on any highway. The driver of the vehicle may be cited for any litter thrown, placed, or dropped from the vehicle.

(b) "Litter" means rubbish, refuse, waste material, garbage, trash, offal, or debris of whatever kind or description, whether or not it is of value, and includes improperly discarded paper, metal, plastic, glass, or solid waste.

(c) The court shall sentence any person convicted of the offense of littering from vehicles as follows:

(1) For the first offense, defendant shall spend four hours of either picking up litter on public property or performing community service.

(2) For any subsequent offense, defendant shall spend eight hours of either picking up litter on public property or performing community service.

(d) The court shall fine the person convicted of committing the offense of littering at least $100, but not more than $500.

291C-133

291C-133 Waste material falling from motor vehicles.

(a) Notwithstanding sections 291C-131 and 291C-132 to the contrary, a driver of a motor vehicle from which waste material falls onto a highway or roadway shall be responsible for the removal of the fallen waste material. If the driver is unable to remove the waste material from the highway or roadway, or if removal will create a hazardous situation, the driver shall report, without unnecessary delay, the following information to the county police department:

(1) Description of the fallen waste material;

(2) Location of the fallen waste material;

(3) Time of the incident; and

(4) Any other pertinent information.

(b) A driver who:

(1) Knowingly refuses to remove waste material that has fallen from the driver's motor vehicle onto a highway or roadway; and

(2) Knowingly fails to report the incident, without unnecessary delay, to the county police department, pursuant to subsection (a), shall be subject to the penalties set forth in section 291C-161.

(c) As used in this section, "waste material" means rubbish, refuse, garbage, trash, tire debris, mufflers, tail pipes, or debris of whatever kind or description. "Waste material" does not include material used by authorized persons in connection with any lawful purpose.

291C-134 [§291C-134] Neighborhood electric vehicles; speed; restrictions

291C-134 Neighborhood electric vehicles; speed; restrictions [§291C-134] Neighborhood electric vehicles; speed; restrictions.

(a) A neighborhood electric vehicle shall not be operated at a speed of more than twenty-five miles per hour.

(b) A neighborhood electric vehicle shall not be driven on a highway that has a posted speed limit of more than thirty-five miles per hour. This subsection does not prohibit a neighborhood electric vehicle from crossing a highway that has a posted speed limit of more than thirty-five miles per hour at an intersection.

(c) A neighborhood electric vehicle shall have a notice of the operational restrictions applying to the vehicle permanently attached to or painted on the vehicle in a location that is in clear view of the driver. [(d)] The director of transportation shall adopt rules pursuant to chapter 91 as may be necessary to regulate the use of neighborhood electric vehicles.

291C-134.5 Bill

291C-134.5 Electric personal assistive mobility devices; restrictions.

(a) Unless otherwise prohibited or regulated by a county ordinance, an electric personal assistive mobility device may be operated on sidewalks, at a speed no greater than eight miles per hour, and bicycle paths of the State. The sale of consumer models of electric personal assistive mobility devices in the State shall be limited to those models operated by a key that can set the maximum forward speed at no more than eight miles per hour.

(b) An electric personal assistive mobility device operator shall be sixteen years of age or older.

(c) An electric personal assistive mobility device operator on a sidewalk or bicycle path shall exercise due care to avoid colliding with, and shall yield the right-of-way to, persons traveling on foot and those using mobility aids.

(d) An electric personal assistive mobility device operator shall give an audible signal before overtaking and passing any pedestrian.

(e) An electric personal assistive mobility device operator shall wear or equip the electric personal assistive mobility device with reflectors and a headlamp when operating between one-half hour after sunset and one-half hour before sunrise.

(f) Any operator who operates an electric personal assistive mobility device recklessly in disregard for the safety of persons or property shall be assessed penalties as set forth in section 291C-161.

291C-135

291C-135 Tow trucks; signage and insurance requirements. Notwithstanding any other law to the contrary, the registered owner or lessee of a tow truck shall:

(1) Permanently affix on each door of the truck a sign with the name and telephone number of the tow business. The letters and numbers used in the sign shall be no less than two inches in height; and

(2) Maintain insurance in the following amounts: (A) Bodily injury of not less than $500,000; (B) Property damage of not less than $200,000; and (C) On-hook coverage of not less than $175,000; or (D) A combined single limit of liability of not less than $1,000,000, to protect owners of towed vehicles in the event of vehicle loss or damage due to towing or bodily injury in the course of towing. If a tow operator fails to comply with the insurance requirements of this section, no charges, including storage charges, may be collected by the tow operator as a result of the tow or as a condition of the release of the towed vehicle. Any person, including the registered owner, lien holder, or insurer of the vehicle, who has been injured by the tow operator's failure to comply with this section is entitled to sue for damages sustained. If a judgment is obtained by the plaintiff, the court shall award the plaintiff a sum of not less than $1,000 or threefold damages sustained by the plaintiff, whichever sum is greater, and reasonable attorney's fees and costs. This section shall not apply

to a county that has adopted ordinances regulating towing operations.

291C-136 HRS

291C-136 Towing by consent; payment. Notwithstanding any other law to the contrary, towing companies engaged by the registered owner of a vehicle for towing services, including storage if any, shall release the towed vehicle to the registered owner, legal owner, insurer, or a designated representative upon payment of fees for towing services and storage of the vehicle; provided that payment may be made in cash or by debit card, credit card, insurance company check, commercial check, or automated teller machine located on the premises.

291C-137 Bill

291C-137 Mobile electronic devices.

(a) No person shall operate a motor vehicle while using a mobile electronic device.

(b) The use of a mobile electronic device for the sole purpose of making a "911" emergency communication shall be an affirmative defense to this law.

(c) No person under eighteen years of age shall operate a motor vehicle while utilizing a hands-free mobile electronic device, except for the sole purpose of making a "911" emergency communication.

(d) The following persons shall be exempt from subsection (a):

(1) Emergency responders using a mobile electronic device while in the performance and scope of their official duties;

(2) Drivers using a two-way radio or a private Land Mobile Radio System, within the meaning of title 47 Code of Federal Regulations part 90, while in the performance and scope of their work-related duties and who are operating fleet vehicles or who possess a commercial vehicle license;

(3) Drivers holding a valid amateur radio operator license issued by the Federal Communications Commission and using a half-duplex two-way radio; or

(4) Drivers of vehicles that are at a complete stop, while the engine is turned off, in a safe location by the side of the road out of the way of traffic.

(e) As used in this section: "Emergency responders" includes firefighters, emergency medical technicians, mobile intensive care technicians, emergency management workers, police officers, and federal and state law enforcement officers. "Fleet vehicle" means any vehicle validly registered pursuant to section 286-53.5. "Mobile electronic device" means any handheld or other portable electronic equipment capable of providing wireless or data communication between two or more persons or of providing amusement, including but not limited to a cellular phone, text messaging device, paging device, personal digital assistant, laptop computer, video game, or digital photographic device, but does not include any audio equipment or any equipment installed in a motor vehicle for the purpose of providing navigation, emergency assistance to the operator of the motor vehicle, or video entertainment to the passengers in the rear seats of the motor vehicle. "Operate" a motor vehicle means to drive or assume actual physical control of the vehicle upon a public way, street, road, or highway, including operation while temporarily stationary because of traffic, a traffic light, or a stop sign. "Use" or "using" means holding a mobile electronic device while operating a motor vehicle.

(f) Every person who violates this section shall be subject to a fine of $300 that shall be deposited into the state highway fund; provided that if a person violates this section while operating a motor vehicle in a school zone or construction area, as defined in section 291C-104, the fine shall be $400, which shall be paid to the director of finance pursuant to section 291C-171.

(g) Any violation as provided in subsections

(a) and (c) shall be deemed to be a traffic infraction as defined in section 291D-2.

(h) This section shall supersede any county ordinance regulating the use or utilization of mobile electronic devices while operating a motor vehicle.

291C-138 HRS

291C-138 Waipio valley access; required four-wheel drive vehicle use.

(a) No vehicle, other than a low-range, four-wheel drive vehicle, shall at any time be driven through or in the connecting roadway corridor between the Waipio valley lookout and the floor of Waipio valley; provided that any vehicle may be driven in these areas if it is:

(1) In the process of executing a legal turn, lane change, or parking maneuver to exit the area;

(2) An authorized emergency vehicle performing the functions under section 291C-26;

(3) An official federal, state, or county vehicle in the performance of its actual duty;

(4) Necessary to assist a stalled or broken vehicle;

(5) Necessary to yield to an authorized emergency vehicle pursuant to section 291C-65;

(6) A vehicle engaged in or in support of research or maintenance activities; or

(7) Otherwise provided by law.

(b) Violation of this section shall subject the driver of the vehicle to a fine of $250.

(c) For purposes of this section, an all-wheel drive vehicle shall not be considered to be a low-range, four-wheel drive vehicle.

291C-139 HRS

291C-139 Electric foot scooters.

(a) This section shall apply whenever an electric foot scooter is operated upon any highway, street, roadway, or other designated public area set aside for the use of electric foot scooters.

(b) Every person operating an electric foot scooter upon a roadway shall be granted all of the rights and shall be subject to all of the duties applicable to a driver of a vehicle under this chapter, except as to provisions of this:

(1) Section to the contrary; and

(2) Chapter that, by their nature, can have no application.

(c) The counties by ordinance shall regulate operations of electric foot scooters with regard to, but not limited to, the following:

(1) Operations in or upon roadways, bikeways, bicycle paths, and sidewalks;

(2) Storage and docking locations;

(3) Restrictions on maximum speed;

(4) Safety considerations; and

(5) Insurance requirements; provided that no authority adopted in accordance with this subsection shall be less restrictive than the requirements set forth in this section.

(d) No person under fifteen years of age shall operate an electric foot scooter on a highway, street, roadway, or any other public property in the State. No person under sixteen years of age shall operate an electric foot scooter unless the person wears a safety helmet securely fastened with a chin strap. The safety helmet shall meet the specifications of and requirements for a bicycle helmet as set out in section 291C-150.

(e) No person shall operate an electric foot scooter that is carrying any other person, nor shall any person other than the operator ride upon an electric foot scooter.

(f) No person operating an electric foot scooter shall carry any package, bundle, or article that prevents the use of both hands in the control and operation of the electric foot scooter.

(g) Any electric foot scooter used from thirty minutes after sunset until thirty minutes before sunrise shall meet the specifications of and requirements for lamps and other equipment on bicycles as set out in section 291C-147; provided that in lieu of the requirement of section 291C-147(b), every electric foot scooter shall be equipped with a lighted lamp that is visible from the rear.

(h) No person shall operate an electric foot scooter at a speed other than is reasonable and prudent and having regard to the actual and potential hazards and conditions then existing; provided that no person shall operate an electric foot scooter at a speed greater than fifteen miles per hour.

(i) Any person who operates an electric foot scooter recklessly in disregard of the safety of persons or property shall be assessed penalties as set forth in section 291C-161(b).

(j) A person or entity that provides electric foot scooters for hire shall not rent or lease an electric foot scooter to any person unless:

(1) Each renter or lessee that is under the age of sixteen wears a safety helmet, as required by subsection (d), while operating the electric foot scooter; and

(2) Each renter or lessee is provided with a copy of the electric foot scooter ordinances or rules that have been adopted by the applicable county.

(k) Electric foot scooters shall only be stored or docked at specific locations that shall be authorized by the counties.

291C-139.5 HRS

291C-139.5 Skateboards; helmet required.

(a) No person under eighteen years of age shall operate a skateboard upon a street, roadway, or bikeway, or any other public property, unless the person is wearing a properly fitted and fastened helmet that:

(1) Is designed to fit the user;

(2) Is designed to protect against head trauma; and

(3) Has been tested by a nationally recognized agency, such as the National Highway Traffic Safety Administration, National Safety Council, or Children's Safety Network.

(b) This section shall not be construed to legalize the use of skateboards in violation of any county ordinance.

(c) For the purposes of this section, "skateboard" means a short board that is on wheels that a person stands on to move along a surface or to perform tricks.

291C-141 XIII

291C-141 Effect of regulations.

(a) It is a traffic infraction for any person to do any act forbidden or fail to perform any act required in this part.

(b) The parent of any child and the guardian of any ward shall not authorize or knowingly permit any such child or ward to violate this chapter.

(c) These regulations applicable to bicycles shall apply whenever a bicycle is operated upon any highway or upon any bicycle path set aside for the preferential or exclusive use of bicycles subject to those exceptions stated herein.

291C-142

291C-142 Traffic laws apply to persons riding bicycles. Every person riding a bicycle upon a roadway shall be granted all of the rights and shall be subject to all of the duties applicable to the driver of a vehicle by this chapter, except as to special regulations in this part and except as to those provisions of this chapter which by their nature can have no application.

291C-143 Riding on bicycles

291C-143 Riding on bicycles.

(a) A person propelling a bicycle shall not ride other than upon or astride a permanent and regular seat attached thereon.

(b) No bicycle shall be used to carry more persons at one time than the number for which it is designed and equipped.

291C-143.5 HRS

291C-143.5 Low-speed electric bicycles; operator age. No person under the age of fifteen shall operate a low-speed electric bicycle as defined under title 15 United States Code section 2085.

291C-144 Clinging to vehicles

291C-144 Clinging to vehicles. No person riding upon any coaster, roller skates, sled, or toy bicycle or other toy vehicle shall attach it or oneself to any vehicle upon a roadway, and no person riding a bicycle or moped upon any roadway shall attach the bicycle or moped or oneself to any vehicle other than the one the person is riding.

291C-145 Riding on roadways and bikeways

291C-145 Riding on roadways and bikeways.

(a) Every person operating a bicycle upon a roadway at a speed less than the normal speed of traffic moving in the same direction at such time shall ride as near to the right-hand curb, on the edge of the roadway, or on the shoulder off of the roadway as practicable, exercising due care when passing a standing vehicle or one proceeding in the same direction;

except under any of the following situations:

(1) When preparing for a left turn at an intersection or into a private road or driveway, except where prohibited by official traffic-control devices;

(2) When reasonably necessary to avoid conditions (including but not limited to fixed or moving objects, vehicles, bicycles, pedestrians, animals, surface hazards, or substandard width lanes) that make it unsafe to continue along the right-hand curb, on the edge of the roadway, or on the shoulder off of the roadway. For purposes of this section, a "substandard width lane" is a lane that is too narrow for a bicycle and a vehicle to travel safely side-by-side within the lane; or

(3) When a roadway is designated and signposted to carry traffic in one direction only and has two or more marked traffic lanes, a person operating a bicycle may ride as near to the left-hand curb, on the edge of the roadway, or on the shoulder off of such roadway as practicable.

(b) Persons riding bicycles upon a roadway shall ride in single file; provided that where the flow of traffic is unimpeded, riding two abreast upon bicycle lanes and bicycle paths shall be permitted when such lane or path is of sufficient width to allow riding two abreast unless otherwise prohibited by rule or ordinance adopted by the director of transportation or by the counties.

(c) Whenever a usable bicycle lane has been provided on a highway, any person operating a bicycle at a speed less than the normal speed of traffic moving in the same direction at such time shall ride within such bicycle lane, except that such person may move out of the lane under any of the following situations:

(1) When overtaking and passing another bicycle, vehicle, or pedestrian within the lane or about to enter the lane if such overtaking and passing cannot be done safely within the lane;

(2) When preparing for a left turn at an intersection or into a private road or driveway; or

(3) When reasonably necessary to leave the bicycle lane to avoid debris or other hazardous conditions.

(d) No person operating a bicycle shall leave a bicycle lane until the movement can be made with reasonable safety and then only after giving an appropriate signal in the event that any vehicle may be affected by the movement.

(e) No person shall operate or ride a bicycle within a bicycle lane in any direction except that permitted of vehicular traffic traveling on the same side of the highway. Upon all bicycle paths of sufficient width and providing for two-way movement of bicycle traffic, bicycles proceeding in opposite directions shall pass each other to the right.

(f) The director of transportation by rule and the counties by ordinance may with respect to bikeways under their respective jurisdictions restrict or prohibit the use of such bikeways by mopeds.

(g) No person shall ride a bicycle equipped with a motor on any sidewalk. The counties may, by ordinance, post bicycle lanes and bicycle paths to prevent persons riding a bicycle equipped with a motor from using them.

291C-146 Carrying articles

291C-146 Carrying articles. No person operating a bicycle shall carry any package, bundle, or article which prevents the use of both hands in the control and operation of the bicycle. A person operating a bicycle shall keep at least one hand on the handlebars at all times.

291C-147

291C-147 Lamps and other equipment on bicycles.

(a) Any bicycle used from thirty minutes after sunset until thirty minutes before sunrise shall be equipped with a lamp on the front emitting a white light visible from a distance of at least five hundred feet to the front.

(b) Every bicycle shall be equipped with a red reflector at least four square inches in size which shall be visible for six hundred feet to the rear when directly in front of lawful lower beams of head lamps on a motor vehicle.

(c) Every bicycle when in use at the time described in subsection (a) shall be equipped with reflective material at least four square inches in size and of sufficient size and reflectivity to be visible from both sides for six hundred feet when directly in front of lawful lower beams of head lamps on a motor vehicle, or, in lieu of such reflective material, with a lighted lamp visible from both sides from a distance of at least five hundred feet.

(d) A bicycle or its rider may be equipped with lights or reflectors in addition to those required by the foregoing subsections.

(e) A lamp meeting the specification of subsection (a) displayed on the left arm or left leg of the bicycle operator shall be considered to meet the requirements of subsection (a).

(f) A bicycle shall be equipped with a brake or brakes which enable the bicycle's driver to stop the bicycle within twenty-five feet from a speed of ten miles per hour on dry, level, clean pavement.

291C-148 Driving upon sidewalk

291C-148 Driving upon sidewalk.

(a) Except as provided in subsection (b), no person shall drive any vehicle upon a sidewalk or sidewalk area except upon a permanent or authorized temporary driveway.

(b) Unless otherwise prohibited, a bicycle may be driven at a speed of ten miles per hour or less on a sidewalk or sidewalk area; provided that the driver of the bicycle shall yield the right-of-way to any pedestrian and that bicycle riding shall be prohibited on sidewalks in business districts.

(c) This section shall not be construed as preempting the director of transportation's or counties' authority to control parking on sidewalks under section 291C-114. Nor shall this section be construed as prohibiting the director or a county from authorizing parking on sidewalks when the authorization is promulgated in accordance with section 291C-114.

291C-149 Bicycle racing

291C-149 Bicycle racing.

(a) Bicycle racing on the highways is prohibited except as authorized in this section.

(b) Bicycle racing on a highway shall not be unlawful when a racing event has been approved by local authorities for any highway under their respective jurisdictions or for state highways, by the director of transportation. The director may adopt rules pursuant to chapter 91 necessary for the purposes of this chapter. Approval of bicycle highway racing events shall be granted only under conditions which assure reasonable safety for all race participants, spectators and other highway users, and which prevent unreasonable interference with traffic flow which would seriously inconvenience other highway users.

(c) By agreement with the local authority, participants in an approved bicycle highway racing event may be exempted from compliance with any traffic laws otherwise applicable thereto, provided that traffic control is adequate to assure the safety of all highway users.

291C-150 Bicycle helmets

291C-150 Bicycle helmets.

(a) No person under sixteen years of age shall operate a bicycle upon a street, bikeway, or any other public property unless that person is wearing a properly fitted and fastened bicycle helmet that has been tested by a nationally recognized agency such as the National Highway Traffic Safety Administration, the National Safety Council, or the Children's Safety Network, and is designed to fit the user and protect against head trauma. This requirement also applies to a person who rides upon a bicycle while in a restraining seat that is attached to the bicycle or who rides in a trailer towed by the bicycle.

(b) A person who provides bicycles for hire shall not rent a bicycle to any person unless every person who is under age sixteen is wearing a bicycle helmet, as required in subsection (a), while operating the rented bicycle, occupying a restraining seat that is attached to the rented bicycle, or riding in a trailer towed by the rented bicycle.

(c) A violation of this section is punishable by a fine of not more than $25. The parent or legal guardian having control or custody of an unemancipated minor whose conduct violates this section shall be liable for the amount of the fine imposed pursuant to this section.

(d) Notwithstanding any law to the contrary, the fines collected for a violation of this section shall be paid into the state treasury to the credit of the state general fund.

291C-151 XIV

291C-151 Traffic laws apply to persons operating motorcycles. Every person operating a motorcycle shall be granted all of the rights and shall be subject to all of the duties applicable to the driver of any other vehicle under this chapter, except as to special regulations in this part and except as to those provisions of this chapter which by their nature can have no application.

291C-152 Riding on motorcycles

291C-152 Riding on motorcycles.

(a) A person operating a motorcycle shall ride only upon the permanent and regular seat attached thereto, and such operator shall not carry any other person nor shall any other person ride on a motorcycle unless the motorcycle is designed to carry more than one person, in which event a passenger may ride upon the permanent and regular seat if designed for two persons, or upon another seat firmly attached to the motorcycle at the rear or side of the operator.

(b) A person shall ride upon a motorcycle, except for an autocycle, only while sitting astride the seat, facing forward, with one leg on each side of the motorcycle. A person shall ride upon an autocycle only while sitting in the seat and facing forward.

(c) No person shall operate a motorcycle while carrying any package, bundle, or other article which prevents the person from keeping both hands on the handlebars or, for an autocycle, on the steering wheel.

(d) No operator shall carry any person, nor shall any person ride, in a position that will interfere with the operation or control of the motorcycle or the view of the operator.

291C-153

291C-153 Operating motorcycles on roadways laned for traffic.

(a) All motorcycles are entitled to full use of a lane and no motor vehicle shall be driven in such a manner as to deprive any motorcycle of the full use of a lane. This subsection shall not apply to motorcycles operated two abreast in a single lane.

(b) The operator of a motorcycle shall not overtake and pass in the same lane occupied by the vehicle being overtaken.

(c) No person shall operate a motorcycle between lanes of traffic or between adjacent lines or rows of vehicles.

(d) Motorcycles shall not be operated more than two abreast in a single lane.

(e) Subsections (b) and (c) shall not apply to police officers in the performance of their official duties.

291C-154 Clinging to other vehicles

291C-154 Clinging to other vehicles. No person riding upon a motorcycle shall attach oneself or the motorcycle to any other vehicle on a roadway.

291C-155 Footrests and handlebars

291C-155 Footrests and handlebars.

(a) Any motorcycle carrying a passenger, other than in a sidecar or enclosed cab, shall be equipped with footrests for such passenger.

(b) No person shall operate any motorcycle with handlebars more than fifteen inches in height above that portion of the seat occupied by the operator.

291C-161 XV

291C-161 Penalties; photo red light imaging detector system fines; automated speed enforcement system fines.

(a) It shall be a violation for any person to violate any of the provisions of this chapter, except as otherwise specified in subsections (c) and (d) and unless the violation is by other law of this State declared to be a felony, misdemeanor, or petty misdemeanor.

(b) Except as provided in subsections (c) and (d), every person who is determined to have violated any provision of this chapter for which another penalty is not provided shall be fined not more than:

(1) $250 for a first violation thereof;

(2) $300 for a second violation committed within one year after the date of the first violation; and

(3) $500 for a third or subsequent violation committed within one year after the date of the first violation.

(c) Every person convicted under or found in violation of section 291C-12, 291C-12.5, 291C-12.6, 291C-13, 291C-14, 291C-15, 291C-16, 291C-72, 291C-73, 291C-95, 291C-102, 291C-103, 291C-104, or 291C-105 shall be sentenced or fined in accordance with those sections.

(d) Every person who violates section 291C-13 or 291C-18 shall:

(1) Be fined not more than $250 or imprisoned not more than ten days for a first conviction thereof;

(2) Be fined not more than $300 or imprisoned not more than twenty days or both for conviction of a second offense committed within one year after the date of the first offense; and

(3) Be fined not more than $500 or imprisoned not more than six months or both for conviction of a third or subsequent offense committed within one year after the date of the first offense.

(e) The court may assess a sum not to exceed $50 for the cost of issuing a penal summons upon any person who fails to appear at the place within the time specified in the citation issued to the person for any traffic violation.

(f) Fines collected for a violation of section 291C-32(c) pursuant to the photo red light imaging detector system established pursuant to chapter 291J shall be deposited into the photo red light imaging detector systems program special fund established under section 291J-12 and shall be expended in the county in which the fine was imposed, for purposes that include the establishment, implementation, operation, oversight, management, repair, and maintenance of a photo red light imaging detector system.

(g) Notwithstanding any other law to the contrary, fines collected pursuant to chapter 291L and section 291C-108 shall be deposited into the automated speed enforcement systems program special fund established under section 291L-10 and shall be expended in the county in which the fine was imposed, for purposes that include the establishment, implementation, operation, oversight, management, maintenance, and repair of an automated speed enforcement system and implementation of the automated speed enforcement systems program.

(h) The court may require a person who violates any of the provisions of this chapter to attend a course of instruction in driver retraining as deemed appropriate by the court, in addition to any other penalties imposed.

291C-162

291C-162 Provisions uniform throughout State. This chapter shall be applicable and uniform throughout the State and in all political subdivisions therein provided that any matter not covered in this chapter relating to rules of the road may be subject to appropriate county ordinances in any county.

291C-163 Bill

291C-163 Powers of counties.

(a) This chapter shall not be deemed to prevent counties with respect to streets and highways under their jurisdiction from:

(1) Regulating or prohibiting stopping, standing, or parking except as provided in section 291C-111;

(2) Regulating traffic by means of police officers or official traffic-control devices;

(3) Regulating or prohibiting processions or assemblages on the highways;

(4) Designating particular highways or roadways for use by traffic moving in one direction;

(5) Establishing speed limits for vehicles in public parks;

(6) Designating any highway as a through highway or designating any intersection as a stop or yield intersection;

(7) Restricting the use of highways;

(8) Regulating the operation and equipment of and requiring the registration and inspection of bicycles, including the requirement of a registration fee;

(9) Regulating or prohibiting the turning of vehicles or specified types of vehicles;

(10) Altering or establishing speed limits;

(11) Requiring written collision reports;

(12) Designating no-passing zones;

(13) Prohibiting or regulating the use of controlled-access roadways by any class or kind of traffic;

(14) Prohibiting or regulating the use of heavily traveled streets by any class or kind of traffic found to be incompatible with the normal and safe movement of traffic;

(15) Establishing minimum speed limits;

(16) Designating hazardous railroad grade crossing;

(17) Designating and regulating traffic on play streets;

(18) Prohibiting pedestrians from crossing a roadway in a business district or any designated highway except in a crosswalk;

(19) Restricting pedestrian crossing at unmarked crosswalks;

(20) Regulating persons propelling push carts;

(21) Regulating persons upon skates, coasters, sleds, and other toy vehicles;

(22) Adopting and enforcing temporary or experimental regulations as may be necessary to cover emergencies or special conditions;

(23) Adopting maximum and minimum speed limits on streets and highways within their respective jurisdictions;

(24) Adopting requirements on stopping, standing, and parking on streets and highways within their respective jurisdictions except as provided in section 291C-111;

(25) Prohibiting or regulating electric personal assistive mobility devices on sidewalks and bicycle paths;

(26) Implementing a photo red light imaging detector system pursuant to chapter 291J; and

(27) Adopting other traffic regulations as are specifically authorized by this chapter.

(b) No local authority shall erect or maintain any official traffic-control device at any location so as to require the traffic on any state highway to stop before entering or crossing any intersecting highway unless approval in writing has first been obtained from the director of transportation.

291C-164 Procedure upon arrest

291C-164 Procedure upon arrest. Except when authorized or directed under state law to immediately take a person arrested for a violation of any of the traffic laws before a district judge, any authorized police officer, upon making an arrest for violation of the state traffic laws shall take the name, address, and driver's license number of the alleged violator and the registered license number of the motor vehicle involved and shall issue to the driver in writing a summons or citation, hereinafter described, notifying the driver to answer to the complaint to be entered against the driver at a place and at a time provided in the summons or citation.

291C-165 Bill

291C-165 Summons or citation.

(a) There shall be provided for use by authorized police officers, or designees of the county chiefs of police, a form of summons or citation for use in citing violators of those traffic laws that do not mandate the physical arrest of violators. The form and content of the summons or citation shall be as adopted or prescribed by the administrative judge of the district courts and shall be printed on a form commensurate with the form of other summonses or citations used in modern methods of arrest, so designed to include all necessary information to make the same valid within the laws and regulations of the State.

(b) In every case when a citation is issued, the original of the citation shall be given to the violator; provided that:

(1) In the case of an unattended vehicle, the original of the citation shall be affixed to the vehicle as provided for in section 291C-167; or

(2) In the case of: (A) A vehicle utilizing the high occupancy vehicle lane illegally; or (B) A vehicle illegally utilizing a parking space reserved for persons with disabilities, where the violator refuses the citation, the original of the citation shall be sent by certified or registered mail, with a return receipt that is postmarked within forty-eight hours of the time of the incident, as provided in section 291C-223 for vehicles illegally utilizing the high occupancy vehicle lane, or within seventy-two hours of the time of the incident for vehicles illegally utilizing a parking space reserved for persons with disabilities, to the registered owner of the vehicle at the address on record at the vehicle licensing division. If the end of the applicable forty-eight or seventy-two hour period falls on a Saturday, Sunday, or holiday, then the ending period shall run until the end of the next day that is not a Saturday, Sunday, or holiday; provided that the administrative judge of the district courts may allow a carbon copy of the citation to be given to the violator or affixed to the vehicle and provide for the disposition of the original and any other copies of the citation.

(c) In the case of a motor vehicle determined by means of a photo red light imaging detector system established pursuant to chapter 291J to have disregarded a steady red signal in violation of section 291C-32(c); the original of the citation shall

be sent by first-class mail within ten calendar days from the time of the incident for motor vehicles disregarding a steady red light signal in violation of section 291C-32(c), as determined by means of a photo red light imaging system, to the registered owner of the motor vehicle at the address on record at the vehicle licensing division. If the end of the applicable ten-calendar-day period falls on a Saturday, Sunday, or holiday, then the ending period shall run until the end of the next day that is not a Saturday, Sunday, or holiday.

(d) In the case of a motor vehicle determined by means of a speed enforcement system established pursuant to chapter 291L to have exceeded a maximum speed limit in violation of section 291C-108, the original of the citation shall be sent by first-class mail within ten calendar days from the time of the incident, to the registered owner of the motor vehicle at the address on record at the vehicle licensing division. If the end of the applicable ten-calendar-day period falls on a Saturday, Sunday, or holiday, then the ending period shall run until the end of the next day that is not a Saturday, Sunday, or holiday.

(e) Every citation shall be consecutively numbered and each carbon copy shall bear the number of its respective original.

291C-165.5

291C-165.5 Motor vehicle towing and storage; settlement; disabled vehicles.

(a) Notwithstanding any other provision of this chapter, any vehicle identified for removal pursuant to any county ordinance ordering removal of motor vehicles by any county police department for traffic violations, or any vehicle involved in a motor vehicle accident that cannot be moved under its own power or is otherwise disabled, including a vehicle which constitutes an obstruction or hazard to traffic, may be towed away at the expense of the registered owner of the vehicle, as provided by this section.

(b) The towing company shall determine the name of the lien holder and the last registered owner of the vehicle from the department of transportation or the county department of finance. The lien holder and the registered owner shall be notified by the towing company in writing at the address on record with the department of transportation or with the county department of finance by registered or certified mail of the location of the vehicle, together with a description of the vehicle, within a reasonable period not to exceed twenty days following the tow. The notice shall state:

(1) The maximum towing charges and fees allowed by law;

(2) The telephone number of the county finance department that arranged for or authorized the tow; and

(3) That if the vehicle is not recovered within thirty days after the mailing of the notice, the vehicle shall be deemed abandoned and will be sold or disposed of as junk. Any towing company engaged in towing pursuant to this section shall comply with the requirements of section 291C-135. When the vehicle is recovered after the tow by the last registered owner or lien holder, the party recovering the vehicle shall pay the tow and storage charges which shall not exceed the charges as provided by section 290-11(b) or the rates agreed upon with the respective counties, whichever is lower, except that tow operators may charge additional reasonable amounts for excavating vehicles from off-road locations and any additional amount allowed by section 290-11(b) for overturned vehicles; provided that if the notice required by this section was not sent within twenty days after the tow, neither the last registered owner nor the lien holder shall be required to pay the tow and storage charges. No notice shall be sent to a legal or last registered owner or any person with any unrecorded interest in the vehicle whose name or address cannot be determined. Any person who violates any provision of this section shall be deemed to have:

(1) Engaged in an unfair or deceptive act or practice in the conduct of any trade or commerce within the meaning of section 480-2 and subject to the penalties and remedies of chapter 480; and

(2) Furnished services without a license within the meaning of section 487-13 and subject to penalties and remedies under chapter 487.

(c) When a vehicle is recovered by the owner or lien holder before written notice is sent by registered or certified mail, the towing company shall provide the owner or lien holder with a receipt stating the maximum towing charges and fees allowed by law and the telephone number of the county finance department that arranged for or authorized the tow.

(d) When a vehicle is not recovered within thirty days after the mailing of the notice, it shall be deemed abandoned and the owner of the towing company, or the owner of the towing company's authorized representative, after one statewide public notice as required in section 1-28.5, may negotiate a sale of the vehicle or dispose of it as junk.

(e) The authorized seller of the vehicle shall be entitled to the proceeds of the sale to the extent that compensation is due to the authorized seller for services rendered in respect to the vehicle, including reasonable and customary charges for

towing, handling, storage, and the cost of the notices and advertising required by this part. Any remaining balance shall be forwarded to the registered owner or lien holder of the vehicle if the registered owner or lien holder is found. If the registered owner or lien holder cannot be found, the balance shall be deposited with the director of finance of the State and shall be paid out to the registered owner or lien holder of the vehicle if a proper claim is filed therefor within one year from the execution of the sales agreement. The lien holder shall have first priority to the funds to the extent of the lien holder's claim. If no claim is made within the year allowed, the money shall escheat to the State.

(f) The transfer of title and interest by sale under this section is a transfer by operation of law; provided that if the certificate of ownership or registration is unavailable, a bill of sale executed by an authorized seller is satisfactory evidence authorizing the transfer of the title or interest.

(g) In the event that a motor vehicle is involved in an accident and cannot be moved under its own power or is otherwise disabled and constitutes an obstruction or hazard to traffic, and the vehicle has not been ordered to be towed by the applicable county police department, the towing of such vehicle and the towing and storage expenses shall be subject to the provisions of section 290-11(b).

(h) This section shall not apply to a county that has adopted ordinances regulating towing operations. This section shall not apply to automobile clubs or towing companies operating under a contract with an automobile club, insurer, or motor vehicle manufacturer. For purposes of this subsection, "automobile club" means a legal entity that, in consideration of dues, assessments, or periodic payments of money, promises to assist its members or subscribers in matters relating to motor travel or the operation, use, or maintenance of a motor vehicle by supplying services that may include but are not limited to towing services and emergency road service.

291C-166 REPEALED

291C-166 REPEALED. L 1993, c 214, §19. Previous Vol05_Ch0261-0319 Next

291C-167

291C-167 Summons or citation on illegally parked vehicle. Whenever any motor vehicle without a driver is found parked or stopped in violation of any of the restrictions contained in the state traffic laws, the officer or designee finding the vehicle shall take its registration number and may take any other information displayed on the vehicle that may identify its registered owner and shall conspicuously affix to the vehicle a citation, as described in section 291C-165, for the registered owner of record to answer as provided in chapter 291D.

291C-168 REPEALED

291C-168 REPEALED. L 1993, c 214, §20. Previous Vol05_Ch0261-0319 Next

291C-169 When complaint to be issued

291C-169 When complaint to be issued. In the event any person fails to comply with a penal summons given to such person or attached to a vehicle, or if any person fails or refuses to deposit bail as required and within the time permitted, the court shall forthwith issue a warrant for the person's arrest.

291C-170

291C-170 Revocation or suspension of license. In addition to the penalties heretofore provided, the court may revoke or may suspend, for a period not to exceed one year, the license of any driver convicted of a violation of any section or provision of the state traffic laws involving a vehicle in motion.

291C-171

291C-171 Disposition of fines and forfeitures.

(a) All fines and forfeitures collected upon conviction or upon the forfeiture of bail of any person charged with a violation of any section or provision of the state traffic laws and all assessments collected relating to the commission of traffic infractions shall be paid to the director of finance of the State.

(b) In addition to any monetary assessment imposed for a traffic infraction, the court may impose penalties on all outstanding traffic citations and judgments. The penalties shall be established pursuant to rules approved by the supreme court; provided that the amounts of the penalties shall be based upon a graduated scale that increases in proportion to the length of the delinquency. Any interest penalty imposed as provided in this section may be waived by the court for good cause. All penalties collected for such outstanding citations and judgments shall be paid to the director

of finance of the State.

291C-171.5

291C-171.5 Collection of fines and costs.

(a) Unless discharged by payment or service of imprisonment in default of a fine, a fine may be collected in the same manner as a judgment in a civil action.

(b) Costs may be collected in the same manner as a judgment in a civil action, but shall not be deemed part of the penalty, and no person shall be imprisoned under this section in default of payment of costs.

(c) The state attorney general may institute proceedings to collect the fine, and costs, including interest and attorney's fees, as a civil judgment in the court of appropriate jurisdiction.

291C-172

291C-172 Refusal to provide identification.

(a) Except as provided in subsection (b), any person detained for a violation of this chapter shall provide the person's name and address, or any proof thereof, or both, upon the lawful order or direction of any police officer in the course and scope of the officer's duties pursuant to this chapter.

(b) A pedestrian who is detained for violating part VII of this chapter shall provide the person's name and address upon the lawful order or direction of a police officer in the course and scope of the officer's duties. If the officer has reasonable grounds to believe that the person is being deceptive or misleading in providing the person's name and address, the person shall provide such proof thereof, upon the lawful order or direction of the police officer.

291C-173 Interpretation

291C-173 Interpretation. Wherever consistent with the context of the state traffic laws, words in the present, past or future shall be construed to be interchangeable with and to include any other tense; the masculine gender shall be construed to include the feminine gender; and words in the singular number shall be construed to include the plural; and in the plural to include the singular, and each shall be construed to be interchangeable with the other.

291C-174 Severability

291C-174 Severability. If any provision of the state traffic laws is held for any reason invalid by a court of competent jurisdiction, such decision shall not affect the validity of the remaining provisions of the state traffic laws.

291C-191 [PART XVI

291C-191 Definition. As used in this part "FMVSS" means Federal Motor Vehicle Safety Standards as prescribed in Title 49, Part 571, Code of Federal Regulations.

291C-192

291C-192 Effect of violations; vicarious responsibility; jurisdiction.

(a) It is a violation for any person to do any act forbidden or fail to perform any act required in this part, except as otherwise provided by law.

(b) Any negligence, misconduct, or violation of this part by a minor while driving a moped shall be imputed to the parent or guardian having custody of such minor, which person shall be jointly and severally liable with the minor for any damages caused by such negligence or misconduct and any penalty assessed by the courts for such violation.

(c) This part applies to every person driving a moped upon any roadway or highway or any other publicly owned place under the jurisdiction of the State or any county.

291C-193

291C-193 Traffic laws apply to persons driving mopeds. Every person driving a moped upon a roadway shall be granted all of the rights and shall be subject to all of the duties applicable to the driver of a vehicle under this chapter, except as to the special provisions of this part and except as to those provisions of this chapter which by their nature can have no application.

291C-194

291C-194 Driver's license possession; required.

(a) No person shall drive a moped unless the person is in immediate possession of a valid driver's license or instruction permit at all times.

(b) The driver of a moped shall, upon the demand of a police officer, exhibit the driver's driver's license or instruction permit.

(c) Any person who is convicted of violating this section shall be subject to penalties as provided under section 291C-161(b) and (h).

291C-195 Driving of mopeds

291C-195 Driving of mopeds.

(a) Notwithstanding section 286-81(b), no person:

(1) Less than sixteen years of age shall drive a moped on a highway, street, or roadway, or any other public property in the State; and

(2) Shall drive a moped unless the person wears a safety helmet securely fastened with a chin strap. The safety helmet shall meet the specifications and requirements established by rules adopted by the director.

(b) No person shall drive a moped except while sitting astride the seat, facing forward, with one leg on each side of the moped.

(c) No person shall drive a moped which is carrying any other person nor shall any person other than the driver ride upon a moped.

(d) Subsections (b) and (c) shall not apply to three-wheeled mopeds designed to carry a driver and passenger seated side by side.

(e) Three-wheeled mopeds shall be insured for liability and property damage, excluding personal injury protection.

291C-196 Driving mopeds on roadways

291C-196 Driving mopeds on roadways.

(a) Every person driving a moped, except a three-wheeled moped, upon a roadway at a speed less than the normal speed of traffic moving in the same direction at such time shall ride as near to the right side of the roadway as practicable, exercising due care when passing a standing vehicle or one proceeding in the same direction, except under any of the following situations:

(1) When preparing for a left turn at an intersection or into a private road or driveway, except where prohibited by official traffic-control devices;

(2) When reasonably necessary to avoid conditions (including, but not limited to fixed or moving objects, vehicles, bicycles, pedestrians, animals, surface hazards, or substandard width lanes) that make it unsafe to continue along the right-hand curb or edge; and

(3) When a roadway is designated and signposted to carry traffic in one direction only and has two or more marked traffic lanes, a person operating a moped may ride as near to the left-hand side of the roadway as practicable.

(b) Persons driving mopeds upon a roadway shall drive in single file.

(c) No person shall drive a moped on any sidewalk or area intended for use as a sidewalk, nor shall any person drive a moped on any path or other area intended for the exclusive use of pedestrians.

(d) A three-wheeled moped shall be restricted to traveling on roadways with a posted speed limit of thirty-five miles per hour or less.

291C-197

291C-197 Driving mopeds on bicycle lanes and paths.

(a) Wherever bicycle lanes are provided on the roadway, moped drivers shall use such bicycle lanes.

(b) The director of transportation by rule and the counties by ordinance may with respect to bicycle paths under their respective jurisdictions restrict or prohibit the use of such bicycle paths by mopeds. Signs clearly visible to an ordinarily observant person indicating the restriction or prohibition shall be placed along bicycle paths so designated and every moped driver shall obey the directions thereof.

(c) This section shall not apply to a three-wheeled moped.

291C-198 Speed restrictions on mopeds

291C-198 Speed restrictions on mopeds.

(a) No person shall drive a moped at a speed other than is reasonable and prudent under the conditions and having regard to the actual and potential hazards then existing.

(b) No person shall drive a moped at a speed greater than thirty-five miles per hour (fifty-eight kilometers per hour).

291C-199

291C-199 Clinging to vehicles, bicycles, etc. No person driving a moped shall attach oneself or the moped to any other vehicle, nor permit the rider of a bicycle, coaster, sled, or toy vehicle or any person on roller skates to be or become attached to the moped or the driver.

291C-200 Use of lamps on mopeds

291C-200 Use of lamps on mopeds. Every moped moving upon a highway from thirty minutes after sunset until thirty minutes before sunrise and at any other time when there is insufficient ambient light to render clearly discernible persons and vehicles on the highway at a distance of two hundred feet (60.9 meters) ahead shall display a lighted head lamp and tail lamp; provided that every moped upon a highway within a tunnel shall at all times display a lighted head lamp and tail lamp.

291C-201 Renting or selling mopeds

291C-201 Renting or selling mopeds.

(a) Every person engaged in the retail business of selling or renting mopeds shall provide the person renting or purchasing a moped with a copy of the rules for mopeds as approved by the director of transportation.

(b) Every person renting a moped to another shall keep a record for two years of the registration number of the moped so rented, the name and address of the person to whom the moped is rented, the number of the driver's license of the latter person, and the date and place when and where the driver's license was issued. This record shall be open to inspection by any police officer or the examiner of drivers or the examiner of drivers' representative.

291C-202

291C-202 Moped equipment requirements and inspection.

(a) Every moped offered for sale for use upon, sold for use upon, or used upon the roadways and highways shall be equipped with:

(1) A motor having a maximum power output capability, measured at the motor output shaft, in accordance with SAE International standards, of two horsepower (one thousand four hundred ninety-two watts) or less and, if it is a combustion engine, a maximum piston or rotor displacement of 3.05 cubic inches (fifty cubic centimeters) and that will propel the moped, unassisted, on a level surface at a maximum speed no greater than thirty miles per hour; provided that those mopeds, including those modified pursuant to section 291C-206, registered prior to April 23, 1998, shall continue to be subject to the prior thirty-five miles per hour maximum speed limitation; and

(2) A direct or automatic power drive system that requires no clutch or gear shift operation by the moped driver after the drive system is engaged with the power unit.

(b) The director of transportation by rules and regulations, pursuant to chapter 91, shall establish criteria which shall comply with approved federal regulations for the following moped equipment: brake system; fuel system components; exhaust system components; steering system; handlebars; wheel rims; fenders; a guard or protective covering for drive belts, chains and rotating components; seat or saddle; lamps and reflectors; equipment controls; speedometer; retracting stand; horn; and identification markings.

(c) The director of transportation by rules and regulations, pursuant to chapter 91, shall establish criteria and procedures for the annual safety inspection of every moped. Safety inspection criteria shall include the criteria established by the director of transportation under subsection (b).

291C-203 Certification of compliance

291C-203 Certification of compliance. A person engaged in the business of selling mopeds shall provide to the director of finance of the county in which the mopeds are sold a certificate from the moped manufacturer that each class, type or

model of moped offered for sale or sold meets the performance and equipment requirements of this part.

291C-204 Defacing serial numbers, etc

291C-204 Defacing serial numbers, etc., of mopeds. No person shall wilfully deface, destroy, or alter the serial number, a component part number, or identification mark placed on any moped by the manufacturer thereof. This section shall not prohibit the restoration by an owner of an original mark or number when the restoration is authorized in writing by the director of finance, nor prohibit any manufacturer from placing in the ordinary course of business numbers or marks upon new mopeds or new parts thereof. Violation of this section shall be a misdemeanor and shall result in a fine of not more than $500.

291C-205

291C-205 Unlawful to possess certain mopeds and moped parts. It shall be unlawful for any person to possess a moped, a moped motor, or any moped part knowing that the serial or identification number placed thereon by the manufacturer has been changed, altered, erased or mutilated. This section shall not prohibit the possession of a moped, a moped motor, or any moped part whose original mark or number has been restored when the restoration is authorized in writing by the director of finance, nor prohibit any manufacturer from placing in the ordinary course of business numbers or marks upon new mopeds or new parts thereof. Violation of this section shall be a misdemeanor and shall result in a fine of not more than $500.

291C-206 Modifying moped motor; violation

291C-206 Modifying moped motor; violation.

(a) A motor used to power a moped shall not be modified in any manner except as authorized by the motor manufacturer and any modification shall not increase the power capacity of the motor above two horsepower (one thousand four hundred ninety-two watts).

(b) No person shall rent or lease to another person any moped or motor scooter that has an aftermarket modification to the motor of the moped or motor scooter that does not comply with this subsection.

(c) Any person who violates this section shall be fined not more than $500.

291C-207

291C-207 Moped liability insurance; coverage for damage by rented or leased moped. Every person who offers a moped for rent or lease shall insure the moped against loss resulting from liability imposed by law for bodily injury, death or property damage suffered by any person other than the owner or operator of the moped arising out of the ownership, maintenance or use of the moped. The moped liability insurance shall have a coverage of not less than $25,000 per occurrence bodily injury and $5,000 per occurrence property damage.

291C-221 [PART XVII

291C-221 Definitions . As used in this part unless the context otherwise requires: "High occupancy vehicle" means a vehicle carrying at least the minimum number of persons designated by the director of transportation as indicated on official signs and other official traffic-control devices, and other vehicles as provided by rules adopted in accordance with chapter 91 or by county ordinance. "High occupancy vehicle lane" means a designated lane of a laned roadway where the use of the designated lane is restricted to school buses, vehicles carrying at least the minimum number of persons designated by the director of transportation on official signs and other official traffic-control devices, and to other vehicles as provided by rules adopted in accordance with chapter 91, or by county ordinance.

291C-221.5 HRS

291C-221.5 High occupancy vehicle lanes; emergencies.

(a) Notwithstanding any law to the contrary, when a roadway includes one or more lanes for traffic moving in the same direction that include a high occupancy vehicle lane or zipper lane, and at least one lane other than a high occupancy vehicle lane or zipper lane is closed by law enforcement officers or emergency services personnel because of a traffic incident or accident, any motor vehicle, regardless of the number of persons carried, that can safely enter the high occupancy vehicle lane or zipper lane shall, subject to subsection (b), be allowed to use the high occupancy vehicle lane or zipper lane.

(b) For the purposes of subsection (a), the director of transportation shall have the authority to declare an emergency to open the use of high occupancy vehicle lanes and zipper lanes to all motor vehicles regardless of the number of persons carried.

(c) For the purposes of this section: "Accident" means an unplanned event involving a motor vehicle, resulting in damage to one or more motor vehicles, property damage, or personal injury. "Incident" includes any accident or issue that disrupts the flow of traffic.

291C-222

291C-222 Designation of high occupancy vehicle lane.

(a) The director of transportation by rules adopted in accordance with chapter 91, and the counties by ordinance, may designate high occupancy vehicle lanes as to roadways under their respective jurisdictions.

(b) Signs and other official traffic-control devices that designate high occupancy vehicle lanes shall be placed and maintained to advise drivers of the high occupancy vehicle requirement and the hours of usage. When the high occupancy vehicle lane also serves as a contraflow lane, the hours of usage as a high occupancy vehicle lane shall be the time when the lane is coned for use as a high occupancy vehicle lane.

(c) No motor vehicle shall be operated upon these lanes except in conformance with the instructions on the signs and other official traffic-control devices.

(d) A motorcycle may use any high occupancy vehicle lane, regardless of the number of occupants.

(e) Any vehicle authorized by rules adopted in accordance with chapter 91 may use any high occupancy vehicle lane, regardless of the number of occupants, when the use is determined to enhance public safety and improves traffic conditions.

291C-222.5 [§291C-222

291C-222.5 School buses; zipper lanes. Notwithstanding any other law to the contrary, the director of transportation shall allow school buses, regardless of number of occupants, to be used on contraflow lanes that have been designated as zipper or zip lanes by the department of transportation.

291C-223 Bill

291C-223 Summons or citation for illegal use of high occupancy vehicle lane. Whenever any motor vehicle is observed operating in a high occupancy vehicle lane without the prescribed number of passengers, the officer observing the vehicle shall:

(1) Cause a summons or citation as described in section 291C-165 to be issued at the scene of the violation to the operator of the vehicle; or

(2) Make every reasonable effort to be seen by the operator of the vehicle and record evidence of the violation by taking any information displayed on the vehicle that may identify its registered owner and cause a summons or citation as described in section 291C-165 to be sent by certified or registered mail, with a return receipt that is postmarked within forty-eight hours of the time of the incident, to the registered owner of the vehicle at the address on record at the vehicle licensing division. If the end of the forty-eight hour period falls on a Saturday, Sunday, or holiday, then the ending period shall run until the end of the next day which is not a Saturday, Sunday, or holiday. Upon receipt, the registered owner shall be given fourteen days to respond to the summons or citation by: (A) Paying a fine by mail; or (B) Requesting that a hearing be set on the matter. A mail receipt signed by the registered owner is prima facie evidence of notification.

291C-224

291C-224 Registered owner's responsibility for a summons or citation. In any proceeding for a violation of this part, the information contained in the summons or citation issued in accordance with section 291C-223 shall be deemed evidence that the registered vehicle was violating the use of the high occupancy lane and the registered owner is responsible for its illegal operation. The registered owner shall be determined by the identification of the vehicle's registration plates.

291C-225

291C-225 Failure to comply with summons or citation. If a violator of this part does not return an answer in response to a summons or citation within a period of fourteen days upon receipt of the summons or citation, the traffic, emergency period, and fireworks violations bureau shall issue to the registered owner of the vehicle a penal summons ordering the

registered owner's appearance in court.

291C-226

291C-226 Liability for rental or U-drive vehicle. Notwithstanding any other law to the contrary, if the registered owner of record is the lessor of a rental or U-drive motor vehicle, as defined in section 286-2 pursuant to a written lease agreement, the lessee at the time of the violation shall be responsible for the summons or citation. However, the lessor shall be responsible for the summons or citation if the lessor does not provide the court, having jurisdiction over the summons or citation, with the name and address of the lessee within forty-five days after a notice containing the date, time, and location of the violation and the license number of the vehicle is sent to lessor; provided further that the administrative judge of the court having jurisdiction over the summons or citation may waive the requirement of providing the name and address of the lessee and impose on the lessor an administrative fee of $50 per citation.

291C-227 Penalty

291C-227 Penalty. A person who violates any provision of this part shall for a first conviction thereof be fined $75; for conviction of a second offense committed within one year after the date of the first offense, the person shall be fined $150; for conviction of a third or subsequent offense committed within one year after the date of the first offense, the person shall be fined $200.

Chapter 291D

291D-1

291D-1 Purpose .

(a) Act 222, Session Laws of Hawaii 1978, began the process of decriminalizing certain traffic offenses, not of a serious nature, to the status of violations. In response to a request by the legislature, the judiciary prepared a report in 1987 that recommended, among other things, further decriminalization of traffic offenses, elimination of most traffic arraignments, disposition of uncontested violations by mail, and informal hearings where the violation or the proposed penalty is questioned. The legislature finds that further decriminalization of certain traffic offenses and streamlining of the handling of those traffic cases will achieve a more expeditious system for the judicial processing of traffic infractions. The system of processing traffic infractions established by this chapter will:

(1) Eliminate the long and tedious arraignment proceeding for a majority of traffic matters;

(2) Facilitate and encourage the resolution of many traffic infractions through the payment of a monetary assessment;

(3) Speed the disposition of contested cases through a hearing, similar to small claims proceedings, in which the rules of evidence will not apply and the court will consider as evidence the notice of traffic infraction, applicable police reports, or other written statements by the police officer who issued the notice, any other relevant written material, and any evidence or statements by the person contesting the notice of traffic infraction;

(4) Dispense in most cases with the need for witnesses, including law enforcement officers, to be present and for the participation of the prosecuting attorney;

(5) Allow judicial, prosecutorial, and law enforcement resources to be used more efficiently and effectively; and

(6) Save the taxpayers money and reduce their frustration with the judicial system by simplifying the traffic court process. The legislature further finds that this chapter will not require expansion of the current traffic division of the district courts, but will achieve greater efficiency through more effective use of existing resources of the district courts.

(b) The legislature finds that the pandemic related to the coronavirus disease 2019 necessitated the imposition of emergency period rules in an attempt to control the spread of the disease in the State. The thousands of violations of the emergency period rules caused an examination of the ability to impose infractions for lesser offenses as an alternative to using the Penal Code and to allow for more efficient use of the judicial system. The system of processing traffic infractions under this chapter was enacted in 1993 and has provided a useful mechanism for handling offenses deemed as infractions and is well-suited to certain types of violations of emergency period rules that are designated infractions by the governor or mayor under the state's emergency management laws.

(c) The legislature further finds that the illegal use of fireworks poses a serious public health and safety hazard. Due to the high number of fireworks being set off throughout the State, an expeditious adjudication system for fireworks infractions, such as the system for processing traffic infractions, will allow the judiciary to expediently process violations of

the fireworks control law. This system will allow the judiciary to reserve resources for cases that require more resources.

291D-2 Definitions

291D-2 Definitions. As used in this chapter: "Concurrent trial" means a trial proceeding held in the district or family court in which the defendant is tried simultaneously in a civil case for any charged traffic infraction, emergency period infraction, or fireworks infraction and in a criminal case for any related criminal offense, with trials to be held in one court on the same date and at the same time. "Emergency period infraction" means all occurrences of noncompliance with rules adopted by the governor or a mayor pursuant to chapter 127A, which are stated and designated in the rule as being an emergency period infraction. "Fireworks infraction" means any violation of chapter 132D that is not explicitly classified as a felony or misdemeanor, any rule adopted pursuant to chapter 132D, or any county ordinance or rule enacted pursuant to chapter 132D. "Hearing" means a proceeding conducted by the district court pursuant to section 291D-8 at which the person to whom a notice of traffic infraction, notice of emergency period infraction, or notice of fireworks infraction was issued either admits to the infraction, contests the notice of traffic infraction, notice of emergency period infraction, or notice of fireworks infraction, or admits to the traffic infraction, emergency period infraction, or fireworks infraction but offers an explanation to mitigate the monetary assessment imposed. "Notice of traffic infraction" includes a notice of parking infraction. "Related criminal offense" means any criminal violation or crime, committed in the same course of conduct as a traffic infraction, emergency period infraction, or fireworks infraction, for which the defendant is arrested or charged. "Traffic infraction" means all violations of statutes, ordinances, or rules relating to traffic movement and control, including parking, standing, equipment, and pedestrian offenses, for which the prescribed penalties do not include imprisonment and that are not otherwise specifically excluded from coverage of this chapter. "Trial" means a trial conducted by the district court pursuant to the rules of the district court and the Hawaii rules of evidence.

291D-3 Applicability

291D-3 Applicability.

(a) Notwithstanding any other provision of law to the contrary, all traffic infractions, emergency period infractions, and fireworks infractions, including infractions committed by minors, shall be adjudicated pursuant to this chapter, except as provided in subsection (b). This chapter shall be applied uniformly throughout the State and in all counties. No penal sanction that includes imprisonment shall apply to a violation of a state statute or rule, or county ordinance or rule, that would constitute a traffic infraction, an emergency period infraction, or a fireworks infraction under this chapter. No traffic infraction, emergency period infraction, or fireworks infraction shall be classified as a criminal offense.

(b) Where a defendant is charged with a traffic infraction, an emergency period infraction, or a fireworks infraction and the infraction is committed in the same course of conduct as a criminal offense for which the offender is arrested or charged, the traffic infraction, emergency period infraction, or fireworks infraction shall be adjudicated pursuant to this chapter; provided that the court may schedule any initial appearance, hearing, or trial on the traffic infraction, emergency period infraction, or fireworks infraction at the same date, time, and place as the arraignment, hearing, or trial on the related criminal offense. Notwithstanding this subsection and subsection (c), the court shall not schedule any initial appearance, hearing, or trial on the traffic infraction, emergency period infraction, or fireworks infraction at the same date, time, and place as the arraignment, hearing, or trial on the related criminal offense where the related criminal offense is a felony or is a misdemeanor for which the defendant has demanded a jury trial.

(c) If the defendant requests a trial pursuant to section 291D-13, the trial shall be held in the district court of the circuit in which the traffic infraction, emergency period infraction, or fireworks infraction was committed. If the court schedules a concurrent trial pursuant to paragraph (1), the concurrent trial shall be held in the appropriate district or family court of the circuit in which the traffic infraction, emergency period infraction, or fireworks infraction was committed, whichever has jurisdiction over the related criminal offense charged pursuant to the applicable statute or rule of court; provided that:

(1) The district or family court, for the purpose of trial, may schedule a civil trial on the traffic infraction, emergency period infraction, or fireworks infraction on the same date and at the same time as a criminal trial on the related criminal offense charged. The court shall enter a civil judgment as to the traffic infraction, emergency period infraction, or fireworks infraction and a judgment of conviction or acquittal as to the related criminal offense following the concurrent trial; and

(2) If trial on the traffic infraction, emergency period infraction, or fireworks infraction is held separately from and before trial on any related criminal offense, the following shall be inadmissible in the prosecution or trial of the related criminal offense, except as expressly provided by the Hawaii rules of evidence: (A) Any written or oral statement made by the defendant in proceedings conducted pursuant to section 291D-7(b); and (B) Any testimony given by the defendant in the

trial on the traffic infraction, emergency period infraction, or fireworks infraction. These statements or testimony shall not be deemed a waiver of the defendant's privilege against self-incrimination in connection with any related criminal offense.

(d) In no event shall section 701-109 preclude prosecution for a related criminal offense where a traffic infraction, an emergency period infraction, or a fireworks infraction committed in the same course of conduct has been adjudicated pursuant to this chapter.

(e) If the defendant fails to appear at any scheduled court date before the date of trial or concurrent trial and:

(1) The defendant's civil liability for the traffic infraction, emergency period infraction, or fireworks infraction has not yet been adjudicated pursuant to section 291D-8, the court shall enter a judgment by default in favor of the State for the traffic infraction, emergency period infraction, or fireworks infraction unless the court determines that good cause or excusable neglect exists for the defendant's failure to appear; or

(2) The defendant's civil liability for the traffic infraction, emergency period infraction, or fireworks infraction has been adjudicated previously pursuant to section 291D-8, the judgment earlier entered in favor of the State shall stand unless the court determines that good cause or excusable neglect exists for the defendant's failure to appear.

(f) If the defendant fails to appear at any scheduled court date prior to concurrent trial or fails to appear for concurrent trial scheduled pursuant to subsection (c)(1), the court shall enter a disposition pursuant to the Hawaii rules of penal procedure for the criminal offense.

291D-3.5 Bill

291D-3.5 U-drive vehicles; traffic infractions. Notwithstanding any other law to the contrary, except those pertaining to the care and maintenance of the vehicle, if the registered owner of record is the lessor of a rental or U-drive motor vehicle, as defined in section 286-2, pursuant to a written lease agreement, the lessee at the time of the issuance of the traffic infraction shall be responsible for such summons or citation; provided that the lessor shall be responsible for such summons or citation if the lessor does not provide the court having jurisdiction over the summons or citation the name and address of the lessee within forty-five days after a notice containing the date, time, and location of the violation and the license number of the vehicle; provided further that if requested by the lessor in writing within forty-five days of such notice of violation other than for parking citations, the administrative judge of the court having jurisdiction over the citation or summons shall waive the requirement of providing the name and address of the lessee by the lessor and impose an administrative fee of $5 per citation on the lessor, plus costs and fees not to exceed $10 in total per violation, notwithstanding section 607-4 or other sections of the law, county ordinance, or any rule to the contrary. In the case of parking citations, the administrative judge of the court having jurisdiction over the citation or summons may waive the requirement of providing the name and address of the lessee by the lessor and impose an administrative fee of $5 per parking citation on the lessor, plus costs and fees not to exceed $10 in total per such violation, notwithstanding section 607-4 or other sections of the law, county ordinance, or any rule to the contrary.

291D-4 Venue and jurisdiction

291D-4 Venue and jurisdiction.

(a) All violations of state law, ordinances, or rules designated as traffic infractions, emergency period infractions, or fireworks infractions in this chapter shall be adjudicated in the district and circuit where the alleged infraction occurred, except as otherwise provided by law.

(b) Except as otherwise provided by law, jurisdiction is in the district court of the circuit where the alleged traffic infraction, emergency period infraction, or fireworks infraction occurred. Except as otherwise provided in this chapter, district court judges shall adjudicate traffic infractions, emergency period infractions, and fireworks infractions.

291D-5

291D-5 Notice of infraction; form; determination final unless contested.

(a) The notice of traffic infraction for moving violations, the notice of emergency period infraction, and the notice of fireworks infraction shall include the summons for the purposes of this chapter. Whenever a notice of traffic infraction, notice of emergency period infraction, or notice of fireworks infraction is issued, the person's signature, driver's license number or state identification number, electronic mail address, and current address shall be noted on the notice. If the person refuses to sign the notice of traffic infraction, notice of emergency period infraction, or notice of fireworks infraction, the officer shall record this refusal on the notice and issue the notice to the person. Anyone to whom a notice of

traffic infraction, notice of emergency period infraction, or notice of fireworks infraction is issued under this chapter need not be arraigned before the court, unless required by rule of the supreme court.

(b) The forms for the notice of traffic infraction, notice of emergency period infraction, and notice of fireworks infraction shall be prescribed by rules of the district court, which shall be uniform throughout the State; provided that each judicial circuit may include differing statutory, rule, or ordinance provisions on its respective notice of traffic infraction, notice of emergency period infraction, or notice of fireworks infraction.

(c) A notice of traffic infraction, notice of emergency period infraction, or notice of fireworks infraction that is generated by the use of electronic equipment or that bears the electronically stored image of any person's signature, or both, shall be valid under this chapter.

(d) The notice of traffic infraction, notice of emergency period infraction, or notice of fireworks infraction shall include the following:

(1) A statement of the specific infraction for which the notice was issued;

(2) Except in the case of parking-related traffic infractions, a brief statement of the facts;

(3) A statement of the total amount to be paid for each infraction, which amount shall include any fee, surcharge, or cost required by statute, ordinance, or rule, and any monetary assessment, established for the particular infraction pursuant to section 291D-9, to be paid by the person to whom the notice was issued, which shall be uniform throughout the State;

(4) A statement of the options provided in section 291D-6(b) for answering the notice and the procedures necessary to exercise the options;

(5) A statement that the person to whom the notice is issued shall answer, choosing one of the options specified in section 291D-6(b), within twenty-one days of issuance of the notice;

(6) A statement that failure to answer the notice within twenty-one days of issuance shall result in the entry of judgment by default for the State and may result in the assessment of a late penalty;

(7) A statement that, at a hearing requested to contest the notice, pursuant to section 291D-8, no officer shall be present unless the person to whom the notice was issued timely requests the court to have the officer present, and that the standard of proof to be applied by the court is whether a preponderance of the evidence proves that the specified infraction was committed;

(8) A statement that, at a hearing requested for the purpose of explaining mitigating circumstances surrounding the commission of the infraction or in consideration of a written request for mitigation, the person shall be considered to have committed the infraction;

(9) A space in which the signature of the person to whom the notice was issued may be affixed; and

(10) The date, time, and place at which the person to whom the notice was issued shall appear in court, if the person is required by the notice to appear in person at the hearing.

(e) In the case of traffic infractions involving parking or equipment, where the motor vehicle is found parked or stopped without a driver, the notice shall be affixed conspicuously to the vehicle as provided in section 291C-167 and shall include the information required by paragraphs (1) and (3) to (9) of subsection (d).

291D-6 Answer required

291D-6 Answer required.

(a) A person who receives a notice of traffic infraction, notice of emergency period infraction, or notice of fireworks infraction shall answer the notice within twenty-one days of the date of issuance of the notice. There shall be included with the notice of traffic infraction, notice of emergency period infraction, or notice of fireworks infraction a preaddressed envelope directed to the traffic, emergency period, and fireworks violations bureau of the applicable district court.

(b) Provided that the notice of traffic infraction, notice of emergency period infraction, or notice of fireworks infraction does not require an appearance in person at a hearing as set forth in section 291D-5(d)(10), in answering a notice of traffic infraction, notice of emergency period infraction, or notice of fireworks infraction, a person shall have the following options:

(1) Admit the commission of the infraction in one of the following ways: (A) By mail or in person, by completing the appropriate portion of the notice of traffic infraction, notice of emergency period infraction, notice of fireworks infraction, or preaddressed envelope and submitting it to the authority specified on the notice together with payment of the total amount

stated on the notice of traffic infraction, notice of emergency period infraction, or notice of fireworks infraction. Payment by mail shall be in the form of a check, money order, or by an approved credit or debit card. Payment in person shall be in the form of United States currency, check, money order, or by an approved credit or debit card; or (B) Via the Internet or by telephone, by submitting payment of the total amount stated on the notice of traffic infraction, notice of emergency period infraction, or notice of fireworks infraction. Payment via the Internet or by telephone shall be by an approved credit or debit card;

(2) Deny the commission of the infraction and request a hearing to contest the infraction by completing the appropriate portion of the notice of traffic infraction, notice of emergency period infraction, notice of fireworks infraction, or preaddressed envelope and submitting it, either by mail or in person, to the authority specified on the notice. In lieu of appearing in person at a hearing, the person may submit a written statement of grounds on which the person contests the notice of traffic infraction, notice of emergency period infraction, or notice of fireworks infraction, which shall be considered by the court as a statement given in court pursuant to section 291D-8(a); or

(3) Admit the commission of the infraction and request a hearing to explain circumstances mitigating the infraction by completing the appropriate portion of the notice of traffic infraction, notice of emergency period infraction, notice of fireworks infraction, or preaddressed envelope and submitting it, either by mail or in person, to the authority specified on the notice. In lieu of appearing in person at a hearing, the person may submit a written explanation of the mitigating circumstances, which shall be considered by the court as a statement given in court pursuant to section 291D-8(b).

(c) When answering the notice of traffic infraction, notice of emergency period infraction, or notice of fireworks infraction, the person shall affix the person's signature to the answer and shall state the address at which the person will accept future mailings from the court. No other response shall constitute an answer for purposes of this chapter.

291D-7

291D-7 Court action after answer or failure to answer.

(a) When an admitting answer is received, the court shall enter judgment in favor of the State in the total amount specified in the notice of traffic infraction, notice of emergency period infraction, or notice of fireworks infraction.

(b) When a denying answer is received, the court shall proceed as follows:

(1) In the case of a traffic infraction, emergency period infraction, or fireworks infraction where the person requests a hearing at which the person will appear in person to contest the infraction, the court shall notify the person in writing of the date, time, and place of hearing to contest the notice of traffic infraction, notice of emergency period infraction, or notice of fireworks infraction. The notice of hearing shall be mailed to the address stated in the denying answer or, if none is given, to the address stated on the notice of traffic infraction, notice of emergency period infraction, or notice of fireworks infraction. An electronic copy of the notice of hearing may be sent to the electronic mail address stated on the notice of infraction. The notification also shall advise the person that, if the person fails to appear at the hearing, the court shall enter judgment by default in favor of the State, as of the date of the scheduled hearing, and that the total amount specified in the default judgment shall be paid within thirty days of entry of default judgment; and

(2) When a denying answer is accompanied by a written statement of the grounds on which the person contests the notice of traffic infraction, notice of emergency period infraction, or notice of fireworks infraction, the court shall proceed as provided in section 291D-8(a) and shall notify the person of its decision, including the total amount assessed, if any, by mailing the notice of entry of judgment within forty-five days of the postmarked date of the answer to the address provided by the person in the denying answer or, if none is given, to the address given when the notice of traffic infraction, notice of emergency period infraction, or notice of fireworks infraction was issued or, in the case of parking violations, to the address at which the vehicle is registered. An electronic copy of the notice of entry of judgment may be sent to the electronic mail address stated on the notice of infraction. The notice of entry of judgment also shall advise the person, if it is determined that the infraction was committed and judgment is entered in favor of the State, that the person has the right, within thirty days of entry of judgment, to request a trial and shall specify the procedures for doing so. The notice of entry of judgment shall also notify the person, if an amount is assessed by the court for monetary assessments, fees, surcharges, or costs, that if the person does not request a trial within the time specified in this paragraph, the total amount assessed shall be paid within thirty days of entry of judgment.

(c) When an answer admitting commission of the infraction but seeking to explain mitigating circumstances is received, the court shall proceed as follows:

(1) In the case of a traffic infraction, emergency period infraction, or fireworks infraction where the person requests a hearing at which the person will appear in person to explain mitigating circumstances, the court shall notify the person in writing of the date, time, and place of hearing to explain mitigating circumstances. The notice of hearing shall be mailed to the address stated in the answer or, if none is given, to the address stated on the notice of traffic infraction, notice of emergency period infraction, or notice of fireworks infraction. An electronic copy of the notice of hearing may be sent to the electronic mail address stated on the notice of infraction. The notification also shall advise the person that, if the person fails to appear at the hearing, the court shall enter judgment by default in favor of the State, as of the date of the scheduled hearing, and that the total amount stated in the default judgment shall be paid within thirty days of entry of default judgment; and

(2) If a written explanation is included with an answer admitting commission of the infraction, the court shall enter judgment for the State and, after reviewing the explanation, determine the total amount of the monetary assessments, fees, surcharges, or costs to be assessed, if any. The court shall then notify the person of the total amount to be paid for the infraction, if any. There shall be no appeal from the judgment. If the court assesses an amount for monetary assessments, fees, surcharges, or costs, the court shall also notify the person that the total amount shall be paid within thirty days of entry of judgment.

(d) If the person fails to answer within twenty-one days of issuance of the notice of traffic infraction, notice of emergency period infraction, or notice of fireworks infraction, the court shall take action as provided in subsection (e).

(e) Whenever judgment by default is entered in favor of the State, the court shall mail a notice of entry of default judgment to the address provided by the person when the notice of traffic infraction, notice of emergency period infraction, or notice of fireworks infraction was issued or, in the case of parking infractions, to the address stated in the answer, if any, or the address at which the vehicle is registered. An electronic copy of the notice of entry of default judgment may be sent to the electronic mail address stated on the notice of infraction. The notice of entry of default judgment shall advise the person that the total amount specified in the default judgment shall be paid within thirty days of entry of default judgment and shall explain the procedure for setting aside a default judgment. Judgment by default entered for the State pursuant to this chapter may be set aside pending final disposition of the traffic infraction, emergency period infraction, or fireworks infraction upon written application of the person and posting of an appearance bond equal to the amount of the total amount specified in the default judgment and any other assessment imposed pursuant to section 291D-9. The application shall show good cause or excusable neglect for the person's failure to take action necessary to prevent entry of judgment by default. Thereafter, the court shall determine whether good cause or excusable neglect exists for the person's failure to take action necessary to prevent entry of judgment by default. If so, the application to set aside default judgment shall be granted, the default judgment shall be set aside, and the notice of traffic infraction, notice of emergency period infraction, or notice of fireworks infraction shall be disposed of pursuant to this chapter. If not, the application to set aside default judgment shall be denied, the appearance bond shall be forfeited and applied to satisfy amounts due under the default judgment, and the notice of traffic infraction, notice of emergency period infraction, or notice of fireworks infraction shall be finally disposed. In either case, the court shall determine the existence of good cause or excusable neglect and notify the person of its decision on the application in writing.

291D-8 Hearings

291D-8 Hearings.

(a) In proceedings to contest a notice of traffic infraction, notice of emergency period infraction, or notice of fireworks infraction where the person to whom the notice was issued has timely requested a hearing and appears at the hearing:

(1) In lieu of the personal appearance by the officer who issued the notice of traffic infraction, notice of emergency period infraction, or notice of fireworks infraction, the court shall consider the notice of traffic infraction, notice of emergency period infraction, or notice of fireworks infraction, and any other written report made by the officer, if provided to the court by the officer, together with any oral or written statement by the person to whom the notice of infraction was issued, or in the case of traffic infractions involving parking or equipment, the operator or registered owner of the motor vehicle;

(2) The court may compel by subpoena the attendance of the officer who issued the notice of traffic infraction, notice of emergency period infraction, or notice of fireworks infraction, and other witnesses from whom it may wish to hear;

(3) The standard of proof to be applied by the court shall be whether, by a preponderance of the evidence, the court finds that the traffic infraction, emergency period infraction, or fireworks infraction was committed; and

(4) After due consideration of the evidence and arguments, if any, the court shall determine whether commission of the traffic infraction, emergency period infraction, or fireworks infraction has been established. Where the commission of the traffic infraction, emergency period infraction, or fireworks infraction has not been established, judgment in favor of the defendant, dismissing the notice of traffic infraction, notice of emergency period infraction, or notice of fireworks infraction or any count therein with prejudice, shall be entered in the record. Where it has been established that the traffic infraction, emergency period infraction, or fireworks infraction was committed, the court shall enter judgment in favor of the State and shall assess a monetary assessment pursuant to section 291D-9, together with any fees, surcharges, or costs. The court also shall inform the person of the right to request a trial pursuant to section 291D-13. If the person requests a trial at the time of the hearing, the court shall provide the person with the trial date as soon as practicable.

(b) In proceedings to explain mitigating circumstances where the person to whom the notice of traffic infraction, notice of emergency period infraction, or notice of fireworks infraction was issued has timely requested a hearing and appears at the hearing:

(1) The procedure shall be limited to the issue of mitigating circumstances. A person who requests to explain the circumstances shall not be permitted to contest the notice of traffic infraction, notice of emergency period infraction, or notice of fireworks infraction;

(2) After the court has received the explanation, the court shall enter judgment in favor of the State and may assess a monetary assessment pursuant to section 291D-9, together with any fees, surcharges, or costs;

(3) The court, after receiving the explanation, may vacate the admission and enter judgment in favor of the defendant, dismissing the notice of traffic infraction, notice of emergency period infraction, notice of fireworks infraction, or any count therein with prejudice, where the explanation establishes that the infraction was not committed; and

(4) There shall be no appeal from the judgment.

(c) If a person for whom a hearing has been scheduled, to contest the notice of traffic infraction, notice of emergency period infraction, or notice of fireworks infraction, or to explain mitigating circumstances, fails to appear at the hearing, the court shall enter judgment by default for the State and take action as provided in section 291D-7(e).

291D-9 Monetary assessments

291D-9 Monetary assessments.

(a) A person found to have committed a traffic infraction, emergency period infraction, or fireworks infraction shall be assessed a monetary assessment not to exceed the maximum fine specified in the law or rule defining the traffic infraction, emergency period infraction, or fireworks infraction. The court shall consider a person's financial circumstances, if disclosed, in determining the monetary assessment.

(b) Notwithstanding section 291C-161 or any other law to the contrary, the district court of each circuit shall prescribe a schedule of monetary assessments for all traffic infractions, emergency period infractions, and fireworks infractions, and any additional assessments to be imposed pursuant to subsection (c). The particular assessment to be entered on the notice of traffic infraction, notice of emergency period infraction, or notice of fireworks infraction pursuant to section 291D-5 shall correspond to the schedule prescribed by the district court. Except after proceedings conducted pursuant to section 291D-8 or a trial conducted pursuant to section 291D-13, monetary assessments assessed pursuant to this chapter shall not vary from the schedule prescribed by the district court having jurisdiction over the traffic infraction, emergency period infraction, or fireworks infraction.

(c) In addition to any monetary assessment imposed for a traffic infraction, an emergency period infraction, or a fireworks infraction, the court may impose additional assessments for:

(1) Failure to pay a monetary assessment by the scheduled date of payment; or

(2) The cost of service of a penal summons issued pursuant to this chapter.

(d) In addition to any monetary assessment imposed for a fireworks infraction, the court shall impose an administrative fee of $20 for each fireworks infraction in which judgment is entered in favor of the State. The clerk of the district court shall deposit the administrative fees collected into the judiciary computer system special fund pursuant to section 601-3.7.

(e) Upon request of a person claiming inability to pay a monetary assessment, the court may grant an extension of the period in which the monetary assessment shall be paid or may impose community service in lieu thereof.

(f) At any point before full payment of a monetary assessment, any person who suffers a change in financial circumstances may request a hearing to modify the monetary assessment or to request community service in lieu thereof.

291D-10 REPEALED

291D-10 REPEALED. L 2020, c 59, §8. Previous Vol05_Ch0261-0319 Next

291D-11 Time computation

291D-11 Time computation. In computing any period of time prescribed or allowed by this chapter, the day of the act, event, or default from which the period of time begins to run shall not be included. The last day of the period so computed shall be included, unless it is a Saturday, Sunday, or legal holiday in which event the period runs until the end of the next day that is not a Saturday, Sunday, or legal holiday. Intermediate Saturdays, Sundays, and legal holidays shall be included. Whenever an act required to be performed under this chapter may be accomplished by mail, the act shall be deemed to have been performed on the date of the postmark on the mailed article.

291D-12

291D-12 Powers of the district court judge sitting in the traffic, emergency period, and fireworks division.

(a) A district court judge sitting in the traffic, emergency period, and fireworks division and hearing cases pursuant to this chapter shall have all the powers of a district court judge under chapter 604, including the power to:

(1) Conduct traffic infraction, emergency period infraction, and fireworks infraction hearings and impose monetary assessments;

(2) Permit deferral of monetary assessment or impose community service in lieu thereof;

(3) Dismiss a notice of traffic infraction, notice of emergency period infraction, or notice of fireworks infraction, with or without prejudice, or set aside a judgment for the State;

(4) Order temporary driver's license suspension or driver's license reinstatement;

(5) Approve the issuance or renewal of a driver's license or instruction permit pursuant to section 286-109(c);

(6) Issue penal summonses and bench warrants and initiate contempt of court proceedings in proceedings conducted pursuant to section 291D-13;

(7) Issue penal summonses and bench warrants and initiate failure to appear proceedings in proceedings conducted pursuant to section 291D-5(d)(10); and

(8) Exercise other powers the court finds necessary and appropriate to carry out the purposes of this chapter.

(b) A district court judge sitting in the traffic, emergency period, and fireworks division and hearing cases pursuant to this chapter shall not order the director of finance to withhold issuing or renewing the driver's license, or registering, renewing the registration of, or issuing the title to a motor vehicle, of any person who has not paid a monetary assessment, has not performed community service in lieu thereof, or has not otherwise satisfied a judgment for the State entered pursuant to this chapter.

291D-13 Trial and concurrent trial

291D-13 Trial and concurrent trial.

(a) There shall be no right to trial unless the defendant contests the notice of traffic infraction, notice of emergency period infraction, or notice of fireworks infraction pursuant to section 291D-8. If, after proceedings to contest the notice of traffic infraction, notice of emergency period infraction, or notice of fireworks infraction, a determination is made that the defendant committed the traffic infraction, emergency period infraction, or fireworks infraction, judgment shall enter in favor of the State. The defendant may request a trial pursuant to the Hawaii rules of evidence and the rules of the district court; provided that any request for trial shall be made within thirty days of entry of judgment. If, after appearing in person at a hearing to contest the notice of traffic infraction, notice of emergency period infraction, or notice of fireworks infraction, the person requests a trial at the conclusion of the hearing, the court shall provide the person with the trial date as soon as practicable.

(b) At the time of trial, the State shall be represented by a prosecuting attorney of the county in which the infraction occurred. The prosecuting attorney shall orally recite the charged civil traffic infraction, emergency period infraction, or fireworks infraction in court before commencement of the trial. Proof of the defendant's commission of the traffic infraction, emergency period infraction, or fireworks infraction shall be by a preponderance of the evidence.

(c) If trial on the traffic infraction, emergency period infraction, or fireworks infraction is held before trial on any related criminal offense, the following shall be inadmissible in the subsequent prosecution or trial of the related criminal offense:

(1) Any written or oral statement made by the defendant in proceedings conducted pursuant to section 291D-7(b); and

(2) Any testimony given by the defendant in the traffic infraction, emergency period infraction, or fireworks infraction trial. The statement or testimony, or both, shall not be deemed a waiver of the defendant's privilege against self-incrimination in connection with any related criminal offense.

(d) In any concurrent trial, the State shall be represented by a prosecuting attorney of the county in which the infraction and related crime occurred. Proof of the defendant's commission of the infraction shall be by a preponderance of the evidence, and proof of the related criminal offense shall be by proof beyond a reasonable doubt. The concurrent trial shall be conducted pursuant to the rules of the appropriate court, the Hawaii rules of evidence, and the Hawaii rules of penal procedure.

291D-14 Rules

291D-14 Rules.

(a) The supreme court may adopt rules of procedure for the conduct of all proceedings pursuant to this chapter.

(b) Chapter 626 shall not apply in proceedings conducted pursuant to this chapter, except for the rules governing privileged communications, and proceedings conducted under section 291D-13.

(c) Notwithstanding section 604-17, while the court is sitting in any matter pursuant to this chapter, the court shall not be required to preserve the testimony or proceedings, except proceedings conducted pursuant to section 291D-13 and proceedings in which the traffic infraction, emergency period infraction, or fireworks infraction is heard on the same date and time as any related criminal offense.

(d) The prosecuting attorney shall not participate in traffic infraction, emergency period infraction, or fireworks infraction proceedings conducted pursuant to this chapter, except proceedings pursuant to section 291D-13 and proceedings in which a related criminal offense is scheduled for arraignment, hearing, or concurrent trial.

(e) Chapter 91 shall not apply in proceedings before the court.

(f) Except as otherwise provided in section 291D-3, chapter 571 and the Hawaii family court rules shall not apply in any proceedings conducted pursuant to this chapter.

Chapter 291E

291E-1 I

291E-1 Definitions. As used in this chapter, unless the context otherwise requires: "Administrative revocation" means termination of the respondent's license, and the privilege to operate a vessel underway on or in the waters of the State pursuant to part III, but does not include any revocation imposed under section 291E-61 or 291E-61.5. "Alcohol" means ethanol or any substance containing ethanol. "Alcohol concentration" means either grams of alcohol per one hundred milliliters or cubic centimeters of blood or grams of alcohol per two hundred ten liters of breath. "Alcohol enforcement contact" means:

(1) Any administrative revocation ordered pursuant to part III;

(2) Any administrative revocation ordered pursuant to part XIV of chapter 286, as that part was in effect on or before December 31, 2001;

(3) Any suspension or revocation of any license or any suspension or revocation of a privilege to operate a vessel underway imposed by this or any other state or federal jurisdiction for refusing to submit to a test for alcohol concentration;

(4) Any conviction in this State for operating or being in physical control of a vehicle while having an unlawful alcohol concentration or while under the influence of alcohol; or

(5) Any conviction in any other state or federal jurisdiction for an offense that is comparable to operating or being in physical control of a vehicle while having an unlawful alcohol concentration or while under the influence of alcohol. "Certified substance abuse counselor" means any person certified by the department of health pursuant to section 321-193(10), or any other substance abuse specialist or medical practitioner the director of health may appoint to carry

out the functions of a certified substance abuse counselor under this chapter. "Continuous alcohol monitoring device" means any device or instrument that:

(1) Is attached to the person;

(2) Is designed to automatically test the alcohol content in a person by contact with the person's skin at least once per one-half hour regardless of the person's location;

(3) Detects the presence of alcohol; and

(4) Detects attempts to tamper with, obstruct, or remove the device. "Director" means the administrative director of the courts or any other person within the judiciary appointed by the director to conduct administrative reviews or hearings or carry out other functions relating to administrative revocation under part III. "Drug" means any controlled substance, as defined and enumerated in schedules I through IV of chapter 329, or its metabolites, or any substance that, when taken into the human body, can impair the ability of a person to operate a vehicle safely . "Drug enforcement contact" means:

(1) Any administrative revocation ordered pursuant to part III;

(2) Any administrative revocation ordered pursuant to part XIV of chapter 286, as that part was in effect on or before December 31, 2001;

(3) Any suspension or revocation of license or any suspension or revocation of a privilege to operate a vessel underway imposed by this or any other state or federal jurisdiction for refusing to submit to a test for drug content in the person's blood or urine;

(4) Any conviction in this State for operating or being in physical control of a vehicle while having an unlawful drug content in the blood or urine or while under the influence of drugs; or

(5) Any conviction in any other state or federal jurisdiction for an offense that is comparable to operating or being in physical control of a vehicle while having an unlawful drug content in the blood or urine or while under the influence of drugs. "Highly intoxicated driver" means a person whose measurable amount of alcohol is:

(1) .15 or more grams of alcohol per one hundred milliliters or cubic centimeters of the person's blood; or

(2) .15 or more grams of alcohol per two hundred ten liters of the person's breath. "Household member" means:

(1) Persons who reside in the same dwelling unit as the respondent; or

(2) Persons under twenty-one years of age who are related to the respondent by marriage, blood, or adoption, regardless of whether they reside in the same dwelling unit with the respondent. "Ignition interlock device" means a breath alcohol ignition interlock device that is certified pursuant to section 291E-6 and rules adopted thereunder that, when affixed to the ignition system of a motor vehicle, prevents the vehicle from being started without first testing, and thereafter from being operated without periodically retesting, a deep-lung breath sample of the person required to use the device that indicates the person's alcohol concentration is less than .02. "Impair" means to weaken, to lessen in power, to diminish, to damage, or to make worse by diminishing in some material respect or otherwise affecting in an injurious manner. "Intoxicant" means alcohol or any drug, as defined in this section. "Law enforcement officer" means any public servant, whether employed by the State, a county, or by the United States, vested by law with a duty to maintain public order or to make arrests for offenses or to enforce the criminal laws, and includes a conservation and resources enforcement officer as specified in section 199-3. "License" means any driver's license or any other license or permit to operate a motor vehicle issued under, or granted by, the laws of this State and includes:

(1) Any learner's permit or instruction permit;

(2) The privilege of any person to operate a motor vehicle, regardless of whether the person holds a valid license;

(3) Any nonresident's operating privilege; and

(4) The eligibility, including future eligibility, of any person to apply for a license or privilege to operate a motor vehicle. "Measurable amount of alcohol" means a test result equal to or greater than .02 but less than .08 grams of alcohol per one hundred milliliters or cubic centimeters of blood or equal to or greater than .02 but less than .08 grams of alcohol per two hundred ten liters of breath. "Moped" has the same meaning as in section 291C-1. "Motor vehicle" has the same meaning as in section 291C-1, except that it specifically includes a moped. "Nonresident's operating privilege" means the privilege conferred by law upon a nonresident to operate a vehicle in this State. "Notice of administrative revocation" or "notice" means the written notice issued to the respondent pursuant to section 291E-33. "Number plates" refer to the number plates or special number plates, which are commonly known as license plates, that are issued under sections

249-9, 249-9.1, 249-9.2, and 249-9.3 and that are required to be attached on a motor vehicle pursuant to sections 249-1 to 249-13. "Operate" means to drive or assume actual physical control of a vehicle upon a public way, street, road, or highway or to navigate or otherwise use or assume physical control of a vessel underway on or in the waters of the State. "Operator" means a person who drives or assumes actual physical control of a vehicle or a person who operates, navigates, or who has an essential role in the operation of a vessel underway. "Preliminary alcohol screening device" means a device designed to detect and verify the presence of alcohol or provide an estimated value of alcohol concentration. "Privilege" refers to the authority to operate a vessel underway on or in the waters of the State. "Public way, street, road, or highway" includes:

(1) The entire width, including berm or shoulder, of every road, alley, street, way, right of way, lane, trail, highway, or bridge;

(2) A parking lot, when any part thereof is open for use by the public or to which the public is invited for entertainment or business purposes;

(3) Any bicycle lane, bicycle path, bicycle route, bikeway, controlled-access highway, laned roadway, roadway, or street, as defined in section 291C-1; or

(4) Any public highway, as defined in section 264-1. "Qualified household member" means a household member of the respondent who has a license that has not expired or been suspended or revoked. "Repeat intoxicated driver" means a person who previously:

(1) Has been convicted, during the five years preceding the date of arrest, of one or more violations under: (A) Section 291E-61 or 291E-61.5, as a result of having consumed alcohol; or (B) Section 291-4 or 291-4.4, as those sections were in effect on or before December 31, 2001;

(2) Has been convicted, during the ten years preceding the date of arrest, of three or more violations under: (A) Section 291E-61 or 291E-61.5, as a result of having consumed alcohol; or (B) Section 291-4 or 291-4.4, as those sections were in effect on or before December 31, 2001; or

(3) Has had one prior alcohol enforcement contact or drug enforcement contact during the five years preceding the date of arrest, two prior alcohol enforcement contacts or drug enforcement contact during the five years preceding the date of arrest, or three or more prior alcohol enforcement contacts or drug enforcement contact during the ten years preceding the date of arrest. "Respondent" means a person to whom a notice of administrative revocation has been issued following an arrest for a violation of section 291E-61 or 291E-61.5 or following the collection of a blood or urine sample from the person, pursuant to section 291E-21, because there was probable cause to believe that the person has violated section 291E-61 or 291E-61.5. "State" means: any state or possession of the United States; the District of Columbia; the Commonwealth of Puerto Rico; the United States Virgin Islands; American Samoa; Guam; any province or territory of the Dominion of Canada; and the Commonwealth of the Northern Mariana Islands, except when the word, in context, clearly refers to the State of Hawaii. "Substance" means any plant, medication, poison, natural or synthetic chemical, or any compound or combination of these, and includes but is not limited to central nervous system depressants, central nervous systems stimulants, hallucinogens, dissociative anesthetics, narcotic analgesics, inhalants, and cannabis. "Substance abuse" means the use or misuse of alcohol, any drug on schedules I through IV of chapter 329, or any substance as defined in this section, to any extent deemed deleterious or detrimental to the user, to others, or to society. "Temporary permit" means that portion of the notice of administrative revocation that, when completed by a law enforcement officer, permits the respondent to operate a vehicle for thirty days in the case of an alcohol related offense and forty-four days in the case of a drug related offense or until such time as the director may establish under part III. "Under the influence" means that a person:

(1) Is under the influence of alcohol in an amount sufficient to impair the person's normal mental faculties or ability to care for the person and guard against casualty;

(2) Is under the influence of any drug that impairs the person's ability to operate the vehicle in a careful and prudent manner;

(3) Has .08 or more grams of alcohol per two hundred ten liters of the person's breath; or

(4) Has .08 or more grams of alcohol per one hundred milliliters or cubic centimeters of the person's blood. "Underway" means that a vessel is not at anchor, made fast to the shore, or aground. "Valid license" means a license that:

(1) Is issued by an authorized licensing official in any state;

(2) Authorizes an individual to operate a motor vehicle on public streets, roads, or highways; and

(3) Has not expired or been revoked, suspended, or canceled. "Vehicle" includes a:

(1) Motor vehicle;

(2) Moped; and

(3) Vessel. "Vessel" means all description of watercraft that are used or are capable of being used as a means of transportation on or in the water. "Waters of the State" means any waters within the jurisdiction of the State, the marginal seas adjacent to the State, and the high seas when navigated as part of a journey or ride to or from the shore of the State.

291E-2 I

291E-2 Medical services. The several county and state government physicians shall, or any other qualified person may, make whatever tests and analyses as may be requested of them by any law enforcement officer in connection with the determination of whether a person is or was under the influence of an intoxicant or has consumed a measurable amount of alcohol for any purpose under this chapter.

291E-3 I

291E-3 Evidence of intoxication.

(a) In any criminal prosecution for a violation of section 291E-61 or 291E-61.5 or in any proceeding under part III:

(1) .08 or more grams of alcohol per one hundred milliliters or cubic centimeters of the person's blood;

(2) .08 or more grams of alcohol per two hundred ten liters of the person's breath; or

(3) The presence of one or more drugs in an amount sufficient to impair the person's ability to operate a vehicle in a careful and prudent manner, within three hours after the time of the alleged violation as shown by chemical analysis or other approved analytical techniques of the person's blood, breath, or urine shall be competent evidence that the person was under the influence of an intoxicant at the time of the alleged violation.

(b) In any criminal prosecution for a violation of section 291E-61 or 291E-61.5, the amount of alcohol found in the defendant's blood or breath within three hours after the time of the alleged violation as shown by chemical analysis or other approved analytical techniques of the defendant's blood or breath shall be competent evidence concerning whether the defendant was under the influence of an intoxicant at the time of the alleged violation and shall give rise to the following presumptions:

(1) If there were .05 or less grams of alcohol per one hundred milliliters or cubic centimeters of defendant's blood or .05 or less grams of alcohol per two hundred ten liters of defendant's breath, it shall be presumed that the defendant was not under the influence of alcohol at the time of the alleged violation; and

(2) If there were in excess of .05 grams of alcohol per one hundred milliliters or cubic centimeters of defendant's blood or .05 grams of alcohol per two hundred ten liters of defendant's breath, but less than .08 grams of alcohol per one hundred milliliters or cubic centimeters of defendant's blood or .08 grams of alcohol per two hundred ten liters of defendant's breath, that fact may be considered with other competent evidence in determining whether the defendant was under the influence of alcohol at the time of the alleged violation, but shall not of itself give rise to any presumption.

(c) In any criminal prosecution for a violation of section 291E-61 or in any proceeding under part III:

(1) .15 or more grams of alcohol per one hundred milliliters or cubic centimeters of the person's blood; or

(2) .15 or more grams of alcohol per two hundred ten liters of the person's breath, within three hours after the time of the alleged violation as shown by chemical analysis or other approved analytical techniques of the person's blood or breath shall be competent evidence that the person was a highly intoxicated driver at the time of the alleged violation.

(d) Nothing in this section shall be construed as limiting the introduction, in any criminal proceeding for a violation under section 291E-61 or 291E-61.5 or in any proceeding under part III, of relevant evidence of a person's alcohol concentration or drug content obtained more than three hours after an alleged violation; provided that the evidence is offered in compliance with the Hawaii rules of evidence.

291E-4 I

291E-4 Convictions and acts prior to January 1, 2002.

(a) Any:

(1) Conviction for an offense under section 200-81, 291-4, 291-4.4, or 291-7 as those sections were in effect on December 31, 2001;

(2) Conviction in any other state or federal jurisdiction for an offense that is comparable to operating or being in physical control of a vehicle while having either an unlawful alcohol concentration or an unlawful drug content in the blood or urine or while under the influence of an intoxicant; or

(3) Adjudication of a minor for a law violation that, if committed by an adult, would constitute a violation of section 200-81, 291-4, 291-4.4, 291-4.5, or 291-7 as those sections were in effect on December 31, 2001; shall be counted as a prior offense for purposes of section 291E-41, 291E-61, or 291E-61.5.

(b) Any conviction of an offense under section 291-4, 291-4.4, 291-4.5, or 291-7 as those sections were in effect on December 31, 2001, shall be counted for purposes of imposing sentence for a violation under section 291E-62.

291E-5

291E-5 Ignition interlock user affordability. The director of transportation shall contract with the selected ignition interlock vendor to provide partial financial relief for the installation and the periodic calibration charges to offenders who apply for such assistance and who are recipients, at the time of license revocation or suspension, of either food stamps under the Supplemental Nutrition Assistance Program, or free services under the Older Americans Act or Developmentally Disabled Assistance and Bill of Rights Act.

291E-6

291E-6 Ignition interlock devices; certification.

(a) The director of transportation shall establish and administer a statewide program relating to certification and monitoring of ignition interlock devices installed pursuant to chapter 291E and shall select a single vendor to install and maintain them.

(b) The program shall include standards and procedures for the certification of ignition interlock devices installed pursuant to chapter 291E. At a minimum, the standards shall require that the devices:

(1) Be certified by an independent laboratory to meet or exceed the guidelines published by the National Highway Traffic Safety Administration;

(2) Operate using an alcohol-specific sensor technology;

(3) Employ a digital camera by which a photograph of the person using the device can be incorporated into the electronic record generated by each use of the device;

(4) Require a rolling retest by which the driver must, within a specified period of time or distance driven after starting the vehicle, be retested and found to have an alcohol concentration of less than .02, with a margin of error of .01; and

(5) Generate a record of vehicle usage, including dates and times driven.

(c) The program shall include standards and procedures for the certification of the vendor selected to install and maintain ignition interlock devices pursuant to chapter 291E. At a minimum, the standards shall require that the vendor:

(1) Install only an ignition interlock device that is certified pursuant to this section;

(2) Offer or contract for ignition interlock device installation and maintenance statewide;

(3) Train drivers who are required to install an ignition interlock device, pursuant to chapter 291E, in how to use the device;

(4) Schedule the driver for all necessary readings and maintenance of the device; and

(5) Provide periodic reports regarding the use of each ignition interlock device installed pursuant to chapter 291E, including incidents of test failure, attempts to circumvent the device, and dates, times, and distances the vehicle was driven.

(d) The vendor selected for installation and maintenance of ignition interlock devices pursuant to chapter 291E shall be audited annually by the director of transportation pursuant to this section and the rules adopted thereunder. The director of transportation may require the vendor to pay for all or part of the costs incurred in conducting the audit.

(e) The director of transportation shall adopt rules pursuant to chapter 91 necessary for the purposes of this section.

291E-6.5 HRS

291E-6.5 Continuous alcohol monitoring device; requirement; penalties.

(a) Any person charged with a violation of section 291E-61 or 291E-61.5 as a result of having consumed alcohol:

(1) Who is a repeat intoxicated driver; or

(2) While pending criminal investigation or prosecution for one or more prior charges of violating section 291E-61 or 291E-61.5, as a result of having consumed alcohol, may be ordered to refrain from consuming any alcohol and submit to monitoring by a continuous alcohol monitoring device, for a period of no less than ninety days. If, following the person's arrest, the person is released on bail by the sheriff, deputy sheriff, chief of police, or any person named by the chief of police, the person shall be scheduled for an initial court appearance within five business days, or as soon thereafter as is practicable.

(b) At the person's initial court appearance, the person may be ordered to refrain from consuming any alcohol and to submit to monitoring by a continuous alcohol monitoring device, for a period of no less than ninety days, as conditions of release on bail. As further conditions of release on bail, if a continuous alcohol monitoring device is ordered, the person shall be ordered to refrain from removing, obstructing, or tampering with the device during the applicable period. The applicable period may be extended by the court at any time, beyond ninety days, but may not be shortened or suspended. Once ordered, the person shall be fitted with a continuous alcohol monitoring device within five business days of the person's initial court appearance, or as soon thereafter as is practicable.

