

2007 Hi. SB 2402

Enacted, April 17, 2008

Reporter

2008 Hi. ALS 19; 2008 Hi. Act 19; 2007 Hi. SB 2402

HAWAII ADVANCE LEGISLATIVE SERVICE > HAWAII THE 24TH STATE LEGISLATURE > ACT 19 > SENATE
BILL NO. 2402

Notice

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Synopsis

A BILL FOR AN ACT MAKING VARIOUS HOUSEKEEPING AMENDMENTS TO VOLUME 11 OF THE HAWAII REVISED STATUTES FOR THE PURPOSE OF CORRECTING ERRORS AND REFERENCES, AND CLARIFYING LANGUAGE.

Text

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

SECTION 1.

Section 476-1, Hawaii Revised Statutes, is amended as follows:

1.

By amending the definition of "credit sale contract" or "contract" to read:

"Credit sale contract" or "contract" means any agreement, including a conditional sale contract, a retail installment contract, or any other form of instrument evidencing an obligation to pay the price of goods, services, or both, purchased in a credit sale, either :

- (1) ~~by~~ BY payment thereof over a period of time subject to a finance charge ~~of~~; OR
- (2) ~~pursuant~~ PURSUANT to A written agreement, subject to payment in more than four installments not including a down payment, ~~and in either case~~ whether or not the contract contains a title retention provision. ~~This term~~ "CREDIT SALE CONTRACT" includes any contract for the bailment or leasing of goods (unless terminable without penalty at any time by the bailee or lessee) by which the bailee or lessee contracts to pay as compensation a sum substantially equivalent to or in excess of the value of the goods and services involved and by which it is agreed that the bailee or lessee is bound to become, or has the option of becoming, for no additional consideration or for nominal consideration, the owner of the goods upon full compliance with the terms of the contract."

2.

By amending the definition of "goods" to read:

“Goods” ~~include~~ INCLUDES all things which are movable at the time the credit sale is entered into or which will be movable when they thereafter come into existence or which are or will be fixtures (sections 490:9-334 and 490:9-604) ~~, but except~~ . EXCEPT as provided in this paragraph , “GOODS” does not include money, documents, instruments, accounts, chattel paper, general intangibles, or minerals or the like (including oil and gas) before extraction. “Goods” ~~include~~ INCLUDES standing timber which is to be cut and removed under a conveyance or contract for sale, the unborn young OF animals, growing crops, and merchandise certificates or coupons, issued by a credit seller, to be used in the face amount in lieu of cash in exchange for goods sold by such a seller.”

SECTION 2.

[Section 476-8, Hawaii Revised Statutes](#), is amended to read as follows:

"Section 476-8 Insurance provisions.

- (A) The amount, if any, charged for insurance ~~—~~ shall not exceed the premiums chargeable in accordance with rate filings made with the ~~commissioner of insurance~~ STATE INSURANCE COMMISSIONER UNDER CHAPTER 431 for similar insurance.

The seller or holder, if dual interest insurance on the goods is included in a credit sale contract ~~—~~ and a separate charge is made therefor, shall within thirty days after execution of the credit sale contract send or cause to be sent to the buyer a policy or policies or certificate of insurance, written by an insurance company authorized to do business in this State, clearly setting forth the amount of the premium, the kind or kinds of insurance, and the scope of the coverage and all the terms, exceptions, limitations, restrictions, and conditions of the contract or contracts of insurance.

The buyer of goods under a credit sale contract may purchase ~~such~~ ANY REQUIRED insurance from ~~a~~ AN INSURANCE producer of the buyer's own selection, and in an insurance company of the buyer's own selection authorized to do business in this State; provided that the seller or holder shall have the right for reasonable cause to disapprove of the insurance company selected by the buyer to underwrite the insurance.

- (B) In any credit sale contract for the sale of a motor vehicle where insurance is contracted for as a part of the sale, and the insurance does not include public liability insurance for bodily injury and property ~~damages~~ DAMAGE, the contract shall contain, on the same page as the disclosures therein concerning insurance, a notice substantially similar to the following:

“THIS DOES NOT INCLUDE INSURANCE ON YOUR LIABILITY FOR BODILY INJURY OR PROPERTY DAMAGE. IT DOES NOT MEET THE REQUIREMENTS FOR PROOF OF FINANCIAL RESPONSIBILITY UNDER HAWAII LAW.”

- (C) If any ~~such~~ INSURANCE policy or certificate is canceled, the unearned insurance premium refund received by the holder of the contract shall at the option of the holder either be credited to the final maturing installments of the credit sale contract or BE paid to the buyer, except to the extent applied toward payment for similar insurance protecting the interests of the buyer and holder of the contract or either of them.”

SECTION 3.

[Section 477E-2, Hawaii Revised Statutes](#), is amended by amending the definition of “creditor” to read as follows:

“Creditor” means any bank; savings and loan association; trust company; financial services loan company ~~or small loan company~~ ; credit union; mortgage banker, broker, or solicitor; pawnbroker; mutual BENEFIT SOCIETY or fraternal benefit society; debt adjuster; the issuer of a credit card as defined in section 708-800; any person who initiates, extends, renews, or continues loans of money or credit; any person who regularly arranges for the initiation, extension, renewal, or continuation of a loan

of money or credit; or any assignee of an original creditor who participates in the decision to grant, extend, renew, or to continue such loan or credit."

SECTION 4.

Section 477E-5, Hawaii Revised Statutes, is amended to read as follows:

"Section 477E-5

~~-Civil penalties-~~ **UNFAIR OR DECEPTIVE ACT OR PRACTICE.** Any creditor who violates or attempts to violate any provision of this chapter shall be deemed to have engaged in an unfair ~~-and~~ **OR** deceptive act or practice in the conduct of trade or commerce within the meaning of section 480-2."

SECTION 5.

Section 480-14, Hawaii Revised Statutes, is amended as follows:

1. By amending subsections (a) and (b) to read:

"(a) Whenever the State, any county, ~~-or city and county-~~ **OR ANY OF ITS POLITICAL SUBDIVISIONS OR GOVERNMENTAL AGENCIES,** is injured in its business or property by reason of anything forbidden or declared unlawful by this chapter, it may sue to recover threefold the actual damages sustained by it.

(b) The attorney general may bring an action on behalf of the State **, ANY COUNTY,** or any of its political subdivisions or governmental agencies to recover the damages provided for by this section, or by any comparable provisions of federal law."

2. By amending subsection (d) to read:

"(d) If judgment is in favor of the State **, ANY COUNTY,** or any of its political subdivisions or governmental agencies under any provision of this chapter, the attorney general or the director of the office of consumer protection shall be awarded reasonable attorney's fees together with the cost of suit; provided further that in any class action lawsuit brought by the attorney general in behalf of indirect purchasers, the attorney general shall in addition be awarded an amount commensurate with expenses reasonably expected to be expended in distribution of damages to the indirect purchasers."

SECTION 6.

Section 480-20, Hawaii Revised Statutes, is amended by amending subsections (a) and (b) to read as follows:

"(a) The attorney general shall enforce the criminal and civil provisions of this chapter. The county attorney ~~of any county, the prosecuting attorney and the~~ **, OR PROSECUTING ATTORNEY** of ~~the city and county~~ **ANY COUNTY** shall investigate and report suspected violations of this chapter to the attorney general.

(b) Whenever this chapter authorizes or requires the attorney general to commence any action or proceeding, including proceedings under section 480-18, the attorney general may require the county attorney, ~~prosecuting attorney, or~~ **OR PROSECUTING ATTORNEY** of any ~~county or city and~~ county, holding office in the circuit where the action or proceeding is to be commenced or maintained, to maintain the action or proceeding under the direction of the attorney general."

SECTION 7.

[Section 480-22, Hawaii Revised Statutes](#), is amended by amending subsections (a) and (b) to read as follows:

- "(a) A final judgment or decree rendered in any civil or criminal proceeding brought by the State under this chapter shall be prima facie evidence against the defendant in any action or proceeding brought by any other party under this chapter, or by the State, county, ~~or city and county,~~ OR ANY OF ITS POLITICAL SUBDIVISIONS OR GOVERNMENTAL AGENCIES, under section 480-14, against the defendant as to all matters respecting which the judgment or decree would be an estoppel between the parties thereto. This section shall not apply to consent judgments or decrees entered before any complaint has been filed; provided that when a consent judgment or decree is filed, the attorney general shall set forth at the same time the alleged violations and reasons for entering into the consent judgment or decree. No consent judgment or decree that is entered before any complaint has been filed shall become final until sixty days from the filing of the consent judgment or decree or until the final determination of any exceptions filed, as hereinafter provided, whichever is later. During the sixty-day period any interested party covered under section 480-13 may file verified exceptions to the form and substance of the consent judgment or decree, and the court, upon a full hearing thereon may approve, refuse to approve, or may modify the consent judgment or decree.
- (b) A plea of nolo contendere and a final judgment or decree rendered pursuant to that plea in any criminal action under this chapter shall not be admissible against the defendant in any action or proceeding brought by any other party under this chapter, or by the State, county, ~~or city and county,~~ OR ANY OF ITS POLITICAL SUBDIVISIONS OR GOVERNMENTAL AGENCIES, under section 480-14 against the defendant."

SECTION 8.

[Section 480-23, Hawaii Revised Statutes](#), is amended by amending subsection (b) to read as follows:

- "(b) No individual shall be criminally prosecuted or subjected to any criminal penalty under this chapter for or on account of any transaction, matter, evidence, or thing concerning which the individual may so testify or produce in any investigation brought by the attorney general pursuant to section 480-18, or any county attorney, ~~prosecuting attorney, or~~ corporation counsel, OR PROSECUTING ATTORNEY of any ~~county or city and~~ county, when the individual has done so pursuant to an order issued under section 480-23.1 ~~;~~ provided THAT no individual so testifying shall be exempt from prosecution or punishment for perjury, for giving a false statement, or for an offense involving a failure to comply with the order."

SECTION 9.

