



GOV. MSG. NO. 1134

EXECUTIVE CHAMBERS
HONOLULU

NEIL ABERCROMBIE
GOVERNOR

April 20, 2012

The Honorable Shan Tsutsui, President
and Members of the Senate
Twenty-Sixth State Legislature
State Capitol, Room 409
Honolulu, Hawaii 96813

The Honorable Calvin Say, Speaker
and Members of the House
Twenty-Sixth State Legislature
State Capitol, Room 431
Honolulu, Hawaii 96813

Dear President Tsutsui, Speaker Say and Members of the Legislature:

This is to inform you that on April 20, 2012, the following bill was signed into law:

SB3029 SD1 HD1

RELATING TO STATUTORY REVISION:
AMENDING VARIOUS PROVISIONS OF THE
HAWAII REVISED STATUTES AND THE
SESSION LAWS OF HAWAII FOR THE
PURPOSE OF CORRECTING ERRORS AND
REFERENCES AND CLARIFYING LANGUAGE.
Act 034 (12)

Aloha
Sincerely,
Neil Abercrombie

NEIL ABERCROMBIE
Governor, State of Hawaii

Approved by the Governor

on APR 20 2012

ACT 034

THE SENATE
TWENTY-SIXTH LEGISLATURE, 2012
STATE OF HAWAII

S.B. NO. 3029
S.D. 1
H.D. 1

A BILL FOR AN ACT

RELATING TO STATUTORY REVISION: AMENDING VARIOUS PROVISIONS OF THE HAWAII REVISED STATUTES AND THE SESSION LAWS OF HAWAII FOR THE PURPOSE OF CORRECTING ERRORS AND REFERENCES AND CLARIFYING LANGUAGE.

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

1 PART I

2 SECTION 1. Section 11-156, Hawaii Revised Statutes, is
3 amended to read as follows:

4 "§11-156 Certificate of election and certificate of
5 results, form. The chief election officer or county clerk shall
6 deliver certificates of election to the persons elected as
7 determined under section 11-155. The chief election officer or
8 county clerk in county elections shall issue certificates of
9 results where a question has been voted upon. Certificates of
10 election shall be delivered only after the filing of expense
11 statements by the person elected in accordance with part [~~XII~~
12 XIII] and after the expiration of time for bringing an election
13 contest. The certificate of election shall be substantially in
14 the following form:



CERTIFICATE OF ELECTION

I,, chief election officer (county clerk) of Hawaii (county), do hereby certify that was on the day of [~~19~~] 20....., duly elected a (name of office) for the district for a term expiring on the day of, A.D. [~~19~~] 20.....

Witness my hand this day of, A.D. [~~19~~] 20.....

.....
Chief Election Officer (County Clerk)

The certificate of results shall be substantially in the following form:

CERTIFICATE OF RESULTS

I,, chief election officer (county clerk) of Hawaii (county), do hereby certify that (question) was on the day of [~~19~~] 20....., duly adopted (rejected) by a majority of the votes cast.

.....
Chief Election Officer (County Clerk)

1 If there is an election contest these certificates shall be
2 delivered only after a final determination in the contest has
3 been made and the time for an appeal has expired."

4 SECTION 2. Section 11-157, Hawaii Revised Statutes, is
5 amended to read as follows:

6 "§11-157 In case of tie. In case of the failure of an
7 election by reason of the equality of vote between two or more
8 candidates, the tie shall be decided by the chief election
9 officer or county clerk in the case of county elections in
10 accordance with the following procedure:

11 (1) In the case of an election involving a seat for the
12 senate, house of representatives, or county council
13 where only voters within a specified district are
14 allowed to cast a vote, the winner shall be declared
15 as follows:

16 (A) For each precinct in the affected district, an
17 election rate point shall be calculated by
18 dividing the total voter turnout in that precinct
19 by the total voter turnout in the district. For
20 the purpose of this subparagraph, the absentee
21 votes cast for the affected district shall be
22 treated as a precinct. The election rate point



1 shall be calculated by dividing the total
2 absentee votes cast for the affected district by
3 the total voter turnout in that district. All
4 election rate points shall be expressed as
5 decimal fractions rounded to the nearest hundred
6 thousandth;

7 (B) The candidate with the highest number of votes in
8 a precinct shall be allocated the election rate
9 point calculated under subparagraph (A) for that
10 precinct. In the event that two or more persons
11 are tied in receiving the highest number of votes
12 for that precinct, the election rate point shall
13 be equally apportioned among those candidates
14 involved in that precinct tie;