(c) If the device is removed upon being taken into custody by the department of law enforcement, or for a verified medical emergency, such removal shall not be considered a violation of conditions of release on bail, and the applicable period shall be suspended. The person shall be refitted with a continuous alcohol monitoring device at the earliest possible opportunity, at which time the applicable period shall resume.

(d) The administrative director of the courts shall establish and administer a statewide program relating to oversight of all continuous alcohol monitoring devices ordered to be fitted pursuant to chapter 291E, and shall select a single vendor to fit, maintain and monitor them. All costs associated with the device, including administrative and operating costs, shall be paid by the person, except that the vendor shall provide partial financial relief for any charges to persons who apply for such assistance and who are recipients, at the time of arrest, of either food stamps under the Supplemental Nutrition Assistance Program, or free services under the Older Americans Act or Developmentally Disabled Assistance and Bill of Rights Act.

(e) If the person violates any of the conditions of release on bail as specified in subsection (b), the person's bail may be declared forfeited and bail reset in the same amount or higher, in addition to any other penalties the court may impose.

(f) Nothing in this section shall prevent a court from ordering a defendant to submit to monitoring by a continuous alcohol monitoring device as a condition of release on bail, recognizance, supervised release or sentencing, for violation of section 291E-61 or 291E-61.5 as a first offense, or for violation of any other section, if otherwise permitted by law.

291E-7 Trauma system surcharge

291E-7 Trauma system surcharge.

(a) In addition to any other civil penalties ordered by the court, a person who violates any offense under this part may be ordered to pay a trauma system surcharge, provided that:

(1) The maximum of which may be $10 if the violator is not already required to pay a trauma system surcharge pursuant to the violation of the offense;

(2) The maximum of which may be $25 if the violation is an offense under section 291E-61(a)(1), 291E-61(a)(3), or 291E-61(a)(4);

(3) The maximum of which may be $50 if the violation is an offense under section 291E-61(a)(2) or 291E-61.5 or if the offense under section 291E-61(a)(3) or 291E-61(a)(4) is a second or subsequent offense that occurred within five years of the first offense.

(b) The surcharge shall not be ordered when the court determines that the defendant is unable to pay the surcharge.

(c) The person shall pay the surcharge to the clerk of the court. The surcharge shall be deposited with the state director of finance who shall transmit the surcharge to the trauma system special fund pursuant to section 321-22.5.

291E-8 HRS

291E-8 Drug and alcohol toxicology testing laboratory special fund; established.

(a) There is established in the state treasury a drug and alcohol toxicology testing laboratory special fund, into which shall be deposited:

(1) All fines collected pursuant to sections 291E-61(b)(2)(E), 291E-61.5(c)(2)(C), and 291E-62(c);

(2) Moneys appropriated by the legislature to the fund;

(3) Other grants and gifts made to the fund; and

(4) Any income and interest earned on the balance of the fund.

(b) Moneys in the drug and alcohol toxicology testing laboratory special fund shall be administered and expended by the department of transportation, or appropriated as a grant-in-aid to the emergency services department of a county with a population of five hundred thousand or more, to support a drug and alcohol toxicology testing laboratory.

291E-11 I

291E-11 Implied consent of operator of vehicle to submit to testing to determine alcohol concentration and drug content.

(a) Any person who operates a vehicle upon a public way, street, road, or highway or on or in the waters of the State shall be deemed to have given consent, subject to this part, to a test or tests approved by the director of health of the person's breath, blood, or urine for the purpose of determining alcohol concentration or drug content of the person's breath, blood, or urine, as applicable.

(b) The test or tests shall be administered at the request of a law enforcement officer having probable cause to believe the person operating a vehicle upon a public way, street, road, or highway or on or in the waters of the State is under the influence of an intoxicant or is under the age of twenty-one and has consumed a measurable amount of alcohol, only after:

(1) A lawful arrest; and

(2) The person has been informed by a law enforcement officer that the person may refuse to submit to testing under this chapter.

(c) If there is probable cause to believe that a person is in violation of section 291E-64, as a result of being under the age of twenty-one and having consumed a measurable amount of alcohol, or section 291E-61 or 291E-61.5, as a result of having consumed alcohol, then the person shall elect to take a breath or blood test, or both, for the purpose of determining the alcohol concentration.

(d) If there is probable cause to believe that a person is in violation of section 291E-61 or 291E-61.5, as a result of having consumed any drug, then the person shall elect to take a blood or urine test, or both, for the purpose of determining the drug content. Drug content shall be measured by the presence of any drug or its metabolic products, or both.

(e) A person who chooses to submit to a breath test under subsection (c) also may be requested to submit to a blood or urine test, if the law enforcement officer has probable cause to believe that the person was operating a vehicle while under the influence of any drug under section 291E-61 or 291E-61.5 and the officer has probable cause to believe that a blood or urine test will reveal evidence of the person being under the influence of any drug. The law enforcement officer shall state in the officer's report the facts upon which that belief is based. The person shall elect to take a blood or urine test, or both, for the purpose of determining the person's drug content. Results of a blood or urine test conducted to determine drug content also shall be admissible for the purpose of determining the person's alcohol concentration. Submission to testing for drugs under subsection (d) or this subsection shall not be a substitute for alcohol tests requested under subsection (c).

(f) The use of a preliminary alcohol screening device by a law enforcement officer shall not replace a breath, blood, or urine test required under this section. The analysis from the use of a preliminary alcohol screening device shall only be used in determining probable cause for the arrest.

(g) Any person tested pursuant to this section who is convicted or has the person's license or privilege suspended or revoked pursuant to this chapter may be ordered to reimburse the county for the cost of any blood or urine tests, or both, conducted pursuant to this section. If reimbursement is so ordered, the court or the director, as applicable, shall order the person to make restitution in a lump sum, or in a series of prorated installments, to the police department or other agency incurring the expense of the blood or urine test, or both.

291E-12 I

291E-12 Persons qualified to take blood specimen. No person, other than a physician, physician assistant, registered nurse, or phlebotomist deemed qualified by the director of a clinical laboratory that is licensed by the State, or person licensed in a clinical laboratory occupation under section 321-13, may withdraw blood for the purpose of determining the alcohol concentration or drug content therein. This limitation shall not apply to the taking of a breath or urine specimen.

291E-13 I

291E-13 Additional tests. The person tested may choose any physician, physician assistant, registered nurse, or person licensed in a clinical laboratory occupation under section 321-13 to withdraw blood and also may choose any qualified person to administer a test or tests in addition to any administered at the direction of a law enforcement officer. The result of the test or tests may be used as provided in section 291E-3. The failure or inability to obtain an additional test by a person shall not preclude the admission of the test or tests administered at the direction of a law enforcement officer. Upon the request of the person who is tested, full information concerning the test or tests administered shall be made available to that person.

291E-14 I

291E-14 Consent of person incapable of refusal not withdrawn. The consent of a person deemed to have given the person's consent pursuant to section 291E-11 shall not be withdrawn by reason of the person's being dead, unconscious, or in any other condition that renders the person incapable of consenting to examination, and the test may be given. In such event, a test of the person's blood or urine shall be administered.

291E-15 I

291E-15 Refusal to submit to breath, blood, or urine test; subject to administrative revocation proceedings. If a person under arrest refuses to submit to a breath, blood, or urine test, none shall be given, except as provided in section 291E-21, or pursuant to a search warrant issued by a judge upon a finding of probable cause supported by oath or affirmation, or pursuant to any other basis permissible under the Constitution of the State of Hawaii and laws of this State. Upon the law enforcement officer's determination that the person under arrest has refused to submit to a breath, blood, or urine test, if applicable, then a law enforcement officer shall:

(1) Inform the person under arrest of the sanctions under section 291E-41 or 291E-65; and

(2) Ask the person if the person still refuses to submit to a breath, blood, or urine test, thereby subjecting the person to the procedures and sanctions under part III or section 291E-65, as applicable; provided that if the law enforcement officer fails to comply with paragraphs (1) and (2), the person shall not be subject to the refusal sanctions under part III or IV.

291E-16 I

291E-16 REPEALED. L 2009, c 88, §§10, 17(1). Previous Vol05_Ch0261-0319 Next

291E-17 I

291E-17 Other evidence not excluded. This part shall not limit the introduction of any other competent evidence bearing on the question of whether the person was under the influence of an intoxicant or was operating a vehicle while under the age of twenty-one and after consuming a measurable amount of alcohol.

291E-18 I

291E-18 Test results to be collected. The results of any test for intoxicants made upon any person, including any person who has been fatally injured in a traffic collision or the operator of a vehicle involved in a collision that resulted in another person's death, shall be sent to the state director of transportation, who shall compile the data without revealing the identity of any individual tested. This data shall be available only to the state and county highway safety councils and to other agencies the director of transportation deems necessary and advisable.

291E-19 I

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, failure to comply scrupulously with the internal police procedures shall not invalidate a roadblock that otherwise meets the minimum statutory criteria provided in section 291E-20.

291E-20 I

291E-20 Minimum standards for roadblock procedures.

(a) Every intoxicant control roadblock program shall:

(1) Require that all vehicles approaching roadblocks be stopped or that certain vehicles be stopped by selecting vehicles in a specified numerical sequence or pattern;

(2) Require that roadblocks be located at fixed locations for a maximum three-hour period;

(3) Provide for the following minimum safety precautions at every roadblock: (A) Proper illumination; (B) Off-road or otherwise safe and secure holding areas for vehicles involved in any roadblock stop; (C) Uniformed law enforcement officers carrying proper identification; (D) Adequate advance warning of the fact and purpose of the roadblocks, either by sign posts, flares, or other alternative methods; (E) Termination of roadblocks at the discretion of the law enforcement officer in charge where traffic congestion would otherwise result; and

(4) Provide for a sufficient quantity and visibility of uniformed officers and official vehicles to ensure speedy compliance with the purpose of the roadblocks and to move traffic with a minimum of inconvenience.

(b) Nothing in this section shall prohibit the establishment of procedures to make roadblock programs less intrusive than required by the minimum standards provided in this section.

291E-21 I

291E-21 Applicable scope of part; mandatory testing in the event of a collision resulting in injury or death.

(a) Nothing in this part shall be construed to prevent a law enforcement officer from obtaining a sample of breath, blood, or urine, from the operator of any vehicle involved in a collision resulting in injury to or the death of any person, as evidence that the operator was under the influence of an intoxicant.

(b) If a health care provider who is providing medical care, in a health care facility, to any person involved in a vehicle collision:

(1) Becomes aware, as a result of any blood or urine test performed in the course of medical treatment, that: (A) The alcohol concentration in the person's blood meets or exceeds the amount specified in section 291E-61(a)(4) or 291E-61.5(a)(2)(D); or (B) The person's blood or urine contains one or more drugs that are capable of impairing a person's ability to operate a vehicle in a careful and prudent manner; and

(2) Has a reasonable belief that the person was the operator of a vehicle involved in the collision, the health care provider shall notify, as soon as reasonably possible, any law enforcement officer present at the health care facility to investigate the collision. If no law enforcement officer is present, the health care provider shall notify the county police department in the county where the collision occurred. If the health care provider is aware of any blood or urine test result, as provided in paragraph (1), but lacks information to form a reasonable belief as to the identity of the operator involved in a vehicle collision, as provided in paragraph (2), then the health care provider shall give notice to a law enforcement officer present or to the county police department, as applicable, for each person involved in a vehicle collision whose alcohol concentration in the person's blood meets or exceeds the amount specified in section 291E-61(a)(4) or 291E-61.5(a)(2)(D) or whose blood or urine contains one or more drugs. The notice by the health care provider shall consist of the name of the person being treated, the blood alcohol concentration or drug content disclosed by the test, and the date and time of the administration of the test. This notice shall be deemed to satisfy the intoxication element necessary to establish the probable cause requirement set forth in subsection (c).

(c) In the event of a collision resulting in injury or death and if a law enforcement officer has probable cause to believe that a person involved in the collision has committed a violation of section 707-702.5, 707-703, 707-704, 707-705, 707-706, 291E-61, 291E-61.5, or 291E-64, the law enforcement officer shall request that a sample of blood or urine be recovered from the vehicle operator or any other person suspected of committing a violation of section 707-702.5, 707-703, 707-704, 707-705, 707-706, 291E-61, 291E-61.5, or 291E-64. If the person involved in the collision is not injured or refuses to be treated for any injury, the law enforcement officer may offer the person a breath test in lieu of a blood or urine test. If the person declines to perform a breath test, the law enforcement officer shall request a blood or urine sample pursuant to subsection (d). The act of declining to perform a breath test under this section shall not be

treated as a refusal under chapter 291E and shall not relieve the declining person from the requirement of providing a blood or urine sample under this section.

(d) The law enforcement officer shall make the request under subsection (c) to the hospital or medical facility treating the person from whom the blood or urine is to be recovered. If the person is not injured or refuses to be treated for any injury, the law enforcement officer shall make the request of a blood or urine sample under subsection (c) to a person authorized under section 291E-12; provided that a law enforcement officer may transport that person to another police facility or a hospital or medical facility that is capable of conducting a breath, blood, or urine test. Upon the request of the law enforcement officer that blood or urine be recovered pursuant to this section, and except where the person to perform the withdrawal of a blood sample or to obtain a urine sample or the responsible attending personnel at the hospital or medical facility determines in good faith that recovering or attempting to recover blood or urine from the person presents an imminent threat to the health of the medical personnel or others, the person authorized under section 291E-12 shall:

(1) Recover the sample in compliance with section 321-161; and

(2) Provide the law enforcement officer with the blood or urine sample requested.

(e) Any person complying with this section shall be exempt from liability pursuant to section 663-1.9 as a result of compliance.

(f) As used in this section, unless the context otherwise requires: "Health care facility" includes any program, institution, place, building, or agency, or portion thereof, private or public, whether organized for profit or not, that is used, operated, or designed to provide medical diagnosis, treatment, or rehabilitative or preventive care to any person. The term includes health care facilities that are commonly referred to as hospitals, outpatient clinics, organized ambulatory health care facilities, emergency care facilities and centers, health maintenance organizations, and others providing similarly organized services regardless of nomenclature. "Health care provider" means a person who is licensed, certified, or otherwise authorized or permitted by law to administer health care in the ordinary course of business or practice of a profession.

291E-22 I

291E-22 Presence of drugs or metabolic products; admissibility. Any results reflecting the presence of drugs or metabolic products obtained from a blood or urine specimen obtained under this part shall not be admissible in any proceeding brought under chapter 329 or 712.

291E-31 I

291E-31 Notice of administrative revocation; effect. As used in this part, the notice of administrative revocation:

(1) Establishes that the respondent's license and privilege to operate a vehicle in the State or on or in the waters of the State shall be terminated: (A) Thirty days after the date the notice of administrative revocation is issued in the case of an alcohol related offense; (B) Forty-four days after the date the notice of administrative revocation is issued in the case of a drug related offense; or (C) Such later date as is established by the director under section 291E-38, if the director administratively revokes the respondent's license and privilege;

(2) Establishes the date on which administrative revocation proceedings against the respondent were initiated;

(3) Serves as a temporary permit, if applicable, to operate a vehicle as provided in section 291E-33; and

(4) Notifies the respondent that the respondent shall obtain an ignition interlock permit and keep an ignition interlock device installed and operating in any vehicle the respondent operates during the revocation period if the respondent had a valid license at the time of the arrest.

291E-32 I

291E-32 Criminal prosecution.

(a) Criminal prosecution under section 291E-61 or 291E-61.5 may be commenced concurrently with administrative revocation proceedings under this part; provided that documentary and testimonial evidence provided by the respondent during the administrative proceeding shall not be admissible against the respondent in any proceeding under section 291E-61 or 291E-61.5 arising out of the same occurrence.

(b) When a person's license and privilege to operate a vehicle is revoked under this part and the person also is convicted of an offense under section 291E-61 or 291E-61.5 arising out of the same occurrence, the total period of revocation imposed in the two proceedings shall not exceed the longer period of revocation imposed in either proceeding. If the

person is convicted under section 291E-61 or 291E-61.5 prior to completion of administrative proceedings, the person shall surrender the temporary permit issued under this part at the time of entry of a plea of guilty or no contest, entry of a verdict of guilty, or of sentencing, whichever occurs first.

291E-33 I

291E-33 Probable cause determination; issuance of notice of administrative revocation; procedures.

(a) Whenever a person is arrested for a violation of section 291E-61 or 291E-61.5 on a determination by the arresting law enforcement officer that:

(1) There was reasonable suspicion to stop the vehicle or the vehicle was stopped at an intoxicant control roadblock established and operated in compliance with sections 291E-19 and 291E-20; and

(2) There was probable cause to believe that the person was operating the vehicle while under the influence of an intoxicant; the law enforcement officer shall take possession of any license held by the person and request the person to take a test for alcohol concentration, in the case of an alcohol related offense, or a test for drug content in the blood or urine, in the case of a drug related offense. The law enforcement officer shall inform the person that, in the case of an alcohol related offense, the person shall elect to take a breath test, a blood test, or both, pursuant to section 291E■11, but that the person may refuse to submit to testing under this chapter. In the case of a drug related offense, the person shall elect to take a blood test, a urine test, or both, pursuant to section 291E-11, after being informed that the person may refuse to submit to testing under this chapter.

(b) When applicable under section 291E-15, the law enforcement officer also shall:

(1) Inform the person of the sanctions under section 291E■41, including the sanction for refusing to take a breath, blood, or urine test, if applicable; and

(2) Ask the person if the person still refuses to submit to a breath, blood, or urine test, upon the law enforcement officer's determination that, after the person has been informed by a law enforcement officer that the person may refuse to submit to testing, the person under arrest has refused to submit to a breath, blood, or urine test.

(c) After taking action pursuant to subsections (a) and (b), as applicable, the law enforcement officer shall complete and issue to the person a notice of administrative revocation and shall indicate thereon whether the notice shall serve as a temporary permit. The notice shall serve as a temporary permit, unless, at the time of arrest: the person was unlicensed; the person's license or privilege to operate a vehicle was revoked or suspended; or the person had no license in the person's possession.

(d) Whenever a law enforcement officer determines that, as the result of a blood or urine test performed pursuant to section 291E-21, there is probable cause to believe that a person being treated in a hospital or medical facility has violated section 291E-61 or 291E-61.5, the law enforcement officer immediately shall take possession of any license held by the person and shall complete and issue to the person a notice of administrative revocation and indicate thereon whether the notice shall serve as a temporary permit. The notice shall serve as a temporary permit unless, at the time the notice was issued: the person was unlicensed; the person's license or privilege to operate a vehicle was revoked or suspended; or the person had no license in the person's possession.

291E-34 I

291E-34 Notice of administrative revocation; contents.

(a) The notice of administrative revocation shall provide, at a minimum and in clear language, the following general information relating to administrative revocation:

(1) The statutory authority for administrative revocation;

(2) An explanation of the distinction between administrative revocation and a suspension or revocation imposed under section 291E-61 or 291E-61.5; and

(3) That criminal charges filed pursuant to section 291E-61 or 291E-61.5 may be prosecuted concurrently with the administrative action.

(b) The notice, when completed by the law enforcement officer and issued to the respondent, shall contain at a minimum the following information relating to the incident that gives rise to the issuance of the notice of administrative revocation:

(1) Information identifying the respondent;

(2) The specific violation for which the respondent was arrested;

(3) The date issued and the date the administrative revocation is scheduled to go into effect;

(4) The expiration date of the temporary permit; and

(5) That the issuance of the notice of administrative revocation will be administratively reviewed.

(c) The notice shall provide, at a minimum, the following information relating to the administrative review:

(1) That the review is automatic;

(2) That the respondent, within three days of the issuance of the notice of administrative revocation in the case of an alcohol related offense and within seventeen days of the issuance of the notice of administrative revocation in the case of a drug related offense, may submit written information demonstrating why the respondent's license and privilege to operate a vehicle should not be administratively revoked;

(3) The address or location where the respondent may submit the information;

(4) That the respondent is not entitled to be present or represented at the administrative review; and

(5) That the administrative review decision shall be mailed to the respondent: (A) No later than eight days after the date of the issuance of the notice of administrative revocation in the case of an alcohol related offense; and (B) No later than twenty-two days after the date of the issuance of the notice of administrative revocation in the case of a drug related offense.

(d) The notice shall state that, if the respondent's license and privilege to operate a vehicle is not administratively revoked after the review, the respondent's license shall be returned, unless a subsequent alcohol or drug enforcement contact has occurred, along with a certified statement that the administrative revocation proceedings have been terminated.

(e) The notice shall state that, if the respondent's license and privilege to operate a vehicle is administratively revoked after the review, a decision shall be mailed to the respondent, or to the parent or guardian of the respondent if the respondent is under the age of eighteen, that shall contain, at a minimum, the following information:

(1) The reasons why the respondent's license and privilege to operate a vehicle is administratively revoked;

(2) That the respondent may request the director, within six days of the date the decision is mailed, to schedule an administrative hearing to review the administrative revocation;

(3) That, if the respondent's request for an administrative hearing is received by the director within six days of the date the decision was mailed, the hearing shall be scheduled to commence: (A) No later than twenty-five days after the date of the issuance of the notice of administrative revocation in the case of an alcohol related offense; and (B) No later than thirty-nine days after the date of the issuance of the notice of administrative revocation in the case of a drug related offense;

(4) The procedure to request an administrative hearing;

(5) That failure to request an administrative hearing within the time provided shall cause the administrative revocation to take effect for the period and under the conditions established by the director in the decision;

(6) That the respondent may regain the right to a hearing by requesting the director, within sixty days after the issuance of the notice of administrative revocation, to schedule a hearing;

(7) That the director shall schedule the hearing to commence no later than thirty days after a request under paragraph (6) is received, but that, except as provided in section 291E-38(j), the temporary permit shall not be extended if the respondent fails to request an administrative hearing within the initial six-day period provided for that purpose;

(8) That failure to attend the hearing shall cause the administrative revocation to take effect for the period and under the conditions indicated;

(9) The duration of the administrative revocation and other conditions that may be imposed, including: referral to the driver's education program for an assessment of the respondent's substance abuse or dependence and the need for treatment; and

(10) That the respondent shall obtain an ignition interlock permit in order to operate a vehicle during the revocation period if the respondent had a valid license at the time of the arrest.

(f) The notice shall provide, at a minimum, the following information relating to administrative hearings:

(1) That the respondent shall have six days from the date the administrative review decision was mailed to request that an administrative hearing be scheduled;

(2) That a request for an administrative hearing and payment of a $30 fee, unless waived pursuant to section 291E■39, shall entitle the respondent to review and copy, prior to the hearing, all documents that were considered at the administrative review, including the arrest report and the sworn statements;

(3) That the respondent may be represented by an attorney, submit evidence, give testimony, and present and cross-examine witnesses;

(4) That, in cases where the respondent is under the age of eighteen, a parent or guardian must be present; and

(5) That a written decision shall be mailed no later than five days after completion of the hearing.

(g) The notice shall state that, if the administrative revocation is reversed after the hearing, the respondent's license shall be returned, along with a certified statement that the administrative revocation proceedings have been terminated.

(h) The notice shall state that, if the administrative revocation is sustained at the hearing, a written decision shall be mailed to the respondent, or to the parent or guardian of the respondent if the respondent is under the age of eighteen, that shall contain, at a minimum, the following information:

(1) The effective date of the administrative revocation;

(2) The duration of the administrative revocation;

(3) Other conditions that may be imposed by law, including the use of an ignition interlock device; and

(4) The right to obtain judicial review.

(i) The notice shall state that failure of the respondent, or of the parent or guardian of the respondent if the respondent is under the age of eighteen, to attend a scheduled hearing shall cause the administrative revocation to take effect as provided in the administrative review decision.

291E-35 I

291E-35 Immediate restoration of license.

(a) In cases involving an alcohol related offense, if a test conducted in accordance with part II and section 321■161 and the rules adopted thereunder shows that a respondent had an alcohol concentration less than .08, the director or the arresting law enforcement agency immediately shall return the respondent's license along with a certified statement that administrative revocation proceedings have been terminated with prejudice.

(b) In cases involving a drug related offense, if a test conducted in accordance with part II and section 321■161 and the rules adopted thereunder fails to show the presence, in the respondent's blood or urine, of any drug that is capable of impairing the respondent's ability to operate a vehicle in a careful and prudent manner, the director or the arresting law enforcement agency immediately shall return the respondent's license along with a certified statement that administrative revocation proceedings have been terminated with prejudice.

291E-36 I

291E-36 Documents required to be submitted for administrative review; sworn statements.

(a) Whenever a respondent has been arrested for a violation of section 291E-61 or 291E-61.5 and submits to a test that establishes: the respondent's alcohol concentration was .08 or more; the presence, in the respondent's blood or urine, of any drug that is capable of impairing the respondent's ability to operate a vehicle in a careful and prudent manner; or whenever a respondent has been involved in a collision resulting in injury or death and a blood or urine test performed pursuant to section 291E-21 establishes that the respondent's alcohol concentration was .08 or more or establishes the presence in the respondent's blood or urine of any drug that is capable of impairing the respondent's ability to operate a vehicle in a careful and prudent manner, the following shall be forwarded immediately to the director:

(1) A copy of the arrest report or the report of the law enforcement officer who issued the notice of administrative revocation to the person involved in a collision resulting in injury or death and the sworn statement of the arresting law enforcement officer or the officer who issued the notice of administrative revocation, stating facts that establish that: (A) There was reasonable suspicion to stop the vehicle, the vehicle was stopped at an intoxicant control roadblock established and operated in compliance with sections 291E-19 and 291E-20, or the respondent was tested pursuant to section 291E-21; (B) There was probable cause to believe that the respondent had been operating the vehicle while

under the influence of an intoxicant; and (C) The respondent agreed to be tested or the person was tested pursuant to section 291E-21;

(2) In a case involving an alcohol related offense, the sworn statement of the person responsible for maintenance of the testing equipment, stating facts that establish that, pursuant to section 321-161 and rules adopted thereunder: (A) The equipment used to conduct the test was approved for use as an alcohol testing device in this State; (B) The person had been trained and at the time the test was conducted was certified and capable of maintaining the testing equipment; and (C) The testing equipment used had been properly maintained and was in good working condition when the test was conducted;

(3) In a case involving an alcohol related offense, the sworn statement of the person who conducted the test, stating facts that establish that, pursuant to section 321-161 and rules adopted thereunder: (A) The person was trained and at the time the test was conducted was certified and capable of operating the testing equipment; (B) The person followed the procedures established for conducting the test; (C) The equipment used to conduct the test functioned in accordance with operating procedures and indicated that the respondent's alcohol concentration was at, or above, the prohibited level; and (D) The person whose breath or blood was tested is the respondent;

(4) In a case involving a drug related offense, the sworn statement of the person responsible for maintenance of the testing equipment, stating facts that establish that, pursuant to section 321-161 and rules adopted thereunder: (A) The equipment used to conduct the test was approved for use in drug testing; (B) The person conducting the test had been trained and, at the time of the test, was certified and capable of maintaining the testing equipment; and (C) The testing equipment used had been properly maintained and was in good working condition when the test was conducted;

(5) In a case involving a drug related offense, the sworn statement of the person who conducted the test, stating facts that establish that, pursuant to section 321-161 and rules adopted thereunder: (A) At the time the test was conducted, the person was trained and capable of operating the testing equipment; (B) The person followed the procedures established for conducting the test; (C) The equipment used to conduct the test functioned in accordance with operating procedures and indicated the presence of one or more drugs or their metabolites in the respondent's blood or urine; and (D) The person whose blood or urine was tested is the respondent;

(6) A copy of the notice of administrative revocation issued by the law enforcement officer to the respondent;

(7) Any license taken into possession by the law enforcement officer; and

(8) A listing of any prior alcohol or drug enforcement contacts involving the respondent.

(b) Whenever a respondent has been arrested for a violation of section 291E-61 or 291E-61.5 and refuses to submit to a test to determine alcohol concentration or drug content in the blood or urine, the following shall be forwarded immediately to the director:

(1) A copy of the arrest report and the sworn statement of the arresting law enforcement officer, stating facts that establish that: (A) There was reasonable suspicion to stop the vehicle or the vehicle was stopped at an intoxicant control roadblock established and operated in compliance with sections 291E-19 and 291E-20; (B) There was probable cause to believe that the respondent had been operating the vehicle while under the influence of an intoxicant; (C) The respondent was informed of:

(i) The sanctions of section 291E-41; (ii) The possibility that criminal charges may be filed; and (iii) The probable consequences of refusing to be tested for alcohol concentration or drug content in the blood or urine; and (D) The respondent refused to be tested;

(2) A copy of the notice of administrative revocation issued to the respondent;

(3) Any license taken into possession; and

(4) A listing of all alcohol and drug enforcement contacts involving the respondent.

291E-37 I

291E-37 Administrative review; procedures; decision.

(a) The director shall automatically review the issuance of a notice of administrative revocation and shall issue a written decision administratively revoking the license and privilege to operate a vehicle or rescinding the notice of administrative revocation. The written review decision shall be mailed to the respondent, or to the parent or guardian of the respondent if the respondent is under the age of eighteen, no later than:

(1) Fourteen days after the date the notice was issued in a case involving an alcohol related offense; or

(2) Twenty-eight days after the date the notice was issued in a case involving a drug related offense.

(b) The respondent shall have the opportunity to demonstrate in writing why the respondent's license and privilege to operate a vehicle should not be administratively revoked and, within three days of receiving the notice of administrative revocation, as provided in section 291E-33, shall submit any written information, either by mail or in person, to the director's office or to any office or address designated by the director for that purpose.

(c) In conducting the administrative review, the director shall consider:

(1) Any sworn or unsworn written statement or other written evidence provided by the respondent;

(2) The breath, blood, or urine test results, if any; and

(3) The sworn statement of any law enforcement officer or other person or other evidence or information required by section 291E-36.

(d) The director shall administratively revoke the respondent's license and privilege to operate a vehicle if the director determines that:

(1) There existed reasonable suspicion to stop the vehicle, the vehicle was stopped at an intoxicant control roadblock established and operated in compliance with sections 291E-19 and 291E-20, or the person was tested pursuant to section 291E-21;

(2) There existed probable cause to believe that the respondent operated the vehicle while under the influence of an intoxicant; and

(3) The evidence proves by a preponderance that: (A) The respondent operated the vehicle while under the influence of an intoxicant; or (B) The respondent operated the vehicle and refused to submit to a breath, blood, or urine test after being informed:

(i) That the person may refuse to submit to testing in compliance with section 291E-11; and (ii) Of the sanctions of this part and then asked if the person still refuses to submit to a breath, blood, or urine test, in compliance with the requirements of section 291E-15.

(e) If the evidence does not support administrative revocation, the director shall rescind the notice of administrative revocation and return the respondent's license along with a certified statement that administrative revocation proceedings have been terminated.

(f) If the director administratively revokes the respondent's license and privilege to operate a vehicle, the director shall mail a written review decision to the respondent, or to the parent or guardian of the respondent if the respondent is under the age of eighteen. The written review decision shall:

(1) State the reasons for the administrative revocation;

(2) Indicate that the respondent has six days from the date the decision is mailed to request an administrative hearing to review the director's decision;

(3) Explain the procedure by which to request an administrative hearing;

(4) Be accompanied by a form, postage prepaid, that the respondent may fill out and mail in order to request an administrative hearing;

(5) Inform the respondent of the right to review and copy all documents considered at the review, including the arrest report and the sworn statements of law enforcement officers or other persons, prior to the hearing; and

(6) State that the respondent may be represented by counsel at the hearing, submit evidence, give testimony, and present and cross-examine witnesses, including the arresting law enforcement officer.

(g) Failure of the respondent to request a hearing within the time provided in section 291E-38(a) shall cause the administrative revocation to take effect for the period and under the conditions provided in the administrative review decision issued by the director under this section. The respondent may regain the right to an administrative hearing by requesting the director, within sixty days of the issuance of the notice of administrative revocation as provided in section 291E-33, to schedule an administrative hearing. The administrative hearing shall be scheduled to commence no later than thirty days after the request is received by the director. The administrative review decision issued by the director under this section shall explain clearly the consequences of failure to request an administrative hearing and the procedure by which the respondent may regain the right to a hearing.

291E-38 Administrative hearing; procedure; decision.

(a) If the director administratively revokes the respondent's license and privilege to operate a vehicle after the administrative review, the respondent may request an administrative hearing to review the decision within six days of the date the administrative review decision is mailed. If the request for hearing is received by the director within six days of the date the decision is mailed, the hearing shall be scheduled to commence no later than:

(1) Twenty-five days from the date the notice of administrative revocation was issued in a case involving an alcohol related offense; or

(2) Thirty-nine days from the date the notice of administrative revocation was issued in a case involving a drug related offense. The director may continue the hearing only as provided in subsection (j).

(b) The hearing shall be held at a place designated by the director, as close to the location where the notice of administrative revocation was issued as practical.

(c) The respondent may be represented by counsel and, if the respondent is under the age of eighteen, must be accompanied by a parent or guardian.

(d) The director shall conduct the hearing and have authority to:

(1) Administer oaths and affirmations;

(2) Examine witnesses and take testimony;

(3) Receive and determine the relevance of evidence;

(4) Issue subpoenas;

(5) Regulate the course and conduct of the hearing; and

(6) Make a final ruling.

(e) The director shall affirm the administrative revocation only if the director determines that:

(1) There existed reasonable suspicion to stop the vehicle, the vehicle was stopped at an intoxicant control roadblock established and operated in compliance with sections 291E■19 and 291E■20, or the person was tested pursuant to section 291E■21;

(2) There existed probable cause to believe that the respondent operated the vehicle while under the influence of an intoxicant; and

(3) The evidence proves by a preponderance that: (A) The respondent operated the vehicle while under the influence of an intoxicant; or (B) The respondent operated the vehicle and refused to submit to a breath, blood, or urine test after being informed:

(i) That the person may refuse to submit to testing in compliance with section 291E-11; and (ii) Of the sanctions of this part and then asked if the person still refuses to submit to a breath, blood, or urine test in compliance with the requirements of section 291E-15.

(f) The respondent's prior alcohol and drug enforcement contacts shall be entered into evidence.

(g) The sworn statements provided in section 291E-36 shall be admitted into evidence. The director shall consider the sworn statements in the absence of the law enforcement officer or other person. Upon written notice to the director, no later than five days prior to the hearing, that the respondent wishes to examine a law enforcement officer or other person who made a sworn statement, the director shall issue a subpoena for the officer or other person to appear at the hearing. Personal service upon the law enforcement officer or other person who made a sworn statement shall be made no later than forty-eight hours prior to the hearing time. If the officer or other person cannot appear, the officer or other person at the discretion of the director, may testify by telephone.

(h) The hearing shall be recorded in a manner to be determined by the director.

(i) The director's decision shall be rendered in writing and mailed to the respondent, or to the parent or guardian of the respondent if the respondent is under the age of eighteen, no later than five days after the hearing is concluded. If the decision is to reverse the administrative revocation, the director shall return the respondent's license, along with a certified statement that administrative revocation proceedings have been terminated. If the decision sustains the administrative revocation, the director shall mail to the respondent a written decision indicating the duration of the administrative

revocation and any other conditions or restrictions as may be imposed pursuant to section 291E■41.

(j) For good cause shown, the director may grant a continuance either of the commencement of the hearing or of a hearing that has already commenced. If a continuance is granted at the request of the director, the director shall extend the validity of the temporary permit, unless otherwise prohibited, for a period not to exceed the period of the continuance. If a continuance is granted at the request of the respondent, the director shall not extend the validity of the temporary permit. For purposes of this section, a continuance means a delay in the commencement of the hearing or an interruption of a hearing that has commenced, other than for recesses during the day or at the end of the day or week. The absence from the hearing of a law enforcement officer or other person, upon whom personal service of a subpoena has been made as set forth in subsection (g), constitutes good cause for a continuance.

(k) The director may grant a special motor vehicle registration, pursuant to section 291E-48, to a qualified household member or a co-owner of any motor vehicle upon determination that:

(1) The person is completely dependent on the motor vehicle for the necessities of life; and

(2) At the time of the application for a special motor vehicle registration, the respondent does not have a valid ignition interlock permit. The special motor vehicle registration shall not be valid for use by the respondent.

(l) If the respondent fails to appear at the hearing, or if a respondent under the age of eighteen fails to appear with a parent or guardian, administrative revocation shall take effect for the period and under the conditions established by the director in the administrative review decision issued by the director under section 291E■37.

291E-39 I

291E-39 Fees and costs. The director may assess and collect a $30 fee from the respondent to cover the costs of processing the respondent's request for an administrative hearing. These costs include but shall not be limited to: the cost of photocopying documents; conditional license permits, temporary permits, and relicensing forms; interpreter services; and other similar costs; provided that the costs of issuing subpoenas for witnesses, including mileage fees, shall be borne by the party requesting the subpoena. The director may waive the fee in the case of an indigent respondent, upon an appropriate inquiry into the financial circumstances of the respondent seeking the waiver and an affidavit or a certificate signed by the respondent demonstrating the respondent's financial inability to pay the fee.

291E-40 I

291E-40 Judicial review; procedure.

(a) If the director sustains the administrative revocation after an administrative hearing, the respondent, or parent or guardian of a respondent under the age of eighteen, may file a petition for judicial review within thirty days after the administrative hearing decision is mailed. The petition shall be filed with the clerk of the district court in the district in which the incident occurred and shall be accompanied by the required filing fee for civil actions. The filing of the petition shall not operate as a stay of the administrative revocation, nor shall the court stay the administrative revocation pending the outcome of the judicial review. The petition shall be appropriately captioned. The petition shall state with specificity the grounds upon which the petitioner seeks reversal of the administrative revocation.

(b) The court shall schedule the judicial review as quickly as practicable, and the review shall be on the record of the administrative hearing without taking of additional testimony or evidence. If the petitioner fails to appear without just cause or, in the case of a petitioner under the age of eighteen, the petitioner fails to appear with a parent or guardian, the court shall affirm the administrative revocation.

(c) The sole issues before the court shall be whether the director:

(1) Exceeded constitutional or statutory authority;

(2) Erroneously interpreted the law;

(3) Acted in an arbitrary or capricious manner;

(4) Committed an abuse of discretion; or

(5) Made a determination that was unsupported by the evidence in the record.

(d) The court shall not remand the matter back to the director for further proceedings consistent with its order.

291E-41 I

291E-41 Effective date, conditions, and period of administrative revocation; criteria.

(a) Unless an administrative revocation is reversed or the temporary permit is extended by the director, administrative revocation shall become effective on the day specified in the notice of administrative revocation. Except as provided in section 291E-44.5, no license to operate a vehicle shall be restored under any circumstances during the administrative revocation period. Upon completion of the administrative revocation period, the respondent may reapply and be reissued a license pursuant to section 291E-45.

(b) Except as provided in paragraphs (4)(A)(ii) and (5) and in section 291E-44.5, the respondent shall keep an ignition interlock device installed and operating in all vehicles operated by the respondent during the revocation period. Except as provided in section 291E-5, installation and maintenance of the ignition interlock device shall be at the respondent's expense. The periods of administrative revocation, with respect to a license to operate a vehicle, that shall be imposed under this part are as follows:

(1) A one year revocation of license to operate a vehicle, if the respondent's record shows no prior alcohol enforcement contact or drug enforcement contact during the ten years preceding the date the notice of administrative revocation was issued;

(2) A two-year revocation of license to operate a vehicle, if the respondent's record shows one prior alcohol enforcement contact or drug enforcement contact during the ten years preceding the date the notice of administrative revocation was issued;

(3) A four-year revocation of license to operate a vehicle, if the respondent's record shows two or more prior alcohol enforcement contacts or drug enforcement contacts during the ten years preceding the date the notice of administrative revocation was issued;

(4) For a respondent who is a highly intoxicated driver: (A) If the respondent's record shows no prior alcohol enforcement contact or drug enforcement contact during the ten years preceding the date the notice of administrative revocation was issued:

(i) An eighteen-month revocation of license to operate a vehicle, with mandatory installation of an ignition interlock device in all vehicles operated by the respondent during the revocation period; or (ii) A two-year revocation of license to operate a vehicle, without mandatory installation of an ignition interlock device in all vehicles operated by the respondent during the revocation period; (B) If the respondent's record shows one prior alcohol enforcement contact or drug enforcement contact during the ten years preceding the date the notice of administrative revocation was issued, a three-year revocation of license to operate a vehicle, with mandatory installation of an ignition interlock device in all vehicles operated by the respondent during the revocation period; and (C) If the respondent's record shows two or more prior alcohol enforcement contacts or drug enforcement contacts during the ten years preceding the date the notice of administrative revocation was issued, a six-year revocation of license to operate a vehicle, with mandatory installation of an ignition interlock device in all vehicles operated by the respondent during the revocation period;

(5) For respondents under the age of eighteen years who were arrested for a violation of section 291E-61 or 291E-61.5, revocation of license and privilege to operate a vehicle for the appropriate revocation period provided in paragraphs (1) to (3) or in subsection (c); provided that the respondent shall be prohibited from driving during the period preceding the respondent's eighteenth birthday and shall thereafter be subject to the ignition interlock requirement of this subsection for the balance of the revocation period; or

(6) For respondents, other than those excepted pursuant to section 291E-44.5(c), who do not install an ignition interlock device in all vehicles operated by the respondent during the revocation period, revocation of license to operate a vehicle for the period of revocation provided in paragraphs (1) to (4)(A) or in subsection (c); provided that: (A) The respondent shall be absolutely prohibited from driving during the revocation period and subject to the penalties provided by section 291E-62 if the respondent drives during the revocation period; and (B) The director shall not issue an ignition interlock permit to the respondent pursuant to section 291E-44.5; provided that when more than one administrative revocation, suspension, or conviction arises out of the same arrest, it shall be counted as only one prior alcohol enforcement contact or drug enforcement contact, whichever revocation, suspension, or conviction occurs later.

(c) If a respondent has refused to be tested after being informed:

(1) That the person may refuse to submit to testing in compliance with section 291E-11; and

(2) Of the sanctions of this part and then asked if the person still refuses to submit to a breath, blood, or urine test, in compliance with the requirements of section 291E-15, the revocation imposed under subsection (b)(1), (2), or (3) shall be for a period of two years, four years, or eight years, respectively.

(d) Whenever a license to operate a vehicle is administratively revoked under this part, the respondent shall be referred to the driver's education program for an assessment, by a certified substance abuse counselor, of the respondent's substance abuse or dependence and the need for treatment. The counselor shall submit a report with recommendations to the director. If the counselor's assessment establishes that the extent of the respondent's substance abuse or dependence warrants treatment, the director shall so order. All costs for assessment and treatment shall be paid by the respondent.

(e) Alcohol and drug enforcement contacts that occurred prior to January 1, 2002, shall be counted in determining the administrative revocation period.

(f) The requirement to provide proof of financial responsibility pursuant to section 287-20 shall not be based upon a revocation under subsection (b)(1).

291E-42 I

291E-42 Notice to other states. When a nonresident's driving and boating privileges, and motor vehicle registration if applicable, are administratively revoked under this part, the director shall:

(1) Notify, in writing, the officials in charge of traffic control, boating control, or public safety in the nonresident's home state, and in any other state in which the nonresident has driving and boating privileges, licenses, or any motor vehicles registered if applicable, of the action taken in this State; and

(2) Return to the appropriate issuing authority in the other states any license, and any motor vehicle registration and number plates if applicable, seized under section 291E■33.

291E-43 I

291E-43 Administrative procedure act. Neither the administrative review nor the administrative hearing provided under this part shall be subject to the contested case requirements of chapter 91. The availability of administrative review of an order of administrative revocation shall have no effect upon the availability of judicial review under this part.

291E-44 I

291E-44 REPEALED. L 2009, c 88, §§11, 17(2). Previous Vol05_Ch0261-0319 Next

291E-44.5

291E-44.5 Ignition interlock permits; driving for employment.

(a) Except as provided in subsection (b), upon proof that the respondent has installed an ignition interlock device in any vehicle the respondent operates and obtained motor vehicle insurance or self-insurance that complies with the requirements of section 431:10C-104 or 431:10C-105, the director shall issue an ignition interlock permit that will allow the respondent to drive a vehicle equipped with an ignition interlock device during the revocation period.

(b) Except as provided in sections 286-118.5 and 291E-61.6, the director shall not issue an ignition interlock permit to:

(1) A respondent whose license is expired, suspended, or revoked as a result of action other than the instant revocation;

(2) A respondent who does not hold a valid license at the time of arrest for the violation of section 291E-61;

(3) A respondent who holds a license that is a learner's permit or instruction permit; or

(4) A respondent who holds either a category 4 license under section 286-102(b) or a commercial driver's license under section 286-239(a) unless the ignition interlock permit is restricted to a category 1, 2, or 3 license under section 286-102(b).

(c) Except as provided in subsection (b), the director may issue a separate permit authorizing a respondent to operate a vehicle owned by the respondent's employer during the period of revocation without installation of an ignition interlock device if the respondent is gainfully employed in a position that requires driving and the respondent will be discharged if prohibited from driving a vehicle not equipped with an ignition interlock device.

(d) A request made pursuant to subsection (c) shall be accompanied by:

(1) A sworn statement from the respondent containing facts establishing that the respondent currently is employed in a position that requires driving and that the respondent will be discharged if prohibited from driving a vehicle not equipped with an ignition interlock device; and

(2) A sworn statement from the respondent's employer establishing that the employer will, in fact, discharge the respondent if the respondent cannot drive a vehicle that is not equipped with an ignition interlock device and identifying the specific vehicle or vehicles the respondent will drive for the purposes of employment and the hours of the day, not to exceed twelve hours per day, or the period of the specified assigned hours of work, the respondent will drive the vehicle or vehicles for purposes of employment.

(e) A permit issued pursuant to subsection (c) shall include restrictions allowing the respondent to drive:

(1) Only during specified hours of employment, not to exceed twelve hours per day, or the period of the specified assigned hours of work, and only for activities solely within the scope of the employment;

(2) Only the vehicles specified; and

(3) Only if the permit is kept in the respondent's possession while operating the employer's vehicle. In addition, the director may impose other appropriate restrictions.

291E-45 I

291E-45 Eligibility for relicensing and reregistration of motor vehicle.

(a) To be eligible for relicensing or renewing the privilege to operate a vessel after a period of administrative revocation has expired, the person shall:

(1) Submit proof to the director of compliance with all conditions imposed by the director;

(2) Obtain a certified statement from the director indicating eligibility for relicensing and for renewing the privilege to operate a vessel;

(3) Present the certified statement to the appropriate licensing official or to the department of land and natural resources, as applicable; and

(4) Successfully complete each requirement, including payment of all applicable fees, for: (A) Obtaining a new license in this State, pursuant to chapter 286; or (B) Renewing the privilege to operate a vessel, as may be provided in chapter 200 or rules adopted by the department of land and natural resources pursuant to section 200■24.

(b) To be eligible for reregistration of a motor vehicle, if applicable, after a period of administrative revocation has expired, the person shall:

(1) Submit proof to the director of compliance with all conditions imposed by the director;

(2) Obtain a certified statement from the director indicating eligibility for registration of a motor vehicle;

(3) Present the certified statement to the director of the appropriate county agency; and

(4) Successfully complete each requirement, as provided in chapter 286, for obtaining a new certificate of registration for a motor vehicle in this State, including payment of all applicable fees.

291E-45.5 HRS

291E-45.5 Repeat intoxicated driver after December 31, 2010; eligibility to obtain motor vehicle registration and number plates. Any repeat intoxicated driver arrested for a violation of section 291E-61 or 291E-61.5 after December 31, 2010, may request that the director remove any stopper imposed on the motor vehicle registration files pursuant to part III of chapter 291E. Upon request, the director shall remove the stopper as soon as practicable.

291E-46 I

291E-46 Computation of time. The time in which any act provided in this part is to be done is computed by excluding the first day and including the last, unless the last day is a Saturday, Sunday, or state holiday, and then it also is excluded; provided that if the last day for the mailing of decisions under sections 291E-37(a) and 291E-38(i) is a federal holiday, it also is excluded.

291E-47 Bill

291E-47 Failure to surrender number plates. Any person who has had the person's motor vehicle registration revoked pursuant to this part and subsequently fails to comply with an order to surrender all motor vehicle number plates issued to the person, pursuant to chapter 249, shall be guilty of a misdemeanor.

291E-48 Bill

291E-48 Special motor vehicle registration.

(a) Anytime after the effective date of revocation or after the administrative hearing decision is mailed pursuant to section 291E-38(i), a qualified household member or co-owner of a motor vehicle with a respondent who has had a motor vehicle registration revoked under this part may submit a sworn statement to the director requesting a special motor vehicle registration. The director may grant the request upon determining that the following conditions have been met:

(1) The applicant is a household member of the respondent's or a co-owner of the vehicle;

(2) The applicant has a license that has not expired or been suspended or revoked;

(3) The applicant is completely dependent on the motor vehicle for the necessities of life;

(4) The director finds that the applicant will take reasonable precautions to ensure that the respondent will not drive the vehicle; and

(5) The respondent does not have a valid ignition interlock permit. A person to whom a special motor vehicle registration has been granted shall apply to the director of the appropriate county agency for special series number plates, as provided in section 249-9.4.

(b) The director shall revoke the special motor vehicle registration if any one of the conditions set forth in the application no longer exist.

(c) The applicant shall be under an affirmative duty to report to the director any changes in the conditions to the special motor vehicle registration.

(d) The director shall adopt rules, pursuant to chapter 91, necessary to carry out the purposes of this section.

291E-49 Bill

291E-49 Transferring title to, or ownership interest in, vehicle prohibited; exceptions.

(a) A registered owner shall not sell or transfer title to, or ownership interest in, a motor vehicle during the time period the motor vehicle's registration has been ordered revoked and number plates surrendered or during the time the motor vehicle bears the special series number plates pursuant to section 249■9.4, unless the registered owner applies to the administrative director of the courts, or the administrative director's appointee pursuant to section 291E■1, for consent to transfer title to the motor vehicle. If the director is satisfied that:

(1) The proposed sale is in good faith and for valid consideration;

(2) The registered owner will be deprived of the custody and control of the motor vehicle; and

(3) The sale is not for the purpose of circumventing this part, the director may consent to the sale or transfer. If the director consents, the director shall issue a certified copy of the written consent to the registered owner and forward a copy to the appropriate county director of finance.

(b) The county director of finance, upon proper application and the presentation to the director of finance of a certified copy of the director's written consent to the sale or transfer of a motor vehicle, shall transfer the certificate of title and ownership to the new owner pursuant to chapter 286 and shall issue new number plates to the new registered owner pursuant to chapter 249.

(c) Notwithstanding subsections (a) and (b), if the title to the motor vehicle is transferred by foreclosure of a chattel mortgage, cancellation of a conditional sales contract, a sale upon execution, or decree or order of a court of competent jurisdiction, after the motor vehicle registration has been revoked under this part, the county director of finance shall transfer the certificate of title and ownership to the new owner pursuant to chapter 286 and shall issue new number plates to the new registered owner pursuant to chapter 249.

291E-50 Bill

291E-50 Notice to the department of land and natural resources of suspensions and revocations of operating privileges. The director shall notify the department of land and natural resources of all persons adjudicated of violations under this part and the period of suspension or revocation of operator privileges ordered by the director under this part.

291E-61 I

291E-61 to 291E-65 renumbered pursuant to §23G-15. §291E-61 Operating a vehicle under the influence of an intoxicant.

(a) A person commits the offense of operating a vehicle under the influence of an intoxicant if the person operates or assumes actual physical control of a vehicle:

(1) While under the influence of alcohol in an amount sufficient to impair the person's normal mental faculties or ability to care for the person and guard against casualty;

(2) While under the influence of any drug that impairs the person's ability to operate the vehicle in a careful and prudent manner;

(3) With .08 or more grams of alcohol per two hundred ten liters of breath; or

(4) With .08 or more grams of alcohol per one hundred milliliters or cubic centimeters of blood.

(b) [Repeal and reenactment on June 30, 2028. L 2023, c 148, §8(2).] A person committing the offense of operating a vehicle under the influence of an intoxicant shall be sentenced without possibility of probation or suspension of sentence as follows:

(1) Except as provided in paragraph (4), for the first offense, or any offense not preceded within a ten-year period by a conviction for an offense under this section or section 291E-4(a): (A) A fourteen-hour minimum substance abuse rehabilitation program, including education and counseling, or other comparable programs deemed appropriate by the court; (B) Revocation of license to operate a vehicle for no less than one year and no more than eighteen months; (C) Installation during the revocation period of an ignition interlock device on all vehicles operated by the person; (D) Any one or more of the following:

(i) Seventy-two hours of community service work; (ii) No less than forty-eight hours and no more than five days of imprisonment; or (iii) A fine of no less than $250 and no more than $1,000; (E) A surcharge of $25 to be deposited into the neurotrauma special fund; and (F) A surcharge, if the court so orders, or up to $25 to be deposited into the trauma system special fund;

(2) For an offense that occurs within ten years of a prior conviction for an offense under this section: (A) A substance abuse program of at least thirty-six hours, including education and counseling, or other comparable programs deemed appropriate by the court; (B) Revocation of license to operate a vehicle for no less than two years and no more than three years; (C) Installation during the revocation period of an ignition interlock device on all vehicles operated by the person; (D) Either one of the following:

(i) No less than two hundred forty hours of community service work; or (ii) No less than five days and no more than thirty days of imprisonment, of which at least forty-eight hours shall be served consecutively; (E) A fine of no less than $1,000 and no more than $3,000, to be deposited into the drug and alcohol toxicology testing laboratory special fund; (F) A surcharge of $25 to be deposited into the neurotrauma special fund; and (G) A surcharge of up to $50, if the court so orders, to be deposited into the trauma system special fund;

(3) In addition to a sentence imposed under paragraphs (1) and (2), any person eighteen years of age or older who is convicted under this section and who operated a vehicle with a passenger, in or on the vehicle, who was younger than fifteen years of age, shall be sentenced to an additional mandatory fine of $500 and an additional mandatory term of imprisonment of forty-eight hours; provided that the total term of imprisonment for a person convicted under this paragraph shall not exceed the maximum term of imprisonment provided in paragraph (1) or (2), as applicable. Notwithstanding paragraphs (1) and (2), the revocation period for a person sentenced under this paragraph shall be no less than two years;

(4) In addition to a sentence imposed under paragraph (1), for a first offense under this section, or an offense not preceded within a ten-year period by a conviction for an offense, any person who is convicted under this section and was a highly intoxicated driver at the time of the subject incident shall be sentenced to an additional mandatory term of imprisonment for forty-eight consecutive hours and an additional mandatory revocation period of six months; provided that the total term of imprisonment for a person convicted under this paragraph shall not exceed the maximum term of imprisonment provided in paragraph (1). Notwithstanding paragraph (1), the revocation period for a person sentenced under this paragraph shall be no less than eighteen months;

(5) In addition to a sentence under paragraph (2), for an offense that occurs within ten years of a prior conviction for an offense under this section, any person who is convicted under this section and was a highly intoxicated driver at the time of the subject incident shall be sentenced to an additional mandatory term of imprisonment of ten consecutive days and an additional mandatory revocation period of one year; provided that the total term of imprisonment for a person convicted under this paragraph shall not exceed the maximum term of imprisonment provided in paragraph (2), as applicable.

Notwithstanding paragraph (2), the revocation period for a person sentenced under this paragraph shall be no less than three years;

(6) A person sentenced pursuant to paragraph (1)(B) may file a motion for early termination of the applicable revocation period if the person: (A) Was not sentenced to any additional mandatory revocation period pursuant to paragraph (3) or (4); (B) Actually installed and maintained an ignition interlock device on all vehicles operated by the person for a continuous period of six months, after which the person maintained the ignition interlock device on all vehicles operated by the person for a continuous period of three months without violation; (C) Includes with the person's motion for early termination a certified court abstract establishing that the person was not sentenced to any additional mandatory revocation period pursuant to paragraph (3) or (4); (D) Includes with the person's motion for early termination a certified statement from the director of transportation establishing that:

(i) The person installed and maintained an ignition interlock device on all vehicles operated by the person for a continuous period of six months; and (ii) After the six-month period, the person maintained the ignition interlock device on all vehicles operated by the person for a continuous period of three months without violation; and (E) Has complied with all other sentencing requirements. Nothing in this paragraph shall require a court to grant early termination of the revocation period if the court finds that continued use of the ignition interlock device will further the person's rehabilitation or compliance with this section;

(7) If the person demonstrates to the court that the person: (A) Does not own or have the use of a vehicle in which the person can install an ignition interlock device during the revocation period; or (B) Is otherwise unable to drive during the revocation period, the person shall be prohibited from driving during the period of applicable revocation provided in paragraphs (1) to (5); provided that the person shall be sentenced to the maximum license revocation period, the court shall not issue an ignition interlock permit pursuant to subsection (i), and the person shall be subject to the penalties provided by section 291E-62 if the person drives during the applicable revocation period; and

(8) For purposes of this subsection, "violation" means: (A) Providing a sample of .04 or more grams of alcohol per two hundred ten liters of breath when starting the vehicle, unless a subsequent test performed within ten minutes registers a breath alcohol concentration lower than .02 and the digital image confirmed the same person provided both samples; (B) Providing a sample of .04 or more grams of alcohol per two hundred ten liters of breath on a rolling retest, unless a subsequent test performed within ten minutes registers a breath alcohol concentration lower than .02 and the digital image confirms the same person provided both samples; (C) Failing to provide a rolling retest, unless an acceptable test is performed within ten minutes; (D) Violating section 291E-66; or (E) Failing to provide a clear photo of the person when the person blows into the ignition interlock device.

(c) Except as provided in sections 286-118.5 and 291E-61.6, the court shall not issue an ignition interlock permit to:

(1) A defendant whose license is expired, suspended, or revoked as a result of action other than the instant offense;

(2) A defendant who does not hold a valid license at the time of the instant offense;

(3) A defendant who holds either a category 4 license under section 286-102(b) or a commercial driver's license under section 286-239(a), unless the ignition interlock permit is restricted to a category 1, 2, or 3 license under section 286-102(b); or

(4) A defendant who holds a license that is a learner's permit or instruction permit.

(d) Except as provided in subsection (c), the court may issue a separate permit authorizing a defendant to operate a vehicle owned by the defendant's employer during the period of revocation without installation of an ignition interlock device if the defendant is gainfully employed in a position that requires driving and the defendant will be discharged if prohibited from driving a vehicle not equipped with an ignition interlock device.

(e) A request made pursuant to subsection (d) shall be accompanied by:

(1) A sworn statement from the defendant containing facts establishing that the defendant currently is employed in a position that requires driving and that the defendant will be discharged if prohibited from driving a vehicle not equipped with an ignition interlock device; and

(2) A sworn statement from the defendant's employer establishing that the employer will, in fact, discharge the defendant if the defendant cannot drive a vehicle that is not equipped with an ignition interlock device and identifying the specific vehicle the defendant will drive for purposes of employment and the hours of the day, not to exceed twelve hours per day, or the period of the specified assigned hours of work, the defendant will drive the vehicle for purposes of employment.

(f) A permit issued pursuant to subsection (d) shall include restrictions allowing the defendant to drive:

(1) Only during specified hours of employment, not to exceed twelve hours per day, or the period of the specified assigned hours of work, and only for activities solely within the scope of the employment;

(2) Only the vehicle specified; and

(3) Only if the permit is kept in the defendant's possession while operating the employer's vehicle.

(g) Notwithstanding any other law to the contrary, any:

(1) Conviction under this section, section 291E-4(a), or section 291E-61.5;

(2) Conviction in any other state or federal jurisdiction for an offense that is comparable to operating or being in physical control of a vehicle while having either an unlawful alcohol concentration or an unlawful drug content in the blood or urine or while under the influence of an intoxicant or habitually operating a vehicle under the influence of an intoxicant; or

(3) Adjudication of a minor for a law violation that, if committed by an adult, would constitute a violation of this section or an offense under section 291E-4(a), or section 291E-61.5, shall be considered a prior conviction for the purposes of imposing sentence under this section. Any judgment on a verdict or a finding of guilty, a plea of guilty or nolo contendere, or an adjudication, in the case of a minor, that at the time of the offense has not been expunged by pardon, reversed, or set aside shall be deemed a prior conviction under this section.

(h) Whenever a court sentences a person pursuant to subsection (b), it also shall require that the offender be referred to the driver's education program for an assessment, by a certified substance abuse counselor deemed appropriate by the court, of the offender's substance abuse or dependence and the need for appropriate treatment. The counselor shall submit a report with recommendations to the court. The court shall require the offender to obtain appropriate treatment if the counselor's assessment establishes the offender's substance abuse or dependence. All costs for assessment and treatment shall be borne by the offender.

(i) Upon proof that the defendant has:

(1) Installed an ignition interlock device in any vehicle the defendant operates pursuant to subsection (b); and

(2) Obtained motor vehicle insurance or self-insurance that complies with the requirements under either section 431:10C-104 or section 431:10C-105, the court shall issue an ignition interlock permit that will allow the defendant to drive a vehicle equipped with an ignition interlock device during the revocation period.

(j) Notwithstanding any other law to the contrary, whenever a court revokes a person's driver's license pursuant to this section, the examiner of drivers shall not grant to the person a new driver's license until the expiration of the period of revocation determined by the court. After the period of revocation is completed, the person may apply for and the examiner of drivers may grant to the person a new driver's license.

(k) Any person sentenced under this section may be ordered to reimburse the county for the cost of any blood or urine tests conducted pursuant to section 291E-11. The court shall order the person to make restitution in a lump sum, or in a series of prorated installments, to the police department or other agency incurring the expense of the blood or urine test. Except as provided in section 291E-5, installation and maintenance of the ignition interlock device required by subsection (b) shall be at the defendant's own expense.

(l) As used in this section, the term "examiner of drivers" has the same meaning as provided in section 286-2.

291E-61.5 Bill

291E-61.5 Habitually operating a vehicle under the influence of an intoxicant.

(a) A person commits the offense of habitually operating a vehicle under the influence of an intoxicant if:

(1) The person is a habitual operator of a vehicle while under the influence of an intoxicant; and

(2) The person operates or assumes actual physical control of a vehicle: (A) While under the influence of alcohol in an amount sufficient to impair the person's normal mental faculties or ability to care for the person and guard against casualty; (B) While under the influence of any drug that impairs the person's ability to operate the vehicle in a careful and prudent manner; (C) With .08 or more grams of alcohol per two hundred ten liters of breath; or (D) With .08 or more grams of alcohol per one hundred milliliters or cubic centimeters of blood.

(b) Habitually operating a vehicle while under the influence of an intoxicant is a class C felony.

(c) [Repeal and reenactment on June 30, 2028. L 2023, c 148, §8(2).] For a conviction under this section, the sentence shall be either:

(1) An indeterminate term of imprisonment of five years; or

(2) A term of probation of five years, with conditions to include: (A) Mandatory revocation of license to operate a vehicle for a period no less than three years but no more than five years, with mandatory installation of an ignition interlock device in all vehicles operated by the respondent during the revocation period; (B) No less than ten days imprisonment, of which at least forty-eight hours shall be served consecutively; (C) A fine of no less than $2,000 but no more than $5,000, to be deposited into the drug and alcohol toxicology testing laboratory special fund; (D) Referral to a certified substance abuse counselor as provided in subsection (e); (E) A surcharge of $25 to be deposited into the neurotrauma special fund; and (F) A surcharge of up to $50 to be deposited into the trauma system special fund if the court so orders. In addition to the foregoing, any vehicle owned and operated by the person committing the offense shall be subject to forfeiture pursuant to chapter 712A.

(d) For any person who is convicted under this section and was a highly intoxicated driver at the time of the subject incident, the offense shall be a class B felony and the person shall be sentenced to the following:

(1) An indeterminate term of imprisonment of ten years; or

(2) A term of probation of five years, with conditions to include the following: (A) Permanent revocation of license to operate a vehicle; (B) No less than eighteen months imprisonment; (C) A fine of no less than $5,000 but no more than $25,000; and (D) Referral to a certified substance abuse counselor as provided in subsection (e). In addition to the foregoing, any vehicle owned and operated by the person who committed the offense shall be subject to forfeiture pursuant to chapter 712A.

(e) Whenever a court sentences a person under this section, it shall also require that the offender be referred to the driver's education program for an assessment, by a certified substance abuse counselor, of the offender's substance abuse or dependence and the need for appropriate treatment. The counselor shall submit a report with recommendations to the court. The court shall require the offender to obtain appropriate treatment if the counselor's assessment establishes the offender's substance abuse or dependence. All costs for assessment and treatment shall be borne by the offender.

(f) Notwithstanding any other law to the contrary, whenever a court revokes a person's driver's license pursuant to this section, the examiner of drivers shall not grant to the person a new driver's license until expiration of the period of revocation determined by the court. After the period of revocation is complete, the person may apply for and the examiner of drivers may grant to the person a new driver's license.

(g) Any person sentenced under this section may be ordered to reimburse the county for the cost of any blood or urine tests conducted pursuant to section 291E-11. The court shall order the person to make restitution in a lump sum, or in a series of prorated installments, to the police department or other agency incurring the expense of the blood or urine test.

(h) As used in this section: "Convicted one or more times for offenses of habitually operating a vehicle under the influence" means that, at the time of the behavior for which the person is charged under this section, the person had one or more times within ten years of the instant offense:

(1) A judgment on a verdict or a finding of guilty, or a plea of guilty or nolo contendere, for a violation of this section or section 291-4.4 as that section was in effect on December 31, 2001;

(2) A judgment on a verdict or a finding of guilty, or a plea of guilty or nolo contendere, for an offense that is comparable to this section or section 291-4.4 as that section was in effect on December 31, 2001; or

(3) An adjudication of a minor for a law or probation violation that, if committed by an adult, would constitute a violation of this section or section 291-4.4 as that section was in effect on December 31, 2001, that, at the time of the instant offense, had not been expunged by pardon, reversed, or set aside. All convictions that have been expunged by pardon, reversed, or set aside before the instant offense shall not be deemed prior convictions for the purposes of proving the person's status as a habitual operator of a vehicle while under the influence of an intoxicant. "Convicted two or more times for offenses of operating a vehicle under the influence" means that, at the time of the behavior for which the person is charged under this section, the person had two or more times within ten years of the instant offense:

(1) A judgment on a verdict or a finding of guilty, or a plea of guilty or nolo contendere, for a violation of section 291E-61 or 707-702.5;

(2) A judgment on a verdict or a finding of guilty, or a plea of guilty or nolo contendere, for an offense that is comparable to section 291E-61 or 707-702.5; or

(3) An adjudication of a minor for a law or probation violation that, if committed by an adult, would constitute a violation of section 291E-61 or 707-702.5, that, at the time of the instant offense, had not been expunged by pardon, reversed, or set aside. All convictions that have been expunged by pardon, reversed, or set aside before the instant offense shall not be deemed prior convictions for the purposes of proving that the person is a habitual operator of a vehicle while under the influence of an intoxicant. "Examiner of drivers" has the same meaning as provided in section 286-2. "Habitual operator of a vehicle while under the influence of an intoxicant" means that the person was convicted:

(1) Two or more times for offenses of operating a vehicle under the influence; or

(2) One or more times for offenses of habitually operating a vehicle under the influence.

291E-61.6 HRS

291E-61.6 Petition for ignition interlock instruction permit and ignition interlock permit; eligibility; requirements.

(a) This section shall apply to the following:

(1) Any person subject to a lifetime license revocation pursuant to part III, as that part was in effect before January 1, 2011, or part XIV of chapter 286, as that part was in effect before January 1, 2002;

(2) Any person who was arrested pursuant to section 291E-61 or 291E-61.5 before January 1, 2011, and whose license revocation period has not terminated;

(3) Except as provided in section 286-118.5, any person whose license was expired, had a learner's permit or instruction permit, or who was otherwise unlicensed at the time of arrest pursuant to section 291E-61 or 291E-61.5; and

(4) Any person arrested pursuant to section 291E-61 or 291E-61.5 whose driver's license from another state is expired or will expire during the license revocation period and who applies for a permit under this section.

(b) Any person under subsection (a) may file a petition in the district court for permission to apply for an ignition interlock instruction permit that will allow the person to take the driving demonstration portion of the driver's license examination. The petition shall be filed with the clerk of the district court in the district in which the arrest occurred and shall be accompanied by the required filing fee for civil actions. The petition shall include the following:

(1) A certified court abstract establishing that other than the instant offense, the petitioner has no pending traffic matters, outstanding fines, outstanding court costs, and outstanding restitution;

(2) A certified statement from the director establishing that the petitioner has complied with all requirements, including payment of applicable fees, undergone substance abuse assessment and treatment, and surrendered motor vehicle registration and vehicle number plates, if applicable; and

(3) A proposed order. In determining whether the petitioner may be granted an ignition interlock instruction permit, the district court shall consider whether the requirements of paragraphs (1) through (3) are met and may also consider any other factors, including but not limited to the petitioner's criminal and traffic record after receiving a lifetime license revocation, and based on the foregoing, the district court shall determine whether an order allowing the petitioner to apply to the director for an ignition interlock instruction permit and requiring the director to remove any stopper placed on the petitioner's motor vehicle registration files pursuant to part III of chapter 291E, as applicable, shall be issued; provided that the petitioner complies with applicable driver licensing requirements under part VI of chapter 286, and proof of financial responsibility under chapter 287. Upon submission of the order to the director, the director shall remove any stopper placed on the person's motor vehicle registration files and issue a certified statement indicating eligibility for an ignition interlock instruction permit.

(c) To apply for an ignition interlock instruction permit, the person shall:

(1) Present the certified statement of eligibility for ignition interlock instruction permit, as provided in subsection (b), to the examiner of drivers;

(2) Pass the written portion of the driver's license examination in accordance with section 286-108;

(3) Install an ignition interlock device on a vehicle to be used for the driving demonstration portion of the driver's license examination; and

(4) Submit to the director the following: (A) Proof of passing the written portion of the driver's license examination; (B) Proof of installation of the ignition interlock device; (C) Proof of motor vehicle insurance; and (D) Proof of a valid motor

vehicle registration. Upon receipt of proof of the requirements of paragraph (4), the director shall issue an ignition interlock instruction permit that allows the person to drive a category 1, 2, or 3 vehicle under section 286-102(b) that is equipped with an ignition interlock device for the period as provided in section 286-110; provided that a holder of the ignition interlock instruction permit for a category 3 vehicle shall be accompanied by a person who is twenty-one years of age or older and licensed to operate a category 3 vehicle. The licensed person shall occupy a passenger seat beside the permit holder while the category 3 vehicle equipped with an ignition interlock device is being operated. For the purposes of this section, "examiner of drivers" shall have the same meaning as provided in section 286-2.

(d) Upon showing the ignition interlock instruction permit to the examiner of drivers, an applicant may take the driving demonstration portion of the driver's license examination in accordance with section 286-108. Upon successful completion of the driving demonstration portion of the driver's license examination, an applicant may apply to the director for an ignition interlock permit pursuant to section 291E-44.5. If granted, the ignition interlock permit shall expire as provided in section 286-106 or upon the end of the revocation period, whichever occurs first.

(e) After a minimum period of five years from the issuance of an ignition interlock permit under subsection (d), a person subject to a lifetime license revocation for operating a motor vehicle while under the influence of an intoxicant may file a petition in the district court to reinstate the person's eligibility for license and privilege to operate a vehicle without an ignition interlock device. The petition shall be filed with the clerk of the district court in the district in which the arrest occurred and shall be accompanied by the required filing fee for civil actions. A copy of the petition shall be served on the prosecuting attorney in the county in which the petition is filed. The petition shall include the following:

(1) A certified court abstract establishing that: (A) The petitioner has no pending traffic matters, outstanding fines, outstanding court costs, and outstanding restitution; and (B) The petitioner has not been convicted of any violation of section 291E-66 during the five-year period immediately preceding the petition;

(2) A certified statement from the director establishing that the petitioner has complied with all requirements, including payment of applicable fees, undergone substance abuse assessment and treatment, and surrendered motor vehicle registration and vehicle number plates, if applicable;

(3) A certified statement from the director of transportation establishing that: (A) The petitioner has had an ignition interlock device installed in a vehicle without a cumulative break of more than thirty days during the five years immediately preceding the petition; and (B) The petitioner has not attempted to operate a vehicle with .04 or more grams of alcohol per two hundred ten liters of breath during the two years immediately preceding the petition;

(4) A certificate of service demonstrating the place, time, and manner of service of the petition on the prosecuting attorney;

(5) A certified record from the Hawaii Criminal Justice Information System that shows the petitioner's current criminal history record;

(6) A statement from the petitioner establishing where the petitioner has resided since the ignition interlock permit was issued;

(7) A statement from the petitioner as to whether the petitioner has undergone substance abuse assessment and treatment and the outcome of this assessment and treatment; and

(8) A proposed order. Within ten days of service of the petition, the prosecuting attorney may submit a written request for a hearing on the petition. The district court shall set a hearing and the prosecuting attorney shall serve notice of the hearing upon the petitioner at the petitioner's address shown on the petition and in accordance with the applicable court rules pertaining to service of civil process. The prosecuting attorney shall appear at the hearing on the petition and may offer evidence and argument in support of or against the granting of the petition. If the requirements of paragraphs

(1) through (8) are met and it appears to the court that the petitioner no longer poses a danger to other persons using streets or highways and is not likely to operate a vehicle under the influence of an intoxicant, the district court shall grant the petition and issue an order declaring the person eligible for relicensing and reregistration, if applicable. In making its decision, the court, in addition to any other evidence, may consider the petitioner's ignition interlock program driving records and history. If the prosecuting attorney fails to submit a timely request for a hearing, and the requirements of paragraphs (1) through (8) are met, the district court shall grant the petition and issue an order declaring the petitioner eligible for relicensing and reregistration, if applicable. If the court denies the petition, the person may file another petition under this subsection no sooner than one year from the date of the court order.

(f) Nothing in this section shall be interpreted to allow repeat intoxicated driving to be treated as a first time offense for purposes of relicensing.

291E-62 I

291E-62 Operating a vehicle after license and privilege have been suspended or revoked for operating a vehicle under the influence of an intoxicant; penalties.

(a) No person whose license and privilege to operate a vehicle have been revoked, suspended, or otherwise restricted pursuant to this section, part III, section 291E-61 or 291E-61.5, or part VII or part XIV of chapter 286 or section 200-81, 291-4, 291-4.4, 291-4.5, or 291-7 as those provisions were in effect on December 31, 2001, shall operate or assume actual physical control of any vehicle:

(1) In violation of any restrictions placed on the person's license;

(2) While the person's license or privilege to operate a vehicle remains suspended or revoked;

(3) Without installing an ignition interlock device required by this chapter; or

(4) With an ignition interlock permit unless the person has the ignition interlock permit and government-issued identification in the person's immediate possession. For purposes of this paragraph, "government-issued identification" means: (A) A passport issued by the United States of America; or (B) A photo identification card issued by any federal, state, or local government.

(b) No person who has been issued a notice of administrative revocation that serves as a temporary permit by a law enforcement officer, pursuant to section 291E-33, shall operate or assume actual physical control of any vehicle after the expiration of the temporary permit unless that person has an otherwise valid driver's license. No person charged with violating this section shall be convicted if the person produces in court, or proves from the proper official or other records, that the person was the holder of a valid driver's license at the time of the offense.

(c) [Repeal and reenactment on June 30, 2028. L 2023, c 148, §8(2).] Any person convicted of violating this section shall be sentenced as follows without possibility of probation or suspension of sentence:

(1) For a first offense, or any offense not preceded within a ten-year period by conviction for an offense under this section, section 291E-66, or section 291-4.5 as that section was in effect on December 31, 2001: (A) A term of imprisonment of no less than three consecutive days and no more than thirty days; (B) A fine of no less than $250 and no more than $1,000, to be deposited into the drug and alcohol toxicology testing laboratory special fund; and (C) Revocation of license and privilege to operate a vehicle for an additional year;

(2) For an offense that occurs within ten years of a prior conviction for an offense under this section, section 291E-66, or section 291-4.5 as that section was in effect on December 31, 2001: (A) Thirty days imprisonment; (B) A $1,000 fine, to be deposited into the drug and alcohol toxicology testing laboratory special fund; and (C) Revocation of license and privilege to operate a vehicle for an additional two years;

(3) For an offense that occurs within ten years of two or more prior convictions for offenses under this section, section 291E-66, or section 291-4.5 as that section was in effect on December 31, 2001, or any combination thereof: (A) No less than six months and no more than one year imprisonment; (B) A $2,000 fine, to be deposited into the drug and alcohol toxicology testing laboratory special fund; and (C) Permanent revocation of the person's license and privilege to operate a vehicle; and

(4) In addition to a sentence imposed under paragraphs (1) through (3), any person who is convicted under this section and also convicted under section 291E-61 or 291E-61.5, for an offense based on the same incident or arising from the same episode, shall be sentenced to terms of imprisonment for both offenses, which shall be served consecutively.

(d) The applicable period of revocation in subsection (c) shall commence upon the release of the person from the period of imprisonment imposed pursuant to this section.

291E-63 I

291E-63 Records of suspensions and revocations of operating privileges to be maintained. The court shall notify the department of land and natural resources of any sanctions imposed for offenses or violations under this part and the period of suspension or revocation of operator privileges ordered by the court under this part.

291E-64 I

291E-64 Operating a vehicle after consuming a measurable amount of alcohol; persons under the age of twenty-one.

(a) It shall be unlawful for any person under the age of twenty-one years to operate any vehicle with a measurable amount of alcohol. A law enforcement officer may arrest a person under this section when the officer has probable cause to believe the arrested person is under the age of twenty-one and had been operating a vehicle upon a public way, street, road, or highway or on or in the waters of the State with a measurable amount of alcohol.

(b) A person who violates this section shall be sentenced as follows:

(1) For a first violation or any violation not preceded within a five-year period by a prior alcohol enforcement contact: (A) The court shall impose:

(i) A requirement that the person and, if the person is under the age of eighteen, the person's parent or guardian attend an alcohol abuse education and counseling program for not more than ten hours; and (ii) A one hundred eighty-day prompt suspension of license and privilege to operate a vehicle with absolute prohibition from operating a vehicle during the suspension period, or in the case of a person eighteen years of age or older, the court may impose, in lieu of the one hundred eighty-day prompt suspension of license, a minimum thirty-day prompt suspension of license with absolute prohibition from operating a vehicle and, for the remainder of the one hundred eighty-day period, a restriction on the license that allows the person to drive for limited work-related purposes and to participate in alcohol abuse education and treatment programs; and (B) In addition, the court may impose any one or more of the following:

(i) Not more than thirty-six hours of community service work; or (ii) A fine of not less than $150 but not more than $500;

(2) For a violation that occurs within five years of a prior alcohol enforcement contact: (A) The court shall impose prompt suspension of license and privilege to operate a vehicle for a period of one year with absolute prohibition from operating a vehicle during the suspension period; and (B) In addition, the court may impose any of the following:

(i) Not more than fifty hours of community service work; or (ii) A fine of not less than $300 but not more than $1,000; and

(3) For a violation that occurs within five years of two prior alcohol enforcement contacts: (A) The court shall impose revocation of license and privilege to operate a vehicle for a period of two years; and (B) In addition, the court may impose any of the following:

(i) Not more than one hundred hours of community service work; or (ii) A fine of not less than $300 but not more than $1,000.

(c) Notwithstanding any other law to the contrary, any conviction or plea under this section shall be considered a prior alcohol enforcement contact.

(d) Whenever a court sentences a person pursuant to subsection (b)(2) or (3), it also shall require that the person be referred to the driver's education program for an assessment, by a certified substance abuse counselor, of the person's alcohol abuse or dependence and the need for appropriate treatment. The counselor shall submit a report with recommendations to the court. The court shall require the person to obtain appropriate treatment if the counselor's assessment establishes the person's alcohol abuse or dependence. All costs for assessment and treatment shall be borne by the person or by the person's parent or guardian, if the person is under the age of eighteen.

(e) Notwithstanding section 831-3.2 or any other law to the contrary, a person convicted of a first-time violation under subsection (b)(1) or section 291-4.3, as it existed before Act 189, Session Laws of Hawaii 2000, who had no prior alcohol enforcement contacts, may apply to the court for an expungement order upon attaining the age of twenty-one, or thereafter, if the person has fulfilled the terms of the sentence imposed by the court and has had no subsequent alcohol or drug related enforcement contacts; provided that this subsection shall not apply to persons in possession of a commercial learner's permit or commercial driver's license or convicted in a commercial motor vehicle or while transporting hazardous materials .

(f) Notwithstanding any other law to the contrary, whenever a court revokes a person's driver's license pursuant to this section, the examiner of drivers shall not grant to the person an application for a new driver's license for a period to be determined by the court.

(g) Any person sentenced under this section may be ordered to reimburse the county for the cost of any blood tests conducted pursuant to section 291E-11. The court shall order the person to make restitution in a lump sum, or in a series of prorated installments, to the police department or other agency incurring the expense of the blood test.

(h) The requirement to provide proof of financial responsibility pursuant to section 287-20 shall not be based upon a sentence imposed under subsection (b)(1).

(i) Any person who violates this section shall be guilty of a violation.

(j) As used in this section, the terms "driver's license" and "examiner of drivers" have the same meanings as provided in section 286-2.

291E-65 I

291E-65 Refusal to submit to testing for measurable amount of alcohol; district court hearing; sanctions; appeals; admissibility.

(a) If a person under arrest for operating a vehicle after consuming a measurable amount of alcohol, pursuant to section 291E-64, refuses to submit to a breath or blood test, none shall be given, except as provided in section 291E-21, but the arresting law enforcement officer, as soon as practicable, shall submit an affidavit to a district judge of the circuit in which the arrest was made, stating:

(1) That at the time of the arrest, the arresting officer had probable cause to believe the arrested person was under the age of twenty-one and had been operating a vehicle upon a public way, street, road, or highway or on or in the waters of the State with a measurable amount of alcohol;

(2) That the arrested person was informed that the person may refuse to submit to a breath or blood test, in compliance with section 291E-11;

(3) That the person had refused to submit to a breath or blood test;

(4) That the arrested person was: (A) Informed of the sanctions of this section; and then (B) Asked if the person still refuses to submit to a breath or blood test, in compliance with the requirements of section 291E-15; and

(5) That the arrested person continued to refuse to submit to a breath or blood test.

(b) Upon receipt of the affidavit, the district judge shall hold a hearing within twenty days. The district judge shall hear and determine:

(1) Whether the arresting law enforcement officer had probable cause to believe that the person was under the age of twenty-one and had been operating a vehicle upon a public way, street, road, or highway or on or in the waters of the State with a measurable amount of alcohol;

(2) Whether the person was lawfully arrested;

(3) Whether the person was informed that the person may refuse to submit to a breath or blood test, in compliance with section 291E-11;

(4) Whether the person refused to submit to a test of the person's breath or blood;

(5) Whether the person was: (A) Informed of the sanctions of this section; and then (B) Asked if the person still refuses to submit to a breath or blood test, in compliance with the requirements of section 291E-15; and

(6) Whether the person continued to refuse to submit to a breath or blood test.

(c) If the district judge finds the statements contained in the affidavit are true, the judge shall suspend the arrested person's license and privilege to operate a vehicle as follows:

(1) For a first suspension, or any suspension not preceded within a five-year period by a suspension under this section, for a period of twelve months; and

(2) For any subsequent suspension under this section, for a period not less than two years and not more than five years.

(d) An order of a district court issued under this section may be appealed to the supreme court.

291E-66 HRS

291E-66 Circumvention of, or tampering with, an ignition interlock device by a person who has been restricted to operating a vehicle equipped with an ignition interlock device; penalties.

(a) No person whose driving privileges have been restricted to operating a vehicle equipped with an ignition interlock device shall knowingly circumvent or tamper with an ignition interlock device in any way, including but not limited to:

(1) Requesting, soliciting, directing, or authorizing another person to blow into an ignition interlock device or start a vehicle equipped with the device for the purpose of providing an operable vehicle to a person who has been restricted by law to operating only a vehicle so equipped;

(2) Tampering with an ignition interlock device with the intent to render it inaccurate or inoperable;

(3) Obscuring a camera lens associated with an ignition interlock device; or

(4) Failing to provide a picture of the driver.

(b) Any person required under subsection (a) to drive using an ignition interlock device who violates subsection (a) shall be sentenced without possibility of probation or suspension of sentence as follows:

(1) For a first offense, or any offense not preceded within a ten-year period by conviction under this section or section 291E-62(a)(3): (A) A term of imprisonment of no less than three consecutive days and no more than thirty days; (B) A fine of no less than $250 and no more than $1,000; and (C) Loss of the privilege to operate a vehicle equipped with an ignition interlock device;

(2) For an offense that occurs within ten years of a prior conviction for an offense under this section or section 291E-62(a)(3): (A) Thirty days imprisonment; (B) A $1,000 fine; and (C) Loss of the privilege to operate a vehicle equipped with an ignition interlock device; and

(3) For an offense that occurs within ten years of two or more prior convictions for offenses under this section or section 291E-62(a)(3), or any combination thereof: (A) One year imprisonment; (B) A $2,000 fine; and (C) Loss of the privilege to operate a vehicle equipped with an ignition interlock device.

291E-67 HRS

291E-67 Assisting or abetting the circumvention of, or tampering with, an ignition interlock device; penalties.

(a) No person shall knowingly:

(1) Blow into or start a vehicle equipped with an ignition interlock device for the purposes of providing an operable vehicle to another person who has been restricted by law to operating only a vehicle equipped with an ignition interlock device;

(2) Tamper with an ignition interlock device with the intent to render it inaccurate or inoperable to permit another person, who has been restricted by law to operating only a vehicle equipped with an ignition interlock device, to operate the vehicle; or

(3) Rent, lease, or lend a vehicle to another person who has been restricted by law to operating only vehicles equipped with an ignition interlock device, when the rented, leased, or loaned vehicle is not equipped with a functioning certified ignition interlock device.

(b) Subsection (a) shall not apply to any act taken for the purpose of safety or mechanical repair of the device; provided that the person who is restricted to operating a vehicle equipped with the interlock device does not operate the vehicle.

(c) Any person who violates this section shall be:

(1) Fined not more than $1,000 or imprisoned not more than thirty days, or both, for any offense that does not occur within five years of two prior convictions for this offense; and

(2) Fined not less than $500 but not more than $1,000 or imprisoned not more than one year, or both, if the person has two or more prior convictions for the offense in the preceding five-year period.

291E-68 HRS

291E-68 REPEALED. L 2016, c 17, §2. Previous Vol05_Ch0261-0319 Next

Chapter 291J

291J-5.5 HRS

291J-5.5 Facial recognition software; prohibited.

(a) No photo red light imaging detector system authorized under this chapter shall use or be equipped with facial recognition software or biometric identification technology.

(b) This section shall not apply to:

(1) Automated license plate reader systems; or

(2) Any non-biometric technology used to verify vehicle identity, registration status, or to generate photographic evidence of a traffic violation.

(c) For the purposes of this section: "Biometric identification" includes but is not limited to recognition of facial features, iris scans, retinal scans, fingerprints, or voice patterns. "Facial recognition software" means technology that analyzes facial features to identify or verify the identity of an individual.

Chapter 291L

291L-1 HRS

291L-1 Definitions. As used in this chapter, unless the context otherwise requires: "Automated speed enforcement system" means a device, or combination of devices, used for traffic enforcement pursuant to section 291C-108, that includes a vehicle sensor working in conjunction and synchronization with a speed measuring device and camera, to automatically produce and record one or more sequenced photographs, microphotographs, video, or other recorded images of a motor vehicle and motor vehicle license plate, at the time the motor vehicle is exceeding the applicable maximum speed limit, in violation of section 291C-108. "Department" means the department of transportation. "Motor vehicle" has the same meaning as defined in section 291C-1. "Owner" or "registered owner" has the same meaning as defined in section 286-2.

291L-2 HRS

291L-2 Automated speed enforcement systems program; established. There shall be established the automated speed enforcement systems program, which shall be implemented by the State to enforce the speed restriction laws of the State. The automated speed enforcement system program shall be limited to only those locations where a photo red light imaging detector system has been implemented pursuant to chapter 291J.

291L-3 HRS

291L-3 State powers and duties.

(a) The State shall establish and implement, in accordance with this chapter, an automated speed enforcement system imposing monetary liability on the registered owner of a motor vehicle for violations of section 291C-108. The State shall provide for the:

(1) Procurement, location, and oversight of an automated speed enforcement system; and

(2) Installation, operation, maintenance, and repair of the automated speed enforcement system through a third-party contractor. Where the automated speed enforcement system affects county property, the department shall cooperate with and assist the county as needed to install, maintain, and repair the automated speed enforcement system established pursuant to this chapter.

(b) The compensation paid by the State to establish an automated speed enforcement system under this chapter to a manufacturer or vendor of the equipment used shall be based upon the value of the equipment and services provided or rendered in support of the automated speed enforcement system and shall not be based upon a portion of the fine or civil penalty imposed or the revenue generated by the equipment.

(c) Before the installation and operation of any automated speed enforcement system, for each location considered for enforcement via the automated speed enforcement system, the State shall conduct:

(1) A comprehensive engineering review and study of each location and implement all necessary and appropriate engineering, design, and traffic-control signal measures; and

(2) A study to acquire a baseline average of the number of motor vehicles violating the posted maximum speed limit, over a period of not less than one week; provided that the baseline average shall be determined before the installation of any signs or other official traffic-control devices that indicate that a location is being considered for an automated speed enforcement system.

(d) At least sixty days before the automated speed enforcement system becomes operational, the department, in conjunction with any county in which an automated speed enforcement systems program is implemented pursuant to this chapter, shall conduct a comprehensive informational and educational campaign to inform motorists and the general public about the program.

(e) During the first thirty days of operation of an automated speed enforcement system at a particular location, a warning shall be issued for any violation and mailed to the registered owner of the motor vehicle at the address on record at the vehicle licensing division in lieu of a summons or citation pursuant to section 291L-5.

(f) For the purposes of this section: "Intersection" has the same meaning as defined in section 291C-1. "Location" means the place, intersection, or roadway where an automated speed enforcement system is installed and operated.

291L-4 HRS

291L-4 Automated speed enforcement system requirements.

(a) Automated speed enforcement system equipment shall be operated from a fixed pole, post, or other fixed structure on a state highway or county highway.

(b) Signs or other traffic-control signal devices indicating that traffic signal laws are enforced by an automated speed enforcement system shall be posted on major routes entering the area in question to provide, as far as practicable, notice to drivers of the existence and operation of the automated speed enforcement system.

(c) Proof of a violation of section 291C-108 shall be evidenced by information obtained from an automated speed enforcement system authorized pursuant to this chapter. A certificate, sworn to or affirmed by the reviewing county police department, or a facsimile thereof, based upon inspection of any clear and unobstructed photographs, microphotographs, video, or other recorded images produced by the system, shall be prima facie evidence of the facts contained therein. Any photographs, microphotographs, video, or other recorded images shall be available for inspection in any proceeding to adjudicate the liability for that violation.

(d) It shall be a defense to any prosecution for a violation of exceeding the maximum motor vehicle speed limits pursuant to this chapter and section 291C-108 that the automated speed enforcement system was malfunctioning at the time of the alleged violation.

(e) The conditions specified in this section shall not apply when the information gathered is used for highway safety research or to issue warning citations not involving a fine or court appearance.

(f) As used in this section, "county highway" and "state highway" have the same meaning as defined in section 264-1.

291L-4.5 HRS

291L-4.5 Facial recognition software; prohibited.

(a) No automated speed enforcement system authorized under this chapter shall use or be equipped with facial recognition software or biometric identification technology.

(b) This section shall not apply to:

(1) Automated license plate reader systems; or

(2) Any non-biometric technology used to verify vehicle identity, registration status, or to generate photographic evidence of a traffic violation.

(c) For the purposes of this section: "Biometric identification" includes but is not limited to recognition of facial features, iris scans, retinal scans, fingerprints, or voice patterns. "Facial recognition software" means technology that analyzes facial features to identify or verify the identity of an individual.

291L-5 HRS

291L-5 Summons or citation.

(a) Notwithstanding any law to the contrary and except as otherwise provided in this chapter, beginning January 1, 2025, whenever any motor vehicle is determined, by means of an automated speed enforcement system, to have violated section 291C-108, the State's third-party contractor shall cause a summons or citation, as described in this section, to be sent by first-class mail to the registered owner of the motor vehicle. The summons or citation shall be mailed to the registered owner's address on record at the vehicle licensing division and submitted to the post office within ten calendar days after the date of the incident. The State, the county, or the State's or county's third-party contractor shall implement a process to record the date on which the summons or citation was submitted to the post office, and the record shall be prima facie evidence of the date the summons or citation was submitted to the post office. If the end of the ten-calendar-day period falls on a Saturday, Sunday, or holiday, then the ending period shall run until the end of the next day that is not a Saturday, Sunday, or holiday. The registered owner shall be determined by the identification of the motor vehicle license plate.

(b) The form and content of the summons or citation shall be adopted or prescribed by the administrative judge of the district courts and printed on a form commensurate with the form of other summonses or citations used in modern

methods of arrest that are designed to include all necessary information to make the summons or citation valid within the laws of the State; provided that any summons or citation issued pursuant to the automated speed enforcement systems program shall contain a clear and unobstructed photographic, digital, or other visual image of the motor vehicle license plate, and speed units measured by the speed reader that shall be used as evidence of the violation.

(c) Every summons or citation shall be consecutively numbered and each copy thereof shall bear the number of its respective original.

(d) Before mailing the summons or citation for a traffic infraction pursuant to subsection (a), the applicable county police department shall review and verify the clear and unobstructed photographic, digital, or other visual image of the license plate of the motor vehicle required under this section.

(e) Upon receipt of the summons or citation, the registered owner shall respond as provided for in section 291D-6. A record of the mailing of the summons or citation prepared in the ordinary course of business shall be prima facie evidence of notification.

(f) Procedures regarding answering a notice, court actions, and court hearings shall be pursuant to sections 291D-6, 291D-7, 291D-8, and 291D-13; provided that it shall not be a defense to any citation issued pursuant to this chapter that another person was driving the defendant's motor vehicle at the time of incident, unless the motor vehicle was stolen as documented by a police report; provided further that any reference to the defendant's commission of the traffic infraction or similar language shall be interpreted to mean commission of the traffic infraction.

(g) Any summons or citations issued or convictions resulting from this chapter shall not be recorded on a person's traffic abstract and shall not be used for insurance purposes in the provision of motor vehicle insurance coverage .

291L-6 HRS

291L-6 Registered owner's responsibility for a summons or citation. In any proceeding pursuant to this chapter, the information contained in the summons or citation mailed in accordance with section 291L-5 shall be deemed prima facie evidence that a violation of section 291C-108 occurred. The registered owner shall be strictly liable for a violation of section 291C-108.

291L-7 HRS

291L-7 Failure to comply with a summons or citation. If the registered owner of the motor vehicle fails to respond to a summons or citation within thirty days from the date of the mailing of the summons or citation, the district court shall issue a notice of entry of judgment of default to the registered owner of the motor vehicle pursuant to section 291D-7(e).

291L-8 HRS

291L-8 Liability for rental or U-drive motor vehicle. Notwithstanding any law to the contrary, any registered owner of record who is the lessor of a rental or U-drive motor vehicle, including those defined in section 286-2, shall be liable for any summons or citation issued pursuant to this chapter. The registered owner shall not be precluded from pursuing reimbursement from any applicable renter or lessee.

291L-9 HRS

291L-9 Fines for unauthorized disclosure. All personal and confidential information made available by an automated speed enforcement system to an officer, employee, or agent of the State or any county, including third-party contractors, shall be kept confidential and shall be used only for the purposes for which the information was furnished. Any officer, employee, or agent of the State or any county, including a third-party contractor, who intentionally discloses or provides a copy of personal and confidential information obtained from an automated speed enforcement system to any person or agency without authorization shall be fined not more than $500; provided that the fine shall not preclude the application of penalties or fines otherwise provided for by law.

291L-10 HRS

291L-10 Automated speed enforcement systems program special fund; established.

(a) There is established in the state treasury an automated speed enforcement systems program special fund to be administered by the department, into which shall be deposited all fines collected pursuant to this chapter and section 291C-108.

(b) Moneys in the automated speed enforcement systems program special fund shall be expended by the department in the county in which the fine was imposed, for the establishment, implementation, operation, oversight, management, maintenance, and repair of an automated speed enforcement system and implementation of the automated speed enforcement systems program.

291L-11 HRS

291L-11 Rules. The department shall adopt rules pursuant to chapter 91 to effectuate the purposes of this chapter; provided that the department may adopt interim rules to carry out the purposes of this chapter without regard to chapter 91 or 201M; provided further that:

(1) The department shall hold at least one public hearing before the adoption of the interim rules; and

(2) The interim rules shall be effective for not more than two years after adoption.

Chapter 293

293-1 Defacing serial numbers, etc

293-1 Defacing serial numbers, etc., of bicycles. It shall be unlawful for any person to wilfully deface, destroy, or alter the serial number, a component part number, or identification mark of any bicycle, so placed or stamped on any bicycle by the manufacturer for the purpose of identifying the bicycle or its component parts. This section does not prohibit the restoration by an owner of an original mark or number, when the restoration is authorized in writing by the county treasurer or director of finance, nor prevent any manufacturer from placing in the ordinary course of business, numbers or marks upon new bicycles or new parts thereof. Violation of this section shall be a misdemeanor and shall result in a fine of not more than $500.

293-2 Bicycle dealers, records required

293-2 Bicycle dealers, records required. All persons selling new bicycles to others as a business shall keep a record for four years after the sale of a bicycle of the name of the purchaser, and the serial number, description, and make of the bicycle sold to the purchaser. This record may be inspected by the police during reasonable business hours.

293-3 HRS

293-3 Prohibition of sale; stolen.

(a) In any county with a population of five hundred thousand or more, no person shall sell or offer for sale a bicycle on an online sales platform, at a dealer, or elsewhere if the bicycle:

(1) Has been reported as stolen to a county police department; and

(2) Is listed on a publicly available online stolen bicycle database as provided in subsection (b).

(b) In any county with a population of five hundred thousand or more, the county police department or any other agency as designated by the county shall establish the publicly available online stolen bicycle database that allows persons to verify if a bicycle serial number or emblem number has been reported as stolen.

(c) Any person who violates this section shall be guilty of a misdemeanor and shall be fined either $500, the listed sale price on the advertisement, or the actual sale price, whichever is greater.

(d) For purposes of this section: "Dealer" has the same meaning as in section 486M-1. "Online sales platform" means an internet website or application that:

(1) Is open to the public;

(2) Operates in the State; and

(3) Enables the sale of goods between persons using any medium of facilitation.

(e) The prosecution need not prove the person's state of mind as to the attendant circumstance of the offense occurring in a county with a population of five hundred thousand or more.

(f) It shall be an affirmative defense that the person viewed the publicly available online stolen bicycle database and did not see the bicycle listed before selling or offering to sell the bicycle.

Title 37 — Hawaii Penal Code

Chapter 701

701-105 HRS

701-105 Effect of commentary. The

701-100 HRS

701-100 Title and effective date of amendments. Title 37 shall be known as the Hawaii Penal Code. Amendments made to this Code by Act 314, Session Laws of Hawaii 1986, shall become effective on January 1, 1987.

701-101 HRS

701-101 Applicability to offenses committed before the effective date of amendments.

(1) Except as provided in subsection (2), amendments made by Act 314, Session Laws of Hawaii 1986, to this Code do not apply to offenses committed before the effective date of Act 314, Session Laws of Hawaii 1986. Prosecutions for offenses committed before the effective date of Act 314, Session Laws of Hawaii 1986, are governed by the prior law, which is continued in effect for that purpose, as if amendments made by Act 314, Session Laws of Hawaii 1986, to this Code were not in force. For purposes of this section, an offense is committed before the effective date of Act 314, Session Laws of Hawaii 1986, if any of the elements of the offense occurred before that date.

(2) In any case pending on or commenced after the effective date of amendments made by Act 314, Session Laws of Hawaii 1986, to this Code, involving an offense committed before that date upon the request of the defendant, and subject to the approval of the court, the provisions of chapter 706 amended by Act 314, Session Laws of Hawaii 1986, may be applied in particular cases.

701-102 HRS

701-102 All offenses defined by statute; applicability to offenses committed after the effective date.

(1) No behavior constitutes an offense unless it is a crime or violation under this Code or another statute of this State.

(2) The provisions of this Code govern the construction of and punishment for any offense set forth herein committed after the effective date, as well as the construction and application of any defense to a prosecution for such an offense.

(3) The provisions of chapters 701 through 706 of the Code are applicable to offenses defined by other statutes, unless otherwise provided by applicable law.