[Section 480-23.1, Hawaii Revised Statutes](#), is amended by amending subsection (b) to read as follows:

- "(b) A judge of a circuit court or of a district court may, upon application by the attorney general ~~or~~ or any county attorney, ~~prosecuting attorney, or~~ corporation counsel, OR PROSECUTING ATTORNEY of any ~~county or city and~~ county, issue an order requiring the person to testify or to produce a record, document, or other object, notwithstanding the person's refusal to do so on the basis of the person's privilege against self-incrimination. The application shall specify whether the immunity being sought is use immunity as set forth in section 480-23.2 or transactional immunity as set forth in section 480-23.3."

SECTION 10.

[Section 480D-2, Hawaii Revised Statutes](#), is amended by amending the definition of "debt collector" to read as follows:

"Debt collector" means any person, who is not a collection agency ~~—~~ **REGULATED PURSUANT TO CHAPTER 443B**, and who in the regular course of business collects or attempts to collect consumer debts owed or due or asserted to be owed or due to the collector."

SECTION 11.

Section 480F-6, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

"(b) Any person who is not a consumer and is injured by a wilful violation of ~~the~~ **THIS** chapter may bring an action for the recovery of damages, a proceeding to restrain and enjoin those violations, or both. If judgment is for the plaintiff, the plaintiff shall be awarded a sum not less than \$ 1,000 or threefold damages, whichever sum is greater, and reasonable attorneys' fees together with the costs of suit."

SECTION 12.

Section 481B-1.6, Hawaii Revised Statutes, is amended by amending subsection (e) to read as follows:

"(e) It shall be an unlawful practice and a violation of this chapter for any person, in any contest or sweepstakes in which the winning entry or entries are to be determined by a drawing or some other method based on an element of chance ~~÷~~ **TO:**

(1) ~~To promote~~ **PROMOTE** a contest or sweepstakes in which some or all of the prizes may not be awarded, or to fail to award all prizes or awards offered, unless the person makes the following disclosures to each offeree in writing and in a conspicuous manner prior to the acceptance of the offeree's entry:

(A) That some or all of the prizes may not be awarded; and

(B) The date or dates on which a determination of winners will be made; ~~and~~ **OR**

(2) ~~To offer~~ **OFFER** a prize of real property unless the offeror files and maintains with the director **OF COMMERCE AND CONSUMER AFFAIRS** a bond in a sum not less than \$ 10,000, executed by the offeror, and naming the director as the obligee and a surety company authorized to do business in the State as surety. The bond shall be continuous in form and conditioned upon the award of the real property to an eligible participant. The bond shall run to the State for the benefit of any person who failed to receive the real property due to the failure of the offeror to award the real property pursuant to the terms of the offer. The surety may cancel the bond by giving sixty days' notice in writing to the director ~~—~~ **OF COMMERCE AND CONSUMER AFFAIRS**. Upon cancellation or expiration of the bond, the surety shall remain liable for any claims against the bond for a period of one year; provided that the claim arose while the bond was in effect and the director **OF COMMERCE AND CONSUMER AFFAIRS** notifies the surety of any claims within ninety days of discovery of the claim."

SECTION 13.

Section 481B-4, Hawaii Revised Statutes, is amended to read as follows:

"Section 481B-4

~~Penalty.~~ **REMEDIES.** Any person who violates this chapter shall be deemed to have engaged in an unfair method of competition ~~or~~ **AND** unfair ~~and~~ **OR** deceptive act or practice in the conduct of any trade or commerce within the meaning of section 480-2."

SECTION 14.

Section 481B-5.5, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a)

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

"Ancillary charges" includes all charges paid to the merchant that are necessary for the use of the goods for their purchased purpose and all sums paid for agreements for service, warranty, or replacement.

"Conspicuous sign" means a sign posted in the merchant's place of business in a location reasonably calculated to bring the sign to the attention of purchasers before a purchaser makes a purchase.

"Exchange" means a transaction between a merchant and a purchaser in which a previously purchased item is exchanged for another item.

"Full amount of the payment" includes the amount paid for the returned goods, including any ancillary charges or taxes incident to the purchase of the returned goods, and without any deduction for restocking of the merchant's inventory, or for administration of the refund, exchange, or merchandise credit.

"Merchandise credit" means the crediting to the purchaser of the full amount of the payment upon return of the goods and allowing the purchaser to purchase goods from the merchant with the merchandise credit, or applying to the purchaser's credit account with the merchant, in the amount of the merchandise credit.

"Merchant" means any person engaged in the business of offering goods for sale to purchasers at retail.

"Proof of purchase" means a sales slip, receipt, credit card slip, or any other documentation that substantiates the sale of the goods from the merchant and the amount of payment.

"Purchaser" means a natural person who is returning goods that were purchased or received primarily for personal, family, or household purposes.

"Refund" means the return to the purchaser of the full amount of the payment upon return of the goods, in accordance with this ~~chapter.~~ **SECTION.**

"Repacking and transportation charges" means the charges for repacking, ~~pickup,~~ **PICK UP,** and transportation of goods previously delivered, unpacked, and set up by the merchant at the direction of the purchaser.

"Return" or "return of goods" means the acceptance by the merchant of goods from a purchaser, whether for refund, merchandise credit, or exchange, and includes the cancellation of a custom or special order before the merchant is obligated to make payment on the order and the cancellation of a layaway."

SECTION 15.

[Section 481B-6, Hawaii Revised Statutes](#), is amended by amending its title to read as follows:

"Section 481B-6

Sale of solar energy devices; disclosure requirements ~~;-penalty-~~."

SECTION 16.

[Section 481B-11, Hawaii Revised Statutes](#), is amended by amending its title to read as follows:

"Section 481B-11

~~Refunds; offer of services-~~ **SENSITIVITY-AWARENESS GROUP SEMINARS.** "

SECTION 17.

Section 481B-13, Hawaii Revised Statutes, is amended by amending subsection (d) to read as follows:

"(d) Any violation of this section shall constitute an unfair ~~and~~ **OR** deceptive act or practice in the conduct of trade or commerce within the meaning of section 480-2."

SECTION 18.

Section 481C-1, Hawaii Revised Statutes, is amended to read as follows:

"Section 481C-1

Definitions. In this chapter, unless the context or subject matter otherwise requires:

~~(1) (A)~~ "Door-to-door sale" ~~means (i) a~~ :

(1) MEANS:

(A) A sale of goods or services solicited in person and signed by the buyer at a place other than the seller's business address shown on the contract; ~~or (ii) a~~

(B) A sale of goods or services solicited in person or by mail ~~or~~ **OR** telephone; or ~~public~~

(C) A **PUBLIC** or private notice or advertisement if the solicitation includes an offer of a gift, prize, premiums, stamps, coupons, tickets, or other redeemable devices as an inducement for the person solicited or a member of the person's immediate family to go to the seller's place of business, whether the buyer signs at the seller's place of business or elsewhere ~~or~~ ; **AND**

~~(B) The term "door-to-door sale" does~~ **(2) DOES** not include a transaction:

(i) (A) Made pursuant to prior negotiations in the course of a visit by the buyer to a retail business establishment having a fixed permanent location where the goods are exhibited or the services are offered for sale on a continuing basis; ~~or~~

(ii) (B) In which the buyer has initiated the contact and the goods or services are needed to meet a bona fide immediate personal emergency of the buyer, and the buyer furnishes the seller with a separate dated and signed personal statement in the buyer's handwriting describing the situation requiring immediate remedy and expressly acknowledging and waiving the right to cancel the sale within three business days; ~~or~~

(iii) (C) Conducted and consummated entirely by mail or telephone ~~or~~ and without any other contact between the buyer and the seller or its representative prior to delivery of the goods or performance of the services; or

(iv) (D) In which the buyer has initiated the contact and specifically requested the seller to visit the buyer's home for the purpose of repairing or performing maintenance upon the buyer's personal property. If in the course of such a visit, the seller sells the buyer the right to receive additional services or goods other than replacement parts necessarily used in performing the maintenance or in making the repairs, the sale of those additional goods or services would not fall within this exclusion.

~~(2)~~ "Goods" means all chattels personal, other than money and things in action, except as herein provided, and includes emblements, growing crops, and things which attach to or form a part of land which are agreed to be severed before sale under the contract and things which at the time of sale or subsequently are to be so affixed to real property as to become a part thereof, whether or not severable therefrom. The term includes merchandise certificates or coupons, issued by a seller, to be used in their face amount in lieu of cash in exchange for goods sold by such a seller. The term also includes services as herein defined.

~~(3)~~ "Services" means work, labor, or service of any kind whether purchased primarily for personal, family, or household use, and whether or not furnished in connection with the

delivery, installation, servicing, repair, or improvement of goods, and includes repairs, alterations, or improvements upon or in connection with real property.

~~(4)~~ "Seller" means any person, partnership, corporation, association, or other group, however organized, engaged in the door-to-door sale of goods or services.

~~(5)~~ "Sale" means ~~and includes~~ any sale with a purchase price of \$ 5 or more, or \$ 25 if the merchandise is capable of being delivered at one time, other than for resale, of goods to a buyer pursuant to a contract. It does not include a sale to a business establishment.

~~(6)~~ "Contract" means ~~and includes~~ any agreement, including a conditional sales contract or any other form of instrument, evidencing an obligation to pay the purchase price, or moneys advanced in payment of the purchase price of goods, by payment thereof in one payment, or more than one payment made in installments over a period of time, whether or not the contract contains a title retention provision.

~~(7)~~ "Cash sale price" means the cash sale price stated in a contract for which the seller would sell to the buyer, and the buyer would buy from the seller, the goods which are the subject matter of the contract if the sale were a sale for cash instead of by payments made in installments over a period of time. The cash sale price may include taxes, registration, license, and other fees and charges for accessories and their installation and for delivering, servicing, repairing, or improving the goods.

~~(8)~~ "Business day" means any calendar day, except Saturday, Sunday, or any state or federal holiday."

SECTION 19.