15 (C) After the election rate points calculated under
16 subparagraph (A) for all the precincts have been
17 allocated as provided under subparagraph (B), the
18 election rate points allocated to each candidate
19 shall be tallied and the candidate with the
20 highest election rate point total shall be
21 declared the winner; and



1 (D) If there is a tie between two or more candidates
2 in the election rate point total, the candidate
3 who is allocated the highest election rate points
4 from the precinct with the largest voter turnout
5 shall be declared the winner;

6 (2) In the case of an election involving a federal office
7 or an elective office where the voters in the entire
8 State or in an entire county are allowed to cast a
9 vote, the winner shall be declared as follows:

10 (A) For each representative district in the State or
11 county, as the case may be, an election rate
12 point shall be calculated by dividing the total
13 voter turnout in that representative district by
14 the total voter turnout in the state, county, or
15 federal office district, as the case may be;
16 provided that for purposes of this subparagraph:

17 (i) The absentee votes cast for a statewide,
18 countywide, or federal office shall be
19 treated as a separate representative
20 district and the election rate point shall
21 be calculated by dividing the total absentee
22 votes cast for the statewide, countywide, or



1 federal office by the total voter turnout in
2 the state, county, or federal office
3 district, as the case may be; and

4 (ii) The overseas votes cast for any election in
5 the State for a federal office shall be
6 treated as a separate representative
7 district and the election rate point shall
8 be calculated by dividing the total number
9 of overseas votes cast for the affected
10 federal office by the total voter turnout in
11 the affected federal office district. The
12 term "overseas votes" means those votes cast
13 by absentee ballots for a presidential
14 election as provided in section 15-3.

15 All election rate points shall be expressed as
16 decimal fractions rounded to the nearest hundred
17 thousandth;

18 (B) The candidate with the highest number of votes in
19 a representative district shall be allocated the
20 election rate point calculated under subparagraph
21 (A) for that district. In the event that two or
22 more persons are tied in receiving the highest



1 number of votes for that district, the election
2 rate point shall be equally apportioned among
3 those candidates involved in that district tie;
4 (C) After the election rate points calculated under
5 subparagraph (A) for all the precincts have been
6 allocated as prescribed under subparagraph (B),
7 the election rate points allocated to each
8 candidate shall be tallied and the candidate with
9 the highest election rate point total shall be
10 declared the winner; and

11 (D) If there is a tie between two or more candidates
12 in the election rate point total, the candidate
13 who is allocated the highest election rate points
14 from the representative district with the largest
15 voter turnout shall be declared the winner."

16 SECTION 3. Section 12-8, Hawaii Revised Statutes, is
17 amended by amending subsection (f) to read as follows:

18 "(f) If a political party objects to the nomination paper
19 filed by a candidate because the candidate is not a member of
20 the party pursuant to the party's rules filed in conformance
21 with section 11-63, an officer of the party whose name appears
22 on file with the chief election officer shall file a complaint



1 in the circuit court for a prompt determination of the
2 objection; provided that the complaint shall be filed with the
3 clerk of the circuit court not later than 4:30 p.m. on the
4 sixtieth [~~working~~] day or the next earliest working day prior to
5 that election day."

6 SECTION 4. Section 121-15, Hawaii Revised Statutes, is
7 amended to read as follows:

8 "**§121-15 Commissioned and warrant officers; transfer to**
9 **inactive list, retirement, separation.** Officers may be
10 transferred to the inactive or retired lists, or separated from
11 the service as follows:

12 (1) An officer may be honorably discharged by reason of
13 resignation, removal of residence from the State,
14 failure to meet or maintain the requirements for
15 federal recognition, or acceptance of an incompatible
16 office.

17 (2) An officer who is eligible to be placed on the retired
18 list under federal law, or who has completed the years
19 of service required for retirement under [~~chapter 67~~
20 ~~of title~~] title 10, United States Code, chapter 1223
21 may at the officer's request be discharged, or with



1 the approval of the governor be placed on the retired
2 list.

3 (3) Any commissioned officer who has served in the same
4 grade in the military service of the State for a
5 continuous period of not less than ten years, upon the
6 commissioned officer's own request, may be honorably
7 discharged or placed on the retired list.

8 (4) Any officer who is rendered surplus by the disbandment
9 of the officer's unit, or who changes the officer's
10 residence within the State and is unable to serve with
11 the unit to which the officer was assigned, shall be
12 absorbed in another unit of the army or air national
13 guard, or if there be no such other available unit the
14 officer shall be transferred to an inactive status as
15 authorized by the secretary of the army or of the air
16 force, and may be ordered to perform appropriate
17 duties.