701-103 HRS

701-103 Purposes of this Code. The purposes of this Code are to codify the general principles of the penal law and to define and codify certain specific offenses which constitute harms to basic social interests which the Code seeks to protect.

701-104 HRS

701-104 Principles of construction. The provisions of this Code cannot be extended by analogy so as to create crimes not provided for herein; however, in order to promote justice and effect the objects of the law, all of its provisions shall be given a genuine construction, according to the fair import of the words, taken in their usual sense, in connection with the context, and with reference to the purpose of the provision.

701-106 HRS

701-106 Territorial applicability.

(1) Except as otherwise provided in this section, a person may be convicted under the law of this State of an offense committed by the person's own conduct or the conduct of another for which the person is legally accountable if:

(a) Either the conduct or the result which is an element of the offense occurs within this State;

(b) Conduct occurring outside the State is sufficient under the law of this State to constitute an attempt to commit an offense within the State;

(c) Conduct occurring outside the State is sufficient under the law of this State to constitute a conspiracy to commit an offense within the State and an overt act in furtherance of such conspiracy occurs within the State;

(d) Conduct occurring within the State establishes complicity in the commission of, or an attempt, solicitation, or conspiracy to commit, an offense in another jurisdiction which also is an offense under the law of this State;

(e) The offense consists of the omission, while within or outside this State to perform a legal duty imposed by the law of this State with respect to domicile, residence, or a relationship to a person, thing, or transaction in the State; or

(f) The offense is based on a statute of this State which expressly prohibits conduct outside the State, when the conduct bears a reasonable relation to a legitimate interest of this State and the actor knows that the actor's conduct is likely to affect that interest.

(2) Subsection (1)(a) does not apply when a specified result, or conduct creating a risk of such a result, is an element of an offense and the result occurs, or is intended or is likely to occur, only in another jurisdiction where the conduct charged would not constitute an offense, unless a legislative purpose plainly appears to declare that the conduct constitutes an offense regardless of the place of the result.

(3) Subsection (1)(a) does not apply when a particular result is an element of an offense and the result is caused by conduct occurring outside the State which conduct would not constitute an offense if the result had occurred there, unless the actor intentionally or knowingly caused the result within the State.

(4) When the offense involves a homicide, either the death of the victim or the bodily impact causing death constitutes a "result", within the meaning of subsection (1)(a). If the body of a homicide victim is found within the State, it is prima facie evidence that the result occurred within the State.

(5) This State includes the land and water and the air space about the land and water with respect to which the State has legislative jurisdiction.

701-107 HRS

701-107 Grades and classes of offenses.

(1) An offense defined by this Code or by any other statute of this State for which a sentence of imprisonment is authorized constitutes a crime. Crimes are of three grades: felonies, misdemeanors, and petty misdemeanors. Felonies include murder in the first and second degrees, attempted murder in the first and second degrees, and the following three classes: class A, class B, and class C.

(2) A crime is a felony if it is so designated in this Code or if persons convicted thereof may be sentenced to imprisonment for a term which is in excess of one year.

(3) A crime is a misdemeanor if it is so designated in this Code or in a statute other than this Code enacted subsequent thereto, or if it is defined in a statute other than this Code which provides for a term of imprisonment the maximum of which is one year.

(4) A crime is a petty misdemeanor if it is so designated in this Code or in a statute other than this Code enacted subsequent thereto, or if it is defined by a statute other than this Code that provides that persons convicted thereof may be sentenced to imprisonment for a term not to exceed thirty days.

(5) An offense defined by this Code or by any other statute of this State constitutes a violation if it is so designated in this Code or in the law defining the offense or if no other sentence than a fine, or fine and forfeiture or other civil penalty, is authorized upon conviction or if it is defined by a statute other than this Code which provides that the offense shall not constitute a crime. A violation does not constitute a crime, and conviction of a violation shall not give rise to any civil disability based on conviction of a criminal offense.

(6) Any offense declared by law to constitute a crime, without specification of the grade thereof or of the sentence authorized upon conviction, is a misdemeanor.

(7) An offense defined by any statute of this State other than this Code shall be classified as provided in this section and the sentence that may be imposed upon conviction thereof shall hereafter be governed by this Code.

701-108 HRS

701-108 Time limitations.

(1) A prosecution for murder, murder in the first and second degrees, attempted murder, attempted murder in the first and second degrees, criminal conspiracy to commit murder in any degree, criminal solicitation to commit murder in any degree, sexual assault in the first and second degrees, sex trafficking, and continuous sexual assault of a minor under the age of fourteen years may be commenced at any time.

(2) Except as otherwise provided in this section, prosecutions for other offenses are subject to the following periods of limitation:

(a) A prosecution for manslaughter where the death was not caused by the operation of a motor vehicle must be commenced within ten years after it is committed;

(b) A prosecution for a class A felony must be commenced within six years after it is committed;

(c) A prosecution for any felony under part IX of chapter 708 must be commenced within five years after it is committed;

(d) A prosecution for any other felony must be commenced within three years after it is committed;

(e) A prosecution for a misdemeanor or parking violation must be commenced within two years after it is committed; and

(f) A prosecution for a petty misdemeanor or a violation other than a parking violation must be commenced within one year after it is committed.

(3) If the period prescribed in subsection (2) has expired, a prosecution may nevertheless be commenced for:

(a) Any offense an element of which is fraud, deception as defined in section 708-800, or a breach of fiduciary obligation or the offense of medical assistance fraud under section 346-43.5, within three years after discovery of the offense by an aggrieved party or by a person who has a legal duty to represent an aggrieved party and who is oneself not a party to the offense, but in no case shall this provision extend the period of limitation by more than six years from the expiration of the period of limitation prescribed in subsection (2);

(b) Any offense based on misconduct in office by a public servant at any time when the defendant is in public office or employment or within two years thereafter, but in no case shall this provision extend the period of limitation by more than three years from the expiration of the period of limitation prescribed in subsection (2); and

(c) Any felony offense involving evidence containing deoxyribonucleic acid from the offender, if a test confirming the presence of deoxyribonucleic acid is performed prior to expiration of the period of limitation prescribed in subsection (2), but in no case shall this provision extend the period of limitation by more than ten years from the expiration of the period of limitation prescribed in subsection (2).

(4) An offense is committed either when every element occurs, or, if a legislative purpose to prohibit a continuing course of conduct plainly appears, at the time when the course of conduct or the defendant's complicity therein is terminated. Time starts to run on the day after the offense is committed.

(5) A prosecution is commenced either when an indictment is found or a complaint filed, or when an arrest warrant or other process is issued, provided that such warrant or process is executed without unreasonable delay.

(6) The period of limitation does not run:

(a) During any time when the accused is continuously absent from the State or has no reasonably ascertainable place of abode or work within the State, but in no case shall this provision extend the period of limitation by more than four years from the expiration of the period of limitation prescribed in subsection (2);

(b) During any time when a prosecution against the accused for the same conduct is pending in this State; or

(c) For any felony offense under chapter 707, part V or VI, during any time when the victim is alive and under eighteen years of age.

(7) As used in this section, "public servant" shall have the same meaning as in section 710-1000.

701-109 HRS

701-109 Method of prosecution when conduct establishes an element of more than one offense.

(1) When the same conduct of a defendant may establish an element of more than one offense, the defendant may be prosecuted for each offense of which such conduct is an element. The defendant may not, however, be convicted of more than one offense if:

(a) One offense is included in the other, as defined in subsection (4) of this section;

(b) One offense consists only of a conspiracy or solicitation to commit the other;

(c) Inconsistent findings of fact are required to establish the commission of the offenses;

(d) The offenses differ only in that one is defined to prohibit a designated kind of conduct generally and the other to prohibit a specific instance of such conduct; or

(e) The offense is defined as a continuing course of conduct and the defendant's course of conduct was uninterrupted, unless the law provides that specific periods of conduct constitute separate offenses.

(2) Except as provided in subsection (3) of this section, a defendant shall not be subject to separate trials for multiple offenses based on the same conduct or arising from the same episode, if such offenses are known to the appropriate prosecuting officer at the time of the commencement of the first trial and are within the jurisdiction of a single court.

(3) When a defendant is charged with two or more offenses based on the same conduct or arising from the same episode, the court, on application of the prosecuting attorney or of the defendant, may order any such charge to be tried separately, if it is satisfied that justice so requires.

(4) A defendant may be convicted of an offense included in an offense charged in the felony complaint, indictment, or information. An offense is so included when:

(a) It is established by proof of the same or less than all the facts required to establish the commission of the offense charged;

(b) It consists of an attempt to commit the offense charged or to commit an offense otherwise included therein; or

(c) It differs from the offense charged only in the respect that a less serious injury or risk of injury to the same person, property, or public interest or a different state of mind indicating lesser degree of culpability suffices to establish its commission.

(5) The court is not obligated to charge the jury with respect to an included offense unless there is a rational basis in the evidence for a verdict acquitting the defendant of the offense charged and convicting the defendant of the included offense.

701-110 HRS

701-110 When prosecution is barred by former prosecution for the same offense. When a prosecution is for an offense under the same statutory provision and is based on the same facts as a former prosecution, it is barred by the former prosecution under any of the following circumstances:

(1) The former prosecution resulted in an acquittal which has not subsequently been set aside. There is an acquittal if the prosecution resulted in a finding of not guilty by the trier of fact or in a determination by the court that there was insufficient evidence to warrant a conviction. A finding of guilty of a lesser included offense is an acquittal of the greater inclusive offense, although the conviction is subsequently set aside on appeal by the defendant.

(2) The former prosecution was terminated, after the information had been filed or the indictment found, by a final order or judgment for the defendant, which has not been set aside, reversed, or vacated and which necessarily required a determination inconsistent with a fact or a legal proposition that must be established for conviction of the offense.

(3) The former prosecution resulted in a conviction. There is a conviction if the prosecution resulted in a judgment of conviction which has not been reversed or vacated, a verdict of guilty which has not been set aside and which is capable of supporting a judgment, or a plea of guilty or nolo contendere accepted by the court.

(4) The former prosecution was improperly terminated. Except as provided in this subsection, there is an improper termination of a prosecution if the termination is for reasons not amounting to an acquittal, and it takes place after the first witness is sworn but before verdict. Termination under any of the following circumstances is not improper:

(a) The defendant consents to the termination or waives, by motion to dismiss or otherwise, the defendant's right to object to the termination.

(b) The trial court finds the termination is necessary because:

(i) It is physically impossible to proceed with the trial in conformity with law; (ii) There is a legal defect in the proceedings which would make any judgment entered upon a verdict reversible as a matter of law; (iii) Prejudicial conduct, in or outside the courtroom, makes it impossible to proceed with the trial without injustice to either the defendant or the State; (iv) The jury is unable to agree on a verdict; or

(v) False statements of a juror on voir dire prevent a fair trial.

701-111 HRS

701-111 When prosecution is barred by former prosecution for a different offense. Although a prosecution is for a violation of a different statutory provision or is based on different facts, it is barred by a former prosecution under any of the following circumstances:

(1) The former prosecution resulted in an acquittal which has not subsequently been set aside or in a conviction as defined in section 701-110(3) and the subsequent prosecution is for:

(a) Any offense of which the defendant could have been convicted on the first prosecution;

(b) Any offense for which the defendant should have been tried on the first prosecution under section 701-109 unless the court ordered a separate trial of the offense; or

(c) An offense based on the same conduct, unless:

(i) The offense for which the defendant is subsequently prosecuted requires proof of a fact not required by the former offense and the law defining each of the offenses is intended to prevent a substantially different harm or evil; or (ii) The second offense was not consummated when the former trial began.

(2) The former prosecution was terminated by an acquittal or by a final order or judgment for the defendant which has not been set aside, reversed, or vacated and which acquittal, final order, or judgment necessarily required a determination inconsistent with a fact which must be established for conviction of the second offense.

(3) The former prosecution was improperly terminated, as improper termination is defined in section 701-110(4), and the subsequent prosecution is for an offense of which the defendant could have been convicted had the former prosecution not been improperly terminated.

701-112 HRS

701-112 Former prosecution in another jurisdiction: when a bar. When behavior constitutes an offense within the concurrent jurisdiction of this State and of the United States or another state, a prosecution in any such other jurisdiction is a bar to a subsequent prosecution in this State under any of the following circumstances:

(1) The first prosecution resulted in an acquittal which has not subsequently been set aside or in a conviction as defined in section 701-110(3), and the subsequent prosecution is based on the same conduct, unless:

(a) The offense for which the defendant is subsequently prosecuted requires proof of a fact not required by the former offense and the law defining each of the offenses is intended to prevent a substantially different harm or evil; or

(b) The second offense was not consummated when the former trial began.

(2) The former prosecution was terminated, after the information was filed or the indictment found, by an acquittal or by a final order or judgment for the defendant which has not been set aside, reversed, or vacated and which acquittal, final order, or judgment necessarily required a determination inconsistent with a fact which must be established for conviction of the offense for which the defendant is subsequently prosecuted.

(3) The former prosecution was improperly terminated, as improper termination is defined in section 701-110(4), and the subsequent prosecution is for an offense of which the defendant could have been convicted had the former prosecution not been improperly terminated.

701-113 HRS

701-113 Former prosecution before court lacking jurisdiction or when fraudulently procured by the defendant. A prosecution is not a bar within the meaning of sections 701-110, 701-111, and 701-112 under any of the following circumstances:

(1) The former prosecution was before a court which lacked jurisdiction over the defendant or the offense.

(2) The former prosecution was procured by the defendant without the knowledge of the appropriate prosecuting officer and with the purpose of avoiding the sentence which might otherwise be imposed.

(3) The former prosecution resulted in a judgment of conviction which was held invalid on appeal or in a subsequent proceeding on a writ of habeas corpus, coram nobis, or similar process.

701-114 HRS

701-114 Proof beyond a reasonable doubt.

(1) Except as otherwise provided in section 701-115, no person may be convicted of an offense unless the following are proved beyond a reasonable doubt:

(a) Each element of the offense;

(b) The state of mind required to establish each element of the offense;

(c) Facts establishing jurisdiction;

(d) Facts establishing venue; and

(e) Facts establishing that the offense was committed within the time period specified in section 701-108.

(2) In the absence of the proof required by subsection (1), the innocence of the defendant is presumed.

701-115 HRS

701-115 Defenses.

(1) A defense is a fact or set of facts which negatives penal liability.

(2) No defense may be considered by the trier of fact unless evidence of the specified fact or facts has been presented. If such evidence is presented, then:

(a) If the defense is not an affirmative defense, the defendant is entitled to an acquittal if the trier of fact finds that the evidence, when considered in the light of any contrary prosecution evidence, raises a reasonable doubt as to the defendant's guilt; or

(b) If the defense is an affirmative defense, the defendant is entitled to an acquittal if the trier of fact finds that the evidence, when considered in light of any contrary prosecution evidence, proves by a preponderance of the evidence the specified fact or facts which negative penal liability.

(3) A defense is an affirmative defense if:

(a) It is specifically so designated by the Code or another statute; or

(b) If the Code or another statute plainly requires the defendant to prove the defense by a preponderance of the evidence.

701-116 HRS

701-116 Proving applicability of the Code. When the application of the Code depends on the finding of a fact which is not required to be found beyond a reasonable doubt:

(1) The burden of proving the fact is on the prosecution or defendant, depending on whose interest or contention will be furthered if the finding should be made; and

(2) The fact must be proved by a preponderance of the evidence.

701-117 HRS

701-117 Prima facie evidence. Prima facie evidence of a fact is evidence which, if accepted in its entirety by the trier of fact, is sufficient to prove the fact. Prima facie evidence provisions in this Code are governed by section 626-1, rule 306.

701-118 HRS

701-118 General definitions. In this Code, unless a different meaning plainly is required: "Act" or "action" means a bodily movement whether voluntary or involuntary. "Acted" includes, where relevant, "omitted to act". "Actor" includes, a person who acts, or, where relevant, a person guilty of omission. "Another" means any other person and includes, where relevant, the United States, this State and any of its political subdivisions, and any other state and any of its political subdivisions. "Conduct" means an act or omission, or, where relevant, a series of acts or a series of omissions, or a series of acts and omissions. "Law enforcement officer" means any public servant, whether employed by the State or county or by the United States, vested by law with a duty to maintain public order or, to make arrests for offenses or to enforce the criminal laws, whether that duty extends to all offenses or is limited to a specific class of offenses. "Omission" means a failure to act. "Person", "he", "him", "actor", and "defendant" include any natural person, including any natural person whose identity can be established by means of scientific analysis, including but not limited to scientific analysis of deoxyribonucleic acid and fingerprints, whether or not the natural person's name is known, and, where relevant, a corporation or an unincorporated association. "State" means a state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and any territory or possession of the United States. "Statute" includes the Constitution of

the State and a local law or ordinance of a political subdivision of the State.

701-119 HRS

701-119 REPEALED. L 1988, c 260, §§4, 7; L 1996, c 104, §6.

Chapter 702

702-200 HRS

702-200 Requirement of voluntary act or voluntary omission.

(1) In any prosecution it is a defense that the conduct alleged does not include a voluntary act or the voluntary omission to perform an act of which the defendant is physically capable.

(2) Where the defense provided in subsection

(1) is based on a physical or mental disease, disorder, or defect which precludes or impairs a voluntary act or a voluntary omission, the defense shall be treated exclusively according to chapter 704, except that a defense based on intoxication which is pathological or not self-induced which precludes or impairs a voluntary act or a voluntary omission shall be treated exclusively according to this chapter.

702-201 HRS

702-201 "Voluntary act" defined. "Voluntary act" means a bodily movement performed consciously or habitually as the result of the effort or determination of the defendant.

702-202 HRS

702-202 Voluntary act includes possession. Possession is a voluntary act if the defendant knowingly procured or received the thing possessed or if the defendant was aware of the defendant's control of it for a sufficient period to have been able to terminate the defendant's possession.

702-203 HRS

702-203 Penal liability based on an omission. Penal liability may not be based on an omission unaccompanied by action unless:

(1) The omission is expressly made a sufficient basis for penal liability by the law defining the offense; or

(2) A duty to perform the omitted act is otherwise imposed by law.

702-204 HRS

702-204 State of mind required. Except as provided in section 702-212, a person is not guilty of an offense unless the person acted intentionally, knowingly, recklessly, or negligently, as the law specifies, with respect to each element of the offense. When the state of mind required to establish an element of an offense is not specified by the law, that element is established if, with respect thereto, a person acts intentionally, knowingly, or recklessly.

702-205 HRS

702-205 Elements of an offense. The elements of an offense are such (1) conduct, (2) attendant circumstances, and

(3) results of conduct, as:

(a) Are specified by the definition of the offense, and

(b) Negative a defense (other than a defense based on the statute of limitations, lack of venue, or lack of jurisdiction).

702-206 HRS

702-206 Definitions of states of mind.

(1) "Intentionally."

(a) A person acts intentionally with respect to his conduct when it is his conscious object to engage in such conduct.

(b) A person acts intentionally with respect to attendant circumstances when he is aware of the existence of such circumstances or believes or hopes that they exist.

(c) A person acts intentionally with respect to a result of his conduct when it is his conscious object to cause such a result.

(2) "Knowingly."

(a) A person acts knowingly with respect to his conduct when he is aware that his conduct is of that nature.

(b) A person acts knowingly with respect to attendant circumstances when he is aware that such circumstances exist.

(c) A person acts knowingly with respect to a result of his conduct when he is aware that it is practically certain that his conduct will cause such a result.

(3) "Recklessly."

(a) A person acts recklessly with respect to his conduct when he consciously disregards a substantial and unjustifiable risk that the person's conduct is of the specified nature.

(b) A person acts recklessly with respect to attendant circumstances when he consciously disregards a substantial and unjustifiable risk that such circumstances exist.

(c) A person acts recklessly with respect to a result of his conduct when he consciously disregards a substantial and unjustifiable risk that his conduct will cause such a result.

(d) A risk is substantial and unjustifiable within the meaning of this section if, considering the nature and purpose of the person's conduct and the circumstances known to him, the disregard of the risk involves a gross deviation from the standard of conduct that a law-abiding person would observe in the same situation.

(4) "Negligently."

(a) A person acts negligently with respect to his conduct when he should be aware of a substantial and unjustifiable risk taken that the person's conduct is of the specified nature.

(b) A person acts negligently with respect to attendant circumstances when he should be aware of a substantial and unjustifiable risk that such circumstances exist.

(c) A person acts negligently with respect to a result of his conduct when he should be aware of a substantial and unjustifiable risk that his conduct will cause such a result.

(d) A risk is substantial and unjustifiable within the meaning of this subsection if the person's failure to perceive it, considering the nature and purpose of his conduct and the circumstances known to him, involves a gross deviation from the standard of care that a law- abiding person would observe in the same situation.

702-207 HRS

702-207 Specified state of mind applies to all elements. When the definition of an offense specifies the state of mind sufficient for the commission of that offense, without distinguishing among the elements thereof, the specified state of mind shall apply to all elements of the offense, unless a contrary purpose plainly appears.

702-208 HRS

702-208 Substitutes for negligence, recklessness, and knowledge. When the law provides that negligence is sufficient to establish an element of an offense, that element also is established if, with respect thereto, a person acts intentionally, knowingly, or recklessly. When the law provides that recklessness is sufficient to establish an element of an offense, that element also is established if, with respect thereto, a person acts intentionally or knowingly. When the law provides that acting knowingly is sufficient to establish an element of an offense, that element also is established if, with respect thereto, a person acts intentionally.

702-209 HRS

702-209 Conditional intent. When a particular intent is necessary to establish an element of an offense, it is immaterial that such intent was conditional unless the condition negatives the harm or evil sought to be prevented by the law prohibiting the offense.

702-210 HRS

702-210 Requirement of wilfulness satisfied by acting knowingly. A requirement that an offense be committed wilfully is satisfied if a person acts knowingly with respect to the elements of the offense, unless a purpose to impose further requirements appears.

702-211 HRS

702-211 State of mind as determinant of grade or class of a particular offense. When the grade or class of a particular offense depends on whether it is committed intentionally, knowingly, recklessly, or negligently, its grade or class shall be the lowest for which the determinative state of mind is established with respect to any element of the offense.

702-212 HRS

702-212 When state of mind requirements are inapplicable to violations and to crimes defined by statutes other than this Code. The state of mind requirements prescribed by sections 702-204 and 702-207 through 702-211 do not apply to:

(1) An offense which constitutes a violation, unless the state of mind requirement involved is included in the definition of the violation or a legislative purpose to impose such a requirement plainly appears; or

(2) A crime defined by statute other than this Code, insofar as a legislative purpose to impose absolute liability for such offense or with respect to any element thereof plainly appears.

702-213 HRS

702-213 Effect of absolute liability in reducing grade of offense to violation. Notwithstanding any other provisions of existing law and unless a subsequent statute otherwise provides:

(1) When absolute liability is imposed with respect to any element of an offense defined by a statute other than this Code and a conviction is based upon such liability, the offense constitutes a violation except as provided in section 702-212(2); and

(2) Although absolute liability is imposed by law with respect to one or more of the elements of an offense defined by a statute other than this Code, the culpable commission of the offense may be charged and proved, in which event negligence with respect to such elements constitutes a sufficient state of mind and the classification of the offense and the sentence that may be imposed therefor upon conviction are determined by section 701-107 and chapter 706.

702-214 HRS

702-214 Causal relationship between conduct and result. Conduct is the cause of a result when it is an antecedent but for which the result in question would not have occurred.

702-215 HRS

702-215 Intentional or knowing causation; different result from that intended or contemplated. In the following instances intentionally or knowingly causing a particular result shall be deemed to be established even though the actual result caused by the defendant may not have been within the defendant's intention or contemplation:

(1) The actual result differs from that intended or contemplated, as the case may be, only in the respect that a different person or different property is injured or affected or that the injury or harm intended or contemplated would have been more serious or more extensive than that caused; or

(2) The actual result involves the same kind of injury or harm as the intended or contemplated result and is not too remote or accidental in its occurrence or too dependent on another's volitional conduct to have a bearing on the defendant's liability or on the gravity of the defendant's offense.

702-216 HRS

702-216 Reckless or negligent causation; different result from that within the risk. In the following instances, recklessly or negligently causing a particular result shall be deemed to be established even though the actual result caused by the defendant may not have been within the risk of which the defendant was or, in the case of negligence, should have been aware:

(1) The actual result differs from the probable result only in the respect that a different person or different property is injured or affected or that the probable injury or harm would have been more serious or more extensive than that caused; or

(2) The actual result involves the same kind of injury or harm as the probable result and is not too remote or accidental in its occurrence or too dependent on another's volitional conduct to have a bearing on the defendant's liability or on the gravity of the defendant's offense.

702-217 HRS

702-217 Causation in offenses of absolute liability. When causing a particular result is an element of an offense for which absolute liability is imposed by law, the element is not established unless the actual result is a probable consequence of the defendant's conduct.

702-218 Bill

702-218 Ignorance or mistake as a defense. In any prosecution for an offense, it is a defense that the accused engaged in the prohibited conduct under ignorance or mistake of fact if:

(1) The ignorance or mistake negatives the state of mind required to establish an element of the offense; or

(2) The law defining the offense or a law related thereto provides that the state of mind established by such ignorance or mistake constitutes a defense.

702-219 HRS

702-219 Ignorance or mistake; reduction in grade and class of the offense. Although ignorance or mistake would otherwise afford a defense to the offense charged, the defense is not available if the defendant would be guilty of another offense had the situation been as the defendant supposed. In such case, however, the ignorance or mistake of the defendant shall reduce the grade and class of the offense of which the defendant may be convicted to those of the offense of which the defendant would be guilty had the situation been as the defendant supposed.

702-220 HRS

702-220 Ignorance or mistake of law; belief that conduct not legally prohibited. In any prosecution, it shall be an affirmative defense that the defendant engaged in the conduct or caused the result alleged under the belief that the conduct or result was not legally prohibited when the defendant acts in reasonable reliance upon an official statement of the law, afterward determined to be invalid or erroneous, contained in:

(1) A statute or other enactment;

(2) A judicial decision, opinion, or judgment;

(3) An administrative order or administrative grant of permission; or

(4) An official interpretation of the public officer or body charged by law with responsibility for the interpretation, administration, or enforcement of the law defining the offense.

702-221 HRS

702-221 Liability for conduct of another.

(1) A person is guilty of an offense if it is committed by his own conduct or by the conduct of another person for which he is legally accountable, or both.

(2) A person is legally accountable for the conduct of another person when:

(a) Acting with the state of mind that is sufficient for the commission of the offense, he causes an innocent or irresponsible person to engage in such conduct;

(b) He is made accountable for the conduct of such other person by this Code or by the law defining the offense; or

(c) He is an accomplice of such other person in the commission of the offense.

702-222 HRS

702-222 Liability for conduct of another; complicity. A person is an accomplice of another person in the commission of an offense if:

(1) With the intention of promoting or facilitating the commission of the offense, the person:

(a) Solicits the other person to commit it;

(b) Aids or agrees or attempts to aid the other person in planning or committing it; or

(c) Having a legal duty to prevent the commission of the offense, fails to make reasonable effort so to do; or

(2) The person's conduct is expressly declared by law to establish the person's complicity.

702-223 HRS

702-223 Liability for conduct of another; complicity with respect to the result. When causing a particular result is an element of an offense, an accomplice in the conduct causing the result is an accomplice in the commission of that offense, if the accomplice acts, with respect to that result, with the state of mind that is sufficient for the commission of the offense.

702-224 HRS

702-224 Liability for conduct of another; exemption from complicity. Unless otherwise provided by this Code or by the law defining the offense, a person is not an accomplice in an offense committed by another person if:

(1) He is a victim of that offense;

(2) The offense is so defined that his conduct is inevitably incident to its commission; or

(3) He terminates his complicity prior to the commission of the offense and:

(a) Wholly deprives his complicity of effectiveness in the commission of the offense; or

(b) Gives timely warning to the law enforcement authorities or otherwise makes reasonable effort to prevent the commission of the offense.

702-225 HRS

702-225 Liability for conduct of another; incapacity of defendant; failure to prosecute or convict or immunity of other person. In any prosecution for an offense in which the liability of the defendant is based on conduct of another person, it is no defense that:

(1) The offense charged, as defined, can be committed only by a particular class of persons, and the defendant, not belonging to such class, is for that reason legally incapable of committing the offense in an individual capacity, unless imposing liability on the defendant is inconsistent with the purpose of the provision establishing the defendant's incapacity;

(2) The other person has not been prosecuted for or convicted of any offense, or has been convicted of a different offense or degree of offense, based upon the conduct in question; or

(3) The other person has a legal immunity from prosecution based upon the conduct in question.

702-226 HRS

702-226 Liability for conduct of another; multiple convictions; different degrees. When, pursuant to any section from section 702-221 through section 702-223, two or more persons are liable for an offense which is divided into degrees, each person is guilty of the degree of the offense which is consistent with the person's own state of mind and with the person's own accountability for an aggravating fact or circumstance.

702-227 HRS

702-227 Penal liability of corporations and unincorporated associations. A corporation or unincorporated association is guilty of an offense when:

(1) It omits to discharge a specific duty of affirmative performance imposed on corporations or unincorporated associations by law and the omission is prohibited by penal law;

(2) The conduct or result specified in the definition of the offense is engaged in, caused, authorized, solicited, requested, commanded, or recklessly tolerated by the board of directors of the corporation or by the executive board of the unincorporated association or by a high managerial agent acting within the scope of the agent's office or employment and in behalf of the corporation or the unincorporated association; or

(3) The conduct or result specified in the definition of the offense is engaged in or caused by an agent of the corporation or the unincorporated association while acting within the scope of the agent's office or employment and in behalf of the corporation or the unincorporated association and:

(a) The offense is a misdemeanor, petty misdemeanor, or violation; or

(b) The offense is one defined by a statute which clearly indicates a legislative purpose to impose such criminal liability on a corporation or unincorporated association.

702-228 HRS

702-228 Liability of persons acting, or under a duty to act, in behalf of corporations or unincorporated associations.

(1) A person is legally accountable for any conduct the person performs or causes to be performed in the name of a corporation or an unincorporated association or in its behalf to the same extent as if it were performed in the person's own name or behalf.

(2) Whenever a duty to act is imposed by law upon a corporation or an unincorporated association, any agent of the corporation or the unincorporated association having primary responsibility for the discharge of the duty is legally accountable for a reckless omission to perform the required act to the same extent as if the duty were imposed by law directly upon the agent.

(3) When a person is convicted of an offense by reason of the person's legal accountability for the conduct of a corporation or of an unincorporated association, the person is subject to the sentence authorized by law when a natural person is convicted of an offense of the grade and class involved.

702-229 HRS

702-229 Definitions relating to corporations and unincorporated associations. As used in sections 702-227 and 702-228: "Agent" means any director, officer, servant, employee or other person authorized to act in behalf of the corporation or association and, in the case of an unincorporated association, a member of such association. "Corporation" does not include an entity organized as or by a governmental agency for the execution of a governmental program. "High managerial agent" means an officer of a corporation or an unincorporated association, or, in the case of a partnership, a partner, or any other agent of a corporation or unincorporated association having duties of such responsibility that his conduct may fairly be assumed to represent the policy of the corporation or the unincorporated association.

702-230 HRS

702-230 Intoxication; self-induced; not self-induced; pathological; affirmative defense. [Repeal and reenactment on July 1, 2034. L 2024, c 243, §4.]

(1) Self-induced intoxication is prohibited as a defense to any offense, except as specifically provided in this section.

(2) Evidence of the intoxication of the defendant that is not self-induced intoxication or that is pathological intoxication shall be admissible to prove or disprove the conduct alleged or the state of mind sufficient to establish an element of the offense. Evidence of self-induced intoxication of the defendant is admissible to prove or disprove conduct or to prove the state of mind sufficient to establish an element of an offense. Evidence of self-induced intoxication of the defendant is not admissible to disprove the state of mind sufficient to establish an element of the offense.

(3) Intoxication does not, in itself, constitute a physical or mental disease, disorder, or defect within the meaning of section 704-400.

(4) Intoxication that is:

(a) Not self-induced intoxication; or

(b) Pathological intoxication, is an affirmative defense if by reason of the intoxication, the defendant at the time of the defendant's conduct lacks substantial capacity to engage in the alleged conduct, to have the state of mind sufficient to establish an element of the offense, to appreciate the wrongfulness of the defendant's conduct, or to conform the defendant's conduct to the requirements of law.

(5) As used in this section: "Intoxication" means a disturbance of mental or physical capacities resulting from the introduction of substances into the body. "Lacks substantial capacity" means capacity that has been impaired to such a degree that only an extremely limited amount remains. "Pathological intoxication" means intoxication grossly excessive in degree, given the amount of the intoxicant, to which the defendant does not know the defendant is susceptible and that results from a physical abnormality of the defendant. "Self-induced intoxication" means intoxication caused by substances that the defendant knowingly introduces into the defendant's body, the tendency of which to cause intoxication the defendant knows or ought to know, unless the defendant introduces the substances pursuant to medical advice or under circumstances that would afford a defense to a charge of a penal offense.

702-231 HRS

702-231 Duress.

(1) It is a defense to a penal charge that the defendant engaged in the conduct or caused the result alleged because he was coerced to do so by the use of, or a threat to use, unlawful force against his person or the person of another, which a person of reasonable firmness in his situation would have been unable to resist.

(2) The defense provided by this section is unavailable if the defendant recklessly placed himself in a situation in which it was probable that he would be subjected to duress. The defense is also unavailable if he was negligent in placing himself in such a situation, whenever negligence suffices to establish the requisite state of mind for the offense charged.

(3) It is not a defense that a person acted on the command of his or her spouse, unless he or she acted under such coercion as would establish a defense under this section.

(4) When the conduct of the defendant would otherwise be justifiable under section 703-302, this section does not preclude the defense of justification.

(5) In prosecutions for any offense described in this Code, the defense asserted under this section shall constitute an affirmative defense. The defendant shall have the burden of going forward with the evidence to prove the facts constituting such defense, unless such facts are supplied by the testimony of the prosecuting witness or circumstance in such testimony, and of proving such facts by a preponderance of the evidence pursuant to section 701-115.

702-232 HRS

702-232 Military orders. It is an affirmative defense to a penal charge that the defendant, in engaging in the conduct or causing the result alleged, which the defendant did not know to be unlawful, did no more than execute an order of the defendant's superior in the armed services.

702-233 HRS

702-233 Consent; general. In any prosecution, the victim's consent to the conduct alleged, or to the result thereof, is a defense if the consent negatives an element of the offense or precludes the infliction of the harm or evil sought to be prevented by the law defining the offense.

702-234 HRS

702-234 Consent to bodily injury. In any prosecution involving conduct which causes or threatens bodily injury, consent to such conduct or to the infliction of such injury is a defense if:

(1) The conduct and the injury are reasonably foreseeable hazards of joint participation in a lawful athletic event or competitive sport; or

(2) The consent establishes a justification for the conduct under chapter 703.

702-235 HRS

702-235 Ineffective consent. Unless otherwise provided by this Code or by the law defining the offense, consent does not constitute a defense if:

(1) It is given by a person who is legally incompetent to authorize the conduct alleged;

(2) It is given by a person who by reason of youth, mental disease, disorder, or defect, or intoxication is manifestly unable or known by the defendant to be unable to make a reasonable judgment as to the nature or harmfulness of the conduct alleged;

(3) It is given by a person whose improvident consent is sought to be prevented by the law defining the offense; or

(4) It is induced by force, duress or deception.

702-236 HRS

702-236 De minimis infractions.

(1) The court may dismiss a prosecution if, having regard to the nature of the conduct alleged and the nature of the attendant circumstances, it finds that the defendant's conduct:

(a) Was within a customary license or tolerance, which was not expressly refused by the person whose interest was infringed and which is not inconsistent with the purpose of the law defining the offense;

(b) Did not actually cause or threaten the harm or evil sought to be prevented by the law defining the offense or did so only to an extent too trivial to warrant the condemnation of conviction; or

(c) Presents such other extenuations that it cannot reasonably be regarded as envisaged by the legislature in forbidding the offense.

(2) The court shall not dismiss a prosecution under subsection (1)(c) of this section without filing a written statement of its reasons.

702-237 HRS

702-237 Entrapment.

(1) In any prosecution, it is an affirmative defense that the defendant engaged in the prohibited conduct or caused the prohibited result because the defendant was induced or encouraged to do so by a law enforcement officer, or by a person acting in cooperation with a law enforcement officer, who, for the purpose of obtaining evidence of the commission of an offense, either:

(a) Knowingly made false representations designed to induce the belief that such conduct or result was not prohibited; or

(b) Employed methods of persuasion or inducement which created a substantial risk that the offense would be committed by persons other than those who are ready to commit it.

(2) The defense afforded by this section is unavailable when causing or threatening bodily injury is an element of the offense charged and the prosecution is based on conduct causing or threatening such injury to a person other than the person perpetrating the entrapment.

Chapter 703

703-300 HRS

703-300 Definitions relating to justification. In this chapter, unless a different meaning is plainly required: "Believes" means reasonably believes. "Deadly force" means force which the actor uses with the intent of causing or which the actor knows to create a substantial risk of causing death or serious bodily harm. Intentionally firing a firearm in the direction of another person or in the direction which another person is believed to be constitutes deadly force. A threat to cause death or serious bodily injury, by the production of a weapon or otherwise, so long as the actor's intent is limited to creating an apprehension that the actor will use deadly force if necessary, does not constitute deadly force. "Dwelling" means any building or structure, though movable or temporary, or a portion thereof, which is for the time being a home or place of lodging. "Force" means any bodily impact, restraint, or confinement, or the threat thereof. "Unlawful force" means force which is employed without the consent of the person against whom it is directed and the employment of which constitutes an offense or would constitute an offense except for a defense not amounting to a justification to use the force. Assent constitutes consent, within the meaning of this section, whether or not it otherwise is legally effective, except assent to the infliction of death or serious or substantial bodily injury.

703-301 HRS

703-301 Justification a defense; civil remedies unaffected.

(1) In any prosecution for an offense, justification, as defined in sections 703-302 through 703-309, is a defense.

(2) The fact that conduct is justifiable under this chapter does not abolish or impair any remedy for such conduct which is available in any civil action.

703-302 HRS

703-302 Choice of evils.

(1) Conduct which the actor believes to be necessary to avoid an imminent harm or evil to the actor or to another is justifiable provided that:

(a) The harm or evil sought to be avoided by such conduct is greater than that sought to be prevented by the law defining the offense charged;

(b) Neither the Code nor other law defining the offense provides exceptions or defenses dealing with the specific situation involved; and

(c) A legislative purpose to exclude the justification claimed does not otherwise plainly appear.

(2) When the actor was reckless or negligent in bringing about the situation requiring a choice of harms or evils or in appraising the necessity for the actor's conduct, the justification afforded by this section is unavailable in a prosecution for any offense for which recklessness or negligence, as the case may be, suffices to establish culpability.

(3) In a prosecution for escape under section 710-1020 or 710-1021, the defense available under this section is limited to an affirmative defense consisting of the following elements:

(a) The actor receives a threat, express or implied, of death, substantial bodily injury, or forcible sexual attack;

(b) Complaint to the proper prison authorities is either impossible under the circumstances or there exists a history of futile complaints;

(c) Under the circumstances there is no time or opportunity to resort to the courts;

(d) No force or violence is used against prison personnel or other innocent persons; and

(e) The actor promptly reports to the proper authorities when the actor has attained a position of safety from the immediate threat.

703-303 HRS

703-303 Execution of public duty.

(1) Except as provided in subsection (2), conduct is justifiable when it is required or authorized by:

(a) The law defining the duties or functions of a public officer or the assistance to be rendered to a public officer in the performance of the public officer's duties;

(b) The law governing the execution of legal process;

(c) The judgment or order of a competent court or tribunal;

(d) The law governing the armed services or the lawful conduct of war; or

(e) Any other provision of law imposing a public duty.

(2) The other sections of this chapter apply to:

(a) The use of force upon or toward the person of another for any of the purposes dealt with in those sections; and

(b) The use of deadly force for any purpose, unless the use of deadly force is otherwise expressly authorized by law or occurs in the lawful conduct of war.

(3) The justification afforded by subsection

(1) applies:

(a) When the actor believes the actor's conduct to be required or authorized by the judgment or direction of a competent court or tribunal or in the lawful execution of legal process, notwithstanding lack of jurisdiction of the court or defect in the legal process; and

(b) When the actor believes the actor's conduct to be required or authorized to assist a public officer in the performance of the officer's duties, notwithstanding that the officer exceeded the officer's legal authority.

703-304 HRS

703-304 Use of force in self-protection.

(1) Subject to the provisions of this section and of section 703-308, the use of force upon or toward another person is justifiable when the actor believes that such force is immediately necessary for the purpose of protecting himself against the use of unlawful force by the other person on the present occasion.

(2) The use of deadly force is justifiable under this section if the actor believes that deadly force is necessary to protect himself against death, serious bodily injury, kidnapping, rape, or forcible sodomy.

(3) Except as otherwise provided in subsections (4) and (5) of this section, a person employing protective force may estimate the necessity thereof under the circumstances as he believes them to be when the force is used without retreating, surrendering possession, doing any other act which he has no legal duty to do, or abstaining from any lawful action.

(4) The use of force is not justifiable under this section:

(a) To resist an arrest which the actor knows is being made by a law enforcement officer, although the arrest is unlawful; or

(b) To resist force used by the occupier or possessor of property or by another person on his behalf, where the actor knows that the person using the force is doing so under a claim of right to protect the property, except that this limitation

shall not apply if:

(i) The actor is a public officer acting in the performance of his duties or a person lawfully assisting him therein or a person making or assisting in a lawful arrest; or (ii) The actor believes that such force is necessary to protect himself against death or serious bodily injury.

(5) The use of deadly force is not justifiable under this section if:

(a) The actor, with the intent of causing death or serious bodily injury, provoked the use of force against himself in the same encounter; or

(b) The actor knows that he can avoid the necessity of using such force with complete safety by retreating or by surrendering possession of a thing to a person asserting a claim of right thereto or by complying with a demand that he abstain from any action which he has no duty to take, except that:

(i) The actor is not obliged to retreat from his dwelling or place of work, unless he was the initial aggressor or is assailed in his place of work by another person whose place of work the actor knows it to be; and (ii) A public officer justified in using force in the performance of his duties, or a person justified in using force in his assistance or a person justified in using force in making an arrest or preventing an escape, is not obliged to desist from efforts to perform his duty, effect the arrest, or prevent the escape because of resistance or threatened resistance by or on behalf of the person against whom the action is directed.

(6) The justification afforded by this section extends to the use of confinement as protective force only if the actor takes all reasonable measures to terminate the confinement as soon as he knows that he safely can, unless the person confined has been arrested on a charge of crime.

703-305 HRS

703-305 Use of force for the protection of other persons.

(1) Subject to the provisions of this section and of section 703-310, the use of force upon or toward the person of another is justifiable to protect a third person when:

(a) Under the circumstances as the actor believes them to be, the person whom the actor seeks to protect would be justified in using such protective force; and

(b) The actor believes that the actor's intervention is necessary for the protection of the other person.

(2) Notwithstanding subsection (1):

(a) When the actor would be obliged under section 703-304 to retreat, to surrender the possession of a thing, or to comply with a demand before using force in self-protection, the actor is not obliged to do so before using force for the protection of another person, unless the actor knows that the actor can thereby secure the complete safety of such other person;

(b) When the person whom the actor seeks to protect would be obliged under section 703-304 to retreat, to surrender the possession of a thing or to comply with a demand if the person knew that the person could obtain complete safety by so doing, the actor is obliged to try to cause the person to do so before using force in the person's protection if the actor knows that the actor can obtain the other's complete safety in that way; and

(c) Neither the actor nor the person whom the actor seeks to protect is obliged to retreat when in the other's dwelling or place of work to any greater extent than in the actor's or the person's own.

703-306 HRS

703-306 Use of force for the protection of property.

(1) The use of force upon or toward the person of another is justifiable when the actor believes that such force is immediately necessary:

(a) To prevent the commission of criminal trespass or burglary in a building or upon real property in the actor's possession or in the possession of another person for whose protection the actor acts;

(b) To prevent unlawful entry upon real property in the actor's possession or in the possession of another person for whose protection the actor acts; or

(c) To prevent theft, criminal mischief, or any trespassory taking of tangible, movable property in the actor's possession or in the possession of another person for whose protection the actor acts.

(2) The actor may in the circumstances specified in subsection (1) use such force as the actor believes is necessary to protect the threatened property, provided that the actor first requests the person against whom force is used to desist from the person's interference with the property, unless the actor believes that:

(a) Such a request would be useless;

(b) It would be dangerous to the actor or another person to make the request; or

(c) Substantial harm would be done to the physical condition of the property which is sought to be protected before the request could effectively be made.

(3) The use of deadly force for the protection of property is justifiable only if:

(a) The person against whom the force is used is attempting to dispossess the actor of the actor's dwelling otherwise than under a claim of right to its possession; or

(b) The person against whom the deadly force is used is attempting to commit felonious property damage, burglary, robbery, or felonious theft and either:

(i) Has employed or threatened deadly force against or in the presence of the actor; or (ii) The use of force other than deadly force to prevent the commission of the crime would expose the actor or another person in the actor's presence to substantial danger of serious bodily injury.

(4) The justification afforded by this section extends to the use of a device for the purpose of protecting property only if:

(a) The device is not designed to cause or known to create a substantial risk of causing death or serious bodily injury;

(b) The use of the particular device to protect the property from entry or trespass is reasonable under the circumstances, as the defendant believes them to be; and

(c) The device is one customarily used for such a purpose or reasonable care is taken to make known to probable intruders the fact that it is used.

(5) The justification afforded by this section extends to the use of confinement as protective force only if the actor takes all reasonable measures to terminate the confinement as soon as the actor knows that the actor can do so with safety to the property, unless the person confined has been arrested on a charge of crime.

703-307 HRS

703-307 Use of force in law enforcement.

(1) Subject to the provisions of this section and of section 703-310, the use of force upon or toward the person of another is justifiable when the actor is making or assisting in making an arrest and the actor believes that such force is immediately necessary to effect a lawful arrest.

(2) The use of force is not justifiable under this section unless:

(a) The actor makes known the purpose of the arrest or believes that it is otherwise known by or cannot reasonably be made known to the person to be arrested; and

(b) When the arrest is made under a warrant, the warrant is valid or believed by the actor to be valid.

(3) The use of deadly force is not justifiable under this section unless:

(a) The arrest is for a felony;

(b) The person effecting the arrest is authorized to act as a law enforcement officer or is assisting a person whom he believes to be authorized to act as a law enforcement officer;

(c) The actor believes that the force employed creates no substantial risk of injury to innocent persons; and

(d) The actor believes that:

(i) The crimes for which the arrest is made involved conduct including the use or threatened use of deadly force; or (ii) There is a substantial risk that the person to be arrested will cause death or serious bodily injury if his apprehension is delayed.

(4) The use of force to prevent the escape of an arrested person from custody is justifiable when the force could justifiably have been employed to effect the arrest under which the person is in custody, except that a guard or other person authorized to act as a law enforcement officer is justified in using force which he believes to be immediately necessary to prevent the escape from a detention facility.

(5) A private person who is summoned by a law enforcement officer to assist in effecting an unlawful arrest is justified in using any force which he would be justified in using if the arrest were lawful, provided that he does not believe the arrest is unlawful. A private person who assists another private person in effecting an unlawful arrest, or who, not being summoned, assists a law enforcement officer in effecting an unlawful arrest, is justified in using any force which he would be justified in using if the arrest were lawful, provided that he believes the arrest is lawful, and the arrest would be lawful if the facts were as he believes them to be.

703-308 HRS

703-308 Use of force to prevent suicide or the commission of a crime.

(1) The use of force upon or toward the person of another is justifiable when the actor believes that such force is immediately necessary to prevent the other person from committing suicide, inflicting serious bodily harm upon oneself, committing or consummating the commission of a crime involving or threatening bodily injury, damage to or loss of property, or breach of the peace, except that:

(a) Any limitations imposed by the other provisions of this chapter on the justifiable use of force in self-protection, for the protection of others, the protection of property, the effectuation of an arrest, or the prevention of an escape from custody shall apply notwithstanding the criminality of the conduct against which such force is used; and

(b) The use of deadly force is not in any event justifiable under this section unless:

(i) The actor believes that there is a substantial risk that the person whom the actor seeks to prevent from committing a crime will cause death or serious bodily injury to another unless the commission or the consummation of the crime is prevented and that the use of such force presents no substantial risk of injury to innocent persons; or (ii) The actor believes that the use of such force is necessary to suppress a riot after the rioters have been ordered to disperse and warned, in any particular manner that the law may require, that deadly force will be used if they do not obey.

(2) The justification afforded by this section extends to the use of confinement as preventive force only if the actor takes all reasonable measures to terminate the confinement as soon as the actor knows that the actor safely can, unless the person confined has been arrested on a charge of crime.

703-309 HRS

703-309 Use of force by persons with special responsibility for care, discipline, or safety of others. The use of force upon or toward the person of another is justifiable under the following circumstances:

(1) The actor is the parent, guardian, or other person similarly responsible for the general care and supervision of a minor, or a person acting at the request of the parent, guardian, or other responsible person, and:

(a) The force is employed with due regard for the age and size of the minor and is reasonably related to the purpose of safeguarding or promoting the welfare of the minor, including the prevention or punishment of the minor's misconduct; provided that there shall be a rebuttable presumption that the following types of force are not justifiable for purposes of this [paragraph]: throwing, kicking, burning, biting, cutting, striking with a closed fist, shaking a minor under three years of age, interfering with breathing, or threatening with a deadly weapon; and

(b) The force used does not intentionally, knowingly, recklessly, or negligently create a risk of causing substantial bodily injury, disfigurement, extreme pain or mental distress, or neurological damage.

(2) The actor is a principal, the principal's agent, a teacher, or a person otherwise entrusted with the care or supervision for a special purpose of a minor, and:

(a) The actor believes that the force used is necessary to further that special purpose, including maintenance of reasonable discipline in a school, class, other group, or at activities supervised by the department of education held on or off school property and that the use of force is consistent with the welfare of the minor; and

(b) The degree of force, if it had been used by the parent or guardian of the minor, would not be unjustifiable under paragraph (1).

(3) The actor is the guardian or other person similarly responsible for the general care and supervision of an incompetent person, and:

(a) The force is employed with due regard for the age and size of the incompetent person and is reasonably related to the purpose of safeguarding or promoting the welfare of the incompetent person, including the prevention of the incompetent person's misconduct, or, when such incompetent person is in a hospital or other institution for the incompetent person's

care and custody, for the maintenance of reasonable discipline in the institution; and

(b) The force used is not designed to cause or known to create a risk of causing substantial bodily injury, disfigurement, extreme pain or mental distress, or neurological damage.

(4) The actor is a doctor or other therapist or a person assisting the doctor or therapist at the doctor's or therapist's direction, and:

(a) The force is used for the purpose of administering a recognized form of treatment which the actor believes to be adapted to promoting the physical or mental health of the patient; and

(b) The treatment is administered with the consent of the patient, or, if the patient is a minor or an incompetent person, with the consent of the minor's or incompetent person's parent or guardian or other person legally competent to consent in the minor's or incompetent person's behalf, or the treatment is administered in an emergency when the actor believes that no one competent to consent can be consulted and that a reasonable person, wishing to safeguard the welfare of the patient, would consent.

(5) The actor is a warden or other authorized official of a correctional institution, and:

(a) The actor believes that the force used is necessary for the purpose of enforcing the lawful rules or procedures of the institution;

(b) The nature or degree of force used is not forbidden by other provisions of the law governing the conduct of correctional institutions; and

(c) If deadly force is used, its use is otherwise justifiable under this chapter.

(6) The actor is a person responsible for the safety of a vessel or an aircraft or a person acting at the direction of the person responsible for the safety of a vessel or an aircraft, and:

(a) The actor believes that the force used is necessary to prevent interference with the operation of the vessel or aircraft or obstruction of the execution of a lawful order, unless the actor's belief in the lawfulness of the order is erroneous and the actor's error is due to ignorance or mistake as to the law defining authority; and

(b) If deadly force is used, its use is otherwise justifiable under this chapter.

(7) The actor is a person who is authorized or required by law to maintain order or decorum in a vehicle, train, or other carrier, or in a place where others are assembled, and:

(a) The actor believes that the force used is necessary for that purpose; and

(b) The force used is not designed to cause or known to create a substantial risk of causing death, bodily injury or extreme mental distress.

703-310 HRS

703-310 Provisions generally applicable to justification.

(1) When the actor believes that the use of force upon or toward the person of another is necessary for any of the purposes for which such belief would establish a justification under sections 703-303 to 703-309 but the actor is reckless or negligent in having such belief or in acquiring or failing to acquire any knowledge or belief which is material to the justifiability of the actor's use of force, the justification afforded by those sections is unavailable in a prosecution for an offense for which recklessness or negligence, as the case may be, suffices to establish culpability.

(2) When the actor is justified under sections 703-303 to 703-309 in using force upon or toward the person of another but the actor recklessly or negligently injures or creates a risk of injury to innocent persons, the justification afforded by those sections is unavailable in a prosecution for such recklessness or negligence toward innocent persons.

Chapter 704

704-400 HRS

704-400 Physical or mental disease, disorder, or defect excluding penal responsibility.

(1) A person is not responsible, under this Code, for conduct if at the time of the conduct as a result of physical or mental disease, disorder, or defect the person lacks substantial capacity either to appreciate the wrongfulness of the person's conduct or to conform the person's conduct to the requirements of law.

(2) As used in this chapter, the terms "physical or mental disease, disorder, or defect" do not include an abnormality manifested only by repeated penal or otherwise anti-social conduct.

704-401 HRS

704-401 Evidence of physical or mental disease, disorder, or defect admissible when relevant to state of mind. Evidence that the defendant was affected by a physical or mental disease, disorder, or defect is admissible whenever it is relevant to prove that the defendant did or did not have a state of mind that is required to establish an element of the offense.

704-402 HRS

704-402 Physical or mental disease, disorder, or defect excluding responsibility is an affirmative defense; form of verdict and judgment when finding of irresponsibility is made.

(1) Physical or mental disease, disorder, or defect excluding responsibility is an affirmative defense.

(2) When the defense provided for by subsection (1) is submitted to a jury, the court shall, if requested by the defendant, instruct the jury as to the consequences to the defendant of an acquittal on the ground of physical or mental disease, disorder, or defect excluding responsibility.

(3) When the defendant is acquitted on the ground of physical or mental disease, disorder, or defect excluding responsibility, the verdict and the judgment shall so state.

704-403 HRS

704-403 Physical or mental disease, disorder, or defect excluding fitness to proceed. No person who as a result of a physical or mental disease, disorder, or defect lacks capacity to understand the proceedings against the person or to assist in the person's own defense shall be tried, convicted, or sentenced for the commission of an offense so long as such incapacity endures.

704-404 HRS

704-404 Examination of defendant with respect to physical or mental disease, disorder, or defect excluding fitness to proceed.

(1) Whenever there is reason to doubt the defendant's fitness to proceed, the court may immediately suspend all further proceedings in the prosecution; provided that for any defendant not subject to an order of commitment to the director of health for the purpose of the examination, neither the right to bail nor proceedings pursuant to chapter 804 shall be suspended. If a trial jury has been empaneled, it shall be discharged or retained at the discretion of the court. The discharge of the trial jury shall not be a bar to further prosecution.

(2) Upon suspension of further proceedings in the prosecution:

(a) In cases where the defendant is charged with a petty misdemeanor not involving violence or attempted violence, if a court-based certified examiner is available, the court shall appoint the court-based certified examiner to examine and provide an expedited report solely upon the issue of the defendant's capacity to understand the proceedings against the defendant and defendant's ability to assist in the defendant's own defense. The court-based certified examiner shall file the examiner's report with the court within two days of the appointment of the examiner, or as soon thereafter is practicable. A hearing shall be held to determine if the defendant is fit to proceed within two days of the filing of the report, or as soon thereafter as is practicable;

(b) In all other nonfelony cases, and where a court-based certified examiner is not available in cases under paragraph (a), the court shall appoint one qualified examiner to examine and report upon the defendant's fitness to proceed. The court may appoint as the examiner either a psychiatrist or a licensed psychologist designated by the director of health from within the department of health; and

(c) In felony cases, the court shall appoint three qualified examiners to examine and report upon the defendant's fitness to proceed. The court shall appoint as examiners psychiatrists, licensed psychologists, or qualified physicians; provided that one of the three examiners shall be a psychiatrist or licensed psychologist designated by the director of health from within the department of health. All examiners shall be appointed from a list of certified examiners as determined by the department of health. The court, in appropriate circumstances, may appoint an additional examiner or examiners. The examination may be conducted while the defendant is in custody or on release or, in the court's discretion, when necessary the court may order the defendant to be committed to a hospital or other suitable facility for the purpose of the examination for a period not exceeding thirty days, or a longer period as the court determines to be necessary for the

purpose. The court may direct that one or more qualified physicians or psychologists retained by the defendant be permitted to witness the examination. As used in this section, the term "licensed psychologist" includes psychologists exempted from licensure by section 465-3(a)(3) and "qualified physician" means a physician qualified by the court for the specific evaluation ordered.

(3) An examination performed under this section may employ any method that is accepted by the professions of medicine or psychology for the examination of those alleged to be affected by a physical or mental disease, disorder, or defect; provided that each examiner shall form and render an opinion upon the defendant's fitness to proceed independently from the other examiners, and the examiners, upon approval of the court, may secure the services of clinical psychologists and other medical or paramedical specialists to assist in the examination.

(4) For defendants charged with felonies, the examinations for fitness to proceed under this section and penal responsibility under section 704-407.5 shall be conducted separately unless a combined examination has been ordered by the court upon a request by the defendant or upon a showing of good cause to combine the examinations. The report of the examination for fitness to proceed shall be separate from the report of the examination for penal responsibility unless a combined examination has been ordered. For defendants charged with offenses other than felonies, a combined examination is permissible when ordered by the court.

(5) Except in the case of an examination pursuant to subsection (2)(a), the report of the examination for fitness to proceed shall include the following:

(a) A description of the nature of the examination;

(b) A diagnosis of the physical or mental condition of the defendant;

(c) An opinion as to the defendant's capacity to understand the proceedings against the defendant and to assist in the defendant's own defense;

(d) An assessment of the risk of danger to the defendant or to the person or property of others for consideration and determination of the defendant's release on conditions; and

(e) Where more than one examiner is appointed, a statement that the opinion rendered was arrived at independently of any other examiner, unless there is a showing to the court of a clear need for communication between or among the examiners for clarification. A description of the communication shall be included in the report. After all reports are submitted to the court, examiners may confer without restriction.

(6) If the examination cannot be conducted by reason of the unwillingness of the defendant to participate in the examination, the report shall so state and shall include, if possible, an opinion as to whether the unwillingness of the defendant was the result of physical or mental disease, disorder, or defect.

(7) A copy of the report of the examination, including any supporting documents, shall be filed with the clerk of the court.

(8) Any examiner shall be permitted to make a separate explanation reasonably serving to clarify the examiner's opinion.

(9) The court shall obtain all existing relevant medical, mental health, social, police, and juvenile records, including those expunged, and other pertinent records in the custody of public agencies, notwithstanding any other statute, and make the records available for inspection by the examiners in hard copy or digital format. The court may order that the records so obtained be made available to the prosecuting attorney and counsel for the defendant in either format, subject to conditions the court determines appropriate; provided that juvenile records shall not be made available unless constitutionally required. No further disclosure of records shall be made except as permitted by law. If, pursuant to this section, the court orders the defendant committed to a hospital or other suitable facility under the control of the director of health, then the county police departments shall provide to the director of health and the defendant copies of all police reports from cases filed against the defendant that have been adjudicated by the acceptance of a plea of guilty or no contest, a finding of guilt, acquittal, acquittal pursuant to section 704-400, or by the entry of plea of guilty or no contest made pursuant to chapter 853; provided that the disclosure to the director of health and the defendant does not frustrate a legitimate function of the county police departments, with the exception of expunged records, records of or pertaining to any adjudication or disposition rendered in the case of a juvenile, or records containing data from the United States National Crime Information Center. The county police departments shall segregate or sanitize from the police reports information that would result in the likely or actual identification of individuals who furnished information in connection with its investigation, or who were of investigatory interest. No further disclosure of records shall be made except as provided by law.

(10) All public agencies in possession of relevant medical, mental health, social, police, and juvenile records, and any other pertinent records of a defendant ordered to be examined under this chapter, shall provide those records to the court, notwithstanding any other state statute.

(11) The compensation of persons making or assisting in the examination, other than those retained by a nonindigent defendant, who are not undertaking the examination upon designation by the director of health as part of their normal duties as employees of the State or a county, shall be paid by the judiciary in the amount of $2,000, which amount includes compensation for the examination, the drafting of the report, and any consultation, preparation, testimony, and attendance in court.

704-405 HRS

704-405 Determination of fitness to proceed. When the defendant's fitness to proceed is drawn in question, the issue shall be determined by the court. If neither the prosecuting attorney nor counsel for the defendant contests the finding of the report filed pursuant to section 704-404, the court may make the determination on the basis of such report. If the finding is contested, the court shall hold a hearing on the issue. When the report is received in evidence upon such hearing, the party who contests the finding thereof shall have the right to summon and to cross-examine the persons who joined in the report or assisted in the examination and to offer evidence upon the issue.

704-406 HRS

704-406 Effect of finding of unfitness to proceed and regained fitness to proceed.

(1) If the court determines that the defendant lacks fitness to proceed, the proceeding against the defendant shall be suspended, except as provided in sections 704-407 and 704-421, and the court shall commit the defendant to the custody of the director of health to be placed in an appropriate institution for detention, assessment, care, and treatment; provided that:

(a) When the defendant is charged with a petty misdemeanor not involving violence or attempted violence, the defendant shall be diverted from the criminal justice system pursuant to section 704-421; and

(b) When the defendant is charged with a misdemeanor not involving violence or attempted violence, the commitment shall be limited to no longer than one hundred twenty days from the date the court determines the defendant lacks fitness to proceed. If the court is satisfied that the defendant may be released on conditions without danger to the defendant or to another or risk of substantial danger to property of others, the court shall order the defendant's release, which shall continue at the discretion of the court, on conditions the court determines necessary; provided that the release on conditions of a defendant charged with a misdemeanor not involving violence or attempted violence shall continue for no longer than one hundred twenty days. A copy of all reports filed pursuant to section 704-404 shall be attached to the order of commitment or order of release on conditions that is provided to the department of health . When the defendant is committed to the custody of the director of health for detention, assessment, care, and treatment, the county police departments shall provide to the director of health and the defendant copies of all police reports from cases filed against the defendant that have been adjudicated by the acceptance of a plea of guilty or nolo contendere, a finding of guilt, acquittal, acquittal pursuant to section 704-400, or by the entry of a plea of guilty or nolo contendere made pursuant to chapter 853; provided that the disclosure to the director of health and the defendant does not frustrate a legitimate function of the county police departments; provided further that expunged records, records of or pertaining to any adjudication or disposition rendered in the case of a juvenile, or records containing data from the United States National Crime Information Center shall not be provided. The county police departments shall segregate or sanitize from the police reports information that would result in the likely or actual identification of individuals who furnished information in connection with the investigation or who were of investigatory interest. No further disclosure of records shall be made except as provided by law.

(2) When the defendant is released on conditions after a finding of unfitness to proceed, the department of health shall establish and monitor a fitness restoration program consistent with conditions set by the court order of release, and shall inform the prosecuting attorney of the county that charged the defendant of the program and report the defendant's compliance therewith.

(3) When the court, on its own motion or upon the application of the director of health, the prosecuting attorney, or the defendant, has reason to believe that the defendant has regained fitness to proceed, for a defendant charged with the offense of murder in the first or second degree, attempted murder in the first or second degree, or a class A felony, the court shall appoint three qualified examiners and may appoint in all other cases one qualified examiner, to examine and

report upon the physical and mental condition of the defendant. In cases in which the defendant has been charged with murder in the first or second degree, attempted murder in the first or second degree, or a class A felony, the court shall appoint as examiners at least one psychiatrist and at least one licensed psychologist. The third examiner may be a psychiatrist, licensed psychologist, or qualified physician. One of the three examiners shall be a psychiatrist or licensed psychologist designated by the director of health from within the department of health. In all other cases, the one qualified examiner shall be a psychiatrist or licensed psychologist designated by the director of health from within the department of health. The court, in appropriate circumstances, may appoint an additional examiner or examiners. All examiners shall be appointed from a list of certified examiners as determined by the department of health. After a hearing, if a hearing is requested, if the court determines that the defendant has regained fitness to proceed, the penal proceeding shall be resumed and the defendant shall no longer be committed to the custody of the director of health. In cases where a defendant is charged with the offense of murder in the first or second degree, attempted murder in the first or second degree, or a class A felony, upon the request of the prosecuting attorney or the defendant, and in consideration of information provided by the defendant's clinical team, the court may order that the defendant remain in the custody of the director of health, for good cause shown, subject to bail or until a judgment on the verdict or a finding of guilt after a plea of guilty or nolo contendere. Thereafter, the court may consider a request from the director of health to rescind its order maintaining the defendant in the director's custody, for good cause shown. As used in this section, the term "qualified physician" means a physician qualified by the court for the specific evaluation ordered. If, however, the court is of the view that so much time has elapsed since the commitment or release on conditions of the defendant that it would be unjust to resume the proceeding, the court may dismiss the charge and:

(a) Order the defendant to be discharged;

(b) Subject to section 334-60.2 regarding involuntary hospitalization criteria, order the defendant to be committed to the custody of the director of health to be placed in an appropriate institution for detention, care, and treatment; or

(c) Subject to section 334-121 regarding assisted community treatment criteria, order the defendant to be released on conditions the court determines necessary.

(4) An examination for regained fitness to proceed performed under this section may employ any method that is accepted by the professions of medicine or psychology for the examination of those alleged to be affected by a physical or mental disease, disorder, or defect, and shall include a review of records where the defendant, while under the custody of the director of health, was placed; provided that each examiner shall form and render an opinion on the defendant's regained fitness to proceed independently from the other examiners and the examiners, upon approval of the court, may secure the services of clinical psychologists and other medical or paramedical specialists to assist in the examination.

(5) The report of the examination for regained fitness to proceed shall include the following:

(a) A description of the nature of the examination;

(b) An opinion as to the defendant's capacity to understand the proceedings against the defendant and to assist in the defendant's own defense; and

(c) Where more than one examiner is appointed, a statement that the opinion rendered was arrived at independently of any other examiner, unless there is a showing to the court of a clear need for communication between or among the examiners for clarification. A description of the communication shall be included in the report. After all reports are submitted to the court, examiners may confer without restriction.

(6) All other procedures as set out in section 704-404(6) through (11) shall be followed for the completion of the report of the examination for regained fitness to proceed performed under this section.

(7) If a defendant committed to the custody of the director of health for a limited period pursuant to subsection (1) is not found fit to proceed prior to the expiration of the commitment, the charge for which the defendant was committed for a limited period shall be dismissed. Upon dismissal of the charge, the defendant shall be released from custody unless the defendant is subject to prosecution for other charges or subject to section 334-60.2 regarding involuntary hospitalization criteria, in which case the court shall order the defendant's commitment to the custody of the director of health to be placed in an appropriate institution for detention, care, and treatment. Within a reasonable time following any other commitment under subsection (1), the director of health shall report to the court on whether the defendant presents a substantial likelihood of becoming fit to proceed in the future. The court, in addition, may appoint a panel of three qualified examiners in felony cases or one qualified examiner in nonfelony cases to make a report. If, following the report, the court determines that the defendant probably will remain unfit to proceed, the court may dismiss the charge and:

(a) Release the defendant; or

(b) Subject to section 334-60.2 regarding involuntary hospitalization criteria, order the defendant to be committed to the custody of the director of health to be placed in an appropriate institution for detention, care, and treatment.

(8) If a defendant released on conditions for a limited period pursuant to subsection (1) is not found fit to proceed prior to the expiration of the release on conditions order, the charge for which the defendant was released on conditions for a limited period shall be dismissed. Upon dismissal of the charge, the defendant shall be discharged from the release on conditions unless the defendant is subject to prosecution for other charges or subject to section 334-60.2 regarding involuntary hospitalization criteria, in which case the court shall order the defendant's commitment to the custody of the director of health to be placed in an appropriate institution for detention, care, and treatment. Within a reasonable time following any other release on conditions under subsection (1), the court shall appoint a panel of three qualified examiners in felony cases or one qualified examiner in nonfelony cases to report to the court on whether the defendant presents a substantial likelihood of becoming fit to proceed in the future. If, following the report, the court determines that the defendant probably will remain unfit to proceed, the court may dismiss the charge and:

(a) Release the defendant; or

(b) Subject to section 334-60.2 regarding involuntary hospitalization criteria, order the defendant to be committed to the custody of the director of health to be placed in an appropriate institution for detention, care, and treatment.

704-407 HRS

704-407 Special hearing following commitment or release on conditions . (1) At any time after commitment as provided in section 704■406, the defendant or the defendant's counsel or the director of health may apply for a special post-commitment or post-release hearing. If the application is made by or on behalf of a defendant not represented by counsel, the defendant shall be afforded a reasonable opportunity to obtain counsel, and if the defendant lacks funds to do so, counsel shall be assigned by the court. The application shall be granted only if the counsel for the defendant satisfies the court by affidavit or otherwise that, as an attorney, the counsel has reasonable grounds for a good faith belief that the counsel's client has an objection based upon legal grounds to the charge.

(2) If the motion for a special post-commitment or post■release hearing is granted, the hearing shall be by the court without a jury. No evidence shall be offered at the hearing by either party on the issue of physical or mental disease, disorder, or defect as a defense to, or in mitigation of, the offense charged.

(3) After the hearing, the court shall rule on any legal objection raised by the application and, in an appropriate case, may quash the indictment or other charge, find it to be defective or insufficient, or otherwise terminate the proceedings on the law. Unless all defects in the proceedings are promptly cured, the court shall terminate the commitment or release ordered under section 704-406 and:

(a) Order the defendant to be discharged;

(b) Subject to section 334-60.2 regarding involuntary hospitalization criteria, order the defendant to be committed to the custody of the director of health to be placed in an appropriate institution for detention, care, and treatment; or

(c) Subject to section 334-121 regarding assisted community treatment criteria, order the defendant to be released on conditions as the court deems necessary.

704-407.5 HRS

704-407.5 Examination of defendant with respect to physical or mental disease, disorder, or defect excluding penal responsibility.

(1) Whenever the defendant has filed a notice of intention to rely on the defense of physical or mental disease, disorder, or defect excluding penal responsibility, or there is reason to believe that the physical or mental disease, disorder, or defect of the defendant will or has become an issue in the case, the court may order an examination as to the defendant's physical or mental disease, disorder, or defect at the time of the conduct alleged. Whenever there is reason to believe that the physical or mental disease, disorder, or defect of the defendant will or has become an issue in the case, the court may enter into an agreement with the parties at any stage of the proceeding to divert the case into an evaluation of the defendant, treatment of the defendant, including residential or rehabilitation treatment; or any other course or procedure, including diversion into specialized courts. Such agreements may include in-court clinical evaluations.

(2) For those cases not diverted by an agreement pursuant to subsection (1), the court shall appoint three qualified examiners for class A and class B felonies, as well as for class C felonies involving violence or attempted violence, and one qualified examiner in nonfelony cases to examine and report upon the physical or mental disease, disorder, or defect of the defendant at the time of the conduct. For class C felonies not involving violence or attempted violence, the court may appoint one or three qualified examiners to examine and report upon the physical or mental disease, disorder, or defect of the defendant at the time of the conduct. In cases where the court appoints three examiners, the court shall appoint as examiners psychiatrists, licensed psychologists, or qualified physicians; provided that one of the three examiners shall be a psychiatrist or licensed psychologist designated by the director of health from within the department of health. In nonfelony cases and class C felonies not involving violence or attempted violence where one examiner is appointed, the court may appoint as examiners either a psychiatrist or a licensed psychologist. The examiner may be designated by the director of health from within the department of health. All examiners shall be appointed from a list of certified examiners as determined by the department of health. The court, in appropriate circumstances, may appoint an additional examiner or examiners. The court may direct that one or more qualified physicians or psychologists retained by the defendant be permitted to witness the examination. As used in this section, the term "licensed psychologist" includes psychologists exempted from licensure by section 465-3(a)(3) and "qualified physician" means a physician qualified by the court for the specific evaluation ordered.

(3) An examination performed under this section may employ any method that is accepted by the professions of medicine or psychology for the examination of those alleged to be affected by a physical or mental disease, disorder, or defect; provided that each examiner shall form and render diagnoses and opinions upon the physical and mental condition of the defendant independently from the other examiners, and the examiners, upon approval of the court, may secure the services of clinical psychologists and other medical or paramedical specialists to assist in the examination and diagnosis.

(4) For defendants charged with felonies, the examinations for fitness to proceed under section 704-404 and penal responsibility under this section shall be conducted separately unless a combined examination has been ordered by the court upon a request by the defendant or upon a showing of good cause to combine the examinations. The report of the examination for fitness to proceed shall be separate from the report of the examination for penal responsibility unless a combined examination has been ordered. For defendants charged with offenses other than felonies, a combined examination is permissible when ordered by the court.

(5) The court may order the examination to occur no sooner than one hundred twenty days of a finding of unfit to proceed under section 704-404 upon a showing of good cause.

(6) The report of the examination for penal responsibility shall include the following:

(a) A description of the nature of the examination;

(b) A diagnosis of the physical or mental condition of the defendant;

(c) An opinion as to the extent, if any, to which the capacity of the defendant to appreciate the wrongfulness of the defendant's conduct or to conform the defendant's conduct to the requirements of law was impaired at the time of the conduct alleged;

(d) When directed by the court, an opinion as to the capacity of the defendant to have a particular state of mind that is required to establish an element of the offense charged; and

(e) Where more than one examiner is appointed, a statement that the diagnosis and opinion rendered were arrived at independently of any other examiner, unless there is a showing to the court of a clear need for communication between or among the examiners for clarification. A description of the communication shall be included in the report. After all reports are submitted to the court, examiners may confer without restriction.

(7) If the examination cannot be conducted by reason of the unwillingness of the defendant to participate in the examination, the report shall so state and shall include, if possible, an opinion as to whether the unwillingness of the defendant was the result of physical or mental disease, disorder, or defect.

(8) Three copies of the report of the examination, including any supporting documents, shall be filed with the clerk of the court, who shall cause copies to be delivered to the prosecuting attorney and to counsel for the defendant.

(9) Any examiner shall be permitted to make a separate explanation reasonably serving to clarify the examiner's diagnosis or opinion.

(10) The court shall obtain all existing relevant medical, mental health, social, police, and juvenile records, including those expunged, and other pertinent records in the custody of public agencies, notwithstanding any other statute, and make the records available for inspection by the examiners in hard copy or digital format. The court may order that the records so obtained be made available to the prosecuting attorney and counsel for the defendant in either format, subject to conditions the court determines appropriate; provided that juvenile records shall not be made available unless constitutionally required. No further disclosure of records shall be made except as permitted by law.

(11) All public agencies in possession of relevant medical, mental health, social, police, and juvenile records, and any other pertinent records of a defendant ordered to be examined under this chapter, shall provide those records to the court, notwithstanding any other state statute.

(12) The compensation of persons making or assisting in the examination, other than those retained by a nonindigent defendant, who are not undertaking the examination upon designation by the director of health as part of their normal duties as employees of the State or a county, shall be paid by the judiciary in the amount of $2,000, which amount includes compensation for the examination, the drafting of the report, and any consultation, preparation, testimony, and attendance in court.

(13) The time during which completion of an examination pursuant to this section is pending shall be excluded in computing the time for trial commencement.

704-408 HRS

704-408 Determination of irresponsibility. If the report of the examiners filed pursuant to section 704-404, or the report of examiners of the defendant's choice under section 704-409, states that the defendant at the time of the conduct alleged was affected by a physical or mental disease, disorder, or defect that substantially impaired the defendant's capacity to appreciate the wrongfulness of the defendant's conduct or to conform the defendant's conduct to the requirements of law, the court shall submit the defense of physical or mental disease, disorder, or defect to the jury or the trier of fact at the trial of the charge against the defendant.

704-409 HRS

704-409 Access to defendant by examiners of defendant's choice. When, notwithstanding the report filed pursuant to section 704-404, the defendant wishes to be examined by one or more qualified physicians or other experts of the defendant's own choice, such examiner or examiners shall be permitted to have reasonable access to the defendant for the purposes of such examination.

704-410 HRS

704-410 Form of expert testimony regarding physical or mental disease, disorder, or defect.

(1) At the hearing pursuant to section 704-405 or upon the trial, the examiners who reported pursuant to section 704-404 may be called as witnesses by the prosecution, the defendant, or the court. If the issue is being tried before a jury, the jury may be informed that the examiners or any of them were designated by the court or by the director of health at the request of the court, as the case may be. If called by the court, the witness shall be subject to cross-examination by the prosecution and the defendant. Both the prosecution and the defendant may summon any other qualified physician or licensed psychologist or other expert to testify, but no one who has not examined the defendant shall be competent to testify to an expert opinion with respect to the physical or mental condition of the defendant, as distinguished from the validity of the procedure followed by, or the general scientific propositions stated by, another witness.

(2) When an examiner testifies on the issue of the defendant's fitness to proceed, the examiner shall be permitted to make a statement as to the nature of the examiner's examination, the examiner's diagnosis of the physical or mental condition of the defendant, and the examiner's opinion of the extent, if any, to which the capacity of the defendant to understand the proceedings against the defendant or to assist in the defendant's own defense is impaired as a result of physical or mental disease, disorder, or defect.

(3) When an examiner testifies on the issue of the defendant's responsibility for conduct alleged or the issue of the defendant's capacity to have a particular state of mind which is necessary to establish an element of the offense charged, the examiner shall be permitted to make a statement as to the nature of the examiner's examination, the examiner's diagnosis of the physical or mental condition of the defendant at the time of the conduct alleged, and the examiner's opinion of the extent, if any, to which the capacity of the defendant to appreciate the wrongfulness of the defendant's conduct or to conform the defendant's conduct to the requirements of law or to have a particular state of mind which is

necessary to establish an element of the offense charged was impaired as a result of physical or mental disease, disorder, or defect at that time.

(4) When an examiner testifies, the examiner shall be permitted to make any explanation reasonably serving to clarify the examiner's diagnosis and opinion and may be cross-examined as to any matter bearing on the examiner's competency or credibility or the validity of the examiner's diagnosis or opinion.

704-410.5 HRS

704-410.5 Conditional release; duration limited in nonfelony cases. For any defendant granted conditional release in a nonfelony case pursuant to section 704-411(1)(b), 704-412, 704-414, or 704-415, the period of conditional release shall not exceed one year.

704-411 HRS

704-411 Legal effect of acquittal on the ground of physical or mental disease, disorder, or defect excluding responsibility; commitment; conditional release; discharge; procedure for separate post-acquittal hearing. (1) When a defendant is acquitted on the ground of physical or mental disease, disorder, or defect excluding responsibility, the court, on the basis of the report made pursuant to section 704-404, if uncontested, or the medical or psychological evidence given at the trial or at a separate hearing, shall order that:

(a) The defendant shall be committed to the custody of the director of health to be placed in an appropriate institution for custody, care, and treatment if the court finds that the defendant:

(i) Is affected by a physical or mental disease, disorder, or defect; (ii) Presents a risk of danger to self or others; and (iii) Is not a proper subject for conditional release; provided that the director of health shall place defendants charged with misdemeanors or felonies not involving violence or attempted violence in the least restrictive environment appropriate in light of the defendant's treatment needs and the need to prevent harm to the person confined and others. The county police departments shall provide to the director of health and the defendant copies of all police reports from cases filed against the defendant that have been adjudicated by the acceptance of a plea of guilty or nolo contendere, a finding of guilt, acquittal, acquittal pursuant to section 704-400, or by the entry of a plea of guilty or nolo contendere made pursuant to chapter 853; provided that the disclosure to the director of health and the defendant does not frustrate a legitimate function of the county police departments; provided further that expunged records, records of or pertaining to any adjudication or disposition rendered in the case of a juvenile, or records containing data from the United States National Crime Information Center shall not be provided. The county police departments shall segregate or sanitize from the police reports information that would result in the likelihood or actual identification of individuals who furnished information in connection with the investigation or who were of investigatory interest. Records shall not be re-disclosed except to the extent permitted by law;

(b) The defendant shall be granted conditional release with conditions as the court deems necessary if the court finds that the defendant is affected by physical or mental disease, disorder, or defect and that the defendant presents a danger to self or others, but that the defendant can be controlled adequately and given proper care, supervision, and treatment if the defendant is released on condition; or

(c) The defendant shall be discharged if the court finds that the defendant is no longer affected by physical or mental disease, disorder, or defect or, if so affected, that the defendant no longer presents a danger to self or others and is not in need of care, supervision, or treatment.

(2) The court, upon its own motion or on the motion of the prosecuting attorney or the defendant, shall order a separate post-acquittal hearing for the purpose of taking evidence on the issue of physical or mental disease, disorder, or defect and the risk of danger that the defendant presents to self or others.

(3) When ordering a hearing pursuant to subsection (2):

(a) In nonfelony cases, the court shall appoint a qualified examiner to examine and report upon the physical and mental condition of the defendant. The court may appoint either a psychiatrist or a licensed psychologist. The examiner may be designated by the director of health from within the department of health. The examiner shall be appointed from a list of certified examiners as determined by the department of health. The court, in appropriate circumstances, may appoint an additional examiner or examiners; and

(b) In felony cases, the court shall appoint three qualified examiners to examine and report upon the physical and mental condition of the defendant. In each case, the court shall appoint as examiners psychiatrists, licensed psychologists, or

qualified physicians; provided that one of the three shall be a psychiatrist or licensed psychologist designated by the director of health from within the department of health. The three examiners shall be appointed from a list of certified examiners as determined by the department of health. To facilitate the examination and the proceedings thereon, the court may cause the defendant, if not then confined, to be committed to a hospital or other suitable facility for the purpose of examination for a period not exceeding thirty days or a longer period as the court determines to be necessary for the purpose upon written findings for good cause shown. The court may direct that qualified physicians or psychologists retained by the defendant be permitted to witness the examination. The examination and report and the compensation of persons making or assisting in the examination shall be in accordance with section 704-404(3), (5)(a), (b), (d), and (e), (7), (8), (9), (10), and (11). As used in this section, the term "licensed psychologist" includes psychologists exempted from licensure by section 465-3(a)(3) and "qualified physician" means a physician qualified by the court for the specific evaluation ordered.

(4) Whether the court's order under subsection

(1) is made on the basis of the medical or psychological evidence given at the trial, or on the basis of the report made pursuant to section 704-404, or the medical or psychological evidence given at a separate hearing, the burden shall be upon the State to prove, by a preponderance of the evidence, that the defendant is affected by a physical or mental disease, disorder, or defect and may not safely be discharged and that the defendant should be either committed or conditionally released as provided in subsection (1).

(5) In any proceeding governed by this section, the defendant's fitness shall not be an issue.

704-412 HRS

704-412 Committed person; application for conditional release or discharge; by the director of health; by the person.

(1) After the expiration of at least ninety days following an original order of commitment pursuant to section 704-411(1)(a), or after the expiration of at least sixty days following the revocation of conditional release pursuant to section 704-413, if the director of health is of the opinion that the person committed is still affected by a physical or mental disease, disorder, or defect and may be granted conditional release or discharged without danger to self or to the person or property of others or that the person is no longer affected by a physical or mental disease, disorder, or defect, the director shall make an application for either the conditional release or discharge of the person, as appropriate. In such a case, the director shall submit a report to the court by which the person was ordered committed and shall transmit copies of the application and report to the prosecuting attorney of the county from which the person was committed and to the person committed.

(2) After the expiration of ninety days from the date of the order of commitment pursuant to section 704-411, or after the expiration of sixty days following the revocation of conditional release pursuant to section 704-413, the person committed may apply to the court from which the person was committed for an order of discharge upon the ground that the person is no longer affected by a physical or mental disease, disorder, or defect. The person committed may apply for conditional release or discharge upon the ground that, though still affected by a physical or mental disease, disorder, or defect, the person may be released without danger to self or to the person or property of others. A copy of the application shall be transmitted to the prosecuting attorney of the county from which the person was committed. If the court denies the application, the person shall not be permitted to file another application for either conditional release or discharge until one year after the date of the hearing held on the immediate prior application.

(3) Upon application to the court by either the director of health or the person committed, the court shall complete the hearing process and render a decision within sixty days of the application; provided that for good cause the court may extend the sixty-day time frame upon the request of the director of health or the person committed.

704-413 HRS

704-413 Conditional release; application for modification or discharge; termination of conditional release and commitment.

(1) Any person granted conditional release pursuant to this chapter shall continue to receive mental health or other treatment and care deemed appropriate by the director of health until discharged from conditional release. The person shall follow all prescribed treatments and take all prescribed medications according to the instructions of the person's treating mental health professional. If a mental health professional who is treating a person granted conditional release believes that either the person is not complying with the requirements of this section or there is other evidence that

hospitalization is appropriate, the mental health professional shall report the matter to the probation officer of the person granted conditional release. The probation officer may order the person granted conditional release to be hospitalized for a period not to exceed seventy-two hours if the probation officer has probable cause to believe the person has violated the requirements of this subsection. No person shall be hospitalized beyond the seventy-two-hour period, as computed pursuant to section 1-29, unless a hearing has been held pursuant to subsection (4); provided that on or before the expiration of the seventy-two-hour period, a court may conduct a hearing to determine whether the person would benefit from further hospitalization, which may render a revocation of conditional release unnecessary. If satisfied, the court may order further temporary hospitalization for a period not to exceed ninety days, subject to extension as appropriate, but in no event for a period longer than one year. At any time within that period, the court may determine that a hearing pursuant to subsection (4) should be conducted.

(2) The director of health may apply to the court ordering any person released pursuant to this chapter, for the person's discharge from, or modification of, the order granting conditional release; provided that the person receives community-based mental health services from or contracted by the department of health, and the director is of the opinion that the person on conditional release is no longer affected by a physical or mental disease, disorder, or defect and may be discharged, or the order may be modified, without danger to the person or to others. The director shall make an application for the discharge from, or modification of, the order of conditional release in a report to the circuit from which the order was issued. The director shall transmit a copy of the application and report to the prosecuting attorney of the county from which the conditional release order was issued, to the person's treating mental health professionals, and to the probation officer supervising the conditional release. The person on conditional release shall be given notice of the application.

(3) Any person granted conditional release pursuant to this chapter may apply to the court ordering the conditional release for discharge from, or modification of, the order granting conditional release on the ground that the person is no longer affected by a physical or mental disease, disorder, or defect and may be discharged, or the order may be modified, without danger to the person or to others. The application shall be accompanied by a letter from or supporting affidavit of a qualified physician or licensed psychologist. A copy of the application and letter or affidavit shall be transmitted to the prosecuting attorney of the circuit from which the order issued and to any persons supervising the release, and the hearing on the application shall be held following notice to such persons. If the court denies the application, the person shall not be permitted to file another application for either discharge or modification of conditional release until one year after the date of the denial.

(4) If, at any time after the order pursuant to this chapter granting conditional release, the court determines, after hearing evidence, that:

(a) The person is still affected by a physical or mental disease, disorder, or defect, and the conditions of release have not been fulfilled; or

(b) For the safety of the person or others, the person's conditional release should be revoked, the court may forthwith modify the conditions of release or order the person to be committed to the custody of the director of health, subject to discharge or release in accordance with the procedure prescribed in section 704-412; provided that, if satisfied that the person would benefit from temporary hospitalization that may render a revocation of conditional release unnecessary, the court, in lieu of revocation, may order hospitalization for a period not to exceed ninety days, subject to extension as appropriate, but in no event for a period exceeding a total of one year, and may reinstate or revoke conditional release at any time during the temporary hospitalization.

(5) Upon application for discharge from, or modification of, the order of conditional release by either the director of health or the person, the court shall complete the hearing process and render a decision within sixty days of the application, provided that for good cause the court may extend the sixty day time frame upon the request of the director of health or the person.

704-414 HRS

704-414 Procedure upon application for discharge, conditional release, or modification of conditions of release.

(1) Upon filing of an application pursuant to section 704-412 for discharge or conditional release, or upon the filing of an application pursuant to section 704-413 for discharge, the court shall appoint three qualified examiners in felony cases, and one qualified examiner in nonfelony cases, to examine and report upon the physical and mental condition of the defendant. In felony cases, the court shall appoint as examiners psychiatrists, licensed psychologists, or qualified

physicians; provided that one of the three shall be a psychiatrist or licensed psychologist designated by the director of health from within the department of health. The examiners shall be appointed from a list of certified examiners as determined by the department of health. To facilitate the examination and the proceedings thereon, the court may cause the defendant, if not then confined, to be committed to a hospital or other suitable facility for the purpose of the examination and may direct that qualified physicians or psychologists retained by the defendant be permitted to witness the examination. The examination and report and the compensation of persons making or assisting in the examination shall be in accordance with section 704-404(3), (5)(a), (b), (d), and (e), (7), (8), (9), (10), and (11). As used in this section, the term "licensed psychologist" includes psychologists exempted from licensure by section 465-3(a)(3) and "qualified physician" means a physician qualified by the court for the specific evaluation ordered.

(2) Upon the filing of an application pursuant to section 704-413 for modification of conditions of release, the court may proceed as provided in subsection (1).

704-415 HRS

704-415 Disposition of application for discharge, conditional release, or modification of conditions of release.

(1) If the court is satisfied from the report filed pursuant to section 704-414, and such testimony of the reporting examiners as the court deems necessary, that:

(a) The person is affected by a physical or mental disease, disorder, or defect and the discharge, conditional release, or modification of conditions of release applied for may be granted without danger to the committed or conditionally released person or to the person or property of others; or

(b) The person is no longer affected by a physical or mental disease, disorder, or defect, the court shall grant the application and order the relief. If the court is not so satisfied, it shall promptly order a hearing.

(2) Any such hearing shall be deemed a civil proceeding and the burden shall be upon the applicant to prove that the person is no longer affected by a physical or mental disease, disorder, or defect or may safely be either released on the conditions applied for or discharged. According to the determination of the court upon the hearing, the person shall be:

(a) Discharged;

(b) Released on such conditions as the court determines to be necessary; or

(c) Recommitted to the custody of the director of health, subject to discharge or release only in accordance with the procedure prescribed in section 704-412.

704-416 HRS

704-416 Statements for purposes of examination or treatment inadmissible except on issue of physical or mental condition. A statement made by a person subjected to examination or treatment pursuant to this chapter for the purposes of such examination or treatment shall not be admissible in evidence against the person in any penal proceeding on any issue other than that of the person's physical or mental condition, but it shall be admissible upon that issue, whether or not it would otherwise be deemed a privileged communication, unless such statement constitutes an admission of guilt of the offense charged.

704-416.5 HRS

704-416.5 Supervision of person on conditional release.

(1) Any person hospitalized under this chapter who is subsequently placed on conditional release shall be subject to the supervision of a probation officer until such time as that supervision is terminated by order of the court.

(2) The probation officer shall report, as the court may order, whether the conditionally released person is complying with the conditions of the release.

704-417 HRS

704-417 Use of out-of-state institutions. The term "appropriate institution" includes any institution within or without this State to which the defendant may be eligible for admission and treatment for physical or mental disease, disorder, or defect.

704-418 HRS

704-418 Immaturity excluding penal conviction; transfer of proceedings to family court.

(1) A person shall not be tried for or convicted of an offense if the person is subject to the exclusive original jurisdiction of the family court, unless the family court has waived jurisdiction over the person.

(2) No court shall have jurisdiction to try or convict a person of an offense if penal proceedings against the person are barred by subsection (1). When it appears that a person charged with the commission of an offense may be of such an age that penal proceedings may be barred under subsection (1), the court shall hold a hearing thereon, and the burden shall be on the prosecution to establish to the satisfaction of the court that the penal proceeding is not barred upon such grounds. If the court determines the penal proceeding is barred, custody of the person charged shall be surrendered to the family court, and the case, including all papers and processes relating thereto, shall be transferred.

704-419 HRS

704-419 REPEALED. L 1980, c 306, §2. Previous Vol14_Ch0701-0853 Next

704-420 HRS

704-420 Examination reports; provided to director of health. Copies of all examination reports made pursuant to sections 704-404, 704-406, 704-411, and 704-414 shall be provided to the director of health.

704-421 HRS

704-421 Proceedings for defendants charged with petty misdemeanors not involving violence or attempted violence; criminal justice diversion program.

(1) In cases where the defendant is charged with a petty misdemeanor not involving violence or attempted violence, if, at the hearing held pursuant to section 704-404(2)(a) or at a further hearing held after the appointment of an examiner pursuant to section 704-404(2)(b), the court determines that the defendant is fit to proceed, then the proceedings against the defendant shall resume. In all other cases under this section where fitness remains an outstanding issue, the court shall continue the suspension of the proceedings and either commit the defendant to the custody of the director of health to be placed in a hospital or other suitable facility, including an outpatient facility, for further examination and assessment or, in cases where the defendant was not subject to an order of commitment to the director of health for the purpose of the fitness examination under section 704-404(2), the court may order that the defendant remain released on conditions the court determines necessary for placement in a group home, residence, or other facility prescribed by the director of health for further assessment by a clinical team pursuant to subsection (3).

(2) In cases under this section where the defendant's fitness to proceed remains an outstanding issue at the hearing held pursuant to section 704-404(2)(a) or a further hearing held after the appointment of an examiner pursuant to section 704-404(2)(b), as applicable, the director of health, within fourteen days of that hearing or as soon thereafter as is practicable, shall report to the court on the following:

(a) The defendant's current capacity to understand the proceedings against the defendant and the defendant's current ability to assist in the defendant's own defense;

(b) Whether, after assessment of the defendant pursuant to subsection (3)(a) or (b), the defendant's clinical team believes that the defendant meets the criteria for involuntary hospitalization under section 334-60.2 or assisted community treatment under section 334-121; and

(c) The date that the director of health filed a petition for involuntary hospitalization or assisted community treatment on behalf of the defendant pursuant to subsection (3)(a) or (b), as applicable. If, following the report, the court finds the defendant fit to proceed, the proceedings against the defendant shall resume. In all other cases, the court shall dismiss the charge with or without prejudice in the interest of justice.

(3) During the defendant's commitment to the custody of the director of health or release on conditions pursuant to subsection (1):

(a) If the defendant's clinical team determines that the defendant meets the criteria for involuntary hospitalization set forth in section 334-60.2, the director of health, within seven days of the clinical team's determination, shall file with the family court a petition for involuntary hospitalization pursuant to section 334-60.3. If the petition is granted, the defendant shall remain hospitalized for a period of time as provided by section 334-60.6; or

(b) If the defendant's clinical team determines that the defendant does not meet the criteria for involuntary hospitalization, or the court denies the petition for involuntary hospitalization, the defendant's clinical team shall determine whether an assisted community treatment plan is appropriate pursuant to part VIII of chapter 334. If the clinical team determines that

an assisted community treatment plan is appropriate, the psychiatrist or advanced practice registered nurse from the clinical team shall prepare the certificate for assisted community treatment specified by section 334-123, including a written treatment plan for the provision of mental health services to the defendant. The clinical team shall identify a community mental health outpatient program that agrees to provide mental health services to the defendant as the designated mental health program under the assisted community treatment order. The clinical team shall provide the defendant with a copy of the certificate. Within ten days of provision of the certificate to the defendant by the clinical team, the director of health shall file with the family court the assisted community treatment petition described in section 334-123. When a petition for assisted community treatment has been filed for a defendant, the defendant committed to the custody of the director of health shall remain in custody until the family court issues a decision on the petition; provided that the judge may order that the subject be released during the pendency of that action.

(4) This section shall not apply to any case under the jurisdiction of the family court unless the presiding judge orders otherwise.

Chapter 705

705-500 HRS

705-500 Criminal attempt.

(1) A person is guilty of an attempt to commit a crime if the person:

(a) Intentionally engages in conduct which would constitute the crime if the attendant circumstances were as the person believes them to be; or

(b) Intentionally engages in conduct which, under the circumstances as the person believes them to be, constitutes a substantial step in a course of conduct intended to culminate in the person's commission of the crime.

(2) When causing a particular result is an element of the crime, a person is guilty of an attempt to commit the crime if, acting with the state of mind required to establish liability with respect to the attendant circumstances specified in the definition of the crime, the person intentionally engages in conduct which is a substantial step in a course of conduct intended or known to cause such a result.

(3) Conduct shall not be considered a substantial step under this section unless it is strongly corroborative of the defendant's criminal intent.

705-501 HRS

705-501 Criminal attempt; attempting to aid another.

(1) A person who engages in conduct intended to aid another to commit a crime is guilty of an attempt to commit the crime, although the crime is not committed or attempted by the other person, provided his conduct would establish his complicity under sections 702-222 through 702-226 if the crime were committed or attempted by the other person.

(2) It is not a defense to a prosecution under this section that under the circumstances it was impossible for the defendant to aid the other person in the commission of the offense, provided he could have done so had the circumstances been as he believed them to be.

705-502 HRS

705-502 Grading of criminal attempt. An attempt to commit a crime is an offense of the same class and grade as the most serious offense which is attempted.

705-510 HRS

705-510 Criminal solicitation.

(1) A person is guilty of criminal solicitation if, with the intent to promote or facilitate the commission of a crime, the person commands, encourages, or requests another person to engage in conduct or cause the result specified by the definition of an offense or to engage in conduct which would be sufficient to establish complicity in the specified conduct or result.

(2) It is immaterial under subsection (1) that the defendant fails to communicate with the person the defendant solicits if the defendant's conduct was designed to effect such communication.

705-511 HRS

705-511 Immunity, irresponsibility, or incapacity of a party to criminal solicitation.

(1) A person shall not be liable under section 705-510 for criminal solicitation of another if under sections 702-224(1) and (2) and 702-225(1) he would not be legally accountable for the conduct of the other person.

(2) It is not a defense to a prosecution under section 705-510 that the person solicited could not be guilty of committing the crime because:

(a) He is, by definition of the offense, legally incapable in an individual capacity of committing the offense solicited;

(b) He is penally irresponsible or has an immunity to prosecution or conviction for the commission of the crime;

(c) He is unaware of the criminal nature of the conduct in question or of the defendant's criminal intent; or

(d) He does not have the state of mind sufficient for the commission of the offense in question.

(3) It is not a defense to a prosecution under section 705-510 that the defendant is, by definition of the offense, legally incapable in an individual capacity of committing the offense solicited.

705-512 HRS

705-512 Grading of criminal solicitation. Criminal solicitation is an offense one class or grade, as the case may be, less than the offense solicited; provided that criminal solicitation to commit murder in any degree is a class A felony.

705-520 HRS

705-520 Criminal conspiracy. A person is guilty of criminal conspiracy if, with intent to promote or facilitate the commission of a crime:

(1) He agrees with one or more persons that they or one or more of them will engage in or solicit the conduct or will cause or solicit the result specified by the definition of the offense; and

(2) He or another person with whom he conspired commits an overt act in pursuance of the conspiracy.

705-521 HRS

705-521 Scope of conspiratorial relationship. If a person guilty of criminal conspiracy, as defined in section 705-520, knows that a person with whom he conspires to commit a crime has conspired with another person or persons to commit the same crime, he is guilty of conspiring to commit the crime with such other person or persons, whether or not he knows their identity.

705-522 HRS

705-522 Conspiracy with multiple criminal objectives. If a person conspires to commit a number of crimes, the person is guilty of only one conspiracy if the multiple crimes are the object of the same agreement or continuous conspiratorial relationship.

705-523 HRS

705-523 Immunity, irresponsibility, or incapacity of a party to criminal conspiracy.

(1) A person shall not be liable under section 705-520 for criminal conspiracy if under sections 702-224(1) and (2) and 702-225(1) he would not be legally accountable for the conduct of the other person.

(2) It is not a defense to a prosecution under section 705-520 that a person with whom the defendant conspires could not be guilty of committing the crime because:

(a) He is, by definition of the offense, legally incapable in an individual capacity of committing the offense;

(b) He is penally irresponsible or has an immunity to prosecution or conviction for the commission of the crime;

(c) He is unaware of the criminal nature of the conduct in question or of the defendant's criminal intent; or

(d) He does not have the state of mind sufficient for the commission of the offense in question.