Section 481D-3, Hawaii Revised Statutes, is amended to read as follows:

" ~~†~~ Section 481D-3 ~~†~~ Posting of notice. (A) A person required to post notice under this chapter shall post a notice which shall be not less than twenty-two inches by thirty-three inches in size and posted in a conspicuous place ~~which~~ **THAT** is visible and readable outside the place of business where the sale is to be held. The notice shall be signed under penalty of perjury. Where the person is a corporation, the notice shall be signed by two officers. Where the person is a partnership, the notice shall be signed by two partners. The notice shall include the following:

- (1) The name and address of the owner of the goods being sold. If the ~~person~~ **OWNER** is a partnership, corporation, firm, or association, the **NOTICE SHALL CONTAIN THE** full name and position of the individual filing the notice;
- (2) The type of sale and manner in which the sale is to be conducted and the address where the sale is to be conducted;
- (3) The dates and ~~time~~ **TIMES** during which the sale is to be conducted;
- (4) The name and street address of the person in charge of and responsible for the conduct of the sale;
- (5) An explanation regarding the condition or necessity for the sale, including a statement of the descriptive name of the sale and the reasons why the name is truthfully descriptive of the sale. The notice shall contain a statement that the business will be discontinued at the premises where the sale is to be conducted upon termination of the sale. If the sale is with respect to a removal sale, it shall contain a statement that the business will be discontinued at the premises where the sale is to be conducted upon termination of the sale, in addition to the location of the premises to which the business is to be moved. If the sale is with respect to the sale of goods damaged by fire, smoke, water, or otherwise, the notice shall contain a statement as to the time, location, and cause of the damage;

- (6) The notice shall state that an inventory report form, containing a detailed list and inventory of each item of inventory costing over \$ 100 to be sold, itemizing the goods to be sold, and containing sufficient information concerning each item, including make and brand name, shall be available for inspection on the store premises on request. The inventory report form shall list separately goods ~~which~~ **THAT** were purchased during the sixty-day period immediately prior to the date of posting the notice showing the cost price of each item to the owner of the inventory together with the name and address of the seller of the item to the owner of the inventory, the date of purchase, the date of delivery to the owner of the inventory, and the total value of the inventory at cost;
- (7) A statement that no goods will be added to the inventory after posting the notice or during the sale, and that the inventory contains no goods received on consignment; and
- (8) A statement disclosing the date from which the person has maintained a place of business within the State prior to the posting of the notice.
- (9) (B)** This section shall not apply to any person who acquired a right, title, or interest in the goods:
- (A) (1)** As an heir, devisee, legatee, or surviving joint tenant;
- (B) (2)** As an executor, administrator, trustee, guardian, or conservator; or
- (C) (3)** Pursuant to an order or process of a court of competent jurisdiction."

SECTION 20.

Section 481D-5, Hawaii Revised Statutes, is amended by amending its title to read as follows:

" ~~Section 481D-5 Violation; penalties.~~ **VIOLATIONS.** "

SECTION 21.

Section 481G-6, Hawaii Revised Statutes, is amended to read as follows:

" ~~Section 481G-6~~ ~~Exceptions.~~ No action may be brought under section 481G-4 in connection with the termination, cancellation, or nonrenewal of a dealership if the dealership provides for the binding arbitration of disputes arising thereunder, including disputes related to the termination, cancellation, or nonrenewal of the dealership, in accordance with **CHAPTER 658A OR** the rules of the American Arbitration Association."

SECTION 22.

Section 481H-8, Hawaii Revised Statutes, is amended by amending its title to read as follows:

" ~~Section 481H-8 Penalty and remedies.~~ **REMEDIES.** "

SECTION 23.

Section 481I-2, Hawaii Revised Statutes, is amended by amending the definitions of "lessee", "motor vehicle", "purchase price", and "replacement motor vehicle" to read as follows:

"Lessee" means any consumer who leases a motor vehicle :

(1) for FOR one year or more pursuant to a written lease agreement which provides that the lessee is responsible for repairs to such motor vehicle ~~;~~ **;** or ~~any consumer who leases a motor vehicle~~

(2) pursuant PURSUANT to a lease-purchase agreement.

"Motor vehicle" ~~means~~ **:**

- (1) **MEANS** a self-propelled vehicle primarily designed for the transportation of persons or property over public streets and highways which is used primarily for personal, family, or household purposes ~~-. For purposes of this definition, a "motor vehicle" also includes a -~~ ;
- (2) **INCLUDES BUT SHALL NOT BE LIMITED TO:**
- (A) A "demonstrator", which means a vehicle assigned by a dealer for the purpose of demonstrating qualities and characteristics common to vehicles of the same or similar model or type ~~-~~ ;
- (B) **AN INDIVIDUALLY REGISTERED VEHICLE USED FOR AN INDIVIDUAL'S BUSINESS PURPOSES AS WELL AS FOR PERSONAL, FAMILY, OR HOUSEHOLD PURPOSES; AND**
- (C) **A VEHICLE OWNED OR LEASED BY A SOLE PROPRIETORSHIP, CORPORATION, OR PARTNERSHIP WHICH HAS PURCHASED OR LEASED NO MORE THAN ONE VEHICLE PER YEAR, USED FOR HOUSEHOLD, INDIVIDUAL, OR PERSONAL USE IN ADDITION TO BUSINESS USE; AND**
- (3) **SHALL** ~~-but does-~~ not include mopeds, motorcycles, or motor scooters, as those terms are defined in chapter 286, or vehicles over 10,000 pounds, gross vehicle weight rating. ~~-For purposes of this definition, a "motor vehicle" also includes (1) an individually registered vehicle used for an individual's business purposes and for personal, family, or household purposes; and (2) a vehicle owned or leased by a sole proprietorship, corporation or partnership which has purchased or leased no more than one vehicle per year, used for household, individual, or personal use in addition to business use.~~

"Purchase price" means the cash price appearing in the sales agreement or contract and paid for the motor vehicle, including any net allowance for a trade-in vehicle. Where the consumer is a second or subsequent purchaser and the arbitration award is for a refund of the **PURCHASE PRICE OF THE** motor vehicle, "purchase price" means the purchase price of the second or subsequent purchase **AND SHALL** not ~~-to-~~ exceed the purchase price paid by the original purchaser.

"Replacement motor vehicle" means a motor vehicle which is identical or reasonably equivalent to the motor vehicle to be replaced, as the motor vehicle to be replaced existed at the time of original acquisition, including any service contract, undercoating, rustproofing, and ~~-factory or dealer installed-~~ **FACTORY-INSTALLED OR DEALER-INSTALLED** options."

SECTION 24.

[Section 481J-2, Hawaii Revised Statutes](#), is amended by amending subsections (i) and (j) to read as follows:

"(i) The dealer shall provide to the consumer, each time the consumer's vehicle is returned from being diagnosed or repaired under the warranty, a fully itemized, legible warranty repair receipt indicating any diagnosis made and all work performed on the vehicle, including ~~-~~ but not limited to:

- (1) The defect or malfunction complained of;
- (2) The work performed in an attempt to correct the defect or malfunction and the identity of the repairer if it is not the dealer;
- (3) The parts replaced in performing such work;
- (4) The date and odometer reading when the vehicle was submitted for repair; and
- (5) The date when the vehicle was made available to the consumer.

The consumer shall sign a copy of the warranty repair receipt.

- (j) A dealer may repair, within the meaning of this section, either by performing the repair itself or, if the dealer does not have a repair facility, by arranging and making payment for prompt repair by a motor vehicle repair dealer ~~-registered-~~ LICENSED under chapter 437B."

SECTION 25.

Section 481J-6, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

- "(a) If the dealer or its agent fails to correct a defect or malfunction as required by the warranty specified in section 481J-2 after a reasonable period of time, the dealer shall accept return of the used motor vehicle from the consumer and refund the full purchase price, including ~~-sales-~~ GENERAL EXCISE tax, less a reasonable allowance for any damage not attributable to normal wear or usage, and with an adjustment for any modifications which either increase or decrease the market value of the vehicle. A reasonable allowance for use shall be fifteen cents for each mile the used motor vehicle has been operated between its sale and its return."

SECTION 26.

Section 481J-7, Hawaii Revised Statutes, is amended to read as follows:

" ~~+~~ Section 481J-7 ~~+~~ Civil and administrative actions for violations. (a) A consumer of a used motor vehicle shall have a private right of action against a dealer to enforce this ~~-section-~~ CHAPTER and recover costs, including reasonable attorney's fees, incurred in the civil action.

(b) It shall be an affirmative defense to any claim under this section that:

- (1) The alleged malfunction or defect does not substantially impair the use or safety of the used motor vehicle;
 - (2) The alleged malfunction or defect is the result of abuse, neglect, or unreasonable modifications or alterations of the used motor vehicle; or
 - (3) The alleged malfunction or defect was covered or warranted under an express warranty issued by the manufacturer of the used motor vehicle, and that such warranty issued by the manufacturer of the used motor vehicle was in effect during the warranty period established by this ~~-section-~~ CHAPTER.
- (c) Any private civil action brought pursuant to this section shall be commenced within one year of the date of original delivery of the used motor vehicle to the consumer.
- (d) Nothing in this chapter shall in any way limit the rights or remedies which are otherwise available to a consumer under any other law.
- (e) A ~~-motor-vehicle-~~ dealer's failure to comply with any of the provisions of this chapter may result in disciplinary action pursuant to chapter 437, which may result in sanctions, including ~~-~~, but not limited to ~~-~~, suspension or revocation of license, and the imposition of fines or restitution."

SECTION 27.

Section 481K-3, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

"(b) For purposes of subsection (a):

- (1) The "current value of the written lease" equals the total amount for which that lease obligates the consumer during the period of the lease remaining after its early termination, plus the assistive device ~~-dealer's-~~ LESSOR'S early termination costs and the value of the assistive device at the lease expiration date if the lease sets forth that value, less the assistive device lessor's early termination savings;

- (2) A "reasonable allowance for use" shall not exceed the amount obtained by multiplying the total amount the consumer paid or for which the written lease obligates the consumer **TO PAY** by a fraction, the denominator of which is one thousand eight hundred twenty-five and the numerator of which is the number of days that the consumer used the assistive device before first reporting the nonconformity to the manufacturer, its agent, assistive device lessor, or assistive device dealer; and
- (3) It shall be presumed that a manufacturer has had a "reasonable opportunity to repair" if the manufacturer or its agents fails to repair the same nonconformity ~~with~~ **WITHIN** two attempts, or the assistive device is out of service, including by reason of attempts to repair one or more nonconformities, for a cumulative total of more than thirty business days after the consumer has returned it for repair."

SECTION 28.

Section 481L-4, Hawaii Revised Statutes, is amended to read as follows:

" ~~+~~ Section 481L-4 ~~+~~ Civil remedies. A retail lessor who fails to comply with the requirements of this chapter shall be deemed to have engaged in an unfair ~~and~~ **OR** deceptive act or practice in the conduct of trade or commerce within the meaning of section 480-2."