18 (5) At any time the moral character, capacity, and general
19 fitness for the service of any officer may be
20 investigated and determined by an efficiency board of
21 three commissioned or warrant officers, senior in rank
22 to the officer if possible, to be appointed by the



1 governor. The investigation shall be thorough and
2 impartial, and may include misconduct in civil life
3 for which the officer is not amenable to trial by
4 court-martial. If the findings are unfavorable to the
5 officer and are approved by the governor, the officer
6 shall be discharged.

7 (6) At any time the physical fitness for the service of
8 any officer, upon order of the governor, may be
9 investigated and determined by a board of not less
10 than three commissioned officers, not less than two of
11 whom shall be medical officers. If the board reports
12 the officer to be physically unable to perform the
13 duties of the officer's office, and the report is
14 approved by the governor, the officer may be
15 discharged or placed on the retired list.

16 (7) Any officer who is under sentence of imprisonment by a
17 civil court for any offense involving moral turpitude,
18 whether suspended or not, or who has been absent
19 without leave for three months, or who refuses or
20 neglects to report before the board provided in
21 paragraph (5) or (6) within a period of three months
22 from the time the officer is ordered to report before



1 the board may be discharged with the approval of the
2 governor.

3 (8) Upon the approval by the governor of a sentence of
4 dismissal rendered by a court-martial, the officer
5 shall be dismissed."

6 SECTION 5. Section 128D-1, Hawaii Revised Statutes, is
7 amended by amending the definition of "national contingency
8 plan" to read as follows:

9 "National contingency plan" means the national contingency
10 plan published under section [~~311(e)~~] 311(d) of the Clean Water
11 Act or revised pursuant to section 105 of CERCLA."

12 SECTION 6. Section 142-61, Hawaii Revised Statutes, is
13 amended by amending subsection (d) to read as follows:

14 "(d) Whenever fences are built on any boundary, or within
15 the exterior boundaries of any privately owned land or lot, or
16 within the exterior boundaries of any leased public land or lot,
17 to keep animals confined to certain areas or to keep farms
18 protected against the trespass of animals, except on the
19 boundary of any government road, it shall be lawful to have
20 fence wire electrically charged, provided such wire is fastened
21 to insulators supported on posts, and provided also that the
22 charge supplied shall be through an approved electric fence



1 controller which shall be labeled or listed as conforming to the
2 standards of either the [~~National Bureau of Standards,~~] National
3 Institute of Standards and Technology, the Underwriters
4 Laboratories, Inc., or any other similar institutions of
5 recognized standing, and provided that an electric fence
6 controller intended for use in the State shall bear a recognized
7 commercial trade name and the name of the selling agency of
8 same."

9 SECTION 7. Section 144-4, Hawaii Revised Statutes, is
10 amended by amending subsection (a) to read as follows:

11 "(a) Any commercial feed, other than custom-mixed or toll-
12 milled feed, distributed in this State or imported shall be
13 accompanied by a legible label bearing the following
14 information:

- 15 (1) The net weight.
- 16 (2) The product name or brand name under which the
17 commercial feed is distributed.
- 18 (3) The guaranteed analysis stated in such terms as the
19 department by rule determines is required to advise
20 the user of the composition of the commercial feed or
21 to support claims made in the labeling. In all cases
22 the substances or elements must be determinable by



1 laboratory methods published by the [~~Association of~~
2 ~~Official Analytical Chemists~~] AOAC International.

3 (4) The common or official name of each ingredient used in
4 the manufacture of the commercial feed, except as the
5 department may, by rule, permit the use of a
6 collective term for a group of ingredients all of
7 which perform the same function.

8 (5) The name and principal address of the person
9 responsible for distributing the commercial feed.

10 (6) Adequate directions for use for all commercial feeds
11 containing drugs and for such other commercial feeds
12 as the department may require by rule as necessary for
13 their safe and effective use.

14 (7) Such precautionary statements as the department by
15 rule determines are necessary for the safe and
16 effective use of the commercial feed."

17 SECTION 8. Section 144-9, Hawaii Revised Statutes, is
18 amended by amending subsection (e) to read as follows:

19 "(e) Sampling and analysis shall be conducted in
20 accordance with methods published by the [~~Association of~~
21 ~~Official Analytical Chemists~~] AOAC International or in
22 accordance with other generally recognized methods."