(3) It is not a defense to a prosecution under section 705-520 that the defendant is, by definition of the offense, legally incapable in an individual capacity of committing the offense that is the object of the conspiracy.

705-524 HRS

705-524 Venue in criminal conspiracy prosecutions. For purposes of determining venue in a prosecution for criminal conspiracy, a criminal conspiracy is committed in any circuit in which the defendant enters into the conspiracy and in any circuit in which the defendant or person with whom the defendant conspires does an overt act.

705-525 HRS

705-525 Duration of conspiracy. For purposes of section 701-108, the following apply:

(1) Conspiracy is a continuing course of conduct which terminates when the crime or crimes which are its object are committed or the agreement that they be committed is abandoned by the defendant and by those with whom the defendant conspired.

(2) It is prima facie evidence that the agreement has been abandoned if neither the defendant nor anyone with whom the defendant conspired did any overt act in pursuance of the conspiracy during the applicable period of limitation.

(3) If an individual abandons the agreement, the conspiracy is terminated as to the individual only if and when the individual advises those with whom the individual conspired of the individual's abandonment or the individual informs the law-enforcement authorities of the existence of the conspiracy and of the individual's participation therein.

705-526 HRS

705-526 Grading of criminal conspiracy.

(1) A conspiracy to commit murder in any degree is a class A felony.

(2) Except as provided in subsection (1), a conspiracy to commit a class A felony is a class B felony.

(3) Except as provided in subsections (1) and (2), conspiracy to commit a crime is an offense of the same class and grade as the most serious offense which is an object of the conspiracy.

705-530 HRS

705-530 Renunciation of attempt, solicitation, or conspiracy; affirmative defense.

(1) In a prosecution for criminal attempt, it is an affirmative defense that the defendant, under circumstances manifesting a voluntary and complete renunciation of the defendant's criminal intent, gave timely warning to law-enforcement authorities or otherwise made a reasonable effort to prevent the conduct or result which is the object of the attempt.

(2) In a prosecution for criminal solicitation, it is an affirmative defense that the defendant, under circumstances manifesting a complete and voluntary renunciation of the defendant's criminal intent:

(a) First notified the person solicited of the defendant's renunciation[;]

(b) Gave timely warning to law-enforcement authorities or otherwise made a reasonable effort to prevent the conduct or result solicited.

(3) In a prosecution for criminal conspiracy, it is an affirmative defense that the defendant, under circumstances manifesting a voluntary and complete renunciation of the defendant's criminal intent, gave timely warning to law-enforcement authorities or otherwise made a reasonable effort to prevent the conduct or result which is the object of the conspiracy.

(4) A renunciation is not "voluntary and complete" within the meaning of this section if it is motivated in whole or in part by:

(a) A belief that circumstances exist which increase the probability of detection or apprehension of the accused or another participant in the criminal enterprise, or which render more difficult the accomplishment of the criminal purpose; or

(b) A decision to postpone the criminal conduct until another time or to transfer the criminal effort to another victim or another but similar objective.

(5) A warning to law-enforcement authorities is not "timely" within the meaning of this section unless the authorities, reasonably acting upon the warning, would have the opportunity to prevent the conduct or result. An effort is not "reasonable" within the meaning of this section unless the defendant, under reasonably foreseeable circumstances, would have prevented the conduct or result.

705-531 HRS

705-531 Multiple convictions. A person may not be convicted of more than one offense defined by this chapter for conduct designed to commit or culminate in the commission of the same substantive crime.

Chapter 706

706-600 HRS

706-600 Sentence in accordance with this chapter; other applicable law. A sentence shall be imposed in accordance with this chapter, unless otherwise provided by applicable law.

706-600.5 HRS

706-600.5 Definitions of terms in this chapter. In this chapter, unless a different meaning plainly is required: "Day" means a twenty-four-hour period of time. "Month" means a thirty-day period of time. "Secure drug treatment facility" means a facility employing security protocols modeled after a minimum-security detention center, including continuous direct supervision. "Year" means a three hundred sixty-five-day period of time.

706-600.6 HRS

706-600.6 Time of release. A person imprisoned whose term of imprisonment ends between the hours of 9:00 p.m. to 12:00 midnight, may be released at 9:00 p.m. A person imprisoned whose term of imprisonment ends between the hours of 12:00 midnight to 7:00 a.m. may be released at 9:00 p.m. the day before the person's scheduled release.

706-601 HRS

706-601 Pre-sentence diagnosis and report.

(1) Except as provided in subsections (3) and (4), the court shall order a pre-sentence correctional diagnosis of the defendant and accord due consideration to a written report of the diagnosis before imposing sentence where:

(a) The defendant has been convicted of a felony; or

(b) The defendant is less than twenty-two years of age and has been convicted of a crime.

(2) The court may order a pre-sentence diagnosis in any other case.

(3) With the consent of the court, the requirement of a pre-sentence diagnosis may be waived by agreement of both the defendant and the prosecuting attorney; provided that in felony cases, the prosecuting attorney shall inform, or make reasonable efforts to inform, the victim or the victim's surviving immediate family members of their rights to be present at the sentencing hearing and to provide information relating to the impact of the crime, including any requested restitution.

(4) The court on its own motion may waive a pre-sentence correctional diagnosis where:

(a) A prior pre-sentence diagnosis was completed within one year preceding the sentencing in the instant case;

(b) The defendant is being sentenced for murder or attempted murder in any degree; or

(c) The sentence was agreed to by the parties and approved by the court under rule 11 of the Hawaii rules of penal procedure.

706-602 HRS

706-602 Pre-sentence diagnosis, notice to victims, and report.

(1) The pre-sentence diagnosis and report shall be made by personnel assigned to the court or other agency designated by the court and shall include:

(a) An analysis of the circumstances attending the commission of the crime;

(b) The defendant's history of delinquency or criminality, physical and mental condition, family situation and background, economic status and capacity to make restitution or to make reparation to the victim or victims of the defendant's crimes for loss or damage caused thereby, education, occupation, and personal habits;

(c) Information made available by the victim or other source concerning the effect that the crime committed by the defendant has had upon said victim, including but not limited to, any physical or psychological harm or financial loss suffered;

(d) Information concerning defendant's compliance or non-compliance with any order issued under section 806-11; and

(e) Any other matters that the reporting person or agency deems relevant or the court directs to be included.

(2) The court personnel or agency shall give notice of the Crime Victim Compensation Act, the application for compensation procedure, and the possibility of restitution by the defendant to all victims of the convicted defendant's

criminal acts.

706-603 HRS

706-603 DNA analysis monetary assessment; DNA registry special fund.

(1) In addition to any disposition authorized by chapter 706 or 853, every defendant convicted of a felony offense shall be ordered to pay a monetary assessment of $500 or the actual cost of the DNA analysis, whichever is less. The court may reduce the monetary assessment if the court finds, based on evidence presented by the defendant and not rebutted by the State, that the defendant is not and will not be able to pay the full monetary assessment and, based on the finding, shall instead order the defendant to pay an assessment that the defendant will be able to pay within five years.

(2) Notwithstanding any other law to the contrary, the assessment and penalty provided by this section shall be in addition to, and not in lieu of, and shall not be used to offset or reduce, any fine or restitution authorized or required by law. All assessments and penalties shall be paid into the DNA registry special fund established in subsection (3).

(3) There is established a special fund to be known as the DNA registry special fund which shall be administered by the

706-604 HRS

706-604 Opportunity to be heard with respect to sentence; notice of pre-sentence report; opportunity to controvert or supplement; transmission of report to department.

(1) Before imposing sentence, the court shall afford a fair opportunity to the defendant to be heard on the issue of the defendant's disposition.

(2) The court shall furnish to the defendant or the defendant's counsel and to the prosecuting attorney a copy of the report of any pre-sentence diagnosis or psychological, psychiatric, or other medical examination and afford fair opportunity, if the defendant or the prosecuting attorney so requests, to controvert or supplement them. The court shall amend or order the amendment of the report upon finding that any correction, modification, or addition is needed and, where appropriate, shall require the prompt preparation of an amended report in which material required to be deleted is completely removed or other amendments, including additions, are made.

(3) In all circuit court cases, regardless of whether a pre-sentence report has been prepared or waived, the court shall afford a fair opportunity to the victim to be heard on the issue of the defendant's disposition, before imposing sentence. The court, service center, or agency personnel who prepare the pre-sentence diagnosis and report shall inform the victim of the sentencing date and of the victim's opportunity to be heard. In the case of a homicide or where the victim is a minor or is otherwise unable to appear at the sentencing hearing, the victim's family shall be afforded the fair opportunity to be heard.

(4) If the defendant is sentenced to imprisonment, a copy of the report of any pre-sentence diagnosis or psychological, psychiatric, or other medical examination, which shall incorporate any amendments ordered by the court, shall be transmitted immediately to the department of corrections and rehabilitation.

706-605 HRS

706-605 Authorized disposition of convicted defendants.

(1) Except as provided in parts II and IV or in section 706-647 and subsections (2), (6), and (7), and subject to the applicable provisions of this Code, the court may sentence a convicted defendant to one or more of the following dispositions:

(a) To be placed on probation as authorized by part II;

(b) To pay a fine as authorized by part III and section 706-624;

(c) To be imprisoned for a term as authorized by part IV;

(d) To perform services for the community under the supervision of a governmental agency or benevolent or charitable organization or other community service group or appropriate supervisor; provided that the convicted person who performs these services shall not be deemed to be an employee of the governmental agency or assigned work site for any purpose. All persons sentenced to perform community service shall be screened and assessed for appropriate placement by a governmental agency coordinating public service work placement as a condition of sentence; or

(e) To undergo domestic violence programs pursuant to chapter 580, 586, or 709 or other applicable law, with or without probation.

(2) The court shall not sentence a defendant to probation and imprisonment except as authorized by part II.

(3) In addition to any disposition authorized in subsection (1), the court may sentence a person convicted of a misdemeanor or petty misdemeanor to a suspended sentence.

(4) The court may sentence a person who has been convicted of a violation to any disposition authorized in subsection (1) except imprisonment.

(5) The court shall sentence a corporation or unincorporated association that has been convicted of an offense in accordance with section 706-608.

(6) The court shall impose a compensation fee upon every person convicted of a criminal offense pursuant to section 351-62.6; provided that the court shall waive the imposition of a compensation fee if it finds that the defendant is unable to pay the compensation fee. When a defendant is ordered to make payments in addition to the compensation fee, payments by the defendant shall be made in the order of priority established in section 706-651.

(7) The court shall order the defendant to make restitution for losses as provided in section 706-646. In ordering restitution, the court shall not consider the defendant's financial ability to make restitution in determining the amount of restitution to order. The court, however, shall consider the defendant's financial ability to make restitution for the purpose of establishing the time and manner of payment.

(8) This chapter does not deprive the court of any authority conferred by law to decree a forfeiture of property, suspend or cancel a license, remove a person from office, or impose any other civil penalty. Such a judgment or order may be included in the sentence.

706-605.1 HRS

706-605.1 Intermediate sanctions; eligibility; criteria and conditions.

(1) The judiciary shall implement alternative programs that place, control, supervise, and treat selected defendants in lieu of a sentence of incarceration.

(2) Defendants may be considered for sentencing to alternative programs if they have not been convicted of a non-probationable class A felony.

(3) A defendant may be sentenced by a district, family, or circuit court judge to alternative programs.

(4) As used in this section, "alternative programs" means programs that are created and funded by legislative appropriation or federal grant naming the judiciary or one of its operating agencies as the expending agency and that are intended to provide an alternative to incarceration. Alternative programs may include:

(a) House arrest, or curfew using electronic monitoring and surveillance, or both;

(b) Drug court programs for defendants with assessed alcohol or drug abuse problems, or both;

(c) Therapeutic residential and nonresidential programs, including secure drug treatment facilities; and

(d) Similar programs created and designated as alternative programs by the legislature or the administrative director of the courts for qualified defendants who do not pose significant risks to the community. [L Sp 1995, c 25, §4; am L Sp 2009, c 4, §2; am L 2016, c 231, §19]

706-605.5 HRS

706-605.5 REPEALED. L 2016, c 231, §30. Previous Vol14_Ch0701-0853 Next

706-605.6 HRS

706-605.6 Assault against a sports official .

(1) If a person is convicted of the offense of:

(a) Assault in the first degree, as provided by section 707-710;

(b) Assault in the second degree, as provided by section 707-711(1)(a), (b), (d), or (n);

(c) Assault in the third degree, as provided by section 707-712;

(d) Terroristic threatening in the first degree, as provided by section 707-716(a), (e), or (f); or

(e) Terroristic threatening in the second degree, as provided by section 707-717; and the victim of the offense is a sports official engaged in the lawful discharge of the sports official's duties, the court may order, in the court's discretion, that the

defendant, in addition to any other punishment imposed pursuant to chapter 706, be enjoined from attending any sports event of the type at which the sports official was engaged in the lawful discharge of the sports official's duties for a period of up to twelve months from the date of sentencing for a first offense, and for life for a second or subsequent offense.

(2) For the purposes of this section: "Lawful discharge of the sports official's duty" means the performance of duties of a sports official from the time the sports official arrives at the venue of a sports event and ending when the sports official returns to their residence or business. "Sports event" means any organized amateur or professional athletic contest in the State. "Sports official" means a person at a sports event who enforces the rules of the event, such as an umpire, referee, timer, or scorer, or a person who supervises the participants, such as a coach, regardless of whether the person is paid or provides their services as an unpaid volunteer.

706-606 HRS

706-606 Factors to be considered in imposing a sentence. The court, in determining the particular sentence to be imposed, shall consider:

(1) The nature and circumstances of the offense and the history and characteristics of the defendant;

(2) The need for the sentence imposed:

(a) To reflect the seriousness of the offense, to promote respect for law, and to provide just punishment for the offense;

(b) To afford adequate deterrence to criminal conduct;

(c) To protect the public from further crimes of the defendant; and

(d) To provide the defendant with needed educational or vocational training, medical care, or other correctional treatment in the most effective manner;

(3) The kinds of sentences available; and

(4) The need to avoid unwarranted sentence disparities among defendants with similar records who have been found guilty of similar conduct.

706-606.1 HRS

706-606.1 REPEALED. L 1986, c 314, §16. Previous Vol14_Ch0701-0853 Next

706-606.2 HRS

706-606.2 Special sentencing considerations for arson; other actions not prohibited.

(1) In addition to any other penalty imposed, a person convicted of arson involving fire set to brush, grass, vegetation on the land resulting in damage to ten thousand square feet or more of property, may be required to:

(a) Pay any costs associated with extinguishing the fire, which shall include, but are not limited to:

(i) Personnel salary, benefits, and overtime; (ii) The operation, maintenance, and repair of apparatus, aircraft, and equipment; (iii) Supplies expended, damaged, or lost; and (iv) Rehabilitation supplies during firefighting operations; and

(b) Perform community service work in the region in which the property damage occurred. With regard to any fine or monetary penalty that may be imposed on a minor convicted or adjudicated for an offense of arson, the parents or legal guardians of the minor shall be liable for the percentage of costs associated with extinguishing the fire based upon the apportionment of fire damage to real or personal property caused by the minor as a result of committing the offense of arson, regardless of whether the property is publicly or privately owned.

(2) Nothing in this section shall prohibit a separate criminal action being brought by the State or a civil action being brought by the State or a third party for conduct that constitutes an offense of arson.

706-606.3 HRS

706-606.3 Expedited sentencing program.

(1) A person who has committed intra-family sexual assault may be considered for the expedited sentencing program in accordance with this section. As used in this section, "intra-family" sexual assault means any criminal offense of felony sexual assault under section 707-730, 707-731, or 707-732, or incest, as defined in section 707-741, in which the victim of the offense is related to the defendant by consanguinity or marriage, or resides in the same dwelling unit as the defendant, and the victim was, at the time of the sexual assault, under the age of eighteen.

(2) The police department of the county in which the sexual assault took place or any other appropriate investigative law enforcement agency shall confer with the appropriate prosecuting authority. If the prosecuting authority determines that it is appropriate to provide notice of the expedited sentencing program to the defendant, the police department or other appropriate investigative law enforcement agency shall give the defendant written notice of the existence of the expedited sentencing program provided in this section. The notice provision shall not be a prerequisite to questioning the defendant. The notice provision shall not obligate the prosecuting authority to issue a statement of "no objection" when considering the defendant for the expedited sentencing program.

(3) The written notice shall state: "YOU ARE ADVISED TO SEEK LEGAL COUNSEL IMMEDIATELY. IF YOU CANNOT AFFORD PRIVATE COUNSEL, CONTACT THE OFFICE OF THE PUBLIC DEFENDER. FAILURE TO CONTACT AN ATTORNEY MAY DISQUALIFY YOU FROM THIS PROGRAM. A copy of section 706-606.3, Hawaii Revised Statutes, is attached to this notice. You are under investigation for a felony sexual assault against a minor. Upon completion of this investigation, if there is sufficient basis to believe that you have committed a sexual assault, the case will be referred to the appropriate prosecuting authority for review and possible institution of criminal charges. Hawaii law provides for a range of ordinary prison sentences for felony sexual assault ranging from five years up to twenty years, or life imprisonment, depending upon the offense. However, section 706-606.3, Hawaii Revised Statutes, provides that a person who commits a sexual assault upon a minor but who admits guilt, cooperates with the prosecuting authority, and participates in appropriate assessment and treatment may be considered for the expedited sentencing program. A person who is sentenced in accordance with the expedited sentencing program may be sentenced to a term of probation. Probation may be revoked, however, for failure to comply with the terms of the probation pursuant to section 706-625. To qualify for consideration for the expedited sentencing program, your legal counsel first must request from the office of the prosecuting authority named in this notice a written statement as to whether that office has any objection to your being considered for the expedited sentencing program. THE COURT WILL NOT CONSIDER YOU FOR THE EXPEDITED SENTENCING PROGRAM UNDER SECTION 706-606.3, HAWAII REVISED STATUTES, UNLESS YOUR LEGAL COUNSEL HAS RECEIVED A WRITTEN STATEMENT THAT THE APPROPRIATE PROSECUTING AUTHORITY HAS NO OBJECTION TO YOUR BEING CONSIDERED FOR THE EXPEDITED SENTENCING PROGRAM AND THE REQUEST FOR THAT WRITTEN STATEMENT WAS MADE WITHIN FOURTEEN DAYS OF YOUR RECEIPT OF THIS NOTICE. FURTHER, THE COURT WILL NOT CONSIDER YOU FOR THE EXPEDITED SENTENCING PROGRAM UNDER SECTION 706-606.3, HAWAII REVISED STATUTES, UNLESS, ONCE YOUR LEGAL COUNSEL HAS RECEIVED THIS NOTICE, YOU HAVE MADE A GOOD FAITH EFFORT TO AVOID THE NECESSITY OF THE CHILD BEING REMOVED FROM THE FAMILY HOME, INCLUDING BUT NOT LIMITED TO MOVING AND REMAINING OUT OF THE FAMILY HOME UNTIL OTHERWISE ORDERED BY THE COURT." The written notice also shall provide:

(a) Instructions on how to contact the appropriate prosecuting authority, including any necessary addresses and telephone numbers; and

(b) The name of the person delivering the notice and the date it was given to the alleged offender.

(4) A defendant shall not be considered by the court for the expedited sentencing program under this section unless the defendant's legal counsel requests within fourteen days of the defendant's receipt of the written notice, that the defendant be considered for the expedited sentencing program, and defendant's counsel subsequently receives a written statement from the appropriate prosecuting authority stating that it has no objection to the defendant being considered for the expedited sentencing program in accordance with this section. Additionally, each of the following criteria shall be met:

(a) After receiving the required written notice, the defendant made a good faith effort to avoid the necessity of the child being removed from the family home, including but not limited to moving and remaining out of the family home until otherwise ordered by the court;

(b) The victim of the sexual assault was under the age of eighteen when the sexual assault was committed;

(c) The defendant was never previously sentenced under this section and has never been convicted of felony sexual assault under section 707-730, 707-731, or 707-732, or incest under section 707-741;

(d) A guardian ad litem appointed in a family court proceeding, or a person assigned by the Children's Advocacy Center to serve as guardian ad litem, agreed that it would be in the best interest of the child for the defendant to be considered for the expedited sentencing program. No prosecuting authority shall issue a statement of no objection without this prior agreement; and

(e) The defendant has complied with the requirements for consideration for the expedited sentencing program as established in subsection (6); provided that at sentencing the prosecuting authority may oppose the defendant's participation in the expedited sentencing program if the prosecuting authority determines that the defendant has failed to satisfy the criteria under subsection (6).

(5) The prosecuting authority and the child's guardian ad litem may consult with any other appropriate agency or individual to assist in a decision whether to provide a written statement of "no objection" prior to the defendant being considered for sentencing under the expedited sentencing program.

(6) Within seven business days of receipt of the written notice stating that the appropriate prosecuting authority has no objection to the defendant being considered for the expedited sentencing program in accordance with this section, unless the prosecuting authority waives compliance with the time limit, the defendant shall:

(a) Continue to make a good faith effort to avoid the necessity of the child being removed from the family home, including but not limited to moving and remaining out of the family home until otherwise ordered by the court;

(b) Admit to commission of the sexual assault to the police department of the county in which the assault took place or other appropriate investigative law enforcement agency;

(c) Provide to the appropriate prosecuting authority a written waiver of indictment and preliminary hearing for any criminal charges arising from the sexual assault; and

(d) Enter a voluntary plea of guilty to the charge or charges alleged upon or following arraignment.

(7) Notwithstanding sections 706-606.5, 706-620, 706-659, 706-660, and 706-660.2, a defendant considered for the expedited sentencing program under this section when sentence is imposed may be sentenced to a term of probation pursuant to section 706-624; provided that if the defendant is sentenced to a term of imprisonment as a condition of probation, the term of imprisonment may allow for the defendant's retention of employment.

(8) The term of probation under this section shall be as follows:

(a) For an offense under section 707-730 or 707-731, twenty years; and

(b) For an offense under section 707-732 or 707-741, ten years.

(9) In addition to the conditions of probation provided under section 706-624, a sentence under this section shall include that the defendant shall:

(a) Participate in court approved, appropriate sex offender assessment and treatment that shall conform to the guidelines developed by the adult probation division of the appropriate circuit court, until clinically discharged; provided that:

(i) The prosecuting authority shall be provided notice and the opportunity for a hearing prior to any authorization for treatment discontinuance by the court or the adult probation division; (ii) The defendant shall pay for the cost of the assessment and treatment to the extent that the defendant has the ability to do so; and (iii) A lack of assessment and treatment resources shall result in the defendant not being considered for the expedited sentencing program;

(b) Provide a written waiver of confidentiality for any assessment, treatment, counseling, therapy, or other program ordered as a condition of probation;

(c) Comply with all orders entered in a proceeding pursuant to chapter 587A; and

(d) Comply with other condition deemed by the court to be reasonably necessary for the protection of the victim of the sexual assault or the rehabilitation of the defendant.

(10) There shall be a rebuttable presumption in favor of the court imposing a sentence in accordance with this section when a defendant qualifies for the expedited sentencing program, and written notice of "no objection" is issued by the prosecuting authority. The court shall provide written findings of fact setting forth specific reasons justifying imposition of a sentence that is not in accordance with this section.

706-606.4 HRS

706-606.4 Sentencing in enumerated offenses committed in the presence of a minor.

(1) In addition to the factors considered under section 706-606, the court shall consider the following aggravating factors in determining the particular sentence to be imposed:

(a) The defendant has been convicted of committing or attempting to commit an offense; and

(b) The offense contemporaneously occurred in the presence of a minor.

(2) As used in this section: "In the presence of a minor" means in the actual physical presence of a child or knowing that a child is present and may hear or see the offense. "Offense" means a violation of section 707-710 (assault in the first degree), 707-711 (assault in the second degree), 707■730 (sexual assault in the first degree), 707-731 (sexual assault in the second degree), 707-732 (sexual assault in the third degree), 709-906 (abuse of family or household members), or 711-1109.8 (sexual assault of an animal).

706-606.5 HRS

706-606.5 Sentencing of repeat offenders.

(1) Notwithstanding section 706-669 and any other law to the contrary, any person convicted of murder in the second degree, any class A felony, any class B felony, or any of the following class C felonies:

(a) Section 134-7 relating to persons prohibited from owning, possessing, or controlling firearms or ammunition;

(b) Section 134-8 relating to ownership, etc., of certain prohibited weapons;

(c) Section 134-17 only as it relates to providing false information or evidence to obtain a permit under section 134-9;

(d) Section 188-23 relating to possession or use of explosives, electrofishing devices, and poisonous substances in state waters;

(e) Section 386-98(d)(1) relating to fraud violations and penalties;

(f) Section 431:2-403(b)(2) relating to insurance fraud;

(g) Section 707-703 relating to negligent homicide in the second degree;

(h) Section 707-711 relating to assault in the second degree;

(i) Section 707-713 relating to reckless endangering in the first degree;

(j) Section 707-716 relating to terroristic threatening in the first degree;

(k) Section 707-721 relating to unlawful imprisonment in the first degree;

(l) Section 707-732 relating to sexual assault in the third degree;

(m) Section 707-752 relating to promoting child abuse in the third degree;

(n) Section 707-757 relating to electronic enticement of a child in the second degree;

(o) Section 707-766 relating to extortion in the second degree;

(p) Section 708-811 relating to burglary in the second degree;

(q) Section 708-821 relating to criminal property damage in the second degree;

(r) Section 708-831 relating to theft in the second degree;

(s) Section 708-835.5 relating to theft of livestock;

(t) Section 708-836 relating to unauthorized control of a propelled vehicle in the first degree;

(u) Section 708-839.55 relating to unauthorized possession of confidential personal information;

(v) Section 708-839.8 relating to identity theft in the third degree;

(w) Section 708-852 relating to forgery in the second degree;

(x) Section 708-854 relating to criminal possession of a forgery device;

(y) Section 708-875 relating to trademark counterfeiting;

(z) Section 709-906(8), (9), or (10) relating to abuse of family or household members; (aa) Section 710-1071 relating to intimidating a witness; (bb) Section 711-1103 relating to riot; [(cc)] Section 712-1224 relating to possession of gambling records in the first degree; [(dd)] Section 712-1247 relating to promoting a detrimental drug in the first degree; or [(ee)] Section 846E-9 relating to failure to comply with covered offender registration requirements, or who is convicted of attempting to commit murder in the second degree, any class A felony, any class B felony, or any of the class C felony offenses enumerated above and who has a prior conviction or prior convictions for the following felonies, including an attempt to commit the same: murder, murder in the first or second degree, a class A felony, a class B felony, any of the class C felony offenses enumerated above, or any felony conviction of another jurisdiction, shall be sentenced to a mandatory minimum period of imprisonment without possibility of parole as provided in subsection (2).

(2) A mandatory minimum period of imprisonment without possibility of parole during that period shall be imposed pursuant to subsection (1), as follows:

(a) One prior felony conviction:

(i) Where the instant conviction is for murder in the second degree or attempted murder in the second degree--ten years; (ii) Where the instant conviction is for a class A felony--six years, eight months; (iii) Where the instant conviction is for a class B felony--three years, four months; and (iv) Where the instant conviction is for a class C felony offense enumerated above--one year, eight months;

(b) Two prior felony convictions:

(i) Where the instant conviction is for murder in the second degree or attempted murder in the second degree--twenty years; (ii) Where the instant conviction is for a class A felony--thirteen years, four months; (iii) Where the instant conviction is for a class B felony--six years, eight months; and (iv) Where the instant conviction is for a class C felony offense enumerated above--three years, four months; and

(c) Three or more prior felony convictions:

(i) Where the instant conviction is for murder in the second degree or attempted murder in the second degree--thirty years; (ii) Where the instant conviction is for a class A felony--twenty years; (iii) Where the instant conviction is for a class B felony--ten years; and (iv) Where the instant conviction is for a class C felony offense enumerated above--five years.

(3) Except as provided in subsection (4), a person shall not be sentenced to a mandatory minimum period of imprisonment under this section unless the instant felony offense was committed during the period as follows:

(a) Within twenty years after a prior felony conviction where the prior felony conviction was for murder in the first degree or attempted murder in the first degree;

(b) Within twenty years after a prior felony conviction where the prior felony conviction was for murder in the second degree or attempted murder in the second degree;

(c) Within twenty years after a prior felony conviction where the prior felony conviction was for a class A felony;

(d) Within ten years after a prior felony conviction where the prior felony conviction was for a class B felony;

(e) Within five years after a prior felony conviction where the prior felony conviction was for a class C felony offense enumerated above;

(f) Within the maximum term of imprisonment possible after a prior felony conviction of another jurisdiction.

(4) If a person was sentenced for a prior felony conviction to a special term under section 706-667, then the person shall not be sentenced to a mandatory minimum period of imprisonment under this section unless the instant felony offense was committed during that period as follows:

(a) Within eight years after a prior felony conviction where the prior felony conviction was for a class A felony;

(b) Within five years after the prior felony conviction where the prior felony conviction was for a class B felony;

(c) Within four years after the prior felony conviction where the prior felony conviction was for a class C felony offense enumerated above.

(5) Notwithstanding any other law to the contrary, any person convicted of any of the following misdemeanor offenses:

(a) Section 707-712 relating to assault in the third degree;

(b) Section 707-717 relating to terroristic threatening in the second degree;

(c) Section 707-733 relating to sexual assault in the fourth degree;

(d) Section 708-822 relating to criminal property damage in the third degree;

(e) Section 708-832 relating to theft in the third degree; and

(f) Section 708-833.5(2) relating to misdemeanor shoplifting, and who has been convicted of any of the offenses enumerated above on at least three prior and separate occasions within three years of the date of the commission of the present offense, shall be sentenced to no less than nine months of imprisonment. Whenever a court sentences a defendant under this subsection for an offense under section 707-733, the court shall order the defendant to participate in a sex offender assessment and, if recommended based on the assessment, participate in the sex offender treatment program established by chapter 353E.

(6) The sentencing court may impose the above sentences consecutive to any sentence imposed on the defendant for a prior conviction, but the sentence shall be imposed concurrent to the sentence imposed for the instant conviction. The court may impose a lesser mandatory minimum period of imprisonment without possibility of parole than that mandated by this section where the court finds that strong mitigating circumstances warrant the action. Strong mitigating circumstances shall include, but shall not be limited to the provisions of section 706-621. The court shall provide a written opinion stating its reasons for imposing the lesser sentence.

(7) A person who is imprisoned in a correctional institution pursuant to subsection (1) shall not be paroled prior to the expiration of the mandatory minimum term of imprisonment imposed pursuant to subsection (1).

(8) For purposes of this section:

(a) Convictions under two or more counts of an indictment or complaint shall be considered a single conviction without regard to when the convictions occur;

(b) A prior conviction in this or another jurisdiction shall be deemed a felony conviction if it was punishable by a sentence of death or of imprisonment in excess of one year; and

(c) A conviction occurs on the date judgment is entered.

706-606.6 Bill

706-606.6 Repeat violent and sexual offender; enhanced sentence.

(1) Notwithstanding any other provision of law to the contrary, any person who is convicted of an offense under section 707-701.5, 707-702, 707-730, 707-731, 707-732, 707-733.6, 707-750, 708-840, 712-1202, 712-1203, or 712-1209.1, after having been convicted on at least three prior and separate occasions of an offense under section 707-701.5, 707-702, 707-710, 707-711, 707■730, 707-731, 707-732, 707-733.6, 707-750, 708-840, 712-1202, 712-1203, or 712-1209.1, or of an offense under federal law or the laws of another state that is comparable to an offense under section 707-701.5, 707-702, 707-710, 707-711, 707-730, 707-731, 707-732, 707-733.6, 707-750, 708-840, 712-1202, 712-1203, or 712-1209.1, shall be sentenced to an extended term of imprisonment as provided in section 706-661.

(2) A conviction shall not be considered a prior offense unless the conviction occurred within the following time periods:

(a) For an offense under section 707-701.5, 707-702, 707■730, 707-733.6, 707-750, 708-840, 712-1202, 712-1203, or 712-1209.1, within the past twenty years from the date of the instant offense;

(b) For an offense under section 707-710 or 707-731, within the past ten years from the date of the instant offense;

(c) For an offense under section 707-711 or 707-732, within the past five years from the date of the instant offense; or

(d) For an offense under federal law or the laws of another state that is comparable to an offense under section 707-701.5, 707-702, 707-710, 707-711, 707-730, 707-731, 707-732, 707-733.6, 707-750, 708-840, 712-1202, 712-1203, or 712-1209.1, within the maximum term of imprisonment possible under the appropriate jurisdiction.

706-606.7 HRS

706-606.7 Discretion when sentencing a defendant for an offense committed while a minor.

(1) If a person is convicted as an adult for an offense that the person committed when the person was a minor, in addition to any other factor that the court is required to consider before sentencing the person, the court shall consider the following factors:

(a) The person's exposure to an adverse childhood experience or early childhood trauma, including involvement in the child welfare or foster care systems;

(b) The person's status as a victim of human trafficking or abuse at the time of the offense;

(c) The differences between minor and adult offenders, including but not limited to the diminished culpability of minors as compared to that of adults and the typical characteristics of youth;

(d) The level of participation in the offense and the impact of peer or familial pressure;

(e) The person's intellectual capacity and any underlying mental health conditions; and

(f) Any other factors the court deems relevant.

(2) Notwithstanding any other provision of law, after considering the factors set forth in subsection (1), the court may, in its discretion, reduce any mandatory minimum period of incarceration or depart from any mandatory sentencing

enhancement that the person is required to serve if the court determines that the reduction or departure is warranted given the person's age, trauma history, and prospects for rehabilitation.

(3) For the purposes of this section, "minor" means any person under the age of eighteen years.

706-607 Bill

706-607 Civil commitment in lieu of prosecution or of sentence.

(1) When a person prosecuted for a class C felony, misdemeanor, or petty misdemeanor is a chronic alcoholic, narcotic addict, or person suffering from mental abnormality and the person is subject by law to involuntary hospitalization for medical, psychiatric, or other rehabilitative treatment, the court may order such hospitalization and dismiss the prosecution. The order of involuntary hospitalization may be made after conviction, in which event the court may set aside the verdict or judgment of conviction and dismiss the prosecution.

(2) The court shall not make an order under subsection (1) unless it is of the view that it will substantially further the rehabilitation of the defendant and will not jeopardize the protection of the public.

706-608 HRS

706-608 Penalties against corporations and unincorporated associations; forfeiture of corporate charter or revocation of certificate authorizing foreign corporation to do business in the State.

(1) The court may sentence a corporation or an unincorporated association which has been convicted of an offense to be placed on probation as authorized by part II of this chapter or to be fined as authorized by part III of this chapter.

(2) When a corporation is convicted of a crime or a high managerial agent of a corporation, as defined in section [702-229], is convicted of a crime committed in the conduct of the affairs of the corporation, the court, in sentencing the corporation or the agent, may order the charter of a corporation organized under the laws of this State forfeited or the certificate of a foreign corporation authorizing it to do business in this State revoked upon finding:

(a) That the board of directors or a high managerial agent acting in behalf of the corporation has, in conducting the corporation's affairs, intentionally engaged in a persistent course of criminal conduct[;] and

(b) That for the prevention of future criminal conduct of the same character, the public interest requires the charter of the corporation to be forfeited and the corporation to be dissolved or the certificate to be revoked.

(3) The proceedings authorized by subsection

(2) shall be conducted in accordance with the procedures authorized by law for the involuntary dissolution of a corporation or the revocation of the certificate authorizing a foreign corporation to conduct business in this State. Such proceedings shall be deemed additional to any other proceedings authorized by law for the purpose of forfeiting the charter of a corporation or revoking the certificate of a foreign corporation.

706-609 HRS

706-609 Resentence for the same offense or for offense based on the same conduct not to be more severe than prior sentence. When a conviction or sentence is set aside on direct or collateral attack, the court shall not impose a new sentence for the same offense, or for a different offense based on the same conduct, which is more severe than the prior sentence.

706-610 HRS

706-610 Classes of felonies.

(1) Apart from first and second degree murder and attempted first and second degree murder, felonies defined by this Code are classified, for the purpose of sentence, into three classes, as follows:

(a) Class A felonies;

(b) Class B felonies; and

(c) Class C felonies. A felony is a class A, class B, or class C felony when it is so designated by this Code. Except for first and second degree murder and attempted first and second degree murder, a crime declared to be a felony, without specification of class, is a class C felony.

(2) A felony defined by any statute of this State other than this Code shall constitute for the purpose of sentence a class C felony, except if another provision of law specifically defines a felony to be of a specified class as defined by this Code,

such felony shall be treated for the purpose of sentence as provided by this chapter for that class of felony.

706-620 HRS

706-620 Authority to withhold sentence of imprisonment. A defendant who has been convicted of a crime may be sentenced to a term of probation unless:

(1) The crime is first or second degree murder or attempted first or second degree murder;

(2) The crime is a class A felony, except class A felonies defined in chapter 712, part IV, and by section 707■702;

(3) The defendant is a repeat offender under section 706■606.5;

(4) The defendant is a felony firearm offender as defined in section 706-660.1(2);

(5) The crime involved the death of or the infliction of serious or substantial bodily injury upon a child, an elder person, or a handicapped person under section 706-660.2; or

(6) The crime is cruelty to animals where ten or more pet animals were involved under section 711-1108.5 or 711■1109.

706-621 HRS

706-621 Factors to be considered in imposing a term of probation. The court, in determining whether to impose a term of probation, shall consider:

(1) The factors set forth in section 706-606 to the extent that they are applicable;

(2) The following factors, to be accorded weight in favor of withholding a sentence of imprisonment:

(a) The defendant's criminal conduct neither caused nor threatened serious harm;

(b) The defendant acted under a strong provocation;

(c) There were substantial grounds tending to excuse or justify the defendant's criminal conduct, though failing to establish a defense;

(d) The victim of the defendant's criminal conduct induced or facilitated its commission;

(e) The defendant has no history of prior delinquency or criminal activity or has led a law-abiding life for a substantial period of time before the commission of the present crime;

(f) The defendant's criminal conduct was the result of circumstances unlikely to recur;

(g) The character and attitudes of the defendant indicate that the defendant is unlikely to commit another crime;

(h) The defendant is particularly likely to respond affirmatively to a program of restitution or a probationary program or both;

(i) The imprisonment of the defendant would entail excessive hardship to the defendant or the defendant's dependents; and

(j) The expedited sentencing program set forth in section 706-606.3, if the defendant has qualified for that sentencing program.

706-622 Bill

706-622 Requirement of probation; exception. When a person who has been convicted of a felony is not sentenced to imprisonment, the court shall place the person on probation. Nothing in this part shall prohibit the court from suspending any sentence imposed upon persons convicted of a crime other than a felony.

706-622.5 Bill

706-622.5 Sentencing for drug offenders; expungement.

(1) Notwithstanding section 706-620(3), a person convicted for the first or second time for any offense under section 329-43.5, except offenses under subsections (a) and (b) of that section which constitute violations, involving the possession or use of drug paraphernalia or any felony offense under part IV of chapter 712 involving the possession or use of any dangerous drug, detrimental drug, harmful drug, intoxicating compound, marijuana, or marijuana concentrate, as defined in section 712■1240, but not including any offense under part IV of chapter 712 involving the distribution or manufacture of any such drugs or substances and not including any methamphetamine offenses under sections 712■1240.7, 712■1240.8 as that section was in effect before July 1, 2016, 712-1241, and 712-1242, is eligible to be sentenced to probation under subsection (2) if the person meets the following criteria:

(a) The court has determined that the person is nonviolent after reviewing the person's criminal history, the factual circumstances of the offense for which the person is being sentenced, and any other relevant information;

(b) The person has been assessed by a certified substance abuse counselor to be in need of substance abuse treatment due to dependency or abuse under the applicable Diagnostic and Statistical Manual and Addiction Severity Index; and

(c) Except for those persons directed to substance abuse treatment under the supervision of the drug court, the person presents a proposal to receive substance abuse treatment in accordance with the treatment plan prepared by a certified substance abuse counselor through a substance abuse treatment program that includes an identified source of payment for the treatment program.

(2) A person eligible under subsection (1) may be sentenced to probation to undergo and complete a substance abuse treatment program if the court determines that the person can benefit from substance abuse treatment and, notwithstanding that the person would be subject to sentencing as a repeat offender under section 706-606.5, the person should not be incarcerated to protect the public. If the person fails to complete the substance abuse treatment program and the court determines that the person cannot benefit from any other suitable substance abuse treatment program, the person shall be subject to sentencing under the applicable section under this part. As a condition of probation under this subsection, the court may direct the person to undergo and complete substance abuse treatment under the supervision of the drug court if the person has a history of relapse in treatment programs. The court may require other terms and conditions of probation, including requiring that the person contribute to the cost of the substance abuse treatment program, comply with deadlines for entering into the substance abuse treatment program, and reside in a secure drug treatment facility.

(3) For the purposes of this section, "substance abuse treatment program" means drug or substance abuse treatment services provided outside a correctional facility by a public, private, or nonprofit entity that specializes in treating persons who are diagnosed with having substance abuse or dependency and preferably employs licensed professionals or certified substance abuse counselors.

(4) Upon written application from a person sentenced under this part or a probation officer, the court shall issue a court order to expunge the record of conviction for that particular offense; provided that a person has successfully completed the substance abuse treatment program and complied with other terms and conditions of probation. A person sentenced to probation under this section who has not previously been sentenced under this section shall be eligible for one time only for expungement under this subsection.

(5) Upon motion from a person convicted for the possession of marijuana under section 712-1249 arising from a set of facts and circumstances that resulted in no other criminal charge, the court shall grant an expungement order pertaining to the conviction for the offense; provided that the amount of marijuana for which the person was convicted of possessing was three grams or less.

(6) Nothing in this section shall be construed to give rise to a cause of action against the State, a state employee, or a treatment provider.

706-622.8 Bill

706-622.8 First-time drug offender prior to 2004; probation; expungement . A person sentenced prior to July 1, 2004, for a first-time drug offense, pursuant to section 706■622.5, and who otherwise meets all the requirements of section 706■622.5, may apply to the court for expungement of the record of conviction for the drug offense. The court shall issue a court order to expunge the record of conviction for the drug offense; provided the person has successfully completed a substance abuse treatment program and has complied with the other terms and conditions set by the court. A person granted an expungement of conviction under this section or section 706-622.5(4) shall not be eligible for another expungement of conviction under this section or section 706■622.5.

706-622.9 Bill

706-622.9 Sentencing for first-time property offenders; expungement.

(1) Notwithstanding section 706-620(3), a person convicted for the first time of any class C felony property offense under chapter 708 who has not previously been sentenced under section 706-606.5, section 706-622.5, or this section shall be eligible to be sentenced to probation under subsection (2) if the person meets the following criteria:

(a) The court has determined that the person is nonviolent after reviewing the person's criminal history, the factual circumstances of the offense for which the person is being sentenced, and any other relevant information;

(b) The person has been assessed by a certified substance abuse counselor to be in need of substance abuse treatment due to dependency or abuse under the applicable Diagnostic and Statistical Manual and Addiction Severity Index;

(c) The court has determined that the offense for which the person is being sentenced is related to the person's substance abuse dependency or addiction;

(d) The court has determined that the person is genuinely motivated to obtain and maintain substance abuse treatment, based upon consideration of the person's history, including whether substance abuse treatment has previously been afforded to the person, and an appraisal of the person's current circumstances and attitude; and

(e) Except for those persons directed to substance abuse treatment under the supervision of the drug court, the person presents a proposal to receive substance abuse treatment in accordance with the treatment plan prepared by a certified substance abuse counselor through a substance abuse treatment program that includes an identified source of payment for the treatment program.

(2) A person eligible under subsection (1) may be sentenced to probation to undergo and complete a substance abuse treatment program if the court determines that the person can benefit from substance abuse treatment and, notwithstanding that the person would be subject to sentencing as a repeat offender under section 706-606.5, the person should not be incarcerated to protect the public. If the person fails to complete the substance abuse treatment program and the court determines that the person cannot benefit from any other suitable substance abuse treatment program, the person shall be sentenced as provided in this part. As a condition of probation under this subsection, the court may direct the person to undergo and complete substance abuse treatment under the supervision of the drug court if the person has a history or relapse in treatment programs. The court may require other terms and conditions of probation, including requiring that the person contribute to the cost of the substance abuse treatment program, comply with deadlines for entering into the substance abuse treatment program, and reside in a secure drug treatment facility.

(3) Upon written application from a person sentenced under this part or a probation officer, the court shall issue a court order to expunge the record of conviction for that particular offense; provided that a person has successfully completed the substance abuse treatment program and complied with other terms and conditions of probation. A person sentenced to probation under this section shall be eligible for expungement under this subsection only if the person has not been previously convicted of a felony offense in this or another jurisdiction.

(4) A person sentenced before June 22, 2006, for any class C felony property offense under chapter 708, and who would have qualified for sentencing pursuant to this section had that person been sentenced after the enactment of this section, and who otherwise meets all the requirements of this section for expungement, may apply to a court for expungement of the record of conviction for the property offense. The court, upon written application from the person, shall issue a court order to expunge the record of conviction for the property offense; provided that:

(a) The person has complied with the terms of the sentence imposed by the court;

(b) The court finds that the person would in fact have qualified for expungement pursuant to this section;

(c) The person has not been convicted of a felony offense in this or another jurisdiction before or after the conviction for which the person is applying for expungement; and

(d) The court makes the finding that the person is currently nonviolent, based upon the court's review of the person's current criminal history, the factual circumstances of the offense for which the person is seeking expungement, and any other relevant information. If the court cannot make the finding that the person fulfilled the criteria required in paragraph (b) at the time of sentencing, the court may nevertheless issue an order to expunge the record of conviction for the property offense; provided that the court finds that the person has successfully completed a substance abuse treatment program. A person granted an expungement of conviction under this subsection shall not be eligible for another expungement of conviction under this section.

(5) Nothing in this section shall be construed to give rise to a cause of action against the State, a state employee, or a treatment provider.

(6) For the purposes of this section, "substance abuse treatment program" means drug or substance abuse treatment services provided outside a correctional facility by a public, private, or nonprofit entity that specializes in treating persons who are diagnosed with having substance abuse or dependency and preferably employs licensed professionals or certified substance abuse counselors.

706-623 Bill

706-623 Terms of probation.

(1) [Repeal and reenactment on June 30, 2026. L 2020, c 19, §15.] When the court has sentenced a defendant to be placed on probation, the period of probation shall be as follows, unless the court enters the reason therefor on the record and sentences the defendant to a shorter period of probation:

(a) Ten years upon conviction of a class A felony;

(b) Five years upon conviction of a class B or class C felony under part II, V, or VI of chapter 707, chapter 709, and part I of chapter 712 and four years upon conviction of any other class B or C felony;

(c) One year upon conviction of a misdemeanor; except that upon a conviction under section 586-4, 586-11, or 709-906, the court may sentence the defendant to a period of probation not exceeding two years; or

(d) Six months upon conviction of a petty misdemeanor; provided that up to one year may be imposed upon a finding of good cause; except upon a conviction under section 709-906, the court may sentence the defendant to a period of probation not exceeding one year. The court, on application of a probation officer, on application of the defendant, or on its own motion, may discharge the defendant at any time. Prior to the court granting early discharge, the defendant's probation officer shall be required to report to the court concerning the defendant's compliance or non-compliance with the conditions of the defendant's probation and the court shall afford the prosecuting attorney an opportunity to be heard. The terms of probation provided in this part, other than in this section, shall not apply to sentences of probation imposed under section 706-606.3.

(2) When a defendant who is sentenced to probation has previously been detained in any state or county correctional or other institution following arrest for the crime for which sentence is imposed, the period of detention following arrest shall be deducted from the term of imprisonment if the term is given as a condition of probation. The pre-sentence report shall contain a certificate showing the length of such detention of the defendant prior to sentence in any state or county correctional or other institution, and the certificate shall be annexed to the official records of the defendant's sentence.

706-624 Bill

706-624 Conditions of probation.

(1) Mandatory conditions. The court shall provide, as an explicit condition of a sentence of probation:

(a) That the defendant not commit another federal or state crime or engage in criminal conduct in any foreign jurisdiction or under military jurisdiction that would constitute a crime under Hawaii law during the term of probation;

(b) That the defendant report to a probation officer as directed by the court or the probation officer;

(c) That the defendant remain within the jurisdiction of the court, unless granted permission to leave by the court or a probation officer;

(d) That the defendant notify a probation officer prior to any change in address or employment;

(e) That the defendant notify a probation officer promptly if arrested or questioned by a law enforcement officer;

(f) That the defendant permit a probation officer to visit the defendant at the defendant's home or elsewhere as specified by the court; and

(g) That the defendant make restitution for losses suffered by the victim or victims if the court has ordered restitution pursuant to section 706-646.

(2) Discretionary conditions. The court may provide, as further conditions of a sentence of probation, to the extent that the conditions are reasonably related to the factors set forth in section 706-606 and to the extent that the conditions involve only deprivations of liberty or property as are reasonably necessary for the purposes indicated in section 706-606(2), that the defendant:

(a) Serve a term of imprisonment to be determined by the court at sentencing in class A felony cases under section 707-702, not exceeding two years in class A felony cases under part IV of chapter 712, not exceeding eighteen months in class B felony cases, not exceeding one year in class C felony cases, not exceeding six months in misdemeanor cases, and not exceeding five days in petty misdemeanor cases; provided that notwithstanding any other provision of law, any order of imprisonment under this subsection that provides for prison work release shall require the defendant to pay thirty per cent of the defendant's gross pay earned during the prison work release period to satisfy any restitution order. The payment shall be handled by the adult probation division and shall be paid to the victim on a monthly basis;

(b) Perform a specified number of hours of services to the community as described in section 706-605(1)(d);

(c) Support the defendant's dependents and meet other family responsibilities;

(d) Pay a fine imposed pursuant to section 706-605(1)(b);

(e) Work conscientiously at suitable employment or pursue conscientiously a course of study or vocational training that will equip the defendant for suitable employment;

(f) Refrain from engaging in a specified occupation, business, or profession bearing a reasonably direct relationship to the conduct constituting the crime or engage in the specified occupation, business, or profession only to a stated degree or under stated circumstances;

(g) Refrain from frequenting specified kinds of places or from associating unnecessarily with specified persons, including the victim of the crime, any witnesses, regardless of whether they actually testified in the prosecution, law enforcement officers, co-defendants, or other individuals with whom contact may adversely affect the rehabilitation or reformation of the person convicted;

(h) Refrain from use of alcohol or any use of narcotic drugs or controlled substances without a prescription;

(i) Refrain from possessing a firearm, ammunition, destructive device, or other dangerous weapon;

(j) Undergo available medical or mental health assessment and treatment, including assessment and treatment for substance abuse dependency, and remain in a specified facility if required for that purpose;

(k) Reside in a specified place or area or refrain from residing in a specified place or area;

(l) Submit to periodic urinalysis or other similar testing procedure;

(m) Refrain from entering specified geographical areas without the court's permission;

(n) Refrain from leaving the person's dwelling place except to go to and from the person's place of employment, the office of the person's physician or dentist, the probation office, or any other location as may be approved by the person's probation officer pursuant to court order. As used in this paragraph, "dwelling place" includes the person's yard or, in the case of condominiums, the common elements;

(o) Comply with a specified curfew;

(p) Submit to monitoring by an electronic monitoring device;

(q) Submit to a search by any probation officer, with or without a warrant, of the defendant's person, residence, vehicle, or other sites or property under the defendant's control, based upon the probation officer's reasonable suspicion that illicit substances or contraband may be found on the person or in the place to be searched;

(r) Sign a waiver of extradition and pay extradition costs as determined and ordered by the court;

(s) Comply with a service plan developed using current assessment tools; and

(t) Satisfy other reasonable conditions as the court may impose.

(3) Written statement of conditions. The court shall order the defendant at the time of sentencing to sign a written acknowledgment of receipt of conditions of probation. The defendant shall be given a written copy of any requirements imposed pursuant to this section, stated with sufficient specificity to enable the defendant to comply with the conditions accordingly.

706-624.5 Bill

706-624.5 Notice of probation.

(1) Whenever the court places a defendant convicted of an offense against the person as described in chapter 707, or of an attempt to commit such an offense on probation without requiring the serving of a term of imprisonment, the court shall provide written notice to each victim of such offense of the probation, whenever the victim has made a written request for such notice. Notice shall be given to the victim at the address given on the request for notice or such other address as may be provided to the court by the victim from time to time.

(2) Neither the failure of any state officer or employee to carry out the requirements of this section nor compliance with it shall subject the State or the officer or employee to liability in any civil action. However, such failure may provide a basis for such disciplinary action as may be deemed appropriate by competent authority.

706-625 Bill

706-625 Revocation, modification of probation conditions.

(1) The court, on application of a probation officer, the prosecuting attorney, the defendant, or on its own motion, after a hearing, may revoke probation except as provided in subsections (6) and (7), reduce or enlarge the conditions of a sentence of probation, pursuant to the provisions applicable to the initial setting of the conditions and the provisions of section 706-627.

(2) The prosecuting attorney, the defendant's probation officer, and the defendant shall be notified by the movant in writing of the time, place, and date of any such hearing, and of the grounds upon which action under this section is proposed. The prosecuting attorney, the defendant's probation officer, and the defendant may appear in the hearing to oppose or support the application, and may submit evidence for the court's consideration. The defendant shall have the right to be represented by counsel. For purposes of this section, the court shall not be bound by the Hawaii rules of evidence, except for the rules pertaining to privileges.

(3) The court shall revoke probation if the defendant has inexcusably failed to comply with a substantial requirement imposed as a condition of the order or has been convicted of a felony. The court may revoke the suspension of sentence or probation if the defendant has been convicted of another crime other than a felony.

(4) The court may modify the requirements imposed on the defendant or impose further requirements, if it finds that such action will assist the defendant in leading a law-abiding life.

(5) When the court revokes probation, it may impose on the defendant any sentence that might have been imposed originally for the crime of which the defendant was convicted.

(6) The court may require a defendant to undergo and complete a substance abuse treatment program when the defendant has committed a violation of the terms and conditions of probation involving possession or use, not including to distribute or manufacture as defined in section 712-1240, of any dangerous drug, detrimental drug, harmful drug, intoxicating compound, marijuana, or marijuana concentrate, as defined in section 712-1240, unlawful methamphetamine trafficking as provided in section 712-1240.6, or involving possession or use of drug paraphernalia under section 329-43.5. If the defendant fails to complete the substance abuse treatment program or the court determines that the defendant cannot benefit from any other suitable substance abuse treatment program, the defendant shall be subject to revocation of probation and incarceration. The court may require the defendant to:

(a) Be assessed by a certified substance abuse counselor for substance abuse dependency or abuse under the applicable Diagnostic and Statistical Manual and Addiction Severity Index;

(b) Present a proposal to receive substance abuse treatment in accordance with the treatment plan prepared by a certified substance abuse counselor through a substance abuse treatment program that includes an identified source of payment for the treatment program;

(c) Contribute to the cost of the substance abuse treatment program; and

(d) Comply with any other terms and conditions of probation.

(7) As a condition of continued probation, the court may require a defendant to undergo a mental health evaluation and treatment program when the defendant has committed a violation of the terms and conditions of probation and there is reason to believe that the violation is associated with a mental disease, disorder, or defect of the defendant. The court may require the defendant to:

(a) Be assessed for a mental disease, disorder, or defect by a psychiatrist or psychologist, who shall prepare an appropriate treatment plan;

(b) Present a proposal to receive treatment in accordance with the plan prepared pursuant to paragraph (a) through a mental health treatment program that includes an identified source of payment for the treatment program, as applicable;

(c) Contribute to the cost of the treatment program, as applicable; and

(d) Comply with any other terms and conditions of probation. If the defendant fails to complete the treatment program or the court determines that the defendant cannot benefit from any other suitable treatment program, the defendant may be subject to revocation of probation and incarceration.

(8) Nothing in subsection (6) or (7) shall be construed to give rise to a cause of action against the State, a state employee, or a treatment provider.

(9) For the purposes of this section: "Conviction" means that a judgment has been pronounced upon the verdict. "Mental health treatment program" means treatment services addressing a mental disease, disorder, or defect of the defendant, including residential or rehabilitation treatment or any other course or procedure, including diversion into specialized

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

706-626 Bill

706-626 Summons or arrest of defendant on probation; commitment without bail. At any time before the discharge of the defendant or the termination of the period of probation:

(1) The court may, in connection with the probation, summon the defendant to appear before it or may issue a warrant for the defendant's arrest;

(2) A probation or law enforcement officer, having probable cause to believe that the defendant has failed to comply with a requirement imposed as a condition of the order, may arrest the defendant without a warrant and the defendant shall be held in custody pending the posting of bail pursuant to a bail schedule established by the court, or until a hearing date is set; provided that when the punishment for the original offense does not exceed one year, the probation or law enforcement officer may admit the probationer to bail; or

(3) The court, if there is probable cause to believe that the defendant has committed another crime or has been held to answer therefor, may commit the defendant without bail, pending a determination of the charge by the court having jurisdiction thereof.

706-627 Bill

706-627 Tolling of probation.

(1) Upon the filing of a motion to revoke a probation or a motion to enlarge the conditions imposed thereby, the period of probation shall be tolled pending the hearing upon the motion and the decision of the court. The period of tolling shall be computed from the filing date of the motion through and including the filing date of the written decision of the court concerning the motion for purposes of computation of the remaining period of probation, if any. In the event the court fails to file a written decision upon the motion, the period shall be computed by reference to the date the court makes a decision upon the motion in open court. During the period of tolling of the probation, the defendant shall remain subject to all terms and conditions of the probation except as otherwise provided by this chapter.

(2) In the event the court, following hearing, refuses to revoke the probation or grant the requested enlargement of conditions thereof because the defendant's failure to comply therewith was excusable, the defendant may be granted the period of tolling of the probation for purposes of computation of the remaining probation, if any.

706-628 Bill

706-628 REPEALED. L 1985, c 192, §3.

706-629 Bill

706-629 Calculation of multiple dispositions involving probation and imprisonment, or multiple terms of probation.

(1) When the disposition of a defendant involves more than one crime:

(a) The court shall not impose a sentence of probation and a sentence of imprisonment except as authorized by section 706-624(2)(a); and

(b) Multiple periods of probation shall run concurrently from the date of the first such disposition.

(2) When a defendant, already under sentence, is convicted for another crime committed prior to the former disposition:

(a) The court shall not sentence to probation a defendant who is under sentence of imprisonment with more than six months to run;

(b) Multiple periods of probation shall run concurrently from the date of the first such disposition; and

(c) When a defendant, already under sentence of probation, is sentenced to imprisonment, the service of imprisonment shall not toll the prior sentence of probation.

(3) When a defendant is convicted of a crime committed while on probation and such probation is not revoked:

(a) If the defendant is sentenced to imprisonment, the service of such sentence shall not toll the prior sentence of probation; and

(b) If the defendant is sentenced to probation, the period of such probation shall run concurrently with or consecutively to the remainder of the prior period, as the court determines at the time of disposition.

706-630 Bill

706-630 Discharge of defendant. Upon the termination of the period of the probation or the earlier discharge of the defendant, the defendant shall be relieved of any obligations imposed by the order of the court and shall have satisfied the disposition of the court, except as to any action under this chapter to collect unpaid fines, restitution, attorney's fees, costs, or interest.

706-631 Bill

706-631 Probation is a final judgment for other purposes. A judgment sentencing a defendant to be placed on probation shall be deemed tentative, to the extent provided in this chapter, but for all other purposes shall constitute a final judgment.

706-640 Bill

706-640 Authorized fines.

(1) A person who has been convicted of an offense may be sentenced to pay a fine not exceeding:

(a) $50,000, when the conviction is of a class A felony, murder in the first or second degree, or attempted murder in the first or second degree;

(b) $25,000, when the conviction is of a class B felony;

(c) $10,000, when the conviction is of a class C felony;

(d) $2,000, when the conviction is of a misdemeanor;

(e) $1,000, when the conviction is of a petty misdemeanor or a violation;

(f) Any higher amount equal to double the pecuniary gain derived from the offense by the defendant;

(g) Any higher or lower amount specifically authorized by statute.

(2) Notwithstanding section 706-641, the court shall impose a mandatory fine upon any defendant convicted of theft in the first or second degree committed by receiving stolen property as set forth in section 708-830(7). The fine imposed shall be the greater of double the value of the stolen property received or $25,000 in the case of a conviction for theft in the first degree; or the greater of double the value of the stolen property received or $10,000 in the case of a conviction for theft in the second degree. The mandatory fines imposed by this subsection shall not be reduced except and only to the extent that payment of the fine prevents the defendant from making restitution to the victim of the offense, or that the defendant's property, real or otherwise, has been forfeited under chapter 712A as a result of the same conviction for which the defendant is being fined under this subsection. Consequences for nonpayment shall be governed by section 706-644; provided that the court shall not reduce the fine under section 706-644(4) or 706-645.

706-641 Bill

706-641 Criteria for imposing fines.

(1) The court shall not sentence a defendant only to pay a fine, when any other disposition is authorized by law, except in misdemeanor and petty misdemeanor cases.

(2) The court shall not sentence a defendant to pay a fine in addition to a sentence of imprisonment or probation unless:

(a) The defendant has derived a pecuniary gain from the crime; or

(b) The court is of the opinion that a fine is specially adapted to the deterrence of the crime involved or to the correction of the defendant.

(3) The court shall not sentence a defendant to pay a fine unless:

(a) The defendant is or will be able to pay the fine; and

(b) The fine will not prevent the defendant from making restitution to the victim of the offense.

(4) In determining the amount and method of payment of a fine, the court shall take into account the financial resources of the defendant and the nature of the burden that its payment will impose.

706-642 Bill

706-642 Time and method of payment.

(1) When a defendant is sentenced to pay a fine, the court may grant permission for the payment to be made within a specified period of time or in specified installments. If no such permission is embodied in the sentence, the fine shall be payable forthwith by cash, check, or by a credit card approved by the court.

(2) When a defendant sentenced to pay a fine is also sentenced to probation, the court may make the payment of the fine a condition of probation.

(3) When a defendant sentenced to pay a fine is also ordered to make restitution or reparation to the victim or victims, or to the person or party who has incurred loss or damage because of the defendant's crime, the payment of restitution or reparation shall have priority over the payment of the fine, pursuant to section 706-651. No fine shall be collected until the restitution or reparation order has been satisfied.

706-643 Bill

706-643 Disposition of funds.

(1) The defendant shall pay a fine or any installment thereof to the cashier or clerk of the district or circuit court. In the event of default in payment, the clerk shall notify the prosecuting attorney and, if the defendant is on probation, the probation officer.

(2) [Repeal and reenactment on June 30, 2028. L 2023, c 148, §8(2).] All fines and other final payments received by a clerk or other officer of a court shall be accounted for, with the names of persons making payment, and the amount and date thereof, being recorded. All such funds shall be deposited with the director of finance to the credit of the general fund of the State. With respect to fines and bail forfeitures that are proceeds of the wildlife revolving fund under section 183D-10.5; fines that are proceeds of the drug and alcohol toxicology testing laboratory special fund under sections 291E-61(b)(2)(E), 291E-61.5(c)(2)(C), and 291E-62(c); and fines that are proceeds of the compliance resolution fund under sections 26-9(o) and 431:2-410, the director of finance shall transmit the fines and forfeitures to the respective funds.

706-644 Bill

706-644 Consequences of nonpayment; imprisonment for contumacious nonpayment; summary collection.

(1) When a defendant is sentenced pursuant to section 706-605, granted a conditional discharge pursuant to section 712-1255, or granted a deferred plea pursuant to chapter 853, and the defendant is ordered to pay a fee, fine, or restitution, whether as an independent order, as part of a judgment and sentence, or as a condition of probation or deferred plea, and the defendant defaults in the payment thereof or of any installment, the court, upon the motion of the prosecuting attorney or upon its own motion, may require the defendant to show cause why the defendant's default should not be treated as contumacious and may issue a summons or a warrant of arrest for the defendant's appearance. Unless the defendant shows that the defendant's default was not attributable to an intentional refusal to obey the order of the court, or to a failure on the defendant's part to make a good faith effort to obtain the funds required for the payment, the court shall find that the defendant's default was contumacious and may order the defendant committed until the fee, fine, restitution, or a specified part thereof is paid.

(2) When a fee, fine, or restitution is imposed on a corporation or unincorporated association, it is the duty of the person or persons authorized to make disbursement from the assets of the corporation or association to pay it from those assets, and their failure to do so may be held contumacious unless they make the showing required in subsection (1).

(3) The term of imprisonment for nonpayment of fee, fine, or restitution shall be specified in the order of commitment, and shall not exceed one day for each $250 of the fee or fine, thirty days if the fee or fine was imposed upon conviction of a violation or a petty misdemeanor, or one year in any other case, whichever is the shorter period. A person committed for nonpayment of a fee or fine shall be given credit toward payment of the fee or fine for each day of imprisonment, at the rate of $250 per day.

(4) If it appears that the defendant's default in the payment of a fee, fine, or restitution is not contumacious, the court may make an order allowing the defendant additional time for payment, reducing the amount of each installment, or revoking the fee, fine, or the unpaid portion thereof in whole or in part, or converting the unpaid portion of the fee or fine to community service. A defendant shall not be discharged from an order to pay restitution until the full amount of the restitution has actually been collected or accounted for.

(5) Unless discharged by payment or, in the case of a fee or fine, service of imprisonment pursuant to subsection (3), an order to pay a fee, fine, or restitution, whether as an independent order, as a part of a judgment and sentence, or as a condition of probation or deferred plea pursuant to chapter 853, may be collected in the same manner as a judgment in a civil action. The State or the victim named in the order may collect the restitution, including costs, interest, and attorney's fees, pursuant to section 706-646. The State may collect the fee or fine, including costs, interest, and attorney's fees pursuant to section 706-647.

(6) Attorney's fees, costs, and interest shall not be deemed part of the penalty, and no person shall be imprisoned under this section in default of payment of attorney's fees, costs, and interest.

706-645 Bill

706-645 Revocation of fine or restitution.

(1) A defendant who has been sentenced to pay a fine or restitution and who is not in contumacious default in the payment thereof may at any time petition the court which sentenced the defendant for a revocation of the fine or restitution or of any unpaid portion thereof.

(2) If it appears to the satisfaction of the court that the circumstances which warranted the imposition of the fine or restitution have changed, or that it would otherwise be unjust to require payment, the court may revoke the fine or restitution or the unpaid portion thereof in whole or in part. Prior to revocation, the court shall afford the prosecuting attorney an opportunity to be heard.

706-646 Bill

706-646 Victim restitution.

(1) As used in this section, "victim" includes any of the following:

(a) The direct victim of a crime including a business entity, trust, or governmental entity;

(b) If the victim dies as a result of the crime, a surviving relative of the victim as defined in chapter 351;

(c) A governmental entity that has reimbursed the victim for losses arising as a result of the crime or paid for medical care provided to the victim as a result of the crime; or

(d) Any duly incorporated humane society or duly incorporated society for the prevention of cruelty to animals, contracted with the county or State to enforce animal-related statutes or ordinances, that impounds, holds, or receives custody of a pet animal pursuant to section 711-1109.1, 711-1109.2, or 711■1110.5; provided that this section does not apply to costs that have already been contracted and provided for by the counties or State.

(2) The court shall order the defendant to make restitution for reasonable and verified losses suffered by the victim or victims as a result of the defendant's offense when requested by the victim. The court shall order restitution to be paid to the crime victim compensation commission if the victim has been given an award for compensation under chapter 351. If the court orders payment of a fine in addition to restitution or a compensation fee, or both, the payment of restitution and compensation fee shall be made pursuant to section 706-651.

(3) In ordering restitution, the court shall not consider the defendant's financial ability to make restitution in determining the amount of restitution to order. The court, however, shall consider the defendant's financial ability to make restitution for the purpose of establishing the time and manner of payment. The court shall specify the time and manner in which restitution is to be paid. While the defendant is in the custody of the department of corrections and rehabilitation , restitution shall be collected pursuant to chapter 353 and any court-ordered payment schedule shall be suspended. Restitution shall be a dollar amount that is sufficient to reimburse any victim fully for losses, including but not limited to:

(a) Full value of stolen or damaged property, as determined by replacement costs of like property, or the actual or estimated cost of repair, if repair is possible;

(b) Medical expenses, which shall include mental health treatment, counseling, and therapy;

(c) Funeral and burial expenses; and

(d) Lost earnings, which shall include paid leave.

(4) In any criminal proceeding before any court, all money deposited by the defendant as bail and not declared forfeited shall be applied toward payment of any restitution, fines, or fees ordered by the court in the same case, consistent with the priorities in subsection (2).

(5) The restitution ordered shall not affect the right of a victim to recover under section 351-33 or in any manner provided by law; provided that any amount of restitution actually recovered by the victim under this section shall be deducted from any award under section 351-33.

706-647 Bill

706-647 Civil enforcement.

(1) A certified or exemplified copy of an order of any court of this State for payment of a fine or restitution pursuant to section 706-605 may be filed in the office of the clerk of an appropriate court of this State as a special proceeding without the assessment of a filing fee or surcharge. The order, whether as an independent order, as part of a judgment and sentence, or as a condition of probation or deferred plea, shall be enforceable in the same manner as a civil judgment.

(2) In the event the victim has received or applied for reimbursement from any governmental entity, the victim named in the order or the victim's attorney shall also mail notice of the filing to the governmental entity providing reimbursement and shall file proof of mailing with the clerk.

(3) Fees for docketing, transcription, or other enforcement proceedings shall be as provided by law for judgments of a court of this State.

706-648 Bill

706-648 Probation services fee.

(1) The court, when sentencing a defendant to probation or granting deferral of a plea under section 853-1, shall order the defendant to pay a probation services fee. The amount of the fee shall be as follows:

(a) $150, when the term of probation or period of deferral is for more than one year; or

(b) $75, when the term of probation or period of deferral is for one year or less; provided that no fee shall be ordered when the court determines that the defendant is unable to pay the fee.

(2) The entire fee ordered or assessed shall be payable forthwith by cash, check, or by a credit card approved by the court. When a defendant is also ordered to pay a fine, make restitution, pay a crime victim compensation fee, or pay other fees in addition to the probation services fee under subsection (1), payments by the defendant shall be made pursuant to section 706-651.

(3) Any defendant received for supervision pursuant to chapter 353B shall be assessed a probation services fee pursuant to this section.

(4) The defendant shall pay the fee to the clerk of the court.

706-649 Bill

706-649 REPEALED. L Sp 2021, c 9, §44. Previous Vol14_Ch0701-0853 Next

706-650 Bill

706-650 Drug demand reduction assessments; special fund.

(1) In addition to any disposition authorized by chapter 706 or 853, any person who is:

(a) Convicted of an offense under part IV of chapter 712, except sections 712-1250.5 and 712-1257;

(b) Convicted under section 707-702.5;

(c) Convicted of a felony or misdemeanor offense under part IV of chapter 329;

(d) Convicted under section 291-3.1, 291-3.2, 291-3.3, 291E-61, or 291E-61.5;

(e) Found in violation of part III of chapter 291E; or

(f) Charged with any offense under paragraphs (a) to

(d) who has been granted a deferred acceptance of guilty or no contest plea; shall be ordered to pay a monetary assessment under subsection (2), except as provided under subsection (5).

(2) Monetary assessments for individuals subject to subsection (1) shall not exceed the following:

(a) $3,000 when the offense is a class A felony;

(b) $2,000 when the offense is a class B felony;

(c) $1,000 when the offense is a class C felony;

(d) $500 when the offense is a misdemeanor; or

(e) $250 when the person has been found guilty of an offense under section 712-1249, 291-3.1, 291-3.2, 291-3.3, 291E-61, or has been found in violation of part III of chapter 291E. Notwithstanding sections 706-640 and 706-641 and any other law to the contrary, the assessments provided by this section shall be in addition to and not in lieu of, and shall not be used to offset or reduce, any fine authorized or required by law and shall be paid pursuant to section 706-651.

(3) There is established a special fund to be known as the "drug demand reduction assessments special fund" to be administered by the department of health. The disbursement of money from the drug demand reduction assessments special fund shall be used to supplement substance abuse treatment and other substance abuse demand reduction programs.

(4) All monetary assessments paid and interest accrued on funds collected pursuant to this section shall be deposited into the drug demand reduction assessments special fund.

(5) If the court determines that the person has the ability to pay the monetary assessment and is eligible for probation or will not be sentenced to incarceration, unless otherwise required by law, the court may order the person to undergo a substance abuse treatment program at the person's expense. If the person undergoes a substance abuse treatment program at the person's expense, the court may waive or reduce the amount of the monetary assessment. Upon a showing by the person that the person lacks the financial ability to pay all or part of the monetary assessment, the court may waive or reduce the amount of the monetary assessment.

706-650.5 HRS

706-650.5 Human trafficking victim services fund.

(1) In addition to any disposition authorized by chapter 706, any individual who is:

(a) Convicted of an offense under part VIII of chapter 707; or

(b) Convicted of an offense under part I of chapter 712; shall be ordered to pay a fee under subsection (2).

(2) Fees for individuals subject to subsection

(1) shall not exceed the following:

(a) $5,000 when the offense is a class A felony;

(b) $2,500 when the offense is a class B felony;

(c) $1,000 when the offense is a class C felony;

(d) $500 when the offense is a misdemeanor; or

(e) $250 when the offense is a petty misdemeanor.

(3) There is established within the state treasury a special fund to be known as the human trafficking victim services fund to be administered by the department of labor and industrial relations. The disbursement of money from the human trafficking victim services fund shall be used to supplement programs, grants, or purchase of service contracts that support or provide comprehensive services to victims of labor trafficking crimes under part VIII of chapter 707, or victims of trafficking related to crimes under part I of chapter 712. Moneys in the special fund shall be used for new or existing programs, grants, or purchase of service contracts and shall not supplant any other moneys previously allocated to these programs, grants, or purchase of service contracts.

(4) All fees paid and interest accrued on funds collected pursuant to this section shall be deposited into the human trafficking victim services fund.

(5) When a defendant is ordered to make payments in addition to the human trafficking victim services fee authorized under subsection (2), payments by the defendant shall be made pursuant to section 706-651.

(6) The department of labor and industrial relations shall submit to the legislature no later than twenty days prior to the convening of each regular session a written annual report that provides the following:

(a) An accounting of the receipts of and expenditures from the human trafficking victim services fund; and

(b) Any recommendations to improve support of and services to victims of labor trafficking crimes under part VIII of chapter 707, or victims of trafficking related to crimes under part I of chapter 712.

706-651 HRS

706-651 Payments by defendant; order of priority. When a defendant is ordered to make payments pursuant to chapters 351, 706, 846F, and 853, or as otherwise provided by law, payments shall be made in the following order of priority:

(1) Restitution;

(2) Crime victims compensation fee;

(3) Probation services fee;

(4) Human trafficking victim services fee;

(5) Other fees, including but not limited to internet crimes against children fee and drug demand reduction assessment fee;

(6) DNA analysis monetary assessment; and

(7) Fines.

706-656 Bill

706-656 Terms of imprisonment for first and second degree murder and attempted first and second degree murder.

(1) Persons twenty-one years of age or older at the time of the offense who are convicted of first degree murder or first degree attempted murder shall be sentenced to life imprisonment without the possibility of parole. As part of the sentence, the court shall order the director of corrections and rehabilitation and the Hawaii paroling authority to prepare an application for the governor to commute the sentence to life imprisonment with parole at the end of twenty years of imprisonment; provided that persons who are repeat offenders under section 706-606.5 shall serve at least the applicable mandatory minimum term of imprisonment. Persons under the age of twenty-one years at the time of the offense who are convicted of first degree murder or first degree attempted murder shall be sentenced to life imprisonment with the possibility of parole.

(2) Except as provided in section 706-657, pertaining to enhanced sentence for second degree murder, persons convicted of second degree murder and attempted second degree murder shall be sentenced to life imprisonment with possibility of parole. The minimum length of imprisonment shall be determined by the Hawaii paroling authority; provided that persons who are repeat offenders under section 706-606.5 shall serve at least the applicable mandatory minimum term of imprisonment. If the court imposes a sentence of life imprisonment without possibility of parole pursuant to section 706-657, as part of that sentence, the court shall order the director of corrections and rehabilitation and the Hawaii paroling authority to prepare an application for the governor to commute the sentence to life imprisonment with parole at the end of twenty years of imprisonment; provided that persons who are repeat offenders under section 706-606.5 shall serve at least the applicable mandatory minimum term of imprisonment.

706-657 Bill

706-657 Enhanced sentence for second degree murder.

(a) The court may sentence a person who was twenty-one years of age or older at the time of the offense and who has been convicted of murder in the second degree to life imprisonment without the possibility of parole under section 706-656 if the court finds that the murder was especially heinous, atrocious, or cruel, manifesting exceptional depravity or that the person was previously convicted of the offense of murder in the first degree or murder in the second degree in this State or was previously convicted in another jurisdiction of an offense that would constitute murder in the first degree or murder in the second degree in this State.

(b) Hearings to determine the grounds for imposing an enhanced sentence for second degree murder may be initiated by the prosecutor or by the court on its own motion. The court shall not impose an enhanced term unless the ground therefor has been established at a hearing after the conviction of the defendant and on written notice to the defendant of the ground proposed. Subject to the provision of section 706-604, the defendant shall have the right to hear and controvert the evidence against the defendant and to offer evidence upon the issue.

(c) The provisions pertaining to commutation in section 706-656(2) shall apply to persons sentenced pursuant to this section.

(d) As used in this section: "Especially heinous, atrocious, or cruel, manifesting exceptional depravity" means a conscienceless or pitiless crime that is unnecessarily torturous to a victim. "Previously convicted" means a sentence imposed at the same time or a sentence previously imposed that has not been set aside, reversed, or vacated.

706-659 Bill

706-659 Sentence of imprisonment for class A felony. Notwithstanding part II; sections 706-605, 706-606, 706-606.5, 706-660.1, 706-661, and 706-662; and any other law to the contrary, a person who has been convicted of a class A felony, except class A felonies defined in chapter 712, part IV, or section 707-702, shall be sentenced to an indeterminate term of imprisonment of twenty years without the possibility of suspension of sentence or probation. The minimum length of imprisonment shall be determined by the Hawaii paroling authority in accordance with section 706-669. A person who has been convicted of a class A felony defined in chapter 712, part IV, or section 707-702, may be sentenced to an indeterminate term of imprisonment, except as provided for in section 706-660.1 relating to the use of firearms in certain felony offenses and section 706-606.5 relating to repeat offenders. When ordering such a sentence, the court shall impose the maximum length of imprisonment which shall be twenty years. The minimum length of imprisonment shall be determined by the Hawaii paroling authority in accordance with section 706-669.

706-660 Bill

706-660 Sentence of imprisonment for class B and C felonies; ordinary terms; discretionary terms.

(1) Except as provided in subsection (2), a person who has been convicted of a class B or class C felony may be sentenced to an indeterminate term of imprisonment except as provided for in section 706-660.1 relating to the use of firearms in certain felony offenses and section 706-606.5 relating to repeat offenders. When ordering such a sentence, the court shall impose the maximum length of imprisonment which shall be as follows:

(a) For a class B felony--ten years; and

(b) For a class C felony--five years. The minimum length of imprisonment shall be determined by the Hawaii paroling authority in accordance with section 706-669.

(2) A person who has been convicted of a class B or class C felony for any offense under part IV of chapter 712 may be sentenced to an indeterminate term of imprisonment; provided that this subsection shall not apply to sentences imposed under sections 706-606.5, 706-660.1, 712-1240.5, 712-1240.8 as that section was in effect prior to July 1, 2016, 712-1242, 712-1245, 712-1249.5, 712■1249.6, 712-1249.7, and 712-1257. When ordering a sentence under this subsection, the court shall impose a term of imprisonment, which shall be as follows:

(a) For a class B felony--ten years or less, but not less than five years; and

(b) For a class C felony--five years or less, but not less than one year. The minimum length of imprisonment shall be determined by the Hawaii paroling authority in accordance with section 706-669.

706-660.1 Bill

706-660.1 Sentence of imprisonment for use of a firearm, semiautomatic firearm, or automatic firearm in a felony.

(1) A person convicted of a felony, where the person had a firearm in the person's possession or threatened its use or used the firearm while engaged in the commission of the felony, whether the firearm was loaded or not, and whether operable or not, may in addition to the indeterminate term of imprisonment provided for the grade of offense be sentenced to a mandatory minimum term of imprisonment without possibility of parole or probation the length of which shall be as follows:

(a) For murder in the second degree and attempted murder in the second degree--up to fifteen years;

(b) For a class A felony--up to ten years;

(c) For a class B felony--up to five years; and

(d) For a class C felony--up to three years. The sentence of imprisonment for a felony involving the use of a firearm as provided in this subsection shall not be subject to the procedure for determining minimum term of imprisonment prescribed under section 706-669; provided further that a person who is imprisoned in a correctional institution as provided in this subsection shall become subject to the parole procedure as prescribed in section 706-670 only upon the expiration of the term of mandatory imprisonment fixed under paragraph (a), (b), (c), or (d).

(2) A person convicted of a second firearm felony offense as provided in subsection (1) where the person had a firearm in the person's possession or threatened its use or used the firearm while engaged in the commission of the felony, whether the firearm was loaded or not, and whether operable or not, shall in addition to the indeterminate term of imprisonment provided for the grade of offense be sentenced to a mandatory minimum term of imprisonment without possibility of parole or probation the length of which shall be as follows:

(a) For murder in the second degree and attempted murder in the second degree--twenty years;

(b) For a class A felony--thirteen years, four months;

(c) For a class B felony--six years, eight months; and

(d) For a class C felony--three years, four months. The sentence of imprisonment for a second felony offense involving the use of a firearm as provided in this subsection shall not be subject to the procedure for determining a minimum term of imprisonment prescribed under section 706-669; provided further that a person who is imprisoned in a correctional institution as provided in this subsection shall become subject to the parole procedure as prescribed in section 706-670 only upon expiration of the term of mandatory imprisonment fixed under paragraph (a), (b), (c), or (d).

(3) A person convicted of a felony, where the person had a semiautomatic firearm or automatic firearm in the person's possession or used or threatened its use while engaged in the commission of the felony, whether the semiautomatic firearm or automatic firearm was loaded or not, and whether operable or not, shall in addition to the indeterminate term of imprisonment provided for the grade of offense be sentenced to a mandatory minimum term of imprisonment without possibility of parole or probation the length of which shall be as follows:

(a) For murder in the second degree and attempted murder in the second degree--twenty years;

(b) For a class A felony--fifteen years;

(c) For a class B felony--ten years; and

(d) For a class C felony--five years. The sentence of imprisonment for a felony involving the use of a semiautomatic firearm or automatic firearm as provided in this subsection shall not be subject to the procedure for determining a minimum term of imprisonment prescribed under section 706-669; provided further that a person who is imprisoned in a correctional institution as provided in this subsection shall become subject to the parole procedure as prescribed in section 706-670 only upon expiration of the term of mandatory imprisonment fixed under paragraph (a), (b), (c), or (d).

(4) In this section: "Automatic firearm" has the same meaning defined in section 134-1. "Firearm" has the same meaning defined in section 134-1 except that it does not include "semiautomatic firearm" or "automatic firearm". "Semiautomatic firearm" means any firearm that uses the energy of the explosive in a fixed cartridge to extract a fired cartridge and chamber a fresh cartridge with each single pull of the trigger.

706-660.2 Bill

706-660.2 Sentence of imprisonment for offenses against children, elder persons, or handicapped persons.

(1) Notwithstanding section 706-669, if not subjected to an extended term of imprisonment pursuant to section 706-662, a person shall be sentenced to a mandatory minimum term of imprisonment without possibility of parole as provided in subsection (2) if:

(a) The person, in the course of committing or attempting to commit a felony, causes the death or inflicts serious or substantial bodily injury upon another person who is:

(i) Sixty years of age or older; (ii) Blind, a paraplegic, or a quadriplegic; or (iii) Eight years of age or younger; and

(b) Such disability is known or reasonably should be known to the defendant.

(2) The term of imprisonment for a person sentenced pursuant to subsection (1) shall be as follows:

(a) For murder in the second degree--fifteen years;

(b) For a class A felony--six years, eight months;

(c) For a class B felony--three years, four months;

(d) For a class C felony--one year, eight months.

706-660.5 HRS

706-660.5 Sentence of imprisonment for use of a ghost gun in a felony.

(1) A person convicted of a felony, where the person had a ghost gun in the person's possession or threatened its use or used the ghost gun while engaged in the commission of the felony, whether the ghost gun was loaded or not, may in addition to the indeterminate term of imprisonment provided for the grade of offense be sentenced to a mandatory minimum term of imprisonment without possibility of parole or probation the length of which shall be as follows:

(a) For murder in the second degree and attempted murder in the second degree—up to fifteen years;

(b) For a class A felony—up to ten years;

(c) For a class B felony—up to five years; and

(d) For a class C felony—up to three years. The sentence of imprisonment for a felony involving the use of a ghost gun as provided in this section shall not be subject to the procedure for determining minimum term of imprisonment prescribed under section 706-669; provided that a person who is imprisoned in a correctional institution as provided in this subsection shall become subject to the parole procedure as prescribed in section 706-670 only upon the expiration of the term of mandatory imprisonment fixed under paragraph (a), (b), (c), or (d).

(2) A person convicted of a second or subsequent ghost gun felony offense as provided in subsection (1), where the person had a ghost gun in the person's possession or threatened its use or used the ghost gun while engaged in the commission of the felony, whether the ghost gun was loaded or not, shall in addition to the indeterminate term of imprisonment provided for the grade of offense be sentenced to a mandatory minimum term of imprisonment without possibility of parole or probation the length of which shall be as follows:

(a) For murder in the second degree and attempted murder in the second degree—twenty years;

(b) For a class A felony—thirteen years, four months;

(c) For a class B felony—six years, eight months; and

(d) For a class C felony—three years, four months. The sentence of imprisonment for a second or subsequent felony offense involving the use of a ghost gun as provided in this subsection shall not be subject to the procedure for determining a minimum term of imprisonment prescribed under section 706-669; provided that a person who is imprisoned in a correctional institution as provided in this subsection shall become subject to the parole procedure as prescribed in section 706-670 only upon expiration of the term of mandatory imprisonment fixed under paragraph (a), (b), (c), or (d).

(3) Any person convicted of a ghost gun felony offense as provided in subsection (1) who has previously been convicted of a felony offense involving the use of a firearm under section 706-660.1, shall in addition to the indeterminate term of imprisonment provided for the grade of offense be sentenced to a mandatory minimum term of imprisonment without possibility of parole or probation the length of which shall be as follows:

(a) For murder in the second degree and attempted murder in the second degree—twenty years;

(b) For a class A felony—thirteen years, four months;

(c) For a class B felony—six years, eight months; and

(d) For a class C felony—three years, four months. The sentence of imprisonment as provided in this subsection shall not be subject to the procedure for determining a minimum term of imprisonment prescribed under section 706-669; provided that a person who is imprisoned in a correctional institution as provided in this subsection shall become subject to the parole procedure as prescribed in section 706-670 only upon expiration of the term of mandatory imprisonment fixed under paragraph (a), (b), (c), or (d).

(4) In this section: "Firearm" has the same meaning defined in section 134-1. "Ghost gun" has the same meaning defined in section 134-1.

706-661 Bill

706-661 Extended terms of imprisonment. The court may sentence a person who satisfies the criteria for any of the categories set forth in section 706-662 to an extended term of imprisonment, which shall have a maximum length as follows:

(1) For murder in the second degree--life without the possibility of parole;

(2) For a class A felony--indeterminate life term of imprisonment;

(3) For a class B felony--indeterminate twenty-year term of imprisonment; and

(4) For a class C felony--indeterminate ten-year term of imprisonment. When ordering an extended term sentence, the court shall impose the maximum length of imprisonment. The minimum length of imprisonment for an extended term sentence under paragraphs (2), (3), and (4) shall be determined by the Hawaii paroling authority in accordance with section 706-669.

706-662 Bill

706-662 Criteria for extended terms of imprisonment. A defendant who has been convicted of a felony may be subject to an extended term of imprisonment under section 706-661 if it is proven beyond a reasonable doubt that an extended term of imprisonment is necessary for the protection of the public and that the convicted defendant satisfies one or more of the following criteria:

(1) The defendant is a persistent offender in that the defendant has previously been convicted of two or more felonies committed at different times when the defendant was twenty-one years of age or older;

(2) The defendant is a professional criminal in that:

(a) The circumstances of the crime show that the defendant has knowingly engaged in criminal activity as a major source of livelihood; or

(b) The defendant has substantial income or resources not explained to be derived from a source other than criminal activity;

(3) The defendant is a dangerous person in that the defendant has been subjected to a psychiatric or psychological evaluation that documents a significant history of dangerousness to others resulting in criminally violent conduct, and this history makes the defendant a serious danger to others. Nothing in this section precludes the introduction of victim-related data to establish dangerousness in accord with the Hawaii rules of evidence;

(4) The defendant is a multiple offender in that:

(a) The defendant is being sentenced for two or more felonies or is already under sentence of imprisonment for any felony; or

(b) The maximum terms of imprisonment authorized for each of the defendant's crimes, if made to run consecutively, would equal or exceed in length the maximum of the extended term imposed or would equal or exceed forty years if the extended term imposed is for a class A felony;

(5) The defendant is an offender against the elderly, the handicapped, or a minor eight years of age or younger in that:

(a) The defendant attempts or commits any of the following crimes: murder, manslaughter, a sexual offense that constitutes a felony under chapter 707, robbery, felonious assault, burglary, or kidnapping; and

(b) The defendant, in the course of committing or attempting to commit the crime, inflicts serious or substantial bodily injury upon a person who has the status of being:

(i) Sixty years of age or older; (ii) Blind, a paraplegic, or a quadriplegic; or (iii) Eight years of age or younger; and the person's status is known or reasonably should be known to the defendant;

(6) The defendant is a hate crime offender in that:

(a) The defendant is convicted of a crime under chapter 707, 708, or 711; and

(b) The defendant intentionally selected a victim or, in the case of a property crime, the property that was the object of a crime, because of hostility toward the actual or perceived race, religion, disability, ethnicity, national origin, gender identity or expression, or sexual orientation of any person. For purposes of this subsection, "gender identity or expression" includes a person's actual or perceived gender, as well as a person's gender identity, gender-related self-image, gender-related appearance, or gender-related expression, regardless of whether that gender identity, gender-related self-image, gender-related appearance, or gender-related expression is different from that traditionally associated with the person's sex at birth; or

(7) The defendant is convicted under section 707-702.5 and the defendant did not remain at the scene of the crime and render reasonable assistance to an injured person, including acts and omissions in violation of section 291C-12.

706-663 Bill

706-663 Sentence of imprisonment for misdemeanor and petty misdemeanor. After consideration of the factors set forth in sections 706-606 and 706-621, the court may sentence a person who has been convicted of a misdemeanor or a petty misdemeanor to imprisonment for a definite term to be fixed by the court and not to exceed one year in the case of a misdemeanor or thirty days in the case of a petty misdemeanor.

706-664 Bill

706-664 Procedure for imposing extended terms of imprisonment.

(1) Hearings to determine the grounds for imposing extended terms of imprisonment may be initiated by the prosecutor or by the court on its own motion. The court shall not impose an extended term unless the ground therefor has been established at a hearing after the conviction of the defendant and written notice of the ground proposed was given to the defendant pursuant to subsection (2). Subject to the provisions of section 706-604, the defendant shall have the right to hear and controvert the evidence against the defendant and to offer evidence upon the issue before a jury; provided that the defendant may waive the right to a jury determination under this subsection, in which case the determination shall be made by the court.

(2) Notice of intention to seek an extended term of imprisonment under section 706-662 shall be given to the defendant within thirty days of the defendant's arraignment. However, the thirty-day period may be waived by the defendant, modified by stipulation of the parties, or extended upon a showing of good cause by the prosecutor. A defendant previously sentenced to an extended term under a prior version of this chapter shall be deemed to have received notice of an intention to seek an extended term of imprisonment.

(3) If the jury, or the court if the defendant has waived the right to a jury determination, finds that the facts necessary for the imposition of an extended term of imprisonment under section 706-662 have been proven beyond a reasonable doubt, the court may impose an indeterminate term of imprisonment as provided in section 706-661.

706-665 Bill

706-665 Former conviction in another jurisdiction. For purposes of sections 706-606.5, 706-620, and 706-662(1), a conviction of the commission of a crime in another jurisdiction shall constitute a previous conviction. Such conviction shall be deemed to have been of a felony if sentence of death or of imprisonment in excess of one year was authorized under the law of such other jurisdiction. Such a conviction shall be graded, for purposes of section 706-620 by comparing the maximum imprisonment authorized under the law of such other jurisdiction with the maximum imprisonment authorized for the relevant grade of felony.

706-666 Bill

706-666 Definition of proof of conviction.

(1) An adjudication by a court of competent jurisdiction that the defendant committed a crime constitutes a conviction for purposes of sections 706-606.5, 706-662, and 706-665, although sentence or the execution thereof was suspended, provided that the defendant was not pardoned on the ground of innocence.

(2) Prior conviction may be proved by any evidence, including fingerprint records made in connection with arrest, conviction, or imprisonment, that reasonably satisfies the court that the defendant was convicted.

706-667 Bill

706-667 Young adult defendants.

(1) Defined. A young adult defendant is a person convicted of a crime who, at the time of the offense, is less than twenty-two years of age and who has not been previously convicted of a felony as an adult or adjudicated as a juvenile for an offense that would have constituted a felony had the young adult defendant been an adult.

(2) Specialized correctional treatment. A young adult defendant who is sentenced to a term of imprisonment exceeding thirty days may be committed by the court to the custody of the department of corrections and rehabilitation and shall receive, as far as practicable, such special and individualized correctional and rehabilitative treatment as may be appropriate to the young adult defendant's needs.

(3) Special term. A young adult defendant convicted of a felony, in lieu of any other sentence of imprisonment authorized by this chapter, may be sentenced to a special indeterminate term of imprisonment if the court is of the opinion that such special term is adequate for the young adult defendant's correction and rehabilitation and will not jeopardize the protection of the public. When ordering a special indeterminate term of imprisonment, the court shall impose the maximum length of imprisonment, which shall be eight years for a class A felony, five years for a class B felony, and four years for a class C felony. The minimum length of imprisonment shall be set by the Hawaii paroling authority in accordance with section 706-669. During this special indeterminate term, the young adult shall be incarcerated separately from career criminals, when practicable. [(4)] This section shall not apply to the offenses of murder or attempted murder.

706-668 Bill

706-668.5 Bill

706-668.5 Multiple sentence of imprisonment.

(1) If multiple terms of imprisonment are imposed on a defendant, whether at the same time or at different times, or if a term of imprisonment is imposed on a defendant who is already subject to an unexpired term of imprisonment, the terms may run concurrently or consecutively. Multiple terms of imprisonment run concurrently unless the court orders or the statute mandates that the terms run consecutively.

(2) The court, in determining whether the terms imposed are to be ordered to run concurrently or consecutively, shall consider the factors set forth in section 706-606.

(3) For terms of imprisonment imposed prior to June 18, 2008, the department of corrections and rehabilitation shall post written notice in all inmate housing units and the facility library at each correctional facility for a period of two months and send written notice to the defendant no later than January 1, 2016, that shall include but not be limited to:

(a) Notice that the department of corrections and rehabilitation may recalculate the multiple terms of imprisonment imposed on the defendant; and

(b) Notice of the defendant's right to have the court review the defendant's sentence.

706-669 Bill

706-669 Procedure for determining minimum term of imprisonment.

(1) When a person has been sentenced to an indeterminate or an extended term of imprisonment, the Hawaii paroling authority shall, as soon as practicable but no later than six months after commitment to the custody of the director of the department of corrections and rehabilitation hold a hearing, and on the basis of the hearing make an order fixing the minimum term of imprisonment to be served before the prisoner shall become eligible for parole.

(2) Before holding the hearing, the authority shall obtain a complete report regarding the prisoner's life before entering the institution and a full report of the prisoner's progress in the institution. The report shall be a complete personality evaluation for the purpose of determining the prisoner's degree of propensity toward criminal activity.

(3) The prisoner shall be given reasonable notice of the hearing under subsection (1) and shall be permitted to be heard by the authority on the issue of the minimum term to be served before the prisoner becomes eligible for parole. In addition, the prisoner shall:

(a) Be permitted to consult with any persons the prisoner reasonably desires, including the prisoner's own legal counsel, in preparing for the hearing;

(b) Be permitted to be represented and assisted by counsel at the hearing;

(c) Have counsel appointed to represent and assist the prisoner if the prisoner so requests and cannot afford to retain counsel; and

(d) Be informed of the prisoner's rights under [paragraphs] (a), (b), and (c).

(4) The authority in its discretion may, in any particular case and at any time, impose a special condition that the prisoner will not be considered for parole unless and until the prisoner has a record of continuous exemplary behavior.

(5) After sixty days notice to the prosecuting attorney, the authority in its discretion may reduce the minimum term fixed by its order pursuant to subsection (1).

(6) A verbatim stenographic or mechanical record of the hearing shall be made and preserved in transcribed or untranscribed form.

(7) The State shall have the right to be represented at the hearing by the prosecuting attorney who may present written testimony and make oral comments and the authority shall consider such testimony and comments in reaching its decision. The authority shall notify the prosecuting attorney of the hearing at the time the prisoner is given notice of the hearing. The hearing shall be opened to victims or their designees or surviving immediate family members who may present a written statement or make oral comments.

(8) The authority shall establish guidelines for the uniform determination of minimum sentences which shall take into account both the nature and degree of the offense of the prisoner and the prisoner's criminal history and character. The guidelines shall be public records and shall be made available to the prisoner and to the prosecuting attorney and other

interested government agencies.

706-670 Bill

706-670 Parole procedure; release on parole; terms of parole, recommitment, and reparole; final unconditional release.

(1) [Repeal and reenactment on July 1, 2018, by L 2013, c 67, §2 deleted by L 2017, c 77, §2.] Parole hearing. A person sentenced to an indeterminate term of imprisonment shall receive an initial parole hearing at least one month before the expiration of the minimum term of imprisonment determined by the Hawaii paroling authority pursuant to section 706-669. If the person has been sentenced to multiple terms of imprisonment, the parole hearing shall not be required until at least one month before the expiration of the minimum term that expires last in time. A validated risk assessment shall be used to determine the person's risk of re-offense and suitability for community supervision. For purposes of this subsection, "validated risk assessment" means an actuarial tool to determine a person's likelihood of engaging in future criminal behavior. The department of corrections and rehabilitation shall select a research-based risk assessment tool and shall validate the accuracy of the risk assessment tool at least every five years in consultation with the paroling authority. Assessments shall be performed by department of corrections and rehabilitation staff who are trained in the use of the risk assessment tool. Except for good cause shown to the paroling authority, a person who is assessed as low risk for re-offending shall be granted parole upon completing the minimum sentence, unless the person:

(a) Is found to have an extensive criminal history record that is indicative of a likelihood of future criminal behavior in spite of the finding by the risk assessment by the paroling authority;

(b) Is found to have committed misconduct while in prison that is equivalent to a misdemeanor or felony crime within thirty-six months of the expiration of the minimum term of imprisonment;

(c) Has any pending felony charges in the State;

(d) Is incarcerated for a sexual offense under part V of chapter 707 or child abuse under part VI of chapter 707; or

(e) Does not have a parole plan as set forth under section 706-670(3) and (4), as approved by, and at the discretion of, the paroling authority. If parole is not granted at the initial parole hearing, additional hearings shall be held at twelve-month intervals or less until parole is granted or the maximum period of imprisonment expires. The State shall have the right to be represented at the initial parole hearing and all subsequent parole hearings by the prosecuting attorney, who may present written testimony and make oral comments. The authority shall consider the testimony and comments in reaching its decision. The authority shall notify the appropriate prosecuting attorney of the hearing at the time the prisoner is given notice of the hearing.

(2) Parole conditions. The authority, as a condition of parole, may impose reasonable conditions on the prisoner as provided under section 706-624.