SECTION 29.

Section 481M-4, Hawaii Revised Statutes, is amended to read as follows:

" ~~+~~ Section 481M-4 ~~+~~ Provisions prohibited in agreements. A lease-purchase agreement may not contain:

- (1) A confession of judgment;
- (2) A negotiable instrument;
- (3) A security interest or any other claim of a property interest in any goods except those goods delivered by the lessor pursuant to the lease-purchase agreement;
- (4) A wage assignment;
- (5) A waiver by the ~~consumer~~ **LESSEE** of claims or defenses; or
- (6) A provision authorizing the lessor or a person acting on the lessor's behalf to enter upon the ~~consumer's~~ **LESSEE'S** premises or to commit any breach of the peace in the repossession of goods."

SECTION 30.

Section 481M-7, Hawaii Revised Statutes, is amended to read as follows:

" ~~+~~ Section 481M-7 ~~+~~ Additional charges. (a) A lessor may contract for and receive an initial nonrefundable fee not to exceed \$ 10 per ~~contract~~ **LEASE-PURCHASE AGREEMENT**. If the lessor requires a security deposit, the amount of the deposit and the conditions under which it will be returned shall be disclosed pursuant to section 481M-13.

- (b) A lessor may contract for and receive an initial delivery charge per ~~contract~~ **LEASE-PURCHASE AGREEMENT THAT SHALL** not ~~to~~ exceed \$ 15 in the case of ~~a lease-purchase~~ **AN** agreement covering five or fewer items if ~~, in either case,~~ the lessor actually delivers the items to the lessee's dwelling and the delivery charge is disclosed pursuant to section 481M-14. The delivery charge shall be assessed in lieu of and not in addition to the initial ~~charge~~ **FEE** in subsection (a). A lessor may not contract for or receive a delivery charge on property redelivered after repair or maintenance.

(c) A lessor may contract for and receive a charge for picking up late payments from the lessee if the lessor is required to do so pursuant to the ~~rental-purchase-~~ LEASE-PURCHASE agreement or is requested to visit the lessee to pick up a payment. In a lease-purchase agreement with payment or renewal dates ~~which-~~ THAT are on a monthly basis, this charge may not be assessed more than three times in any six-month period. In lease-purchase agreements with payments or renewal options on a weekly or biweekly basis, this charge may not be assessed more than six times in any six-month period. No charge assessed pursuant to this subsection may exceed \$ 10. A pickup fee may be assessed pursuant to this subsection only in lieu of and not in addition to any late charge assessed pursuant to subsection (d).

(d) The parties may contract for late charges as follows:

- (1) For lease-purchase agreements with monthly renewal dates, a late charge not exceeding \$ 5 may be assessed on any payment not made within five days after payment is due, or return of the property is required; or
- (2) For lease-purchase agreements with weekly or biweekly renewal dates, a late charge not exceeding \$ 3 may be assessed on any ~~payments-~~ PAYMENT not made within three days after payment is due, or return of the property is required.

A late charge on lease-purchase agreements may be collected only once on any accrued payment, no matter how long it remains unpaid. A late charge may be collected at the time it accrues or at any time thereafter. A lessor may elect to waive imposition of a late charge due on an accrued payment in accordance with the terms of the lease-purchase agreement; ~~except that-~~ PROVIDED THAT the waiver shall be in writing and, once a late charge is waived for A specific payment, the lessor may not seek to impose a late ~~fee-~~ CHARGE for the accrued payment in question. No late charge shall be assessed against a payment that is timely, even though an earlier late charge has not been paid in full."

SECTION 31.

[Section 481M-10, Hawaii Revised Statutes](#), is amended by amending subsection (a) to read as follows:

"(a) In case of a violation by a lessor of any provision of this chapter with respect to any lease-purchase agreement, the lessee may bring a suit in any court of competent jurisdiction to recover ACTUAL DAMAGES from the lessor , or may set off or counterclaim in any action by the lessor ~~actual damages-~~ . If the court finds that any violation BY THE LESSOR has occurred, the court shall award TO THE LESSEE a minimum recovery of \$ 250 or twenty-five per cent of the total cost to acquire ownership under the lease-purchase agreement, whichever is greater."

SECTION 32.

[Section 481M-12, Hawaii Revised Statutes](#), is amended to read as follows:

" ~~†~~ Section 481M-12 ~~†~~ Waivers. A lessor shall not require a lessee to waive:

- (1) Service of process;
- (2) Any defense;
- (3) Any counterclaim; or
- (4) Right of action against the lessor or a person acting on the lessor's behalf as the lessor's agent; in collection of payments under the ~~lease-~~ LEASE-PURCHASE AGREEMENT or in repossession of the ~~lease-~~ LEASED property."

SECTION 33.

[Section 481M-13, Hawaii Revised Statutes](#), is amended to read as follows:

" ~~+~~ Section 481M-13 ~~+~~ Disclosure of information. (A) The lessor shall disclose to the lessee the information required by this chapter. In a transaction involving more than one lessor, only one lessor need make the disclosures, but all lessors shall be bound by these disclosures. The disclosures shall be made before consummation of the lease-purchase agreement.

(B) The disclosures shall be made clearly and conspicuously in writing ~~and a~~ AND IN NOT LESS THAN TEN-POINT STANDARD TYPE. A copy OF THE DISCLOSURES SHALL BE INCLUDED WITH ~~of~~ the lease-purchase agreement provided to the lessee ~~in not less than ten-point standard type~~. All disclosures required by this chapter shall be printed or typed in a color or shade that clearly contrasts with the background. The disclosures required under section 481M-14 shall be made on the face of the ~~contract~~ LEASE-PURCHASE AGREEMENT above the line for the lessee's signature. Before any payment is due, the lessor shall furnish the lessee with an exact copy of the lease-purchase agreement, which shall be signed by the lessee and which shall evidence the lessee's agreement.

(C) If a disclosure becomes inaccurate as the result of any act, occurrence, or agreement by the lessee after delivery of the required disclosures, the resulting inaccuracy shall not be a violation of this chapter."

SECTION 34.

Section 481M-14, Hawaii Revised Statutes, is amended as follows:

1. By amending subsection (a) to read:

"(a) For each lease-purchase agreement, the lessor shall disclose in the agreement the following items, as applicable:

- (1) The total number, total amount, and timing of all payments necessary to acquire ownership of the property;
- (2) A statement that the lessee shall not own the property until the lessee has made the total payment necessary to acquire ownership;
- (3) A statement that the lessee shall be responsible for the fair market value of the property if, and as of the time, it is lost, stolen, damaged, or destroyed;
- (4) A brief description of the leased property ~~+~~ sufficient to identify the property to the lessee and the lessor, including an identification number, if applicable, and a statement indicating whether the property is new or used ~~+~~but; PROVIDED THAT a statement that indicates THAT new property is used PROPERTY does not violate this chapter;
- (5) A brief description of any damages to the leased property;
- (6) A statement of the cash price of the property. If the agreement involves a lease of two or more items as a set ~~+~~ in one agreement, a statement of the aggregate cash price of all items is sufficient;
- (7) The total of initial payments ~~paid~~ MADE or required at or before consummation of the agreement or delivery of the property, whichever is later;
- (8) A statement that the total of payments shall not include other charges, such as delivery, taxes, late payment, pickup, and reinstatement fees, which fees shall be separately disclosed in the ~~contract;~~ AGREEMENT;
- (9) A statement clearly summarizing the terms of the lessee's option to purchase, including a statement that the lessee has the right to exercise an early-purchase option and the price, formula, or method for determining the price at which the property may be so purchased;
- (10) A statement identifying the party responsible for maintaining or servicing the property while it is being leased, together with a description of that responsibility, and a statement that if any part

of a manufacturer's express warranty covers the leased property at the time the lessee acquires ownership of the property, the warranty shall be transferred to the lessee, if allowed by the terms of the warranty;

(11) The date of the transaction and the identities of the lessor and lessee;

(12) A statement that the lessee may terminate the agreement without penalty by voluntarily surrendering or returning the property in good repair, ordinary wear and tear excepted, upon expiration of any lease term along with any past due rental payments; and

(13) Notice of the right to reinstate an agreement as provided in this chapter."

2. By amending subsection (c) to read:

"(c) With respect to matters specifically governed by the ~~Federal~~ **FEDERAL** Consumer Credit Protection Act (15 U.S.C. **SECTIONS** 1601 to 1674), compliance with that Act satisfies the requirements of this section."

SECTION 35.

[Section 481M-15, Hawaii Revised Statutes](#), is amended by amending subsection (a) to read as follows:

"(a) A lessee who breaches any lease-purchase agreement, including but not limited to the failure to make timely ~~rental~~ **LEASE** payments, shall have the right to reinstate the original lease-purchase agreement without losing any rights or options previously acquired under the lease-purchase agreement if both of the following apply:

(1) Subsequent to having failed to make a timely ~~rental~~ **LEASE** payment, the lessee has promptly surrendered the property to the lessor, in the manner as set forth in the lease-purchase agreement, and if and when requested by lessor; and

(2) Not more than thirty days have passed since the lessee returned the ~~lease~~ property; ~~except~~ **PROVIDED** that if the lessee has made more than sixty per cent of the total number of payments required under the lease-purchase agreement to acquire ownership, the thirty-day period shall be extended to a sixty-day period."

SECTION 36.

[Section 481M-17, Hawaii Revised Statutes](#), is amended to read as follows:

" ~~+~~ Section 481M-17 ~~+~~ Renegotiation for new agreement and extensions. (A) A renegotiation shall occur when an existing lease-purchase agreement is satisfied and replaced by a new agreement undertaken by the same lessor and lessee. A renegotiation shall be considered a new agreement requiring new disclosures. ~~However, the~~

(B) THE following events shall not be treated as renegotiations:

(1) The addition or return of property in a multiple-item agreement or in the substitution of the ~~lease~~ **LEASED** property, if in either case the average payment allocable to a payment period is not changed by more than twenty-five per cent;

(2) A deferral or extension of one or more periodic payments, or portions of a periodic payment;

(3) A reduction in charges in the lease or agreement; ~~and~~ **OR**

(4) A lease or agreement involved in a court proceeding.