1 SECTION 9. Section 235-2.4, Hawaii Revised Statutes, is
2 amended by amending subsection (i) to read as follows:

3 "(i) Section 164 (with respect to taxes) of the Internal
4 Revenue Code shall be operative for the purposes of this
5 chapter, except that:

6 (1) Sections 164(a)(6) [~~164(b)(5)~~] and 164(b)(6) shall
7 not be operative for the purposes of this chapter; and

8 (2) The deductions under sections 164(a)(3) and 164(b)(5)
9 shall not be operative for corporate taxpayers and
10 shall be operative only for the following individual
11 taxpayers:

12 (A) A taxpayer filing a single return or a married
13 person filing separately with a federal adjusted
14 gross income of less than \$100,000;

15 (B) A taxpayer filing as a head of household with a
16 federal adjusted gross income of less than
17 \$150,000; and

18 (C) A taxpayer filing a joint return or as a
19 surviving spouse with a federal adjusted gross
20 income of less than \$200,000."



1 SECTION 10. Chapter 431, Hawaii Revised Statutes, is
2 amended by amending the title of part VIII of article 10D to
3 read as follows:

4 "[-]PART VIII.[+] USE OF SENIOR-SPECIFIC
5 [+]**CERTIFICATIONS**[+] AND PROFESSIONAL DESIGNATIONS"

6 SECTION 11. Section 432E-5, Hawaii Revised Statutes, is
7 amended by amending subsection (d) to read as follows:

8 "(d) A health carrier shall send notice of its final
9 internal determination within sixty days of the submission of
10 the complaint to the enrollee, the enrollee's appointed
11 representative, if applicable, the enrollee's treating provider,
12 and the commissioner. The notice shall include the following
13 information regarding the enrollee's rights and procedures:

- 14 (1) The enrollee's right to request an external review;
15 (2) The one hundred thirty day deadline for requesting an
16 external review;
17 (3) Instructions on how to request an external review; and
18 (4) Where to submit the request for an external review.

19 In addition to these general requirements, the notice shall
20 conform to the requirements of [~~section 432E-35.~~] sections 432E-
21 35 and 432E-36."



1 SECTION 12. Section 432E-35, Hawaii Revised Statutes, is
2 amended by amending subsections (d) and (e) to read as follows:

3 "(d) If the commissioner determines that an enrollee is
4 eligible for expedited external review even though the enrollee
5 has not exhausted the health carrier's internal review process,
6 the health carrier shall not be required to proceed with its
7 internal review process. The health carrier may elect to
8 proceed with its internal review process even though the request
9 is determined by the commissioner to be eligible for expedited
10 external review; provided that the internal review process shall
11 not delay or terminate an expedited external review unless the
12 health carrier decides to reverse its adverse determination and
13 provide coverage or payment for the health care service that is
14 the subject of the adverse determination. Immediately after
15 making a decision to reverse its adverse determination, the
16 health carrier shall notify the enrollee, the enrollee's
17 authorized representative, the independent review organization
18 assigned pursuant to subsection [~~(e)~~] (e), and the commissioner
19 [~~(+)~~]in writing[~~(+)~~] of its decision. The assigned independent
20 review organization shall terminate the expedited external
21 review upon receipt of notice from the health carrier pursuant
22 to this subsection.



1 (e) Upon receipt of the notice pursuant to subsection
 2 [~~a~~] (b) or a determination of the commissioner pursuant to
 3 subsection [~~e~~] (d) that the enrollee meets the eligibility
 4 requirements for expedited external review, the commissioner
 5 shall immediately randomly assign an independent review
 6 organization to conduct the expedited external review from the
 7 list of approved independent review organizations qualified to
 8 conduct the external review, based on the nature of the health
 9 care service that is the subject of the adverse action and other
 10 factors determined by the commissioner including conflicts of
 11 interest pursuant to section 432E-43, compiled and maintained by
 12 the commissioner to conduct the external review and immediately
 13 notify the health carrier of the name of the assigned
 14 independent review organization."

15 SECTION 13. Section 514A-121.5, Hawaii Revised Statutes,
 16 is amended to read as follows:

17 "**§514A-121.5** [~~Mediation~~]. If an apartment owner or the
 18 board of directors requests mediation of a dispute involving the
 19 interpretation or enforcement of the association of apartment
 20 owners' declaration, bylaws, or house rules, the other party in
 21 the dispute shall be required to participate in mediation. Each
 22 party shall be wholly responsible for its own costs of



1 participating in mediation, unless at the end of the mediation
2 process, both parties agree that one party shall pay all or a
3 specified portion of the mediation costs. If an apartment owner
4 or the board of directors refuses to participate in the mediation
5 of a particular dispute, a court may take this refusal into
6 consideration when awarding expenses, costs, and attorney's fees."