(3) Prisoner's plan and participation. Each prisoner shall be given reasonable notice of the prisoner's parole hearing and shall prepare a parole plan, setting forth the manner of life the prisoner intends to lead if released on parole, including specific information as to where and with whom the prisoner will reside, a phone contact where the prisoner can be reached, and what occupation or employment the prisoner will follow, if any. The prisoner shall be paroled in the county where the prisoner had a permanent residence or occupation or employment prior to the prisoner's incarceration, unless the prisoner will: reside in a county in which the population exceeds eight-hundred thousand persons; reside in a county in the State in which the committed person has the greatest family or community support, opportunities for employment, job training, education, treatment, and other social services, as determined by the Hawaii paroling authority; or be released for immediate departure from the State. The institutional parole staff shall render reasonable aid to the prisoner in the preparation of the prisoner's plan and in securing information for submission to the authority. In addition, the prisoner shall:

(a) Be permitted to consult with any persons whose assistance the prisoner reasonably desires, including the prisoner's own legal counsel, in preparing for a hearing before the authority;

(b) Be permitted to be represented and assisted by counsel at the hearing;

(c) Have counsel appointed to represent and assist the prisoner if the prisoner so requests and cannot afford to retain counsel; and

(d) Be informed of the prisoner's rights as set forth in this subsection.

(4) Authority's decision; initial minimum term of parole. The authority shall render its decision regarding a prisoner's release on parole within a reasonable time after the parole hearing. A grant of parole shall not be subject to acceptance

by the prisoner. If the authority denies parole after the hearing, it shall state its reasons in writing. A verbatim stenographic or mechanical record of the parole hearing shall be made and preserved in transcribed or untranscribed form. The authority, in its discretion, may order a reconsideration or rehearing of the case at any time and shall provide reasonable notice of the reconsideration or rehearing to the prosecuting attorney. If parole is granted by the authority, the authority shall set the initial minimum length of the parole term.

(5) Release upon expiration of maximum term. If the authority fixes no earlier release date, a prisoner's release shall become mandatory at the expiration of the prisoner's maximum term of imprisonment.

(6) Sentence of imprisonment includes separate parole term. A sentence to an indeterminate term of imprisonment under this chapter includes as a separate portion of the sentence a term of parole or of recommitment for violation of the conditions of parole.

(7) Revocation hearing. When a parolee has been recommitted, the authority shall hold a hearing within sixty days after the parolee's return to determine whether parole should be revoked. The parolee shall have reasonable notice of the grounds alleged for revocation of the parolee's parole. The institutional parole staff shall render reasonable aid to the parolee in preparation for the hearing. In addition, the parolee shall have, with respect to the revocation hearing, those rights set forth in subsection (3)(a), (3)(b), (3)(c), and (3)(d). A record of the hearing shall be made and preserved as provided in subsection (4).

(8) Length of recommitment and reparole after revocation of parole. If a parolee's parole is revoked, the term of further imprisonment upon such recommitment and of any subsequent reparole or recommitment under the same sentence shall be fixed by the authority but shall not exceed in aggregate length the unserved balance of the maximum term of imprisonment.

(9) Final unconditional release. When the prisoner's maximum parole term has expired or the prisoner has been sooner discharged from parole, a prisoner shall be deemed to have served the prisoner's sentence and shall be released unconditionally.

706-670.5 Bill

706-670.5 Notice of parole or final unconditional release.

(1) As used in this section, the following terms have the following meanings: "Offense against the person" means any of the offenses described in chapter 707 and includes any attempt to commit any of those offenses. "Prisoner" or "parolee" means a person who has been convicted of an offense against the person. "Surviving immediate family member" means a person who is a surviving grandparent, parent, sibling, spouse or reciprocal beneficiary, child, or legal guardian of a deceased victim. "Victim" means the person who was the victim of the offense against the person for which the prisoner or parolee was convicted.

(2) The Hawaii paroling authority shall give written notice of the parole or release from parole of a prisoner or parolee to each victim who has submitted a written request for notice or to a surviving immediate family member who has submitted a written request for notice.

(3) The department of corrections and rehabilitation shall give written notice of the final unconditional release of a prisoner or parolee, who has not been previously paroled or discharged, to each victim who has submitted a written request for notice or to a surviving immediate family member who has submitted a written request for notice.

(4) The authority or department, as the case may be, shall provide written notice to the victim or surviving immediate family member at the address given on the written request for notice or such other address as may be provided by the victim or surviving immediate family member, not less than ten days prior to parole or final unconditional release. The authority or department, in its discretion, may instead give written notice to the witness or victim counselor programs in the prosecuting attorney's office in the county where the victim or the surviving immediate family member resides.

(5) Neither the failure of any state officer or employee to carry out the requirements of this section nor compliance with it shall subject the State, the officer, or employee to liability in any civil action. However, such failure may provide a basis for such disciplinary action as may be deemed appropriate by a competent authority.

706-671 Bill

706-671 Credit for time of detention prior to sentence; credit for imprisonment under earlier sentence for same crime.

(1) When a defendant who is sentenced to imprisonment has previously been detained in any State or local correctional or other institution following the defendant's arrest for the crime for which sentence is imposed, such period of detention following the defendant's arrest shall be deducted from the minimum and maximum terms of such sentence. The officer having custody of the defendant shall furnish a certificate to the court at the time of sentence, showing the length of such detention of the defendant prior to sentence in any State or local correctional or other institution, and the certificate shall be annexed to the official records of the defendant's commitment.

(2) When a judgment of conviction or a sentence is vacated and a new sentence is thereafter imposed upon the defendant for the same crime, the period of detention and imprisonment theretofore served shall be deducted from the minimum and maximum terms of the new sentence. The officer having custody of the defendant shall furnish a certificate to the court at the time of sentence, showing the period of imprisonment served under the original sentence, and the certificate shall be annexed to the official records of the defendant's new commitment.

(3) Notwithstanding subsection (1) and any other law to the contrary, when a defendant is sentenced for a crime committed while serving a sentence of imprisonment on a separate unrelated felony conviction, and the defendant was detained in any state or local correctional or other institution following the defendant's arrest for the crime for which a sentence is imposed, any periods of detention following the defendant's arrest that took place while the defendant was also serving a sentence of imprisonment for the separate unrelated felony conviction shall not be deducted from the minimum and maximum terms of the sentence imposed on the later crime.

706-672 Bill

706-672 Place of imprisonment. When a person is sentenced to imprisonment, the court shall commit the person to the custody of the department of corrections and rehabilitation for the term of the person's sentence and until released in accordance with law. The director of corrections and rehabilitation shall determine the proper program of redirection and any place of confinement of the committed person.

706-673 Bill

706-673 Notice of escape.

(1) As used in this section, the following terms have the following meanings: "Offense against the person" means any of the offenses described in chapter 707 and includes any attempt to commit any of those offenses. "Prisoner" means a person who has been convicted of an offense against the person. "Surviving immediate family member" means a person who is a surviving grandparent, parent, sibling, spouse or reciprocal beneficiary, child, or legal guardian of a deceased victim. "Victim" means the person who was the victim of the offense against the person for which the prisoner was convicted.

(2) Upon written request, the department of corrections and rehabilitation shall give notice of the escape of a prisoner, immediately following the escape, by the most reasonable and expedient means available, to each victim or a surviving immediate family member of the victim, through the victim witness assistance program in the county where the crime was committed.

(3) Neither the failure of any state officer or employee to carry out the requirements of this section nor compliance with it shall subject the State, the officer, or employee to liability in any civil action. However, such failure may provide a basis for such disciplinary action as may be deemed appropriate by a competent authority.

706-674 HRS

706-674 Life imprisonment without the possibility of parole; persons under the age of twenty-one; prohibited. Notwithstanding any other law to the contrary, no person convicted of a crime who was under the age of twenty-one at the time of the offense shall be sentenced to life imprisonment without the possibility of parole .

Chapter 707

707-700 Bill

707-700 Definitions of terms in this chapter. In this chapter, unless a different meaning plainly is required: "Bodily injury" means physical pain, illness, or any impairment of physical condition. "Compulsion" means absence of consent, or a threat, express or implied, that places a person in fear of public humiliation, property damage, or financial loss. "Dangerous instrument" means any firearm, whether loaded or not, and whether operable or not, or other weapon,

device, instrument, material, or substance, whether animate or inanimate, which in the manner it is used or is intended to be used is known to be capable of producing death or serious bodily injury. "Deviate sexual intercourse" means any act of sexual gratification between a person and an animal or a corpse, involving the sex organs of one and the mouth, anus, or sex organs of the other. "Emergency worker" means any:

(1) Law enforcement officer, including any police officer, employee of the department of law enforcement conferred with police powers by the director of law enforcement, parole or probation officer, or any other officer of any county, state, federal, or military agency authorized to exercise law enforcement or police powers;

(2) Firefighter, emergency medical services personnel, emergency medical technician, ambulance crewmember, or any other emergency response personnel;

(3) Member of the Hawaii National Guard on any duty or service done under or in pursuance of an order or call of the governor or the President of the United States or any proper authority;

(4) Member of the United States Army, Air Force, Navy, Marine Corps, or Coast Guard on any duty or service performed under or in pursuance of an order or call of the President of the United States or any proper authority;

(5) Member of the National Guard from any other state ordered into service by any proper authority; or

(6) Person engaged in emergency management functions as authorized by the director of Hawaii emergency management or the administrator or director of the county emergency management agency or as otherwise authorized under chapter 127A. "Labor" means work of economic or financial value. "Married" includes persons legally married, and a male and female living together as husband and wife regardless of their legal status, but does not include spouses living apart. "Mentally defective" means a person suffering from a disease, disorder, or defect which renders the person incapable of appraising the nature of the person's conduct. "Mentally incapacitated" means a person rendered temporarily incapable of appraising or controlling the person's conduct as a result of the influence of a substance administered to the person without the person's consent. "Person" means a human being who has been born and is alive. "Physically helpless" means a person who is unconscious or for any other reason physically unable to communicate unwillingness to an act. "Public highway" shall have the same meaning as in section 264-1. "Relative" means parent, ancestor, brother, sister, uncle, aunt, or legal guardian. "Restrain" means to restrict a person's movement in such a manner as to interfere substantially with the person's liberty:

(1) By means of force, threat, or deception; or

(2) If the person is under the age of eighteen or incompetent, without the consent of the relative, person, or institution having lawful custody of the person. "Serious bodily injury" means bodily injury which creates a substantial risk of death or which causes serious, permanent disfigurement, or protracted loss or impairment of the function of any bodily member or organ. "Services" means a relationship between a person and the actor in which the person performs activities under the supervision of or for the benefit of the actor. Prostitution-related and obscenity-related activities as set forth in chapter 712 are forms of "services" under this section. Nothing in this chapter shall be construed to legitimize or legalize prostitution. "Sexual contact" means any touching, other than acts of "sexual penetration", of the sexual or other intimate parts of another, or of the sexual or other intimate parts of the actor by another, whether directly or through the clothing or other material intended to cover the sexual or other intimate parts. "Sexual penetration" means:

(1) Vaginal intercourse, anal intercourse, fellatio, deviate sexual intercourse, or any intrusion of any part of a person's body or of any object into the genital or anal opening of another person's body; it occurs upon any penetration, however slight, but emission is not required. As used in this definition, "genital opening" includes the anterior surface of the vulva or labia majora; or

(2) Cunnilingus or anilingus, whether or not actual penetration has occurred. For purposes of this chapter, each act of sexual penetration shall constitute a separate offense. "Street" shall have the same meaning as in section 291C-1. "Strong compulsion" means the use of or attempt to use one or more of the following to overcome a person:

(1) A threat, express or implied, that places a person in fear of bodily injury to the individual or another person, or in fear that the person or another person will be kidnapped;

(2) A dangerous instrument; or

(3) Physical force. "Substantial bodily injury" means bodily injury which causes:

(1) A major avulsion, laceration, or penetration of the skin;

(2) A burn of at least second degree severity;

(3) A bone fracture;

(4) A serious concussion; or

(5) A tearing, rupture, or corrosive damage to the esophagus, viscera, or other internal organs. "Vehicle" has the same meaning as in section 291E-1. "Vulnerable user" means:

(1) A pedestrian legally within a street or public highway;

(2) A roadway worker actually engaged in work upon a street or public highway or in work upon utility facilities along a street or public highway, or engaged in the provision of emergency services within a street or public highway, including but not limited to:

(a) Construction and maintenance workers; and

(b) Police, fire, and other emergency responders; or

(3) A person legally operating any of the following within the street or public highway:

(a) A bicycle;

(b) A moped;

(c) An electric foot scooter;

(d) An electric personal assistive mobility device; or

(e) A wheelchair conveyance or other personal mobility device.

707-701 HRS

707-701 Murder in the first degree.

(1) A person commits the offense of murder in the first degree if the person intentionally or knowingly causes the death of:

(a) More than one person in the same or separate incident;

(b) A law enforcement officer, judge, or prosecutor arising out of the performance of official duties;

(c) A person known by the defendant to be a witness in a criminal prosecution and the killing is related to the person's status as a witness;

(d) A person by a hired killer, in which event both the person hired and the person responsible for hiring the killer shall be punished under this section;

(e) A person while the defendant was imprisoned;

(f) A person from whom the defendant has been restrained, by order of any court, including an ex parte order, from contacting, threatening, or physically abusing pursuant to chapter 586;

(g) A person who is being protected by a police officer ordering the defendant to leave the premises of that protected person pursuant to section 709-906(4), during the effective period of that order;

(h) A person known by the defendant to be a witness in a family court proceeding and the killing is related to the person's status as a witness; or

(i) A person whom the defendant restrained with intent to:

(i) Hold the person for ransom or reward; or (ii) Use the person as a shield or hostage.

(2) Murder in the first degree is a felony for which the defendant shall be sentenced to imprisonment as provided in section 706-656.

707-701.5 Bill

707-701.5 Murder in the second degree.

(1) Except as provided in section 707-701, a person commits the offense of murder in the second degree if the person intentionally or knowingly causes the death of another person; provided that this section shall not apply to actions taken under chapter 327L.

(2) Murder in the second degree is a felony for which the defendant shall be sentenced to imprisonment as provided in section 706-656.

707-702 Bill

707-702 Manslaughter.

(1) A person commits the offense of manslaughter if:

(a) The person recklessly causes the death of another person; or

(b) The person intentionally causes another person to commit suicide; provided that this section shall not apply to actions taken under chapter 327L.

(2) In a prosecution for murder or attempted murder in the first and second degrees it is an affirmative defense, which reduces the offense to manslaughter or attempted manslaughter, that the defendant was, at the time the defendant caused the death of the other person, under the influence of extreme mental or emotional disturbance for which there is a reasonable explanation. The reasonableness of the explanation shall be determined from the viewpoint of a reasonable person in the circumstances as the defendant believed them to be; provided that an explanation that is not otherwise reasonable shall not be determined to be reasonable because of the defendant's discovery, defendant's knowledge, or the disclosure of the other person's actual or perceived gender, gender identity, gender expression, or sexual orientation, including under circumstances in which the other person made an unwanted nonforcible romantic or sexual advance toward the defendant, or in which the defendant and the other person dated or had a romantic relationship. If the defendant's explanation includes the discovery, knowledge, or disclosure of the other person's actual or perceived gender, gender identity, gender expression, or sexual orientation, the court shall instruct the jury to disregard biases or prejudices regarding the other person's actual or perceived gender, gender identity, gender expression, or sexual orientation in reaching a verdict.

(3) Manslaughter is a class A felony.

707-702.5 Bill

707-702.5 Negligent homicide in the first degree.

(1) A person commits the offense of negligent homicide in the first degree if that person causes the death of:

(a) Another person by the operation of a vehicle in a negligent manner while under the influence of drugs or alcohol; or

(b) A vulnerable user by the operation of a vehicle in a negligent manner.

(2) A person who violates subsection (1)(a) shall be guilty of a class B felony; provided that the person shall be guilty of a class A felony when the person:

(a) Has been convicted one or more times for the offense of operating a vehicle under the influence within fifteen years of the instant offense;

(b) Is, at the time of the instant offense, engaging in conduct that would constitute a violation of section 291E-62; or

(c) Is a highly intoxicated driver as defined by section 291E-1.

(3) A person who violates subsection (1)(b) shall be guilty of a class B felony.

(4) Notwithstanding sections 706-620(2), 706-640, 706-641, 706-659, and any other law to the contrary, the sentencing court may impose a lesser sentence for a person convicted of a class A felony under this section if the court finds that strong mitigating circumstances warrant the action. Strong mitigating circumstances shall include but not be limited to the provisions of section 706-621. The court shall provide a written opinion stating its reasons for imposing the lesser sentence.

(5) For the purposes of this section, a person "has been convicted one or more times for the offense of operating a vehicle under the influence" if the person has one or more:

(a) Convictions under section 291E-4(a), 291E-61, 291E-61.5, or 291E-64;

(b) Convictions in any other state or federal jurisdiction for an offense that is comparable to operating or being in physical control of a vehicle while having either an unlawful alcohol concentration or an unlawful drug content in the blood or urine or while under the influence of an intoxicant or habitually operating a vehicle under the influence of an intoxicant; or

(c) Adjudications of a minor for a law violation that, if committed by an adult, would constitute a violation of section 291E-4(a), 291E-61, or 291E-61.5, that , at the time of the instant offense, had not been expunged by pardon, reversed, or set aside. All convictions that have been expunged by pardon, reversed, or set aside before the instant offense shall not be deemed prior convictions for the purposes of this section.

707-703 Bill

707-703 Negligent homicide in the second degree.

(1) A person commits the offense of negligent homicide in the second degree if that person causes the death of:

(a) Another person by the operation of a vehicle in a negligent manner; or

(b) A vulnerable user by the operation of a vehicle in a manner that constitutes simple negligence as defined in section 707-704(2).

(2) Negligent homicide in the second degree is a class C felony.

707-704 Bill

707-704 Negligent homicide in the third degree.

(1) A person is guilty of the offense of negligent homicide in the third degree if that person causes the death of another person by the operation of a vehicle in a manner which is simple negligence.

(2) "Simple negligence" as used in this section:

(a) A person acts with simple negligence with respect to the person's conduct when the person should be aware of a risk that the person engages in that conduct.

(b) A person acts with simple negligence with respect to attendant circumstances when the person should be aware of a risk that those circumstances exist.

(c) A person acts with simple negligence with respect to a result of the person's conduct when the person should be aware of a risk that the person's conduct will cause that result.

(d) A risk is within the meaning of this subsection if the person's failure to perceive it, considering the nature and purpose of the person's conduct and the circumstances known to the person, involves a deviation from the standard of care that a law-abiding person would observe in the same situation.

(3) Negligent homicide in the third degree is a misdemeanor.

707-705 Bill

707-705 Negligent injury in the first degree.

(1) A person commits the offense of negligent injury in the first degree if that person causes:

(a) Serious bodily injury to another person by the operation of a vehicle in a negligent manner; or

(b) Substantial bodily injury to a vulnerable user by the operation of a [vehicle] in a negligent manner.

(2) Negligent injury in the first degree is a class C felony.

707-706 Bill

707-706 Negligent injury in the second degree.

(1) A person is guilty of the offense of negligent injury in the second degree if that person causes substantial bodily injury to another person by the operation of a vehicle in a negligent manner.

(2) Negligent injury in the second degree is a misdemeanor.

707-710 Bill

707-710 Assault in the first degree.

(1) A person commits the offense of assault in the first degree if the person intentionally or knowingly causes:

(a) Serious bodily injury to another person; or

(b) Substantial bodily injury to a person who is sixty years of age or older and the age of the injured person is known or reasonably should be known to the person causing the injury.

(2) Assault in the first degree is a class B felony.

707-711 Bill

707-711 Assault in the second degree.

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

(a) Intentionally, knowingly, or recklessly causes substantial bodily injury to another;

(b) Recklessly causes serious bodily injury to another;

(c) Intentionally or knowingly causes bodily injury to a correctional worker, as defined in section 710-1031(2), who is engaged in the performance of duty or who is within a correctional facility;

(d) Intentionally or knowingly causes bodily injury to another with a dangerous instrument;

(e) Intentionally or knowingly causes bodily injury to an educational worker who is engaged in the performance of duty or who is within an educational facility. For the purposes of this paragraph, "educational worker" means any administrator, specialist, counselor, teacher, or employee of the department of education or an employee of a charter school; a person who is a volunteer, as defined in section 90-1, in a school program, activity, or function that is established, sanctioned, or approved by the department of education; or a person hired by the department of education on a contractual basis and engaged in carrying out an educational function;

(f) Intentionally or knowingly causes bodily injury to any emergency medical services provider who is engaged in the performance of duty. For the purposes of this paragraph, "emergency medical services provider" means emergency medical services personnel, as defined in section 321-222, and physicians, physician's assistants, nurses, nurse practitioners, certified registered nurse anesthetists, respiratory therapists, laboratory technicians, radiology technicians, and social workers, providing services in the emergency room of a hospital;

(g) Intentionally or knowingly causes bodily injury to a person employed at a state-operated or -contracted mental health facility. For the purposes of this paragraph, "a person employed at a state-operated or -contracted mental health facility" includes health care professionals as defined in section 451D-2, administrators, orderlies, security personnel, volunteers, and any other person who is engaged in the performance of a duty at a state-operated or -contracted mental health facility;

(h) Intentionally or knowingly causes bodily injury to a person who:

(i) The defendant has been restrained from, by order of any court, including an ex parte order, contacting, threatening, or physically abusing pursuant to chapter 586; or (ii) Is being protected by a police officer ordering the defendant to leave the premises of that protected person pursuant to section 709-906(4), during the effective period of that order;

(i) Intentionally or knowingly causes bodily injury to any firefighter or water safety officer who is engaged in the performance of duty. For the purposes of this paragraph, "firefighter" has the same meaning as in section 710-1012 and "water safety officer" means any public servant employed by the United States, the State, or any county as a lifeguard or person authorized to conduct water rescue or ocean safety functions;

(j) Intentionally or knowingly causes bodily injury to a person who is engaged in the performance of duty at a health care facility as defined in section 323D-2. For purposes of this paragraph, "a person who is engaged in the performance of duty at a health care facility" includes health care professionals as defined in section 451D-2, physician assistants, surgical assistants, advanced practice registered nurses, nurse aides, respiratory therapists, laboratory technicians, and radiology technicians;

(k) Intentionally or knowingly causes bodily injury to a person who is engaged in providing home health care services, as defined in section 431:10H-201;

(l) Intentionally or knowingly causes bodily injury to a person employed or contracted to work by a mutual benefit society, as defined in section 432:1-104, to provide case management services to an individual in a hospital, health care provider's office, or home, while that person is engaged in the performance of those services;

(m) Intentionally or knowingly causes bodily injury to a person who is sixty years of age or older and the age of the injured person is known or reasonably should be known to the person causing the injury;

(n) Intentionally or knowingly causes bodily injury to a sports official who is engaged in the lawful discharge of the sports official's duties. For the purposes of this paragraph, "sports official" and "lawful discharge of the sports official's duties" have the same meaning as in section 706-605.6;

(o) Intentionally or knowingly causes bodily injury to a national guard member who is engaged in the performance of duty. For purposes of this paragraph, "national guard member" means a member of the national guard on any duty or service done under or in pursuance of an order or call of the governor or the President of the United States or any proper authority as provided by law; or [(p)] Intentionally or knowingly causes bodily injury to any protective services worker who is engaged in the performance of the worker's duties. For purposes of this paragraph, "protective services worker" means any administrator, specialist, social worker, case manager, or aide employed by the department of human services to

investigate or provide services in response to reports of child abuse or neglect, or to investigate or provide services in response to reports of abuse or neglect of a vulnerable adult.

(2) Assault in the second degree is a class C felony.

707-712 Bill

707-712 Assault in the third degree.

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

(a) Intentionally, knowingly, or recklessly causes bodily injury to another person; or

(b) Negligently causes bodily injury to another person with a dangerous instrument.

(2) Assault in the third degree is a misdemeanor unless committed in a fight or scuffle entered into by mutual consent, in which case it is a petty misdemeanor.

707-712.2 HRS

707-712.2 Habitual violent crime. [Section repealed June 30, 2027. L 2024, c 213, §6.]

(1) A person commits the offense of habitual violent crime if the person is a habitual violent crime perpetrator and commits:

(a) Assault in the third degree under section 707-712 that is categorized as a misdemeanor;

(b) Assault against a law enforcement officer in the second degree under section 707-712.6;

(c) Sexual assault in the fourth degree under section 707-733; or

(d) Abuse of a family or household member under section 709-906(1).

(2) For the purposes of this section, "habitual violent crime perpetrator" means a person who, within five years of the instant offense, has convictions for any combination of three or more of the following offenses set forth in sections 707-710, 707-711, 707-712, 707-712.5, 707-712.6, 707-730, 707-731, 707-732, 707-733, and 709-906; provided that the convictions were not for offenses categorized as petty misdemeanors. The convictions shall be for separate incidents on separate dates. The prosecution shall not be required to prove any state of mind with respect to the person's status as a habitual violent crime perpetrator. Proof that the person has the requisite minimum prior convictions shall be sufficient to establish this element.

(3) Habitual violent misdemeanor crime is a class C felony.

(4) For a conviction under this section, the sentence shall be either:

(a) An indeterminate term of imprisonment of five years; provided that the minimum term of imprisonment shall be no less than one year; or

(b) A term of probation of five years, with conditions to include but not be limited to one year of imprisonment; provided that probation shall only be available for a first conviction under this section.

707-712.5 Bill

707-712.5 Assault against a law enforcement officer in the first degree.

(1) A person commits the offense of assault against a law enforcement officer in the first degree if the person:

(a) Intentionally or knowingly causes bodily injury to a law enforcement officer who is engaged in the performance of duty; or

(b) Recklessly or negligently causes, with a dangerous instrument, bodily injury to a law enforcement officer who is engaged in the performance of duty.

(2) Assault of a law enforcement officer in the first degree is a class C felony. The court shall, at a minimum, sentence the person who has been convicted of this offense to:

(a) An indeterminate term of imprisonment of five years, pursuant to section 706-660; or

(b) Five years probation, with conditions to include a term of imprisonment of not less than thirty days without possibility of suspension of sentence.

707-712.6 Bill

707-712.6 Assault against a law enforcement officer in the second degree.

(1) A person commits the offense of assault against a law enforcement officer in the second degree if the person recklessly causes bodily injury to a law enforcement officer who is engaged in the performance of duty.

(2) Assault of a law enforcement officer in the second degree is a misdemeanor. The court shall sentence the person who has been convicted of this offense to a definite term of imprisonment, pursuant to section 706-663, of not less than thirty days without possibility of probation or suspension of sentence.

707-712.7 Bill

707-712.7 Assault against an emergency worker.

(1) A person commits the offense of assault against an emergency worker if the person, during an emergency period proclaimed by the governor or mayor pursuant to chapter 127A, within the area covered by the emergency or disaster:

(a) Intentionally, knowingly, or recklessly causes serious or substantial bodily injury to an emergency worker; or

(b) Intentionally, knowingly, or recklessly causes bodily injury to an emergency worker with a dangerous instrument.

(2) Assault against an emergency worker is a class B felony.

707-713 Bill

707-713 Reckless endangering in the first degree.

(1) A person commits the offense of reckless endangering in the first degree if the person employs widely dangerous means in a manner which recklessly places another person in danger of death or serious bodily injury or intentionally fires a firearm in a manner which recklessly places another person in danger of death or serious bodily injury.

(2) Reckless endangering in the first degree is a class C felony.

707-714 Bill

707-714 Reckless endangering in the second degree.

(1) A person commits the offense of reckless endangering in the second degree if the person:

(a) Engages in conduct that recklessly places another person in danger of death or serious bodily injury; or

(b) Intentionally discharges a firearm in a populated area, in a residential area, or within the boundaries or in the direction of any road, street, or highway; provided that the provisions of this paragraph shall not apply to any person who discharges a firearm upon a target range for the purpose of the target shooting done in compliance with all laws and regulations applicable thereto.

(2) Reckless endangering in the second degree is a misdemeanor.

707-714.5 Bill

707-714.5 Criminally negligent storage of a firearm.

(1) A person commits the offense of criminally negligent storage of a firearm if:

(a) The person violates section 134-10.5;

(b) The person knows or reasonably should know that a minor is likely to gain access to the firearm without the permission of the parent or guardian of the minor; and

(c) A minor obtains the firearm.

(2) This section shall not apply if the minor obtains the firearm as a result of an unlawful entry to any premises by any person.

(3) Criminally negligent storage of a firearm shall be a misdemeanor.

(4) For purposes of this section, "minor" means any person under the age of eighteen years.

707-715 Bill

707-715 Terroristic threatening, defined. A person commits the offense of terroristic threatening if the person threatens, by word or conduct, to cause bodily injury to another person or serious damage or harm to property, including the pets or livestock, of another or to commit a felony:

(1) With the intent to terrorize, or in reckless disregard of the risk of terrorizing, another person; or

(2) With intent to cause, or in reckless disregard of the risk of causing evacuation of a building, place of assembly, or facility of public transportation.

707-716 Bill

707-716 Terroristic threatening in the first degree.

(1) A person commits the offense of terroristic threatening in the first degree if the person commits terroristic threatening:

(a) By threatening another person on more than one occasion for the same or a similar purpose;

(b) By threats made in a common scheme against different persons;

(c) Against a public servant arising out of the performance of the public servant's official duties. For the purposes of this paragraph, "public servant" includes but is not limited to an educational worker or protective services worker. "Educational worker" and "protective services worker" have the same meanings as defined in section 707-711;

(d) Against any emergency medical services provider who is engaged in the performance of duty. For purposes of this paragraph, "emergency medical services provider" means emergency medical services personnel, as defined in section 321-222, and physicians, physician's assistants, nurses, nurse practitioners, certified registered nurse anesthetists, respiratory therapists, laboratory technicians, radiology technicians, and social workers, providing services in the emergency room of a hospital;

(e) With the use of a dangerous instrument or a simulated firearm. For purposes of this section, "simulated firearm" means any object that:

(i) Substantially resembles a firearm; (ii) Can reasonably be perceived to be a firearm; or (iii) Is used or brandished as a firearm; or

(f) By threatening a person who:

(i) The defendant has been restrained from, by order of any court, including an ex parte order, contacting, threatening, or physically abusing pursuant to chapter 586; or (ii) Is being protected by a police officer ordering the defendant to leave the premises of that protected person pursuant to section 709-906(4), during the effective period of that order.

(2) Terroristic threatening in the first degree is a class C felony; provided that terroristic threatening in the first degree is a class B felony if committed with a firearm as defined in section 134-1, whether the firearm was loaded or not, and whether operable or not, or a simulated firearm, while in one of the locations or premises listed in section 134-9.1(a).

707-717 Bill

707-717 Terroristic threatening in the second degree.

(1) A person commits the offense of terroristic threatening in the second degree if the person commits terroristic threatening other than as provided in section 707-716.

(2) Terroristic threatening in the second degree is a misdemeanor.

707-718 HRS

707-718 Torture.

(1) Any person who knowingly:

(a) Causes serious bodily injury to another person within the actor's custody or physical control;

(b) Causes serious bodily injury or substantial bodily injury to another person, and the actor has previously engaged in a pattern or practice of physically abusing the other person; or

(c) Subjects a minor or vulnerable person to any of the following acts, or to any substantially similar act, on three or more occasions within a period of two years:

(i) Strangling the minor or vulnerable person; (ii) Biting, branding, burning, cutting, or electrocuting the minor or vulnerable person; (iii) Suspending the minor or vulnerable person by the wrists, ankles, arms, legs, hair, or other part of the body; (iv) Depriving the minor or vulnerable person of necessary food, water, or clothing;

(v) Restricting basic and necessary bodily functions required for the personal hygiene of the minor or vulnerable person; (vi) Forcing the minor or vulnerable person to remain in an area unsuitable for human habitation, such as areas where urine or feces are actively present; (vii) Forcing the minor or vulnerable person to ingest mind-altering drugs that have not been prescribed by a physician for the minor or vulnerable person, non-potable water, urine, excrement, or poison; or

(viii) Exposing the minor or vulnerable person to extreme temperatures without adequate clothing, shall be guilty of the offense of torture.

(2) Proof that the victim suffered pain is not an element of a violation of subsection (1)(c).

(3) For purposes of this section: "Custody or physical control" means the forcible restriction of a person's movements or the forcible confinement of the person so as to interfere with that person's liberty, without that person's consent or without lawful authority. "Deprives" or "restricts" means to withhold in a manner that materially endangers the physical or mental health of a minor or vulnerable person. "Minor" means a person under the age of eighteen years. "Pattern or practice" means two or more acts within a period of two years with a common state of mind. "Vulnerable person" means a family or household member as defined in section 709-906, an incompetent person as defined in section 709-905, or a person who has a status as described in section 706-662(5)(b)(ii).

(4) Torture is a class A felony.

(5) Where the conduct consists of depriving the minor or vulnerable person of necessary food, water, or clothing, it shall be a defense that the deprivation was caused solely by poverty, destitution, or lack of financial means.

707-720 Bill

707-720 Kidnapping.

(1) A person commits the offense of kidnapping if the person intentionally or knowingly restrains another person with intent to:

(a) Hold that person for ransom or reward;

(b) Use that person as a shield or hostage;

(c) Facilitate the commission of a felony or flight thereafter;

(d) Inflict bodily injury upon that person or subject that person to a sexual offense;

(e) Terrorize that person or a third person;

(f) Interfere with the performance of any governmental or political function; or

(g) Unlawfully obtain the labor or services of that person, regardless of whether related to the collection of a debt.

(2) Except as provided in subsection (3), kidnapping is a class A felony.

(3) In a prosecution for kidnapping, it is a defense which reduces the offense to a class B felony that the defendant voluntarily released the victim, alive and not suffering from serious or substantial bodily injury, in a safe place prior to trial.

707-721 Bill

707-721 Unlawful imprisonment in the first degree.

(1) A person commits the offense of unlawful imprisonment in the first degree if the person knowingly restrains another person under circumstances which expose the person to the risk of serious bodily injury.

(2) Unlawful imprisonment in the first degree is a class C felony.

707-722 Bill

707-722 Unlawful imprisonment in the second degree.

(1) A person commits the offense of unlawful imprisonment in the second degree if the person knowingly restrains another person.

(2) In any prosecution under this section, it is an affirmative defense that:

(a) The person restrained was less than eighteen years old;

(b) The defendant was a relative of the victim; and

(c) The defendant's sole purpose was to assume custody over the victim. In that case, the liability of the defendant, if any, is governed by section 707-727, and the defendant may be convicted under section 707-727, although charged under this section.

(3) In any prosecution under this section, it is an affirmative defense that:

(a) The person restrained was:

(i) On or in the immediate vicinity of the premises of a retail mercantile establishment for the purpose of investigation or questioning as to the ownership of any merchandise; (ii) Restrained in a reasonable manner and for not more than a reasonable time; and (iii) Restrained to permit the investigation or questioning by a police officer or by the owner of the retail mercantile establishment, the owner's authorized employee, or the owner's agent; and

(b) The police officer, owner, employee, or agent had reasonable grounds to believe that the person detained was committing or attempting to commit theft of merchandise on the premises.

(4) Unlawful imprisonment in the second degree is a misdemeanor.

707-723 Bill

707-723 REPEALED. L 1981, c 171, §3. Previous Vol14_Ch0701-0853 Next

707-726 Bill

707-726 Custodial interference in the first degree.

(1) A person commits the offense of custodial interference in the first degree if:

(a) The person:

(i) Intentionally or knowingly violates a court order issued pursuant to chapter 586, or intentionally or knowingly takes, entices, conceals, or detains the minor from any other person who has a right to custody pursuant to a court order, judgment, or decree; and (ii) Removes the minor from the State;

(b) The person intentionally or knowingly takes, entices, conceals, or detains a minor less than eleven years old from that minor's lawful custodian, knowing that the person had no right to do so; or

(c) The person, in the absence of a court order determining custody or visitation rights, intentionally or knowingly takes, detains, conceals, or entices away a minor with the intent to deprive another person or a public agency of their right to custody, and removes the minor from the State.

(2) It is an affirmative defense to a prosecution under this section that the person had "good cause" for the violation of a court order issued pursuant to chapter 586, for the taking, detaining, concealing, or enticing away of the minor, or for removing the minor from the State; provided that the person asserting the affirmative defense filed a report with the clerk of the family court detailing the whereabouts of the minor, the person who took, enticed, detained, concealed, or removed the minor or child, and the circumstances of the event as soon as the filing of the report was practicable; and provided further that the person asserting the affirmative defense also filed a request for a custody order as soon as the filing of the request was practicable. As used in this section, "good cause" means a good faith and reasonable belief that the taking, detaining, concealing, enticing away, or removing of the minor is necessary to protect the minor from immediate bodily injury.

(3) The identity and address of the person reporting under subsection (2) shall remain confidential unless the information is released pursuant to a court order.

(4) Custodial interference in the first degree is a class C felony.

707-727 Bill

707-727 Custodial interference in the second degree.

(1) A person commits the offense of custodial interference in the second degree if:

(a) The person intentionally or knowingly takes, entices, conceals, or detains a minor knowing that the person has no right to do so; or

(b) The person intentionally or knowingly takes, entices, conceals, or detains from lawful custody any incompetent person, or other person entrusted by authority of law to the custody of another person or an institution.

(2) Custodial interference in the second degree is a misdemeanor, if the minor or incompetent person is taken, enticed, concealed, or detained within the State. If the minor or incompetent person is taken, enticed, concealed, or detained outside of the State under this section, custodial interference in the second degree is a class C felony.

707-730 Bill

707-730 to 707-738 [OLD] REPEALED. L 1986, c 314, §56. §707-730 Sexual assault in the first degree.

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

(a) Knowingly subjects another person to an act of sexual penetration by strong compulsion;

(b) Knowingly engages in sexual penetration with a person who is less than fourteen years old;

(c) Knowingly engages in sexual penetration with a person who is at least fourteen years old but less than sixteen years old; provided that the actor is:

(i) No less than five years older than the minor; and (ii) Not legally married to the minor;

(d) Knowingly subjects to sexual penetration a person who is mentally defective; provided that the actor is negligent in not knowing of the mental defect of the victim; or

(e) Knowingly subjects to sexual penetration a 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 from performing any act within their respective practices.

(2) Sexual assault in the first degree is a class A felony.

707-731 Bill

707-731 Sexual assault in the second degree.

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

(a) Knowingly subjects another person to an act of sexual penetration by compulsion;

(b) Knowingly subjects to sexual penetration a person who is mentally incapacitated or physically helpless;

(c) 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 corrections and rehabilitation and having received notice of this statute; (iv) By a private correctional facility operating in the State; or

(v) As a law enforcement officer as defined in section 710-1000, knowingly subjects to sexual penetration: an imprisoned person; a person confined to a detention facility; a person committed to the director of corrections and rehabilitation; a person residing in a private correctional facility operating in the State; a person in custody; a person who is stopped by a law enforcement officer; or a person who is being accompanied by a law enforcement officer for official purposes; 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; or

(d) Knowingly subjects to sexual penetration a person who is at least sixteen years old and the actor is contemporaneously acting in a professional capacity to instruct, advise, or supervise such a person; provided that the actor is:

(i) No less than five years older than the minor; and (ii) Not legally married to the minor. Paragraphs (b) and (c) shall not be construed to prohibit practitioners licensed under chapter 453 or 455 from performing any act within their respective practices.

(2) Sexual assault in the second degree is a class B felony.

707-732 Bill

707-732 Sexual assault in the third degree.

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

(a) Recklessly subjects another person to an act of sexual penetration by compulsion;

(b) Knowingly subjects to sexual contact a person who is less than fourteen years old or causes such a person to have sexual contact with the actor;

(c) Knowingly engages in sexual contact with a person who is at least fourteen years old but less than sixteen years old or causes such a person to have sexual contact with the actor; provided that the actor is:

(i) No less than five years older than the minor; and (ii) Not legally married to the minor;

(d) Knowingly subjects to sexual contact a person who is mentally incapacitated or physically helpless, or causes such a person to have sexual contact with the actor;

(e) Knowingly subjects to sexual contact a person who is mentally defective, or causes such a person to have sexual contact with the actor; provided that the actor is negligent in not knowing of the mental defect of the victim;

(f) 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 corrections and rehabilitation and having received notice of this statute; (iv) By a private correctional facility operating in the State; or

(v) As a law enforcement officer as defined in section 710-1000, knowingly subjects to sexual contact, or causes to have sexual contact: an imprisoned person; a person confined to a detention facility; a person committed to the director of corrections and rehabilitation; a person residing in a private correctional facility operating in the State; a person in custody; a person who is stopped by a law enforcement officer; or a person who is being accompanied by a law enforcement officer for official purposes; provided that this paragraph 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; or

(g) 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), (e), and (f) shall not be construed to prohibit practitioners licensed under chapter 453 or 455 from performing any act within their respective practices.

(2) Sexual assault in the third degree is a class C felony.

707-733 Bill

707-733 Sexual assault in the fourth degree.

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

(a) The person knowingly subjects another person, not married to the actor, to sexual contact by compulsion or causes another person, not married to the actor, to have sexual contact with the actor by compulsion;

(b) The person knowingly exposes the person's genitals to another person under circumstances in which the actor's conduct is likely to alarm the other person or put the other person in fear of bodily injury;

(c) The person knowingly trespasses on property for the purpose of subjecting another person to surreptitious surveillance for the sexual gratification of the actor; or

(d) The person knowingly engages in or causes sexual contact with a minor who is at least sixteen years old and the person is contemporaneously acting in a professional capacity to instruct, advise, or supervise the minor; 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.

(2) Sexual assault in the fourth degree is a misdemeanor.

(3) Whenever a court sentences a defendant for an offense under this section, the court may order the defendant to submit to a pre-sentence mental and medical examination pursuant to section 706-603.

707-733.5 Bill

707-733.5 REPEALED. L 2006, c 60, §6. Previous Vol14_Ch0701-0853 Next

707-733.6 Bill

707-733.6 Continuous sexual assault of a minor under the age of fourteen years.

(1) A person commits the offense of continuous sexual assault of a minor under the age of fourteen years if the person:

(a) Either resides in the same home with a minor under the age of fourteen years or has recurring access to the minor; and

(b) Engages in three or more acts of sexual penetration or sexual contact with the minor over a period of time, while the minor is under the age of fourteen years.

(2) To convict under this section, the trier of fact, if a jury, need unanimously agree only that the requisite number of acts have occurred; the jury need not agree on which acts constitute the requisite number.

(3) No other felony sex offense involving the same victim may be charged in the same proceeding with a charge under this section, unless the other charged offense occurred outside the period of the offense charged under this section, or the other offense is charged in the alternative. A defendant may be charged with only one count under this section, unless more than one victim is involved, in which case a separate count may be charged for each victim.

(4) Continuous sexual assault of a minor under the age of fourteen years is a class A felony.

707-734 Bill

707-734 Indecent exposure.

(1) A person commits the offense of indecent exposure if, the person intentionally exposes the person's genitals to a person to whom the person is not married under circumstances in which the actor's conduct is likely to cause affront.

(2) Indecent exposure is a petty misdemeanor.

707-739 HRS

707-739 REPEALED. L 1975, c 163, §5. Previous Vol14_Ch0701-0853 Next

707-741 Bill

707-741 Incest.

(1) A person commits the offense of incest if the person commits an act of sexual penetration with another who is within the degrees of consanguinity or affinity within which marriage is prohibited.

(2) Incest is a class C felony.

707-742 Bill

707-742 REPEALED. L 1980, c 164, §13.

707-750 Bill

707-750 Promoting child abuse in the first degree.

(1) A person commits the offense of promoting child abuse in the first degree if, knowing or having reason to know its character and content, the person:

(a) Produces or participates in the preparation of child pornography;

(b) Produces or participates in the preparation of pornographic material that employs, uses, or otherwise contains a minor engaging in or assisting others to engage in sexual conduct; or

(c) Engages in a pornographic performance that employs, uses, or otherwise contains a minor engaging in or assisting others to engage in sexual conduct.

(2) As used in this section: "Child pornography" means any pornographic visual representation, including any photograph, film, video, picture, or computer or computer-generated image or picture, whether made or produced by electronic, mechanical, or other means, of sexual conduct, if:

(a) The pornographic production of such visual representation involves the use of a minor engaging in sexual conduct; or

(b) The pornographic visual representation has been created, adapted, or modified to appear that an identifiable minor is engaging in sexual conduct. "Community standards" means the standards of the State. "Computer" shall have the same meaning as in section 708-890. "Lascivious" means tending to incite lust, to deprave the morals in respect to sexual relations, or to produce voluptuous or lewd emotions in the average person, applying contemporary community standards. "Material" means any printed matter, visual representation, or sound recording and includes, but is not limited to, books, magazines, motion picture films, pamphlets, newspapers, pictures, photographs, and tape or wire recordings. "Minor" means any person less than eighteen years old. "Performance" means any play, motion picture film, dance, or other exhibition performed before any audience. "Pornographic" shall have the same meaning as in section 712-1210. "Produces" means to produce, direct, manufacture, issue, publish, or advertise. "Sadomasochistic abuse" means flagellation or torture by or upon a person as an act of sexual stimulation or gratification. "Sexual conduct" means actual or simulated sexual intercourse, including genital-genital contact, oral-genital contact, anal-genital contact, or oral-anal contact, whether between persons of the same or opposite sex, masturbation, bestiality, sexual penetration, deviate sexual intercourse, sadomasochistic abuse, or lascivious exhibition of the genital or pubic area of a minor. "Visual representation" refers to, but is not limited to, undeveloped film and videotape and data stored on computer disk or by electronic means that are capable of conversion into a visual image.

(3) The fact that a person engaged in the conduct specified by this section is prima facie evidence that the person engaged in that conduct with knowledge of the character and content of the material or the performance produced, directed, or participated in. The fact that the person who was employed, used, or otherwise contained in the pornographic

material or performance, was at that time, a minor, is prima facie evidence that the defendant knew the person to be a minor.

(4) Promoting child abuse in the first degree is a class A felony.

707-751 Bill

707-751 Promoting child abuse in the second degree.

(1) A person commits the offense of promoting child abuse in the second degree if, knowing or having reason to know its character and content, the person:

(a) Disseminates child pornography;

(b) Reproduces child pornography with intent to disseminate;

(c) Disseminates any book, magazine, periodical, film, videotape, computer disk, or any other material that contains an image of child pornography;

(d) Disseminates any pornographic material which employs, uses, or otherwise contains a minor engaging in or assisting others to engage in sexual conduct; or

(e) Possesses thirty or more images of any form of child pornography, and the content of at least one image contains one or more of the following:

(i) A minor who is younger than the age of twelve; (ii) Sadomasochistic abuse of a minor; or (iii) Bestiality involving a minor.

(2) As used in this section: "Child pornography" means any pornographic visual representation, including any photograph, film, video, picture, or computer or computer-generated image or picture, whether made or produced by electronic, mechanical, or other means, of sexual conduct, if:

(a) The pornographic production of such visual representation involves the use of a minor engaging in sexual conduct; or

(b) The pornographic visual representation has been created, adapted, or modified to appear that an identifiable minor is engaging in sexual conduct. "Community standards" means the standards of the State. "Computer" shall have the same meaning as in section 708-890. "Disseminate" means to publish, sell, distribute, transmit, exhibit, present material, mail, ship, or transport by any means, including by computer, or to offer or agree to do the same. "Lascivious" means tending to incite lust, to deprave the morals in respect to sexual relations, or to produce voluptuous or lewd emotions in the average person, applying contemporary community standards. "Material" means any printed matter, visual representation, or sound recording and includes, but is not limited to, books, magazines, motion picture films, pamphlets, newspapers, pictures, photographs, and tape or wire recordings. "Minor" means any person less than eighteen years old. "Pornographic" shall have the same meaning as in section 712-1210. "Sadomasochistic abuse" means flagellation or torture by or upon a person as an act of sexual stimulation or gratification. "Sexual conduct" means actual or simulated sexual intercourse, including genital-genital contact, oral-genital contact, anal-genital contact, or oral-anal contact, whether between persons of the same or opposite sex, masturbation, bestiality, sexual penetration, deviate sexual intercourse, sadomasochistic abuse, or lascivious exhibition of the genital or pubic area of a minor. "Visual representation" refers to, but is not limited to, undeveloped film and videotape, and data stored on computer disk or by electronic means that are capable of conversion into a visual image.

(3) The fact that a person engaged in the conduct specified by this section is prima facie evidence that the person engaged in that conduct with knowledge of the character and content of the material. The fact that the person who was employed, used, or otherwise contained in the pornographic material was at that time, a minor, is prima facie evidence that the defendant knew the person to be a minor.

(4) Promoting child abuse in the second degree is a class B felony.

707-752 Bill

707-752 Promoting child abuse in the third degree.

(1) A person commits the offense of promoting child abuse in the third degree if, knowing or having reason to know its character and content, the person possesses:

(a) Child pornography;

(b) Any book, magazine, periodical, film, videotape, computer disk, electronically stored data, or any other material that contains an image of child pornography; or

(c) Any pornographic material that employs, uses, or otherwise contains a minor engaging in or assisting others to engage in sexual conduct.

(2) As used in this section: "Child pornography" means any pornographic visual representation, including any photograph, film, video, picture, or computer or computer-generated image or picture, whether made or produced by electronic, mechanical, or other means, of sexual conduct, if:

(a) The pornographic production of the visual representation involves the use of a minor engaging in sexual conduct; or

(b) The pornographic visual representation has been created, adapted, or modified to appear that an identifiable minor is engaging in sexual conduct. "Community standards" means the standards of the State. "Computer" shall have the same meaning as in section 708-890. "Lascivious" means tending to incite lust, to deprave the morals with respect to sexual relations, or to produce voluptuous or lewd emotions in the average person, applying contemporary community standards. "Material" means any printed matter, visual representation, or sound recording and includes, but is not limited to, books, magazines, motion picture films, pamphlets, newspapers, pictures, photographs, and tape or wire recordings. "Minor" means any person less than eighteen years old. "Pornographic" shall have the same meaning as in section 712-1210. "Sadomasochistic abuse" means flagellation or torture by or upon a person as an act of sexual stimulation or gratification. "Sexual conduct" means actual or simulated sexual intercourse, including genital-genital contact, oral-genital contact, anal-genital contact, or oral-anal contact, whether between persons of the same or opposite sex, masturbation, bestiality, sexual penetration, deviate sexual intercourse, sadomasochistic abuse, or lascivious exhibition of the genital or pubic area of a minor. "Visual representation" includes but is not limited to undeveloped film and videotape and data stored on computer disk or by electronic means that are capable of conversion into a visual image.

(3) The fact that a person engaged in the conduct specified by this section is prima facie evidence that the person engaged in that conduct with knowledge of the character and content of the material. The fact that the person who was employed, used, or otherwise contained in the pornographic material was, at that time, a minor is prima facie evidence that the defendant knew the person to be a minor.

(4) Promoting child abuse in the third degree is a class C felony.

707-753 Bill

707-753 Affirmative defense to promoting child abuse. It shall be an affirmative defense to a charge of promoting child abuse in the third degree that the defendant:

(a) Possessed less than three images of child pornography; and

(b) Promptly and in good faith, and without retaining or allowing any person, other than a law enforcement agency, to access any image or copy thereof:

(i) Took reasonable steps to destroy each such image; or (ii) Reported the matter to a law enforcement agency and afforded that agency access to each such image.

707-756 Bill

707-756 Electronic enticement of a child in the first degree.

(1) Any person who, using a computer or any other electronic device:

(a) Intentionally or knowingly communicates:

(i) With a minor known by the person to be under the age of eighteen years; (ii) With another person, in reckless disregard of the risk that the other person is under the age of eighteen years, and the other person is under the age of eighteen years; or (iii) With another person who represents that person to be under the age of eighteen years;

(b) With the intent to promote or facilitate the commission of a felony:

(i) That is a murder in the first or second degree; (ii) That is a class A felony; or (iii) That is another covered offense as defined in section 846E-1, agrees to meet with the minor, or with another person who represents that person to be a minor under the age of eighteen years; and

(c) Intentionally or knowingly travels to the agreed upon meeting place at the agreed upon meeting time, is guilty of electronic enticement of a child in the first degree.

(2) Electronic enticement of a child in the first degree is a class B felony. Notwithstanding any law to the contrary, a person convicted of electronic enticement of a child in the first degree shall be sentenced to an indeterminate term of imprisonment as provided by law.

707-757 Bill

707-757 Electronic enticement of a child in the second degree.

(1) Any person who, using a computer or any other electronic device:

(a) Intentionally or knowingly communicates:

(i) With a minor known by the person to be under the age of eighteen years; (ii) With another person, in reckless disregard of the risk that the other person is under the age of eighteen years, and the other person is under the age of eighteen years; or (iii) With another person who represents that person to be under the age of eighteen years;

(b) With the intent to promote or facilitate the commission of a felony, agrees to meet with the minor, or with another person who represents that person to be a minor under the age of eighteen years; and

(c) Intentionally or knowingly travels to the agreed upon meeting place at the agreed upon meeting time; is guilty of electronic enticement of a child in the second degree.

(2) Electronic enticement of a child in the second degree is a class C felony. Notwithstanding any law to the contrary, if a person sentenced under this section is sentenced to probation rather than an indeterminate term of imprisonment, the terms and conditions of probation shall include, but not be limited to, a term of imprisonment of one year.

707-758 Bill

707-758 REPEALED. L 2002, c 240, §11. Previous Vol14_Ch0701-0853 Next

707-759 Bill

707-759 Indecent electronic display to a child.

(1) Any person who intentionally masturbates or intentionally exposes the genitals in a lewd or lascivious manner live over a computer online service, internet service, or local bulletin board service and who knows or should know or has reason to believe that the transmission is viewed on a computer or other electronic device by:

(a) A minor known by the person to be under the age of eighteen years;

(b) Another person, in reckless disregard of the risk that the other person is under the age of eighteen years, and the other person is under the age of eighteen years; or

(c) Another person who represents that person to be under the age of eighteen years, is guilty of indecent electronic display to a child.

(2) Indecent electronic display to a child is a misdemeanor.

707-760 Bill

707-760 Definitions. For the purposes of this part: "An extortionate means" is any means which involves the use, or an express or implicit threat of the use, of violence or other criminal means to cause harm to the person, reputation, or property of any person. "Creditor", with reference to any given extension of credit, refers to any person making that extension of credit, or to any person claiming by, under, or through any person making that extension of credit. "Debtor", with reference to any given extension of credit, refers to any person to whom that extension of credit is made, or to any person who guarantees the repayment of that extension of credit, or in any manner undertakes to indemnify the creditor against loss resulting from the failure of any person to whom that extension of credit is made to repay the same. "Repayment of any extension of credit" includes the repayment, satisfaction, or discharge in whole or in part of any debt or claim, acknowledged or disputed, valid or invalid, resulting from or in connection with that extension of credit. "To collect an extension of credit" means to induce in any way any person to make repayment thereof. "To extend credit" means to make or renew any loan or to enter into any agreement, tacit or express, whereby the repayment or satisfaction of any debt or claim, whether acknowledged or disputed, valid or invalid, and however arising, may or will be deferred.

707-761 Bill

707-761 Extortionate extension of credit; prima facie evidence.

(1) An extortionate extension of credit is any extension of credit with respect to which it is the understanding of the creditor and the debtor at the time it is made that delay in making repayment or failure to make repayment could result in the use of violence or other criminal means to cause harm to the person, reputation, or property of any person.

(2) In any prosecution under this part, if it is shown that all of the following factors were present in connection with the extension of credit in question, there is prima facie evidence that the extension of credit was extortionate, but this section is nonexclusive and in no way limits the effect or applicability of subsection (1):

(a) The repayment of the extension of credit, or the performance of any promise given in consideration thereof, would be unenforceable, through civil judicial processes against the debtor:

(i) In the jurisdiction within which the debtor, if a natural person, resided; or (ii) In every jurisdiction within which the debtor, if other than a natural person, was incorporated or qualified to do business at the time the extension of credit was made;

(b) The extension of credit was made at a rate of interest in excess of a yearly rate of forty-five per cent calculated according to the actuarial method of allocating payments made on a debt between principal and interest, pursuant to which payment is applied first to the accumulated interest and the balance applied to the unpaid principal;

(c) At the time the extension of credit was made, the debtor reasonably believed that either:

(i) One or more extensions of credit by the creditor had been collected or attempted to be collected by extortionate means, or the nonrepayment thereof had been punished by extortionate means; or (ii) The creditor had a reputation for the use of extortionate means to collect extensions of credit or to punish the nonrepayment thereof;

(d) Upon the making of the extension of credit, the total of the extensions of credit by the creditor to the debtor then outstanding, including any unpaid interest or similar charges, exceeded $100.

(3) In any prosecution under this part, if evidence has been introduced tending to show the existence of any of the circumstances described in subparagraph (2)(a) or (2)(b) of this section, and direct evidence of the actual belief of the debtor as to the creditor's collection practices is not available, then for the purpose of showing the understanding of the debtor and the creditor at the time the extension of credit was made, the court may in its discretion allow evidence to be introduced tending to show the reputation as to collection practices of the creditor in any community of which the debtor was a member at the time of the extension.

707-762 Bill

707-762 Financing extortionate extensions of credit. "Financing extortionate extensions of credit" includes wilfully advancing money or property, whether as a gift, as a loan, as an investment, pursuant to a partnership or profit-sharing agreement, or otherwise to any person, with reasonable grounds to believe that it is the intention of that person to use the money or property so advanced directly or indirectly for the purpose of making extortionate extensions of credit.

707-763 Bill

707-763 Collection of extensions of credit by extortionate means.

(1) "Collection of extensions of credit by extortionate means" includes knowingly participating in any way, or conspiring to do so, in the use of any extortionate means:

(a) To collect or attempt to collect any extension of credit; or

(b) To punish any person for the nonrepayment thereof.

(2) In any prosecution under this part, for the purpose of showing an implicit threat as a means of collection, evidence may be introduced tending to show that one or more extensions of credit by the creditor were, to the knowledge of the person against whom the implicit threat was alleged to have been made, collected or attempted to be collected by extortionate means or that the nonrepayment thereof was punished by extortionate means.

(3) In any prosecution under this part, if evidence has been introduced tending to show the existence, at the time the extension of credit in question was made, of the circumstances described in subsection (2)(a) or subsection (2)(b) of section 707-761 and direct evidence of the actual belief of the debtor as to the creditor's collection practices is not available, then for the purpose of showing that words or other means of communication, shown to have been employed as a means of collection, in fact carried an express or implicit threat, the court may in its discretion allow evidence to be introduced tending to show the reputation of the defendant in any community of which the person against whom the alleged threat was made was a member at the time of collection or attempt at collection.

707-764 Bill

707-764 Extortion. A person commits extortion if the person does any of the following:

(1) Obtains, or exerts control over, the property, labor, or services of another with intent to deprive another of property, labor, or services by threatening by word or conduct to:

(a) Cause bodily injury in the future to the person threatened or to any other person;

(b) Cause damage to property or cause damage, as defined in section 708-890, to a computer, computer system, or computer network;

(c) Subject the person threatened or any other person to physical confinement or restraint;

(d) Commit a penal offense;

(e) Accuse some person of any offense or cause a penal charge to be instituted against some person;

(f) Expose a secret or publicize an asserted fact, whether true or false, tending to subject some person to hatred, contempt, or ridicule, or to impair the threatened person's credit or business repute;

(g) Reveal any information sought to be concealed by the person threatened or any other person;

(h) Testify or provide information or withhold testimony or information with respect to another's legal claim or defense;

(i) Take or withhold action as a public servant, or cause a public servant to take or withhold such action;

(j) Bring about or continue a strike, boycott, or other similar collective action, to obtain property that is not demanded or received for the benefit of the group that the defendant purports to represent;

(k) Destroy, conceal, remove, confiscate, or possess any actual or purported passport, or any other actual or purported government identification document, or other immigration document, of another person; or

(l) Do any other act that would not in itself substantially benefit the defendant but that is calculated to harm substantially some person with respect to the threatened person's health, safety, business, calling, career, financial condition, reputation, or personal relationships;

(2) Intentionally compels or induces another person to engage in conduct from which another has a legal right to abstain or to abstain from conduct in which another has a legal right to engage by threatening by word or conduct to do any of the actions set forth in paragraph (1)(a) through (l); or

(3) Makes or finances any extortionate extension of credit, or collects any extension of credit by extortionate means.

707-765 Bill

707-765 Extortion in the first degree.

(1) A person commits the offense of extortion in the first degree if the person commits extortion:

(a) Of property, labor, or services the value of which exceeds $200 in total during any twelve-month period; or

(b) By making or financing any extortionate extension of credit, or by collecting any extension of credit by extortionate means.

(2) Extortion in the first degree is a class B felony.

707-766 Bill

707-766 Extortion in the second degree.

(1) A person commits the offense of extortion in the second degree if the person commits extortion:

(a) Of property, labor, or services the value of which exceeds $50 during any twelve-month period; or

(b) As set forth in section 707-764(2).

(2) Extortion in the second degree is a class C felony.

707-767 Bill

707-767 Extortion in the third degree.

(1) A person commits the offense of extortion in the third degree if the person commits extortion of property, labor, or services.

(2) Extortion in the third degree is a misdemeanor.

707-768 Bill

707-768 Firearms, explosives, and dangerous weapons. Extortion in any degree is a class A felony when a firearm, explosive, or any dangerous weapon is immediately available and is physically used as part of the threat.

707-769 Bill

707-769 Defenses to extortion.

(1) It is a defense to a prosecution for extortion as defined by paragraph (1) of section 707-764 that the defendant:

(a) Was unaware that the property or service was that of another; or

(b) Believed that the defendant was entitled to the property or services under a claim of right or that the defendant was authorized, by the owner or by law, to obtain or exert control as the defendant did.

(2) If the owner of the property is the defendant's spouse or reciprocal beneficiary, it is a defense to a prosecution for extortion under paragraph (1) of section 707-764 that:

(a) The property which is obtained or over which unauthorized control is exerted constitutes household belongings; and

(b) The defendant and the defendant's spouse or reciprocal beneficiary were living together at the time of the conduct.

(3) "Household belongings" means furniture, personal effects, vehicles, or money or its equivalent in amounts customarily used for household purposes, and other property usually found in and about the common dwelling and accessible to its occupants.

(4) It is an affirmative defense to a prosecution for extortion as defined in paragraphs (1) and (2) of section 707-764 and as further defined by subparagraphs (e), (f), (g), and (i), that the defendant believed the threatened accusation, penal charge, or exposure to be true, or the proposed action of a public servant was justified, and that the defendant's sole intention was to compel or induce the victim to give property or services to the defendant due the defendant as restitution or indemnification for harm done, or as compensation for property obtained or lawful services performed, or to induce the victim to take reasonable action to prevent or to remedy the wrong which was the subject of the threatened accusation, charge, exposure, or action of a public servant in circumstances to which the threat relates.

(5) In a prosecution for extortion as defined in paragraph (1) of section 707-764, it is not a defense that the defendant has an interest in the property if the owner has an interest in the property to which the defendant is not entitled.

707-780 HRS

707-780 Definitions. As used in this part: "Deadly force" has the same meaning as in section 703-300. "Force" has the same meaning as in section 703-300. "Labor" means work of economic or financial value. Prostitution-related and obscenity-related activities as set forth in chapter 712 are not forms of "labor" under this part. "Services" means a relationship between a person and the actor in which the person performs activities under the supervision of or for the benefit of the actor or a third party. Prostitution-related and obscenity-related activities as set forth in chapter 712 are not forms of "services" under this part. "Unlawful force" has the same meaning as in section 703■300. "Venture" means a business relationship between two or more parties to undertake economic activity together. "Victim" means the person against whom an offense specified in section 707-781 or 707-782 has been committed.

707-781 HRS

707-781 Labor trafficking in the first degree.

(1) A person commits the offense of labor trafficking in the first degree if the person intentionally or knowingly provides or obtains, or attempts to provide or obtain, another person for labor or services by any of the following means committed against the other person:

(a) Any of the acts constituting extortion as described in section 707-764, except that for purposes of this paragraph "labor" and "services" shall be as defined in section 707-780;

(b) The acts constituting kidnapping as described in section 707-720(1)(a) through (g), except that for purposes of this paragraph "labor" and "services" shall be as defined in section 707-780;

(c) The acts described in section 707-721(1) or 707-722, relating to unlawful imprisonment;

(d) The acts described in section 707-730, 707-731, or 707-732, relating to sexual assault in the first, second, or third degree;

(e) Force, deadly force, or unlawful force;

(f) The acts described in the definition of deception pursuant to section 708-800, or fraud, which means making material false statements, misstatements, or omissions to induce or maintain the person to engage or continue to engage in the labor or services;

(g) Requiring that labor or services be performed to retire, repay, or service a real or purported debt, if performing the labor or services is the exclusive method allowed to retire, repay, or service the debt and the indebted person is required to repay the debt with direct labor in place of currency; provided that this shall not include labor or services performed by a child for the child's parent or guardian;

(h) The acts described in either section 707-710, 707■711, or 707-712, relating to assault;

(i) Withholding any of the person's government-issued identification documents with the intent to impede the movement of the person;

(j) Using any scheme, plan, or pattern intended to cause the person to believe that if the person did not perform the labor or services, then the person or a friend or a member of the person's family would suffer serious harm, serious financial loss, or physical restraint; or

(k) Using or threatening to use any form of domination, restraint, or control over the person which, given the totality of the circumstances, would have the reasonably foreseeable effect of causing the person to engage in or to remain engaged in the labor or services.

(2) Labor trafficking in the first degree is a class A felony.

707-782 HRS

707-782 Labor trafficking in the second degree.

(1) A person commits the offense of labor trafficking in the second degree if the person knowingly:

(a) Acts as an individual or uses a licensed business or business enterprise to aid another in a venture knowing that the other person in that venture is committing the offense of labor trafficking in the first degree; or

(b) Benefits, financially or by receiving something of value, from participation in a venture knowing or in reckless disregard of the fact that another person has engaged in any act described in paragraph (a) in the course of that venture or that another person in that venture is committing the offense of labor trafficking in the first degree.

(2) Labor trafficking in the second degree is a class B felony; provided that if a violation of subsection (1) involves kidnapping or an attempt to kidnap, sexual assault in the first, second, or third degree, or the attempt to commit sexual assault in the first, second, or third degree, or an attempt to cause the death of a person, or if a death results, the offense shall be a class A felony.

(3) Upon conviction of a defendant for an offense under subsection (1), the court shall also order that any and all business licenses issued by the State be revoked for the business or enterprise that the defendant used to aid in the offense of labor trafficking in the second degree; provided that the court, in its discretion, may reinstate a business license upon petition to the court by any remaining owner or partner of the business or enterprise who was not convicted of an offense under this section or section 707-781.

707-783 HRS

707-783 Additional sentencing considerations; victims held in servitude. In addition to the factors set forth in sections 706-606 and 706-621, when determining the particular sentence to be imposed on a defendant convicted under section 707-781 or 707■782, the court shall consider:

(a) The time for which the victim was held in servitude; and

(b) The number of victims involved in the offense for which the defendant is convicted.

707-784 HRS

707-784 Extended terms of imprisonment; labor trafficking offenses. If a person is found guilty of a violation under section 707-781 or 707-782 and the victim of the offense suffered bodily injury, the person may be sentenced to an extended indeterminate term of imprisonment as described in this section. Subject to the procedures set forth in section 706-664, the court may impose, in addition to the indeterminate term of imprisonment provided for the grade of offense, an additional indeterminate term of imprisonment as follows:

(a) Bodily injury – an additional two years of imprisonment;

(b) Substantial bodily injury – an additional five years of imprisonment;

(c) Serious bodily injury – an additional fifteen years of imprisonment; or

(d) If death results, the defendant shall be sentenced in accordance with the homicide statute relevant for the level of criminal intent. When ordering an extended term sentence, the court shall impose the maximum length of imprisonment. The minimum length of imprisonment for an extended term sentence under paragraph (a), (b), (c), or

(d) shall be determined by the Hawaii paroling authority in accordance with section 706-669.

707-785 HRS

707-785 Restitution for victims of labor trafficking.

(1) In addition to any other penalty, and notwithstanding a victim's failure to request restitution under section 706-646(2), the court shall order restitution to be paid to the victim, consisting of an amount that is the greater of:

(a) The total gross income or value to the defendant of the victim's labor or services; or

(b) The value of the victim's labor or services, as guaranteed under the minimum wage provisions of chapter 387 or the Fair Labor Standards Act of 1938, Public Law 75-718, title 29 United States Code sections 201 through 219, inclusive, whichever is greater.

(2) The return of the victim to the victim's home country or other absence of the victim from the jurisdiction shall not relieve the defendant of the defendant's restitution obligation.

707-786 HRS

707-786 Nonpayment of wages.

(1) A person commits the offense of nonpayment of wages if the person, in the capacity as an employer of an employee, intentionally or knowingly or with intent to defraud fails or refuses to pay wages to the employee, except where required by federal or state statute or by court process. In addition to any other penalty, a person convicted of nonpayment of wages shall be fined not less than $2,000 nor more than $10,000 for each offense.

(2) Nonpayment of wages is:

(a) A class C felony, if the amount owed to the employee is equal to or greater than $2,000 or if the defendant convicted of nonpayment of wages falsely denies the amount or validity of the wages owed; or

(b) A misdemeanor, if the amount owed to the employee is less than $2,000.

(3) A person commits a separate offense under this section for each pay period during which the employee earned wages that the person failed or refused to pay the employee. If no set pay periods were agreed upon between the person and the employee at the time the employee commenced the work, then each "pay period" shall be deemed to be bi-weekly.

(4) In addition to any other penalty, the court shall order restitution to be paid to the employee, consisting of an amount that is the greater of:

(a) The wages earned by the employee that were unpaid by the person convicted of nonpayment of wages; or

(b) The value of the employee's labor or services, as guaranteed under the minimum wage provisions of chapter 387 or the Fair Labor Standards Act of 1938, Public Law 75-718, title 29 United States Code sections 201 through 219, inclusive, whichever is greater.

(5) An employee who is the victim of nonpayment of wages may bring a civil action to recover all wages owed by the defendant convicted of nonpayment of wages.

(6) For purposes of this section: "Employee" means any person working for another for hire, including an individual employed in domestic service or at a family's or person's home, any individual employed by the individual's spouse, or by an independent contractor. "Person" includes any individual, partnership, association, joint-stock company, trust, corporation, the personal representative of the estate of a deceased individual, or the receiver, trustee, or successor of any of the same, employing any persons, but shall not include the United States. "Wages" means compensation for labor or services rendered by an employee, whether the amount is determined on a time, task, piece, commission, or other basis of calculation.

707-787 HRS

707-787 Unlawful conduct with respect to documents.

(1) A person commits unlawful conduct with respect to documents if the person knowingly:

(a) Destroys, conceals, removes, confiscates, or possesses any actual or purported government identification document of another person:

(i) In the course of a violation or attempt to commit an offense under section 707-781 or 707-782; or (ii) To prevent or restrict, or in an attempt to prevent or restrict, without lawful authority, the ability of the other person to move or travel in order to maintain the labor or services of the other person, when the person is or has been the victim of an offense under section 707-781 or 707-782; or

(b) Destroys, conceals, removes, or confiscates any actual or purported government identification document of an employee.

(2) Unlawful conduct with respect to documents is a class C felony.

Chapter 708

708-800 HRS

708-800 Definitions of terms in this chapter. In this chapter, unless a different meaning plainly is required, the following definitions apply. "Agricultural equipment, supplies, or products" mean any agricultural equipment, supplies, or commercial agricultural products or commodities raised, grown, or maintained by a commercial agricultural enterprise or research agency while owned by the enterprise or agency. "Apartment building" means any structure containing one or more dwelling units which is not a hotel or a single-family residence. "Aquacultural equipment, supplies, or products" means any equipment, supplies, products, or commodities used, raised, grown, or maintained for the production of fish, shellfish, mollusk, crustacean, algae, or other aquatic plant or animal by an aquaculture enterprise or research agency while owned by the enterprise or agency. "Building" includes any structure, and the term also includes any vehicle, railway car, aircraft, or watercraft used for lodging of persons therein; each unit of a building consisting of two or more units separately secured or occupied is a separate building. "Cable operator" means any person who provides cable television service by means of a set of closed transmission paths and associated signal generation, reception, and control equipment designed to deliver such programming to multiple subscribers. "Cable television service" means one-way transmission of programming provided by, or generally considered comparable to programming provided by, a television broadcast station or other information made available by a cable operator to all subscribers generally. "Cable television service device" means any mechanical or electronic instrument, apparatus, equipment or device which can be used to obtain cable television services without payment of applicable charges therefor. A "cable television service device" does not include any instrument, apparatus, equipment, device, facility or any component thereof furnished by a cable operator in the ordinary course of its business. "Cardholder" means the person or organization named on the face of a credit card to whom or for whose benefit the credit card is issued by an issuer. "Confidential personal information" means information in which an individual has a significant privacy interest, including but not limited to an individual's entire driver's license number or social security number; the entire identifying number of an individual's depository, investment, or credit account; an individual's entire credit card number; or a username and password that, when used in conjunction, provide access to an individual's credit card account, medical records, or depository, investment, or credit account. "Control over the property" means the exercise of dominion over the property and includes, but is not limited to, taking, carrying away, or possessing the property, or selling, conveying, or transferring title to or an interest in the property. "Credit card" means any instrument or device, whether known as a credit card, credit plate, debit card, electronic benefits transfer card, or by any other name, issued with or without fee by an issuer for the use of the cardholder in obtaining money, goods, services, or anything else of value. "Dealer" means a person in the business of buying and selling goods. "Deception" occurs when a person knowingly:

(1) Creates or confirms another's impression which is false and which the defendant does not believe to be true;

(2) Fails to correct a false impression which the person previously has created or confirmed;

(3) Prevents another from acquiring information pertinent to the disposition of the property involved;

(4) Sells or otherwise transfers or encumbers property, failing to disclose a lien, adverse claim, or other legal impediment to the enjoyment of the property, whether that impediment is or is not valid, or is or is not a matter of official record; or

(5) Promises performance which the person does not intend to perform or knows will not be performed, but a person's intention not to perform a promise shall not be inferred from the fact alone that the person did not subsequently perform the promise. The term "deception" does not, however, include falsity as to matters having no pecuniary significance, or puffing by statements unlikely to deceive ordinary persons in the group addressed. "Puffing" means an exaggerated commendation of wares or services in communications addressed to the public or to a class or group. "Deprive" means:

(1) To withhold property or cause it to be withheld from a person permanently or for so extended a period or under such circumstance that a significant portion of its economic value, or of the use and benefit thereof, is lost to the person;

(2) To dispose of the property so as to make it unlikely that the owner will recover it;

(3) To retain the property with intent to restore it to the owner only if the owner purchases or leases it back, or pays a reward or other compensation for its return;

(4) To sell, give, pledge, or otherwise transfer any interest in the property; or

(5) To subject the property to the claim of a person other than the owner. "Distributes" means to sell, transfer, give or deliver to another, or to leave, barter, or exchange with another, or to offer or agree to do the same. "Dwelling" means a building, including a multi-unit building, that is used or usually used by a person or persons for lodging. "Dwelling" includes any connected parking or storage areas, access to which is clearly restricted to residents by means of signage or security apparatus, or both. "Encoding" means making, changing, altering, erasing, adding, creating, or manipulating a credit card number electronically, or magnetically, or both. "Enter or remain unlawfully" means to enter or remain in or upon premises when the person is not licensed, invited, or otherwise privileged to do so. A person who, regardless of the person's intent, enters or remains in or upon premises which are at the time open to the public does so with license and privilege unless the person defies a lawful order not to enter or remain, personally communicated to the person by the owner of the premises or some other authorized person. A license or privilege to enter or remain in a building which is only partly open to the public is not a license or privilege to enter or remain in that part of the building which is not open to the public. "Expired credit card" means a credit card which is no longer valid because the term shown on the credit card has elapsed. "Financial institution" means a bank, trust company, insurance company, credit union, safety deposit company, savings and loan association, investment trust, or other organization held out to the public as a place of deposit of funds or medium of savings or collective investment. "Government" means the United States, or any state, county, municipality, or other political unit within territory belonging to the United States, or any department, agency, or subdivision of any of the foregoing, or any corporation or other association carrying out the functions of government, or any corporation or agency formed pursuant to interstate compact or international treaty. As used in this definition "state" includes any state, territory, or possession of the United States, the District of Columbia, and the Commonwealth of Puerto Rico. "Hotel" means a structure in which a majority of the tenants are roomers or boarders. "Intent to defraud" means:

(1) An intent to use deception to injure another's interest which has value; or

(2) Knowledge by the defendant that the defendant is facilitating an injury to another's interest which has value. "Issuer" means the business organization or financial institution which issues a credit card or its agent. "Master key" means a key which will operate two or more locks to different apartments, offices, hotel rooms, or motel rooms in a common physical location. "Obtain" means:

(1) When used in relation to property, to bring about a transfer of possession or other interest, whether to the obtainer or to another; and

(2) When used in relation to services, to secure the performance of services. "Owner" means a person, other than the defendant, who has possession of or any other interest in, the property involved, even though that possession or interest is unlawful; however, a secured party is not an owner in relation to a defendant who is a debtor with respect to property in which the secured party has only a security interest. "Personal information" means information associated with an actual person or a fictitious person that is a name, an address, a telephone number, an electronic mail address, a driver's license number, a social security number, an employer, a place of employment, information related to employment, an employee identification number, a mother's maiden name, an identifying number of a depository account, a bank account number, a password used for accessing information, or any other name, number, or code that is used, alone or in conjunction with other information, to confirm the identity of an actual or a fictitious person. "Premises" includes any building and any real property. "Property" means any money, personal property, real property, thing in action, evidence of debt or contract, or article of value of any kind , and includes property that is stored in an electronic medium and is

retrievable in a perceivable form. Commodities of a public utility nature such as gas, electricity, steam, and water constitute property, but the supplying of such a commodity to premises from an outside source by means of wires, pipes, conduits, or other equipment shall be deemed a rendition of a service rather than a sale or delivery of property. "Property of another" means property which any person, other than the defendant, has possession of or any other interest in, even though that possession or interest is unlawful; however, a security interest is not an interest in property, even if title is in the secured party pursuant to the security agreement. "Receives" or "receiving" includes but is not limited to acquiring possession, control, or title, and taking a security interest in the property. "Revoked credit card" means a credit card which is no longer valid because permission to use the credit card has been suspended or terminated by the issuer. "Services" includes but is not limited to labor, professional services, transportation, telephone or other public services, accommodation in hotels, restaurants or elsewhere, admission to exhibitions, and the supplying of equipment for use. "Stolen" means obtained by theft or robbery. "Telecommunication service" means the offering of transmission between or among points specified by a user, of information of the user's choosing, including voice, data, image, graphics, and video without change in the form or content of the information, as sent and received, by means of electromagnetic transmission, or other similarly capable means of transmission, with or without benefit of any closed transmission medium, and does not include cable service as defined in section 440G-3. "Telecommunication service device" means any mechanical or electronic instrument, apparatus, equipment, or device which can be used to obtain telecommunication services without payment of applicable charges therefor and shall include any such device that is capable of, or has been altered, modified, programmed, or reprogrammed alone or in conjunction with another device or other equipment so as to be capable of acquiring or facilitating the acquisition of any electronic serial number, mobile identification number, personal identification number, or any telecommunication service without payment of the applicable charges therefor. A "telecommunication service device" includes telecommunication devices altered to obtain service without the consent of the telecommunication service provider, tumbler phones, counterfeit or clone microchips, scanning receivers of wireless telecommunication service of a telecommunication service provider, and other instruments capable of disguising their identity or location or of gaining access to a communications system operated by a telecommunication service provider. A "telecommunication service device" does not include any telephone or telegraph instrument, equipment, device, facility, or any component thereof furnished by a provider of telecommunication services in the ordinary course of its business nor any device operated by a law enforcement agency in the normal course of its activities. "Telecommunication service provider" means any person that owns, operates, manages, or controls any facility used to furnish telecommunication services for profit to the public, or to classes of users as to be effectively available to the public, engaged in the provision of services, such as voice, data, image, graphics, and video services, that make use of all or part of their transmission facilities, switches, broadcast equipment, signalling, or control devices. "Unauthorized control over property" means control over property of another which is not authorized by the owner. "Widely dangerous means" includes explosion, flood, avalanche, collapse of building, poison gas, radioactive material, or any other material, substance, force, or means capable of causing potential widespread injury or damage.

708-801 HRS

708-801 Valuation of property or services. Whenever the value of property or services is determinative of the class or grade of an offense, or otherwise relevant to a prosecution, the following shall apply:

(1) Except as otherwise specified in this section, value means the market value of the property or services at the time and place of the offense, or the replacement cost if the market value of the property or services cannot be determined.

(2) Whether or not they have been issued or delivered, certain written instruments, not including those having a readily ascertained market value, shall be evaluated as follows:

(a) The value of an instrument constituting an evidence of debt, such as a check, traveler's check, draft, or promissory

708-802 HRS

708-802 Property recovered in offenses against property rights. Identification of an item of property recovered for violation of chapter 708, may be made by photographing the item and authentication of the content of the photograph. Such photograph shall be deemed competent evidence of the item photographed and admissible in any proceeding, hearing, or trial for violation of the chapter. Provided, however, that nothing in this section shall be construed to limit or to restrict the application of rule 901 of the Hawaii rules of evidence.

708-803 HRS

708-803 Habitual property crime.

(1) A person commits the offense of habitual property crime if the person is a habitual property crime perpetrator and commits a property crime.

(2) For the purposes of this section, "habitual property crime perpetrator" means a person who, within ten years of the instant offense, has convictions for offenses within this chapter for:

(a) Any combination of two felonies or misdemeanors; or

(b) Any combination of either one felony or one misdemeanor and one petty misdemeanor; or

(c) Three petty misdemeanors. The convictions shall be for separate incidents on separate dates. The prosecution is not required to prove any state of mind with respect to the person's status as a habitual property crime perpetrator. Proof that the person has the requisite minimum prior convictions shall be sufficient to establish this element.

(3) A person commits a property crime if the person engages in conduct that constitutes an offense under this chapter. It can be established that the person has committed a property crime by either the prosecution proving that the person is guilty of or by the person pleading guilty or no contest to committing any offense under this chapter.

(4) Habitual property crime is a class C felony.

(5) For a conviction under this section, the sentence shall be either:

(a) An indeterminate term of imprisonment of five years; provided that the minimum term of imprisonment shall be not less than one year; or

(b) A term of probation of five years, with conditions to include but not be limited to one year of imprisonment; provided that probation shall only be available for a first conviction under this section.

708-804 HRS

708-804 Control of albizia trees on private property.

(a) An owner of real property or the owner's agent shall be authorized to enter vacant real property that is privately owned and directly adjacent to the entering owner's property to control one or more albizia trees located on the adjacent property; provided that the entering owner:

(1) Has consulted with a tree risk assessment qualification certified arborist to confirm that the albizia trees on the adjacent property: (A) Create a condition that could become hazardous to the entering owner's property or persons thereupon if left untreated; and (B) May be felled and removed or otherwise treated according to current established methods that minimize risk to human health and safety, and without damaging any structure, utility pole, or utility line;

(2) Has unsuccessfully made two or more reasonable attempts within the previous thirty days to contact the owner of record of the adjacent property via telephone or registered mail; and

(3) Has given written notice to the adjacent property owner prior to accessing the adjacent property, to prevent the property from mistakenly being determined vacant where the land is not in production because it is, for example, resting pasture land at the intended time of entry.

(b) It shall be a defense to citation or prosecution under sections 708-814, 708-815, 708-820, 708-821, 708-822, 708-823, and 708-823.5 that the entering property owner or agent entered an adjacent property for the purposes of and in compliance with this section.

(c) As used in this section: "Albizia tree" means any tree of the species Falcataria moluccana or Albizia chinensis . "Vacant" means improved or unimproved but having no reasonable indication of use or maintenance for one year or more.

708-810 Bill

708-810 Burglary in the first degree.

(1) A person commits the offense of burglary in the first degree if the person intentionally enters or remains unlawfully in a building, with intent to commit therein a crime against a person or against property rights, and:

(a) The person is armed with a dangerous instrument in the course of committing the offense;

(b) The person intentionally, knowingly, or recklessly inflicts or attempts to inflict bodily injury on anyone in the course of committing the offense; or

(c) The person recklessly disregards a risk that the building is the dwelling of another, and the building is such a dwelling.

(2) An act occurs "in the course of committing the offense" if it occurs in effecting entry or while in the building or in immediate flight therefrom.

(3) In the case of a dwelling that is a multi-unit building, the owner of the multi-unit building, owner of an individual unit, a property manager, or an authorized representative of the condominium association may act as a complainant.

(4) Burglary in the first degree shall be a class B felony.

708-811 Bill

708-811 Burglary in the second degree.

(1) A person commits the offense of burglary in the second degree if the person intentionally enters or remains unlawfully in a building with intent to commit therein a crime against a person or against property rights.

(2) Burglary in the second degree is a class C felony.

708-812 Bill

708-812 Possession of burglar's tools.

(1) A person commits the offense of possession of burglar's tools if:

(a) The person knowingly possesses any explosive, tool, instrument, or other article adapted, designed, or commonly used for committing or facilitating the commission of an offense involving forcible entry into premises or theft by a physical taking, and the person intends to use the explosive, tool, instrument, or article, or knows some person intends ultimately to use it, in the commission of the offense of the nature described aforesaid; or

(b) The person knowingly possesses any master key, unless authorized, and the person intends to use the master key or knows some person intends ultimately to use it, in the commission of an offense involving entry into premises or theft by a physical taking.

(2) Possession of burglar's tools is a misdemeanor.

(3) A master key taken in evidence shall be impounded by the court and returned to the owner of the locks or premises which the key operates.

708-812.5 Bill

708-812.5 Burglary offenses; intent to commit therein a crime against a person or against property rights. A person engages in conduct "with intent to commit therein a crime against a person or against property rights" if the person formed the intent to commit within the building a crime against a person or property rights before, during, or after unlawful entry into the building.

708-812.6 Bill

708-812.6 Unauthorized entry in a dwelling in the second degree.

(1) A person commits the offense of unauthorized entry in a dwelling in the second degree if the person intentionally or knowingly enters unlawfully into a dwelling and another person was lawfully present in the dwelling.

(2) Unauthorized entry in a dwelling in the second degree is a class C felony.

(3) It shall be an affirmative defense that reduces this offense to a misdemeanor that, at the time of the unlawful entry:

(a) There was a social gathering of invited guests at the dwelling the defendant entered;

(b) The defendant intended to join the social gathering; and

(c) The defendant had no intent to commit any unlawful act other than the entry.

708-813 Bill

708-813 Criminal trespass in the first degree.

(1) A person commits the offense of criminal trespass in the first degree if:

(a) That person knowingly enters or remains unlawfully:

(i) In a dwelling; or (ii) In or upon the premises of a hotel or apartment building;

(b) That person:

(i) Knowingly enters or remains unlawfully in or upon premises that are fenced or enclosed in a manner designed to exclude intruders; and (ii) Is in possession of a firearm, as defined in section 134-1, at the time of the intrusion; or

(c) That person enters or remains unlawfully in or upon the premises of any public school as defined in section 302A-101, or any private school, after reasonable warning or request to leave by school authorities or a police officer; provided however, such warning or request to leave shall be unnecessary between 10:00 p.m. and 5:00 a.m.

(2) Subsection (1) shall not apply to:

(a) A process server who enters or remains in or upon the land or premises of another, unless the land or premises are secured with a fence and locked gate, for the purpose of making a good faith attempt to perform their legal duties and to serve process upon any of the following:

(i) An owner or occupant of the land or premises; (ii) An agent of the owner or occupant of the land or premises; or (iii) A lessee of the land or premises; or

(b) A professional land surveyor, or assistant under the direct supervision of the professional land surveyor, who enters or remains in or upon the land or premises of another for the purpose of performing land surveying at the request of the landowner of, or person with an interest in, the real property to be surveyed.

(3) As used in this section, "process server" means any person authorized under the Hawaii rules of civil procedure, district court rules of civil procedure, Hawaii family court rules, or section 353C-10 to serve process.

(4) Criminal trespass in the first degree is a misdemeanor.

708-814 Bill

708-814 Criminal trespass in the second degree.

(1) A person commits the offense of criminal trespass in the second degree if:

(a) The person knowingly enters or remains unlawfully in or upon premises that are enclosed in a manner designed to exclude intruders or are fenced;

(b) The person enters or remains unlawfully in or upon commercial premises after a reasonable warning or request to leave by the owner or lessee of the commercial premises, the owner's or lessee's authorized agent, or a police officer; provided that this paragraph shall not apply to any conduct or activity subject to regulation by the National Labor Relations Act. For the purposes of this paragraph, "reasonable warning or request" means a warning or request communicated in writing at any time within a one-year period inclusive of the date the incident occurred, which may be evidenced by a copy of the previously issued written warning or request, whether or not the copy is posted at the premises or retained by the county police department, and which may contain but is not limited to the following information:

(i) A warning statement advising the person that the person's presence is no longer desired on the property for a period of one year from the date of the notice, that a violation of the warning will subject the person to arrest and prosecution for trespassing pursuant to this subsection, and that criminal trespass in the second degree is a petty misdemeanor; (ii) The legal name, any aliases, and a photograph, if practicable, or a physical description, including but not limited to sex, racial extraction, age, height, weight, hair color, eye color, or any other distinguishing characteristics of the person warned; (iii) The name of the person giving the warning along with the date and time the warning was given; and (iv) The signature of the person giving the warning, the signature of a witness or police officer who was present when the warning was given and, if possible, the signature of the violator;

(c) The person enters or remains unlawfully on unimproved or unused lands without the permission of the owner of the land, the owner's agent who is authorized to give the permission, or the person in lawful possession of the land, and the lands:

(i) Are fenced, enclosed, or secured in a manner designed to exclude the general public; or (ii) Have a sign or signs displayed on the unenclosed, unimproved, or unused land sufficient to give reasonable notice and reads as follows: "Private Property - No Trespassing", "Government Property - No Trespassing", or a substantially similar message; provided that the sign or signs shall contain letters no less than two inches in height and shall be placed at reasonable intervals no less than three signs to a mile along the boundary line of the land and at roads and trails entering the land in a manner and position as to be clearly noticeable from outside the boundary line. For the purposes of this paragraph, "unimproved or unused lands" means any land upon which there is no improvement; construction of any structure, building, or facility; or alteration of the land by grading, dredging, or mining that would cause a permanent change in the land or that would change the basic natural condition of the land. Land remains "unimproved or unused land" under this

paragraph notwithstanding minor improvements, including the installation or maintenance of utility poles, signage, and irrigation facilities or systems; minor alterations undertaken for the preservation or prudent management of the unimproved or unused land, including the installation or maintenance of fences, trails, or pathways; maintenance activities, including forest plantings and the removal of weeds, brush, rocks, boulders, or trees; and the removal or securing of rocks or boulders undertaken to reduce risk to downslope properties; or

(d) The person enters or remains unlawfully in or upon any area of a housing project that is closed to the public pursuant to section 356D-6.7 and meets the signage requirements of section 356D-6.7, or the person enters or remains unlawfully in or upon any property that is subject to section 356D-6.7 and meets the signage requirements of section 356D-6.7 after a reasonable warning or request to leave by the housing authority or law enforcement officer, as defined in section 710-1000, based upon an alleged violation of law or administrative rule, notwithstanding any invitation or authorization provided to the person by a tenant of that housing project or a member of that tenant's household. As used in this paragraph: "Housing authority" means a property manager, resident manager, tenant monitors, security guards, or others officially designated by the Hawaii public housing authority, for the housing project. "Housing project" means a public housing project, or elder or elderly housing as defined in section 356D-1, or state low-income housing project as defined in section 356D-51. "Reasonable warning or request" means a warning or request communicated in writing at any time within a one-year period inclusive of the date the incident occurred, which may contain but is not limited to the following information:

(i) A warning statement advising the person that for a period of one year from the date of the notice, the person's presence is no longer desired in or on the areas of the subject housing project that are closed to the public, that a violation of the warning will subject the person to arrest and prosecution for trespassing pursuant to this subsection, and that criminal trespass in the second degree is a petty misdemeanor; (ii) The legal name, any aliases, and a photograph, if practicable, or a physical description, including but not limited to sex, racial extraction, age, height, weight, hair color, eye color, or any other distinguishing characteristics of the person warned; (iii) The name of the person giving the warning along with the date and time the warning was given; (iv) The signature of the person giving the warning and, if possible, the signature of the violator; and

(v) The name and signature of a witness or law enforcement officer, as defined in section 710-1000, who was present when the warning was given.

(2) Subsection (1) shall not apply to:

(a) A process server who enters or remains in or upon the land or premises of another, unless the land or premises are secured with a fence and locked gate, for the purpose of making a good faith attempt to perform the process server's legal duties and to serve process upon any of the following:

(i) An owner or occupant of the land or premises; (ii) An agent of the owner or occupant of the land or premises; or (iii) A lessee of the land or premises. For the purposes of this paragraph, "process server" means any person authorized under the Hawaii rules of civil procedure, district court rules of civil procedure, Hawaii family court rules, or section 353C-10 to serve process; or

(b) A professional land surveyor, or assistant under the direct supervision of the professional land surveyor, who enters or remains in or upon the land or premises of another for the purpose of performing land surveying at the request of the landowner of, or person with an interest in, the real property to be surveyed.

(3) Criminal trespass in the second degree is a petty misdemeanor.

708-814.5 Bill

708-814.5 Criminal trespass onto public parks and recreational grounds.

(1) A person commits the offense of criminal trespass onto public parks and recreational grounds if the person remains unlawfully in or upon a public park or recreational ground after a request to leave is made by any law enforcement officer, when the request is based upon violation by the person of any term of use specified on a sign or notice posted on the property, or based on violation of any term of use contained in, or the expiration of, any permit relating to the person's presence on the property.

(2) For the purposes of this section, unless the context requires otherwise: "Law enforcement officer" has the same meaning as in section 710-1000. "Public park or recreational ground" means any park, park roadway, playground, athletic field, beach, shore, beach or shore right-of-way, tennis court, golf course, swimming pool, or other recreational area or

facility under control, maintenance, and management of the State or any of the counties.

(3) Criminal trespass onto public parks and recreational grounds is a petty misdemeanor.

708-814.7 HRS

708-814.7 Criminal trespass onto state lands.

(1) Except for lands owned by the office of Hawaiian affairs, and except for improved state lands that are designated safe havens by state departments or agencies, or that are under executive order by the governor to be used as a safe haven and have a department of health component and adequate space, not to include state hospitals, a person commits the offense of criminal trespass onto state lands if:

(a) The person enters or remains unlawfully in or upon any improved state land when:

(i) The land is closed to public use and its closure hours are posted on a sign or signs on the improved state land, and after a request to leave is made by any law enforcement officer the person remains in or upon the land; or (ii) The land is not open to the public and there are signs that are sufficient to give reasonable notice that read: "Government Property - No Trespassing"; provided that these signs shall contain letters no less than two inches in height and shall be placed at reasonable intervals no less than three signs to a mile along the boundary line of the land and at all roads and trails entering the land in a manner and position as to be clearly noticeable from outside the boundary; or

(b) The person enters or remains unlawfully in or upon any state land on or under any highway, and the state land has a sign or signs displayed upon the land that are sufficient to give reasonable notice that read: "Government Property - No Trespassing"; provided that the signs shall contain letters no less than two inches in height and shall be placed at reasonable intervals no less than three signs to a mile along the boundary line of the land and at all roads and trails entering the land in a manner and position as to be clearly noticeable from outside the boundary.

(2) Criminal trespass onto state lands is a petty misdemeanor.

(3) For the purposes of this section, unless the context requires otherwise: "Highway" has the same meaning as in section 286-2. "Improved state land" means any state land, including but not limited to harbors under the care and control of the department of transportation under chapter 266, and small boat harbors under the care and control of the department of land and natural resources under chapter 200, upon which there is improvement, including any structure, building, or facility; or alteration of the land by grading, dredging, or mining that would cause a permanent change in the land or that would change the basic natural condition of the land. Land is not "improved state land" if it only has minor improvements, including utility poles, signage, and irrigation facilities or systems; or minor alterations undertaken for the preservation or prudent management of the unimproved or unused land, including fences, trails, or pathways. Land is not "improved state land" solely due to the performance of state maintenance activities on the land, including forest plantings and the removal of weeds, brush, rocks, boulders, or trees; or removal or securing of rocks or boulders undertaken to reduce risk to downslope properties. "State lands" means all land owned by the State through any of its departments or agencies.

(4) No conviction under this section shall be used to establish a felony conviction under section 708-803.

708-814.8 HRS

708-814.8 Enforcement of trespass laws on public land. When trespass involves public land, any state or county law enforcement officer may enforce the trespass laws of this part without regard to whether the land is owned by the State or by a county; provided that nothing in this section shall be construed to alter the existing responsibility of law enforcement officers to enforce, as applicable, the laws of the State, or to alter the respective jurisdictional boundaries observed by state and county law enforcement officers. Nothing contained in this section shall diminish, alter, or amend any existing rights, privileges, or practices of the Native Hawaiian people; nor shall the obligations of the State to the Native Hawaiian people be absolved.

708-815 Bill

708-815 Simple trespass.

(1) A person commits the offense of simple trespass if the person knowingly enters or remains unlawfully in or upon premises.

(2) Simple trespass is a violation.

708-816 Bill

708-816 Defense to trespass. It is a defense to prosecution for trespass as a violation of sections 708-814 and 708-815 that the defendant entered upon and passed along or over established and well-defined roadways, pathways, or trails leading to public beaches over government lands, whether or not under lease to private persons, or for the purposes of and in compliance with section 708-804.

708-816.5 Bill

708-816.5 Entry upon the premises of a facility utilized as a sex, child, or spouse abuse shelter; penalty. [(1)] No person shall knowingly enter or remain unlawfully upon the premises of a facility utilized as a sex abuse, child abuse, or spouse abuse shelter after reasonable warning or request to leave by a member of the facility's staff. [(2)] Violation of this section is a misdemeanor.

708-817 Bill

708-817 Burglary of a dwelling during an emergency period.

(1) A person commits the offense of burglary of a dwelling if, during an emergency period proclaimed by the governor or mayor pursuant to chapter 127A and within the area covered by the emergency period, the person:

(a) Intentionally enters or remains unlawfully in a dwelling with intent to commit therein a crime against a person or against property rights; and

(b) Recklessly disregards a risk that the building is the dwelling of another, and the building is such a dwelling at the time.

(2) Burglary of a dwelling during an emergency period is a class A felony.

708-818 Bill

708-818 Burglary of a building during an emergency period.

(1) A person commits the offense of burglary of a building if, during an emergency period proclaimed by the governor or mayor pursuant to chapter 127A and within the area covered by the emergency period, the person intentionally enters or remains unlawfully in a building other than a dwelling with intent to commit therein a crime against a person or against property rights.

(2) Burglary of a building during an emergency period is a class B felony.

708-820 Bill

708-820 Criminal property damage in the first degree.

(1) A person commits the offense of criminal property damage in the first degree if by means other than fire:

(a) The person intentionally or knowingly damages property and thereby recklessly places another person in danger of death or bodily injury;

(b) The person intentionally or knowingly damages the property of another, without the other's consent, in an amount exceeding $20,000;

(c) The person intentionally or knowingly damages the property of another during an emergency period proclaimed by the governor or mayor pursuant to chapter 127A, within the area covered by the emergency or disaster; or

(d) The person intentionally or knowingly damages the agricultural equipment, supplies, or products or aquacultural equipment, supplies, or products of another, including trees, bushes, or any other plant and livestock of another, without the other's consent, in an amount exceeding $1,500. In calculating the amount of damages to agricultural products, the amount of damages includes future losses and the loss of future production.

(2) Criminal property damage in the first degree is a class B felony; provided that any person convicted of violating subsection (1)(d) shall be sentenced to a term of imprisonment of not less than one hundred eighty days, without possibility of probation or suspension of sentence.

708-821 Bill

708-821 Criminal property damage in the second degree.

(1) A person commits the offense of criminal property damage in the second degree if by means other than fire:

(a) The person intentionally or knowingly damages the property of another, without the other's consent, by the use of widely dangerous means;

(b) The person intentionally or knowingly damages the property of another, without the other's consent, in an amount exceeding $1,500; or

(c) The person intentionally or knowingly damages the agricultural equipment, supplies, or products or aquacultural equipment, supplies, or products of another, including trees, bushes, or any other plant and livestock of another, without the other's consent, in an amount exceeding $500. In calculating the amount of damages to agricultural products, the amount of damages includes future losses and the loss of future production.

(2) Criminal property damage in the second degree is a class C felony; provided that any person convicted of violating subsection (1)(c) shall be sentenced to a term of imprisonment of not less than one hundred eighty days, without possibility of probation or suspension of sentence.

708-822 Bill

708-822 Criminal property damage in the third degree.