(C) No disclosures are required for any extension of a lease-purchase agreement."

SECTION 37.

Section 481P-2, Hawaii Revised Statutes, is amended by amending its title to read as follows:

"Section 481P-2

~~-Unfair or deceptive acts or practices prohibited-~~ **VIOLATIONS.** "

SECTION 38.

Section 481P-3, Hawaii Revised Statutes, is amended to read as follows:

" ~~+~~ Section 481P-3 ~~+~~ Abusive telemarketing acts or practices. It is an abusive telemarketing act or practice and a violation of this chapter for any seller or telephone solicitor to engage in the following conduct:

- (1) Threaten, intimidate, or use profane or obscene language;
- (2) Request a fee to remove derogatory information from or **TO** improve a consumer's credit history or credit record until:
 - (A) The time frame in which the seller or telephone solicitor has represented that all of the goods or services will be provided to that consumer has expired; and
 - (B) The seller or telephone solicitor has provided the consumer with documentation in the form of a credit report from a credit reporting agency demonstrating that the promised results have been achieved, the report having been issued more than six months after the results were achieved. Nothing in this chapter ~~-should-~~ **SHALL** be construed to affect the requirement of **SECTION 604 OF** the Fair Credit Reporting Act, 15 U.S.C. **SECTION** 1681b, that a consumer report may only be obtained for a specified permissible purpose;
- (3) Request or receive payment from a consumer to recover or otherwise aid in the return of money or any other item lost by the consumer in a telemarketing transaction, until seven business days after the money or other item is delivered to the consumer;
- (4) Request or actually receive payment of any fee in advance of obtaining a loan or other extension of credit when a high likelihood of success has been represented to the consumer by the seller or telephone solicitor;
- (5) Cause the telephone to ring more than ten times in an outbound telephone call;
- (6) Engage any consumer repeatedly or continuously with behavior a reasonable person would deem to be annoying, abusive, or harassing;
- (7) Initiate an outbound telephone call to a consumer, when the person has stated previously that the consumer does not wish to receive telephone calls from that seller or telephone solicitor; provided that the seller or telephone solicitor will not be liable for violating this paragraph if:
 - (A) It has established and implemented written procedures to comply with this paragraph, which procedures shall meet the minimum standards set forth in 47 C.F.R. **SECTION** 64.1200(e)(2);
 - (B) It has trained its personnel in the procedures established pursuant to subparagraph (A);
 - (C) The seller, or telephone solicitor acting on behalf of the seller, has maintained and recorded lists of persons who may not be contacted in compliance with this paragraph; and
 - (D) The call is the result of error; **OR**
- (8) Initiate an outbound telephone call to a consumer's residence at any time other than between 8:00 a.m. and 9:00 p.m. local time at the location of the consumer called."

SECTION 39.

Section 481P-5, Hawaii Revised Statutes, is amended to read as follows:

" ~~§~~ Section 481P-5 ~~§~~ Exemptions. This chapter shall not apply to:

- (1) A person who initiates telephone calls to a residence for the sole purpose of polling or soliciting the expression of ideas, opinions, or votes, or a person soliciting solely for a political or religious cause or purpose;
- (2) A securities broker-dealer, salesperson, investment ~~§~~ adviser ~~§~~, or investment ~~§~~ adviser ~~§~~ representative who is registered with this State to sell securities or who is authorized to sell securities in this State pursuant to federal securities laws, when soliciting over the telephone within the scope of the person's registration;
- (3) A financial institution that is authorized to accept deposits under its chartering or licensing authority where such deposits are insured by the Federal Deposit Insurance Corporation or the National Credit Union Administration, ~~such as~~ INCLUDING BUT NOT LIMITED TO a bank, savings bank, savings and loan association, depository financial services loan company, or credit union, or a nondepository financial services loan company that is licensed or authorized to conduct business in this State by the commissioner of financial institutions, or an affiliate or subsidiary of a financial institution as defined in chapter 412;
- (4) A person or organization that is licensed or authorized to conduct business in this State by the ~~commissioner of insurance~~ INSURANCE COMMISSIONER including but not limited to an insurance company and its employees, while engaged in the business of selling or advertising the sale of insurance products or services;
- (5) A college or university accredited by an accrediting organization recognized by the United States Department of Education;
- (6) A person who publishes a catalog of at least fifteen pages, four times a year, with a circulation of at least one hundred thousand, where the catalog includes clear disclosure of sale prices, shipping, handling, and other charges;
- (7) A political subdivision or instrumentality of the United States, or any state of the United States;
- (8) The sale of goods or services by telecommunications or landline (i.e., cable) or wireless video service providers, for which the terms and conditions of the offering, production, or sale are regulated by the public utilities commission or the Federal Communications Commission, or pursuant to chapter 440G, including the sale of goods or services by affiliates of these telecommunications or video service providers ~~; provided that nothing~~ . NOTHING herein shall be construed to preclude or preempt actions brought under any other laws including chapter 480;
- (9) A real estate broker or salesperson who is licensed by this State to sell real estate, when soliciting within the scope of the license; or
- (10) A travel agency that is registered with this State, when engaging in the business of selling or advertising the sale of travel services."

SECTION 40.

Section 481P-6, Hawaii Revised Statutes, is amended to read as follows:

" ~~§~~ Section 481P-6 ~~§~~ Unfair or deceptive act or practice. Any person who violates this chapter shall be deemed to have engaged in an unfair method of competition ~~or~~ AND unfair ~~and~~ OR deceptive act or practice in the conduct ~~§~~ of ~~§~~ any trade or commerce within the meaning of section 480-2."

SECTION 41.

Section 481R-4, Hawaii Revised Statutes, is amended as follows:

1.

By amending its title to read:

" ~~†~~ Section 481R-4 ~~†~~ Registration requirements ~~—~~; EXEMPTIONS. "

2. By amending subsection (b) to read:

"(b) Warrantor registration records shall be updated annually and shall contain the following information:

- (1) The address of the principal office of the warrantor;
- (2) The name and address of the warrantor's agent for the service of process in this State if other than the ~~—provider—~~; WARRANTOR;
- (3) The identities of the warrantor's executive officer or officers directly responsible for the warrantor's vehicle protection product business;
- (4) The name, address, and telephone number of any administrators designated by the warrantor to be responsible for the administration of vehicle protection product warranties in this State;
- (5) A copy of each warranty form the warrantor proposes to use in this State; and
- (6) A statement that the warrantor is in compliance with the financial ~~—responsibility—~~ SECURITY requirements of section 481R-5 and that details how the warrantor intends to meet the requirements, and proof of compliance with the requirements."

SECTION 42.

[Section 481R-9, Hawaii Revised Statutes](#), is amended by amending subsection (c) to read as follows:

"(c) The vehicle protection product warranty shall state the name and address of the insurer and state that if a covered service is not provided by the warrantor before the sixty-first day after the date the consumer provides proof of loss, the consumer may apply for reimbursement directly to the vehicle protection ~~—product's—~~ PRODUCT WARRANTOR'S reimbursement insurance company."

SECTION 43.

[Section 482-5, Hawaii Revised Statutes](#), is amended by amending its title to read as follows:

"Section 482-5

~~—Penalty—~~ UNLAWFUL USE OF TRADE NAME; PENALTY. "

SECTION 44.

[Section 482B-1, Hawaii Revised Statutes](#), is amended to read as follows:

" ~~†~~ Section 482B-1 ~~†~~ Short title. This chapter may be cited as the Uniform ~~—Trades—~~ TRADE Secrets Act."

SECTION 45.

[Section 482D-1, Hawaii Revised Statutes](#), is amended by amending the definition of "article of merchandise" to read as follows:

" ~~—Article—~~ "ARTICLE" OR "ARTICLE of merchandise" means any goods, wares, works of art, commodities, or other things which may be lawfully kept or offered for sale, imported into, or exported from the State."

SECTION 46.

Section 482E-1, Hawaii Revised Statutes, is amended to read as follows:

" ~~+~~ Section 482E-1 ~~+~~ Purpose and intent. (A) The purpose of this chapter is to regulate the sale of franchises in the State to minimize losses to the franchisee in cases where the franchisor or the franchisor's representative has not provided full and complete information regarding:

- (1) ~~the~~ **THE** franchisor-franchisee relationship;
- (2) ~~the~~ **THE** details of the contract between **THE** franchisor and franchisee; and
- (3) ~~the~~ **THE** prior business experience of the franchisor.

(B) It is the intent of the legislature to:

- (1) ~~provide~~ **PROVIDE** each prospective franchisee with the information necessary to make an intelligent decision regarding franchises being offered;
- (2) ~~prohibit~~ **PROHIBIT** the sale of franchises ~~which~~ **THAT** would lead to fraud or a likelihood that the franchisor's promises would not be fulfilled; and
- (3) ~~protect~~ **PROTECT** the franchisor or subfranchisor by providing a better understanding of the relationship between the franchisor or subfranchisor and the franchisee with regard to their business relationship."

SECTION 47.

Section 482E-3, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) It is unlawful for any person to sell a franchise in this State unless such person has presented to the prospective franchisee or the franchisee's representative, at least seven days prior to the sale of the franchise, an offering circular containing the following information:

- (1) The name of the franchisor, the name under which the franchisor is doing or intends to do business, and the name of any parent or affiliated company that will engage in business transactions with franchisees ~~;~~ ;
- (2) The franchisor's principal business address and the name and address of the franchisor's agent in the State authorized to receive **SERVICE OF** process ~~;~~ ;
- (3) The business form of the franchisor whether corporate, partnership, or otherwise ~~;~~ ;
- (4) Such other information concerning the identity and business experience of persons affiliated with the franchisor including franchise brokers and selling agents as the director may by rule prescribe ~~;~~ ;
- (5) A statement whether any person identified in the offering circular, within ten years preceding the date of the offering circular:
 - (A) Has been found guilty of a felony or held liable in a civil action by final judgment if the civil action involved fraud, embezzlement, fraudulent conversion, or misappropriation of property; or
 - (B) Is subject to any currently effective order of the Securities and Exchange Commission or the securities administrator of any state denying registration to or revoking or suspending the registration of such person as a securities broker or dealer or investment ~~advisor~~ **ADVISER** or is subject to any currently effective order of any national security association or national securities exchange (as defined in the Securities ~~and~~ Exchange Act of 1934) suspending or expelling such person from membership ~~of~~ **IN** such association or exchange; or
 - (C) Is subject to any currently effective order or ruling of the Federal Trade Commission or is subject to any currently effective order relating to the business activity as a result of an action brought by any public agency or department.