7 SECTION 14. Section 514B-161, Hawaii Revised Statutes, is
8 amended to read as follows:

9 "**§514B-161 Mediation.** (a) If an apartment owner or the
10 board of directors requests mediation of a dispute involving the
11 interpretation or enforcement of the association of apartment
12 owners' declaration, bylaws, or house rules, the other party in
13 the dispute shall be required to participate in mediation. Each
14 party shall be wholly responsible for its own costs of
15 participating in mediation, unless both parties agree that one
16 party shall pay all or a specified portion of the mediation
17 costs. If a party refuses to participate in the mediation of a
18 particular dispute, a court may take this refusal into
19 consideration when awarding expenses, costs, and attorneys'
20 fees.

21 (b) Nothing in subsection (a) shall be interpreted to
22 mandate the mediation of any dispute involving:



- 1 (1) Actions seeking equitable relief involving threatened
- 2 property damage or the health or safety of association
- 3 members or any other person;
- 4 (2) Actions to collect assessments;
- 5 (3) Personal injury claims; or
- 6 (4) Actions against an association, a board, or one or
- 7 more directors, officers, agents, employees, or other
- 8 persons for amounts in excess of \$2,500 if insurance
- 9 coverage under a policy of insurance procured by the
- 10 association or its board would be unavailable for
- 11 defense or judgment because mediation was pursued.

12 (c) If any mediation under this section is not completed
 13 within two months from commencement, no further mediation shall
 14 be required unless agreed to by the parties."

15 SECTION 15. Section 712-1240, Hawaii Revised Statutes, is
 16 amended by amending the definitions of "dangerous drugs" and
 17 "harmful drug" to read as follows:

18 " "Dangerous drugs" means any substance or immediate
 19 precursor defined or specified as a "Schedule I substance" or a
 20 "Schedule II substance" by chapter 329, or a substance specified
 21 in section [~~329-18(e)(13)~~], 329-18(c)(14), except marijuana or
 22 marijuana concentrate.



1 "Harmful drug" means any substance or immediate precursor
2 defined or specified as a "Schedule III substance" or a
3 "Schedule IV substance" by chapter 329, or any marijuana
4 concentrate except marijuana and a substance specified in
5 section [~~329-18(e)(13).~~] 329-18(c)(14)."

6 SECTION 16. Act 151, Session Laws of Hawaii 2009, is
7 amended by amending section 28 to read as follows:

8 "SECTION 28. This Act shall take effect upon approval[-];
9 provided that the amendments made to section 346-352, Hawaii
10 Revised Statutes, by this Act shall not be repealed when section
11 346-352, Hawaii Revised Statutes, is reenacted on July 1, 2013,
12 pursuant to section 5 of Act 92, Session Laws of Hawaii 2007."

13 PART II

14 SECTION 17. Section 235-1, Hawaii Revised Statutes, is
15 amended by amending the definition of "prepaid legal service
16 plan" to read as follows:

17 "" [~~Prepaid legal~~] Legal service plan" ("Plan") means a
18 [~~group legal service~~] plan in which the cost of the services are
19 [~~prepaid~~] paid by [~~the group member~~] a member or by some other
20 person or organization in the member's behalf. A [~~group~~] legal
21 service plan is a plan by which legal services are rendered to



1 ~~[individual members of a group]~~ members identifiable in terms of
2 some common interest. A plan shall provide:

3 (A) That individual members shall be afforded freedom of
4 choice in the selection of their own attorney or
5 attorneys to provide legal services under such plan.

6 (B) For the payment of equal amounts for the cost of
7 services rendered without regard to the identity of
8 the attorney or attorneys selected by the plan member
9 or members. No plan shall otherwise discriminate on
10 the basis of such selection."

11 SECTION 18. Section 235-2.4, Hawaii Revised Statutes, is
12 amended by amending subsection (z) to read as follows:

13 "(z) Sections 512 to 514 (with respect to taxation of
14 business income of certain exempt organizations) of the Internal
15 Revenue Code shall be operative for the purposes of this chapter
16 as provided in this subsection.

17 "Unrelated business taxable income" means the same as in
18 the Internal Revenue Code, except that in the computation
19 thereof sections 235-3 to 235-5, and 235-7 (except subsection
20 (c)), shall apply, and in the determination of the net operating
21 loss deduction there shall not be taken into account any amount
22 of income or deduction that is excluded in computing the



1 unrelated business taxable income. Unrelated business taxable
2 income shall not include any income from a [~~prepaid~~] legal
3 service plan.

4 For a person described in section 401 or 501 of the
5 Internal Revenue Code, as modified by section 235-2.3, the tax
6 imposed by section 235-51 or 235-71 shall be imposed upon the
7 person's unrelated business taxable income."