(1) A person commits the offense of criminal property damage in the third degree if by means other than fire:

(a) The person recklessly damages the property of another, without the other's consent, by the use of widely dangerous means;

(b) The person intentionally or knowingly damages the property of another, without the other's consent, in an amount exceeding $500; or

(c) The person intentionally damages the agricultural equipment, supplies, or products or aquacultural equipment, supplies, or products of another, including trees, bushes, or any other plant and livestock of another, without the other's consent, in an amount exceeding $100. In calculating the amount of damages to agricultural products, the amount of damages includes future losses and the loss of future production.

(2) Criminal property damage in the third degree is a misdemeanor; provided that any person convicted of violating subsection (1)(c) shall be sentenced to a term of imprisonment of not less than ninety days, without possibility of probation or suspension of sentence.

708-823 Bill

708-823 Criminal property damage in the fourth degree.

(1) A person commits the offense of criminal property damage in the fourth degree if by means other than fire, the person intentionally or knowingly damages the property of another without the other's consent.

(2) Criminal property damage in the fourth degree is a petty misdemeanor.

708-823.2 HRS

708-823.2 Criminal trespass on agricultural land.

(1) A person commits the offense of criminal trespass on agricultural land if the person enters or remains unlawfully on agricultural land without the permission of the owner of the land, the owner's agent who is authorized by the owner to give the permission, or the person in lawful possession of the land, and the agricultural land:

(a) Is fenced, enclosed, or secured in a manner designed to exclude intruders or marked by a structure or barrier, including a cattle grid, cattle grate, or other obstacle, used to secure livestock; or

(b) At the time of entry, is fallow or has a visible presence of livestock-raising, such as cattle, horses, water troughs, shelters, or paddocks, or a crop:

(i) Under cultivation; (ii) In the process of being harvested; or (iii) That has been harvested.

(2) Subsection (1) shall not apply to:

(a) A process server who enters or remains in or upon the land or premises of another, unless the land or premises are secured with a fence and locked gate, for the purpose of making a good faith attempt to perform the process server's legal duties and to serve process upon any of the following:

(i) An owner or occupant of the land or premises; (ii) An agent of the owner or occupant of the land or premises; or (iii) A lessee of the land or premises. For the purposes of this paragraph, "process server" means any person authorized under

the Hawaii rules of civil procedure, district court rules of civil procedure, Hawaii family court rules, or section 353C-11 to serve process; or

(b) A professional land surveyor, or assistant under the direct supervision of the professional land surveyor, who enters or remains in or upon the land or premises of another for the purpose of performing land surveying at the request of the landowner of, or person with an interest in, the real property to be surveyed.

(3) Except as provided in subsection (4), criminal trespass on agricultural land shall be a misdemeanor, and any person who violates this section shall be sentenced as follows, without possibility of probation or suspension of sentence:

(a) For a first offense, or any offense not preceded within five years of a previous conviction for an offense under this section:

(i) A term of imprisonment of not less than three consecutive days; and (ii) A fine of not less than $500;

(b) For an offense that occurs within five years of a previous conviction for an offense under this section:

(i) A term of imprisonment of not less than thirty days; and (ii) A fine of not less than $1,000; and

(c) For an offense that occurs within five years of two or more previous convictions for offenses under this section:

(i) A term of imprisonment of not less than ninety days; and (ii) A fine of $2,000.

(4) Any person who violates this section while in possession of a dangerous instrument shall be guilty of a class C felony.

(5) Any fines imposed in connection with the offense under this section shall be deposited with the director of finance who shall deposit the fines into the animal industry special fund established pursuant to section 142-3.6.

(6) For the purposes of this section: "Agricultural land" means any land used primarily for a farming operation. "Agricultural land" includes state- or county-owned agricultural land, privately owned agricultural land, and land used for farm buildings and dwellings and roads and irrigation infrastructure associated with these lands. "Dangerous instrument" has the same meaning as defined in section 707-700. "Fallow" means land associated with agricultural production that is left unseeded or unplanted for one or more growing seasons. "Farming operation" means a commercial agricultural or aquacultural facility or pursuit conducted, in whole or in part, including the care and production of livestock and livestock products, poultry and poultry products, apiary products, and plant and animal production for nonfood uses; the planting, cultivating, harvesting, and processing of crops; and the farming or ranching of any plant or animal species in a controlled salt, brackish, or freshwater environment.

708-823.5 Bill

708-823.5 Aggravated criminal property damage.

(1) A person commits the offense of aggravated criminal property damage if the person by means other than fire:

(a) Intentionally damages the property of another without the other's consent; and

(b) Has been convicted two or more times of an offense under section 708-822 or 708-823.

(2) For purposes of this section, "convicted two or more times" means that, at the time of the instant offense, the person had previously entered a plea of guilty or no contest or a judge or jury had previously returned a verdict of guilty against the person for two or more offenses committed on separate occasions.

(3) Aggravated criminal property damage is a misdemeanor.

708-823.6 HRS

708-823.6 Graffiti; sentencing.

(1) Whenever a person is sentenced under section 708-821, 708-822, 708-823, or 708-823.5 for an offense in which the damage is caused by graffiti, in addition to any penalty prescribed by those sections, the person shall be required to:

(a) Remove the graffiti from the damaged property within thirty days of sentencing, if it has not already been removed and where consent from the respective property owner or owners has been obtained; and

(b) For a period of time not to exceed two years from the date of sentencing, along with any other person or persons who may be sentenced under this section for the same property, perform community service removing, within fourteen days, any graffiti applied to other property within two hundred fifty yards of the site of the offense for which the person was sentenced, where consent from the respective property owner or owners has been obtained, even if the property was damaged by another person; provided that removal of graffiti shall not place the person or others in physical danger nor

inconvenience the public.

(2) In lieu of performing graffiti removal pursuant to subsection (1), the court may require a person to perform one hundred hours of community service if the government agency that is responsible for supervising the graffiti removal lacks the necessary resources to ensure the person's compliance with subsection (1).

(3) For purposes of this section, "graffiti" means any unauthorized drawing, inscription, figure, or mark of any type intentionally created by paint, ink, chalk, dye, or similar substances.

708-824 Bill

708-824 Failure to control widely dangerous means.

(1) A person commits the offense of failure to control widely dangerous means if, knowing that widely dangerous means are endangering life or property, the person negligently fails to take measures to prevent or mitigate the danger and:

(a) The person knows that the person is under an official, contractual, or other legal duty to take measures to prevent, control, or mitigate the danger; or

(b) The means were employed by the person or with the person's assent, or on premises in the person's custody or control.

(2) Failure to control widely dangerous means is a misdemeanor.

708-825 Bill

708-825 Criminal tampering; definitions of terms. In sections 708-826 and 708-827: To "tamper with" means to interfere improperly with something, meddle with it, or make unwarranted alterations in its existing condition. "Utility" means an enterprise which provides gas, electric, steam, water or communications services, and any common carrier; it may be either publicly or privately owned or operated.

708-826 Bill

708-826 Criminal tampering in the first degree.

(1) A person commits the offense of criminal tampering in the first degree if, and with intent to cause a substantial interruption or impairment of a service rendered to the public by a utility or by an institution providing health or safety protection, the person damages or tampers with, without the consent of the utility or institution, its property or facilities and thereby causes substantial interruption or impairment of service.

(2) Criminal tampering in the first degree is a misdemeanor.

708-827 Bill

708-827 Criminal tampering in the second degree.

(1) A person commits the offense of criminal tampering in the second degree if the person intentionally tampers with property of another person, without the other person's consent, with intent to cause substantial inconvenience to that person or to another.

(2) Criminal tampering in the second degree is a petty misdemeanor.

708-828 Bill

708-828 Criminal use of a noxious substance.

(1) A person commits the offense of criminal use of a noxious substance if the person knowingly deposits on the premises or in the vehicle of another, without the other's consent, any stink bomb or device, irritant, or offensive-smelling substance, with the intent to interfere with another's use of the premises or vehicle.

(2) Criminal use of a noxious substance is a petty misdemeanor.

708-829 Bill

708-829 Criminal littering.

(1) A person commits the offense of criminal littering if that person knowingly places, throws, or drops litter on any public or private property or in any public or private waters, except:

(a) In a place designated by the department of health or the county for the disposal of garbage and refuse;

(b) Into a litter receptacle;

(c) Into a litter bag; provided that the bag is disposed of properly into a litter receptacle or in a place designated by the department of health or the county for the disposal of garbage and refuse.

(2) "Litter" means rubbish, refuse, waste material, garbage, trash, offal, or debris of whatever kind or description, and whether or not it is of value, and includes improperly discarded paper, metal, plastic, glass, or solid waste.

(3) Criminal littering is a petty misdemeanor.

(4) The court shall sentence any person convicted of committing the offense of criminal littering as follows:

(a) For the first offense, the person shall spend four hours of either picking up litter on public property or performing community service;

(b) For any subsequent offense, the person shall spend eight hours of either picking up litter on public property or performing community service; and

(c) The court shall fine the person convicted of committing the offense of criminal littering at least $500, but not more than $1,000.

(5) It shall be an affirmative defense that the defendant had consent of the owner in control of the property.

708-830 Bill

708-830 Theft. A person commits theft if the person does any of the following:

(1) Obtains or exerts unauthorized control over property. A person obtains or exerts unauthorized control over the property of another with intent to deprive the other of the property.

(2) Property obtained or control exerted through deception. A person obtains, or exerts control over, the property of another by deception with intent to deprive the other of the property.

(3) Appropriation of property. A person obtains, or exerts control over, the property of another that the person knows to have been lost or mislaid or to have been delivered under a mistake as to the nature or amount of the property, the identity of the recipient, or other facts, and, with the intent to deprive the owner of the property, the person fails to take reasonable measures to discover and notify the owner.

(4) Obtaining services by deception. A person intentionally obtains services, known by the person to be available only for compensation, by deception, false token, or other means to avoid payment for the services. When compensation for services is ordinarily paid immediately upon the rendering of them, absconding without payment or offer to pay is prima facie evidence that the services were obtained by deception.

(5) Diversion of services. Having control over the disposition of services of another to which a person is not entitled, the person intentionally diverts those services to the person's own benefit or to the benefit of a person not entitled thereto.

(6) Failure to make required disposition of funds.

(a) A person intentionally obtains property from anyone upon an agreement, or subject to a known legal obligation, to make specified payment or other disposition, whether from the property or its proceeds or from the person's own property reserved in equivalent amount, and deals with the property as the person's own and fails to make the required payment or disposition. It does not matter that it is impossible to identify particular property as belonging to the victim at the time of the defendant's failure to make the required payment or disposition. A person's status as an officer or employee of the government or a financial institution is prima facie evidence that the person knows the person's legal obligations with respect to making payments and other dispositions. If the officer or employee fails to pay or account upon lawful demand, or if an audit reveals a falsification of accounts, it shall be prima facie evidence that the officer or employee has intentionally dealt with the property as the officer's or employee's own.

(b) A person obtains personal services from an employee upon agreement or subject to a known legal obligation to make a payment or other disposition of funds to a third person on account of the employment, and the person intentionally fails to make the payment or disposition at the proper time.

(7) Receiving stolen property. A person intentionally receives, retains, or disposes of the property of another, knowing that it has been stolen, with intent to deprive the owner of the property. It is prima facie evidence that a person knows the property to have been stolen if, being a dealer in property of the sort received, the person acquires the property for a consideration that the person knows is far below its reasonable value.

(8) Shoplifting.

(a) A person conceals or takes possession of the goods or merchandise of any store or retail establishment, with intent to defraud.

(b) A person alters the price tag or other price marking on goods or merchandise of any store or retail establishment, with intent to defraud.

(c) A person transfers the goods or merchandise of any store or retail establishment from one container to another, with intent to defraud. The unaltered price or name tag or other marking on goods or merchandise, duly identified photographs or photocopies thereof, or printed register receipts shall be prima facie evidence of value and ownership of such goods or merchandise. Photographs of the goods or merchandise involved, duly identified in writing by the arresting police officer as accurately representing such goods or merchandise, shall be deemed competent evidence of the goods or merchandise involved and shall be admissible in any proceedings, hearings, and trials for shoplifting to the same extent as the goods or merchandise themselves.

708-830.5 Bill

708-830.5 Theft in the first degree.

(1) A person commits the offense of theft in the first degree if the person commits theft of:

(a) Property or services, the value of which exceeds $20,000;

(b) A firearm;

(c) Dynamite or other explosive;

(d) Property or services during an emergency period proclaimed by the governor or mayor pursuant to chapter 127A, within the area covered by the emergency or disaster under chapter 127A, the value of which exceeds $300;

(e) Property from the person of another who is sixty years of age or older and the age of the property owner is known or reasonably should be known to the person who commits theft;

(f) Property or services, the value of which exceeds $750, from a person who is sixty years of age or older and the age of the property owner is known or reasonably should be known to the person who commits theft; or

(g) A motor vehicle or motorcycle as defined in section 291C-1.

(2) Theft in the first degree is a class B felony.

708-831 Bill

708-831 Theft in the second degree.

(1) A person commits the offense of theft in the second degree if the person commits theft of:

(a) Property from the person of another;

(b) Property or services the value of which exceeds $750;

(c) An aquacultural product or part thereof from premises that are fenced or enclosed in a manner designed to exclude intruders or there is prominently displayed on the premises a sign or signs sufficient to give notice and reading as follows: "Private Property", "No Trespassing", or a substantially similar message;

(d) Agricultural equipment, supplies, or products, or part thereof, the value of which exceeds $100 but does not exceed $20,000, or of agricultural products that exceed twenty-five pounds, from premises that are fenced, enclosed, or secured in a manner designed to exclude intruders or where there is prominently displayed on the premises a sign or signs sufficient to give notice and reading as follows: "Private Property", "No Trespassing", or a substantially similar message; or if at the point of entry of the premises, a crop is visible. The sign or signs, containing letters no less than two inches in height, shall be placed along the boundary line of the land in a manner and in such a position as to be clearly noticeable from outside the boundary line. Possession of agricultural products without ownership and movement certificates, when a certificate is required pursuant to chapter 145, is prima facie evidence that the products are or have been stolen;

(e) Agricultural commodities that are generally known to be marketed for commercial purposes. Possession of agricultural commodities without ownership and movement certificates, when a certificate is required pursuant to section 145-22, is prima facie evidence that the products are or have been stolen; provided that "agricultural commodities" has the same meaning as in section 145-21;

(f) Property commonly used to store items of monetary value, including but not limited to any purse, handbag, or wallet;

(g) Property or services, the value of which exceeds $250, from a person who is sixty years of age or older and the age of the property owner is known or reasonably should be known to the person who commits theft; or

(h) An electric gun as defined in section 134-81.

(2) Theft in the second degree is a class C felony. A person convicted of committing the offense of theft in the second degree under subsection (1)(c) and (d) shall be sentenced in accordance with chapter 706, except that for the first offense, the court may impose a minimum sentence of a fine of at least $1,000 or two-fold damages sustained by the victim, whichever is greater.

708-832 Bill

708-832 Theft in the third degree.

(1) A person commits the offense of theft in the third degree if the person commits theft:

(a) Of property or services the value of which exceeds $250; or

(b) Of gasoline, diesel fuel, or other related petroleum products used as propellants of any value not exceeding $750.

(2) Theft in the third degree is a misdemeanor.

708-833 Bill

708-833 Theft in the fourth degree.

(1) A person commits the offense of theft in the fourth degree if the person commits theft of property or services of any value not in excess of $250.

(2) Theft in the fourth degree is a petty misdemeanor.

708-833.5 Bill

708-833.5 Shoplifting. A person convicted of committing theft by means of shoplifting as defined in section 708-830 shall be sentenced to the following minimum fines:

(1) In cases involving a class C felony, the minimum fine shall be four times the value or aggregate value of the property involved;

(2) In cases involving a misdemeanor, the minimum fine shall be three times the value or aggregate value of the property involved;

(3) In cases involving a petty misdemeanor, the minimum fine shall be twice the value or aggregate value of the property involved;

(4) If a person has previously been convicted of committing theft by means of shoplifting as defined in section 708-830, the minimum fine shall be doubled that specified in paragraphs (1), (2), and (3), respectively, as set forth above; provided in the event the convicted person defaults in payment of any fine, and the default was not contumacious, the court may sentence the person to community services as authorized by section 706-605(1)(d).

708-834 Bill

708-834 Defenses: unawareness of ownership; claim of right; household belongings; co-interest not a defense.

(1) It is a defense to a prosecution for theft that the defendant:

(a) Was unaware that the property or service was that of another; or

(b) Believed that the defendant was entitled to the property or services under a claim of right or that the defendant was authorized, by the owner or by law, to obtain or exert control as the defendant did.

(2) If the owner of the property is the defendant's spouse or reciprocal beneficiary, it is a defense to a prosecution for theft of property that:

(a) The property which is obtained or over which unauthorized control is exerted constitutes household belongings; and

(b) The defendant and the defendant's spouse or reciprocal beneficiary were living together at the time of the conduct.

(3) "Household belongings" means furniture, personal effects, vehicles, money or its equivalent in amounts customarily used for household purposes, and other property usually found in and about the common dwelling and accessible to its occupants.

(4) In a prosecution for theft, it is not a defense that the defendant has an interest in the property if the owner has an interest in the property to which the defendant is not entitled.

708-835 Bill

708-835 Proof of theft offense. A charge of an offense of theft in any degree may be proved by evidence that it was committed in any manner that would be theft under section 708-830, notwithstanding the specification of a different manner in the indictment, information, or other charge, subject only to the power of the court to ensure a fair trial by granting a continuance or other appropriate relief where the conduct of the defense would be prejudiced by lack of fair notice or by surprise.

708-835.4 Bill

708-835.4 Unauthorized operation of a recording device in a motion picture theater.

(1) A person commits the offense of unauthorized operation of a recording device in a motion picture theater if the person knowingly operates the audiovisual recording function of any device in a motion picture theater while a motion picture is being exhibited, without the consent of the motion picture theater owner.

(2) This section shall not prevent any lawfully authorized investigative, protective, law enforcement, or intelligence-gathering employee or agent of the local, state, or federal government, from operating any audiovisual recording device in a motion picture theater as part of lawfully authorized investigative, protective, law enforcement, or intelligence-gathering activities.

(3) Unauthorized operation of a recording device in a motion picture theater is a misdemeanor.

(4) For the purposes of this section: "Audiovisual recording function" means the capability of a device to record or transmit a motion picture or any part thereof by means of any technology. "Motion picture theater" means a movie theater, screening room, or other venue in use primarily for the exhibition of a motion picture at the time of the offense.

708-835.5 Bill

708-835.5 Theft of livestock.

(1) A person commits the offense of theft of livestock if the person commits theft by:

(a) Having in the person's possession a live animal of the bovine, equine, swine, sheep, or goat species, or its carcass or meat, while in or upon premises that the person knowingly entered or remained unlawfully in or upon, and that are fenced or enclosed in a manner designed to exclude intruders; or

(b) Having in the person's possession a live animal, carcass, or meat in any other location.

(2) Possession of livestock without a livestock ownership and movement certificate, when a certificate is required pursuant to section 142-49, is prima facie evidence that the livestock is or has been stolen.

(3) Theft of livestock is a class C felony.

(4) A person convicted of committing the offense of theft of livestock shall be sentenced in accordance with chapter 706, except that for a first offense the court shall impose a minimum sentence of a fine of at least $1,000 or restitution, whichever is greater.

708-835.6 Bill

708-835.6 Telemarketing fraud.

(1) A person commits the offense of telemarketing fraud if, with intent to defraud or misrepresent, that person obtains or attempts to obtain the transfer of possession, control, or ownership of the property of another through communications conducted at least in part by telephone and involving direct or implied claims that the person contacted:

(a) Will or is about to receive anything of value; or

(b) May be able to recover any losses suffered by the person contacted in connection with a prize promotion.

(2) Telemarketing fraud is a class B felony. In addition, any property used or intended for use in the commission of, attempt to commit, or conspiracy to commit telemarketing fraud, or that facilitated or assisted this activity, shall be forfeited subject to chapter 712A.

(3) For purposes of this section, "telemarketing" means a plan, program, or campaign, including a prize promotion or investment opportunity, that:

(a) Is conducted to include the purchase of goods or services or to solicit funds or contributions by use of one or more telephones; and

(b) Involves more than one telephone call.

708-835.7 Bill

708-835.7 Theft of copper.

(1) A person commits the offense of theft of copper if the person commits theft of copper that weighs a pound or more, but not including legal tender of the United States.

(2) Theft of copper is a class C felony.

708-835.8 Bill

708-835.8 Theft of beer keg.

(1) A person commits the offense of theft of beer keg if the person commits theft of a beer keg.

(2) For the purposes of this section, "beer keg" means a metal container used to hold five gallons or more of liquid that is stamped, engraved, stenciled, or otherwise marked with the name of a brewery manufacturer; provided that a deposit beverage container, as defined under section 342G-101, shall not be considered a beer keg.

(3) Theft of beer keg is a misdemeanor.

708-835.9 HRS

708-835.9 Theft of urn.

(1) A person commits the offense of theft of urn if the person:

(a) Obtains an urn through any means described in section 708-830; or

(b) Violates section 445-233 in regard to an urn.

(2) For the purposes of this section, "urn" means a container that is or has been used to hold human ashes.

(3) Theft of urn is a class C felony.

708-836 Bill

708-836 Unauthorized control of a propelled vehicle in the first degree.

(1) A person commits the offense of unauthorized control of a propelled vehicle in the first degree if the person intentionally or knowingly exerts unauthorized control over another's propelled vehicle by operating the propelled vehicle without the owner's consent or by changing the identity of the propelled vehicle without the owner's consent.

(2) It is an affirmative defense to a prosecution under this section that the defendant:

(a) Received authorization to use the propelled vehicle from an agent of the owner where the agent had actual or apparent authority to authorize the use;

(b) Is a lien holder or legal owner of the propelled vehicle, or an authorized agent of the lien holder or legal owner, engaged in the lawful repossession of the propelled vehicle; or

(c) Purchased the vehicle and reasonably believed oneself to be the actual owner of the vehicle.

(3) For the purposes of this section: "Owner" means the registered owner of the propelled vehicle or the unrecorded owner of the propelled vehicle pending transfer of ownership; provided that if there is no registered owner of the propelled vehicle or unrecorded owner of the propelled vehicle pending transfer of ownership, "owner" means the legal owner. "Propelled vehicle" means an automobile, airplane, motorcycle, motorboat, or other motor-propelled vehicle.

(4) Unauthorized control of a propelled vehicle in the first degree is a class C felony.

708-836.1 HRS

708-836.1 Unauthorized control of a propelled vehicle in the second degree.

(1) A person commits the offense of unauthorized control of a propelled vehicle in the second degree if the person recklessly or negligently exerts unauthorized control over another's propelled vehicle by operating the propelled vehicle without the owner's consent or by changing the identity of the propelled vehicle without the owner's consent.

(2) It is an affirmative defense to a prosecution under this section that the defendant:

(a) Received authorization to use the propelled vehicle from an agent of the owner where the agent had actual or apparent authority to authorize the use;

(b) Is a lien holder or legal owner of the propelled vehicle, or an authorized agent of the lien holder or legal owner, engaged in the lawful repossession of the propelled vehicle; or

(c) Purchased the vehicle and reasonably believed oneself to be the actual owner of the vehicle.

(3) For the purposes of this section: "Owner" means the registered owner of the propelled vehicle or the unrecorded owner of the propelled vehicle pending transfer of ownership; provided that if there is no registered owner of the propelled vehicle or unrecorded owner of the propelled vehicle pending transfer of ownership, "owner" means the legal owner. "Propelled vehicle" shall have the same meaning as in section 708-836.

(4) Unauthorized control of a propelled vehicle in the second degree is a misdemeanor.

708-836.5 Bill

708-836.5 Unauthorized entry into motor vehicle in the first degree.

(1) A person commits the offense of unauthorized entry into motor vehicle in the first degree if the person intentionally or knowingly enters or remains unlawfully in a motor vehicle, without being invited, licensed, or otherwise authorized to enter or remain within the vehicle, with the intent to commit a crime against a person or against property rights.

(2) Unauthorized entry into motor vehicle in the first degree is a class C felony.

708-836.6 Bill

708-836.6 Unauthorized entry into motor vehicle in the second degree.

(1) A person commits the offense of unauthorized entry into a motor vehicle in the second degree if the person intentionally or knowingly enters into a motor vehicle without being invited, licensed, or otherwise authorized to do so.

(2) Unauthorized entry into a motor vehicle in the second degree is a misdemeanor.

708-836.8 HRS

708-836.8 Theft of catalytic converter.

(1) A person commits the offense of theft of catalytic converter if the person commits theft of a catalytic converter.

(2) For the purposes of this section, "catalytic converter" shall have the same meaning as that term is defined in section 289-1.

(3) Theft of catalytic converter is a class C felony.

708-837 Bill

708-837 Failure to return a rental motor vehicle; penalty. [(1)] A person commits the offense of failure to return a rental motor vehicle when he intentionally does not return the motor vehicle to the person, or his agent, from whom the vehicle was rented within forty-eight hours after the time stated on the rental agreement, unless the person renting the vehicle gives notice that he will not be able to return the vehicle in the stated time and extends the time in which the vehicle will be returned. [(2)] Failure to return a rental motor vehicle is a misdemeanor.

708-837.5 Bill

708-837.5 Failure to return leased or rented personal property; penalty. [(1)] A person commits the offense of failure to return leased or rented personal property other than a rental motor vehicle, when he knowingly or intentionally does not return the leased or rented personal property to the person, or his agent, from whom the personal property was leased or rented within fourteen days after the return date stated in the lease or rental contract, unless the person leasing or renting the personal property gives notice that he will not be able to return the leased or rented personal property by the date stated and with the permission of the owner of the property or his agent extends the date by which the personal property will be returned. [(2)] Failure to return leased or rented personal property is a petty misdemeanor.

708-838 Bill

708-838 Removal of identification marks. A person commits the offense of removal of identification marks if

(1) The person defaces, erases, or otherwise alters any serial number or identification mark placed or inscribed by the manufacturer, or

(2) The person knowingly, to conceal the true ownership of the property of another, defaces, erases, or otherwise alters any serial number or identification mark placed or inscribed on any bicycle, movable or immovable construction tool or equipment, appliance, merchandise, or other article for the purpose of identifying the bicycle, movable or immovable tool or equipment, appliance, merchandise or other article or its component parts, with a value of more than $50. A person removes identification marks if the person attempts to or succeeds in erasing, defacing, altering, or removing a serial number or identification mark or part thereof, on the property of another. Removal of identification marks is a misdemeanor.

708-839 Bill

708-839 Unlawful possession. It shall be unlawful for any person to possess any bicycle, movable construction tool or equipment, appliance, merchandise, or other article, or any part thereof

(1) Where the serial number or identification mark placed on the same by the manufacturer for the purpose of identification, or

(2) Knowing the serial number or identification mark placed on the same for the purpose of identification, has been erased, altered, changed or removed for the purpose of changing the identity of the foregoing items. Unlawful possession is a misdemeanor.

708-839.5 Bill

708-839.5 Theft of utility services.

(1) For purposes of this section: "Customer" means the person in whose name the utility service is provided. "Divert" means to change the intended course or path of utility services without the authorization or consent of the utility. "Person" means any individual, partnership, firm, association, corporation, or other legal entity. "Reconnection" means the reconnection of utility service by a customer or other person after service has been lawfully disconnected by the utility. "Utility" means any public utility as defined in section 269-1, that provides electricity, gas, or water services. "Utility service" means the provision of electricity, gas, water, or any other service provided by the utility for compensation.

(2) A person commits the offense of theft of utility services if the person, with intent to obtain utility services for the person's own or another's use without paying the full lawful charge therefor, or with intent to deprive any utility of any part of the full lawful charge for utility services it provides, commits, authorizes, solicits, aids, or abets any of the following:

(a) Diverts, or causes to be diverted utility services, by any means whatsoever;

(b) Prevents any utility meter, or other device used in determining the charge for utility services, from accurately performing its measuring function;

(c) Makes or causes to be made any connection or reconnection with property owned or used by the utility to provide utility services, without the authorization or consent of the utility; or

(d) Uses or receives the direct benefit of all or a portion of utility services with knowledge or reason to believe that a diversion, prevention of accurate measuring function, or unauthorized connection existed at the time of use or that the use or receipt was otherwise without the authorization or consent of the utility.

(3) In any prosecution under this section, the presence of any of the following objects, circumstances, or conditions on premises controlled by the customer, or by the person using or receiving the direct benefit of all or a portion of utility services obtained in violation of this section, shall create a rebuttable presumption that the customer or person intended to and did violate this section:

(a) Any instrument, apparatus, or device primarily designed to be used to obtain utility services without paying the full lawful charge therefor; or

(b) Any meter that has been diverted or prevented from accurately performing its measuring function so as to cause no measurement or inaccurate measurement of utility services.

(4) A person commits the offense of theft of utility services in the first degree in cases where the theft:

(a) Accrues to the benefit of any commercial trade or business, including any commercial trade or business operating in a residence, home, or dwelling;

(b) Is obtained through the services of a person hired to commit the theft of utility services; in which event, both the person hired and the person responsible for the hiring shall be punished under this section as a class C felony; or

(c) Accrues to the benefit of a residence, home, or dwelling where the value of the theft of utility services exceeds $750. Theft of utility services in the first degree is a class C felony, and shall be sentenced in accordance with chapter 706, except that for a first offense the court shall impose a minimum sentence of a fine of at least $1,000 or two times the value of the theft, whichever is greater.

(5) A person commits theft of utility services in the second degree if the person commits theft of utility services other than as provided in subsection (4). Theft of utility services in the second degree is a misdemeanor and shall be sentenced in accordance with chapter 706, except that for a first offense the court shall impose a minimum sentence of a fine of $500, with an increase of $500 for each succeeding conviction under this subsection.

708-839.6 Bill

708-839.6 Identity theft in the first degree.

(1) A person commits the offense of identity theft in the first degree if that person makes or causes to be made, either directly or indirectly, a transmission of any personal information of another by any oral statement, any written statement, or any statement conveyed by any electronic means, with the intent to:

(a) Facilitate the commission of a murder in any degree, a class A felony, kidnapping, unlawful imprisonment in any degree, extortion in any degree, any offense under chapter 134, criminal property damage in the first or second degree, escape in any degree, any offense under part VI of chapter 710, any offense under section 711-1103, or any offense under chapter 842; or

(b) Commit the offense of theft in the first degree from the person whose personal information is used, or from any other person or entity.

(2) Identity theft in the first degree is a class A felony.

708-839.7 Bill

708-839.7 Identity theft in the second degree.

(1) A person commits the offense of identity theft in the second degree if that person makes or causes to be made, either directly or indirectly, a transmission of any personal information of another by any oral statement, any written statement, or any statement conveyed by any electronic means, with the intent to commit the offense of theft in the second degree from any person or entity.

(2) Identity theft in the second degree is a class B felony.

708-839.8 Bill

708-839.8 Identity theft in the third degree.

(1) A person commits the offense of identity theft in the third degree if that person makes or causes to be made, either directly or indirectly, a transmission of any personal information of another by any oral statement, any written statement, or any statement conveyed by any electronic means, with the intent to commit the offense of theft in the third or fourth degree from any person or entity.

(2) Identity theft in the third degree is a class C felony.

708-839.9 HRS

708-839.9 Theft of mail.

(1) A person commits the offense of theft of mail if the person intentionally obtains or exerts unauthorized control over mail from another person's mailbox or premises without the effective consent of the addressee and with the intent to deprive that addressee of the mail.

(2) For purposes of this section, "mail" means an envelope, a package, a bag, or a box that:

(a) Is delivered by a common carrier or delivery service to an addressee; or

(b) Has been left to be collected for delivery by a common carrier or delivery service.

(3) Theft of mail is a misdemeanor.

708-840 Bill

708-840 Robbery in the first degree.

(1) A person commits the offense of robbery in the first degree if, in the course of committing theft or non-consensual taking of a motor vehicle:

(a) The person attempts to kill another or intentionally or knowingly inflicts or attempts to inflict serious bodily injury upon another;

(b) The person is armed with a dangerous instrument, an electric gun, or a simulated firearm and:

(i) The person uses force against the person of anyone present with intent to overcome that person's physical resistance or physical power of resistance; or (ii) The person threatens the imminent use of force against the person of anyone present with intent to compel acquiescence to the taking of or escaping with the property;

(c) The person uses force against the person of anyone present with the intent to overcome that person's physical resistance or physical power of resistance during an emergency period proclaimed by the governor or mayor pursuant to chapter 127A, within the area covered by the emergency or disaster; or

(d) The person threatens the imminent use of force against the person of anyone present with intent to compel acquiescence to the taking of or escaping with the property during an emergency period proclaimed by the governor or mayor pursuant to chapter 127A, within the area covered by the emergency or disaster.

(2) As used in this section: "Dangerous instrument" means any firearm, whether loaded or not, and whether operable or not, or other weapon, device, instrument, material, or substance, whether animate or inanimate, which in the manner it is used or threatened to be used is capable of producing death or serious bodily injury. "Electric gun" shall have the same meaning as in section 134-81. "Simulated firearm" means any object that:

(a) Substantially resembles a firearm;

(b) Can reasonably be perceived to be a firearm; or

(c) Is used or brandished as a firearm.

(3) Robbery in the first degree is a class A felony.

708-841 Bill

708-841 Robbery in the second degree.

(1) A person commits the offense of robbery in the second degree if, in the course of committing theft or non-consensual taking of a motor vehicle:

(a) The person uses force against the person of anyone present with the intent to overcome that person's physical resistance or physical power of resistance;

(b) The person threatens the imminent use of force against the person of anyone who is present with intent to compel acquiescence to the taking of or escaping with the property; or

(c) The person recklessly inflicts serious bodily injury upon another.

(2) Robbery in the second degree is a class B felony.

708-842 Bill

708-842 Robbery; "in the course of committing a theft". An act shall be deemed "in the course of committing a theft or non-consensual taking of a motor vehicle" if it occurs in an attempt to commit theft or non-consensual taking of a motor vehicle, in the commission of theft or non-consensual taking of a motor vehicle, or in the flight after the attempt or commission.

708-850 Bill

708-850 Definitions of terms in this part. In this part, unless a different meaning plainly is required: "Complete written instrument" means a written instrument which purports to be genuine and fully drawn with respect to every essential feature thereof. "Falsely alter", in relation to a written instrument, means to change, without the authority of the ostensible maker, drawer, or issuing commercial establishment, a written instrument, whether complete or incomplete, by means of erasure, obliteration, deletion, insertion of new matter, transposition of matter, or in any other manner, so that the instrument so altered falsely appears or purports to be in all respects an authentic creation of its ostensible maker, authorized by the maker, or issuing commercial establishment. "Falsely complete", in relation to a written instrument, means to transform, by adding, inserting, or changing matter, an incomplete written instrument into a complete one, without the authority of the ostensible maker, drawer, or issuing commercial establishment, so that the complete written

instrument falsely appears or purports to be in all respects an authentic creation of its ostensible maker[,] authorized by the maker, or issuing commercial establishment. "Falsely endorse", in relation to a written instrument, means to endorse, without the authority of the ostensible maker, drawer, or issuing commercial establishment, any part of a written instrument, whether complete or incomplete, so that the written instrument so endorsed falsely appears or purports to be authorized by the ostensible maker, drawer, or issuing commercial establishment. "Falsely make", in relation to a written instrument, means to make or draw a complete written instrument, or an incomplete written instrument, which purports to be an authentic creation of its ostensible maker or issuing commercial establishment, but which is not either because the ostensible maker, or issuing commercial establishment is fictitious or because, if real, the same did not authorize the making or drawing thereof. "Forged instrument" means a written instrument which has been falsely made, completed, endorsed, or altered. "Fraudulently encode magnetic ink character recognition numbers", in relation to a written instrument, means to change, alter, erase, add, create, tamper with, or manipulate the magnetic ink character recognition numbers, or symbols representing to be magnetic ink character recognition numbers, from the issuing commercial establishment. "Incomplete written instrument" means a written instrument which contains some matter by way of content or authentication but which requires additional matter in order to render it a complete written instrument. "Utter", in relation to a forged instrument, means to offer, whether accepted or not, a forged instrument with representation by acts or words, oral or in writing, that the instrument is genuine. "Written instrument" means:

(a) Any paper, document, or other instrument containing written or printed matter or its equivalent; or

(b) Any token, coin, stamp, seal, badge, trademark, or other evidence or symbol of value, right, privilege, or identification.

708-851 Bill

708-851 Forgery in the first degree.

(1) A person commits the offense of forgery in the first degree if, with intent to defraud, the person falsely makes, completes, endorses, or alters a written instrument, or utters a forged instrument, or fraudulently encodes the magnetic ink character recognition numbers, which is or purports to be, or which is calculated to become or to represent if completed:

(a) Part of an issue of stamps, securities, or other valuable instruments issued by a government or governmental agency;

(b) Part of an issue of stock, bonds, or other instruments representing interests in or claims against a corporate or other organization or its property; or

(c) All or part of a deed, will, codicil, contract, assignment, commercial instrument, or other instrument which does or may evidence, create, transfer, terminate, or otherwise affect a legal right, interest, obligation, or status and:

(i) The purported maker or drawer of the written instrument or forged instrument is a person who is sixty years of age or older; and (ii) The age of the purported maker or drawer of the written instrument or forged instrument is known or reasonably should be known to the person who falsely makes, completes, endorses, or alters the instrument; utters the forged instrument; or fraudulently encodes the magnetic ink character recognition numbers of the instrument.

(2) Forgery in the first degree is a class B felony.

708-852 Bill

708-852 Forgery in the second degree.

(1) A person commits the offense of forgery in the second degree if, with intent to defraud, the person:

(a) Falsely makes, completes, endorses, or alters a written instrument, or utters a forged instrument, or fraudulently encodes the magnetic ink character recognition numbers, which is or purports to be, or which is calculated to become or to represent if completed, a deed, will, codicil, contract, assignment, commercial instrument, or other instrument which does or may evidence, create, transfer, terminate, or otherwise affect a legal right, interest, obligation, or status; or

(b) Falsely makes, completes, endorses, or alters a written instrument, or utters a forged instrument; and:

(i) The purported maker or drawer of the written instrument or forged instrument is a person who is sixty years of age or older; and (ii) The age of purported maker or drawer of the written instrument or forged instrument is known or reasonably should be known to the person who falsely makes, completes, endorses, or alters a written instrument; or utters a forged instrument.

(2) Forgery in the second degree is a class C felony.

708-853 Bill

708-853 Forgery in the third degree.

(1) A person commits the offense of forgery in the third degree if, with intent to defraud, the person falsely makes, completes, endorses, or alters a written instrument, or utters a forged instrument.

(2) Forgery in the third degree is a misdemeanor.

708-854 Bill

708-854 Criminal possession of a forgery device.

(1) A person commits the offense of criminal possession of a forgery device if:

(a) The person makes or possesses with knowledge of its character any plate, die, or other device, apparatus, equipment, or article specifically designed or adapted for use in forging written instruments; or

(b) The person makes or possesses any device, apparatus, equipment, or article capable of or adaptable to use in forging written instruments with intent to use it oneself, or to aid or permit another to use it, for purposes of forgery.

(2) Criminal possession of a forgery device is a class C felony.

708-855 Bill

708-855 Criminal simulation.

(1) A person commits the offense of criminal simulation if, with intent to defraud, the person makes, alters, or utters any object, so that it appears to have an antiquity, rarity, source, or authorship that it does not in fact possess.

(2) In subsection (1), "utter" means to offer, whether accepted or not, an object with representation by acts or words, oral or in writing, relating to its antiquity, rarity, source, or authorship.

(3) Criminal simulation is a misdemeanor.

708-856 Bill

708-856 Obtaining signature by deception.

(1) A person commits the offense of obtaining a signature by deception if, with intent to defraud, the person:

(a) Causes another, by deception, to sign or execute a written instrument; or

(b) Utters the written instrument specified in [paragraph] (a).

(2) Obtaining a signature by deception is a misdemeanor.

708-857 Bill

708-857 Negotiating a worthless negotiable instrument.

(1) A person commits the offense of negotiating a worthless negotiable instrument if that person intentionally issues or negotiates a negotiable instrument knowing that it will not be honored by the maker or drawee.

(2) For the purpose of this section, as well as in any prosecution for theft committed by means of a worthless negotiable instrument, either of the following shall be prima facie evidence that the drawer knew that the negotiable instrument would not be honored upon presentation:

(a) The drawer had no account with the drawee at the time the negotiable instrument was negotiated; or

(b) Payment was refused by the drawee for lack of funds upon presentation within thirty days after date or issue, whichever is later, and the drawer failed to make good within ten days after actual receipt of a notice of dishonor, as defined in section 490:3-503.

(3) The definitions of the following terms shall apply to this section: "Issue" as defined in section 490:3-105. "Negotiable instrument" as defined in section 490:3-104. "Negotiation" as defined in section 490:3-201.

(4) Negotiating a worthless negotiable instrument is a misdemeanor.

708-858 Bill

708-858 Suppressing a testamentary or recordable instrument.

(1) A person commits the offense of suppressing a testamentary instrument if, with intent to defraud, the person destroys, removes, or conceals any will, codicil, or other testamentary instrument.

(2) A person commits the offense of suppressing a recordable instrument if, with intent to defraud, the person destroys, removes, or conceals any deed, mortgage, security instrument, or other written instrument for which the law provides public recording.

(3) Each offense defined in this section is a class C felony.

708-870 Bill

708-870 Deceptive business practices.

(1) A person commits the offense of deceptive business practices if in the course of engaging in a business, occupation, or profession the person knowingly or recklessly:

(a) Uses or possesses for use a false weight or measure, or any other device for falsely determining or recording any quality or quantity;

(b) Sells, offers or exposes for sale, or delivers less than the represented quantity of any commodity or service;

(c) Takes or attempts to take more than the represented quantity of any commodity or service when as buyer the person furnishes the weight or measure;

(d) Sells or offers for sale adulterated commodities; or

(e) Sells or offers or exposes for sale mislabeled commodities.

(2) "Adulterated" means varying from the standard of composition or quality prescribed by statute or lawfully promulgated administrative regulation, or if none, as set by established commercial usage.

(3) "Mislabeled" means:

(a) Varying from the standard of truth or disclosure in labeling prescribed by statute or lawfully promulgated administrative regulation, or if none, as set by established commercial usage; or

(b) Represented as being another person's product, though otherwise labeled accurately as to quality and quantity.

(4) Deceptive business practices is a misdemeanor.

(5) This section does not apply to deceptive business practices, as defined in subsection (1), for which a specific penalty is provided by a statute other than this Code.

708-871 Bill

708-871 False advertising.

(1) A person commits the offense of false advertising if, in connection with the promotion of the sale of property or services, the person knowingly or recklessly makes or causes to be made a false or misleading statement in any advertisement addressed to the public or to a substantial number of persons.

(2) "Misleading statement" includes an offer to sell property or services if the offeror does not intend to sell or provide the advertised property or services:

(a) At the price equal to or lower than the price offered;

(b) In a quantity sufficient to meet the reasonably-expected public demand, unless quantity is specifically stated in the advertisement; or

(c) At all.

(3) False advertising is a misdemeanor.

708-871.5

708-871.5 False labeling of Hawaii-grown coffee.

(1) A person commits the offense of false labeling of Hawaii-grown coffee if the person knowingly transports, distributes, advertises, sells, or possesses with the intent to sell Hawaii-grown green coffee, cherry coffee, parchment coffee, or roasted coffee that is falsely labeled with regard to the geographic origin of the Hawaii-grown coffee.

(2) For the purposes of this section: "Cherry coffee" means the unprocessed fruit of the coffee plant. "Geographic origin" means the geographic areas designated as follows:

(a) Hamakua is the Hamakua district on the island of Hawaii, as designated by the State of Hawaii tax map;

(b) Hawaii is the State of Hawaii;

(c) Kau is the Kau district on the island of Hawaii, as designated by the State of Hawaii tax map;

(d) Kauai is the island of Kauai;

(e) Kona is the north Kona and south Kona districts on the island of Hawaii, as designated by the State of Hawaii tax map;

(f) Maui is the island of Maui;

(g) Molokai is the island of Molokai; and

(h) Oahu is the island of Oahu. "Green coffee" means the agricultural commodity comprised of green coffee beans. "Parchment coffee" means the dried product that remains when coffee cherries are processed by removing the coffee seeds from the pulp. "Roasted coffee" means a product that results from heating the cherry coffee seeds to augment aroma and flavor.

(3) False labeling of Hawaii-grown coffee is a class C felony. In addition to any penalties imposed pursuant to section 706-605, the court shall impose on any defendant convicted of false labeling of Hawaii-grown coffee a mandatory minimum fine of $7,500 for each separate offense. Each act of false labeling of Hawaii-grown coffee shall constitute a distinct and separate offense. The mandatory minimum fine imposed shall not be suspended or waived.

708-872 Bill

708-872 Falsifying business records.

(1) A person commits the offense of falsifying business records if, with intent to defraud, the person:

(a) Makes or causes a false entry in the business records of an enterprise;

(b) Alters, erases, obliterates, deletes, removes, or destroys a true entry in the business records of an enterprise;

(c) Omits to make a true entry in the business records of an enterprise in violation of a duty to do so which the person knows to be imposed upon the person by law, other than for the information of the government, or by the nature of the person's position; or

(d) Prevents the making of a true entry or causes the omission thereof in the business records of an enterprise.

(2) For purposes of this section: "Business record" means any record kept or maintained by an enterprise for the purpose of evidencing or reflecting its condition or activity. "Electronic" means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities. "Enterprise" means any entity of one or more persons, corporate or otherwise, engaged in business, commercial, professional, industrial, eleemosynary, or social activity. "Information" includes data, text, images, sounds, codes, computer programs, software, or databases. "Record" means information that is written or printed, or that is stored in an electronic or other medium and is retrievable in a perceivable form.

(3) Falsifying business records is a misdemeanor.

708-873 Bill

708-873 Defrauding secured creditors.

(1) A person commits the offense of defrauding secured creditors if the person destroys, removes, conceals, encumbers, transfers, or otherwise deals with property subject to a security interest with intent to hinder enforcement of that interest.

(2) Defrauding secured creditors is a misdemeanor.

708-874 Bill

708-874 Misapplication of entrusted property.

(1) A person commits the offense of misapplication of entrusted property if, with knowledge that he is misapplying property and that the misapplication involves substantial risk of loss or detriment to the owner of the property or to a person for whose benefit the property was entrusted, he misapplies or disposes of property that has been entrusted to him as a fiduciary or that is property of the government or a financial institution.

(2) "Fiduciary" includes a trustee, guardian, personal representative, receiver, or any other person acting in a fiduciary capacity, or any person carrying on fiduciary functions on behalf of a corporation or other organization which is a fiduciary.

(3) To "misapply property" means to deal with the property contrary to law or governmental regulation relating to the custody or disposition of that property; "governmental regulation" includes administrative and judicial rules and orders as

well as statutes and ordinances.

(4) Misapplication of property is a misdemeanor.

708-875 Bill

708-875 Trademark counterfeiting.

(1) A person commits the offense of trademark counterfeiting who knowingly manufactures, produces, displays, advertises, distributes, offers for sale, sells, or possesses with the intent to sell or distribute any item bearing or identified by a counterfeit mark, knowing that the mark is counterfeit.

(2) As used in this section: "Counterfeit mark" means any spurious mark that is identical to or confusingly similar to any print, label, trademark, service mark, or trade name registered in accordance with chapter 482 or registered on the Principal Register of the United States Patent and Trademark Office. "Sale" includes resale.

(3) Trademark counterfeiting is a class C felony.

(4) In any action brought under this section resulting in a conviction or a plea of nolo contendere, the court shall order the forfeiture and destruction of all counterfeit marks and the forfeiture and destruction or other disposition of all items bearing a counterfeit mark, and all personal property, including any items, objects, tools, machines, equipment, instrumentalities, or vehicles of any kind, employed or used in connection with a violation of this section, in accordance with the procedures set forth in chapter 712A.

708-880 Bill

708-880 Commercial bribery.

(1) A person commits the offense of commercial bribery if:

(a) He confers or offers or agrees to confer, directly or indirectly, any benefit upon:

(i) An agent with intent to influence the agent to act contrary to a duty to which, as an agent, he is subject; or (ii) An appraiser with intent to influence the appraiser in his selection, appraisal, or criticism; or

(b) Being an agent, an appraiser, or agent in charge of employment, he solicits, accepts, or agrees to accept, directly or indirectly, any benefit from another person with intent:

(i) In the case of an agent, that he will thereby be influenced to act contrary to a duty to which, as an agent, he is subject; (ii) In the case of an appraiser, that he will thereby be influenced in his selection, appraisal, or criticism; or (iii) In the case of an agent in charge of employment, that he will thereby be influenced in the exercise of his discretion or power with respect to hiring someone, or retaining someone in employment, or discharging or suspending someone from employment.

(2) In this section: "Agent" means:

(a) An agent or employee of another;

(b) A trustee, guardian, or other fiduciary;

(c) A lawyer, physician, accountant, appraiser, or other professional adviser or informant;

(d) An officer, director, partner, manager, or other participant in the direction of the affairs of an incorporated or unincorporated association; or

(e) An arbitrator or other purportedly disinterested adjudicator or referee. "Agent in charge of employment" does not include any person conducting a private employment agency licensed and operating in accordance with law. "Appraiser" means a person who holds oneself out to the public as being engaged in the business of making disinterested selection, appraisal, or criticism of commodities or services.

(3) Commercial bribery is a misdemeanor, except in the event that the value of the benefit referred to in subsection (1) exceeds $1,000, in which case commercial bribery shall be a class C felony.

708-881 Bill

708-881 Tampering with a publicly-exhibited contest.

(1) A person commits the offense of tampering with a publicly-exhibited contest if:

(a) He confers, or offers or agrees to confer, directly or indirectly, any benefit upon:

(i) A contest participant with intent to influence him not to give his best efforts in a publicly-exhibited contest; or (ii) A contest official with intent to influence him to perform improperly his duties in connection with a publicly-exhibited contest;

(b) Being a contest participant or contest official, he intentionally solicits, accepts, or agrees to accept, directly or indirectly, any benefit from another person with intent that he will thereby be influenced:

(i) In the case of a contest participant, not to give his best efforts in a publicly-exhibited contest; or (ii) In the case of a contest official, to perform improperly his duties in connection with a publicly-exhibited contest; or

(c) With intent to influence the outcome of a publicly-exhibited contest he:

(i) Tampers with any contest participant, contest official, animal, equipment, or other thing involved in the conduct or operation of the contest, in a manner contrary to the rules and usages purporting to govern the contest in question; or (ii) Substitutes a contest participant, animal, equipment, or other thing involved in the conduct or operation of the contest, for the genuine person, animal, or thing.

(2) In this section: "Contest official" means any person who acts or expects to act in a publicly-exhibited contest as an umpire, referee, or judge, or otherwise to officiate at a publicly-exhibited contest. "Contest participant" means any person who participates or expects to participate in a publicly-exhibited contest as a player, contestant, or member of a team, or as a coach, manager, trainer, or other person directly associated with a player, contestant, or team. "Publicly-exhibited contest" means any professional or amateur sport, athletic game or contest, or race or contest involving machines, persons, or animals, viewed by the public, but does not include an exhibition which does not purport to be and which is not represented as being such a sport, game, contest, or race.

(3) Tampering with a publicly-exhibited contest is a misdemeanor.

708-890 IX

708-890 to 708-896 REPEALED. L 1992, c 225, §3. PART IX. COMPUTER CRIME §708-890 Definitions. As used in this part, unless the context otherwise requires: "Access" means to gain entry to, instruct, communicate with, store data in, retrieve data from, or otherwise make use of any resources of a computer, computer system, or computer network. "Computer" means any electronic, magnetic, optical, electrochemical, or other high-speed data processing device performing logical, arithmetic, or storage functions, and includes all computer equipment connected or related to such a device in a computer system or computer network, but shall not include an automated typewriter or typesetter, a portable hand-held calculator, or other similar device. "Computer equipment" means any equipment or devices, including all input, output, processing, storage, software, or communications facilities, intended to interface with the computer. "Computer network" means two or more computers or computer systems, interconnected by communication lines, including microwave, electronic, or any other form of communication. "Computer program" or "software" means a set of computer-readable instructions or statements and related data that, when executed by a computer system, causes the computer system or the computer network to which it is connected to perform computer services. "Computer services" includes but is not limited to the use of a computer system, computer network, computer program, data prepared for computer use, and data contained within a computer system or computer network. "Computer system" means a set of interconnected computer equipment intended to operate as a cohesive system. "Critical infrastructure" means publicly or privately owned or operated systems or assets vital to the defense, security, economic security, public health or safety, or any combination thereof, of the State or nation. "Critical infrastructure" includes:

(1) Gas and oil production, storage, and delivery systems;

(2) Water supply systems;

(3) Telecommunications networks;

(4) Electrical power delivery systems;

(5) Finance and banking systems;

(6) Emergency services, such as medical, police, fire, and rescue services;

(7) Transportation systems and services, such as highways, mass transit, airlines, and airports; and

(8) Government operations that provide essential services to the public. "Damage" means any impairment to the integrity or availability of data, a program, a system, a network, or computer services. "Data" means information, facts, concepts, software, or instructions prepared for use in a computer, computer system, or computer network. "Obtain information" includes but is not limited to mere observation of the data. "Property" includes financial instruments, data, computer

software, computer programs, documents associated with computer systems, money, computer services, or anything else of value. "Rule of court" means any rule adopted by the supreme court of this State, the Federal Rules of Civil Procedure, or the Federal Rules of Criminal Procedure. "Statute" means any statute of this State or the federal government. "Without authorization" means without the permission of or in excess of the permission of an owner, lessor, or rightful user or someone licensed or privileged by an owner, lessor, or rightful user to grant the permission.

708-891 to 708-893 [OLD] REPEALED

708-891 to 708-893 [OLD] REPEALED. L 2001, c 33, §§5 to 7. §708-891 Computer fraud in the first degree.

(1) A person commits the offense of computer fraud in the first degree if the person knowingly accesses a computer, computer system, or computer network with the intent to commit the offense of theft in the first degree .

(2) Computer fraud in the first degree is a class A felony.

708-891.5

708-891.5 Computer fraud in the second degree.

(1) A person commits the offense of computer fraud in the second degree if the person knowingly accesses a computer, computer system, or computer network with the intent to commit the offense of theft in the second degree.

(2) Computer fraud in the second degree is a class B felony.

708-891.6

708-891.6 Computer fraud in the third degree.

(1) A person commits the offense of computer fraud in the third degree if the person knowingly accesses a computer, computer system, or computer network with the intent to commit the offense of theft in the third or fourth degree.

(2) Computer fraud in the third degree is a class C felony.

708-892

708-892 Computer damage in the first degree.

(1) A person commits the offense of computer damage in the first degree if the person intentionally causes or attempts to cause damage to a computer, computer system, or computer network that manages or controls any critical infrastructure and the damage results in, or in the case of an attempt to cause damage would have resulted in if completed, the substantial impairment of:

(a) The operation of the computer, computer system, or computer network; or

(b) The critical infrastructure managed or controlled by the computer, computer system, or computer network.

(2) Computer damage in the first degree is a class A felony.

708-892.5

708-892.5 Computer damage in the second degree.

(1) A person commits the offense of computer damage in the second degree if:

(a) The person knowingly causes the transmission of a program, information, code, or command, and thereby knowingly causes unauthorized damage to a computer, computer system, or computer network; or

(b) The person intentionally accesses a computer, computer system, or computer network without authorization and thereby knowingly causes damage.

(2) As used in this section, "damage" means:

(a) A loss aggregating at least $5,000 in value, including the costs associated with diagnosis, repair, replacement, or remediation, during any one-year period to one or more individuals;

(b) The modification or impairment, or potential modification or impairment, of the medical examination, diagnosis, treatment, or care of one or more individuals; or

(c) Impairment or disruption of government operations.

(3) Computer damage in the second degree is a class B felony.

708-892.6 HRS

708-892.6 Computer damage in the third degree.

(1) A person commits the offense of computer damage in the third degree if the person knowingly accesses a computer, computer system, or computer network without authorization and thereby recklessly causes damage.

(2) Computer damage in the third degree is a class C felony.

708-893 Bill

708-893 Use of a computer in the commission of a separate crime.

(1) [Repeal and reenactment on July 1, 2027. L 2024, c 239, §4.] A person commits the offense of use of a computer in the commission of a separate crime if the person knowingly uses a computer to identify, select, solicit, persuade, coerce, entice, induce, procure, pursue, surveil, contact, harass, annoy, or alarm the victim or intended victim of the following offenses:

(a) Section 707-726, relating to custodial interference in the first degree;

(b) Section 707-727, relating to custodial interference in the second degree;

(c) Section 707-731, relating to sexual assault in the second degree;

(d) Section 707-732, relating to sexual assault in the third degree;

(e) Section 707-733, relating to sexual assault in the fourth degree;

(f) Section 707-751, relating to promoting child abuse in the second degree;

(g) Section 711-1106, relating to harassment;

(h) Section 711-1106.4, relating to aggravated harassment by stalking;

(i) Section 711-1106.5, relating to harassment by stalking;

(j) Section 711-1110.9, violation of privacy in the first degree;

(k) Section 711-1111, violation of privacy in the second degree; or

(l) Section 712-1215, relating to promoting pornography for minors.

(2) Use of a computer in the commission of a separate crime is an offense one class or grade, as the case may be, greater than the offense facilitated. Notwithstanding any other law to the contrary, a conviction under this section shall not merge with a conviction for the separate crime.

708-894

708-894 Forfeiture of property used in computer crimes. Any property used or intended for use in the commission of, attempt to commit, or conspiracy to commit an offense under this part, or which facilitated or assisted such activity, shall be forfeited subject to the requirements of chapter 712A; provided that the court shall have the discretion to require forfeiture of the property pursuant to this section if the perpetrator of the offense was a person under the age of eighteen , regardless of whether the person owned the property .

708-895 Jurisdiction

708-895 Jurisdiction. For purposes of prosecution under this part, a person who causes, by any means, the access of a computer, computer system, or computer network in one jurisdiction from another jurisdiction is deemed to have personally accessed the computer, computer system, or computer network in each jurisdiction.

708-895.5

708-895.5 Unauthorized computer access in the first degree.

(1) A person commits the offense of unauthorized computer access in the first degree if the person knowingly accesses a computer, computer system, or computer network without authorization and thereby obtains information, and:

(a) The offense was committed for the purpose of commercial or private financial gain;

(b) The offense was committed in furtherance of any other crime;

(c) The value of the information obtained exceeds $20,000; or

(d) The information has been determined by statute or rule of court to require protection against unauthorized disclosure.

(2) Unauthorized computer access in the first degree is a class A felony.

708-895.6

708-895.6 Unauthorized computer access in the second degree.

(1) A person commits the offense of unauthorized computer access in the second degree if the person knowingly accesses a computer, computer system, or computer network without authorization and thereby obtains information.

(2) Unauthorized computer access in the second degree is a class B felony.

708-895.7 Bill

708-895.7 Unauthorized computer access in the third degree.

(1) A person commits the offense of unauthorized computer access in the third degree if the person knowingly accesses a computer, computer system, or computer network without authorization.

(2) Unauthorized computer access in the third degree is a class C felony.

708-8100 Bill

708-8100 Fraudulent use of a credit card.

(1) A person commits the offense of fraudulent use of a credit card, if with intent to defraud the issuer, or another person or organization providing money, goods, services, or anything else of value, or any other person, the person:

(a) Uses or attempts or conspires to use, for the purpose of obtaining money, goods, services, or anything else of value a credit card obtained or retained in violation of section 708-8102 or a credit card which the person knows is forged, expired, or revoked;

(b) Obtains or attempts or conspires to obtain money, goods, services, or anything else of value by representing without the consent of the cardholder that the person is the holder of a specified card or by representing that the person is the holder of a card and such card has not in fact been issued; or

(c) Uses or attempts or conspires to use a credit card number without the consent of the cardholder for the purpose of obtaining money, goods, services, or anything else of value.

(2) Fraudulent use of a credit card is a class C felony if the value of all money, goods, services, and other things of value obtained or attempted to be obtained exceeds $300 in any six-month period. For purposes of this section, each separate use of a credit card that exceeds $300 constitutes a separate offense.

(3) Fraudulent use of a credit card is a misdemeanor, if the value of all money, goods, services, and other things of value obtained or attempted to be obtained does not exceed $300 in any six-month period.

(4) Knowledge of revocation of a credit card shall be presumed to have been received by a cardholder four days after it has been mailed to the cardholder at the address set forth on the credit card or at the last known address by registered or certified mail, return receipt requested, and, if the address is more than five hundred miles from the place of mailing, by air mail. If the address is located outside the United States, Puerto Rico, the Virgin Islands, the Canal Zone, and Canada, notice shall be presumed to have been received ten days after mailing by registered or certified mail.

708-8100.5 Bill

708-8100.5 Fraudulent encoding of a credit card.

(1) A person commits the offense of fraudulent encoding of a credit card if, with the intent to defraud the issuer, or another person or organization providing money, goods, services or anything else of value, the person:

(a) Intentionally changes, alters, erases, adds, creates, tampers with, or manipulates a credit card number by encoding credit card numbers onto the magnetic strip of the credit card;

(b) Knowingly uses, utters, or offers a credit card with changed, altered, erased, added, tampered with, or manipulated magnetically or electronically encoded credit numbers on the magnetic strip of a credit card for the purpose of obtaining money, goods, services, or anything else of value; or

(c) Knowingly sells, or distributes any credit card with changed, altered, erased, added, tampered with, or manipulated magnetically or electronically encoded credit card numbers on the magnetic strip of the credit card.

(2) Fraudulent encoding of a credit card is a class B felony.

708-8101 Bill

708-8101 Making a false statement to procure issuance of a credit card.

(1) A person commits the offense of making a false statement to procure issuance of a credit card if the person makes or causes to be made, either directly or indirectly, any false statement in writing, knowing it to be false and with intent that it be relied on, respecting the person's identity or that of any other person, firm, or corporation, for the purpose of procuring the issuance of a credit card.

(2) Making a false statement to procure issuance of a credit card is a misdemeanor.

708-8102 Bill

708-8102 Theft, forgery, etc., of credit cards.

(1) A person who takes a credit card from the person, possession, custody, or control of another without the cardholder's consent or who, with knowledge that it has been so taken, receives the credit card with intent to use it or to sell it, or to transfer it to a person other than the issuer or the cardholder commits the offense of credit card theft. If a person has in the person's possession or under the person's control credit cards issued in the names of two or more other persons, which have been taken or obtained in violation of this subsection, it is prima facie evidence that the person knew that the credit cards had been taken or obtained without the cardholder's consent.

(2) A person who receives a credit card that the person knows to have been lost, mislaid, or delivered under a mistake as to the identity or address of the cardholder, and who retains possession with intent to use it or to sell it or to transfer it to a person other than the issuer or the cardholder commits the offense of credit card theft.

(3) A person, other than the issuer, who sells a credit card or a person who buys a credit card from a person other than the issuer commits the offense of credit card theft.

(4) A person who, with intent to defraud the issuer, a person or organization providing money, goods, services, or anything else of value, or any other person, obtains control over a credit card as security for a debt commits the offense of credit card theft.

(5) A person, other than the issuer, who during any twelve-month period, receives credit cards issued in the names of two or more persons which the person has reason to know were taken or retained under circumstances which constitute credit card theft or a violation of section 708-8101, commits the offense of credit card theft.

(6) A person who, with intent to defraud a purported issuer, a person or organization providing money, goods, services, or anything else of value, or any other person, falsely makes or falsely embosses a purported credit card or utters such a credit card, or possesses such a credit card with knowledge that the same has been falsely made or falsely embossed commits the offense of credit card forgery. If a person other than the purported issuer possesses two or more credit cards which have been made or embossed in violation of this subsection, it is prima facie evidence that the person intended to defraud or that the person knew the credit cards had been so made or embossed. A person falsely makes a credit card when the person makes or draws, in whole or in part, a device or instrument which purports to be the credit card of a named issuer but which is not such a credit card because the issuer did not authorize the making or drawing, or alters a credit card which was validly issued. A person falsely embosses a credit card who, without authorization of the named issuer, completes a credit card by adding any of the matter, other than the signature of the cardholder, which an issuer requires to appear on the credit card before it can be used by a cardholder.

(7) A person other than the cardholder or a person authorized by the cardholder who, with intent to defraud the issuer, or a person or organization providing money, goods, services, or anything else of value, or any other person, signs a credit card, commits the offense of credit card forgery.

(8) Credit card theft is a class C felony.

(9) Credit card forgery is a class C felony.

708-8103 Bill

708-8103 Credit card fraud by a provider of goods or services.

(1) A person who is authorized by an issuer to furnish money, goods, services, or anything else of value upon presentation of a credit card by the cardholder, or any agent or employees of such person, who, with intent to defraud the issuer or cardholder, furnishes money, goods, services, or anything else of value upon presentation of a credit card obtained or retained in violation of section 708-8102 or a credit card which the person knows is forged, expired, or revoked commits the offense of credit card fraud by a provider of goods or services.

(2) A person who is authorized by an issuer to furnish money, goods, services, or anything else of value upon presentation of a credit card by the cardholder, or any agent or employee of such person, who, with intent to defraud the issuer or the cardholder, fails to furnish money, goods, services, or anything else of value which the person represents in writing to the issuer that the person has furnished commits the offense of credit card fraud by a provider of goods or services.

(3) Credit card fraud by a provider of goods or services is a class C felony.

708-8104 Bill

708-8104 Possession of unauthorized credit card machinery or incomplete cards.

(1) A person other than the cardholder possessing an incomplete credit card, with intent to complete it without the consent of the issuer or a person possessing, with knowledge of its character, machinery, plates, or any other contrivance designed to reproduce instruments purporting to be the credit cards of the issuer who has not consented to the preparation of such credit cards, commits the offense of possession of unauthorized credit card machinery or incomplete cards. A credit card is incomplete if part of the matter other than the signature of the cardholder, which an issuer requires to appear on the credit card, before it can be used by a cardholder, has not yet been stamped, embossed, imprinted, or written on it. If a person other than the cardholder or issuer possesses two or more incomplete credit cards, it is prima facie evidence that the person intended to complete them without the consent of the owner.

(2) Possession of unauthorized credit card machinery or incomplete cards is a class C felony.

708-8105 Bill

708-8105 Credit card lists prohibited; penalty.

(1) It is unlawful for any person, business, corporation, partnership, or other agency to make available, lend, donate, or sell any list or portion of a list of any credit cardholders and their addresses and account numbers to any third party without the express written permission of the issuer and the cardholders; except that a credit card issuer may make a list of its cardholders, including names, addresses, and account numbers, available, without the permission of the cardholders, to a third party pursuant to a contract, if the contract contains language requiring the third party to bind through contract each of its subcontractors by including language prohibiting the divulging of any part of the list for any purpose by the subcontractors except to fulfill and service orders pursuant to the contract between the credit card issuer and the authorized third party. Notwithstanding any contrary provision of this section, a "consumer reporting agency", as that term is defined by the Fair Credit Reporting Act, Public Law No. 91-508, may provide lists of credit account names, addresses, and account numbers to third parties pursuant to that Act. Nothing in this section shall make unlawful or otherwise prohibit the transmittal of any such information to or from a "consumer reporting agency", as that term is defined in the Fair Credit Reporting Act, or a "debt collector", as that term is defined in the Fair Debt Collection Practices Act, Public Law No. 95-109. Notwithstanding the provisions of this section, it is lawful for any corporation to make available, lend, donate, or sell any list or portion of a list of any credit cardholders and their addresses and account numbers to a subsidiary or the parent corporation of such corporation or to another subsidiary of the common parent corporation.

(2) Violation of this section is a misdemeanor.

708-8106 Bill

708-8106 Defenses not available. In any prosecution for violation of this part, the prosecution is not required to establish and it is no defense:

(1) That a person other than the defendant who violated this part has not been convicted, apprehended, or identified; or

(2) That some of the acts constituting the offense did not occur in this State or were not a crime or element of a crime where they did occur.

708-8120 Bill

708-8120 and 708-8121 REPEALED. L 1995, c 119, §3.

708-8200 Bill

708-8200 Cable television service fraud in the first degree.

(1) A person commits cable television service fraud in the first degree if the person knowingly:

(a) Distributes written instructions or plans to make or assemble a cable television service device and knows that the written plans or instructions are intended to be used to make or assemble a device to obtain cable television service without payment of applicable charges; or

(b) Distributes a cable television service device and knows that the device is intended to be used to obtain cable television service without payment of applicable charges.

(2) Cable television service fraud in the first degree is a class C felony.

708-8201 Bill

708-8201 Cable television service fraud in the second degree.

(1) A person commits the offense of cable television service fraud in the second degree if the person knowingly:

(a) Possesses a cable television service device with the intent to obtain cable television service without payment of applicable charges; or

(b) Possesses written instructions or plans to make or assemble a cable television service device with the intent to use the written plans or instructions to make or assemble a device to obtain cable television service without payment of applicable charges.

(2) Cable television service fraud in the second degree is a misdemeanor.

708-8202 Bill

708-8202 Telecommunication service fraud in the first degree.

(1) A person commits the offense of telecommunication service fraud in the first degree if the person:

(a) Knowingly publishes plans or instructions for making, assembling, or using a telecommunication service device, or sells, offers to sell, distributes, transfers, or otherwise makes available written instructions, plans, or materials including hardware, cables, tools, data, computer software, or other information or equipment to make or assemble a telecommunication service device and knows that the written plans, instructions, or materials are intended to be used to make or assemble a device to obtain telecommunication service without payment of applicable charges;

(b) Knowingly makes, assembles, sells, offers to sell, advertises, distributes, transports, transfers, or otherwise makes available a telecommunication service device and knows that the device is intended to be used to obtain telecommunication service without payment of applicable charges; or

(c) With the intent to defraud another of the lawful charge for any telecommunication service that is provided for a charge or compensation:

(i) Publishes, sells, offers for sale, or otherwise makes available an access device, without obtaining the consent of the holder of the access device or the telecommunication service provider; (ii) Uses an access device, without obtaining the consent of the holder of the access device or the telecommunication service provider, resulting in obtaining services, the value of which exceeds $300 in any six-month period; (iii) Engages in a scheme constituting a systematic and continuing course of conduct to obtain an access device from another by false or fraudulent pretenses, representations, or promises and does obtain an access device from the other person; or (iv) Uses a telecommunication service device for the purpose of obtaining telecommunication services, the value of which exceeds $300 in any six-month period, without obtaining the consent of the holder of the telecommunication service device or the telecommunication service provider.

(2) For the purpose of this section: "Access device" means any number or code of an existing, canceled, revoked, or nonexistent telephone number, telephone calling card number, credit card number, account number, personal identification number, or other credit device or method of numbering or coding which is employed in the issuance of telephone numbers, credit numbers, or other credit devices that can be used to obtain telecommunication service. "Holder of access device" means a person or organization to which an access device has been issued by a telecommunication service provider. "Publish" means the communication or dissemination of information to any one or more persons, either orally, in person, or by telephone, radio, television, or computer, or in a writing of any kind, including without limitation a letter, memorandum, circular, handbill, newspaper, magazine article, or book.

(3) Telecommunication service fraud in the first degree is a class C felony.

708-8203 Bill

708-8203 Telecommunication service fraud in the second degree.

(1) A person commits the offense of telecommunication service fraud in the second degree if the person:

(a) Knowingly possesses a telecommunication service device with the intent to obtain telecommunication service without payment of applicable charges;

(b) Knowingly possesses written instructions or plans to make or assemble a telecommunication service device with the intent to use the written plans or instructions to make or assemble a device to obtain telecommunication service without payment of applicable charges; or

(c) With the intent to defraud another of the lawful charge for any telecommunication service, that is provided for a charge or compensation:

(i) Uses an access device without obtaining the consent of the holder of the access device or the telecommunication service provider, resulting in obtaining services, the value of which does not exceed $300 in any six-month period; or (ii) Uses a telecommunication service device for the purpose of obtaining telecommunication services, the value of which does not exceed $300 in any six-month period, without obtaining the consent of the holder of the telecommunication service device or the telecommunication service provider.

(2) For the purposes of this section: "Access device" means any number or code of an existing, canceled, revoked, or nonexistent telephone number, telephone calling card number, credit card number, account number, personal identification number, or other credit device or method of numbering or coding which is employed in the issuance of telephone numbers, credit numbers, or other credit devices that can be used to obtain telecommunication service. "Holder of access device" means a person or organization to which an access device has been issued by a telecommunication service provider.

(3) Telecommunication service fraud in the second degree is a misdemeanor.

708-8204 Bill

708-8204 Forfeiture of telecommunication service device and cable television service device. Any telecommunication service device, cable television service device, or instructions or plans therefor, or any materials for making or assembling a telecommunication service device possessed or used in violation of sections 708-8200 to 708-8203 may be ordered forfeited to the State for destruction or other disposition, subject to the requirements of chapter 712A.

708-8251 Bill

708-8251 Arson in the first degree.

(1) A person commits the offense of arson in the first degree if the person intentionally or knowingly sets fire to or causes to be burned property and:

(a) Knowingly places another person in danger of death or bodily injury; or

(b) Knowingly or recklessly damages the property of another, without the other's consent, in an amount exceeding $20,000.

(2) Arson in the first degree is a class A felony.

708-8252 Bill

708-8252 Arson in the second degree.

(1) A person commits the offense of arson in the second degree if the person intentionally or knowingly sets fire to or causes to be burned property and:

(a) Recklessly places another person in danger of death or bodily injury; or

(b) Knowingly or recklessly damages the property of another, without the other's consent, in an amount exceeding $1,500.

(2) Arson in the second degree is a class B felony.

708-8253 Bill

708-8253 Arson in the third degree.

(1) A person commits the offense of arson in the third degree if the person intentionally or knowingly sets fire to or causes to be burned property and:

(a) Negligently places another person in danger of death or bodily injury; or

(b) Knowingly or recklessly damages the property of another, without the other's consent, in an amount exceeding $500.

(2) Arson in the third degree is a class C felony.

708-8254 Bill

708-8254 Arson in the fourth degree.

(1) A person commits the offense of arson in the fourth degree if the person intentionally, knowingly, or recklessly sets fire to, or causes to be burned, property and thereby damages the property of another without the other's consent.

(2) Except as provided in subsection (3), arson in the fourth degree shall be a misdemeanor.

(3) Arson in the fourth degree shall be a class C felony if the act was committed during the time period and within the geographic area in which a red flag warning was in effect. The state of mind requirement for the offense shall not be applicable to the fact that the red flag warning was in effect at the time and within the geographic area in which the act was committed. The state of mind requirement applicable to the attendant circumstance that the red flag warning was in effect at the time and within the geographic area in which the act was committed shall be negligence. For purposes of this subsection, "red flag warning" means the weather warning issued by the National Weather Service to indicate that warm temperatures, very low humidities, and stronger winds are expected to combine to produce an increased risk of fire danger.

708-8301

708-8301 Habitual unlicensed contracting activity; felony.

(1) A person commits the offense of habitual unlicensed contracting activity if the person has had two or more convictions within ten years, preceding the conduct for which the person is charged under this section, for unlicensed contracting activity in violation of section 436B-27 or 708-8300, and:

(a) Engages in any activity for which a contractor's license is required under chapter 444, and is not licensed as a contractor under chapter 444 when engaging in the activity; or

(b) Uses any word, title, or representation to induce the false belief that the person is licensed under chapter 444 to engage in contracting activity.

(2) A conviction for purposes of this section is a judgment on a verdict, a finding of guilt, or a judgment on a plea of guilty or nolo contendere. The convictions shall have occurred on separate dates and be for separate incidents on separate dates. At the time of the instant offense, the convictions shall not have been expunged by pardon, reversed, or set aside.

(3) Habitual unlicensed contracting activity is a class C felony.

(4) It is an affirmative defense to a prosecution under this section that the defendant was a licensed contractor performing activity outside the scope of the defendant's contractor's license. This defense shall not preclude any administrative or civil enforcement action for the unlicensed activity.

708-8302 Unlicensed contractor fraud

708-8302 Unlicensed contractor fraud. (1) A person commits the offense of unlicensed contractor fraud if the person:

(a) Engages in any activity that requires a contractor's license under chapter 444 and is not licensed as a contractor under chapter 444 when the person engages in the activity; and

(b) While engaged in the activity, obtains or exerts control over the property of another by deception, with intent to deprive the other of the property.

(2) For purposes of this section, "deception", as defined in section 708-800, includes deception as to the person's status as a licensed contractor or as to permits required to engage in the activity.

708-8303

708-8303 Unlicensed contractor fraud in the first degree.

(1) A person commits the offense of unlicensed contractor fraud in the first degree if the person commits unlicensed contractor fraud and the total value of the property over which the person obtains control is equal to or greater than $20,000.

(2) Unlicensed contractor fraud in the first degree is a class B felony.

708-8304

708-8304 Unlicensed contractor fraud in the second degree.

(1) A person commits the offense of unlicensed contractor fraud in the second degree if the person commits unlicensed contractor fraud and the total value of the property over which the person obtains control is less than $20,000.

(2) Unlicensed contractor fraud in the second degree is a class C felony.

708-8305

708-8305 Unlicensed contractor fraud; valuation of property.

(1) For purposes of unlicensed contractor fraud, the value of the property shall be the greater of:

(a) The value of property as provided in section 708-801; or

(b) The total value of all moneys and any assets of value paid or lost by the victim or victims pursuant to the same scheme or course of conduct.

(2) The value of any work done by the unlicensed contractor shall not be used as an offset for the value of the property calculated under this section.

Chapter 709

709-900 Illegally marrying

709-900 Illegally marrying.

(1) A person commits the offense of illegally marrying if the person intentionally marries or purports to marry, knowing that the person is legally ineligible to do so.

(2) Illegally marrying is a petty misdemeanor.

709-901

709-901 Concealing the corpse of an infant.

(1) A person commits the offense of concealing the corpse of an infant if the person conceals the corpse of a new-born child with intent to conceal the fact of its birth or to prevent a determination of whether it was born dead or alive.

(2) Concealing the corpse of an infant is a misdemeanor.

709-902 Abandonment of a child

709-902 Abandonment of a child.

(1) A person commits the offense of abandonment of a child if, being a parent, guardian, or other person legally charged with the care or custody of a child less than fourteen years old, the person deserts the child in any place with intent to abandon it.

(2) Leaving a newborn child at a hospital, fire station, or police station or with emergency services personnel pursuant to section 587D■2 shall not constitute a violation of this section.

(3) Abandonment of a child is a misdemeanor.

709-903 Persistent nonsupport

709-903 Persistent nonsupport.

(1) A person commits the offense of persistent nonsupport if the person knowingly and persistently fails to provide support which the person can provide and which the person knows the person is legally obliged to provide to a spouse, child, or other dependent.

(2) "Support" includes but is not limited to food, shelter, clothing, education, and other necessary care as determined by law.

(3) Persistent nonsupport is a misdemeanor.

709-903.5 HRS

709-903.5 Endangering the welfare of a minor in the first degree.

(1) Except as provided in subsection (2), a person commits the offense of endangering the welfare of a minor in the first degree if, having care or custody of a minor, the person:

(a) Intentionally or knowingly allows another person to inflict serious or substantial bodily injury on the minor; or

(b) Intentionally or knowingly causes or permits the minor to inject, ingest, inhale, or otherwise introduce into the minor's body any controlled substance listed in sections 329-14, 329-16, 329-18, and 329-20 that has not been prescribed by a physician for the minor, except as permitted under section 329-122.

(2) It shall be a defense to prosecution under sections 709-903.5(1) and 709-904(1) if, at the time the person allowed another to inflict serious or substantial bodily injury on a minor, the person reasonably believed the person would incur serious or substantial bodily injury in acting to prevent the infliction of serious or substantial bodily injury on the minor.

(3) Endangering the welfare of a minor in the first degree is a class C felony.

709-904 HRS

709-904 Endangering the welfare of a minor in the second degree.

(1) Except as provided in section 709-903.5(2), a person commits the offense of endangering the welfare of a minor in the second degree if, having care or custody of a minor, the person:

(a) Recklessly allows another person to inflict serious or substantial bodily injury on the minor; or

(b) Recklessly causes or permits the minor to inject, ingest, inhale, or otherwise introduce into the minor's body any controlled substance listed in sections 329-14, 329-16, 329-18, and 329-20 that has not been prescribed by a physician for the minor, except as permitted under section 329-122. This subsection shall not apply to nursing mothers who may cause the ingestion or introduction of detectable amounts of any controlled substance listed in sections 329-14, 329-16, 329-18, and 329-20 to their minor children through breastfeeding.

(2) A person commits the offense of endangering the welfare of a minor in the second degree if, being a parent, guardian, or other person whether or not charged with the care or custody of a minor, the person knowingly endangers the minor's physical or mental welfare by violating or interfering with any legal duty of care or protection owed such minor.

(3) Endangering the welfare of a minor in the second degree is a misdemeanor.

709-904.5

709-904.5 Compensation by an adult of juveniles for crimes; grade or class of offense increased.

(1) A person other than a juvenile commits the offense of compensation of a juvenile for a crime if the person intentionally or knowingly compensates, offers to compensate, or agrees to compensate any juvenile for the commission of any criminal offense.

(2) Any person convicted of compensating, offering to compensate, or agreeing to compensate a juvenile for the commission of a:

(a) Petty misdemeanor shall be deemed guilty of a misdemeanor;

(b) Misdemeanor shall be deemed guilty of a class C felony;

(c) Class C felony shall be deemed guilty of a class B felony;

(d) Class B or class A felony shall be deemed guilty of a class A felony.

(3) It is not a defense to a prosecution under subsection (1) that the accused had no knowledge of the juvenile's age. The intent is to impose absolute liability with respect to the element of the other person's being less than eighteen years old.

(4) For the purposes of this section, the following terms have the following meanings: "Compensate" means to confer any benefit or pecuniary benefit. "Juvenile" means any person under eighteen years of age.

709-905

709-905 Endangering the welfare of an incompetent person.

(1) A person commits the offense of endangering the welfare of an incompetent person if he knowingly acts in a manner likely to be injurious to the physical or mental welfare of a person who is unable to care for himself because of physical or mental disease, disorder, or defect.

(2) Endangering the welfare of an incompetent person is a misdemeanor.

709-906 HRS

709-906 Abuse of family or household members; penalty. [Repeal and reenactment on June 30, 2026. L 2020, c 19, §15; L 2021, c 238, §4.]

(1) It shall be unlawful for any person, singly or in concert, to physically abuse a family or household member or to refuse compliance with the lawful order of a police officer under subsection (4). The police, in investigating any complaint of abuse of a family or household member, upon request, may transport the abused person to a hospital or safe shelter.

(2) Any police officer, with or without a warrant, may arrest a person if the officer has reasonable grounds to believe that the person is physically abusing, or has physically abused, a family or household member and that the person arrested is guilty thereof.

(3) A police officer who has reasonable grounds to believe that the person is physically abusing, or has physically abused, a family or household member shall prepare a written report.

(4) Any police officer, with or without a warrant, shall take the following course of action, regardless of whether the physical abuse or harm occurred in the officer's presence:

(a) The police officer shall make reasonable inquiry of the family or household member upon whom the officer believes physical abuse or harm has been inflicted and other witnesses as there may be;

(b) If the person who the police officer reasonably believes to have inflicted the abuse is eighteen years of age or older, the police officer lawfully shall order the person to leave the premises for a period of separation, during which time the person shall not initiate any contact, either by telephone or in person, with the family or household member; provided that the person is allowed to enter the premises with police escort to collect any necessary personal effects. The period of separation shall commence when the order is issued and shall expire at 6:00 p.m. on the second business day following the day the order was issued; provided that the day the order is issued shall not be included in the computation of the two business days;

(c) If the person who the police officer reasonably believes to have inflicted the abuse is under the age of eighteen, the police officer may order the person to leave the premises for a period of separation, during which time the person shall not initiate any contact with the family or household member by telephone or in person; provided that the person is allowed to enter the premises with police escort to collect any necessary personal effects. The period of separation shall commence when the order is issued and shall expire at 6:00 p.m. on the second business day following the day the order was issued; provided that the day the order is issued shall not be included in the computation of the two business days. The order of separation may be amended at any time by a judge of the family court. In determining whether to order a person under the age of eighteen to leave the premises, the police officer may consider the following factors:

(i) Age of the person; (ii) Relationship between the person and the family or household member upon whom the police officer reasonably believes the abuse has been inflicted; and (iii) Ability and willingness of the parent, guardian, or other authorized adult to maintain custody and control over the person;

(d) All persons who are ordered to leave as stated above shall be given a written warning citation stating the date, time, and location of the warning and stating the penalties for violating the warning. A copy of the warning citation shall be retained by the police officer and attached to a written report which shall be submitted in all cases. A third copy of the warning citation shall be given to the abused person;

(e) If the person so ordered refuses to comply with the order to leave the premises or returns to the premises before the expiration of the period of separation, or if the person so ordered initiates any contact with the abused person, the person shall be placed under arrest for the purpose of preventing further physical abuse or harm to the family or household member; and

(f) The police officer shall seize all firearms and ammunition that the police officer has reasonable grounds to believe were used or threatened to be used in the commission of an offense under this section.

(5) Abuse of a family or household member and refusal to comply with the lawful order of a police officer under subsection

(4) are misdemeanors and the person shall be sentenced as follows:

(a) For the first offense the person shall serve a minimum jail sentence of forty-eight hours; and

(b) For a second offense that occurs within one year of the first conviction, the person shall be termed a "repeat offender" and serve a minimum jail sentence of thirty days.

(6) It shall be a petty misdemeanor for a person to intentionally or knowingly strike, shove, kick, or otherwise touch a family or household member in an offensive manner; subject the family member or household member to offensive physical contact; or exercise coercive control, as defined in section 586-1, over a family or household member and the person shall be sentenced as provided in sections 706-640 and 706-663. Upon conviction and sentencing of the defendant, the court may order that the defendant immediately be incarcerated to serve the mandatory minimum sentence imposed; provided that the defendant may be admitted to bail pending appeal pursuant to chapter 804. The court may stay the imposition of the sentence if special circumstances exist.

(7) Whenever a court sentences a person or grants a motion for deferral pursuant to subsections (5) and (6), it shall also require that the offender first complete, within a specified time frame, an assessment at any available domestic violence intervention program, and then complete a domestic violence intervention or anger management course as determined by the domestic violence program, and, if the offense involved the presence or abuse of a minor, any available parenting classes ordered by the court. The court shall revoke the defendant's probation or set aside the defendant's deferred acceptance of guilty plea and enter an adjudication of guilt, if applicable, and sentence or resentence the defendant to the maximum term of incarceration if:

(a) The defendant fails to complete, within the specified time frame, any domestic violence intervention course, anger management course, or parenting classes ordered by the court; or

(b) The defendant violates any other term or condition of the defendant's probation or deferral imposed by the court; provided that, after a hearing on an order to show cause, the court finds that the defendant has failed to show good cause why the defendant has not timely completed the domestic violence intervention course, anger management course, or parenting classes, if applicable, or why the defendant violated any other term or condition of the defendant's sentence. However, the court may suspend any portion of a jail sentence, except for the mandatory sentences under subsection (5)(a) and (b), upon the condition that the defendant remain arrest-free and conviction-free or complete court-ordered intervention.

(8) For a third or any subsequent offense that occurs within two years of a second or subsequent conviction, the offense shall be a class C felony.

(9) Where the physical abuse consists of intentionally or knowingly causing bodily injury by impeding the normal breathing or circulation of the blood by:

(a) Applying pressure on the throat or the neck with any part of the body or a ligature;

(b) Blocking the nose and mouth; or

(c) Applying pressure to the chest, abuse of a family or household member is a class C felony; provided that infliction of visible bodily injury shall not be required to establish an offense under this subsection. For the purposes of this subsection, "bodily injury" shall have the same meaning as in section 707-700.

(10) Where physical abuse occurs in the presence of a minor, as defined in section 706-606.4, and the minor is a family or household member less than fourteen years of age, abuse of a family or household member is a class C felony.

(11) Any police officer who arrests a person pursuant to this section shall not be subject to any civil or criminal liability; provided that the police officer acts in good faith, upon reasonable belief, and does not exercise unreasonable force in effecting the arrest.

(12) The family or household member who has been physically abused or harmed by another person may petition the family court, with the assistance of the prosecuting attorney of the applicable county, for a penal summons or arrest warrant to issue forthwith or may file a criminal complaint through the prosecuting attorney of the applicable county.

(13) The defendant shall be taken into custody and brought before the family court at the first possible opportunity. The court may dismiss the petition or hold the defendant in custody, subject to bail. Where the petition is not dismissed, a hearing shall be set.

(14) This section shall not operate as a bar against prosecution under any other section of this Code in lieu of prosecution for abuse of a family or household member.

(15) It shall be the duty of the prosecuting attorney of the applicable county to assist any victim under this section in the preparation of the penal summons or arrest warrant.

(16) This section shall not preclude the physically abused or harmed family or household member from pursuing any other remedy under law or in equity.

(17) When a person is ordered by the court to complete any domestic violence intervention course, anger management course, or parenting classes, that person shall provide adequate proof of compliance with the court's order. The court shall order a subsequent hearing at which the person is required to make an appearance, on a date certain, to determine whether the person has completed the ordered domestic violence intervention course, anger management course, or parenting classes. The court may waive the subsequent hearing and appearance where a court officer has established that the person has completed the intervention ordered by the court.

(18) Notwithstanding any provision of law to the contrary, the court may grant a deferred acceptance of guilty plea pursuant to chapter 853 for misdemeanor or petty misdemeanor offenses of abuse of a family or household member when the defendant:

(a) Has no prior conviction; or

(b) Has not been previously granted a deferred acceptance of guilty plea, for any offense charged in family court under this section regardless of the final plea.

(19) For the purposes of this section: "Business day" means any calendar day, except Saturday, Sunday, or any state holiday. "Family or household member":

(a) Means spouses or reciprocal beneficiaries, former spouses or reciprocal beneficiaries, persons in a dating relationship as defined under section 586-1, persons who have a child in common, parents, children, persons related by consanguinity, and persons jointly residing or formerly residing in the same dwelling unit; and

(b) Does not include those who are, or were, adult roommates or cohabitants only by virtue of an economic or contractual affiliation.

709-907 REPEALED

709-907 REPEALED. L 1983, c 248, §2. Previous Vol14_Ch0701-0853 Next

709-908 REPEALED

709-908 REPEALED. L 2016, c 231, §45.

709-909 HRS

709-909 Domestic violence intervention. Notwithstanding chapter 706 or any other law to the contrary, any sentence for domestic violence intervention specified by section 709-906 shall be imposed by the court, with or without probation.

Chapter 710

710-1000 I

710-1000 Definitions of terms in this chapter. In this chapter, unless a different meaning plainly is required: "Administrative proceeding" means any proceeding the outcome of which is required to be based on a record or documentation prescribed by law, or in which law or regulation is particularized in application to individuals. "Benefit" means gain or advantage, or anything regarded by the beneficiary as gain or advantage, including benefit to any other person or entity in whose welfare the beneficiary is interested. "Custody" means restraint by a public servant pursuant to arrest, detention, or order of a court. "Detention facility" means any place used for the confinement of a person:

(a) Arrested for, charged with, or convicted of a criminal offense;

(b) Confined pursuant to chapter 571;

(c) Held for extradition; or

(d) Otherwise confined pursuant to an order of a court. "Electronic" means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities. "Falsely alter" means to change, without the authority of the ostensible maker or authorized custodian of the record, a statement, document, or record, whether complete or incomplete, by means of erasure, obliteration, deletion, insertion of new matter, transposition of matter, or in any other manner, so that the statement, document, or record so altered falsely appears or purports to be in all respects an authentic creation of its ostensible maker, or authorized by the maker or custodian of the record. "Falsely complete" means to transform, by adding, inserting, or changing matter, an incomplete statement, document, or record into a complete one, without the authority of the ostensible maker or authorized custodian of the record, so that the complete statement, document, or record falsely appears or purports to be in all respects an authentic creation of its ostensible

maker, or authorized by the maker or custodian of the record. "Falsely make" means to create a statement, document, or record, which purports to be an authentic creation of its ostensible maker, but that is not because the ostensible maker is fictitious or because, if real, the ostensible maker did not authorize the creation thereof. "Government" includes any branch, subdivision, or agency of the government of this State or any locality within it. "Governmental function" includes any activity which a public servant is legally authorized to undertake on behalf of the government. "Harm" means loss, disadvantage, or injury, or anything so regarded by the person affected, including loss, disadvantage, or injury to any other person or entity in whose welfare the person affected is interested. "Information" includes data, text, images, sounds, codes, computer programs, software, or databases. "Juror" means any person who is a member of any jury, including a grand jury, impaneled by any court of this State or by any public servant authorized by law to impanel a jury, and also includes any person who has been drawn or summoned to attend as a prospective juror. "Law enforcement officer" means any public servant, whether employed by the State or subdivisions thereof or by the United States, vested by law with a duty to maintain public order or, to make arrests for offenses or to enforce the criminal laws, whether that duty extends to all offenses or is limited to a specific class of offenses. "Materially false statement" means any false statement, regardless of its admissibility under the rules of evidence, which could have affected the course or outcome of the proceeding; whether a falsification is material in a given factual situation is a question of law. "Oath" includes an affirmation and every other mode authorized by law of attesting to the truth of that which is stated, and, for the purposes of this chapter, written statements shall be treated as if made under oath if:

(a) The statement was made on or pursuant to a form bearing notice, authorized by law, to the effect that false statements made therein are punishable; or

(b) The statement recites that it was made under oath or affirmation, the declarant was aware of such recitation at the time the declarant made the statement and intended that the statement should be represented as a sworn statement, and the statement was in fact so represented by its delivery or utterance with the signed jurat of an officer authorized to administer oaths appended thereto. "Oath required or authorized by law" means an oath the use of which is specifically provided for by statute or appropriate regulatory provision. "Official proceeding" means a proceeding heard or which may be heard before any legislative, judicial, administrative, or other governmental agency or official authorized to take evidence under oath, including any referee, hearing examiner, commissioner, notary, or other person taking testimony or deposition in connection with any such proceeding. "Pecuniary benefit" is benefit in the form of money, property, commercial interests, or anything else the primary significance of which is economic gain. "Public servant" means any officer or employee of any branch of government, whether elected, appointed, or otherwise employed, and any person participating as advisor, consultant, or otherwise, in performing a governmental function, but the term does not include jurors or witnesses. "Record" means information that is written or printed, or that is stored in an electronic or other medium and is retrievable in a perceivable form. "Statement" means any representation, but includes a representation of opinion, belief, or other state of mind only if the representation clearly relates to state of mind apart from or in addition to any facts which are the subject of the representation. "Testimony" includes oral or written statements, documents, or any other material that may be offered by a witness in an official proceeding.

710-1001

710-1001 Forfeiture of property used as benefit or pecuniary benefit in the commission of an offense defined in this chapter. Any property offered, conferred, agreed to be conferred, or accepted as a benefit, pecuniary benefit, or compensation in the commission of an offense defined in this chapter is forfeited, subject to the requirements of chapter 712A, to the State.

710-1010 II

710-1010 Obstructing government operations.

(1) A person commits the offense of obstructing government operations if, by using or threatening to use violence, force, or physical interference or obstacle, the person intentionally obstructs, impairs, or hinders:

(a) The performance of a governmental function by a public servant acting under color of the public servant's official authority;

(b) The enforcement of the penal law or the preservation of the peace by a law enforcement officer acting under color of the law enforcement officer's official authority; or

(c) The operation of a radio, telephone, television, or other telecommunication system owned or operated by the State or one of its political subdivisions.

(2) This section does not apply to:

(a) The obstruction, impairment, or hindrance of the making of an arrest;

(b) The obstruction, impairment, or hindrance of any governmental function, as provided by law, in connection with a labor dispute with the government; or

(c) A person who is making a video or audio recording or taking a photograph of a law enforcement officer while the officer is in the performance of the officer's duties in a public place or under circumstances in which the officer has no reasonable expectation of privacy; provided that the officer may take reasonable action to maintain safety and control, secure crime scenes and accident sites, protect the integrity and confidentiality of investigations, and protect the public safety and order.

(3) Obstruction of government operations is a misdemeanor.

710-1010.2 HRS

710-1010.2 Official misconduct.

(1) A public servant commits the offense of official misconduct when, in the person 's official capacity, the person:

(a) With intent to obtain a benefit other than the person's lawful compensation, intentionally or knowingly performs an act using the power of that person's office, knowing that the act constitutes an unauthorized exercise of the person's official functions;

(b) With intent to obtain a benefit other than the person's lawful compensation, intentionally or knowingly refrains from performing an official duty that is imposed upon the person by law or is clearly inherent in the nature of the person's office; or

(c) Intentionally or knowingly submits or invites reliance on any statement, document, or record, in written, printed, or electronic form, that the person knows to be falsely made, completed, or altered, or in which the person knows to contain a false statement or false information.

(2) As used in this section: "An official duty that is imposed upon the person by law or is clearly inherent in the nature of the person's office" means one or more unspecified duties that are so essential to the accomplishment of the purposes for which the office was created that it is clearly inherent in the nature of the office. "Official function" means the decision, opinion, recommendation, vote, or other exercise or performance of duty of a public servant.

(3) Official misconduct is a class C felony.

710-1010.5

710-1010.5 Interference with reporting an emergency or crime.

(1) A person commits the offense of interference with reporting an emergency or crime if the person intentionally or knowingly prevents a victim or witness to a criminal act from calling a 911-emergency telephone system, obtaining medical assistance, or making a report to a law enforcement officer.

(2) Interference with the reporting of an emergency or crime is a petty misdemeanor.

710-1011

710-1011 Refusing to aid a law enforcement officer.

(1) A person commits the offense of refusing to aid a law enforcement officer when, upon a reasonable command by a person known to him to be a law enforcement officer, he intentionally refuses or fails to aid such law enforcement officer, in:

(a) Effectuating or securing an arrest; or

(b) Preventing the commission by another of any offense.

(2) Refusing to aid a law enforcement officer is a petty misdemeanor.

(3) A person who complies with this section by aiding a law enforcement officer shall not be held liable to any person for damages resulting therefrom, provided he acted reasonably under the circumstances known to him at the time.

710-1012

710-1012 Refusing to assist in fire control.

(1) A person commits the offense of refusing to assist in fire control when:

(a) Upon a reasonable command by a person known to him to be a firefighter, he intentionally refuses to aid in extinguishing a fire or in protecting property at the scene of a fire; or

(b) Upon command by a person known to him to be a firefighter or law enforcement officer, he intentionally disobeys an order or regulation relating to the conduct of persons in the vicinity of a fire.

(2) "Firefighter" means any officer of a fire department or any other person vested by law with the duty to extinguish fires.

(3) Refusing to assist in fire control is a petty misdemeanor.

(4) A person who complies with this section by assisting in fire control shall not be held liable to any person for damages resulting therefrom, provided he acted reasonably under the circumstances known to him at the time.

710-1013 Compounding

710-1013 Compounding.

(1) A person commits the offense of compounding if the person intentionally accepts or agrees to accept any pecuniary benefit as consideration for:

(a) Refraining from seeking prosecution of an offense; or

(b) Refraining from reporting to law-enforcement authorities the commission or suspected commission of any offense or information relating to the offense.

(2) It is an affirmative defense to a prosecution under subsection (1) that the pecuniary benefit did not exceed an amount which the defendant believed to be due as restitution or indemnification for harm caused by the offense.

(3) Compounding is a misdemeanor.

710-1014 Rendering a false alarm

710-1014 Rendering a false alarm.

(1) A person commits the offense of rendering a false alarm if the person knowingly causes a false alarm of fire or other emergency to be transmitted to or within an official or volunteer fire department, any other government agency, or any public utility that deals with emergencies involving danger to life or property.

(2) Rendering a false alarm is a misdemeanor.

710-1014.5

710-1014.5 Misuse of 911 emergency telephone service.

(1) A person commits the offense of misuse of 911 emergency telephone service if the person accesses the telephone number 911 and:

(a) Knowingly causes a false alarm; or

(b) Makes a false complaint or a report of false information in reckless disregard of the risk that a public safety agency will respond by dispatching emergency services.

(2) Misuse of 911 emergency telephone service is a misdemeanor.

(3) For purposes of this section, "public safety agency" means any federal, state, or county police, fire, emergency medical service, or emergency management agency.

