
A BILL FOR AN ACT

RELATING TO ATTORNEYS.

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

1 SECTION 1. Section 28-8.3, Hawaii Revised Statutes, is
2 amended by amending subsection (a) to read as follows:

3 "(a) No department of the State other than the attorney
4 general may employ or retain any attorney, by contract or
5 otherwise, for the purpose of representing the State or the
6 department in any litigation, rendering legal counsel to the
7 department, or drafting legal documents for the department;
8 provided that the foregoing provision shall not apply to the
9 employment or retention of attorneys:

10 (1) By the public utilities commission, the labor and
11 industrial relations appeals board, and the Hawaii
12 labor relations board;

13 (2) By any court or judicial or legislative office of the
14 State; provided that if representation by the attorney
15 general is requested and the attorney general
16 discloses a conflict that may require the attorney
17 general to decline representation and if the conflict
18 appears to be justified by the conflict of interest



1 rule of the Hawai'i rules of professional conduct as
2 adopted and promulgated by the Hawaii supreme court,
3 then the court or judicial or legislative office may:

4 (A) Hire its own attorney, to be paid by the attorney
5 general; or

6 (B) Consent to the representation, after consultation
7 with the attorney general, whereupon the attorney
8 general shall provide the representation unless
9 the attorney general is nonetheless of the
10 opinion that the representation presents a
11 material conflict so that the representation
12 would be adversely affected even with the
13 consent, whereupon subparagraph (A) shall apply;

14 (3) By the legislative reference bureau;

15 (4) By any compilation commission that may be constituted
16 from time to time;

17 (5) By the real estate commission for any action involving
18 the real estate recovery fund;

19 (6) By the contractors license board for any action
20 involving the contractors recovery fund;

21 (7) By the trustees for any action involving the travel
22 agency recovery fund;



- 1 (8) By the office of Hawaiian affairs;
- 2 (9) By the department of commerce and consumer affairs for
3 the enforcement of violations of chapters 480 and 485;
- 4 (10) As grand jury counsel;
- 5 (11) By the Hawaiian home lands trust individual claims
6 review panel;
- 7 (12) By the Hawaii health systems corporation, or its
8 regional system boards, or any of their facilities;
- 9 (13) By the auditor;
- 10 (14) By the office of ombudsman;
- 11 (15) By the insurance division;
- 12 (16) By the University of Hawaii;
- 13 (17) By the Kahoolawe island reserve commission;
- 14 (18) By the division of consumer advocacy;
- 15 (19) By the office of elections;
- 16 (20) By the campaign spending commission;
- 17 (21) By the Hawaii tourism authority, as provided in
18 section 201B-2.5; [øø]
- 19 (22) By the department of taxation for administration and
20 enforcement as provided in sections 231-4.5, 231-13,
21 and 231-26; or



1 [~~22~~] (23) By a department, in the event the attorney
2 general, for reasons deemed by the attorney general
3 good and sufficient, declines~~[7]~~ to employ or retain
4 an attorney for a department; provided that the
5 governor thereupon waives the provision of this
6 section."

7 SECTION 2. Section 231-4.5, Hawaii Revised Statutes, is
8 amended to read as follows:

9 "**§231-4.5** ~~[Administrative rules officer,]~~ **Chief counsel;**
10 **staff attorneys; specialists; appointment and duties.** (a)
11 Notwithstanding any other law to the contrary, the director of
12 taxation may appoint one chief counsel, one assistant chief
13 counsel, and staff attorneys as necessary to assist the chief
14 counsel. The chief counsel, assistant chief counsel, and staff
15 attorneys shall:

- 16 (1) Serve as legal adviser and representative of the
17 department on matters relating to title 14;
18 (2) Direct the adoption of rules related to taxes
19 administered by the department;
20 (3) Assist with the issuance of tax memoranda and tax
21 information releases;



- 1 (4) Represent the department before tribunals established
2 by chapter 232; and
- 3 (5) Perform other duties as directed by the director of
4 taxation.

5 The chief counsel, assistant chief counsel, and staff
6 attorneys may represent the department of taxation before the
7 tax appeal court, at the director's discretion, under the
8 supervision of the attorney general.

9 The chief counsel, assistant chief counsel, and staff
10 attorneys shall be licensed to practice law in Hawaii and shall
11 be exempt from chapter 76.

12 (b) The director of taxation may appoint [an
13 ~~administrative rules officer, and]~~ administrative rules
14 specialists as necessary to assist the [~~administrative rules~~
15 ~~officer. The administrative rules officer shall direct the~~
16 ~~adoption of rules related to taxes administered by the~~
17 ~~department, assist]~~ chief counsel with the issuance of tax
18 memoranda and tax information releases, and perform other duties
19 as directed by the director. The [~~administrative rules officer~~
20 ~~and the]~~ administrative rules specialists shall be exempt from
21 [~~chapters]~~ chapter 76 [~~and 77]~~ and may be [~~legal or]~~ accounting
22 professionals[~~, provided that no individual appointed under this~~



1 ~~section shall render legal services reserved to the attorney~~
2 ~~general under chapter 28]."~~

3 SECTION 3. Section 605-14, Hawaii Revised Statutes, is
4 amended to read as follows:

5 **"§605-14 Unauthorized practice of law prohibited.** (a) It
6 shall be unlawful for any person, firm, association, or
7 corporation to engage in or attempt to engage in or to offer to
8 engage in the practice of law, or to do or attempt to do or
9 offer to do any act constituting the practice of law, except and
10 to the extent that the person, firm, or association is licensed
11 or authorized so to do by an appropriate court, agency, or
12 office or by a statute of the State or of the United States.
13 Nothing contained in sections 605-14 to 605-17 contained shall
14 be construed to prohibit the preparation or use by any party to
15 a transaction of any legal or business form or document used in
16 the transaction.

17 (b) For purpose of this section, "practice of law" means
18 the provision of professional legal advice or services by a
19 person, firm, association, or corporation if there is an
20 attorney-client relationship of trust and reliance; provided
21 that the term "practice of law" does not include a person, firm,
22 association, or corporation that is licensed under chapters 431,



1 466, or 467, and is doing business accordingly, and while in the
2 course of doing the licensed business does not provide or
3 profess to provide professional legal advice or services based
4 on legal competency or standing in the law."

5 SECTION 4. Statutory material to be repealed is bracketed
6 and stricken. New statutory material is underscored.

7 SECTION 5. This Act shall take effect on July 1, 2050.



Report Title:

Attorneys; Legislature; Judiciary; Taxation

Description:

Clarifies the procedure for determining representation of any court or judicial or legislative office by the attorney general in cases of conflict of interest. Allows department of taxation to retain its own attorneys in specified instances. Defines practice of law. Effective 7/1/2050. (SD2)