8 SECTION 19. Section 235-7, Hawaii Revised Statutes, is
9 amended by amending subsection (a) to read as follows:

10 "(a) There shall be excluded from gross income, adjusted
11 gross income, and taxable income:

12 (1) Income not subject to taxation by the State under the
13 Constitution and laws of the United States;

14 (2) Rights, benefits, and other income exempted from
15 taxation by section 88-91, having to do with the state
16 retirement system, and the rights, benefits, and other
17 income, comparable to the rights, benefits, and other
18 income exempted by section 88-91, under any other
19 public retirement system;

20 (3) Any compensation received in the form of a pension for
21 past services;



- 1 (4) Compensation paid to a patient affected with Hansen's
2 disease employed by the State or the United States in
3 any hospital, settlement, or place for the treatment
4 of Hansen's disease;
- 5 (5) Except as otherwise expressly provided, payments made
6 by the United States or this State, under an act of
7 Congress or a law of this State, which by express
8 provision or administrative regulation or
9 interpretation are exempt from both the normal and
10 surtaxes of the United States, even though not so
11 exempted by the Internal Revenue Code itself;
- 12 (6) Any income expressly exempted or excluded from the
13 measure of the tax imposed by this chapter by any
14 other law of the State, it being the intent of this
15 chapter not to repeal or supersede any express
16 exemption or exclusion;
- 17 (7) Income received by each member of the reserve
18 components of the Army, Navy, Air Force, Marine Corps,
19 or Coast Guard of the United States of America, and
20 the Hawaii national guard as compensation for
21 performance of duty, equivalent to pay received for



1 forty-eight drills (equivalent of twelve weekends) and
2 fifteen days of annual duty, at an:

3 (A) E-1 pay grade after eight years of service;
4 provided that this subparagraph shall apply to
5 taxable years beginning after December 31, 2004;

6 (B) E-2 pay grade after eight years of service;
7 provided that this subparagraph shall apply to
8 taxable years beginning after December 31, 2005;

9 (C) E-3 pay grade after eight years of service;
10 provided that this subparagraph shall apply to
11 taxable years beginning after December 31, 2006;

12 (D) E-4 pay grade after eight years of service;
13 provided that this subparagraph shall apply to
14 taxable years beginning after December 31, 2007;

15 and

16 (E) E-5 pay grade after eight years of service;
17 provided that this subparagraph shall apply to
18 taxable years beginning after December 31, 2008;

19 (8) Income derived from the operation of ships or aircraft
20 if the income is exempt under the Internal Revenue
21 Code pursuant to the provisions of an income tax
22 treaty or agreement entered into by and between the



- 1 United States and a foreign country; provided that the
2 tax laws of the local governments of that country
3 reciprocally exempt from the application of all of
4 their net income taxes, the income derived from the
5 operation of ships or aircraft that are documented or
6 registered under the laws of the United States;
- 7 (9) The value of legal services provided by a [~~prepaid~~]
8 legal service plan to a taxpayer, the taxpayer's
9 spouse, and the taxpayer's dependents;
- 10 (10) Amounts paid, directly or indirectly, by a [~~prepaid~~]
11 legal service plan to a taxpayer as payment or
12 reimbursement for the provision of legal services to
13 the taxpayer, the taxpayer's spouse, and the
14 taxpayer's dependents;
- 15 (11) Contributions by an employer to a [~~prepaid~~] legal
16 service plan for compensation (through insurance or
17 otherwise) to the employer's employees for the costs
18 of legal services incurred by the employer's
19 employees, their spouses, and their dependents;
- 20 (12) Amounts received in the form of a monthly surcharge by
21 a utility acting on behalf of an affected utility
22 under section 269-16.3 shall not be gross income,



1 adjusted gross income, or taxable income for the
2 acting utility under this chapter. Any amounts
3 retained by the acting utility for collection or other
4 costs shall not be included in this exemption; and
5 (13) One hundred per cent of the gain realized by a fee
6 simple owner from the sale of a leased fee interest in
7 units within a condominium project, cooperative
8 project, or planned unit development to the
9 association of owners under chapter 514A or 514B, or
10 the residential cooperative corporation of the
11 leasehold units.

12 For purposes of this paragraph:

13 "Fee simple owner" shall have the same meaning as
14 provided under section 516-1; provided that it shall
15 include legal and equitable owners;

16 "Legal and equitable owner", and "leased fee
17 interest" shall have the same meanings as provided
18 under section 516-1; and

19 "Condominium project" and "cooperative project"
20 shall have the same meanings as provided under section
21 514C-1."