710-1015

710-1015 False reporting to law-enforcement authorities.

(1) A person commits the offense of false reporting to law-enforcement authorities if the person intentionally makes a report or causes the transmission of a report to law-enforcement authorities relating to a crime or other incident within their concern when the person knows that the information contained in the report is false.

(2) False reporting to law-enforcement authorities is a misdemeanor.

710-1016 Impersonating a public servant

710-1016 Impersonating a public servant.

(1) A person commits the offense of impersonating a public servant if the person pretends to be a public servant other than a law enforcement officer and engages in any conduct in that capacity with intent to deceive anyone.

(2) It is no defense to a prosecution under this section that the office the person pretended to hold did not in fact exist.

(3) Impersonating a public servant is a misdemeanor.

710-1016.3 Bill

710-1016.3 Obtaining a government-issued identification document under false pretenses in the first degree.

(1) A person commits the offense of obtaining a government-issued identification document under false pretenses in the first degree if that person, with intent to mislead a public servant and intent to facilitate a felony, obtains an identification document issued by the State or any political subdivision thereof by:

(a) Making any statement, oral or in written, printed, or electronic form, that the person does not believe to be true, in an application for any identification document issued by the State or any political subdivision thereof; or

(b) Submitting or inviting reliance on any statement, document, or record, in written, printed, or electronic form, that the person knows to be falsely made, completed, or altered.

(2) Obtaining a government-issued identification document under false pretenses in the first degree is a class C felony.

710-1016.4 Bill

710-1016.4 Obtaining a government-issued identification document under false pretenses in the second degree.

(1) A person commits the offense of obtaining a government-issued identification document under false pretenses in the second degree if that person, with intent to mislead a public servant, obtains an identification document issued by the State or any political subdivision thereof by:

(a) Making any statement, oral or in written, printed, or electronic form, that the person does not believe to be true, in an application for any identification document issued by the State or any political subdivision thereof; or

(b) Submitting or inviting reliance on any statement, document, or record, in written, printed, or electronic form, that the person knows to be falsely made, completed, or altered.

(2) Obtaining a government-issued identification document under false pretenses in the second degree is a misdemeanor.

710-1016.5 REPEALED

710-1016.5 REPEALED. L 1987, c 130, §2. Previous Vol14_Ch0701-0853 Next

710-1016.6

710-1016.6 Impersonating a law enforcement officer in the first degree.

(1) A person commits the offense of impersonating a law enforcement officer in the first degree if, with intent to deceive, the person pretends to be a law enforcement officer and is armed with a firearm.

(2) Impersonating a law enforcement officer in the first degree is a class C felony.

710-1016.7

710-1016.7 Impersonating a law enforcement officer in the second degree.

(1) A person commits the offense of impersonating a law enforcement officer in the second degree if, with intent to deceive, the person pretends to be a law enforcement officer.

(2) Impersonating a law enforcement officer in the second degree is a misdemeanor.

710-1016.8 Presumptions

710-1016.8 Presumptions. Any person other than a law enforcement officer, who wears the uniform or displays the badge or identification card of a law enforcement officer, or who wears a uniform or displays a badge or identification card resembling the uniform, badge or identification card of a law enforcement officer, or a badge or identification card purported to be a law enforcement officer's badge or identification card, shall be presumed to be pretending to be a law enforcement officer.

710-1016.9 Defense

710-1016.9 Defense.

(1) Employment by the State or a subdivision thereof or by the United States as a law enforcement officer at the time of the conduct charged is an affirmative defense to a prosecution for impersonating a law enforcement officer.

(2) It is no defense to a prosecution for impersonating a law enforcement officer that the office the person pretended to hold did not in fact exist.

710-1017

710-1017 Tampering with a government record.

(1) A person commits the offense of tampering with a government record if:

(a) The person, acting knowingly, falsely makes a purported government record, or falsely completes or alters, or falsely makes an entry in, a government record or a true copy thereof;

(b) The person knowingly presents or uses a government record or a purported government record, or a true copy thereof, knowing that it has been falsely made, completed, or altered, or that a false entry has been made therein, with intent that it be taken as genuine;

(c) The person knowingly records, registers, or files, or offers for recordation, registration, or filing, in a governmental office or agency, a statement, document, or record, in written, printed, or electronic form, which has been falsely made, completed, or altered, or in which a false entry has been made, or which contains a false statement or false information; or

(d) Knowing the person lacks the authority to do so:

(i) The person intentionally destroys, mutilates, conceals, removes, or otherwise impairs the availability of any government records; or (ii) The person refuses to deliver up a government record in the person's possession upon proper request of a public servant entitled to receive such record for examination or other purposes.

(2) For the purpose of this section, "government record" means all records created, issued, received, or kept by any governmental office or agency or required by law to be kept by others for the information of the government.

(3) Tampering with government records is a misdemeanor.

710-1017.5

710-1017.5 Sale or manufacture of deceptive identification document; penalties.

(1) A person commits the offense of sale or manufacture of deceptive identification document if the person intentionally or knowingly manufactures, sells, offers for sale, furnishes, offers to be furnished, transports, offers to be transported, or imports or offers to be imported into this State a deceptive identification document.

(2) As used in this section, "deceptive identification document" means any identification document not issued by a governmental agency that purports to be, or that might deceive a reasonable person into believing that it is, an identification document issued by a governmental agency, including a driver's license, identification card, birth certificate, passport, or social security card.

(3) The sale or manufacture of a deceptive identification document is a class C felony.

(4) Any property used or intended for use in the commission of, attempt to commit, or conspiracy to commit an offense under this section, or that facilitated or assisted such activity, shall be subject to forfeiture under chapter 712A.

710-1018

710-1018 Securing the proceeds of an offense.

(1) A person commits the offense of securing the proceeds of an offense if, with intent to assist another in profiting or benefiting from the commission of a crime, he aids the person in securing the proceeds of the crime.

(2) Securing the proceeds of an offense is a class C felony if the person assisted committed a class A or B felony or murder of any degree; otherwise it is a misdemeanor.

710-1019

710-1019 Destroying or defacing official notices; penalty.

(1) Any person who intentionally or knowingly removes, destroys or defaces any notice posted in compliance with any statute, rule, order of court, or order of the department of health, before the expiration date of the notice, shall be guilty of a violation subject to a fine of not more than $100.

(2) Any such notice shall prominently include the expiration date and a statement, "THE DESTRUCTION, REMOVAL, OR DEFACEMENT OF THIS NOTICE PRIOR TO THE EXPIRATION DATE IS PROHIBITED BY LAW AND PUNISHABLE BY FINE."

710-1020 III

710-1020 Escape in the first degree.

(1) A person commits the offense of escape in the first degree if the person intentionally employs physical force, the threat of physical force, or a dangerous instrument against the person of another in escaping from a correctional or detention facility or from custody.

(2) Escape in the first degree is a class B felony.

710-1021 Escape in the second degree

710-1021 Escape in the second degree.

(1) A person commits the offense of escape in the second degree if the person intentionally escapes from a correctional or detention facility or from custody.

(2) Escape in the second degree is a class C felony.

710-1022 Notes

710-1022 Promoting prison contraband in the first degree.

(1) A person commits the offense of promoting prison contraband in the first degree if:

(a) The person intentionally conveys a dangerous instrument or drug to any person confined in a correctional or detention facility; or

(b) Being a person confined in a correctional or detention facility, the person intentionally makes, obtains, or possesses a dangerous instrument or drug.

(2) A "dangerous instrument" shall have the same meaning as defined in section 707-700; a dangerous instrument may only be possessed by or conveyed to a confined person with the facility administrator's express prior approval. A "drug" shall include dangerous drugs, detrimental drugs, harmful drugs, intoxicating compounds, marijuana, and marijuana concentrates as listed in section 712-1240; a drug may only be possessed by or conveyed to a confined person with the facility administrator's express prior approval and under medical supervision.

(3) Promoting prison contraband in the first degree is a class B felony.

710-1023

710-1023 Promoting prison contraband in the second degree.

(1) A person commits the offense of promoting prison contraband in the second degree if:

(a) The person intentionally conveys known contraband to any person confined in a correctional or detention facility; or

(b) Being a person confined in a correctional or detention facility, the person intentionally makes, obtains, or possesses known contraband.

(2) "Contraband" means any article or thing, other than a dangerous instrument or drug as defined in section 710-1022(2), that a person confined in a correctional or detention facility is prohibited from obtaining or possessing by statute, rule, or order.

(3) Promoting prison contraband in the second degree is a class C felony.

710-1024 Bail jumping in the first degree

710-1024 Bail jumping in the first degree.

(1) A person commits the offense of bail jumping in the first degree if, having been released from custody by court order with or without bail, upon condition that the person will subsequently appear as ordered in connection with a charge of having committed a felony, the person knowingly fails to appear as ordered.

(2) Bail jumping in the first degree is a class C felony.

710-1025

710-1025 Bail jumping in the second degree.

(1) A person commits the offense of bail jumping in the second degree if, having been released from custody by court order with or without bail, upon condition that the person will subsequently appear as ordered in connection with a charge of having committed a misdemeanor or a petty misdemeanor, the person knowingly fails to appear as ordered.

(2) Bail jumping in the second degree is a misdemeanor.

710-1026 Resisting arrest

710-1026 Resisting arrest.

(1) A person commits the offense of resisting arrest if the person intentionally prevents a law enforcement officer acting under color of the law enforcement officer's official authority from effecting an arrest by:

(a) Using or threatening to use physical force against the law enforcement officer or another; or

(b) Using any other means creating a substantial risk of causing bodily injury to the law enforcement officer or another.

(2) Resisting arrest is a misdemeanor.

710-1026.9 HRS

710-1026.9 Resisting an order to stop a motor vehicle in the first degree.

(1) A person commits the offense of resisting an order to stop a motor vehicle in the first degree if the person:

(a) Intentionally fails to obey a direction of a law enforcement officer, acting under color of the law enforcement officer's official authority, to stop the person's motor vehicle; and

(b) While intentionally fleeing from or attempting to elude a law enforcement officer:

(i) Operates the person's motor vehicle in reckless disregard of the safety of other persons; or (ii) Operates the person's motor vehicle in reckless disregard of the risk that the speed of the person's vehicle exceeds: (A) The applicable state or county speed limit by thirty miles per hour or more; or (B) Eighty miles per hour or more, irrespective of the applicable state or county speed limit. For purposes of this section, "the applicable state or county speed limit" shall have the same meaning as in section 291C-105.

(2) Resisting an order to stop a motor vehicle in the first degree is a class C felony.

710-1027

710-1027 Resisting an order to stop a motor vehicle in the second degree.

(1) A person commits the offense of resisting an order to stop a motor vehicle in the second degree if the person intentionally fails to obey a direction of a law enforcement officer, acting under color of the law enforcement officer's official authority, to stop the person's vehicle.

(2) Resisting an order to stop a motor vehicle in the second degree is a misdemeanor.

710-1028

710-1028 Hindering prosecution; definition of rendering assistance. For the purposes of sections [710-1029 and 710-1030], a person renders assistance to another if he:

(1) Harbors or conceals such person;

(2) Warns such person of impending discovery, apprehension, prosecution, or conviction, except this does not apply to a warning given in connection with an effort to bring another into compliance with the law;

(3) Provides such person with money, transportation, weapon, disguise, or other means of avoiding discovery, apprehension, prosecution, or conviction;

(4) Prevents or obstructs, by means of force, deception, or intimidation, anyone from performing an act that might aid in the discovery, apprehension, prosecution, or conviction of such person; or

(5) Suppresses by an act of concealment, alteration, or destruction any physical evidence that might aid in the discovery, apprehension, prosecution, or conviction of such person.

710-1029

710-1029 Hindering prosecution in the first degree.

(1) A person commits the offense of hindering prosecution in the first degree if, with the intent to hinder the apprehension, prosecution, conviction, or punishment of another for a class A, B, or C felony or murder in any degree, the person renders assistance to the other person.

(2) Hindering prosecution in the first degree is a class C felony.

710-1030

710-1030 Hindering prosecution in the second degree.

(1) A person commits the offense of hindering prosecution in the second degree if, with the intent to hinder the apprehension, prosecution, conviction, or punishment of another for a crime, he renders assistance to such person.

(2) Hindering prosecution in the second degree is a misdemeanor.

710-1031

710-1031 Intimidating a correctional worker.

(1) A person commits the offense of intimidation of a correctional worker if the person uses force upon or a threat of force directed to a correctional worker, or the correctional worker's immediate family, with intent to influence such worker's conduct, decision, action or abstention from action as a correctional worker.

(2) "Correctional worker", as used in this section means any employee of the State or any county who works in a correctional or detention facility, a court, a paroling authority or who by law has jurisdiction over any legally committed offender or any person placed on probation or parole.

(3) "Threat" as used in this section means any threat proscribed by section 707-764(1).

(4) Intimidation of a correctional worker is a class B felony.

710-1040 IV

710-1040 Bribery.

(1) A person commits the offense of bribery if:

(a) The person confers, or offers or agrees to confer, directly or indirectly, any pecuniary benefit upon a public servant with the intent to influence the public servant's vote, opinion, judgment, exercise of discretion, or other action in the public servant's official capacity; or

(b) While a public servant, the person solicits, accepts, or agrees to accept, directly or indirectly, any pecuniary benefit with the intent that the person's vote, opinion, judgment, exercise of discretion, or other action as a public servant will thereby be influenced.

(2) It is a defense to a prosecution under subsection (1) that the accused conferred or agreed to confer the pecuniary benefit as a result of extortion or coercion.

(3) For purposes of this section, "public servant" includes in addition to persons who occupy the position of public servant as defined in section [710-1000], persons who have been elected, appointed, or designated to become a public servant although not yet occupying that position.

(4) Bribery is a class B felony. A person convicted of violating this section, notwithstanding any law to the contrary, shall not be eligible for a deferred acceptance of guilty plea or nolo contendere plea under chapter 853.

710-1060 V

710-1060 Perjury.

(1) A person commits the offense of perjury if in any official proceeding the person makes, under an oath required or authorized by law, a false statement which the person does not believe to be true.

(2) No person shall be convicted under this section unless the court rules that the false statement is a "materially false statement" as defined by section [710-1000]. It is not a defense that the declarant mistakenly believed the false statement to be immaterial.

(3) Perjury is a class C felony.

710-1061

710-1061 False swearing in official matters.

(1) A person commits the offense of false swearing in official matters if the person makes, under an oath required or authorized by law, a false statement which the person does not believe to be true, and:

(a) The statement is made in an official proceeding; or

(b) The statement is intended to mislead a public servant in the performance of the public servant's official duty.

(2) False swearing in official matters is a misdemeanor.

710-1062 False swearing

710-1062 False swearing.

(1) A person commits the offense of false swearing if the person makes, under oath required or authorized by law, a false statement which the person does not believe to be true.

(2) False swearing is a petty misdemeanor.

710-1063

710-1063 Unsworn falsification to authorities.

(1) A person commits the offense of unsworn falsification to authorities if, with an intent to mislead a public servant in the performance of the public servant's duty, the person:

(a) Makes any statement, in written, printed, or electronic form, which the person does not believe to be true, in an application for any pecuniary or other benefit or in a record or report required by law to be submitted to any governmental agency;

(b) Knowingly makes a false statement in written, printed, electronic, or oral form, to a state investigator or a county inspector during an investigation into compliance with any state law, rule, or regulation or any county ordinance, rule, or regulation;

(c) Submits or invites reliance on any statement, document, or record, in written, printed, or electronic form, which the person knows to be falsely made, completed, or altered; or

(d) Submits or invites reliance on any sample, specimen, map, boundary-mark, or other object the person knows to be false.

(2) Unsworn falsification to authorities is a misdemeanor.

(3) As used in this section: "County inspector" means a person employed, contracted, or appointed by a county or a county department or agency to evaluate or investigate compliance with any county ordinances, rules, or regulations. "State investigator" means a person employed, contracted, or appointed by the State or a state department or agency to evaluate or investigate compliance with any state laws, rules, or regulations.

710-1064 Retraction

710-1064 Retraction.

(1) It is a defense to a prosecution under this part that the defendant retracted the defendant's falsification:

(a) If the falsification was made in an official proceeding, in the course of the same proceeding before discovery of the falsification became known to the defendant; or

(b) If the falsification was not made in an official proceeding, before reliance upon the falsification by the person or body for whom it was intended.

(2) "In the course of the same proceeding" includes separate hearings at separate stages of the same official or administrative proceeding but does not include any stage of the proceeding after the close of the evidence.

710-1065 Inconsistent statements

710-1065 Inconsistent statements.

(1) Where a person has made inconsistent statements, each of which if made with the requisite state of mind and under the requisite circumstances would constitute an offense specified in this part, and both statements have been made within the period of the statute of limitations, the prosecution may proceed by setting forth the inconsistent statements in a single

count alleging in the alternative that one or the other was false and not believed by the defendant. In such case it shall not be necessary for the prosecution to prove which statement was false; it shall only be necessary for the prosecution to prove:

(a) That one or the other was false and not believed by the defendant to be true; and

(b) The attendant circumstances and states of mind necessary to constitute each statement, if false, as an offense.

(2) The most serious offense of which a person may be convicted in such an instance shall be determined by hypothetically assuming each statement to be false. If offenses of different classes or grades would be established by the making of the two statements, the person may only be convicted of the lesser class or grade.

710-1066

710-1066 No prosecution based on previous denial of guilt. No prosecution shall be brought:

(1) Under this part, if the substance of the defendant's false statement is the defendant's denial of guilt of an offense for which the defendant has previously been put in jeopardy; or

(2) For a substantive offense, the denial of which was the basis of a former prosecution under this part.

710-1067 Corroboration

710-1067 Corroboration. In any prosecution under this part, except a prosecution based upon inconsistent statements pursuant to section 710-1065, falsity of a statement may not be established solely through contradiction by the testimony of a single witness.

710-1068 Irregularities no defense

710-1068 Irregularities no defense. It is not a defense to a prosecution under this part:

(1) That the defendant was not competent, for reasons other than lack of penal responsibility, to make the false statement alleged;

(2) That the statement was inadmissible under the law of evidence;

(3) That the oath was administered or taken in an irregular manner; or

(4) That the person administering the oath lacked authority to do so, if the taking of the oath was required or authorized by law.

710-1069 Bill

710-1069 Misrepresenting a notarized document in the first degree.

(1) A person commits the offense of misrepresenting a notarized document in the first degree if the person submits or invites reliance on a document that the person knows has been altered after the document had been notarized by a notary public in this or any other jurisdiction, and:

(a) The offense was committed with intent to mislead a public servant; or

(b) The offense was committed for purpose of commercial or private financial gain.

(2) Misrepresenting a notarized document in the first degree is a class C felony.

710-1069.5 Bill

710-1069.5 Misrepresenting a notarized document in the second degree.

(1) A person commits the offense of misrepresenting a notarized document in the second degree if, with intent to mislead another, the person submits or invites reliance on a document that the person knows has been altered after the document had been notarized by a notary public in this or any other jurisdiction.

(2) Misrepresenting a notarized document in the second degree is a misdemeanor.

710-1070 VI

710-1070 Bribery of or by a witness.

(1) A person commits the offense of bribing a witness if he confers, or offers or agrees to confer, directly or indirectly, any benefit upon a witness or a person he believes is about to be called as a witness in any official proceeding with intent to:

(a) Influence the testimony of that person;

(b) Induce that person to avoid legal process summoning him to testify; or

(c) Induce that person to absent himself from an official proceeding to which he has been legally summoned.

(2) A witness or a person believing he is about to be called as a witness in any official proceeding commits the offense of bribe receiving by a witness if he intentionally solicits, accepts, or agrees to accept, directly or indirectly, any benefit as consideration:

(a) Which will influence his testimony;

(b) For avoiding or attempting to avoid legal process summoning him to testify; or

(c) For absenting or attempting to absent himself from an official proceeding, to which he has been legally summoned.

(3) The offenses defined in this section are class C felonies.

710-1071 Intimidating a witness

710-1071 Intimidating a witness.

(1) A person commits the offense of intimidating a witness if he uses force upon or a threat directed to a witness or a person he believes is about to be called as a witness in any official proceeding, with intent to:

(a) Influence the testimony of that person;

(b) Induce that person to avoid legal process summoning him to testify; or

(c) Induce that person to absent himself from an official proceeding to which he has been legally summoned.

(2) "Threat" as used in this section means any threat proscribed by section 707-764(1).

(3) Intimidating a witness is a class C felony.

710-1072 Tampering with a witness

710-1072 Tampering with a witness.

(1) A person commits the offense of tampering with a witness if he intentionally engages in conduct to induce a witness or a person he believes is about to be called as a witness in any official proceeding to:

(a) Testify falsely or withhold any testimony which he is not privileged to withhold; or

(b) Absent himself from any official proceeding to which he has been legally summoned.

(2) Tampering with a witness is a misdemeanor.

710-1072.2

710-1072.2 Retaliating against a witness.

(1) A person commits the offense of retaliating against a witness if the person uses force upon or threatens a witness or another person or damages the property of a witness or another person because of the attendance of the witness, or any testimony given, or any record, document, or other object produced, by the witness in an official proceeding.

(2) "Threaten" as used in this section means any threat proscribed by sections 707-764(1) and 707-764(2).

(3) Retaliating against a witness is a class C felony.

710-1072.5

710-1072.5 Obstruction of justice .

(1) A person commits the offense of obstruction of justice if the person intentionally:

(a) When called as a witness and having been granted immunity pursuant to chapters 480 and 621C, before or after having been qualified as a witness, refuses to testify or be qualified as a witness when duly directed to testify or be qualified as a witness; or

(b) Influences; obstructs; impedes; or endeavors to influence, obstruct, or impede, the due administration of justice by means of force, threat of force, coercion, fraud, or deception.

(2) Obstruction of justice shall be a class C felony; provided that if the person engaged in activity under subsection (1)(b), obstruction of justice shall be a class B felony.

710-1073 Bribery of or by a juror

710-1073 Bribery of or by a juror.

(1) A person commits the offense of bribing a juror if the person confers, or offers or agrees to confer, directly or indirectly, any benefit upon a juror with intent to influence the juror's vote, opinion, decision, or other action as a juror.

(2) A person is guilty of the offense of bribe receiving by a juror if the person intentionally solicits, accepts, or agrees to accept, directly or indirectly, any benefit as consideration which will influence the person's vote, opinion, decision, or other action as a juror.

(3) The offenses defined in this section are class C felonies.

710-1074 Intimidating a juror

710-1074 Intimidating a juror.

(1) A person commits the offense of intimidating a juror if the person uses force or a threat with intent to influence a juror's vote, opinion, decision, or other action as a juror.

(2) "Threat" as used in this section means any threat proscribed by section 707-764(1).

(3) Intimidating a juror is a class B felony.

710-1075 Jury tampering

710-1075 Jury tampering.

(1) A person commits the offense of jury tampering if, with intent to influence a juror's vote, opinion, decision, or other action in a case, the person attempts directly or indirectly to communicate with a juror other than as part of the proceedings in the trial of the case.

(2) Jury tampering is a class C felony.

710-1075.5 Retaliating against a juror

710-1075.5 Retaliating against a juror.

(1) A person commits the offense of retaliating against a juror if the person uses force upon or threatens a juror or another person because of the vote, opinion, decision, or other action of the juror in an official proceeding.

(2) "Threaten" as used in this section means any threat proscribed in sections 707-764(1) and 707-764(2).

(3) Retaliating against a juror is a class C felony.

710-1076

710-1076 Tampering with or fabricating physical evidence.

(1) A person commits the offense of tampering with or fabricating physical evidence if, believing that an official proceeding or investigation is pending or about to be instituted, the person:

(a) Destroys, mutilates, conceals, removes, or alters physical evidence with intent to impair its verity or availability in the pending or prospective official proceeding or investigation; or

(b) Makes, presents, offers, or uses any false physical evidence, knowing it to be false, with intent that it be introduced in the pending or prospective official proceeding or investigation, or with intent to mislead a public servant who is or may be engaged in the pending or prospective official proceeding or investigation.

(2) For the purposes of this section, "physical evidence" includes any article, object, document, record, or other thing of physical substance.

(3) Tampering with or fabricating physical evidence is a misdemeanor.

710-1077 Criminal contempt of court

710-1077 Criminal contempt of court.

(1) A person commits the offense of criminal contempt of court if:

(a) The person recklessly engages in disorderly or contemptuous behavior, committed during the sitting of a court in its immediate view and presence, and directly tending to interrupt its proceedings or impair the respect due to its authority;

(b) The person creates a breach of peace or a disturbance with intent to interrupt a court's proceedings;

(c) As an attorney, clerk, or other officer of the court, the person knowingly fails to perform or violates a duty of the person's office, or knowingly disobeys a lawful directive or order of a court;

(d) The person knowingly publishes a false report of a court's proceedings;

(e) Knowing that the person is not authorized to practice law, the person represents the person's self to be an attorney and acts as such in a court proceeding;

(f) The person intentionally records or attempts to record the deliberation of a jury;

(g) The person knowingly disobeys or resists the process, injunction, or other mandate of a court;

(h) The person intentionally refuses to be qualified as a witness in any court or, after being qualified, to answer any proper interrogatory without a privilege to refuse to answer;

(i) Being a juror, the person intentionally, without permission of the court, fails to attend a trial or official proceeding to which the person has been summoned or at which the person has been chosen to serve; or

(j) The person is in violation or disobedience of any injunction or order expressly provided for in part V of chapter 712.

(2) Except as provided in subsections (3) and (7), criminal contempt of court is a misdemeanor.

(3) The court may treat the commission of an offense under subsection (1) as a petty misdemeanor, in which case:

(a) If the offense was committed in the immediate view and presence of the court, or under such circumstances that the court has knowledge of all of the facts constituting the offense, the court may order summary conviction and disposition; and

(b) If the offense was not committed in the immediate view and presence of the court, nor under such circumstances that the court has knowledge of all of the facts constituting the offense, the court shall order the defendant to appear before it to answer a charge of criminal contempt of court; the trial, if any, upon the charge shall be by the court without a jury; and proof of guilt beyond a reasonable doubt shall be required for conviction.

(4) When the contempt under subsection (1) also constitutes another offense, the contemnor may be charged with and convicted of the other offense notwithstanding the fact that the contemnor has been charged with or convicted of the contempt.

(5) Whenever any person is convicted of criminal contempt of court or sentenced therefor, the particular circumstances of the offense shall be fully set forth in the judgment and in the order or warrant of commitment. In any proceeding for review of the judgment, sentence, or commitment, no presumption of law shall be made in support of the jurisdiction to render the judgment, pronounce the sentence, or order the commitment. A judgment, sentence, or commitment under subsection (3)(a) shall not be subject to review by appeal, but shall be subject to review in an appropriate proceeding for an extraordinary writ or in a special proceeding for review. All other judgments, sentences, or commitments for criminal contempt of court shall be subject to review by appeal, in a proceeding for an appropriate extraordinary writ, or in a special proceeding for review.

(6) Nothing in this section shall be construed to alter the court's power to punish civil contempt. When the contempt consists of the refusal to perform an act which the contemnor has the power to perform, the contemnor may be imprisoned until the contemnor has performed it. In such a case the act shall be specified in the warrant of commitment. In any proceeding for review of the judgment or commitment, no presumption of law shall be made in support of the jurisdiction to render the judgment or order the commitment. When a court of competent jurisdiction issues an order compelling a parent to furnish support, including child support, medical support, or other remedial care, for the parent's child, it shall constitute prima facie evidence of a civil contempt of court upon proof that:

(a) The order was made, filed, and served on the parent or proof that the parent was present in court at the time the order was pronounced; and

(b) The parent did not comply with the order. An order of civil contempt of court based on prima facie evidence under this subsection shall clearly state that the failure to comply with the order of civil contempt of court may subject the parent to a penalty that may include imprisonment or, if imprisonment is immediately ordered, the conditions that must be met for release from imprisonment. A party may also prove civil contempt of court by means other than prima facie evidence under this subsection.

(7) Any violation or disobedience of any injunction or order expressly provided for in part V of chapter 712 is punishable by:

(a) A fine of not less than $400 nor more than $5,000;

(b) Imprisonment for not less than one nor more than six months; or

(c) Both a fine and imprisonment pursuant to paragraphs (a) and (b).

710-1078 HRS

710-1078 Disrespect of a house of the legislature.

(1) A person who is not a member of either house of the legislature commits the offense of disrespect of a house of the legislature if, while the person is present at a legislative session of either house or at a hearing of any committee of either house, the person creates a breach of peace or disturbance with intent to interrupt the proceeding.

(2) Whenever there is probable cause to believe that a person has violated subsection (1), the person shall be subject to arrest and removal from the presence of the legislature or either house or any committee of a house, by the sergeant-at-arms of the affected house or by any other law enforcement officer of the State, as directed by the sergeant-at-arms.

(3) Disrespect of a house of the legislature is a petty misdemeanor.

710-1079 HRS

710-1079 Making a false, fictitious, or fraudulent claim.

(1) A person commits the offense of making a false, fictitious, or fraudulent claim against the State or a county if the person makes or presents to any agent of the State, counties, or any department or agency thereof any claim upon or against the State, county, department, or agency that the person knows to be false, fictitious, or fraudulent.

(2) Making a false, fictitious, or fraudulent claim against the State or a county shall be a class C felony.

710-1080 HRS

710-1080 Use of false statements or entries; generally.

(1) Except as otherwise provided in this section, a person commits the offense of use of false statements or entries if, in any matter within the jurisdiction of the executive, legislative, or judicial branch of the State, the person intentionally or knowingly:

(a) Falsifies, conceals, or covers up a material fact by any trick, scheme, or device;

(b) Makes any materially false, fictitious, or fraudulent statement or representation;

(c) Makes any false writing or document knowing the writing or document contains any materially false, fictitious, or fraudulent statement or entry; or

(d) Uses any false writing or document knowing the writing or document contains any materially false, fictitious, or fraudulent statement or entry for the purpose of presenting any statement or entry as true or for the purpose of substantiating any conclusion that is made more likely by any statement or entry.

(2) Subsection (1) shall not apply to a party to a judicial proceeding, or that party's counsel, for statements, representations, writings, or documents submitted by the party or counsel to a judge or magistrate in the proceeding.

(3) With respect to any matter within the jurisdiction of the legislature, subsection (1) shall apply only to:

(a) Administrative matters, including:

(i) A claim for payment; (ii) A matter related to the procurement of property or services; (iii) Personnel or employment practices; (iv) Support services; or

(v) A document required by law or rule to be submitted to the legislature or any office or officer within the legislature; or

(b) Any investigation or review conducted pursuant to the authority of any committee, subcommittee, commission, or office of the legislature, consistent with applicable rules of the senate or house of representatives.

(4) Use of false statements or entries shall be a class C felony.

Chapter 711

711-1100

711-1100 to 711-1113 designated as Part I by L 2024, c 161, §2(1) and c 224, §3. §711-1100 Definitions. In this chapter, unless a different meaning is plainly required, or the definition is otherwise limited by this section: "Animal" includes every living creature, except a human being. "Equine animal" means an animal of or belonging to the family Equidae, including horses, ponies, mules, donkeys, asses, burros, and zebras. "Facsimile" means a document produced by a receiver of signals transmitted over telecommunication lines, after translating the signals, to produce a duplicate of an original document. "Law enforcement animal" means any dog, horse, or other animal used by law enforcement or corrections agencies and trained to work in areas of tracking, suspect apprehension, victim assistance, crowd control, or drug or explosive detection for law enforcement purposes. "Necessary sustenance" means care sufficient to preserve the health and well-being of a pet animal, except for emergencies or circumstances beyond the reasonable control of the owner or caretaker of the pet animal, and includes but is not limited to the following requirements:

(1) Food of sufficient quantity and quality to allow for normal growth or maintenance of body weight;

(2) Open or adequate access to water in sufficient quantity and quality to satisfy the animal's needs;

(3) Access to protection from wind, rain, or sun;

(4) An area of confinement that has adequate space necessary for the health of the animal and is kept reasonably clean and free from excess waste or other contaminants that could affect the animal's health; provided that the area of confinement in a primary pet enclosure shall:

(a) Provide access to shelter;

(b) Be constructed of safe materials to protect the pet animal from injury;

(c) Enable the pet animal to be clean, dry, and free from excess waste or other contaminants that could affect the pet animal's health;

(d) Provide the pet animal with a solid surface or resting platform that is large enough for the pet animal to lie upon in a normal manner, or, in the case of a caged bird, a perch that is large enough for the bird to perch upon in a normal manner;

(e) Provide sufficient space to allow the pet animal, at minimum, to do the following:

(i) Easily stand, sit, lie, turn around, and make all other normal body movements in a comfortable manner for the pet animal, without making physical contact with any other animal in the enclosure; and (ii) Interact safely with other animals within the enclosure; and

(5) Veterinary care when needed to prevent suffering. "Obstructs" means renders impassable without unreasonable inconvenience or hazard. "Pet animal" means a dog, cat, domesticated rabbit, guinea pig, domesticated pig, or caged birds (passeriformes, piciformes, and psittaciformes only) so long as not bred for consumption. "Primary pet enclosure" means any kennel, cage, or structure used to restrict only a pet animal as defined in this section to a limited area of space, and does not apply to the confinement of any animals that are raised for food, such as any poultry that is raised for meat or egg production and livestock, rabbits, or pigs that are raised specifically for meat production because these animals are not pets when raised for meat or egg production. "Private place" means a place where one may reasonably expect to be safe from casual or hostile intrusion or surveillance, but does not include a place to which the public or a substantial group thereof has access. "Public" means affecting or likely to affect a substantial number of persons. "Public place" means a place to which the public or a substantial group of persons has access and includes highways, transportation facilities, schools, places of amusement or business, parks, playgrounds, prisons, and hallways, lobbies, and other portions of apartment houses and hotels not constituting rooms or apartments designed for actual residence. "Record", for the purposes of sections 711-1110.9 and 711-1111, means to videotape, film, photograph, or archive electronically or digitally. "Torment" means fail to attempt to mitigate substantial bodily injury with respect to a person who has a duty of care to the animal. "Torture" includes every act, omission, or neglect whereby unjustifiable physical pain, suffering, or death is caused or permitted.

711-1101 Disorderly conduct

711-1101 Disorderly conduct.

(1) A person commits the offense of disorderly conduct if, with intent to cause physical inconvenience or alarm by a member or members of the public, or recklessly creating a risk thereof, the person:

(a) Engages in fighting or threatening, or in violent or tumultuous behavior;

(b) Makes unreasonable noise;

(c) Subjects another person to offensively coarse behavior or abusive language which is likely to provoke a violent response;

(d) Creates a hazardous or physically offensive condition by any act which is not performed under any authorized license or permit; or

(e) Impedes or obstructs, for the purpose of begging or soliciting alms, any person in any public place or in any place open to the public.

(2) Noise is unreasonable, within the meaning of subsection (1)(b), if considering the nature and purpose of the person's conduct and the circumstances known to the person, including the nature of the location and the time of the day or night, the person's conduct involves a gross deviation from the standard of conduct that a law-abiding citizen would follow in the same situation; or the failure to heed the admonition of a police officer that the noise is unreasonable and should be stopped or reduced. The renter, resident, or owner-occupant of the premises who knowingly or negligently consents to unreasonable noise on the premises shall be guilty of a noise violation.

(3) Disorderly conduct is a petty misdemeanor if it is the defendant's intention to cause substantial harm or serious inconvenience, or if the defendant persists in disorderly conduct after reasonable warning or request to desist. Otherwise disorderly conduct is a violation.

711-1102 Failure to disperse

711-1102 Failure to disperse.

(1) When six or more persons are participating in a course of disorderly conduct likely to cause substantial harm or serious inconvenience, annoyance, or alarm, a law enforcement officer may order the participants and others in the immediate vicinity to disperse.

(2) A person commits the offense of failure to disperse if the person knowingly fails to comply with an order made pursuant to subsection (1).

(3) Failure to disperse is a misdemeanor.

711-1103 Riot

711-1103 Riot.

(1) A person commits the offense of riot if the person participates with five or more other persons in a course of disorderly conduct:

(a) With intent to commit or facilitate the commission of a felony; or

(b) When the person or any other participant to the person's knowledge uses or intends to use a firearm or other dangerous instrument in the course of the disorderly conduct.

(2) Riot is a class C felony.

711-1104 Unlawful assembly

711-1104 Unlawful assembly.

(1) A person commits the offense of unlawful assembly if:

(a) The person assembles with five or more other persons with intent to engage in conduct constituting a riot; or

(b) Being present at an assembly that either has or develops a purpose to engage in conduct constituting a riot, the person remains there with intent to advance that purpose.

(2) Unlawful assembly is a misdemeanor.

711-1105 Obstructing

711-1105 Obstructing.

(1) A person commits the offense of obstructing if, whether alone or with others and having no legal privilege to do so, the person knowingly or recklessly:

(a) Obstructs any highway or public passage; or

(b) Provides less than thirty-six inches of space for passage on any paved public sidewalk.

(2) A person in a gathering commits the offense of obstructing if the person refuses to obey a reasonable request or order by a law enforcement officer:

(a) To move to prevent or to cease any activity prohibited under subsection (1); or

(b) To move to maintain public safety by dispersing those gathered in dangerous proximity to a public hazard.

(3) An order to move under subsection (2)(a), addressed to a person whose speech or other lawful behavior attracts an obstructing audience, is not reasonable if the obstruction can be readily remedied by police control.

(4) A person is not guilty of violating subsection (1) solely because persons gather to hear the person speak or because the person is a member of such a gathering.

(5) Obstructing is a petty misdemeanor if the person persists in the conduct specified in subsection (1) after a warning by a law enforcement officer; otherwise it is a violation.

711-1106 Harassment

711-1106 Harassment.

(1) A person commits the offense of harassment if, with intent to harass, annoy, or alarm any other person, that person:

(a) Strikes, shoves, kicks, or otherwise touches another person in an offensive manner or subjects the other person to offensive physical contact;

(b) Insults, taunts, or challenges another person in a manner likely to provoke an immediate violent response or that would cause the other person to reasonably believe that the actor intends to cause bodily injury to the recipient or another or damage to the property of the recipient or another;

(c) Repeatedly makes telephone calls, facsimile transmissions, or any form of electronic communication as defined in section 711-1111(2), including electronic mail transmissions, without purpose of legitimate communication;

(d) Repeatedly makes a communication anonymously or at an extremely inconvenient hour;

(e) Repeatedly makes communications, after being advised by the person to whom the communication is directed that further communication is unwelcome; or

(f) Makes a communication using offensively coarse language that would cause the recipient to reasonably believe that the actor intends to cause bodily injury to the recipient or another or damage to the property of the recipient or another.

(2) Harassment is a petty misdemeanor.

711-1106.4

711-1106.4 Aggravated harassment by stalking.

(1) A person commits the offense of aggravated harassment by stalking if that person commits the offense of harassment by stalking as provided in section 711-1106.5 and has been convicted previously of harassment by stalking under section 711-1106.5 within five years of the instant offense.

(2) Aggravated harassment by stalking is a class C felony.

711-1106.5 Harassment by stalking

711-1106.5 Harassment by stalking.

(1) A person commits the offense of harassment by stalking if, with intent to harass, annoy, or alarm another person, or in reckless disregard of the risk thereof, that person engages in a course of conduct involving pursuit, surveillance, or nonconsensual contact upon the other person on more than one occasion without legitimate purpose.

(2) A person convicted under this section may be required to undergo a counseling program as ordered by the court.

(3) For purposes of this section, "nonconsensual contact" means any contact that occurs without that individual's consent or in disregard of that person's express desire that the contact be avoided or discontinued. Nonconsensual contact includes direct personal visual or oral contact and contact via telephone, facsimile, or any form of electronic communication, as defined in section 711-1111(2), including electronic mail transmission.

(4) Harassment by stalking is a misdemeanor.

711-1106.6 Bill

711-1106.6 Harassment by impersonation.

(1) A person commits the offense of harassment by impersonation if that person poses as another person, without the express authorization of that person, and makes or causes to be made, either directly or indirectly, a transmission of any personal information of the person to another by any oral statement, any written statement, or any statement conveyed by any electronic means, with the intent to harass, annoy, or alarm any person.

(2) Harassment by impersonation is a misdemeanor.

(3) For the purposes of this section: "Personal information" means information associated with an actual person that is a name, an address, a telephone number, or an electronic mail address. "Pose" means to falsely represent oneself, directly or indirectly, as another person or persons.

711-1107 Desecration

711-1107 Desecration.

(1) A person commits the offense of desecration if the person intentionally or knowingly desecrates:

(a) Any public monument or structure;

(b) A place of worship or burial; or

(c) In a public place, the national flag or any other object of veneration by a substantial segment of the public.

(2) As used in this section, "desecrate" means defacing, damaging, polluting, or otherwise physically mistreating any monument, structure, place, or object described in subsection (1).

(3) Any person convicted of committing the offense of desecration shall be sentenced to a term of imprisonment of not more than one year, a fine of not more than $10,000, or both.

711-1108 Abuse of a corpse

711-1108 Abuse of a corpse.

(1) A person commits the offense of abuse of a corpse if, except as authorized by law, the person:

(a) Treats a human corpse in a way that the person knows would outrage ordinary family sensibilities; or

(b) Accepts the donation of a dead human body or any of its parts.

(2) An entity to whom body parts are entrusted commits the offense of abuse of a corpse if, except as authorized by law, the entity to whom body parts are entrusted disposes of a dead human body without a disposition permit. Disposal of a dead human body includes removal of body parts or organs; provided that it shall not be an offense for a procurement organization to remove body parts or organs for transplantation or therapy prior to obtaining a disposition permit.

(3) The preparation of a corpse for burial or cremation in a manner consistent with traditional Hawaiian cultural customs and practices shall not be a violation of this section.

(4) The burial or cremation of a corpse prepared consistent with traditional Hawaiian cultural customs and practices shall not be a violation of this section.

(5) Abuse of a corpse is a misdemeanor.

(6) For the purposes of this section, "procurement organization" has the same meaning as defined in section 327-2.

711-1108.5 Bill

711-1108.5 Cruelty to animals in the first degree.

(1) A person commits the offense of cruelty to animals in the first degree if the person intentionally or knowingly:

(a) Tortures, mutilates, or poisons or causes the torture, mutilation, or poisoning of any pet animal or equine animal resulting in serious bodily injury or death of the pet animal or equine animal; or

(b) Kills or attempts to kill any pet animal belonging to another person, without first obtaining legal authority or the consent of the pet animal's owner.

(2) Subsection (1)(a) shall not apply to:

(a) Accepted veterinary practices when the practices are performed by a veterinarian licensed under chapter 471; and

(b) Activities carried on for scientific research governed by standards of accepted educational or medicinal practices.

(3) Subsection (1)(b) shall not apply to:

(a) Humane euthanasia of any animal by an animal control officer, duly incorporated humane society, duly incorporated society for the prevention of cruelty to animals, or duly authorized governmental agency in accordance with American Veterinary Medical Association accepted standards; or

(b) Conduct which the actor believes to be necessary to avoid an imminent harm or evil to the actor, another person, or an animal; provided that the harm or evil sought to be avoided by such conduct is greater than that sought to be prevented by this section and is justifiable as provided in section 703-302 for choice of evils; provided further that, for purposes of this paragraph, as the justification described in section 703■302 shall also apply to conduct which the actor believes to be necessary to avoid an imminent harm or evil to an animal.

(4) Whenever any pet animal or equine animal is so severely injured that there is no reasonable probability that its life can be saved, the animal may be immediately destroyed without creating any offense under this section.

(5) Cruelty to animals in the first degree is a class C felony. In addition to any fines and imprisonment imposed under this section, any person convicted under this section shall be prohibited from possessing or owning any pet animal or equine animal for a minimum of five years from the date of conviction. [(6)] For the purposes of this section, "person" means any individual; any firm, partnership, joint venture, association, limited liability company, corporation, estate, trust, receiver, or syndicate; or any other legal entity.

711-1109

711-1109 Cruelty to animals in the second degree.

(1) A person commits the offense of cruelty to animals in the second degree if the person intentionally, knowingly, or recklessly:

(a) Overdrives, overloads, tortures, torments, beats, causes substantial bodily injury to, or starves any animal, or causes the overdriving, overloading, torture, torment, beating, or starving of any animal;

(b) Deprives a pet animal of necessary sustenance or causes that deprivation;

(c) Mutilates, poisons, or kills without need any animal other than insects, vermin, or other pests; provided that the handling or extermination of any insect, vermin, or other pest is conducted in accordance with standard and acceptable pest control practices and all applicable laws and regulations;

(d) Keeps, uses, or in any way is connected with or interested in the management of, or receives money for the admission of any person to, any place kept or used for the purpose of fighting or baiting any bull, bear, cock, or other animal, and includes every person who encourages, aids, or assists therein, or who permits or suffers any place to be so kept or used;

(e) Carries or causes to be carried, in or upon any vehicle or other conveyance, any animal in a cruel or inhumane manner;

(f) Confines or causes to be confined, in a kennel or cage, any pet animal in a cruel or inhumane manner;

(g) Tethers, fastens, ties, or restrains a dog to a doghouse, tree, fence, or any other stationary object, or uses a trolley, trolley with swivels, pulley, cable, running line, or trolley lacking swivels at each end that is designed to attach a dog to two stationary objects in a configuration that endangers the dog, including preventing the dog from obtaining necessary sustenance;

(h) Tethers or restrains a dog under the age of six months unless the dog is engaged in an activity supervised by its owner or an agent of its owner;

(i) Tethers or restrains a dog by a tow or log chain;

(j) Tethers or restrains by means of choke collar, pinch collar, or prong collar unless the dog is engaged in an activity supervised by its owner or an agent of its owner; or

(k) Assists another in the commission of any act specified in paragraphs (a) through (j).

(2) Subsection (1)(a), (b), (c), (e), (f), (g), and (h) shall not apply to:

(a) Accepted veterinary practices;

(b) Activities carried on for scientific research governed by standards of accepted educational or medicinal practices; or

(c) Pest control operations conducted pursuant to chapter 149A by a pest control operator licensed pursuant to chapter 460J, if the pest control is performed under a written contract.

(3) Whenever any animal is so severely injured that there is no reasonable probability that its life or usefulness can be saved, the animal may be immediately destroyed without creating any offense under this section.

(4) Cruelty to animals in the second degree is a misdemeanor, except that if the offense involves ten or more pet animals in any one instance, then cruelty to animals in the second degree is a class C felony.

711-1109.1 Bill

711-1109.1 Authority to enter premises; notice of impoundment of animal; damage resulting from entry.

(1) If there is probable cause to believe that a pet animal or equine animal is being subjected to treatment in violation of section 711-1108.5, 711-1109, 711-1109.3, or 711-1109.35, as applicable, a law enforcement officer, after obtaining a search warrant, or in any other manner authorized by law, may enter the premises where the pet animal or equine animal is located to provide the pet animal or equine animal with food, water, and emergency medical treatment or to impound the pet animal or equine animal. If after reasonable effort, the owner or person having custody of the pet animal or equine animal cannot be found and notified of the impoundment, an impoundment notice shall be conspicuously posted on the premises and within seventy-two hours after posting, the notice shall be sent by certified mail to the address, if any, from which the pet animal or equine animal was removed.

(2) A law enforcement officer is not liable for any damage resulting from an entry under subsection (1), unless the damage resulted from intentional or reckless behavior on behalf of the law enforcement officer.

(3) A court may order a pet animal or equine animal impounded under subsection (1) to be held at a duly incorporated humane society or duly incorporated society for the prevention of cruelty to animals. A facility receiving the pet animal or equine animal shall provide adequate food and water and may provide veterinary care.

(4) For purposes of this section, "law enforcement officer" shall have the same meaning as [in] section 710-1000.

711-1109.2 Bill

711-1109.2 Forfeiture of animal prior to filing of or final disposition of criminal charges.

(1) If any pet animal or equine animal is impounded pursuant to section 711-1109.1, prior to filing of, or final disposition of a criminal charge under section 711-1108.5, 711-1109, 711-1109.3, or 711-1109.35, as applicable, against the pet animal's or equine animal's owner, any duly incorporated humane society or duly incorporated society for the prevention of cruelty to animals that is holding the pet animal or equine animal may file a petition in the court that would have jurisdiction over the criminal case when the criminal charge is filed, if the petition is filed prior to the filing of the criminal charge, or in the criminal action requesting that the court issue an order for forfeiture of the pet animal or equine animal to the county or to the duly incorporated humane society or duly incorporated society for the prevention of cruelty to animals prior to the filing of the criminal charge that arises from the impoundment or final disposition of the criminal charge. The petitioner shall serve a true copy of the petition upon the owner or custodian of the impounded pet animal or equine animal, when a petition is filed prior to the filing of the criminal charge, or the defendant, in the criminal action, and the prosecuting attorney.

(2) Upon receipt of a petition pursuant to subsection (1), the court shall set a hearing on the petition. The hearing shall be conducted within fourteen days after the filing of the petition, or as soon as practicable.

(3) At a hearing conducted pursuant to subsection (2), the petitioner shall have the burden of establishing probable cause that the pet animal or equine animal was subjected to a violation of section 711-1108.5, 711-1109, 711-1109.3, or 711■1109.35, as applicable. If the court finds that probable cause exists, the court shall order immediate forfeiture of the pet animal or equine animal to the petitioner, unless the owner or custodian of the impounded pet animal or equine animal, when a petition is filed prior to the filing of the criminal charge, or the defendant, in the criminal action, within seventy-two hours of the hearing:

(a) Posts a security deposit or bond with the court clerk in an amount determined by the court to be sufficient to repay all reasonable costs incurred, and anticipated to be incurred, by the petitioner in caring for the pet animal or equine animal from the date of initial impoundment to the date of trial; or

(b) Demonstrates to the court that proper alternative care has been arranged for the pet animal or equine animal. Notwithstanding subsection (3)(a), a court may waive, for good cause shown, the requirement that the owner or custodian of the impounded pet animal or equine animal, when a petition is filed prior to the filing of the criminal charge, or the defendant, in the criminal action, post a security deposit or bond.

(4) If a security deposit or bond has been posted in accordance with subsection (3)(a), the petitioner may draw from the security deposit or bond the actual reasonable costs incurred by the petitioner in caring for the pet animal or equine animal until the date of final disposition of the criminal action. If the trial is continued to a later date, any order of continuance shall require the owner or custodian of the impounded pet animal or equine animal, when a petition is filed prior to the filing of the criminal charge, or the defendant, in the criminal action, to post an additional security deposit or bond in an amount determined by the court that shall be sufficient to repay all additional reasonable costs anticipated to be incurred by the petitioner in caring for the pet animal or equine animal until the date of final disposition of the criminal action, and the petitioner may draw from the additional security deposit or bond as necessary.

(5) No pet animal or equine animal may be destroyed by a petitioner under this section prior to final disposition of a criminal charge under section 711-1108.5, 711-1109, 711-1109.3, or 711-1109.35, as applicable, against the pet animal's or equine animal's owner, except in the event that the pet animal or equine animal is a danger to itself or others, or so severely injured that there is no reasonable probability that its life can be saved.

(6) Forfeiture of a pet animal or equine animal under this section shall not be subject to the provisions of chapter 712A.

(7) In addition to any reasonable costs incurred under subsection (4) by the petitioner in the caring for the pet animal or equine animal, the court may award reasonable attorney's fees and court costs to the petitioner following the conviction of the defendant.

(8) As used in this section, "pet animal or equine animal" includes any offspring from the pet animal or equine animal that was pregnant at the time of the rescue and born during the impoundment of the pet animal or equine animal.

(9) An acquittal or dismissal in a criminal proceeding shall not preclude civil proceedings under this chapter.

711-1109.3

711-1109.3 Cruelty to animals by fighting dogs in the first degree.

(1) A person commits the offense of cruelty to animals by fighting dogs in the first degree if the person:

(a) Knowingly:

(i) Causes, sponsors, arranges, or holds a dogfight for entertainment or financial gain; or (ii) Owns, trains, transports, possesses, sells, transfers, or equips any dog with the intent that the dog shall be engaged in a dogfight; or

(b) Recklessly:

(i) Allows a dogfight to occur on any property owned or controlled by the person; or (ii) Allows any dog intended to be used for a dogfight to be kept, trained on, or transported in, any property owned or controlled by the person.

(2) Nothing in this section shall prohibit any of the following:

(a) The use of dogs in the management of livestock by the owner of the livestock or the owner's employees or agents or other persons in lawful custody thereof;

(b) The use of dogs in hunting wildlife including game; or

(c) The training of dogs or the use of equipment in the training of dogs for any purpose not prohibited by law.

(3) As used in this section, "dogfight" means a dog or dogs pitted against another dog or dogs with the intent that the encounter will result in injury to one or more of the dogs.

(4) Violation of this section shall be a class B felony.

(5) If there is any conflict between this section and section 711-1109, or any other provision of law, this section shall apply.

711-1109.4 Bill

711-1109.4 Causing injury or death to a service animal or law enforcement animal.

(1) A person commits the offense of causing injury or death to a service animal or law enforcement animal if:

(a) The person recklessly causes substantial bodily injury to or the death of any service animal or law enforcement animal while the service animal or law enforcement animal is in the discharge of its duties; or

(b) The person is the owner of a dog and recklessly permits that dog to attack a service animal or law enforcement animal while the service animal or law enforcement animal is in the discharge of its duties, resulting in the substantial bodily injury or death of the service animal or law enforcement animal.

(2) Subsection (1) shall not apply to:

(a) Accepted veterinary practices;

(b) Activities carried on for scientific research governed by standards of accepted educational or medicinal practices; or

(c) Cropping or docking as customarily practiced and permitted by law.

(3) Any person who commits the offense of causing injury or death to a service animal or law enforcement animal shall be guilty of a class C felony.

(4) In addition to any other penalties, any person who is convicted of a violation of this section shall be ordered to make restitution to:

(a) The owner of the service animal or law enforcement animal for any veterinary bills and out-of-pocket costs incurred as a result of the injury to the service animal or law enforcement animal; and

(b) The person, entity, or organization that incurs the cost of retraining or replacing the service animal or law enforcement animal for the cost of retraining or replacing the service animal or law enforcement animal if it is disabled or killed.

(5) As used in this section "service animal" shall have the same meaning as in section 347-2.5.

711-1109.5 Bill

711-1109.5 Intentional interference with the use of a service animal or law enforcement animal.

(1) A person commits the offense of intentional interference with the use of a service animal or law enforcement animal if the person, with no legal justification, intentionally or knowingly strikes, beats, kicks, cuts, stabs, shoots, or administers any type of harmful substance or poison to a service animal or law enforcement animal while the service animal or law enforcement animal is in the discharge of its duties.

(2) Subsection (1) shall not apply to:

(a) Accepted veterinary practices;

(b) Activities carried on for scientific research governed by standards or accepted educational or medicinal practices; or

(c) Cropping or docking as customarily practiced and permitted by law.

(3) Intentional interference with the use of a service animal or law enforcement animal is a misdemeanor.

(4) In addition to any other penalties, any person who is convicted of a violation of this section shall be ordered to make restitution to:

(a) The owner of the service animal or law enforcement animal for any veterinary bills and out-of-pocket costs incurred as a result of the injury to the service animal or law enforcement animal; and

(b) The person, entity, or organization that incurs the cost of retraining or replacing the service animal or law enforcement animal for the cost of retraining or replacing the service animal or law enforcement animal, if it is disabled or killed.

(5) Nothing in this section is intended to affect any civil remedies available for a violation of this section.

(6) As used in this section, "service animal" shall have the same meaning as in section 347-2.5.

711-1109.6 Bill

711-1109.6 REPEALED. L 2009, c 160, §3. Previous Vol14_Ch0701-0853 Next

711-1109.7 HRS

711-1109.7 Pet animal or equine animal desertion.

(1) It shall be unlawful for the owner or any person in possession of any pet animal or equine animal to desert the pet animal or equine animal.

(2) Any person who violates subsection (1) shall be guilty of a petty misdemeanor and subject to a fine not exceeding $1,000 in addition to any other penalties.

(3) Any person who violates subsection (1) and recklessly causes the death of or substantial bodily injury to the pet animal or equine animal shall be guilty of a misdemeanor and subject to a fine not exceeding $2,000 in addition to any other penalties.

(4) Each pet animal or equine animal that is deserted in violation of subsection (1) or suffers death or substantial bodily injury as a result of a violation of subsection (1) shall constitute a separate offense.

(5) For the purposes of this section, "desert" means to leave without the intent to return.

711-1109.8 HRS

711-1109.8 Sexual assault of an animal.

(1) A person commits the offense of sexual assault of an animal if the person knowingly:

(a) Subjects an animal to sexual contact;

(b) Possesses, sells, transfers, purchases, or otherwise obtains an animal with the intent to subject the animal to sexual contact;

(c) Organizes, promotes, conducts, or participates as an observer in an act where an animal is subject to sexual contact;

(d) Causes, coerces, aids, or abets another person to subject an animal to sexual contact;

(e) Permits sexual contact with an animal to be conducted on any premises under the person's charge or control;

(f) Advertises, solicits, offers, or accepts the offer of an animal with the intent that it be subjected to sexual contact in the State; or

(g) Creates, distributes, publishes, or transmits, whether for commercial or recreational purposes, a pornographic image or material depicting a person subjecting an animal to sexual contact.

(2) This section shall not apply to the following practices:

(a) Veterinary medicine;

(b) Artificial insemination of animals for the purpose of procreation;

(c) Animal husbandry;

(d) Conformation judging; or

(e) Customary care of an animal by its owner.

(3) Unless otherwise provided by any other law:

(a) Sexual assault of an animal is a misdemeanor for the first offense and a class C felony for the second or subsequent offense; or

(b) If the offense subjected a minor to sexual contact with an animal or was committed in the presence of a minor as defined in section 706■606.4, sexual assault of an animal is a class B felony.

(4) Each violation of this section shall constitute a separate offense.

(5) Upon conviction, guilty plea, or plea of nolo contendere for any violation of this section, in addition to any other penalty, the defendant shall be:

(a) Ordered to:

(i) Surrender or forfeit the animal whose sexual assault was the basis of the conviction or plea to the custody of the animal service contractor in the county in which the offense took place for the time and under the conditions ordered by the court; (ii) Surrender or forfeit any other animals in the defendant's possession, custody, or control to the animal service contractor in the county in which the offense took place for the time and under the conditions ordered by the court; provided that there is substantial evidence that the animals are being abused in violation of this section; (iii) Reimburse the animal service contractor in the county in which the offense took place for reasonable costs incurred to care for, feed, house, and medically treat any animal sexually assaulted under this section; (iv) Attend an appropriate treatment program or obtain psychiatric or psychological counseling, at the defendant's expense; and

(v) Make restitution to the owner of the animal, including reimbursement for any expenses incurred for medical treatment or rehabilitation; provided that the defendant is not the owner of the animal whose sexual assault was the basis of the conviction or plea; and

(b) Prohibited from:

(i) Harboring, owning, possessing, or exercising control over any animal; (ii) Residing in any household where animals are present; and (iii) Engaging in any occupation, whether paid or unpaid, or participating in a volunteer position at any establishment at which animals are present, for the length of time that the court deems reasonable for the protection of all animals but no less than five years after the person's release from imprisonment or court supervision.

(6) Prosecution under this section does not preclude prosecution under any other law. Nothing in this section is intended to affect any civil remedies available for a violation of this section.

(7) As used in this section: "Animal" includes every living or dead creature, except a human being. "Pornographic" has the same meaning as defined in section 712-1210. "Sexual contact" means:

(a) The intentional touching or penetration, however slight, of the sex organs, genitalia, mouth, or anus of an animal by a person or of a person by an animal; or

(b) The insertion of a person's body part or object into the sex organs, genitalia, mouth, or anus of an animal.

(8) Violations of this section shall be subject to the search, impound, and forfeiture provisions in sections 711■1109.1 and 711-1109.2.

711-1110 Relating to agent of society

711-1110 Relating to agent of society. The agent of any society which is formed or incorporated for the prevention of cruelty to animals, upon being appointed thereto by the president of such society in any district in the State, may within such district make arrests and bring before any district judge thereof offenders found violating the provisions of section 711-1109 to be dealt with according to law.

711-1110.5

711-1110.5 Surrender or forfeiture of animals. Upon conviction, guilty plea, or plea of nolo contendere for any violation of section 711-1108.5, 711-1109, 711-1109.3, or 711-1109.35:

(1) The court may order the defendant to surrender or forfeit the animal whose treatment was the basis of the conviction or plea to the custody of a duly incorporated humane society or duly incorporated society for the prevention of cruelty to animals for the time and under the conditions as the court shall order; and

(2) The court also may order the defendant to surrender or forfeit any other animals under the possession, custody, or control of the defendant to the custody of a duly incorporated humane society or duly incorporated society for the prevention of cruelty to animals for the time and under the conditions as the court shall order, if there is substantial evidence that the animals are being abused or neglected. The court shall order the defendant to reimburse the duly incorporated humane society or duly incorporated society for the prevention of cruelty to animals for reasonable costs incurred to care, feed, and house any animal that is surrendered or forfeited pursuant to this section.

711-1110.9 [§711-1110

711-1110.9 Violation of privacy in the first degree.

(1) A person commits the offense of violation of privacy in the first degree if, except in the execution of a public duty or as authorized by law:

(a) The person intentionally or knowingly installs or uses, or both, in any private place, without consent of the person or persons entitled to privacy therein , any device for observing, recording, amplifying, or broadcasting another person in a stage of undress or sexual activity in that place;

(b) The person knowingly discloses or threatens to disclose an image or video of another identifiable person either in the nude, as defined in section 712■1210, or engaging in sexual conduct, as defined in section 712-1210, without the consent of the depicted person, with intent to harm substantially the depicted person with respect to that person's health, safety, business, calling, career, education, financial condition, reputation, or personal relationships or as an act of revenge or retribution; or

(c) The person intentionally creates or discloses or threatens to disclose an image or video of a composite fictitious person depicted in the nude as defined in section 712-1210, or engaged in sexual conduct as defined in section 712-1210, that includes the recognizable physical characteristics of a known person so that the image or video appears to depict the known person and not a composite fictitious person, with intent to substantially harm the depicted person with respect to that person's health, safety, business, calling, career, education, financial condition, reputation, or personal relationships, or as an act of revenge or retribution.

(2) Other than as prohibited in paragraph (1)(c), this section shall not apply to images or videos of the depicted person made:

(a) When the person was voluntarily nude in public or voluntarily engaging in sexual conduct in public; or

(b) Pursuant to a voluntary commercial transaction.

(3) Nothing in this section shall be construed to impose liability on a provider of "electronic communication service" or "remote computing service" as those terms are defined in section 803-41, for an image or video disclosed through the electronic communication service or remote computing service by another person.

(4) Violation of privacy in the first degree is a class C felony. In addition to any penalties the court may impose, the court may order the destruction of any recording made in violation of this section.

(5) Any recording or image made or disclosed in violation of this section and not destroyed pursuant to subsection (4) shall be sealed and remain confidential.

711-1111

711-1111 Violation of privacy in the second degree.

(1) A person commits the offense of violation of privacy in the second degree if, except in the execution of a public duty or as authorized by law, the person intentionally:

(a) Trespasses on property for the purpose of subjecting anyone to eavesdropping or other surveillance in a private place;

(b) Peers or peeps into a window or other opening of a dwelling or other structure adapted for sojourn or overnight accommodations for the purpose of spying on the occupant thereof or invading the privacy of another person with a lewd or unlawful purpose, under circumstances in which a reasonable person in the dwelling or other structure would not expect to be observed;

(c) Trespasses on property for the sexual gratification of the actor;

(d) Installs or uses, or both, in any private place, without consent of the person or persons entitled to privacy therein, any means or device for observing, recording, amplifying, or broadcasting sounds or events in that place other than another person in a stage of undress or sexual activity; provided that this paragraph shall not prohibit a person from making a video or audio recording or taking a photograph of a law enforcement officer while the officer is in the performance of the officer's duties in a public place or under circumstances in which the officer has no reasonable expectation of privacy and the person is not interfering with the officer's ability to maintain safety and control, secure crime scenes and accident sites, protect the integrity and confidentiality of investigations, and protect the public safety and order;

(e) Installs or uses outside a private place any device for hearing, recording, amplifying, or broadcasting sounds originating in that place which would not ordinarily be audible or comprehensible outside, without the consent of the person or persons entitled to privacy therein;

(f) Covertly records or broadcasts an image of another person's intimate area underneath clothing, by use of any device, and that image is taken while that person is in a public place and without that person's consent;

(g) Intercepts, without the consent of the sender or receiver, a message or photographic image by telephone, telegraph, letter, electronic transmission, or other means of communicating privately; but this paragraph does not apply to:

(i) Overhearing of messages through a regularly installed instrument on a telephone party line or an extension; or (ii) Interception by the telephone company, electronic mail account provider, or telephone or electronic mail subscriber incident to enforcement of regulations limiting use of the facilities or incident to other operation and use;

(h) Divulges, without the consent of the sender or the receiver, the existence or contents of any message or photographic image by telephone, telegraph, letter, electronic transmission, or other means of communicating privately, if the accused knows that the message or photographic image was unlawfully intercepted or if the accused learned of the message or photographic image in the course of employment with an agency engaged in transmitting it; or

(i) Knowingly possesses materials created under circumstances prohibited in section 711-1110.9.

(2) This section shall not apply to any dissemination, distribution, or transfer of images subject to this section by an electronic communication service provider or remote storage service in the ordinary course of its business. For the purpose of this subsection: "Electronic communication" means any transfer of signs, signals, writing, images, sounds, data, or intelligence of any nature transmitted in whole or part by a wire, radio, electromagnetic, photoelectronic, or photo-optical system. "Electronic communication service" means any service that provides to users thereof the ability to send or receive wire or electronic communications. "Electronic communication service provider" means any person engaged in the offering or sale of electronic communication services to the public. "Electronic communication system"

means any wire, radio, electromagnetic, photo-optical, or photoelectronic facilities for the transmission of wire or electronic communications, and any computer facilities or related electronic equipment for the electronic storage of such communications, including e-mail, web hosting, multimedia messaging services, and remote storage services offered by an electronic communication service provider. "Remote storage service" means the provision to the public of computer storage or processing services by means of an electronic communication system.

(3) For the purposes of this section: "Intimate areas" means any portion of a person's underwear, pubic area, anus, buttocks, vulva, genitals, or female breast. "Intimate areas underneath clothing" does not include intimate areas visible through a person's clothing or intimate areas exposed in public. "Public place" means an area generally open to the public, regardless of whether it is privately owned, and includes but is not limited to streets, sidewalks, bridges, alleys, plazas, parks, driveways, parking lots, buses, tunnels, buildings, stores, and restaurants.

(4) Violation of privacy in the second degree is a misdemeanor. In addition to any penalties the court may impose, the court may order the destruction of any recording made in violation of this section.

711-1112 HRS

711-1112 Interference with the operator of a public transit vehicle.

(1) A person commits the offense of interference with the operator of a public transit vehicle if the person interferes with or lessens the ability of the operator to operate the public transit vehicle by:

(a) Intentionally, knowingly, or recklessly causing bodily injury to the operator of the public transit vehicle; or

(b) Threatening, by word or conduct, to cause bodily injury to the operator of the public transit vehicle with the intent to terrorize, or in reckless disregard of the risk of terrorizing the operator of the public transit vehicle.

(2) For the purposes of this section, "public transit vehicle" means:

(a) Any public paratransit vehicle providing service to the disabled;

(b) Any transit vehicle used for the transportation of passengers in return for legally charged fees or fares, including any taxi; or

(c) Any transit vehicle owned or operated by a government entity, including any school bus.

(3) Interference with the operator of a public transit vehicle is a class C felony.

711-1113 HRS

711-1113 Interference with the operation of a public transit vehicle.

(1) A person commits the offense of interference with the operation of a public transit vehicle if the person intentionally, knowingly, or recklessly causes:

(a) Damage of a public transit vehicle, resulting in the vehicle's removal from service; or

(b) The unreasonable interruption of a public transit system or service.

(2) As used in this section, "public transit vehicle" includes:

(a) Any public paratransit vehicle providing service to the disabled;

(b) Any transit vehicle used for the transportation of passengers in return for legally charged fees or fares, including any taxi; and

(c) Any transit vehicle owned or operated by a government entity, including any school bus.

(3) Interference with the operation of a public transit vehicle shall be a violation; provided that interference with the operation of a public transit vehicle that results in serious bodily injury to, or death of, any person, shall be a class C felony.

711-1114 HRS

711-1114 Renumbered as §711-1125. Previous Vol14_Ch0701-0853 Next

711-1120 HRS

711-1120 Definitions. As used in this part: "Aircraft" means any device, craft, vehicle, or contrivance that is invented, used, or designed to navigate, fly, or travel in the air, or that is used or intended to be used for flight in the air. "Uncrewed aircraft" means any aircraft that is operated or designed to be operated without a person in or on the aircraft, or without

the possibility of direct human intervention from within or on the aircraft.

711-1121 HRS

711-1121 Misuse of uncrewed aircraft in the first degree.

(1) A person commits the offense of misuse of uncrewed aircraft in the first degree if the person intentionally or knowingly:

(a) Equips or arms an uncrewed aircraft with a firearm, explosive, electric gun, or weapon of mass destruction;

(b) Possesses, receives, transfers, operates, or produces an uncrewed aircraft that is equipped or armed with a firearm, explosive, electric gun, or weapon of mass destruction;

(c) Discharges or deploys a firearm, explosive, electric gun, or weapon of mass destruction using an uncrewed aircraft;

(d) Operates an uncrewed aircraft and thereby intentionally, knowingly, or recklessly interferes with or disrupts the operation of any manned aircraft;

(e) Uses an uncrewed aircraft to transport and introduce, or to attempt to transport and introduce, contraband, drugs, or dangerous instruments into a prison; or

(f) Operates an uncrewed aircraft and thereby causes serious bodily injury to another person.

(2) Misuse of uncrewed aircraft in the first degree is a class A felony.

(3) Subsection (1)(a), (b), (c), (d), and (g) shall not apply to any police officer, deputy sheriff, adult corrections officer, correctional worker, or fire department personnel acting within the course and scope of their duties, or to any other person acting under the authority of, or pursuant to a contract with, the United States or a state or county government, or any department or agency of the United States or a state or county government.

(4) For purposes of this subsection: "Contraband" has the same meaning as in section 710-1023. "Dangerous instrument" has the same meaning as in section 707-700. "Drug" has the same meaning as in section 710-1022. "Electric gun" has the same meaning as in section 134-81. "Explosive" means a device composed of a single ingredient, or mixture of ingredients, capable of instantaneously releasing a sufficient amount of energy to inflict substantial damage to persons or property, and includes fireworks as defined in section 132D-2. "Firearm" has the same meaning as in section 134-1. "Prison" includes jails, prisons, correctional centers, correctional facilities, and detention centers. "Serious bodily injury" has the same meaning as in section 707-700. "Weapon of mass destruction" means any weapon that is designed or intended to cause death or serious bodily injury through the release, dissemination, or impact of toxic or poisonous chemicals, or other precursors, and includes any weapon involving a biological agent, toxin, or vector and any weapon designed to release radiation or radioactivity at a level dangerous to human life.

711-1122 HRS

711-1122 Misuse of uncrewed aircraft in the second degree.

(1) A person commits the offense of misuse of uncrewed aircraft in the second degree if the person intentionally or knowingly:

(a) Disables any required identification transmission or signaling of an uncrewed aircraft;

(b) Disables or obscures any anti-collision lighting of an uncrewed aircraft or fails to have or illuminate the lighting as required by law or by the rules, regulations, and orders of the Federal Aviation Administration;

(c) Operates an uncrewed aircraft and thereby causes substantial bodily injury to another person; or

(d) Operates an uncrewed aircraft and thereby damages the property of another, without the other's consent, in an amount exceeding $20,000.

(2) Misuse of uncrewed aircraft in the second degree is a class B felony.

(3) This section shall not apply to any police officer, deputy sheriff, adult corrections officer, correctional worker, or fire department personnel acting within the course and scope of their duties, or to any other person acting under the authority of, or pursuant to a contract with, the United States or a state or county government, or any department or agency of the United States or a state or county government.

(4) For purposes of this subsection, "substantial bodily injury" has the same meaning as in section 707-700.

711-1123 HRS

711-1123 Misuse of uncrewed aircraft in the third degree.

(1) A person commits the offense of misuse of uncrewed aircraft in the third degree if the person intentionally, knowingly, or recklessly:

(a) Removes, obliterates, alters, or tampers with the identification or registration number of an uncrewed aircraft;

(b) Operates an uncrewed aircraft and thereby obstructs, impairs, or hinders the performance of a police officer, deputy sheriff, or fire department personnel acting under color of their official authority;

(c) Operates an uncrewed aircraft and thereby causes bodily injury to another person;

(d) Operates an uncrewed aircraft and thereby damages the property of another, without the other's consent, in an amount exceeding $750;

(e) Operates an uncrewed aircraft while under the influence of an intoxicant;

(f) Operates an uncrewed aircraft after the person's license, certificate, or privilege to operate an uncrewed aircraft has been revoked, suspended, or otherwise restricted by the issuing governmental authority; or

(g) Uses an uncrewed aircraft in furtherance of the commission of a felony.

(2) Misuse of uncrewed aircraft in the third degree is a class C felony.

(3) This section shall not apply to any police officer, deputy sheriff, adult corrections officer, correctional worker, or fire department personnel acting within the course and scope of their duties, or to any other person acting under the authority of, or pursuant to a contract with, the United States or a state or county government, or any department or agency of the United States or a state or county government.

(4) For purposes of this subsection: "Bodily injury" has the same meaning as in section 707-700. "Intoxicant" has the same meaning as in section 291E-1. "Under the influence" has the same meaning as in section 291E-1; provided that the term "uncrewed aircraft" shall be substituted for the term "vehicle" as used therein.

711-1124 HRS

711-1124 Uncrewed aircraft; operation. Notwithstanding section 711-1121(3), 711-1122(3), and 711-1123(3), uncrewed aircraft shall be directly operated by a human operator at all times.

711-1125 HRS

711-1125 Trespass with an unmanned aircraft system.

(1) A person commits the offense of trespass with an unmanned aircraft system if the person intentionally causes an unmanned aircraft system to:

(a) Cross the property line of another and come within fifty feet of a dwelling to coerce, intimidate, or harass another person or, after having been given actual notice to desist, for any other reason; or

(b) Take off or land in violation of current Federal Aviation Administration special security instructions or unmanned aircraft systems security sensitive airspace restrictions.

(2) This section shall not apply if:

(a) Consent was given to the entry by any person with legal authority to consent or by any person who is lawfully present on the property; or

(b) The person was authorized by federal regulations to operate an unmanned aircraft system and was operating the system in an otherwise lawful manner and consistent with federal regulations.

(3) Trespass with an unmanned aircraft system is a misdemeanor.

711-1140 HRS

711-1140 Definitions. As used in this part, unless the context clearly indicates or requires a different meaning: "Animal control authority" means a county agency that enforces animal control laws. "Bite injury" means any contact between an animal's mouth and teeth and the skin of a bite victim that causes visible trauma, such as a puncture wound, laceration, or other piercing of the skin. "Bodily injury" has the same meaning as defined in section 707-700. "Dangerous dog" means any dog that, without provocation, causes a bite injury to a person or another animal. A dog's breed shall not be considered in determining whether it is dangerous. "Escape-proof kennel" means a kennel:

(1) That allows a dog to stand normally and without restriction, is at least two and one-half times the length of the dog, and protects the dog from the elements;

(2) Having fencing or wall materials that have no openings or gaps that exceed two inches; and

(3) Having no gates, or gates that are lockable and designed to prevent the entry of children or the escape of the dog. "Microchip" has the same meaning as defined in section 143-1. "Negligently" has the same meaning as set forth in section 702-206(4). "Officer " means any sheriff, deputy, and any member of a police force and animal control officers of the several counties of the State. "Owner" means any person owning, harboring, or keeping a dog; provided that, if the owner is a minor under the age of eighteen years, the parents, guardian, or another person having the care, custody, or control of the minor shall be presumed to be the owner; provided further that the person whose current contact information is registered with a microchip registration company shall be presumed to be the owner of the dog. "Provocation" means behavior that precipitates a bite injury caused by a dog under the following circumstances:

(1) The dog was protecting or defending its owner or a member of its owner's household from an attack or assault;

(2) The person bitten was committing a crime or offense while on the property of the owner of the dog;

(3) The person bitten was teasing, tormenting, abusing, or assaulting the dog or at any time in the past had teased, tormented, abused, or assaulted the dog;

(4) The dog was attacked or menaced by another animal, or the animal was on the property of the owner of the dog;

(5) The dog was responding to pain or injury inflicted by the person bitten or another animal;

(6) The dog was protecting itself, its kennel, or its offspring from the person bitten or an animal; or

(7) The person bitten or an animal was disturbing the dog's natural functions, such as sleeping or eating, while the dog was on its owner's property. "Serious bodily injury" has the same meaning as defined in section 707-700. "Serious injury to any animal" means physical injury to an animal involving a broken bone, concussion, laceration requiring multiple stitches, or tearing or rupture of an organ. "Substantial bodily injury" has the same meaning as defined in section 707-700.

711-1141 HRS

711-1141 Designation as dangerous dog; basis.

(1) An officer may find and declare a dog to be a dangerous dog if the officer has probable cause to believe that the dog falls within the definition of "dangerous dog". The declaration shall be based upon:

(a) The written complaint of a person who is willing to testify that the dog has acted in a manner that causes it to fall within the definition of "dangerous dog";

(b) Actions of the dog witnessed by an officer; or

(c) Other substantial evidence admissible in court.

(2) The declaration in subsection (1) shall be in writing and shall be served by the officer upon the owner of the dangerous dog, if known, using one of the following methods:

(a) Certified mail to the owner's last known address; or

(b) Personally.

(3) The owner of a dog declared to be a dangerous dog may initiate a contested case with the declarant officer's department or agency within thirty days following the service date of the declaration.

711-1142 HRS

711-1142 Legal requirements of owner.

(1) The owner of a dog declared to be a dangerous dog shall:

(a) Provide the owner's name, address, and telephone number to the animal control authority;

(b) Provide the location where the dangerous dog is currently kept, if the location is not the owner's address, to the animal control authority;

(c) Promptly notify the animal control authority of:

(i) Any changes in the ownership of the dangerous dog or the location of the dangerous dog, along with the names, addresses, and telephone numbers of the new owners or the new address where the dangerous dog is located; (ii) Any further instances of an attack by the dangerous dog upon a person or an animal; (iii) Any current or future claims made or

legal actions brought as a result of an attack by the dangerous dog upon a person or an animal; or (iv) The death of the dangerous dog;

(d) Have a microchip implanted in the dangerous dog, register the owner's microchip information pursuant to section 143-2.2, and provide the microchip identification number of the dangerous dog to the animal control authority;

(e) Ensure that the dangerous dog is under the control of a person who is at least eighteen years of age, when the dangerous dog is indoors at the owner's premises;

(f) Ensure that when the dangerous dog is outdoors on the owner's premises and unattended, the dangerous dog is confined to an escape-proof kennel that remains locked;

(g) Ensure that when the dangerous dog is outdoors on the owner's premises and attended, the dangerous dog is:

(i) Kept on a fixed and secure leash no longer than four feet in length; (ii) Under the control of a person at least eighteen years of age; and (iii) Kept within a fenced or walled area where it cannot escape;

(h) Ensure that when the dangerous dog is outdoors outside the owner's premises, the dangerous dog is:

(i) Kept on a fixed and secure leash no longer than four feet in length; (ii) Under the control of a person who is at least eighteen years of age; and (iii) Muzzled with a properly fitted, basket muzzle that prevents the dangerous dog from biting any person or animal but does not cause injury to the dangerous dog or interfere with its vision or respiration;

(i) Place on the owner's premises a sign or signs provided by the animal control authority informing the public of the presence and dangerousness of the dangerous dog; and

(j) Neuter or spay the dangerous dog at the owner's expense, unless neutering or spaying the dangerous dog is medically contraindicated.

(2) The owner of a dangerous dog who keeps the dangerous dog in a manner found to be in violation of this section commits the offense of negligent failure to control a dangerous dog and the dangerous dog shall be subject to seizure and impoundment pursuant to this part if the owner is unable to immediately secure the dangerous dog.

711-1143 HRS

711-1143 Rescission of declaration.

(1) The owner of a dangerous dog may apply to the animal control authority to have the declaration rescinded after three years if all of the following requirements have been met:

(a) The owner and dangerous dog have had no subsequent violations of this part;

(b) The owner has complied with all provisions of this part for a period of three years; and

(c) The owner provides proof to the animal control authority of the dangerous dog's successful completion of a behavior modification or management program administered by an animal trainer or behaviorist who is certified by a nationally recognized organization.

(2) If the animal control authority finds that the owner and dangerous dog have complied with all of the requirements of this section and the owner has provided sufficient evidence that the dog is no longer dangerous, the animal control authority shall rescind the declaration.

711-1144 HRS

711-1144 Negligent failure to control a dangerous dog; penalties.

(1) The owner of a dangerous dog commits the offense of negligent failure to control a dangerous dog if:

(a) A bite injury occurs due to the failure of the owner of a dangerous dog to comply with the requirements of this part; or

(b) The owner of a dangerous dog negligently fails to take reasonable measures to prevent the dangerous dog from causing a bite injury, without provocation, to a person or another animal and the attack results in:

(i) The serious injury to any animal or maiming or death of another animal; (ii) Bodily injury to a person other than the owner; or (iii) Substantial bodily injury to, serious bodily injury to, or the death of, a person other than the owner.

(2) An offense under subsection (1)(a), (1)(b)(i), or (1)(b)(ii) shall be a misdemeanor for which the owner of the dangerous dog shall be sentenced to:

(a) A fine of no less than $1,000 but no more than $2,000;

(b) A term of imprisonment of up to six months or a period of probation of no more than one year;

(c) The payment of restitution to any person who has suffered bodily injury or property damage as a result of an attack by the dangerous dog if the person suffers financial losses or medical expenses due to the attack. As used in this paragraph, "medical expenses" may include the costs of necessary counseling or rehabilitative services; and

(d) The payment of all expenses for the boarding and retention of the dangerous dog if the dog is seized and impounded pursuant to this part; provided that no sentence under this subsection shall be suspended.

(3) Unless the dangerous dog has been or is ordered to be euthanized, an owner who has negligently failed to control a dangerous dog shall also be required to:

(a) Meet all conditions imposed on the owner of a dangerous dog pursuant to this part;

(b) Obtain liability insurance or post bond of no less than $50,000, or in a higher amount, if the court finds that a higher amount is appropriate to cover medical or veterinary costs, or both, resulting from potential future actions of the dangerous dog; and

(c) Follow any other condition that the court deems necessary to restrain or control the dangerous dog.

(4) An offense under subsection (1)(b)(iii) shall be a class C felony for which the owner of a dangerous dog shall be sentenced to:

(a) A fine of no less than $1,000 but no more than $10,000;

(b) A term of imprisonment of no less than one year but no more than five years, pursuant to chapter 706; and

(c) The euthanasia of the dangerous dog; provided that no sentence under this subsection shall be suspended.

711-1145 HRS

711-1145 Impoundment of a dangerous dog.

(1) If there is probable cause to believe that the dangerous dog poses an imminent threat to a person or another animal, or if there is probable cause to believe that there is a violation of section 711-1142 or 711-1144, a law enforcement officer, after obtaining a search warrant, or in any other manner authorized by law, may enter the premises where the dangerous dog is located to seize and impound the dog. If, after reasonable effort, the owner or person having custody of the dangerous dog cannot be found and notified of the impoundment, an impoundment notice shall be conspicuously posted on the premises and, within seventy-two hours after posting, the notice shall be sent by certified mail to the address, if any, from which the dangerous dog was removed. A law enforcement officer shall not be liable for any damage resulting from an entry under this subsection, unless the damage was caused by acts beyond the scope of the officer's authority or the officer's negligence, gross negligence, or intentional misconduct.

(2) The owner of a dangerous dog that has been impounded under this section may decline to surrender ownership of the dangerous dog to the animal control authority by paying to the animal control authority impoundment, care, and provision costs in an amount determined by the animal control authority to be sufficient to provide for the dangerous dog's care by the animal control authority for at least thirty days, including the day on which the animal was taken into custody.

(3) If the owner of a dangerous dog that has been impounded under this section cannot be located within five days after the dangerous dog is impounded, ownership of the dangerous dog shall be deemed relinquished.

(4) At the request of the dangerous dog's owner, impoundment under this section may occur at the premises of a licensed veterinarian or a commercial kennel of the dangerous dog owner's choosing; provided that:

(a) The owner shall secure the private boarding placement for the dangerous dog within five days after the dangerous dog has been impounded by the animal control authority; and

(b) All expenses for the dangerous dog's boarding and care shall be borne by the dangerous dog's owner.

(5) If the owner of the dangerous dog does not arrange for private boarding placement, the following requirements shall apply:

(a) The owner of the dangerous dog shall pay the animal control authority within five days after the dangerous dog is impounded; and

(b) At the end of the time for which expenses are covered by an initial or any subsequent impoundment, care, and provision payment:

(i) If the owner of the dangerous dog declines to surrender ownership of the dangerous dog to the animal control authority, the owner shall make an additional payment to the animal control authority at least five days before the

expiration of the previous payment; or (ii) If the owner of the dangerous dog has not made an additional payment in a timely manner to the animal control authority for impoundment, care, and provision costs for the dangerous dog, ownership of the dangerous dog shall be deemed relinquished.

(6) If the owner of a dangerous dog fails to pay impoundment, care, and provision costs for the dangerous dog pursuant to this section, the owner may forfeit the owner's right to contest those costs and any ownership rights to the dangerous dog.

(7) Any dangerous dog that is unclaimed by its owner, within five days after the owner has been notified that the dangerous dog is eligible for release from impoundment, shall be deemed abandoned, and ownership of the dangerous dog shall be deemed relinquished.

(8) If an animal control authority that is impounding a dangerous dog pursuant to this section determines that the dangerous dog is too dangerous for its staff to safely provide basic care, the dangerous dog may be euthanized by the animal control authority.

(9) If a licensed veterinarian determines that an impounded dangerous dog is:

(a) Experiencing extreme pain or suffering;

(b) Severely injured past recovery;

(c) Severely disabled past recovery; or

(d) Severely diseased past recovery, the dangerous dog may be euthanized by the animal control authority.

(10) The owner of a dangerous dog shall not sell or transfer the ownership or physical custody of the dangerous dog before the time period stated in the court summons, and the citation shall notify the owner of this prohibition; provided that this prohibition shall not apply when the owner transfers ownership of the dangerous dog to an animal control authority.

(11) Any person who refuses to surrender a dangerous dog that is subject to relinquishment pursuant to this section shall be guilty of a petty misdemeanor. If the owner of a dangerous dog that is seized and impounded pursuant to this section fails to appear in court as required, ownership of the dangerous dog shall be deemed relinquished, and the court may order disposition of the dangerous dog as it deems appropriate.

(12) Notwithstanding any relinquishment of ownership of the dangerous dog, the owner shall remain responsible for all expenses incurred in boarding, caring for, and providing for the dangerous dog and any fees and penalties that may be imposed by the court.

711-1146 HRS

711-1146 Inspection. Upon the presentation of proper credentials, any officer may enter at reasonable times any building, structure, or premises in the State for the purpose of determining and enforcing compliance with this part or of any court order issued under this part; provided that the entry shall be made in a manner that causes the least possible inconvenience to the person in possession or occupying the building, structure, or premises; provided further that a court order authorizing the entry shall be obtained if entry is denied or resisted.

711-1147 HRS

711-1147 Exemption. This part shall not apply to dogs owned by any law enforcement agency and used in the performance of law enforcement work.

711-1148 HRS

711-1148 Civil action not precluded. Nothing in this part shall preclude any person injured by a dangerous dog from bringing a civil action against the owner of the dangerous dog pursuant to law.

Chapter 712

712-1200 I

712-1200 Prostitution.

(1) A person commits the offense of prostitution if the person engages in, or agrees or offers to engage in, sexual conduct with another person in return for a fee or anything of value.

(2) As used in this section: "Minor" means a person who is less than eighteen years of age. "Seeks medical or law enforcement assistance" includes but is not limited to making, or assisting someone who is making, a report to the 911 system, a poison control center, a medical provider, a reproductive health provider, or any law enforcement agency or providing care to someone who is awaiting the arrival of medical or law enforcement personnel. "Sexual conduct" means "sexual penetration", "deviate sexual intercourse", or "sexual contact", as those terms are defined in section 707-700, or "sadomasochistic abuse" as defined in section 707-752.

(3) Prostitution shall be a petty misdemeanor; provided that if the person who commits the offense under subsection (1) is a minor, prostitution shall be a violation.

(4) A person convicted of committing the offense of prostitution as a petty misdemeanor shall be sentenced as follows:

(a) For the first offense, when the court has not deferred further proceedings pursuant to chapter 853, a fine of no less than $500 but no more than $1,000 and the person may be sentenced to a term of imprisonment of no more than thirty days or probation; provided that in the event the convicted person defaults in payment of the fine, and the default was not contumacious, the court may make an order converting the unpaid portion of the fine to community service as authorized by section 706-605(1);

(b) For any subsequent offense, a fine of no less than $500 but no more than $1,000 and a term of imprisonment of thirty days or probation, without possibility of deferral of further proceedings pursuant to chapter 853 and without possibility of suspension of sentence; and

(c) For the purpose of this subsection, if the court has deferred further proceedings pursuant to chapter 853, and notwithstanding any provision of chapter 853 to the contrary, the defendant shall not be eligible to apply for expungement pursuant to section 831-3.2 until three years following discharge. A plea previously entered by a defendant under section 853-1 for a violation of this section shall be considered a prior offense.

(5) This section shall not apply to any member of a police department, a sheriff, or a law enforcement officer acting in the course and scope of duties; provided that the member of a police department, sheriff, or law enforcement officer is engaging in undercover operations; provided further that under no circumstances shall sexual contact initiated by a member of a police department, sheriff, or law enforcement officer; sexual penetration; or sadomasochistic abuse be considered to fall within the course and scope of duties.

(6) A minor may be taken into custody by any police officer without order of the judge when there are reasonable grounds to believe that the minor has violated subsection (1). The minor shall be released, referred, or transported pursuant to section 571-31(b). The minor shall be subject to the jurisdiction of the family court pursuant to section 571-11(1), including for the purposes of custody, detention, diversion, and access to services and resources.

(7) Notwithstanding this section or any other law to the contrary, a person who in good faith seeks medical or law enforcement assistance for themselves or another person, or is the subject of another person's good faith act seeking medical or law enforcement assistance, shall not:

(a) Be arrested, charged, prosecuted, or convicted;

(b) Have their property be subject to civil forfeiture; or

(c) Otherwise be penalized, pursuant to this section if the probable cause or evidence for the arrest, charge, prosecution, conviction, seizure, or penalty was gained as a result of seeking medical or law enforcement assistance; provided that this subsection shall not apply to any other criminal offense.

712-1200.5 HRS

712-1200.5 Commercial sexual exploitation.

(1) A person commits the offense of commercial sexual exploitation if the person provides, agrees to provide, or offers to provide a fee or anything of value to another to engage in sexual conduct.

(2) As used in this section, "sexual conduct" has the same meaning as in section 712■1200(2).

(3) Except as provided in subsection (4), commercial sexual exploitation is a petty misdemeanor.

(4) Commercial sexual exploitation is a class C felony if the person who commits the offense under subsection (1) does so in reckless disregard of the fact that the person exploited is a victim of sex trafficking.

(5) A person convicted of committing the offense of commercial sexual exploitation as a petty misdemeanor shall be sentenced as follows:

(a) For the first offense, a fine of no less than $500 but no more than $1,000 and the person may be sentenced to a term of imprisonment of no more than thirty days or probation; provided that in the event the convicted person defaults in payment of the fine, and the default was not contumacious, the court may order conversion of the unpaid portion of the fine to community service as authorized by section 706-605(1);

(b) For any subsequent offense, a fine of no less than $500 but no more than $1,000 and a term of imprisonment or probation of no more than thirty days, without possibility of suspension of sentence; and

(c) For purposes of this subsection, the court may impose as a condition of probation that the defendant complete a course of exploitation intervention classes; provided that the court shall only impose the condition for one term of probation.

(6) This section shall not apply to any member of a police department, a sheriff, or a law enforcement officer acting in the course and scope of duties; provided that the member of a police department, sheriff, or law enforcement officer is engaging in undercover operations; provided further that under no circumstances shall sexual contact initiated by a member of a police department, sheriff, or law enforcement officer; sexual penetration; or sadomasochistic abuse be considered to fall within the course and scope of duties.

712-1201

712-1201 Advancing prostitution; profiting from prostitution; definition of terms. In sections 712-1202 and 712-1203:

(1) A person "advances prostitution" if the person knowingly causes or aids a person to commit or engage in prostitution, procures or solicits patrons for prostitution, provides persons for prostitution purposes, permits premises to be regularly used for prostitution purposes, operates or assists in the operation of a house of prostitution or a prostitution enterprise, or engages in any other conduct designed to institute, aid, or facilitate an act or enterprise of prostitution;

(2) A person "profits from prostitution" if the person accepts or receives money, anything of value, or other property pursuant to an agreement or understanding with any person whereby the person participates or is to participate in the proceeds of prostitution activity; and

(3) The definitions in subsections (1) and (2) shall not include those engaged in conduct outlined in section 712-1200 as the prostituted person or section 712-1200.5 as the person engaged in commercial sexual exploitation.

712-1202 Sex trafficking

712-1202 Sex trafficking.

(1) A person commits the offense of sex trafficking if the person knowingly:

(a) Advances prostitution by compelling or inducing a person by force, threat, fraud, coercion, or intimidation to engage in prostitution, or profits from such conduct by another; or

(b) Advances prostitution or profits from prostitution of a minor.

(2) Sex trafficking is a class A felony.

(3) As used in this section: "Fraud" means making material false statements, misstatements, or omissions. "Minor" means a person who is less than eighteen years of age. "Threat" means any of the actions listed in section 707■764(1).

(4) The state of mind requirement for the offense under subsection (1)(b) is not applicable to the fact that the victim was a minor. A person is strictly liable with respect to the attendant circumstances that the victim was a minor.

712-1203 Promoting prostitution

712-1203 Promoting prostitution.

(1) A person commits the offense of promoting prostitution if the person knowingly advances or profits from prostitution.

(2) Promoting prostitution is a class B felony.

712-1204 REPEALED

712-1204 REPEALED. L 2011, c 145, §6.

712-1206

712-1206 Loitering for the purpose of engaging in or advancing prostitution.

(1) For the purposes of this section: "Public place" means any street, sidewalk, bridge, alley or alleyway, plaza, park, driveway, parking lot or transportation facility or the doorways and entrance ways to any building that fronts on any of the aforesaid places, or a motor vehicle in or on any such place. "Seeks medical or law enforcement assistance" includes but is not limited to making, or assisting someone who is making, a report to the 911 system, a poison control center, a medical provider, a reproductive health provider, or any law enforcement agency or providing care to someone who is awaiting the arrival of medical or law enforcement personnel.

(2) Any person who remains or wanders about in a public place and repeatedly:

(a) Beckons to, stops, or attempts to stop or engage passers-by in conversation;

(b) Stops or attempts to stop motor vehicles; or

(c) Interferes with the free passage of other persons, for the purpose of committing the crime of prostitution as that term is defined in section 712-1200 shall be guilty of a violation.

(3) Any person who remains or wanders about in a public place and repeatedly:

(a) Beckons to, stops, or attempts to engage passers-by in conversation;

(b) Stops or attempts to stop motor vehicles; or

(c) Interferes with the free passage of other persons, for the purpose of committing the crime of advancing prostitution as that term is defined in section 712-1201(1) shall be guilty of a petty misdemeanor.

(4) Notwithstanding this section or any other law to the contrary, a person who in good faith seeks medical or law enforcement assistance for themselves or another person, or is the subject of another person's good faith act seeking medical or law enforcement assistance, shall not:

(a) Be arrested, charged, prosecuted, or convicted;

(b) Have their property be subject to civil forfeiture; or

(c) Otherwise be penalized, pursuant to this section if the probable cause or evidence for the arrest, charge, prosecution, conviction, seizure, or penalty was gained as a result of seeking medical or law enforcement assistance; provided that this subsection shall not apply to any other criminal offense.

712-1207

712-1207 Street prostitution and commercial sexual exploitation; designated areas.

(1) It shall be unlawful for any person within the boundaries of Waikiki and while on any public property to:

(a) Offer or agree to engage in sexual conduct with another person in return for a fee or anything of value; or

(b) Provide, agree to provide, or offer to provide a fee or anything of value to another person to engage in sexual conduct.

(2) It shall be unlawful for any person within the boundaries of other areas in the State designated by county ordinance pursuant to subsection (3), and while on any public property to:

(a) Offer or agree to engage in sexual conduct with another person in return for a fee or anything of value; or

(b) Provide, agree to provide, or offer to provide a fee or anything of value to another person to engage in sexual conduct.

(3) Upon a recommendation of the chief of police of a county, that county may enact an ordinance that:

(a) Designates areas, each no larger than three square miles, as zones of significant prostitution-related activity that is detrimental to the health, safety, or welfare of the general public; or

(b) Alters the boundaries of any existing area under paragraph (a); provided that not more than four areas may be designated within the State.

(4) Notwithstanding any law to the contrary, any person violating this section shall be guilty of a petty misdemeanor and shall be sentenced to a mandatory term of thirty days imprisonment. The term of imprisonment shall be imposed immediately, regardless of whether the defendant appeals the conviction, except as provided in subsection (5).

(5) As an option to the mandatory term of thirty days imprisonment, if the court finds the option is warranted based upon the defendant's record, the court may place the defendant on probation for a period not to exceed six months, subject to the mandatory condition that the defendant observe geographic restrictions that prohibit the defendant from entering or

remaining on public property, in Waikiki and other areas in the State designated by county ordinance during the hours from 6 p.m. to 6 a.m. Upon any violation of the geographic restrictions by the defendant, the court, after a hearing, shall revoke the defendant's probation and immediately impose the mandatory thirty-day term of imprisonment. Nothing contained in this subsection shall be construed as prohibiting the imposition of stricter geographic restrictions under section 706-624(2)(h).

(6) Any person charged under this section may be admitted to bail, pursuant to section 804-4, subject to the mandatory condition that the person observe geographic restrictions that prohibit the defendant from entering or remaining on public property, in Waikiki and other areas in the State designated by county ordinance during the hours from 6 p.m. to 6 a.m. Notwithstanding any other provision of law to the contrary, any person who violates these bail restrictions shall have the person's bail revoked after a hearing and shall be imprisoned. Nothing contained in this subsection shall be construed as prohibiting the imposition of stricter geographic restrictions under section 804-7.1.

(7) Notwithstanding any other law to the contrary, a police officer, without warrant, may arrest any person when the officer has probable cause to believe that the person has committed a violation of subsection (5) or (6), and the person shall be detained, without bail, until the hearing under the appropriate subsection can be held, which shall be held as soon as reasonably practicable.

(8) For purposes of this section: "Area" means any zone within a county that is defined with specific boundaries and designated as a zone of significant prostitution by this section or a county ordinance. "Public property" includes any street, highway, road, sidewalk, alley, lane, bridge, parking lot, park, or other property owned or under the jurisdiction of any governmental entity or otherwise open to the public. "Seeks medical or law enforcement assistance" includes but is not limited to making, or assisting someone who is making, a report to the 911 system, a poison control center, a medical provider, a reproductive health provider, or any law enforcement agency or providing care to someone who is awaiting the arrival of medical or law enforcement personnel. "Sexual conduct" has the same meaning as in section 712-1200(2). "Waikiki" means that area of Oahu bounded by the Ala Wai canal, the ocean, and Kapahulu avenue.

(9) This section shall apply to all counties; provided that if a county enacts an ordinance to regulate street prostitution and commercial sexual exploitation, other than an ordinance designating an area as a zone of significant prostitution-related activity, the county ordinance shall supersede this section and no person shall be convicted under this section in that county.

(10) Notwithstanding this section or any other law to the contrary, a person, except for a person who provides, agrees to provide, or offers to provide a fee or anything of value to another person to engage in sexual conduct, who in good faith seeks medical or law enforcement assistance for themselves or another person, or is the subject of another person's good faith act seeking medical or law enforcement assistance, shall not:

(a) Be arrested, charged, prosecuted, or convicted;

(b) Have their property be subject to civil forfeiture; or

(c) Otherwise be penalized, pursuant to this section, if the probable cause or evidence for the arrest, charge, prosecution, conviction, seizure, or penalty was gained as a result of seeking medical or law enforcement assistance; provided that this subsection shall not apply to any other criminal offense.