Such statement shall set forth the court, the date of conviction or judgment, any penalty imposed ~~—~~ or damages assessed, or the date, nature, and issue of such order ~~—~~ ;

(6) A statement of when, where, and how long the franchisor has:

(A) Conducted a business of the type to be operated by the franchisees;

(B) Has granted franchises for such business; and

(C) Has granted franchises in other lines of business ~~—~~ ;

(7) A recent financial statement of the franchisor, together with a statement of any material changes in the financial condition of the franchisor from the date ~~thereof-~~ **OF THE FINANCIAL STATEMENT.**
The director may ~~describe-~~ **PRESCRIBE:**

(A) ~~Form-~~ **THE FORM** and content of the financial statements required under this chapter;

(B) The circumstances under which consolidated financial statements ~~can-~~ **MAY** be filed; and

(C) The circumstances under which financial statements shall be audited by independent, certified public accountants ~~—~~ ;

(8) A copy of the typical franchise contract or agreement proposed for use in this State ~~—~~ ;

(9) A statement of the franchise fee charged, the proposed application of the proceeds of the fee by the franchisor, and the formula by which the amount of the fee is determined if the fee is not the same in all cases ~~—~~ ;

(10) A statement describing a payment of fees other than franchise fees that the franchisee or subfranchisor is required to pay to the franchisor including royalties and payments or fees ~~-which~~ **THAT** the franchisor collects in whole or in part on behalf of a third party or parties ~~—~~ ;

(11) A statement of the conditions under which the franchise agreement may be terminated or renewed or renewal refused, or repurchased at the option of the franchisor ~~—~~ ;

(12) A statement of the conditions under which the franchise may be sold, transferred, or assigned ~~—~~ ;

(13) A statement of the conditions imposed by the franchisor whether by the terms of the franchise agreement or by other device or practice whereby the franchisee or subfranchisor is required to purchase services, supplies, products, fixtures, or other goods relating to the establishment or operation of the franchise business from the franchisor or the franchisor's designee ~~—~~ ;

(14) A statement of any restriction or condition imposed by the franchisor whether by the terms of the franchise agreement or by other device or practice whereby the franchisee is limited or required in the goods and services offered by the franchisee ~~—~~ ;

(15) A statement of the terms and conditions of any financing arrangements when offered directly or indirectly by the franchisor or the franchisor's agent or affiliate ~~—~~ ;

(16) A statement of any intent of the franchisor to sell, assign, or discount to a third party any note, contract, or other obligation of the franchisee in whole or in part ~~—~~ ;

(17) A copy of any financial statement prepared for presentation to prospective franchisees or other persons together with a statement setting forth the basis for such statements ~~—~~ ;

(18) A statement of the number of franchise businesses in each of the following categories ~~-which~~ **THAT** within the three-year period preceding the date of the offering circular have:

(A) Been canceled or terminated by either the franchisor or franchisee;

(B) Not been renewed by either the franchisor or franchisee;

(C) Been reacquired through purchase by the franchisor;

(D) Been otherwise reacquired by the franchisor; and

- (E) Been transferred or sold by the franchisee to persons other than a corporation or other business entity controlled by the transferring or selling franchisee ~~—~~ ;
- (19) A statement describing the training program, supervision, and assistance the franchisor has and will provide the franchisee ~~—~~ ;
- (20) A statement as to whether franchisees or subfranchisors receive an exclusive area or territory ~~—~~ ;
- (21) A statement of any compensation or other benefit given or promised to a public figure arising, in whole or in part, from ;
 - (A) ~~the~~ THE use of the public figure in the name or symbol of the franchise ; or
 - (B) ~~the~~ THE endorsement or recommendation of the franchise by the public figure in advertisements ~~—~~ ;
- (22) Such other information as the director may reasonably require ~~—~~ ;
- (23) Such other information as the franchisor may wish to present ~~—~~ ;
- (24) When the person selling the franchise is a subfranchisor, the offering circular shall also include the same information concerning the subfranchisor as is required from the franchisor pursuant to this subsection ~~—~~ ; AND
- (25) List of names and addresses of all franchisees of the franchisor whose franchise businesses are situated in this State."

SECTION 48.

[Section 483-1, Hawaii Revised Statutes](#), is amended to read as follows:

"Section 483-1

Definitions; limitations of law. In this chapter, unless otherwise expressly stated ~~—, obligation—~~ ;

"OBLIGATION" does not include a liability in tort ~~÷ obligor—~~ .

"OBLIGOR" does not include a person liable for a tort ~~÷ obligee—~~ .

"OBLIGEE" does not include a person having a right based on a tort. ~~Several obligors~~

"SEVERAL OBLIGORS" means obligors severally bound for the same performance."

SECTION 49.

[Section 484-1, Hawaii Revised Statutes](#), is amended as follows:

1.

By adding a new definition to be appropriately inserted and to read:

" "DIRECTOR" MEANS THE DIRECTOR OF COMMERCE AND CONSUMER AFFAIRS. "

2.

By amending the definition of "commissioner of securities" to read:

" "Commissioner of securities" means the ~~—director of commerce and consumer affairs in the director's capacity as—~~ commissioner of securities ~~—~~ . AS DEFINED IN SECTION 485A-102. "

SECTION 50.

[Section 484-2, Hawaii Revised Statutes](#), is amended to read as follows:

"Section 484-2

~~Administrative director.~~ **ADMINISTRATION.** This chapter shall be administered by the director of commerce and consumer affairs ~~, hereinafter called the director~~ . "

SECTION 51.

Section 484-3, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) Unless the method of disposition is adopted for the purpose of evasion of this chapter, or unless the subdivider files in writing with the director that this chapter shall apply to the subdivider's subdivision, this chapter shall not apply to offers or dispositions of an interest in land:

- (1) By a purchaser of subdivided lands for the purchaser's own account in a single or isolated transaction;
- (2) If fewer than twenty separate lots, parcels, units, or interests in subdivided lands are offered by a person in a period of twelve months;
- (3) Where the division of lands is a leasehold agricultural lot within state agricultural districts on which no dwelling structures are constructed as provided in section ~~205-4.5(e)~~; **205-4.5(F)**;
- (4) On which there is a residential, commercial, or industrial building, or as to which there is a legal obligation on the part of the seller to construct a building on the land within two years from the date of disposition; provided that the obligation to construct shall not be, directly ~~+~~ or ~~+~~ indirectly, transferred to or otherwise imposed upon the purchaser;
- (5) To persons who are engaged in, and are duly licensed to engage in, the business of construction of buildings for resale, or to persons who acquire an interest in subdivided lands for the purpose of engaging, and do engage in, and are duly licensed to engage in, the business of construction of buildings for resale;
- (6) Pursuant to court order;
- (7) By any government or government agency;
- (8) As cemetery lots or interests; or
- (9) Registered as a condominium property regime pursuant to chapter 514B."

SECTION 52.

Section 484-5, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

"(c) The application shall be submitted with payment of the appropriate registration ~~+~~ **AND** consultant ~~+~~ **FEES** and inspection ~~fees~~. **EXPENSES.** "

SECTION 53.

Section 486-77, Hawaii Revised Statutes, is amended to read as follows:

"Section 486-77

~~Tampering with passenger car odometer prohibited; misrepresentation of distance traveled prohibited.~~ **ODOMETERS; PROHIBITIONS; EXEMPTIONS.** (a) It shall be unlawful to:

- (1) Tamper with an odometer, installed in a passenger car, for any purpose. This ~~—section~~ **PARAGRAPH** shall not be construed to preclude legitimate repair, replacement **,** or adjustment of an odometer, provided that the administrator may require documentation of such repair, replacement **,** or adjustment ~~—~~ **;**

- (2) Advertise for sale, **OR** sell, rent, lease , or export any passenger car, the odometer of which has been tampered with in such a fashion or manner as to mislead the prospective buyer to believe that the passenger car traveled a lesser distance than it actually has traveled ~~—~~ ;
- (3) Operate a passenger car on any street or highway, knowing that the odometer of the passenger car is disconnected or nonfunctional ~~—~~ ;
- (4) Disconnect, turn back, advance , or reset the odometer of any passenger car with intent to alter the distance indicated on the odometer ~~—~~ ; **OR**
- (5) Misrepresent the true distance traveled by any passenger car subject to this part, so as to mislead a prospective buyer.
 - (b) This section shall not preclude the installation, maintenance, repair , or replacement of odometers when such action is necessary to cause compliance with this part. Any such action, however, shall expressly be noted on the certificate of ownership and called to the attention of a prospective buyer, in writing."

SECTION 54.

[Section 486-79, Hawaii Revised Statutes](#), is amended by amending its title to read as follows:

"Section 486-79

Citation and notice to appear ~~÷penalty~~ ."

SECTION 55.

[Section 486-134, Hawaii Revised Statutes](#), is amended to read as follows:

" ~~÷~~ Section 486-134 ~~÷~~ Optional licensing. The following persons shall not be required, but shall be permitted, to obtain licenses as public measuremasters:

- (1) A law enforcement or measurement standards officer, or other qualified employee of a state ~~÷city~~, or county agency or institution when acting within the scope of the officer's or employee's official duties;
- (2) A person weighing property, produce, commodities, or articles that the person, or the person's employer, ~~÷if any~~, is either buying or selling; and
- (3) A person weighing property, produce, commodities, or articles in conformity with the requirements of federal statutes or the statutes of this State relative to ~~÷warehousepersons~~ **WAREHOUSE WORKERS** or processors."

SECTION 56.

[Section 486B-1, Hawaii Revised Statutes](#), is amended by amending the definition of "person" to read as follows:

"Person" means an individual, corporation, government ~~÷~~ or governmental subdivision or agency, business trust, estate, trust, partnership, unincorporated association, two or more of any of the foregoing having a joint or common interest, or any other legal or commercial entity."

SECTION 57.

[Section 486H-1, Hawaii Revised Statutes](#), is amended as follows:

1.