1 SECTION 20. Section 237-1, Hawaii Revised Statutes, is
2 amended by amending the definition of "prepaid legal service
3 plan" to read as follows:

4 " "~~[Prepaid legal]~~ Legal service plan" ("Plan") means a
5 ~~[group legal service]~~ plan in which the cost of the services are
6 ~~[prepaid]~~ paid by ~~[the group member]~~ a member or by some other
7 person or organization in the member's behalf. A ~~[group]~~ legal
8 service plan is a plan by which legal services are rendered to
9 ~~[individual members of a group]~~ members identifiable in terms of
10 some common interest. A plan shall provide:

11 (A) That individual members shall be afforded freedom of
12 choice in the selection of their own attorney or
13 attorneys to provide legal services under such plan.

14 (B) For the payment of equal amounts for the cost of
15 services rendered without regard to the identity of
16 the attorney or attorneys selected by the plan member
17 or members. No plan shall otherwise discriminate on
18 the basis of such selection."

19 SECTION 21. Section 237-23, Hawaii Revised Statutes, is
20 amended by amending subsection (a) to read as follows:

21 "(a) This chapter shall not apply to the following
22 persons:



- 1 (1) Public service companies as that term is defined in
2 section 239-2, with respect to the gross income,
3 either actual gross income or gross income estimated
4 and adjusted, that is included in the measure of the
5 tax imposed by chapter 239;
- 6 (2) Public utilities owned and operated by the State or
7 any county, or other political subdivision thereof;
- 8 (3) Fraternal benefit societies, orders, or associations,
9 operating under the lodge system, or for the exclusive
10 benefit of the members of the fraternity itself,
11 operating under the lodge system, and providing for
12 the payment of death, sick, accident, [~~prepaid legal~~
13 ~~services,~~] a legal service plan, or other benefits to
14 the members of the societies, orders, or associations,
15 and to their dependents;
- 16 (4) Corporations, associations, trusts, or societies
17 organized and operated exclusively for religious,
18 charitable, scientific, or educational purposes, as
19 well as that of operating senior citizens housing
20 facilities qualifying for a loan under the laws of the
21 United States as authorized by section 202 of the
22 Housing Act of 1959, as amended, as well as that of



1 operating a [~~prepaid legal services~~] legal service
2 plan, as well as that of operating or managing a
3 homeless facility, or any other program for the
4 homeless authorized under part XVII of chapter 346;

5 (5) Business leagues, chambers of commerce, boards of
6 trade, civic leagues, agricultural and horticultural
7 organizations, and organizations operated exclusively
8 for the benefit of the community and for the promotion
9 of social welfare that shall include the operation of
10 a [~~prepaid~~] legal service plan, and from which no
11 profit inures to the benefit of any private
12 stockholder or individual;

13 (6) Hospitals, infirmaries, and sanitararia;

14 (7) Cooperative associations incorporated under chapter
15 421 or Code section 521 cooperatives which fully meet
16 the requirements of section 421-23, except Code
17 section 521 cooperatives need not be organized in
18 Hawaii; provided that:

19 (A) The exemption shall apply only to the gross
20 income derived from activities that are pursuant
21 to purposes and powers authorized by chapter 421,
22 except those provisions pertaining to or



1 requiring corporate organization in Hawaii do not
2 apply to Code section 521 cooperatives;
3 (B) The exemption shall not relieve any person who
4 receives any proceeds of sale from the
5 association of the duty of returning and paying
6 the tax on the total gross proceeds of the sales
7 on account of which the payment was made, in the
8 same amount and at the same rate as would apply
9 thereto had the sales been made directly by the
10 person, and all those persons shall be so
11 taxable; and
12 (C) As used in this paragraph, "Code section 521
13 cooperatives" mean associations that qualify as a
14 cooperative under section 521 (with respect to
15 exemption of farmers' cooperatives from tax) of
16 the Internal Revenue Code of 1986, as amended;
17 (8) Persons affected with Hansen's disease and kokuas,
18 with respect to business within the county of Kalawao;
19 (9) Corporations, companies, associations, or trusts
20 organized for the establishment and conduct of
21 cemeteries no part of the net earnings of which inures
22 to the financial benefit of any private stockholder or



1 individual; provided that the exemption shall apply
 2 only to the activities of those persons in the conduct
 3 of cemeteries and shall not apply to any activity the
 4 primary purpose of which is to produce income, even
 5 though the income is to be used for or in the
 6 furtherance of the exempt activities of those persons;
 7 and

8 (10) Nonprofit shippers associations operating under part
 9 296 of the Civil Aeronautics Board Economic
 10 Regulations."