712-1208 Bill

712-1208 Promoting travel for prostitution.

(1) A person commits the offense of promoting travel for prostitution if the person knowingly sells or offers to sell travel services that include or facilitate travel for the purpose of engaging in what would be prostitution if occurring in the State.

(2) "Travel services" has the same meaning as in section 468L-1.

(3) Promoting travel for prostitution is a class C felony.

712-1209 HRS

712-1209 Commercial sexual exploitation near schools or public parks.

(1) A person commits the offense of commercial sexual exploitation near schools or public parks if, within seven hundred fifty feet of a school or public park, the person provides, agrees to provide, or offers to provide a fee or anything of value to another person to engage in sexual conduct.

(2) Commercial sexual exploitation near schools or public parks is a misdemeanor.

(3) For purposes of this section: "School" has the same meaning as in section 712-1249.6(6). "Sexual conduct" has the same meaning as in section 712■1200(2).

712-1209.1 HRS

712-1209.1 Commercial sexual exploitation of a minor.

(1) A person eighteen years of age or older commits the offense of commercial sexual exploitation of a minor if the person intentionally, knowingly, or recklessly:

(a) Offers or agrees to provide anything of value to a member of a police department, a sheriff, or a law enforcement officer who represents that person's self as a minor to engage in sexual conduct;

(b) Provides anything of value to a minor or third person as compensation for having engaged in sexual conduct with a minor;

(c) Agrees to provide or offers to provide anything of value to a minor or third person for the purpose of engaging in sexual conduct with a minor; or

(d) Solicits, offers to engage in, or requests to engage in sexual conduct with a minor in return for anything of value.

(2) Commercial sexual exploitation of a minor is a class B felony.

(3) In addition to any other authorized disposition, a person convicted of committing the offense of commercial sexual exploitation of a minor shall be sentenced to pay a fine of no less than $5,000.

(4) This section shall not apply to any member of a police department, a sheriff, or a law enforcement officer acting in the course and scope of duties; provided that the member of a police department, sheriff, or law enforcement officer is engaging in undercover operations; provided further that under no circumstances shall sexual contact initiated by a member of a police department, sheriff, or law enforcement officer; sexual penetration; or sadomasochistic abuse be considered to fall within the course and scope of duties.

(5) The state of mind requirement for the offense under subsection (1)(b) is not applicable to the fact that the victim was a minor. A person is strictly liable with respect to the attendant circumstance that the victim was a minor; provided that the person had a reasonable opportunity to observe the victim.

(6) Consent of a minor to the sexual conduct does not constitute a defense to any offense in this section.

(7) For purposes of this section: "Minor" means a person who is less than eighteen years of age. "Sexual conduct" has the same meaning as in section 712■1200(2).

712-1209.5 HRS

712-1209.5 Habitual commercial sexual exploitation.

(1) A person commits the offense of habitual commercial sexual exploitation if the person is a habitual commercial sexual exploitation offender and provides, agrees to provide, or offers to provide a fee or anything of value to another person to engage in sexual conduct.

(2) For the purposes of this section, a person has the status of a "habitual commercial sexual exploitation offender" if the person, at the time of the conduct for which the person is charged, had two or more convictions within ten years of the instant offense for:

(a) Commercial sexual exploitation, in violation of section 712-1200.5;

(b) Street prostitution and commercial sexual exploitation, in violation of section 712-1207(1)(b) or (2)(b);

(c) Habitual commercial sexual exploitation, in violation of this section;

(d) An offense of this jurisdiction or any other jurisdiction that is comparable to one of the offenses in paragraph (a), (b), or (c); or

(e) Any combination of the offenses in paragraph (a), (b), (c), or (d). A conviction for purposes of this section is a judgment on the verdict or a finding of guilt, or a plea of guilty or nolo contendere. The convictions shall have occurred on separate dates and be for separate incidents on separate dates. At the time of the instant offense, the conviction shall not have been expunged by pardon, reversed, or set aside.

(3) Habitual commercial sexual exploitation is a class C felony.

712-1209.6 HRS

712-1209.6 Prostitution; motion to vacate conviction.

(1) A person convicted of committing the offense of prostitution under section 712-1200, loitering for the purpose of engaging in or advancing prostitution under section 712-1206(2), street prostitution and commercial sexual exploitation in designated areas under section 712-1207(1)(a) or (2)(a), or convicted of a lesser offense when originally charged with a violation of section 712-1200, 712-1206(2), or 712-1207(1)(a) or (2)(a), may file a motion to vacate the conviction if the defendant is not subsequently convicted of any offense under the Hawaii Penal Code within three years after the date of the original conviction.

(2) The court shall hold a hearing on a motion filed under this section to review the defendant's record over the three years after the date of the original conviction under section 712-1200, 712-1206(2), or 712-1207(1)(a) or (2)(a) or conviction of a lesser offense when originally charged with a violation of any of those sections, and if the court finds that the defendant has not been convicted of any offense under the Hawaii Penal Code within this three year period, the court shall vacate the conviction.

712-1210 II

712-1210 Definitions of terms in this part. In this part, unless a different meaning is required: "Age verification records of sexually exploited individuals" means individually identifiable records pertaining to every sexually exploited individual provided to patrons or customers of a public establishment or in a private club or event. Such records shall include:

(1) Each sexually exploited individual's name and date of birth, as ascertained by an examination of the individual's valid driver's license, official state identification card, or passport;

(2) A certified copy of each sexually exploited individual's driver's license, official state identification card, or passport; and

(3) Any name ever used by each sexually exploited individual including but not limited to maiden name, aliases, nicknames, stage names, or professional names. "Age verification records of sexual performers" means individually identifiable records pertaining to every sexual performer portrayed in a visual depiction of sexual conduct, which include:

(1) Each performer's name and date of birth, as ascertained by the producer's personal examination of a performer's valid driver's license, official state identification card, or passport;

(2) A certified copy of each performer's valid driver's license, official state identification card, or passport; and

(3) Any name ever used by each performer including, but not limited to, maiden name, alias, nickname, stage name, or professional name. "Community standards" means the standards of the State. "Disseminate" means to manufacture, issue, publish, sell, lend, distribute, transmit, exhibit, or present material or to offer or agree to do the same. "Erotic or nude massager" means a nude person providing massage services with or without a license. "Exotic or nude dancer" means a person performing, dancing, or entertaining in the nude, and includes patrons participating in a contest or receiving instruction in nude dancing. "Intent to profit" means the intent to obtain monetary gain. "Material" means any printed matter, visual representation, or sound recording, and includes but is not limited to books, magazines, motion picture films, pamphlets, newspapers, pictures, photographs, drawings, sculptures, and tape or wire recordings. "Minor" means any person less than sixteen years old. "Nude" means unclothed or in attire, including but not limited to sheer or see-through attire, so as to expose to view any portion of the pubic hair, anus, cleft of the buttocks, genitals or any portion of the female breast below the top of the areola. "Performance" means any play, motion picture film, dance, or other exhibition performed before an audience. "Pornographic". Any material or performance is "pornographic" if all of the following coalesce:

(a) The average person, applying contemporary community standards would find that, taken as a whole, it appeals to the prurient interest.

(b) It depicts or describes sexual conduct in a patently offensive way.

(c) Taken as a whole, it lacks serious literary, artistic, political, or scientific merit. "Pornographic for minors". Any material or performance is "pornographic for minors" if:

(1) It is primarily devoted to explicit and detailed narrative accounts of sexual excitement, sexual conduct, or sadomasochistic abuse; and:

(a) It is presented in such a manner that the average person applying contemporary community standards, would find that, taken as a whole, it appeals to the prurient interest; and

(b) Taken as a whole, it lacks serious literary, artistic, political, or scientific value; or

(2) It contains any photograph, drawing, or similar visual representation of any person of the age of puberty or older revealing such person with less than a fully opaque covering of his or her genitals and pubic area, or depicting such person in a state of sexual excitement or engaged in acts of sexual conduct or sadomasochistic abuse; and:

(a) It is presented in such a manner that the average person, applying contemporary community standards, would find that, taken as a whole, it appeals to the prurient interest; and

(b) Taken as a whole, it lacks serious literary, artistic, political, or scientific value. "Produces" means to manufacture or publish any pornographic performance, book, magazine, periodical, film, videotape, computer image, or other similar matter and includes the duplication, reproduction, or reissuing of any such matter, but does not include mere distribution or any other activity that does not involve hiring, contracting for, managing, or otherwise arranging for the participation of the performers depicted. "Sadomasochistic abuse" means flagellation or torture by or upon a person as an act of sexual stimulation or gratification. "Sexual conduct" means acts of masturbation, bestiality, sexual intercourse or physical contact with a person's clothed or unclothed genitals, pubic area, buttocks, or the breast or breasts of a female for the purpose of sexual stimulation, gratification, or perversion. "Sexual excitement" means the condition of the human male or female genitals when in a state of sexual stimulation or arousal. "Sexually exploited individuals" means erotic or nude massagers and exotic or nude dancers. "Sexual performer" includes any person portrayed in a pornographic visual depiction engaging in, or assisting another person to engage in, sexual conduct.

712-1211 Displaying indecent matter

712-1211 Displaying indecent matter.

(1) A person commits the offense of displaying indecent matter if the person knowingly or recklessly displays on any sign, billboard, or other object visible from any street, highway, or public sidewalk, a photograph, drawing, sculpture, or similar visual representation of any person of the age of puberty or older:

(a) Which reveals the person with less than a fully opaque covering over his or her genitals, pubic area, or buttocks, or depicting the person in a state of sexual excitement or engaged in an act of sexual conduct or sadomasochistic abuse;

(b) Which is presented in such a manner as to exploit lust; and

(c) Which lacks serious literary, artistic, political, or scientific value.

(2) Displaying indecent material is a petty misdemeanor.

712-1212 REPEALED

712-1212 REPEALED. L 1973, c 136, §10. Previous Vol14_Ch0701-0853 Next

712-1213

712-1213 Displaying indecent material; prima facie evidence. The fact that a person engaged in the conduct specified by section 712-1211 is prima facie evidence that the person engaged in that conduct with knowledge of or in reckless disregard of the character, content, or connotation of the material which is displayed.

712-1214 Promoting pornography

712-1214 Promoting pornography.

(1) A person commits the offense of promoting pornography if, knowing its content and character, the person:

(a) Disseminates for monetary consideration any pornographic material;

(b) Produces, presents, or directs pornographic performances for monetary consideration; or

(c) Participates for monetary consideration in that portion of a performance which makes it pornographic.

(2) Promoting pornography is a misdemeanor.

712-1215 Promoting pornography for minors

712-1215 Promoting pornography for minors.

(1) A person commits the offense of promoting pornography for minors if:

(a) Knowing its character and content, the person disseminates to a minor material that is pornographic for minors;

(b) Knowing its character and content, the person disseminates material that is pornographic for minors to a law enforcement officer who represents that officer's self as a minor; or

(c) Knowing the character and content of a motion picture film or other performance that, in whole or in part, is pornographic for minors, the person:

(i) Exhibits the motion picture film or other performance to a minor; (ii) Sells to a minor an admission ticket or pass to premises where there is exhibited or to be exhibited the motion picture film or other performance; or (iii) Admits a minor to premises where there is exhibited or to be exhibited the motion picture film or other performance.

(2) Subsection (1) does not apply to a parent or legal guardian of the minor or to a sibling of the minor, or to a person who commits any act specified therein in the person's capacity and within the scope of the person's employment as a member of the staff of any public library.

(3) Promoting pornography for minors is a class C felony.

712-1215.5

712-1215.5 Promoting minor-produced sexual images in the first degree.

(1) A person, eighteen years of age or older, commits the offense of promoting minor-produced sexual images in the first degree if the person intentionally or knowingly commands, requests, or encourages a minor to use a computer, cell phone, or any other device capable of electronic data transmission or distribution, to transmit to any person a nude photograph or video of a minor.

(2) For purposes of this section, a "minor" means any person under eighteen years of age.

(3) Promoting minor-produced sexual images in the first degree is a misdemeanor.

712-1215.6

712-1215.6 Promoting minor-produced sexual images in the second degree.

(1) A minor commits the offense of promoting minor-produced sexual images in the second degree if the minor:

(a) Knowingly uses a computer, cell phone, or any other device capable of electronic data transmission or distribution, to transmit or distribute to another person a nude photograph or video of a minor or the minor's self; or

(b) Intentionally or knowingly commands, requests, or encourages another minor to use a computer, cell phone, or any other device capable of electronic data transmission or distribution, to transmit to any person a nude photograph or video of a minor or the minor's self.

(2) A person, of any age, commits the offense of promoting minor-produced sexual images in the second degree if the person knowingly possesses a nude photograph or video of a minor transmitted or distributed in violation of subsection (1). It is an affirmative defense under this subsection that the person took reasonable steps to destroy or eliminate the nude photograph or video of a minor.

(3) For purposes of this section, a "minor" means any person under eighteen years of age.

(4) Promoting minor-produced sexual images in the second degree is a petty misdemeanor.

712-1216

712-1216 Promoting pornography; prima facie evidence.

(1) The fact that a person engaged in the conduct specified by section 712-1215 is prima facie evidence that the person engaged in that conduct with knowledge of the character and content of the material disseminated or the performance produced, presented, directed, participated in, exhibited, or to be exhibited.

(2) In a prosecution under section 712-1215, the fact that the person:

(a) To whom material pornographic for minors was disseminated;

(b) To whom a performance pornographic for minors was exhibited;

(c) To whom an admission ticket or pass was sold to premises where there was or was to have been exhibited such performance; or

(d) Who was admitted to premises where there was or was to have been such performance, was at that time, a minor, is prima facie evidence that the defendant knew the person to be a minor.

712-1216.5 HRS

712-1216.5 Importation, sale, or possession of a childlike sex doll.

(1) A person commits the offense of importation, sale, or possession of a childlike sex doll if the person intentionally, knowingly, or recklessly:

(a) Imports or causes to be imported into the State one or more childlike sex dolls;

(b) Sells, offers to sell, distributes, or otherwise provides to another person one or more childlike sex dolls; or

(c) Possesses one or more childlike sex dolls.

(2) The importation, sale, or possession of one childlike sex doll is a misdemeanor.

(3) The importation, sale, or possession of two to five childlike sex dolls is a class C felony.

(4) The importation, sale, or possession of more than five childlike sex dolls is a class B felony.

(5) For purposes of this section, "childlike sex doll" means a doll, mannequin, or robot that is intended for sexual stimulation, gratification, or perversion and that has the features of, or features that resemble those of, a person below the age of puberty.

712-1217 Open lewdness

712-1217 Open lewdness.

(1) A person commits the offense of open lewdness if in a public place the person does any lewd act which is likely to be observed by others who would be affronted or alarmed.

(2) Open lewdness is a petty misdemeanor.

712-1218 Bill

712-1218 Failure to maintain age verification records of sexual performers.

(1) A person commits the offense of failure to maintain age verification records of sexual performers if the person knowingly produces any pornographic performance, book, magazine, periodical, film, videotape, computer image, or other matter that contains one or more pornographic visual depictions made after June 30, 2002, of sexual conduct and:

(a) Knowingly fails to create and maintain age verification records for each sexual performer;

(b) Knowingly makes or causes to be made any false entry into the age verification records of sexual performers required by this section; or

(c) Knowingly fails to produce the age verification records of sexual performers required by this section, upon request by a law enforcement officer for the purpose of verifying the age of a sexual performer.

(2) Failure to maintain age verification records of sexual performers is a class C felony.

712-1218.5 Bill

712-1218.5 Failure to maintain age verification records of sexually exploited individuals.

(1) A person commits the offense of failure to maintain age verification records of sexually exploited individuals if, with the intent to profit therefrom, the person knowingly provides sexually exploited individuals to patrons or customers of a public establishment or provides sexually exploited individuals to a private club or event, and the person:

(a) Knowingly fails to create and maintain age verification records for each sexually exploited individual;

(b) Knowingly makes or causes to be made any false entry into the age verification records of sexually exploited individuals required by this section; or

(c) Knowingly fails to produce the age verification records of sexually exploited individuals required by this section upon request by a law enforcement officer for the purpose of verifying the age of a sexually exploited individual.

(2) Failure to maintain age verification records of sexually exploited individuals is a class C felony.

712-1219 Bill

712-1219 Failure to affix information disclosing location of age verification records of sexual performers.

(1) A person commits the offense of failure to affix information disclosing location of age verification records of sexual performers if the person knowingly produces any pornographic book, magazine, periodical, film, videotape, computer

image, or other matter that contains one or more pornographic visual depictions made after June 30, 2002, of sexual conduct and fails to affix to each copy a statement describing where any records required by section 712-1218 with respect to all performers depicted in that copy of the matter may be located, including the current address and telephone number of the custodian of those records.

(2) If the person to whom any recordkeeping requirement of section 712-1218 applies is an organization, the affixed information required under subsection (1) shall include the name, title, and business address of the individual employed by the organization who is responsible for maintaining the records required by section 712-1218.

(3) Failure to affix information disclosing the location of age verification records of sexual performers is a class C felony.

712-1219.5 Bill

712-1219.5 Disseminating visual depiction of sexual conduct without affixed information disclosing location of age verification records of sexual performers.

(1) A person commits the offense of disseminating visual depiction of sexual conduct without affixed information disclosing location of age verification records of sexual performers if the person knowingly disseminates, sells, or otherwise transfers, or offers for sale or transfer, any book, magazine, periodical, film, videotape, computer image, or other matter that contains one or more visual depictions made after June 30, 2002, of sexual conduct, and that does not have affixed thereto a statement describing where the age verification records required by section 712-1218 may be located; provided that this section shall not be construed to impose a duty upon any persons to determine the accuracy of the contents of the affixed statement or of the records required to be kept at that location.

(2) Disseminating visual depiction of sexual conduct without affixed information disclosing location of age verification records of sexual performers is a misdemeanor.

712-1220 III

712-1220 Definitions of terms in this part. In this part unless a different meaning plainly is required, the following definitions apply[:] "Advance gambling activity". [Repeal and reenactment on July 1, 2029. L 2024, c 249, §4.] A person "advances gambling activity" if the person:

(1) Engages in conduct that materially aids any form of gambling activity. Conduct of this nature includes but is not limited to conduct directed toward: (A) The creation or establishment of the particular game, contest, scheme, device, or activity involved; (B) The acquisition or maintenance of premises, paraphernalia, equipment, or apparatus therefor; (C) The solicitation or inducement of persons to participate therein; (D) The actual conduct of the playing phases thereof; (E) The arrangement of any of its financial or recording phases; or (F) Any other phase of its operation; or

(2) Having substantial proprietary control or other authoritative control over premises being used with the person's knowledge for purposes of gambling activity, permits that activity to occur or continue. "Bookmaking" means advancing gambling activity by accepting bets from members of the public upon the outcomes of future contingent events. "Contest of chance" means any contest, game, gaming scheme, or gaming device in which the outcome depends in a material degree upon an element of chance, notwithstanding that skill of the contestants may also be a factor therein. "Gambling". A person engages in gambling if he stakes or risks something of value upon the outcome of a contest of chance or a future contingent event not under his control or influence, upon an agreement or understanding that he or someone else will receive something of value in the event of a certain outcome. Gambling does not include bona fide business transactions valid under the law of contracts, including but not limited to contracts for the purchase or sale at a future date of securities or commodities, and agreements to compensate for loss caused by the happening of chance, including but not limited to contracts of indemnity or guaranty and life, health, or accident insurance. "Gambling device" means any device, machine, paraphernalia, or equipment that is used or usable in the playing phases of any gambling activity, whether that activity consists of gambling between persons or gambling by a person involving the playing of a machine. However, lottery tickets and other items used in the playing phases of lottery schemes are not gambling devices within this definition. "Lottery" means a gambling scheme in which:

(a) The players pay or agree to pay something of value for chances, represented and differentiated by numbers or by combinations of numbers or by some other medium, one or more of which chances are to be designated the winning ones; and

(b) The winning chances are to be determined by a drawing or by some other method based on an element of chance; and

(c) The holders of the winning chances are to receive something of value. "Mutuel" means a form of lottery in which the winning chances or plays are not determined upon the basis of a drawing or other act on the part of persons conducting or connected with the scheme, but upon the basis of the outcome or outcomes of a future contingent event or events otherwise unrelated to the particular scheme. "Player" means a person who engages in gambling solely as a contestant or bettor. "Profit from gambling activity". A person "profits from gambling activity" if he accepts or receives money or other property pursuant to an agreement or understanding with any person whereby he participates or is to participate in the proceeds of gambling activity. "Social gambling" is defined in section 712-1231. "Something of value" means any money or property, any token, object, or article exchangeable for money or property, or any form of credit or promise directly or indirectly contemplating transfer of money or property or of any interest therein, or involving extension of a service or entertainment.

712-1221

712-1221 Promoting gambling in the first degree.

(1) A person commits the offense of promoting gambling in the first degree if the person recklessly advances or profits from gambling activity by:

(a) Engaging in bookmaking to the extent that the person receives or accepts in any seven-day period more than five bets totaling more than $500;

(b) Receiving in connection with a lottery, or mutuel scheme or enterprise, money or written records from a person other than a player whose chances or plays are represented by such money or records; or

(c) Receiving or having become due and payable in connection with a lottery, mutuel, or other gambling scheme or enterprise, more than $1,000 in any seven-day period played in the scheme or enterprise.

(2) Promoting gambling in the first degree is a class B felony.

712-1222

712-1222 Promoting gambling in the second degree.

(1) A person commits the offense of promoting gambling in the second degree if the person negligently advances or profits from gambling activity.

(2) Promoting gambling in the second degree is a class C felony.

712-1222.5

712-1222.5 Promoting gambling aboard ships.

(1) A person commits the offense of promoting gambling aboard ships if the person knowingly advances or profits from gambling activity by:

(a) Managing, supervising, controlling, operating, or owning, either alone or in association with others, a gambling ship;

(b) Managing, supervising, controlling, operating, or owning, either alone or in association with others, any craft which embarks from any point within the State, and disembarks at the same or another point within the State, during which the person intentionally causes or knowingly permits gambling activity to be conducted, whether within or without the waters of the State; or

(c) Transporting, conveying, or carrying any person to a gambling ship or a craft described in paragraph (b).

(2) In this section:

(a) "Craft" includes every boat, ship, vessel, barge, hulk, or other thing capable of floating.

(b) "Gambling ship" means any craft kept, operated, or maintained for the purpose of gambling, whether within or without the waters of the State and whether it is anchored, moored, lying to, or navigating.

(3) This section shall not apply to gambling activity conducted during travel from foreign nations or another state or territory of the United States to the point of first entry into state waters or during travel to foreign nations or another state or territory of the United States from the point of final exit from state waters; provided that nothing herein shall preclude prosecution for any offense under this part.

(4) Promoting gambling aboard ships is a class C felony.

712-1223 Gambling

712-1223 Gambling.

(1) A person commits the offense of gambling if the person knowingly participates in any gambling activity.

(2) Gambling is a misdemeanor.

712-1224

712-1224 Possession of gambling records in the first degree.

(1) A person commits the offense of possession of gambling records in the first degree if the person knowingly possesses, produces, or distributes any writing, paper, instrument, or article:

(a) Of a kind commonly used in the operation or promotion of a bookmaking scheme or enterprise, and constituting, reflecting, or representing more than five bets totaling more than $500; or

(b) Of a kind commonly used in the operation, promotion, or playing of a lottery or mutuel scheme or enterprise, and constituting, reflecting, or representing more than one hundred plays or chances therein or one play or chance wherein the winning amount exceeds $5,000.

(2) Possession of gambling records in the first degree is a class C felony.

712-1225

712-1225 Possession of gambling records in the second degree.

(1) A person commits the offense of possession of gambling records in the second degree if the person knowingly possesses any writing, paper, instrument, or article:

(a) Of a kind commonly used in the operation or promotion of a bookmaking scheme or enterprise; or

(b) Of a kind commonly used in the operation, promotion, or playing of a lottery or mutuel scheme or enterprise.

(2) Possession of gambling records in the second degree is a misdemeanor.

712-1226 Possession of a gambling device

712-1226 Possession of a gambling device.

(1) A person commits the offense of possession of a gambling device if the person manufactures, sells, transports, places, possesses, or conducts or negotiates any transaction affecting or designed to affect ownership, custody, or use of any gambling device, knowing it is to be used in the advancement of gambling activity which is not social gambling.

(2) Possession of a gambling device is a misdemeanor.

712-1227

712-1227 Possession of gambling records; defense. In any prosecution under sections 712-1224 and [712-1225], it is a defense that the writing, paper, instrument, or article possessed by the defendant was neither used nor intended to be used in the advancement of gambling activity, except for records used in social gambling.

712-1228

712-1228 Gambling offenses; prima facie evidence.

(1) Proof that a person knowingly possessed any gambling record specified in sections 712-1224 and 712-1225 or any gambling device in section 712-1226 is prima facie evidence that the person possessed the record or device with knowledge of its contents and character.

(2) In any prosecution under this part in which it is necessary to prove the occurrence of a sporting event, a published report of its occurrence in any daily newspaper, magazine, or other periodically printed publication of general circulation, shall be admissible in evidence and shall constitute prima facie evidence of the occurrence of the event.

712-1229 Lottery offenses; no defense

712-1229 Lottery offenses; no defense. It is no defense to a prosecution under any section of this part relating to a lottery that the lottery itself is drawn or conducted outside this State and is not in violation of the laws of the jurisdiction in which it is drawn or conducted.

712-1230

712-1230 Forfeiture of property used in illegal gambling. Any gambling device, paraphernalia used on fighting animals, or birds, implements, furniture, personal property, vehicles, vessels, aircraft, or gambling record possessed or used in violation of this part, or any money or personal property used as a bet or stake in gambling activity in violation of this part, may be ordered forfeited to the State, subject to the requirements of chapter 712A.

712-1231

712-1231 Social gambling; definition and specific conditions, affirmative defense.

(a) Definition. "Social gambling" means gambling in which all of the following conditions are present:

(1) Players compete on equal terms with each other; and

(2) No player receives, or becomes entitled to receive, anything of value or any profit, directly or indirectly, other than the player's personal gambling winnings; and

(3) No other person, corporation, unincorporated association, or entity receives or becomes entitled to receive, anything of value or any profit, directly or indirectly, from any source, including but not limited to permitting the use of premises, supplying refreshments, food, drinks, service, lodging or entertainment; and

(4) It is not conducted or played in or at a hotel, motel, bar, nightclub, cocktail lounge, restaurant, massage parlor, billiard parlor, or any business establishment of any kind, public parks, public buildings, public beaches, school grounds, churches or any other public area; and

(5) None of the players is below the age of majority; and

(6) The gambling activity is not bookmaking.

(b) Affirmative defense:

(1) In any prosecution for an offense described in [section] 712-1223, 712-1224, 712-1225 or 712-1226, a defendant may assert the affirmative defense that the gambling activity in question was a social gambling game as defined in [section] 712-1231(a).

(2) If the defendant asserts the affirmative defense, the defendant shall have the burden of going forward with evidence to prove the facts constituting such defense unless such facts are supplied by the testimony of the prosecuting witness or circumstance in such testimony, and of proving such facts by a preponderance of evidence.

(c) In any prosecution for an offense described in this part the fact that the gambling activity involved was other than a social gambling game shall not be an element of the offense to be proved by the prosecution in making out its prima facie case.

712-1232 HRS

712-1232 Savings promotion or prize-linked savings contest not gambling. A savings promotion or prize-linked savings contest conducted by a financial institution pursuant to section 412:4-113 is not gambling and shall not constitute a lottery unless the chance to win a prize requires consideration. Consideration shall not include:

(1) The deposit of a specified minimum amount of money into a savings promotion or prize-linked savings account that results in an entry in a savings promotion or prize-linked savings contest;

(2) The interest earned, if any, on the consumer's savings promotion or prize-linked savings account; or

(3) Any fee or amount to administer or maintain the savings promotion or prize-linked savings account.

712-1240 IV

712-1240 Definitions of terms in this part. In this part, unless a different meaning plainly is required: "Dangerous drugs" means any substance or immediate precursor defined or specified as a "Schedule I substance" or a "Schedule II substance" by chapter 329, or a substance specified in section 329-18(c)(14), except marijuana or marijuana concentrate. "Detrimental drug" means any substance or immediate precursor defined or specified as a "Schedule V substance" by chapter 329, or any marijuana. "Dosage unit" for purposes of section 712-1241 and section 712-1242 means an entity designed and intended for singular consumption or administration. "Harmful drug" means any substance or immediate precursor defined or specified as a "Schedule III substance" or a "Schedule IV substance" by chapter 329, or any marijuana concentrate except marijuana and a substance specified in section 329-18(c)(14). "Hemp" [Definition repealed July 1, 2027. L 2023, c 263, §15.] means all parts of the plant (genus) cannabis, whether growing or not, including the seeds thereof and all derivatives, extracts, cannabinoids, isomers, acids, salts, and salts of isomers, with a

delta-9-tetrahydrocannabinol concentration of not more than 0.3 per cent on a dry weight basis, as measured post-decarboxylation or other similarly reliable methods. "Immediate precursor" means a substance which the department of health, State of Hawaii, has found to be and by rule designates as being the principal compound commonly used or produced primarily for use, and which is an immediate chemical intermediary used or likely to be used in the manufacture of a controlled substance, the control of which is necessary to prevent, curtail, or limit manufacture. "Intoxicating compounds" means any compound, liquid or chemical containing toluol, hexane, trichloroethylene, acetone, toluene, ethyl acetate, methyl ethyl ketone, trichloroethane, isopropanol, methyl isobutyl ketone, methyl cellosolve acetate, cyclohexanone, or any other substance for the purpose of inducing a condition of intoxication, stupefaction, depression, giddiness, paralysis or irrational behavior, or in any manner changing, distorting or disturbing the auditory, visual or mental processes. For the purposes of this section, any such condition so induced shall be deemed to be an intoxicated condition. "Intoxicating liquor" means any substance defined as "liquor" or "intoxicating liquor" by section 281-1. "Manufacture" means to produce, prepare, compound, convert, or process a dangerous drug, either directly or indirectly by extraction from substances of natural origin, or independently by means of chemical conversion or synthesis. "Marijuana" [Repeal and reenactment on July 1, 2027. L 2023, c 263, §15.] means any part of the plant (genus) cannabis, whether growing or not, including the seeds and the resin, and every alkaloid, salt, derivative, preparation, compound, or mixture of the plant, its seeds or resin, except that, as used herein, "marijuana" shall not include:

(1) Hashish, tetrahydrocannabinol, and any alkaloid, salt, derivative, preparation, compound, or mixture, whether natural or synthesized, of tetrahydrocannabinol;

(2) Hemp that is in the possession, custody, or control of an individual or entity that holds a license to produce hemp issued by the United States Department of Agriculture pursuant to title 7 [United States] Code section 1639q;

(3) Hemp that is in the possession, custody, or control of a person or entity that is authorized under state law to process hemp; or

(4) A product containing or derived from hemp that: (A) Does not include any living hemp plants, viable seeds, leaf materials, or floral materials; and (B) Has a delta-9-tetrahydrocannabinol concentration of not more than 0.3 per cent, as measured post-decarboxylation or other similarly reliable methods. "Marijuana concentrate" [Repeal and reenactment on July 1, 2027. L 2023, c 263, §15.] means hashish, tetrahydrocannabinol, or any alkaloid, salt, derivative, preparation, compound, or mixture, whether natural or synthesized, of tetrahydrocannabinol, except that, as used herein, "marijuana concentrate" shall not include:

(1) Hemp that is in the possession, custody, or control of an individual or entity that holds a license to produce hemp, issued by the Secretary of the United States Department of Agriculture pursuant to title 7 United States Code section 1639q; or

(2) A product containing or derived from hemp, including any product containing one or more hemp-derived cannabinoids such as cannabidiol, that: (A) Does not include any living hemp plants, viable seeds, leaf materials, or floral materials; and (B) Has a delta-9-tetrahydrocannabinol concentration of not more than 0.3 per cent, as measured post-decarboxylation or other similarly reliable methods. "Minor" means a person who has not reached the age of majority. "Ounce" means an avoirdupois ounce as applied to solids and semi-solids, and a fluid ounce as applied to liquids. "Practitioner" means[:]

(1) A physician, dentist, veterinarian, scientific investigator, or other person licensed, registered, or otherwise permitted to distribute, dispense, prescribe, conduct research with respect to or to administer a controlled substance in the course of professional practice or research in this State.

(2) A pharmacy, hospital, or other institution licensed, registered, or otherwise permitted to distribute, dispense, prescribe, conduct research with respect to or to administer a controlled substance in the course of professional practice or research in this State. "To distribute" means to sell, transfer, prescribe, give, or deliver to another, or to leave, barter, or exchange with another, or to offer or agree to do the same. "To sell" means to transfer to another for consideration.

712-1240.1 Defense to promoting

712-1240.1 Defense to promoting.

(1) It is a defense to prosecution for any offense defined in this part that the person who possessed or distributed the dangerous, harmful, or detrimental drug did so under authority of law as a practitioner, as an ultimate user of the drug pursuant to a lawful prescription, or as a person otherwise authorized by law.

(2) It is an affirmative defense to prosecution for any marijuana-related offense defined in this part that the person who possessed or distributed the marijuana was authorized to possess or distribute the marijuana for medical purposes pursuant to part IX of chapter 329.

712-1240.5 Bill

712-1240.5 Manufacturing a controlled substance with a child present.

(1) Except as provided in subsection (2), any person convicted of manufacturing a controlled substance in violation of this chapter, who commits the offense knowing that a child under the age of sixteen is present in the structure where the offense occurs, shall be sentenced to a term of two years imprisonment to run consecutively to the maximum indeterminate term of imprisonment for the conviction of any offense involving the manufacturing of a controlled substance.

(2) Any person convicted of manufacturing a controlled substance in violation of this chapter, who commits the offense knowing that a child under the age of eighteen is present in the structure where the offense occurs and causes the child to suffer serious or substantial bodily injury as defined in section 707-700, shall be sentenced to a term of five years imprisonment to run consecutively to the maximum indeterminate term of imprisonment for the conviction of any offense involving the manufacturing of a controlled substance.

(3) As used in this section, "structure" means any house, apartment building, shop, warehouse, building, vessel, cargo container, motor vehicle, tent, recreational vehicle, trailer, or other enclosed space capable of holding a child and equipment for the manufacture of a controlled substance.

712-1240.6 Bill

712-1240.6 REPEALED. L 2006, c 230, §50. Previous Vol14_Ch0701-0853 Next

712-1240.7 Bill

712-1240.7 Methamphetamine trafficking.

(1) A person commits the offense of methamphetamine trafficking if the person knowingly:

(a) Distributes methamphetamine in any amount to a minor; or

(b) Manufactures methamphetamine in any amount.

(2) Methamphetamine trafficking is a class A felony for which the defendant shall be sentenced as provided in subsection (3).

(3) Notwithstanding sections 706-620(2), 706-640, 706-641, 706-659, 706-669, and any other law to the contrary, a person convicted of methamphetamine trafficking shall be sentenced to an indeterminate term of imprisonment of twenty years with a mandatory minimum term of imprisonment of not less than two years and not greater than eight years and a fine not to exceed $20,000,000; provided that:

(a) If the person has one prior conviction for methamphetamine trafficking pursuant to this section, promoting a dangerous drug in the first degree pursuant to section 712-1241 and methamphetamine was the drug upon which the conviction was predicated, or section 712-1240.8 as that section was in effect prior to July 1, 2016, the mandatory minimum term of imprisonment shall be not less than six years, eight months and not greater than thirteen years, four months;

(b) If the person has two prior convictions for methamphetamine trafficking pursuant to this section, promoting a dangerous drug in the first degree pursuant to section 712-1241 and methamphetamine was the drug upon which the conviction was predicated, or section 712-1240.8, as that section was in effect prior to July 1, 2016, the mandatory minimum term of imprisonment shall be not less than thirteen years, four months and not greater than twenty years; or

(c) If the person has three or more prior convictions for methamphetamine trafficking pursuant to this section, promoting a dangerous drug in the first degree pursuant to section 712-1241 and methamphetamine was the drug upon which the conviction was predicated, or section 712-1240.8 as that section was in effect prior to July 1, 2016, the mandatory minimum term of imprisonment shall be twenty years.

712-1240.8 Bill

712-1240.8 REPEALED. L 2016, c 231, §56.

712-1240.9 Bill

712-1240.9 Methamphetamine trafficking; restitution and reimbursement. When sentencing a defendant convicted of methamphetamine trafficking pursuant to section 712-1240.7 or 712-1240.8 as that section was in effect prior to July 1, 2016, the court may order restitution or reimbursement to the State or appropriate county government for the cost incurred for any cleanup associated with the manufacture or distribution of methamphetamine and to any other person injured as a result of the manufacture or distribution of methamphetamine.

712-1241

712-1241 Promoting a dangerous drug in the first degree.

(1) A person commits the offense of promoting a dangerous drug in the first degree if the person knowingly:

(a) Possesses one or more preparations, compounds, mixtures, or substances of an aggregate weight of:

(i) One ounce or more, containing methamphetamine, heroin, morphine, fentanyl, or cocaine or any of their respective salts, isomers, and salts of isomers; or (ii) One and one-half ounce or more, containing one or more of any of the other dangerous drugs;

(b) Distributes:

(i) Twenty-five or more capsules, tablets, ampules, dosage units, or syrettes containing one or more dangerous drugs; or (ii) One or more preparations, compounds, mixtures, or substances of an aggregate weight of: (A) One-eighth ounce or more, containing methamphetamine, heroin, morphine, fentanyl, or cocaine or any of their respective salts, isomers, and salts of isomers; or (B) Three-eighths ounce or more, containing any other dangerous drug;

(c) Distributes any dangerous drug in any amount to a minor except for methamphetamine; or

(d) Manufactures a dangerous drug in any amount, except for methamphetamine; provided that this subsection shall not apply to any person registered under section 329-32.

(2) Promoting a dangerous drug in the first degree is a class A felony.

712-1242

712-1242 Promoting a dangerous drug in the second degree.

(1) A person commits the offense of promoting a dangerous drug in the second degree if the person knowingly:

(a) Possesses twenty-five or more capsules, tablets, ampules, dosage units, or syrettes, containing one or more dangerous drugs;

(b) Possesses one or more preparations, compounds, mixtures, or substances of an aggregate weight of:

(i) One-eighth ounce or more, containing methamphetamine, heroin, morphine, fentanyl, or cocaine or any of their respective salts, isomers, and salts of isomers; or (ii) One-fourth ounce or more, containing any dangerous drug; or

(c) Distributes any dangerous drug in any amount.

(2) Promoting a dangerous drug in the second degree is a class B felony.

712-1243

712-1243 Promoting a dangerous drug in the third degree.

(1) A person commits the offense of promoting a dangerous drug in the third degree if the person knowingly possesses any dangerous drug in any amount.

(2) Promoting a dangerous drug in the third degree is a class C felony.

712-1244

712-1244 Promoting a harmful drug in the first degree.

(1) A person commits the offense of promoting a harmful drug in the first degree if the person knowingly:

(a) Possesses one hundred or more capsules or tablets or dosage units containing one or more of the harmful drugs or one or more of the marijuana concentrates, or any combination thereof;

(b) Possesses one or more preparations, compounds, mixtures, or substances, of an aggregate weight of one ounce or more containing one or more of the harmful drugs or one or more of the marijuana concentrates, or any combination thereof;

(c) Distributes twenty-five or more capsules or tablets or dosage units containing one or more of the harmful drugs or one or more of the marijuana concentrates, or any combination thereof;

(d) Distributes one or more preparations, compounds, mixtures, or substances, of an aggregate weight of one-eighth ounce or more, containing one or more of the harmful drugs or one or more of the marijuana concentrates, or any combination thereof; or

(e) Distributes any harmful drug or any marijuana concentrate in any amount to a minor.

(2) Promoting a harmful drug in the first degree is a class A felony.

712-1245

712-1245 Promoting a harmful drug in the second degree.

(1) A person commits the offense of promoting a harmful drug in the second degree if the person knowingly:

(a) Possesses fifty or more capsules or tablets or dosage units containing one or more of the harmful drugs or one or more of the marijuana concentrates, or any combination thereof;

(b) Possesses one or more preparations, compounds, mixtures, or substances, of an aggregate weight of one-eighth ounce or more, containing one or more of the harmful drugs or one or more of the marijuana concentrates, or any combination thereof; or

(c) Distributes any harmful drug or any marijuana concentrate in any amount.

(2) Promoting a harmful drug in the second degree is a class B felony.

712-1246

712-1246 Promoting a harmful drug in the third degree.

(1) A person commits the offense of promoting a harmful drug in the third degree if the person knowingly possesses twenty-five or more capsules or tablets or dosage units containing one or more of the harmful drugs or one or more of the marijuana concentrates, or any combination thereof.

(2) Promoting a harmful drug in the third degree is a class C felony.

712-1246.5

712-1246.5 Promoting a harmful drug in the fourth degree.

(1) A person commits the offense of promoting a harmful drug in the fourth degree if the person knowingly possesses any harmful drug in any amount.

(2) Promoting a harmful drug in the fourth degree is a misdemeanor.

712-1247

712-1247 Promoting a detrimental drug in the first degree.

(1) A person commits the offense of promoting a detrimental drug in the first degree if the person knowingly:

(a) Possesses four hundred or more capsules or tablets containing one or more of the Schedule V substances;

(b) Possesses one or more preparations, compounds, mixtures, or substances of an aggregate weight of one ounce or more, containing one or more of the Schedule V substances;

(c) Distributes fifty or more capsules or tablets containing one or more of the Schedule V substances;

(d) Distributes one or more preparations, compounds, mixtures, or substances of an aggregate weight of one-eighth ounce or more, containing one or more of the Schedule V substances;

(e) Possesses one or more preparations, compounds, mixtures, or substances of an aggregate weight of one pound or more, containing any marijuana;

(f) Distributes one or more preparations, compounds, mixtures, or substances of an aggregate weight of one ounce or more, containing any marijuana;

(g) Possesses, cultivates, or has under the person's control twenty-five or more marijuana plants; or

(h) Sells or barters any marijuana or any Schedule V substance in any amount.

(2) Promoting a detrimental drug in the first degree is a class C felony.

(3) Any marijuana seized as evidence of a violation of this section in excess of one pound may be destroyed after it has been photographed and the weight thereof recorded. The remainder of the marijuana shall remain in the custody of the police department until the termination of any criminal action brought as a result of the seizure of the marijuana. Photographs duly identified as accurately representing the marijuana shall be deemed competent evidence of the marijuana involved and shall be admissible in any proceeding, hearing, or trial to the same extent as the marijuana itself; provided that nothing in this subsection shall be construed to limit or to restrict the application of rule 901 of the Hawaii rules of evidence.

712-1248

712-1248 Promoting a detrimental drug in the second degree.

(1) A person commits the offense of promoting a detrimental drug in the second degree if the person knowingly:

(a) Possesses fifty or more capsules or tablets containing one or more of the Schedule V substances;

(b) Possesses one or more preparations, compounds, mixtures, or substances, of an aggregate weight of one-eighth ounce or more, containing one or more of the Schedule V substances;

(c) Possesses one or more preparations, compounds, mixtures, or substances, of an aggregate weight of one ounce or more, containing any marijuana; or

(d) Distributes any marijuana or any Schedule V substance in any amount.

(2) Promoting a detrimental drug in the second degree is a misdemeanor.

712-1249

712-1249 Promoting a detrimental drug in the third degree.

(1) A person commits the offense of promoting a detrimental drug in the third degree if the person knowingly possesses any marijuana or any Schedule V substance in any amount.

(2) Promoting a detrimental drug in the third degree is a petty misdemeanor; provided that possession of three grams or less of marijuana is a violation, punishable by a fine of $130.

712-1249.4

712-1249.4 Commercial promotion of marijuana in the first degree.

(1) A person commits the offense of commercial promotion of marijuana in the first degree if the person knowingly:

(a) Possesses marijuana having an aggregate weight of twenty-five pounds or more;

(b) Distributes marijuana having an aggregate weight of five pounds or more;

(c) Possesses, cultivates, or has under the person's control one hundred or more marijuana plants;

(d) Cultivates on land owned by another person, including land owned by the government or other legal entity, twenty-five or more marijuana plants, unless the person has the express permission from the owner of the land to cultivate the marijuana or the person has a legal or an equitable ownership interest in the land or the person has a legal right to occupy the land; or

(e) Uses, or causes to be used, any firearm or other weapon, device, instrument, material, or substance, whether animate or inanimate, which in the manner used is capable of causing death, serious bodily injury, substantial bodily injury, or other bodily injury, as defined in chapter 707 in order to prevent the theft, removal, search and seizure, or destruction of marijuana.

(2) Commercial promotion of marijuana in the first degree is a class A felony.

(3) Any marijuana seized as evidence in violation of this section in excess of an aggregate weight of twenty-five pounds as stated in subsection (1)(a), or in excess of an aggregate weight of five pounds as stated in subsection (1)(b), or in excess of one hundred marijuana plants as stated in subsection (1)(c), or in excess of twenty-five marijuana plants as stated in subsection (1)(d) may be destroyed after the excess amount has been photographed and the number of plants and the weight thereof has been recorded. The required minimum amount of the marijuana needed to constitute the elements of this offense shall remain in the custody of the police until the termination of any criminal action brought as a result of the seizure of the marijuana. Photographs duly identified as accurately representing the marijuana shall be deemed competent evidence of the marijuana involved and shall be admissible in any proceeding, hearing, or trial to the

same extent as the marijuana itself; provided that nothing in this subsection shall be construed to limit or restrict the application of rule 901 of the Hawaii rules of evidence.

712-1249.5

712-1249.5 Commercial promotion of marijuana in the second degree.

(1) A person commits the offense of commercial promotion of marijuana in the second degree if the person knowingly:

(a) Possesses marijuana having an aggregate weight of two pounds or more;

(b) Distributes marijuana having an aggregate weight of one pound or more;

(c) Possesses, cultivates, or has under the person's control fifty or more marijuana plants;

(d) Cultivates on land owned by another person, including land owned by the government or other legal entity, any marijuana plant, unless the person has the express permission from the owner of the land to cultivate the marijuana or the person has a legal or an equitable ownership interest in the land or the person has a legal right to occupy the land; or

(e) Sells or barters any marijuana or any Schedule V substance in any amount to a minor.

(2) Commercial promotion of marijuana in the second degree is a class B felony.

(3) Any marijuana seized as evidence in violation of this section in excess of an aggregate weight of two pounds as stated in subsection (1)(a), or in excess of an aggregate weight of one pound as stated in subsection (1)(b), or in excess of twenty-five marijuana plants as stated in subsection (1)(c) may be destroyed after the excess amount has been photographed and the number of plants and the weight thereof has been recorded. The required minimum amount of the marijuana needed to constitute the elements of this offense shall remain in the custody of the police until the termination of any criminal action brought as a result of the seizure of the marijuana. Photographs duly identified as accurately representing the marijuana shall be deemed competent evidence of the marijuana involved and shall be admissible in any proceeding, hearing, or trial to the same extent as the marijuana itself; provided that nothing in this subsection shall be construed to limit or to restrict the application of rule 901 of the Hawaii rules of evidence.

712-1249.6

712-1249.6 Promoting a controlled substance in, on, or near schools, school vehicles, public parks, or public housing projects or complexes.

(1) A person commits the offense of promoting a controlled substance in, on, or near schools, school vehicles, public parks, or public housing projects or complexes if the person knowingly:

(a) Distributes or possesses with intent to distribute a controlled substance in any amount in or on the real property comprising a school, public park, or public housing project or complex;

(b) Distributes or possesses with intent to distribute a controlled substance in any amount within seven hundred and fifty feet of the real property comprising a school, public park, or public housing project or complex;

(c) Distributes or possesses with intent to distribute a controlled substance in any amount while on any school vehicle, or within ten feet of a parked school vehicle during the time that the vehicle is in service for or waiting to transport school children; or

(d) Manufactures methamphetamine or any of its salts, isomers, and salts of isomers, within seven hundred and fifty feet of the real property comprising a school, public park, or public housing project or complex.

(2) A person who violates subsection (1)(a), (b), or (c) is guilty of a class C felony. A person who violates subsection (1)(d) is guilty of a class A felony.

(3) Any person with prior conviction or convictions under subsection (1)(a), (b), or (c) is punishable by a term of imprisonment of not less than two years and not more than ten years.

(4) Any individual convicted under subsection

(3) of this section shall not be eligible for parole until the individual has served the minimum sentence required by such subsection.

(5) For the purposes of this section, "school vehicle" means every school vehicle as defined in section 286-181 and any regulations adopted pursuant to that section.

(6) For purposes of this section, "school" means any public or private preschool, kindergarten, elementary, intermediate, middle secondary, or high school.

(7) For purposes of this section, "public housing project or complex" means a housing project directly controlled, owned, developed, or managed by the Hawaii public housing authority pursuant to the federal or state low-rent public housing program.

712-1249.7

712-1249.7 Promoting a controlled substance through a minor.

(1) A person age eighteen or over commits the offense of promoting a controlled substance through a minor if the person knowingly employs, hires, uses, persuades, induces, entices, or coerces a minor to facilitate the illegal distribution of a controlled substance.

(2) The offense of promoting a controlled substance through a minor is a class B felony unless the offense occurs in, on, or near the real property comprising a school, school vehicles, or public parks as prohibited under section 712-1249.6, in which case it is a class A felony.

712-1250 Promoting intoxicating compounds

712-1250 Promoting intoxicating compounds.

(1) A person commits the offense of promoting intoxicating compounds if the person knowingly:

(a) Breathes, inhales, or drinks any compound, liquid, or chemical containing toluol, hexane, trichloroethylene, acetone, toluene, ethyl acetate, methyl ethyl ketone, trichloroethane, isopropanol, methyl isobutyl ketone, methyl cellosolve acetate, cyclohexanone, or any other substance for the purpose of inducing a condition of intoxication, stupefaction, depression, giddiness, paralysis or irrational behavior, or in any manner changing, distorting or disturbing the auditory, visual or mental processes.

(b) Sells or offers for sale, delivers or gives to any person under eighteen years of age, unless upon written order of such person's parent or guardian, any compound liquid or chemical containing toluol, hexane, trichloroethylene, acetone, toluene, ethyl acetate, methyl ethyl ketone, trichloroethane, isopropanol, methyl isobutyl ketone, methyl cellosolve acetate, cyclohexanone, or any other substance which will induce an intoxicated condition, as defined herein, when the seller, offeror or deliveror knows or has reason to know that such compound is intended for use to induce such condition.

(2) Promoting intoxicating compounds is a misdemeanor.

(3) This section shall not apply to any person who commits any act described herein pursuant to the direction or prescription of a practitioner, as defined in the "Hawaii Food, Drug and Cosmetic Act" (section 328-16).

712-1250.5

712-1250.5 Promoting intoxicating liquor to a person under the age of twenty-one.

(1) A person, including any licensee as defined in section 281-1, commits the offense of promoting intoxicating liquor to a person under the age of twenty-one if the person recklessly:

(a) Sells or offers for sale, influences the sale, serves, delivers, or gives to a person intoxicating liquor, and the person receiving the intoxicating liquor is a person under the age of twenty-one; or

(b) Permits a person to possess intoxicating liquor while on property under his control, and the person possessing the intoxicating liquor is a person under the age of twenty-one.

(2) It is a defense to a prosecution for promoting intoxicating liquor to a person under the age of twenty-one that:

(a) The intoxicating liquor provided to the person under the age of twenty-one was an ingredient in a medicine prescribed by a licensed physician for medical treatment of the person under the age of twenty-one;

(b) The intoxicating liquor was provided to the person under the age of twenty-one as part of a ceremony of a recognized religion;

(c) The defendant provided the intoxicating liquor to the person under the age of twenty-one with the belief, which was reasonable under the circumstances, that the person under the age of twenty-one had attained the age of twenty-one;

(d) The defendant provided the intoxicating liquor to the person under the age of twenty-one with the express consent of the parent or legal guardian and with the belief, which was reasonable under the circumstances, that the person under the

age of twenty-one would not consume any portion of the substance;

(e) The defendant provided the intoxicating liquor to the person under the age of twenty-one with the express consent of the parent or legal guardian and with the belief, which was reasonable under the circumstances, that the person under the age of twenty-one would consume the substance only in the presence of the parent or legal guardian; or

(f) The intoxicating liquor was possessed by the person under the age of twenty-one to be sold or served as allowed by law.

(3) The fact that a person engaged in the conduct specified by this section is prima facie evidence that the person engaged in that conduct with knowledge of the character, nature, and quantity of the intoxicating liquor possessed, distributed, or sold. The fact that the defendant distributed or sold intoxicating liquor to a person under the age of twenty-one is prima facie evidence that the defendant knew the transferee was a person under the age of twenty-one, except as provided in subsection (2)(c).

(4) Promoting intoxicating liquor to a person under the age of twenty-one is a misdemeanor.

712-1251

712-1251 Possession in a motor vehicle; prima facie evidence.

(1) Except as provided in subsection (2), the presence of a dangerous drug, harmful drug, or detrimental drug in a motor vehicle, other than a public omnibus, is prima facie evidence of knowing possession thereof by each and every person in the vehicle at the time the drug was found.

(2) Subsection (1) does not apply to:

(a) Other occupants of the motor vehicle if the substance is found upon the person of one of the occupants therein;

(b) All occupants, except the driver or owner of the motor vehicle, if the substance is found in some portion of the vehicle normally accessible only to the driver or owner; or

(c) The driver of a motor vehicle who is at the time operating it for hire in the pursuit of the driver's trade, if the substance is found in a part of the vehicle used or occupied by passengers.

712-1252

712-1252 Knowledge of character, nature, or quantity of substance, or age of transferee; prima facie evidence.

(1) The fact that a person engaged in the conduct specified by any section in this part is prima facie evidence that the person engaged in that conduct with knowledge of the character, nature, and quantity of the dangerous drug, harmful drug, detrimental drug, or intoxicating compounds possessed, distributed, or sold.

(2) The fact that the defendant distributed or sold a dangerous drug, harmful drug, detrimental drug, or intoxicating compound to a minor is prima facie evidence that the defendant knew the transferee to be a minor.

712-1253 Penalties under other laws

712-1253 Penalties under other laws. Any penalty imposed for violation of this chapter or chapter 329 is in addition to, and not in lieu of, any civil or administrative penalty or sanction otherwise authorized by law.

712-1254 Bar to prosecution

712-1254 Bar to prosecution. If a violation of this part or chapter 329 is a violation of a federal law or the law of another state, a conviction or acquittal under federal law or the law of another state for the same act is a bar to prosecution in this State.

712-1255 Conditional discharge

712-1255 Conditional discharge.

(1) Whenever any person who has not previously been convicted of any offense under this chapter or chapter 329 or under any statute of the United States or of any state relating to a dangerous drug, harmful drug, detrimental drug, or an intoxicating compound, pleads guilty to or is found guilty of promoting a dangerous drug, harmful drug, detrimental drug, or an intoxicating compound under section 712-1243, 712-1245, 712-1246, 712-1248, 712-1249, or 712-1250, the court, without entering a judgment of guilt and with the consent of the accused, may defer further proceedings and place the accused on probation upon terms and conditions. Upon violation of a term or condition, the court may enter an adjudication of guilt and proceed as otherwise provided.

(2) Upon fulfillment of the terms and conditions, the court shall discharge the person and dismiss the proceedings against the person.

(3) Discharge and dismissal under this section shall be without adjudication of guilt and is not a conviction for purposes of this section or for purposes of disqualifications or disabilities imposed by law upon conviction of a crime.

(4) There may be only one discharge and dismissal under this section with respect to any person.

(5) After conviction, for any offense under this chapter or chapter 329, but prior to sentencing, the court shall be advised by the prosecutor whether the conviction is defendant's first or a subsequent offense. If it is not a first offense, the prosecutor shall file an information setting forth the prior convictions. The defendant shall have the opportunity in open court to affirm or deny that the defendant is identical with the person previously convicted. If the defendant denies the identity, sentence shall be postponed for such time as to permit the trial, before a jury if the defendant has a right to trial by jury and demands a jury, on the sole issue of the defendant's identity with the person previously convicted.

712-1256 Expunging of court records

712-1256 Expunging of court records.

(1) Upon the dismissal of such person and discharge of the proceeding against the person under section 712-1255, this person, if the person was not over twenty years of age at the time of the offense, may apply to the court for an order to expunge from all official records all recordation relating to the person's arrest, indictment, or information, trial, finding of guilt, and dismissal and discharge pursuant to this section.

(2) If the court determines, after hearing, that such person was dismissed and the proceedings against the person discharged and that the person was not over twenty years of age at the time of the offense, it shall enter such order.

(3) The effect of such order shall be to restore such person, in the contemplation of the law, to the status the person occupied before such arrest or indictment or information.

(4) No person as to whom such order has been entered shall be held thereafter under any provision of any law to be guilty of perjury or otherwise giving a false statement by reason of the person's failures to recite or acknowledge such arrest or indictment or information, or trial in response to any inquiry made of the person for any purpose.

712-1257

712-1257 Prohibited cigarette sales of less than twenty.

(1) It shall be unlawful to sell single cigarettes or packs of cigarettes containing less than twenty cigarettes. It further shall be unlawful to sell cigarettes other than in sealed packages originating with the manufacturer and bearing the health warning required by law.

(2) As used in this section, "to sell" includes: to solicit and receive an order for; to have, or keep, or offer, or expose for sale; to deliver for value or in any other way than purely gratuitously; to peddle; to keep with intent to sell; and to traffic in.

(3) "Sale" includes every act of selling as defined in [subsection (2)].

(4) Any person who violates subsection (1), shall be fined not more than $2,500 for the first offense. Any subsequent offense shall subject the person to a fine of not less than $100 and not more than $5,000. Any person who knowingly violates subsection (1) shall be guilty of a class C felony.

712-1258 HRS

712-1258 Tobacco products and electronic smoking devices; persons under twenty-one years of age.

(1) It shall be unlawful to sell or furnish a tobacco product in any shape or form or an electronic smoking device to a person under twenty-one years of age.

(2) All persons engaged in the retail sale of tobacco products or electronic smoking devices shall check the identification of tobacco product or electronic smoking device purchasers to establish the age of the purchaser if the purchaser reasonably appears to be under twenty-seven years of age.

(3) It shall be an affirmative defense that the seller of a tobacco product or an electronic smoking device to a person under twenty-one years of age in violation of this section had requested, examined, and reasonably relied upon a photographic identification from the person establishing that person's age as at least twenty-one years of age prior to selling the person a tobacco product or an electronic smoking device. The failure of a seller to request and examine photographic identification from a person under twenty-one years of age prior to the sale of a tobacco product or an

electronic smoking device to the person shall be construed against the seller and form a conclusive basis for the seller's violation of this section.

(4) Signs using the statement, "The sale of tobacco products or electronic smoking devices to persons under twenty-one is prohibited", shall be posted on or near any vending machine in letters at least one-half inch high and at or near the point of sale of any other location where tobacco products or electronic smoking devices are sold in letters at least one-half inch high.

(5) It shall be unlawful for a person under twenty-one years of age to purchase or possess any tobacco product or electronic smoking device, as those terms are defined in subsection (7). This provision does not apply if a person under the age of twenty-one, with parental authorization, is participating in a controlled purchase as part of a law enforcement activity or a study authorized by the department of health under the supervision of law enforcement to determine the level of incidence of tobacco or electronic smoking devices sales to persons under twenty-one years of age.

(6) Any person who violates subsection (1) or (4), or both, shall be fined $500 for the first offense. Any subsequent offenses shall subject the person to a fine not less than $500 nor more than $2,000. Any person under twenty-one years of age who violates subsection

(5) shall be fined $10 for the first offense. Any subsequent offense shall subject the violator to a fine of $50, no part of which shall be suspended, or the person shall be required to perform not less than forty-eight hours nor more than seventy-two hours of community service during hours when the person is not employed and is not attending school. Any tobacco product or electronic smoking device, as those terms are defined in subsection (7), in the person's possession at the time of violation of subsection (5) shall be seized, summarily forfeited to the State, and destroyed by law enforcement following the conclusion of an administrative or judicial proceeding finding that a violation of subsection (5) has been committed. The procedures set forth in chapter 712A shall not apply to this subsection.

(7) For the purposes of this section: "Electronic smoking device" means any electronic product that can be used to aerosolize and deliver nicotine or other substances to the person inhaling from the device, including but not limited to an electronic cigarette, electronic cigar, electronic cigarillo, or electronic pipe, and any cartridge or other component of the device or related product. "Tobacco product" means any product made or derived from tobacco that contains nicotine or other substances and is intended for human consumption or is likely to be consumed, whether smoked, heated, chewed, absorbed, dissolved, inhaled, or ingested by other means. "Tobacco product" includes but is not limited to a cigarette, cigar, pipe tobacco, chewing tobacco, snuff, snus, or an electronic smoking device. "Tobacco product" does not include drugs, devices, or combination products approved for sale by the United States Food and Drug Administration, as those terms are defined in the Federal Food, Drug, and Cosmetic Act.

712-1260 HRS

712-1260 REPEALED. L 2020, c 14, §6. Previous Vol14_Ch0701-0853 Next

712-1270 [PART V

712-1270 Places used to commit offenses against public health and morals or other offenses, a nuisance. Every building, premises, or place used for the purpose of violating:

(1) Those laws pertaining to offenses against public health and morals contained in this chapter, except offenses under part IV that do not involve the manufacture or distribution of drugs and activities under part III that involve only social gambling as defined in section 712-1231(a);

(2) Section 132D-14(a)(1);

(3) Any offense under part II of chapter 708 that involves a person unlawfully residing on or otherwise occupying real property to which the person has no title, lease, or other legal claim; or

(4) Section 328G-10, and every building, premises, or place in or upon which violations of any of the laws set forth in paragraph (1), (2), (3), or

(4) are held or occur, is a nuisance that shall be enjoined, abated, and prevented, regardless of whether it is a public or private nuisance.

712-1270.3 Citizen's rights

712-1270.3 Citizen's rights. Any citizen who brings a nuisance abatement suit against a place used for the purpose of committing:

(1) Fireworks-related offenses contained in section 132D-14(a)(1); or

(2) Drug offenses under part IV of this chapter or who files a complaint with the local police or drug nuisance abatement unit of the department of the attorney general, shall be entitled to the same rights and protections of victims and witnesses in criminal proceedings in accordance with chapter 801D.

712-1270.5

712-1270.5 Injunctions against persons. Nothing in this part shall be construed to prohibit injunctions against persons causing, maintaining, aiding, abetting, or permitting a nuisance from entering or residing in any public or private building, premises, or place, in or upon which the nuisance exists.

712-1271 Suit to abate

712-1271 Suit to abate.

(1) Whenever there is reason to believe that a nuisance as defined in this chapter is in existence, kept, or maintained in any county, the attorney general of the State or the prosecutor or prosecuting attorney of the respective counties shall, or any citizen of the State residing within such county may in the citizen's own name, or any organization, including, but not limited to a tenant organization within such county may in the organization's own name, maintain a suit to abate and prevent the nuisance and to perpetually enjoin the person or persons causing, maintaining, aiding, abetting, or permitting the nuisance, or the owner, lessee, or agent of the building, premises, or place in or upon which the nuisance exists from directly or indirectly causing, maintaining, aiding, abetting, or permitting the nuisance.

(2) No action authorized under this part which seeks to abate or prevent a nuisance shall be filed or maintained against the State or any political subdivision thereof.

712-1271.5 Standard of proof

712-1271.5 Standard of proof. Except as may be otherwise expressly provided, the civil causes of action in this part shall be proved by a preponderance of the evidence.

712-1271.6 Protective order

712-1271.6 Protective order. If proof of the existence of the nuisance depends, in whole or in part, upon the affidavits or testimony of witnesses who are not law enforcement officers, the court, upon a showing of prior threats of violence or acts of violence by any defendant may issue orders to protect those witnesses including, but not limited to, the nondisclosure of the name, address, or any other information that may identify those witnesses.

712-1272 Temporary writ

712-1272 Temporary writ. Whenever the existence of a nuisance is shown in a suit brought under this part to the satisfaction of the court or the judge thereof, either by verified petition or affidavit, or both, the court or judge thereof shall allow a temporary writ of injunction to abate and prevent the continuance or recurrence of such nuisance, which injunction may include a provision prohibiting the person or persons causing, maintaining, aiding, abetting, or permitting the nuisance from residing in or entering into the building, premises, or place in or upon which the nuisance exists. The petition in such suit need not be verified, except in those suits brought by a citizen in the citizen's own name, or those suits brought by an organization in its own name, but shall be signed by the party bringing the same and shall include a certification that the complainant believes the allegations of the petition to be true.

712-1273 Suit to have precedence

712-1273 Suit to have precedence. The suit when brought shall have precedence over all cases, excepting criminal proceedings, election contests, and hearings on injunctions, and in the suit evidence of the general reputation of the building, premises, place, or persons, and of the use or threat of violence shall be admissible for the purpose of proving the existence of the nuisance.

712-1274 Failure to prosecute

712-1274 Failure to prosecute. If the petition is filed by a citizen or by an organization, it shall not be dismissed by the complainant or for want of prosecution except upon a sworn statement by the complainant or the complainant's attorney, setting forth the reasons why the suit should be dismissed, and the dismissal ordered by the court. In case of failure to prosecute any such suit with reasonable diligence, or at the request of the complainant, the court, in its discretion, may substitute any other citizen or organization, including, but not limited to the attorney general or the prosecutor or

prosecuting attorney of the county consenting thereto for the complainant. If a suit is brought by a citizen or by an organization and the court finds that there was no reasonable ground or cause therefor, the costs shall be taxed against such citizen or organization, except that no costs shall be taxed against state or county organizations.

712-1275 Order of abatement

712-1275 Order of abatement. If the existence of a nuisance is established in a suit as provided herein, an order of abatement shall be entered as a part of the judgment in the case, which order shall include a provision permanently prohibiting the person or persons causing, maintaining, aiding, abetting, or permitting the nuisance, if said person or persons are a party to the proceeding, from residing in or entering into the building, premises, or place in or upon which the nuisance exists. The court, on the application of the person, may suspend the prohibition if the person is participating in a court-approved treatment and monitoring program which addresses the person's conduct which caused the nuisance. If the court determines that the person has successfully completed the program and that the person is not likely to again create a nuisance, the court may dissolve the injunction against the person. In the event that the court determines that an injunction against the person or persons causing, maintaining, aiding, abetting, or permitting the nuisance will not completely abate the nuisance or that one or more of the persons causing, maintaining, aiding, abetting, or permitting the nuisance are not parties to the proceeding, the court shall also direct the effectual closing of the building, premises, or place, against its use for any purpose, and that it be kept closed for a period not exceeding one year, unless sooner released, as provided by section 712-1277. While the order remains in effect as to closing, the building, premises, or place shall remain in the custody of the court. The court's orders may also include, but are not limited to, an order suspending or revoking any business, professional, operational, or liquor license.

712-1276 Costs and expenses

712-1276 Costs and expenses. For any attorneys' fees, costs, or expenses incurred in the closing of the building, premises, or place and keeping it closed, or incurred in enforcing the injunction prohibiting the person or persons causing, maintaining, aiding, abetting, or permitting the nuisance from residing or entering into the building, premises, or place in or upon which the nuisance exists, as well as the attorneys' fees, costs, and expenses incurred by the party bringing the action, a reasonable sum shall be allowed by the court.

712-1277

712-1277 Owner not guilty of contempt; may pay costs. If the owner of the building, premises, or place has not been guilty of any criminal contempt of court in the proceedings, and appears and pays all costs, fees, and allowances which are a lien on the building, premises, or place and files a bond in a reasonable amount to be fixed by the court, with sureties, to be approved by the court or judge, conditioned that the owner will immediately abate any such nuisance that may exist at such building, premises, or place and prevent the same from being established or kept thereat for a period of one year thereafter, the court or the judge thereof, may, if satisfied of the owner's good faith, order the building, premises, or place closed under the order of abatement canceled so far as the same may relate to the closing of said building, premises, or place. The release of the building, premises, or place under the provisions of this section does not release it from any judgment, lien, penalty, or liability to which it may be subject by law.

712-1277.5 Contempt

712-1277.5 Contempt. Any person who knowingly violates any order issued pursuant to this part shall be subject to civil contempt as well as punishment for criminal contempt of court under section 710-1077. Nothing in this section shall be construed in any way to preclude or preempt a criminal prosecution for violation of a controlled substance offense or any other criminal offense.

712-1278 Fine, costs, lien on place

712-1278 Fine, costs, lien on place. Any attorneys' fees, costs, expenses, and fines imposed against any owner of a business, premises or place in any proceedings under this part shall be a lien upon such business, premises, or place, to the extent of the interest of such person therein, enforceable and collectible by execution issued by the order of the court.

712-1279 Termination of lease

712-1279 Termination of lease. The notice by the owner of any business, premises, or place to the lessee that the lease will be revoked if the lessee continues the maintenance of the nuisance, and other action taken to revoke the lease or to obtain the termination of the nuisance shall be given appropriate consideration by the court in the determination of a

criminal contempt action brought against the owner in connection with abatement procedures of this part.

712-1280 Place

712-1280 Place. "Place" as used in this part means any building, structure, or place, or any separate part or portion thereof, whether permanent or not, or the ground itself.

712-1281 HRS

712-1281 Forfeiture; fireworks. In addition to any other penalty that may be imposed for violation of section 132D-14(a)(1), any property used or intended for use in the commission of, attempt to commit, or conspiracy to commit an offense under section 132D-14(a)(1), or that facilitated or assisted such activity, and any proceeds or other property acquired or maintained with the proceeds from violation of section 132D-14(a)(1) may be subject to forfeiture pursuant to chapter 712A.

Chapter 712A

712A-1 Definitions

712A-1 Definitions. In this chapter, unless a different meaning plainly is required: "Attorney general" means the attorney general or deputy attorneys general of the State of Hawaii. "Contraband" means any property the possession of which is illegal. "Controlled substances" means a drug, substance, or immediate precursor in schedules I through V of chapter 329, part II. "Covered offense" means any crime set forth in section 712A-4 or any other offense for which forfeiture is provided by the law relating to a particular offense. "Enterprise" includes any sole proprietorship, partnership, corporation, association, or any union or group of individuals associated for a particular purpose although not a legal entity. "Interest-holder" means a person in whose favor there is a security interest or who is the beneficiary of a perfected encumbrance pertaining to an interest in property. "Law enforcement officer" means any public servant, whether employed by the State or subdivisions thereof or by the United States, vested by law with a duty to maintain public order, to make arrests for offenses, or to enforce the criminal laws, whether that duty extends to all offenses or is limited to a specific class of offenses. The

712A-2 Jurisdiction

712A-2 Jurisdiction.

(1) The State may commence an in rem proceeding in the circuit court if the property for which forfeiture is sought is within this State at the time of the filing of the action.

(2) The State may commence a civil in personam proceeding in the circuit court if the courts of this State have in personam jurisdiction of an owner of or interest-holder in the property.

(3) The State may commence a criminal in personam proceeding in the court which has in personam jurisdiction of an owner of or interest-holder in the property.

712A-3 Venue

712A-3 Venue. An action brought pursuant to this chapter may be brought in the county which the property is seized or in any county where an owner or interest-holder could be complained against for the conduct alleged to give rise to the forfeiture of the property.

712A-4

712A-4 Covered offenses. Offenses for which property is subject to forfeiture under this chapter are:

(a) All offenses that specifically authorize forfeiture;

(b) Murder; kidnapping; labor trafficking; unlicensed sale of liquor; unlicensed manufacture of liquor; gambling; criminal property damage; robbery; bribery; extortion; theft; unauthorized entry into motor vehicle; burglary; money laundering; trademark counterfeiting; insurance fraud; promoting a dangerous, harmful, or detrimental drug; commercial promotion of marijuana; methamphetamine trafficking; manufacturing of a controlled substance with a child present; promoting child abuse; promoting prostitution; sex trafficking; commercial sexual exploitation of a minor; habitual commercial sexual exploitation; or electronic enticement of a child that is chargeable as a felony offense under state law;

(c) The manufacture, sale, or distribution of a controlled substance in violation of chapter 329, promoting detrimental drugs or intoxicating compounds, promoting pornography, promoting pornography for minors, or commercial sexual exploitation near schools or public parks, which is chargeable as a felony or misdemeanor offense, but not as a petty misdemeanor, under state law;

(d) The attempt, conspiracy, solicitation, coercion, or intimidation of another to commit any offense for which property is subject to forfeiture; and

(e) Criminal trespass on agricultural land as defined in section 708-823.2.

712A-5

712A-5 Property subject to forfeiture; exemption.

(1) The following shall be subject to forfeiture:

(a) Property described in a statute authorizing forfeiture;

(b) Property used or intended for use in the commission of, attempt to commit, or conspiracy to commit a covered offense, or that facilitated or assisted the activity;

(c) Any firearm that is subject to forfeiture under any other subsection of this section or that is carried during, visible, or used in furtherance of the commission, attempt to commit, or conspiracy to commit a covered offense, or any firearm found in proximity to contraband or to instrumentalities of an offense;

(d) Contraband or untaxed cigarettes in violation of chapter 245, shall be seized and summarily forfeited to the State without regard to the procedures set forth in this chapter;

(e) Any proceeds or other property acquired, maintained, or produced by means of or as a result of the commission of the covered offense;

(f) Any property derived from any proceeds that were obtained directly or indirectly from the commission of a covered offense;

(g) Any interest in, security of, claim against, or property or contractual right of any kind affording a source of influence over any enterprise that has been established, participated in, operated, controlled, or conducted in order to commit a covered offense; and

(h) All books, records, bank statements, accounting records, microfilms, tapes, computer data, or other data that are used, intended for use, or that facilitated or assisted in the commission of a covered offense, or that document the use of the proceeds of a covered offense.

(2) Real property, or an interest therein, may be forfeited under the provisions of this chapter only in cases in which the covered offense is chargeable as a felony offense under state law.

(3) The following limitations shall apply to the forfeiture of property under this chapter; provided that nothing in this subsection shall be construed to prevent the seizure of property before conviction pursuant to section 712A-6:

(a) No property shall be forfeited under this chapter by reason of the commission of any covered offense unless the owner has received a charge for the covered offense. If no such charge is filed within one year from the date of seizure, all property seized shall be returned to the legal owner, as determined by the department or agency in possession of the property, one year from the date of seizure; provided that property that is contraband or otherwise unlawful shall not be returned and shall be disposed of pursuant to rules adopted by the attorney general; provided further that if the legal owner cannot be determined or located, the department or agency in possession of the property shall follow procedures set forth in rules adopted by the attorney general to determine or locate the owner;

(b) No property shall be forfeited under this chapter by reason of any act or omission established by the owner to have been committed or omitted without the knowledge and consent of the owner;

(c) No conveyance used by any person as a common carrier in the transaction of a business as a common carrier shall be subject to forfeiture under this section unless it appears that the owner or other person in charge of the conveyance is a consenting party or privy to a violation of this chapter;

(d) No conveyance shall be subject to forfeiture under this section by reason of any act or omission established by the owner thereof to have been committed or omitted without the owner's knowledge or consent; and

(e) A forfeiture of a conveyance encumbered by a bona fide security interest shall be subject to the interest of the secured party if the secured party neither had knowledge of nor consented to the act or omission.

(4) This chapter shall not apply to the forfeiture of an animal pursuant to section 711-1109.2.

(5) This section shall not prohibit or restrict forfeitures authorized by law other than this chapter.

712A-5.5 Excessive forfeitures

712A-5.5 Excessive forfeitures. The court shall limit the scope of a forfeiture judgment issued pursuant to section [712A-5(1)(b)] to the extent the court finds the effect of the forfeiture is grossly disproportionate to the nature and severity of the owner's conduct. In determining whether a forfeiture is grossly disproportionate, the court may consider:

(1) The degree to which the property was used to facilitate the conduct that subjects property to forfeiture and the importance of the property to the conduct;

(2) The gain received or expected by an owner from the conduct that subjects property to forfeiture and the value of the property subject to forfeiture;

(3) The nature and extent of the owner's culpability; and

(4) The owner's effort to prevent the conduct or assist in prosecution.

712A-6 Seizure of property

712A-6 Seizure of property.

(1) Personal property subject to forfeiture under this chapter may be seized for forfeiture by a law enforcement officer:

(a) On process issued pursuant to the rules of civil procedure or the provisions of this chapter including a seizure warrant;

(b) By making a seizure for forfeiture on property seized on process issued pursuant to law; or

(c) By making a seizure for forfeiture without court process as follows:

(i) The seizure for forfeiture is of property seized incident to an arrest or search; (ii) The property subject to seizure for forfeiture has been the subject of a prior judgment in favor of the State or any other state or the federal government in forfeiture proceeding; (iii) The law enforcement officer has probable cause to believe that the property seized for forfeiture is directly or indirectly dangerous to health or safety; (iv) The law enforcement officer has probable cause to believe that the property is subject to forfeiture; or

(v) The seizure for forfeiture is of perishable natural resources seized and sold, pursuant to section 199-7, prior to forfeiture proceeding.

(2) Real property subject to forfeiture under this chapter may be seized for forfeiture by a law enforcement officer pursuant to court order following a pre-seizure hearing in the circuit court in the circuit in which the property is located with notice of the pre-seizure hearing to be made to the owners and interest-holders pursuant to section 712A-8. The court shall order the real property in question to be seized for forfeiture if it finds probable cause that the real property is subject to forfeiture under any provision of the Hawaii Revised Statutes.

(3) In determining probable cause for seizure, the fact that a firearm, money, or any negotiable instrument was found in proximity to contraband or to instrumentalities of an offense gives rise to an inference that the money, or instrument was the proceeds of contraband or that the firearm, money or instrument was used or intended to be used to facilitate commission of the offense.

712A-7

712A-7 Powers and duties of law enforcement officers and agencies.

(1) In the event of a seizure for forfeiture under section 712A-6, the property is not subject to replevin, conveyance, sequestration, or attachment but is deemed to be in the custody of the law enforcement agency making the seizure for forfeiture. The seizing agency or the prosecuting attorney may authorize the release of the seizure for forfeiture on the property if forfeiture or retention is unnecessary, may transfer the property to any other county, state, or federal agency or may transfer the action to another prosecuting attorney by discontinuing forfeiture proceedings in favor of forfeiture proceedings initiated by the other agency or prosecuting attorney. An action pursuant to this chapter shall be consolidated with any other action or proceeding pursuant to this chapter relating to the same property upon motion by the prosecuting attorney in either action.

(2) If property is seized for forfeiture under section 712A-6 pending forfeiture and final disposition, the seizing agency may do any of the following:

(a) Place the property under constructive seizure by posting notice of seizure for forfeiture on the property or by filing notice of seizure for forfeiture or notice of pending forfeiture in any appropriate public record relating to the property;

(b) Remove the property to a storage area for safekeeping or, if the property is a negotiable instrument or money, deposit it in an interest bearing account;

(c) Remove the property to a place designated by the court; or

(d) Provide for another agency to take custody of the property and remove it to an appropriate location within the jurisdiction of the court.

(3) As soon as practicable after seizure for forfeiture, the seizing agency shall conduct an inventory and estimate the value of the property seized. Within twenty days after seizure for forfeiture the seizing agency shall make reasonable efforts to give notice of seizure for forfeiture in the manner provided in section 712A-8(a) or 712A-8(b) to all parties known to have an interest in the seized property.

(4) In the event of a seizure for forfeiture under section 712A-6, the seizing agency shall send to a prosecuting attorney a written request for forfeiture within thirty days, which shall include a statement of facts and circumstances of the seizure, the appraised or estimated value of the property, and a summary of the facts relied on for forfeiture.

712A-7.5 HRS

712A-7.5 Equitable sharing program; restrictions. Notwithstanding the provisions of section 712A-7, a seizing agency or prosecuting attorney shall not enter into an agreement to transfer or refer property seized under section 712A-6 to a federal agency directly, indirectly, through adoption, through an intergovernmental joint task force, or by any other means that would circumvent the provisions of this chapter, unless the seized property includes United States currency in excess of $100,000.

712A-8

712A-8 Notice of forfeiture proceedings. Unless otherwise provided, whenever notice is required under this chapter it shall be given in one of the following ways:

(a) If the owner's or interest-holder's name and current address are known:

(i) By personal service; or (ii) By mail;

(b) If the owner's or interest-holder's interest is required by law to be on record with a state or federal agency in order to perfect an interest in the property, but the person's current address is not known, by mailing a copy of the notice by certified mail to any address on the record; or

(c) If the owner's or interest-holder's address is not known, and is not on record pursuant to paragraph (b), or if the person's interest is not known, by publication in one issue of a newspaper of general circulation in the county in which the seizure occurs.

712A-9 Commencement of proceedings

712A-9 Commencement of proceedings.

(1) The prosecuting attorney shall determine whether it is probable that the property is subject to forfeiture and, if so, shall initiate administrative or judicial proceedings against the property within forty-five days of receipt of a written request for forfeiture from a seizing agency. If, on inquiry and examination, the prosecuting attorney determines, with sole discretion, that the proceedings probably cannot be sustained or that justice does not require the institution of proceedings, the prosecuting attorney shall notify the seizing agency, and as soon as practicable authorize the release of the seizure for forfeiture on the property or on any specified interest in it. A determination by the prosecuting attorney to forego initiation of proceedings shall not be a bar to initiation of proceedings against the same property based on the same circumstances at a later time.

(2) If the property sought to be forfeited is real property, including fixtures, the prosecuting attorney shall file a lis pendens with respect to the property but shall not be required to pay a filing fee.

712A-10 Administrative forfeiture

712A-10 Administrative forfeiture. The prosecuting attorney may initiate administrative forfeiture of property other than real property, the estimated value of which is less than $100,000, or of any vehicle or conveyance, regardless of value. Administrative forfeiture shall be processed in the following manner:

(1) The prosecuting attorney shall file a petition with the attorney general, pursuant to rules adopted by the attorney general.

(2) The prosecuting attorney shall give notice of pending forfeiture by making reasonable efforts to serve a copy of the petition in a manner provided in section 712A-8(a) or 712A-8(b) on all persons known to have an interest in the property, together with instructions for filing a claim and cost or in pauperis bond, or a petition for remission or mitigation.

(3) The attorney general shall give notice of intention to forfeit the property administratively by publication in the manner provided in section 712A-8(c). Notice by publication shall include:

(a) A description of the property;

(b) The estimated value of the property;

(c) The date and place of the seizure;

(d) The offense for which the property is subject to forfeiture;

(e) Instructions for filing a claim and cost or in pauperis bond, or a petition for remission or mitigation; and

(f) Notice that the property will be forfeited to the State if a claim and cost or in pauperis bond or petition for remission or mitigation is not filed in substantial compliance with this section.

(4) Persons claiming an interest in the property may file either a petition for remission or mitigation of forfeiture, or a claim and cost or in pauperis bond, but not both, with the attorney general, within thirty days of notice by publication or receipt of written notice, whichever is earlier. Notwithstanding section 1-29, the thirty-day time period prescribed herein is computed by excluding the first day and including the last day, unless the last day is a Saturday, Sunday, or holiday and then it is also excluded, and the thirty-day time period runs until the end of the next day which is not a Saturday, Sunday, or a holiday. "Holiday" includes any day designated as a holiday pursuant to section 8-1.

(5) Any person claiming seized property may seek remission or mitigation of the forfeiture by timely filing a petition with the

712A-11

712A-11 Judicial forfeiture proceedings; general.

(1) In any judicial or administrative proceeding pursuant to this chapter, the court, on application of the State, may enter any restraining order or injunction, require the execution of satisfactory performance bonds, create receiverships, appoint conservators, appraisers, accountants or trustees, or take any other action to seize, secure, maintain, or preserve the availability of property subject to forfeiture under this chapter, including a warrant for its seizure, whether before or after the filing of a petition for forfeiture, complaint, or indictment.

(2) If property is seized for forfeiture without a seizure warrant, a prior judicial order of forfeiture, or a hearing pursuant to section 712A-13, a court, on an application filed by an owner or interest-holder within fifteen days after notice of its seizure for forfeiture or actual knowledge of it, whichever is earlier, and complying with the requirements for claims in section 712A-12, may issue an order to show cause to the seizing agency, with thirty days' notice to the prosecuting attorney, for a hearing on the issue of whether probable cause for forfeiture of the applicant's interest then exists, provided that, the order to show cause shall be set aside upon the filing of a petition for either administrative or judicial forfeiture prior to the hearing, in which event forfeiture proceedings shall be in accordance with this chapter.

(3) There shall be a rebuttable presumption that any property of a person is subject to forfeiture under this chapter if the State establishes, by the standard of proof applicable to that proceeding, all of the following:

(a) That the person has engaged in criminal conduct for which property is subject to forfeiture;

(b) That the property was acquired by the person during the period of the criminal conduct or within a reasonable time after that period; and

(c) That there was no likely source for the property other than the criminal conduct giving rise to forfeiture.

(4) A finding that property is the proceeds of criminal conduct giving rise to forfeiture does not require proof that the property is the proceeds [of] any particular exchange or transaction.

(5) A defendant convicted in any criminal proceeding shall be precluded from subsequently denying the essential allegations of the criminal offense of which the defendant was convicted in any proceeding pursuant to this chapter. For the purposes of this chapter, a conviction may result from a verdict or plea, including a no contest plea, or deferred acceptance of guilty plea, or no contest plea.

(6) An acquittal or dismissal in a criminal proceeding shall not preclude civil proceedings under this chapter.

(7) In any judicial forfeiture proceeding pursuant to this chapter, if a defense is based on an exemption provided for in this chapter, the burden of proving the existence of the exemption is on the claimant or party raising the defense, and it is not necessary to negate the exemption in any petition, application, complaint, or indictment.

(8) For good cause shown, on motion by the prosecuting attorney, the court may stay discovery against the State in civil forfeiture proceedings prior to trial on a criminal complaint or indictment arising from the same conduct and against a claimant who is a defendant in the criminal proceeding after making provision to prevent loss to any party resulting from the delay. The stay provided by this subsection shall not be available pending appeal of any order or judgment in the criminal proceeding.

(9) The court shall receive and consider, at any hearing held pursuant to this chapter, except the hearing on claims pursuant to sections 712A-12(4) through (8) and 712A-13(7), evidence and information which would be admissible under the rules of penal procedure relating to preliminary hearings.

(10) All property, including all interest in such property, declared forfeited under this chapter vests in this State on the commission of the act or omission giving rise to forfeiture under this chapter together with the proceeds of the property after the act or omission. Any property or proceeds transferred to any person after the act or omission are subject to forfeiture and thereafter shall be ordered forfeited unless the transferee claims and establishes in a hearing pursuant to this chapter the showings set out in section 712A-5(2) and (3).

712A-12

712A-12 Judicial in rem forfeiture proceedings.

(1) If a forfeiture is authorized by law, it shall be ordered by a court on an action in rem brought by the prosecuting attorney on a verified petition for forfeiture filed in the criminal or civil division of the circuit court.

(2) A civil in rem action may be brought in addition to or in lieu of the civil and criminal in personam forfeiture procedures set forth in sections 712A-13 and 712A-14 or the administrative forfeiture as set forth in section 712A-10. Judicial in rem forfeiture proceedings are in the nature of an action in rem and are governed by the rules of civil procedure whether brought in the criminal or civil division of the circuit court, unless a different procedure is provided by law.

(3) On the filing of a civil in rem action by the State in circuit court the clerk of the court in which the action is filed shall give, and the attorney for the State may give, notice of the filing of the action in the manner provided by section 712A-8 unless the files of the clerk of the court reflect that notice has previously been given.

(4) An owner of or interest-holder in the property may file a claim against the property, within thirty days after the notice, for a hearing to adjudicate the validity of the claimed interest in the property. The hearing shall be held by the court without a jury.

(5) The claim shall be signed by the claimant and sworn on oath before a notary public and shall set forth all the following:

(a) The name of the claimant;

(b) The address at which the claimant will accept future mailings from the court or the prosecuting attorney;

(c) The nature and extent of the claimant's interest in the property;

(d) The time, transferor and circumstances of the claimant's acquisition of the interest in the property;

(e) The specific provisions of this chapter relied on in asserting that the property seized for forfeiture is not subject to forfeiture;

(f) Facts supporting each assertion that the property is not subject to forfeiture;

(g) Any additional facts supporting the claimant's claim; and

(h) The precise relief sought. Copies of the claim shall be mailed to the seizing agency and to the prosecuting attorney. One extension of thirty days for filing of the claim may be granted upon a written request demonstrating good cause

provided that the request is received within the thirty-day period for filing of a claim.

(6) The hearing on the claim, to the extent practicable and consistent with the interest of justice, shall be held within sixty days after the filing of the petition. The court may consolidate the hearing on the claim with a hearing on any other claim concerning the same property.

(7) At the hearing, the claimant may testify, present evidence and witnesses on the claimant's behalf, and cross- examine witnesses who appear at the hearing. The State may present evidence and witnesses in rebuttal and in defense of its claim to the property and cross-examine witnesses who appear at the hearing.

(8) The State has the initial burden of showing by a preponderance of the evidence that the claimant's interest in the property is subject to forfeiture. On such a showing by the State, the claimant has the burden of showing by a preponderance of the evidence that the claimant's interest in the property is not subject to forfeiture.

(9) In accordance with its findings at the hearing, the court shall order an interest in property returned or conveyed to the claimant, if any, who has established by a preponderance of the evidence that the claimant's interest is not subject to forfeiture. The court shall order all other property, including all interests in the property, forfeited to the State and proceed pursuant to sections 712A-15 and 712A-16.

712A-13

712A-13 Judicial in personam forfeiture proceedings.

(1) If a forfeiture is authorized by law, it shall be ordered by a court on a petition for forfeiture filed by the prosecuting attorney in an in personam civil or criminal action. In any civil in personam action brought under this section, the owner or interest-holder may testify, present evidence and witnesses on the owner or interest-holder's behalf, and cross-examine witnesses who appear at the hearing. The State may present evidence and witnesses in rebuttal and in defense of its claim to the property and cross-examine witnesses who appear at the hearing. The State has the initial burden of showing by a preponderance of the evidence that the owner or interest-holder's interest in the property is subject to forfeiture. On such a showing by the State, the owner or interest-holder has the burden of showing by a preponderance of the evidence that the owner or interest-holder's interest in the property is not subject to forfeiture.

(2) In any proceeding pursuant to this section, the court, on application of the prosecuting attorney, may enter any order authorized by section 712A-11 or take any other action to seize, secure, maintain or preserve the availability of property subject to forfeiture under this chapter, including a warrant for its seizure, whether before or after the filing of a petition for forfeiture, complaint, or indictment.

(3) A temporary restraining order under this section may be entered on petition of the State without notice or an opportunity for a hearing if the State demonstrates that:

(a) There is probable cause to believe that the property with respect to which the order is sought would, in the event of final judgment or conviction, be subject to forfeiture; and

(b) Provision of notice will jeopardize the availability of the property subject to forfeiture. A temporary restraining order expires within ten days after the date on which it is entered unless the party against whom it is entered consents to an extension for a longer period or unless after commencing a hearing the court enters or is considering a preliminary injunction.

(4) Notice of the issuance of the temporary restraining order and an opportunity for a hearing shall be afforded to persons known to have an interest in the property. The hearing, however, is limited to the issues required to be demonstrated in subsection 3(a) and (b) of this section.

(5) A hearing requested by any owner or interest-holder concerning a temporary restraining order entered under this section shall be held at the earliest practicable time and before the expiration of a temporary order.

(6) On a determination of liability or the conviction of a person for conduct giving rise to forfeiture under this title, the court shall enter a judgment of forfeiture of the property described in the petition for forfeiture, and shall also authorize the prosecuting attorney or

712A-14 Supplemental remedies

712A-14 Supplemental remedies.

(1) The court shall order the forfeiture of any other property of an in personam civil or criminal defendant up to the value of the subject property if any of the property subject to forfeiture:

(a) Cannot be located;

(b) Has been transferred or conveyed to, sold to, or deposited with a third party;

(c) Has been placed beyond the jurisdiction of the court;

(d) Has been substantially diminished in value by any act or omission of a defendant, or a defendant's agent or assignee; or

(e) Has been commingled with other property which cannot be divided without difficulty.

(2) In addition to any other remedy provided for by law, if property subject to forfeiture is conveyed, alienated, disposed of, or otherwise rendered unavailable for forfeiture after the filing of a racketeering lien notice or provision of notice of pending forfeiture or after the filing and notice of a civil proceeding or criminal proceeding alleging forfeiture under this chapter, whichever is earlier, the State or seizing agency, on behalf of the State, may institute an action in circuit court against the person named in the racketeering lien or notice of pending forfeiture or the defendant in the civil proceeding or criminal proceeding, and the court shall enter final judgment against the person named in the racketeering lien or notice of pending forfeiture or the defendant in the civil proceeding or criminal proceeding in an amount equal to the fair market value of the property, together with reasonable investigative expenses and attorney fees. If a civil proceeding is pending, such action shall be filed only in the court where the civil proceeding is pending.

(3) This section does not limit the right of the State to obtain any order or injunction, receivership, writ, attachment, garnishment, or other remedy authorized under this chapter or appropriate to protect the interests of the State or available under other applicable law.

712A-15 Disposition of claims by court

712A-15 Disposition of claims by court.

(1) Following the court's disposition of all claims filed under this chapter, or if no such claims are filed, following the expiration of the period provided in this chapter for the filing of such claims, the State has clear title to property that is the subject of the in rem or in personam petition and the court shall so order. Title to the forfeited property and its proceeds is deemed to have vested in the State on the commission of the act or omission giving rise to the forfeiture.

(2) The court, on motion of the prosecuting attorney, may release or convey forfeited personal property to an interest-holder who has satisfied both the prosecuting attorney and the court that all of the following are true:

(a) The interest-holder has an interest which was acquired in the regular course of business as a financial institution and which is not subject to forfeiture pursuant to section 712A-5;

(b) The amount of the interest-holder's encumbrance and the fair market value of the property are readily determinable and both amounts have been reasonably established by proof made available by the attorney for the State to the court;

(c) There are no encumbrances on the property other than encumbrances held by the interest-holder seeking possession; and

(d) The interest-holder has satisfied the State's interest by tendering the fair market value of the property and the expenses of its sale or disposal by the interest- holder.

(3) Upon order of the court forfeiting the subject property the attorney general may transfer good and sufficient title to any subsequent purchaser or transferee, and the title shall be recognized by all courts, by this State, and by all departments and agencies of this State and any political subdivision thereof.

(4) Upon entry of judgment for a claimant or claimants in any proceeding to forfeit property under this chapter such property or interest in property shall be returned or conveyed to the claimant or claimants designated by the court. If it appears that there was reasonable cause for the seizure for forfeiture or the filing of the complaint, the court shall cause a finding to be entered, and the claimant is not, in such case, entitled to costs or damages. Nor, in such case, is the person or seizing agency, or its agents, who made the seizure, or the prosecuting attorney or the

712A-16

712A-16 Disposition of property forfeited.

(1) All property forfeited to the State under this chapter shall be transferred to the attorney general, who may:

(a) Sell forfeited property to the public by public sale; provided that for leasehold real property:

(i) The attorney general shall first offer the holder of the immediate reversionary interest the right to acquire the leasehold interest and any improvements built or paid for by the lessee for the then fair market value of the leasehold interest and improvements. The holder of the immediate reversionary interest shall have thirty days after receiving written notice within which to accept or reject the offer in writing; provided that the offer shall be deemed to be rejected if the holder of the immediate reversionary interest has not communicated acceptance to the attorney general within the thirty-day period. The holder of the immediate reversionary interest shall have thirty days after acceptance to tender to the attorney general the purchase price for the leasehold interest and any improvements, upon which tender the leasehold interest and improvements shall be conveyed to the holder of the immediate reversionary interest; (ii) If the holder of the immediate reversionary interest fails to exercise the right of first refusal provided in subparagraph (i), the attorney general may proceed to sell the leasehold interest and any improvements by public sale; and (iii) Any dispute between the attorney general and the holder of the immediate reversionary interest as to the fair market value of the leasehold interest and improvements shall be settled by arbitration pursuant to chapter 658A;

(b) Sell or destroy all raw materials, products, and equipment of any kind used or intended for use in manufacturing, compounding, or processing a controlled substance or any untaxed cigarettes in violation of chapter 245;

(c) Compromise and pay valid claims against property forfeited pursuant to this chapter; or

(d) Make any other disposition of forfeited property authorized by law.

(2) All forfeited property and the sale proceeds thereof shall, after payment of expenses of administration and sale, be distributed or retained as follows:

(a) One quarter shall be distributed to the unit or units of state or local government law enforcement whose officers or employees conducted the investigation and caused the arrest of the person whose property was forfeited or seizure of the property for forfeiture;

(b) One quarter shall be distributed to the prosecuting attorney who instituted the action producing the forfeiture; and

(c) One half shall be retained in the criminal forfeiture fund established by this chapter.

(3) All property and money distributed to units of state or local government pursuant to subsection (2)(a) and (b) shall be used for law enforcement purposes, including but not limited to drug recognition expert training and public awareness or outreach efforts, and shall complement but not supplant the funds regularly appropriated for these purposes.

(4) There shall be established in the department of the attorney general a special fund to be known as the criminal forfeiture fund into which shall be deposited the proceeds of a forfeiture and any penalties paid pursuant to section 712A-10(6). All moneys in the criminal forfeiture fund except for those disbursements provided for in subsection (2)(a) and (b) shall be expended by the attorney general and are hereby appropriated for the following purposes:

(a) The payment of any expenses necessary to seize, detain, appraise, inventory, safeguard, maintain, advertise, or sell property seized, detained, or forfeited pursuant to this chapter or of any other necessary expenses incident to the seizure, detention, or forfeiture of property and contract services and payments to reimburse any federal, state, or county agency for any expenditures made to perform the foregoing functions;

(b) The payment of expenses arising in connection with programs for training and education of law enforcement officers; and

(c) The payment of expenses arising in connection with enforcement pursuant to the drug nuisance abatement unit in the department of the attorney general.

(5) The attorney general shall adopt rules necessary to carry out the purpose of this chapter, including rules concerning the return of seized property, the disposition of property, the use of the criminal forfeiture fund, and compromising and paying valid claims against property forfeited.

(6) No less than forty days before the convening of each regular session, the attorney general shall provide to the legislature a report on the use of the Hawaii omnibus criminal forfeiture act during the fiscal year preceding the legislative session. The report shall include:

(a) The total amount and type of property seized by law enforcement agencies;

(b) The total number of administrative and judicial actions filed by prosecuting attorneys and the disposition thereof for each action;

(c) The total number of claims or petitions for remission or mitigation filed in administrative actions and the dispositions thereof for each action;

(d) The total amount and type of property forfeited and the sale proceeds thereof;

(e) The total amount and type of property distributed to units of state and local government;

(f) The amount of money deposited into the criminal forfeiture fund; and

(g) The amount of money expended by the attorney general from the criminal forfeiture fund under subsection (5) and the reason for the expenditures.

712A-17 Limitation of actions

712A-17 Limitation of actions. Notwithstanding any other provision of law, forfeiture proceedings under this chapter may be commenced at any time within the period in which a criminal proceeding may be instituted for a covered offense pursuant to section 701-108.

712A-18 Victim restitution

712A-18 Victim restitution. Nothing herein precludes a court from ordering restitution or reparation to a victim by the defendant as part of a sentence imposed for a violation of a covered offense. The State shall not be compelled to provide funds for victim restitution or reparation under this chapter.

712A-19 REPEALED

712A-19 REPEALED. L 2025, c 288, §6. Previous Vol14_Ch0701-0853 Next

712A-20 Short title

712A-20 Short title. This chapter may be cited as the "Hawaii omnibus criminal forfeiture act".

712A-21 HRS

712A-21 Records of seized or forfeited property.

(1) Each seizing agency shall maintain the following records for all property seized for purposes of forfeiture:

(a) The authority under which the property was seized or forfeited;

(b) The date on which each item of property was seized or forfeited;

(c) The department or agency that has possession of the seized or forfeited property;

(d) A description of each item of seized or forfeited property; and

(e) The estimated value of each item of seized or forfeited property.

(2) The seizing agency shall:

(a) Maintain all records of seized or forfeited property;

(b) Make the records open to inspection; and

(c) Post the records on a publicly accessible website.