By amending the definition of "non-refiner marketer" to read:

“Non-refiner marketer” means any person who acquires gasoline for sale in the State ~~of Hawaii~~, and who is not a refiner located and operating in the State ~~of Hawaii~~, nor an importer owned by or affiliated with, directly or indirectly, ~~by~~ a refiner located and operating in the State ~~of Hawaii~~.

2.

By amending the definition of “retail” as follows:

~~“Retail” means the sale of a product for purposes other than resale.~~

“Retail” means a sale of gasoline made to the general public at prices that are displayed on the dispensing equipment.”

3.

By amending the definitions of “retail service station” and “retail station” to read:

“Retail service station” **OR “RETAIL STATION”** means a place of business where motor vehicle fuel is sold and delivered into the tanks of motor vehicles ~~–~~

~~“Retail station” means~~ and includes a company retail station, a dealer retail station, and an independent retail station.”

4.

By amending the definition of “secondary brand” to read:

“Secondary brand” means a trade name or trademark, other than a major brand, used to identify a ~~manufacturer’s~~ **COMPANY** retail ~~service~~ station.”

5.

By repealing the definition of “self-serve basis”:

~~“Self-serve basis” means that the retail station allows customers to dispense gasoline into vehicles. ”~~

SECTION 58.

[Section 486H-4, Hawaii Revised Statutes](#), is amended to read as follows:

~~“ [Section 486H-4] Exceptions. ”~~ **WRONGFUL TERMINATION, CANCELLATION, OR NONRENEWAL; EXCEPTION TO ACTIONS.** No action may be brought under section 486H-2 in connection with the termination, cancellation, or nonrenewal of a franchise if the franchise agreement provides for the binding arbitration of disputes arising under the agreement, including disputes related to the termination, cancellation, or nonrenewal of the franchise, in accordance with **CHAPTER 658A** **AND** the rules of the American Arbitration Association.”

SECTION 59.

[Section 486H-10.4, Hawaii Revised Statutes](#), is amended to read as follows:

“Section 486H-10.4

Restrictions on manufacturers or jobbers in operating service stations; lease rent controls ~~–~~ ~~definitions~~. (a) Beginning August 1, 1997, no manufacturer or jobber shall convert an existing dealer retail station to a company retail station; provided that nothing in this section shall limit a manufacturer or jobber from:

- (1) Continuing to operate any company ~~operated~~ retail ~~service stations~~ **STATION** legally in existence on July 31, 1997;
- (2) Constructing and operating any new retail service ~~stations~~ **STATION** as **A** company retail ~~stations~~ **STATION** constructed after August 1, 1997, subject to subsection (b); or

- (3) Operating a former dealer retail station for up to twenty-four months until a replacement dealer can be found if the former dealer vacates the ~~service~~ RETAIL station, cancels the franchise, or is properly terminated or not renewed.
- (b) No new company retail station shall be located within one-eighth mile of a dealer retail station in an urban area, and within one-quarter mile in other areas.
- (c) All leases as part of a franchise as defined in section 486H-1, existing on August 1, 1997, or entered into thereafter, shall be construed in conformity with the following:
- (1) Such renewal shall not be scheduled more frequently than once every three years; and
- (2) Upon renewal, the lease rent payable shall not exceed fifteen per cent of the gross sales, except for gasoline, which shall not exceed fifteen per cent of the gross profit of product, excluding all related taxes by the dealer ~~operated~~ retail ~~service~~ station as defined in section 486H-1 ~~and 486H-10.4~~ plus, in the case of a retail service station at a location where the manufacturer or jobber is the lessee and not the owner of the ground lease, a percentage increase equal to any increase ~~which~~ THAT the manufacturer or jobber is required to pay the lessor under the ground lease for the service station. ~~For the purposes of this subsection, "gross amount" means all monetary earnings of the dealer from a dealer operated retail service station after all applicable taxes, excluding income taxes, are paid.~~
- The provisions of this subsection shall not apply to any existing contracts that may be in conflict with its provisions.
- (d) Nothing in this section shall prohibit a GASOLINE dealer from selling a retail service station in any manner."

SECTION 60.

[Section 486H-10.5, Hawaii Revised Statutes](#), is amended to read as follows:

" ~~+~~ Section 486H-10.5 ~~+~~ Violation; penalties. Any person who violates section ~~486H-10~~ 486H-10.4 shall be assessed a civil penalty of \$ 1,000 per day for each violation."

SECTION 61.

[Section 486H-11, Hawaii Revised Statutes](#), is amended to read as follows:

" ~~+~~ Section 486H-11 ~~+~~ Enforcement of prohibition. (a) The attorney general shall commence a civil action to enforce section ~~486H-10~~ 486H-10.4 by seeking injunctive or any other appropriate relief. The civil action shall be brought in the circuit court of the circuit where the alleged violation occurred, or where the defendant resides or is doing business.

(b) Any person who is injured in ~~another~~ THAT person's business or property by the violation of section ~~486H-10~~ 486H-10.4 may bring a civil action for damages or injunctive relief, or both, against the person violating section ~~486H-10~~ 486H-10.4. If the plaintiff prevails, the plaintiff shall be awarded reasonable ~~attorneys~~ ATTORNEYS' and expert witness fees; provided that if a court awards only nominal damages to the plaintiff, those fees, in the court's discretion, need not be awarded to the plaintiff. Any action brought under this subsection shall be brought in the circuit court of the circuit where the alleged violation occurred, or where the defendant resides or is doing business."

SECTION 62.

[Section 486K-1, Hawaii Revised Statutes](#), is amended by amending the definitions of "guest", "hotel/hotel-condo", and "keeper" to read as follows:

"Guest" means a person who is registered at the hotel and to whom a bedroom is assigned. The term "guest" shall include not only the guest, but the members of the guest's family **AND OTHER PERSONS** who accompany the guest.

~~"Hotel/hotel-condo"~~ **"HOTEL", "HOTEL-CONDOMINIUM" OR "CONDOMINIUM-HOTEL"** means an establishment consisting of any building or structure used primarily for the business of providing for consideration transient accommodation lodging facilities and that furnishes, as part of its routine operations, one or more customary lodging services, other than living accommodations and the use of furniture and fixtures, including ~~—~~, but not limited to ~~—~~, restaurant facilities, or room attendant, bell, telephone switchboard, laundering, or concierge services, and is subject to the transient accommodations tax under chapter 237D.

~~"Keeper"~~ **"HOTELKEEPER" OR "KEEPER"** includes any ~~—person,—~~ **INDIVIDUAL**, firm, or corporation actually operating a hotel."

SECTION 63.

[Section 486K-2, Hawaii Revised Statutes](#), is amended by amending its title to read as follows:

" ~~—~~ Section 486K-2 ~~—Hotelkeepers—~~ **HOTELKEEPER'S** lien on baggage, etc., of guests; summary ejection of delinquents."

SECTION 64.

[Section 486K-4, Hawaii Revised Statutes](#), is amended by amending subsection (a) to read as follows:

"(a) If the keeper of any hotel provides a safe or vault in its office ~~—thereof,—~~ **AT THE HOTEL** for the safekeeping of any valuables belonging to the guests of the hotel, and prominently posts a notice in the room or rooms occupied by the guest stating that a safe or vault is provided in which valuables may be deposited and if any guest neglects to deliver valuables to the person in charge of the safe or vault, the keeper of the hotel shall not be liable in any sum for any loss of valuables sustained by the guest by theft or otherwise unless the loss is due to the negligence or fault of the keeper of the hotel. If the guest delivers valuables to the person in charge of the office for deposit in the safe or vault, the keeper shall not be liable for any loss ~~—thereof—~~ sustained by the guest ~~—~~, by theft or otherwise ~~—~~, in any sum exceeding \$ 500; provided that the keeper's liability is limited to \$ 500 only if:

(1) ~~the-~~ **THE** keeper gives a receipt for the valuables on a form which states, in type large enough to be clearly noticeable, that the keeper is not liable for any loss exceeding \$ 500 except by special agreement in writing in which the keeper agrees to accept liability for losses in excess of \$ 500; and

(2) ~~the-~~ **THE** loss is not due to the negligence or fault of the keeper of the hotel.

The keeper may accept liability for losses in excess of \$ 500 by special agreement in writing between a guest and the keeper or the keeper's duly authorized representative."

SECTION 65.

[Section 486K-5, Hawaii Revised Statutes](#), is amended to read as follows:

" ~~—~~ Section 486K-5 ~~—~~ Hotelkeeper's liability for personal property. (A) No ~~—keeper-of-any-hotel—~~ **HOTELKEEPER** shall be liable in any sum to any guest of the hotel for the loss of wearing apparel, goods, merchandise, or other personal property not mentioned in section 486K-4, unless it appears that the loss occurred through the fault or negligence of the ~~—keeper—~~ **HOTELKEEPER**.

(B) ~~—Nor shall any keeper—~~ **NO HOTELKEEPER SHALL** be liable in any event in any sum for the loss of any article or articles of wearing apparel, cane, umbrella, satchel, valise, bag, box, bundle, or other chattel belonging to any guest of, or in, any hotel, and not within a room or rooms assigned to the guest, unless the same is specially ~~—intrusted—~~ **ENTRUSTED** to the care and custody of the

keeper or the keeper's duly authorized agent ~~—and if—~~ . IF so specially ~~—intrusted—~~ ENTRUSTED with any such article belonging to the guest, the keeper shall not be liable for the loss of the ~~—same~~ ARTICLE in any sum exceeding \$ 500 ~~—except—~~ ; PROVIDED that the keeper's liability may be in excess of \$ 500 by special agreement in writing with the keeper or the keeper's duly authorized representative."

SECTION 66.

Section 486K-6, Hawaii Revised Statutes, is amended to read as follows:

" ~~—~~ Section 486K-6 ~~—~~ Hotelkeeper's ~~—responsibility—~~ LIABILITY in case of fire, etc. ~~—The keeper of any hotel—~~ A HOTELKEEPER shall only be liable to any guest of the hotel ~~—~~ for ordinary and reasonable care in the custody of money, jewels, bank notes, precious stones, transportation tickets, negotiable or valuable papers, ornaments, baggage, wearing apparel, or other chattels or property belonging to any guest, whether specially ~~—intrusted—~~ ENTRUSTED to the keeper or the keeper's agent, or deposited in the safe of the hotel, for any loss occasioned by fire or by any other cause or force ~~—~~ over which the ~~proprietor—~~ HOTELKEEPER had no control."