11 SECTION 22. Section 431:1-201, Hawaii Revised Statutes, is
 12 amended by amending subsection (b) to read as follows:

13 "(b) The following contracts are not considered to be
 14 insurance for the purposes of this code:

15 (1) A bond with respect to which no premium is charged or
 16 paid;

17 (2) A bond or contract or undertaking in the performance
 18 of which the surety has an interest other than that of
 19 surety;

20 (3) A plan or agreement between an employer and any
 21 employee or the employee's representative,
 22 individually or collectively, by the terms of which



1 the employer or the parties to the plan or agreement
2 agree to contribute to the cost of nonoccupational
3 disability benefits, medical attention, treatment or
4 hospitalization for the employee or members of the
5 employee's family unless such plan is underwritten by
6 an insurer as defined in this article;

7 (4) A [~~prepaid~~] legal service plan as defined in chapter
8 488 other than plans in which either the [~~group~~]
9 person or entity offering the plan or the person
10 administering the plan is otherwise subject to this
11 code;

12 (5) Any unincorporated interindemnity or reciprocal or
13 interinsurance contract, which qualifies under chapter
14 435E between members of a cooperative corporation,
15 whose members consist only of physicians and surgeons
16 licensed in Hawaii, which contracts indemnify solely
17 in respect to medical malpractice claims against such
18 members, and which do not collect in advance of loss
19 any moneys other than contributions by each member to
20 a collective reserve trust fund or for necessary
21 expenses of administration."



1 SECTION 23. Section 432:1-104, Hawaii Revised Statutes, is
2 amended to read as follows:

3 "~~§432:1-104~~ **Definitions.** For the purposes of this
4 article:

5 (1) [~~Commissioner~~] "Commissioner" means the insurance
6 commissioner of the State of Hawaii.

7 (2) [~~Mutual benefit society~~] "Mutual benefit society" is
8 any corporation, unincorporated association, society,
9 or entity:

10 (A) Organized and carried on for the primary benefit
11 of its members and their beneficiaries and not
12 for profit, and:

13 (i) Making provision for the payment of benefits
14 in case of sickness, disability, or death of
15 its members, or disability, or death of its
16 members' spouses or reciprocal beneficiaries
17 or children, or

18 (ii) Making provision for the payment of any
19 other benefits to or for its members,
20 whether or not the amount of the benefits is
21 fixed or rests in the discretion of the society,
22 its officers, or any other person or persons; and



1 the fund from which the payment of the benefits
2 shall be defrayed is derived from assessments or
3 dues collected from its members, and the payment
4 of death benefits is made to the families
5 including reciprocal beneficiaries, heirs, blood
6 relatives, or persons named by its members as
7 their beneficiaries; or
8 (B) Organized and carried on for any purpose, which:
9 (i) Regularly requires money to be paid to it by
10 its members, whether the money be in the
11 form of dues, subscriptions, receipts,
12 contributions, assessments or otherwise, and
13 (ii) Provides for the payment of any benefit or
14 benefits or the payment of any money or the
15 delivery of anything of value to its members
16 or their relatives including reciprocal
17 beneficiaries, or to any person or persons
18 named by its members as their beneficiaries,
19 or to any class of persons which includes or
20 may include its members,
21 whether or not the amount or value of the
22 benefit, benefits, money, or thing of value is



1 fixed, or rests in the discretion of the society,
 2 its officers, or any other person or persons; or
 3 (C) Organized and carried on for any purpose, whose
 4 requirements and provisions although not
 5 identical with, are determined by the
 6 commissioner to be substantially similar to,
 7 those enumerated in subparagraphs (A) and (B).
 8 Participating in a [prepaid] legal service plan
 9 subject to chapter 488 shall not in itself make a
 10 corporation, unincorporated association, society, or
 11 entity a mutual benefit society and subject to this
 12 article."

13 SECTION 24. Section 432:2-101, Hawaii Revised Statutes, is
 14 amended to read as follows:

15 "**§432:2-101 Scope of article.** This article relates only
 16 to fraternal benefit societies, as defined herein, which desire
 17 to be authorized to pay benefits in accordance with this article
 18 after July 10, 1961. This article shall not apply to [prepaid]
 19 legal service plans subject to chapter 488 even though the plan
 20 may be offered by a fraternal benefit society."

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PART III

SECTION 25. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 26. This Act shall take effect on July 1, 2012; provided that section 9, amending section 235-2.4, Hawaii Revised Statutes, shall take effect retroactive to January 1, 2011; and provided further that the amendments made to section 235-7(a), Hawaii Revised Statutes, by section 19, shall not be repealed when section 235-7(a), Hawaii Revised Statutes, is reenacted on January 1, 2013, pursuant to Act 166, Session Laws of Hawaii 2007.

APPROVED this 20 day of APR, 2012



GOVERNOR OF THE STATE OF HAWAII