SECTION 67.

Section 487-13, Hawaii Revised Statutes, is amended as follows:

1. By amending its title to read:

"Section 487-13

~~—Penalties for unlicensed—~~ UNLICENSED acts ~~—~~ ; PENALTIES. "

2. By amending subsection (c) to read:

"(c) Any contract for the furnishing of commodities or services by an unlicensed, unregistered, or ~~—uncertified—~~ UNCERTIFICATED person shall be void and shall prevent such person from recovering the contract price or the reasonable value thereof."

SECTION 68.

Section 487J-2, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) Except as otherwise provided in subsection (b), a business or government agency may not do any of the following:

- (1) Intentionally communicate or otherwise make available to the general public an individual's entire social security number;
- (2) Intentionally print or imbed an individual's entire social security number on any card required for the individual to access products or services provided by the ~~—person or entity—~~ BUSINESS OR GOVERNMENT AGENCY;
- (3) Require an individual to transmit the individual's entire social security number over the ~~—internet—~~ INTERNET, unless the connection is secure or the social security number is encrypted ~~—~~ . FOR PURPOSES OF THIS PARAGRAPH, "ENCRYPTED" MEANS THAT AN ALGORITHMIC PROCESS HAS BEEN USED TO TRANSFORM DATA INTO A FORM IN WHICH THE DATA IS RENDERED UNREADABLE OR UNUSABLE WITHOUT THE USE OF A CONFIDENTIAL PROCESS OR KEY;
- (4) Require an individual to use the individual's entire social security number to access an internet website, unless a password or unique personal identification number or other authentication device is also required to access the internet website; ~~—and—~~ OR

- (5) Print an individual's entire social security number on any materials that are mailed to the individual, unless the materials are employer-to-employee communications, or where specifically requested by the individual."

SECTION 69.

[Section 487N-1, Hawaii Revised Statutes](#), is amended by amending the definition of "encryption" to read as follows:

"Encryption" OR "ENCRYPTED" means the use of an algorithmic process to transform data into a form in which the data is rendered unreadable or unusable without the use of a confidential process or key."

SECTION 70.

[Section 487N-2, Hawaii Revised Statutes](#), is amended by amending subsection (g) to read as follows:

"(g) The following businesses shall be deemed to be in compliance with this section:

- (1) A financial institution that is subject to the ~~Federal~~ FEDERAL Interagency Guidance on Response Programs for Unauthorized Access to ~~Consumer~~ CUSTOMER Information and Customer Notice published in the Federal Register on March 29, 2005 , by the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, the Office of the Comptroller of the Currency, and the Office of Thrift Supervision, or subject to 12 C.F.R. Part 748, and any revisions, additions, or substitutions relating to ~~said~~ THE interagency guidance; and
- (2) Any health plan or healthcare provider that is subject to and in compliance with the standards for privacy or individually identifiable health information and the security standards for the protection of electronic health information of the Health Insurance Portability and Accountability Act of 1996."

SECTION 71.

[Section 487R-1, Hawaii Revised Statutes](#), is amended by amending the definition of "personal information" to read as follows:

"Personal information" means an individual's first name or first initial and last name in combination with any one or more of the following data elements, when either the name or the data elements are not encrypted:

- (1) Social security number;
- (2) Driver's license number or Hawaii identification card number; or
- (3) Account number, credit or debit card number, access code, or password that would permit access to an individual's financial account.

"Personal information" shall not include publicly available information that is lawfully made available to the general public from federal, state, or local government records. "ENCRYPTED", AS USED IN THIS DEFINITION MEANS THE USE OF AN ALGORITHMIC PROCESS TO TRANSFORM DATA INTO A FORM IN WHICH THE DATA IS RENDERED UNREADABLE OR UNUSABLE WITHOUT THE USE OF A CONFIDENTIAL PROCESS OR KEY. "

SECTION 72.

[Section 487R-2, Hawaii Revised Statutes](#), is amended by amending subsection (c) to read as follows:

"(c) A business or government agency may satisfy its obligation hereunder by exercising due diligence and entering into a written contract with, and thereafter monitoring compliance by, another party engaged in

the business of ~~record~~ **RECORDS** destruction to destroy personal information in a manner consistent with this section. Due diligence should ordinarily include one or more of the following:

- (1) Reviewing an independent audit of the disposal business' operations or its compliance with this ~~statute or its equivalent;~~ **CHAPTER;**
- (2) Obtaining information about the disposal business from several references or other reliable sources and requiring that the disposal business be certified by a recognized trade association or similar third party with a reputation for high standards of quality review; or
- (3) Reviewing and evaluating the disposal business' information security policies or procedures, or taking other appropriate measures to determine the competency and integrity of the disposal business."

SECTION 73.

[Section 488-1, Hawaii Revised Statutes](#), is amended to read as follows:

"Section 488-1

Definitions. As used in this chapter:

- ~~(1)~~ "Department" means the department of commerce and consumer affairs.
- ~~(2)~~ "Plan administrator" means those persons who have discretionary authority for the management of the plan or for the collection, management, or disbursement of plan moneys.
- ~~(3)~~ "Prepaid legal service plan" ~~("Plan")~~ **OR "PLAN"** means a group legal service plan in which the cost of the services are prepaid by the group member or by some other person or organization in the member's behalf.
- ~~A group~~ **"GROUP"** legal service plan **"** is a plan by which legal services are rendered to individual members of a group identifiable in terms of some common interest."

SECTION 74.

[Section 488-2, Hawaii Revised Statutes](#), is amended to read as follows:

" ~~+~~ Section 488-2 ~~+~~ Applicability; other statutes, rules of court. (a) This chapter shall apply to all plans in the State other than:

- (1) Plans in which either the group or the plan administrator is otherwise subject to regulation under chapter 431 or ~~433.~~ **432;**
 - (2) Plans in which any party to the plan is the federal government or any agency thereof ~~;~~ **OR**
 - (3) Any employer-employee plan ~~which~~ **THAT** is subject to the federal Employee Retirement Income Security Act of 1974, [Public Law 93-406](#).
- (b) The operation of all plans subject to this chapter shall also be subject to chapters 480, ~~481,~~ **part I,** **PART I OF CHAPTER 481,** 481A, and 481B, and other provisions of law ~~which~~ **THAT** may be applicable. Chapters 431 ~~, 433, and 434~~ **AND 432** shall not apply to any plans or the operations thereof ~~which~~ **THAT** are subject to this chapter, except as provided in sections 488-5 and 488-6.
- (c) No plan subject to this chapter shall contravene rules of court adopted by the Hawaii supreme court."

SECTION 75.

[Section 488-5, Hawaii Revised Statutes](#), is amended to read as follows:

" ~~†~~ Section 488-5 ~~†~~ Annual exhibits; examination by director. (A) Each plan shall file with the director of commerce and consumer affairs within thirty days after the end of its fiscal year a statement under oath in such form as the director prescribes containing:

- (1) A statement setting forth the total amount of gross receipts and expenditures of the plan during its fiscal year;
- (2) The assets and liabilities of the plan at the close of its fiscal year; and
- (3) The profit and loss of the plan during its fiscal year.

(B) The powers, authorities, and duties relating to examinations vested in and imposed upon the insurance commissioner under chapter 431 are extended to and imposed upon the director in respect to examinations of the plans; provided that no examination shall attempt to obtain or inspect written or oral information or documents in violation of the ~~attorney-client privilege~~ RULES FOR CLIENT-LAWYER CONFIDENTIALITY as ~~it is~~ contained in the ~~Code of Professional Responsibility~~ HAWAII RULES OF PROFESSIONAL CONDUCT adopted by the supreme court."

SECTION 76.

Section 488-6, Hawaii Revised Statutes, is amended to read as follows:

" ~~†~~ Section 488-6 ~~†~~ Investments of certain plans. No plan promising or offering to pay for legal services in an amount equal to or in excess of \$ 25 a year shall invest any of its assets other than as authorized and provided for in respect to domestic insurance companies and societies under ~~chapter~~ CHAPTERS 431 ~~—~~ AND 432, which provisions are hereby extended to and made applicable to prepaid legal service plans."

SECTION 77.

Section 489D-4, Hawaii Revised Statutes, is amended by amending the definition of "permissible investments" to read as follows:

"“Permissible investments” means:

- (1) Cash;
- (2) Certificates of deposit or other debt obligations of a financial institution, either domestic or foreign;
- (3) Bills of exchange or time drafts drawn on and accepted by a commercial bank, known as bankers' acceptances, that are eligible for purchase by member banks of the Federal Reserve System;
- (4) Any investment bearing a rating of one of the three highest grades as defined by a nationally recognized organization that rates securities;
- (5) Investment securities that are obligations of the United States, its agencies, or its instrumentalities, obligations that are guaranteed fully as to principal and interest of the United States, or any obligations of any state, municipality, or any political subdivision thereof;
- (6) Shares in a money market mutual fund, interest-bearing bills, notes, or bonds, debentures or stock traded on any national securities exchange or on a national over-the-counter market, mutual funds primarily composed of these securities, or a fund composed of one or more permissible investments as set forth in ~~this subsection~~ PARAGRAPHS (1) TO (5);
- (7) Any demand borrowing agreement or agreements made with a corporation or a subsidiary of a corporation whose capital stock is listed on a national exchange;
- (8) Receivables that are due to a licensee from its authorized delegates pursuant to a contract under section 489D-21, that are not past due or doubtful of collection; or
- (9) Any other investments or security device approved by the commissioner."

SECTION 78.

Section 489E-3, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) This chapter shall apply to electronic records and electronic signatures relating to a transaction. ~~—A transaction subject to this chapter shall be subject to other applicable substantive law.—~~ "

SECTION 79.

This Act shall be amended to conform to all other acts passed by the legislature during the regular session of 2008, whether enacted before or after the effective date of this Act, unless the other act specifically provides otherwise.

SECTION 80.

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

SECTION 81.

This Act shall take effect upon its approval.

History

Approved by the Governor April 17, 2008

Sponsor

Hanabusa

HAWAII ADVANCE LEGISLATIVE SERVICE
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