
A BILL FOR AN ACT

RELATING TO CONTESTED CASES.

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

1 SECTION 1. Chapter 91, Hawaii Revised Statutes, is amended
2 by adding a new section to be appropriately designated and to
3 read as follows:

4 "§91- Utilization of department of commerce and
5 consumer affairs hearings officers. (a) Notwithstanding any
6 other law to the contrary, any state agency that is responsible
7 for conducting contested case hearings and does not have
8 hearings officers on its staff shall arrange with the department
9 of commerce and consumer affairs to have its contested case
10 hearings heard by hearings officers of the department of
11 commerce and consumer affairs.

12 (b) A decision by a hearings officer of the department of
13 commerce and consumer affairs pursuant to this section shall
14 have the same force and effect as if the decision were made by a
15 hearings officer employed or contracted by the state agency
16 responsible for conducting the contested case hearing.



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1 (c) The department of commerce and consumer affairs may
2 charge agencies a fee for conducting contested case hearings
3 pursuant to subsection (a)."

4 SECTION 2. Section 26-9, Hawaii Revised Statutes, is
5 amended to read as follows:

6 **"§26-9 Department of commerce and consumer affairs.** (a)
7 The department of commerce and consumer affairs shall be headed
8 by a single executive to be known as the director of commerce
9 and consumer affairs.

10 (b) The department shall protect the interests of
11 consumers, depositors, and investors throughout the State. It
12 shall set standards and enforce all laws and rules governing the
13 licensing and operation of, and register and supervise the
14 conduct of, trades, businesses, and professions, including
15 banks, insurance companies, brokerage firms, and other financial
16 institutions.

17 (c) The board of acupuncture, board of public accountancy,
18 board of barbering and cosmetology, boxing commission, Hawaii
19 board of chiropractic, contractors license board, board of
20 dentistry, board of electricians and plumbers, elevator
21 mechanics licensing board, board of professional engineers,



1 architects, surveyors, and landscape architects, board of
2 massage therapy, Hawaii medical board, motor vehicle industry
3 licensing board, motor vehicle repair industry board, board of
4 naturopathic medicine, board of nursing, Hawaii board of
5 optometry, pest control board, board of pharmacy, board of
6 physical therapy, board of psychology, board of private
7 detectives and guards, real estate commission, Hawaii board of
8 veterinary medicine, board of speech pathology and audiology,
9 and any board, commission, program, or entity created pursuant
10 to or specified by statute in furtherance of the purpose of this
11 section, including but not limited to section 26H-4, or chapters
12 484, 514B, and 514E shall be placed within the department of
13 commerce and consumer affairs for administrative purposes.

14 The public utilities commission shall be placed, for
15 administrative purposes only, within the department of commerce
16 and consumer affairs. Notwithstanding [~~section 26-9(e),~~]
17 sections (e), (f), (g), (h), (j), (k), (l), (m), (n), (p), (q),
18 (r), and (s), and except as permitted by sections 269-2 and 269-
19 3, the department of commerce and consumer affairs shall not
20 direct or exert authority over the day-to-day operations or
21 functions of the commission.



1 (d) Except as otherwise provided by this chapter, the
2 functions, duties, and powers, subject to the administrative
3 control of the director of commerce and consumer affairs, and
4 the composition of each board and commission shall be as
5 provided by law.

6 (e) Notwithstanding any provision to the contrary, the
7 employment, appointment, promotion, transfer, demotion,
8 discharge, and job descriptions of all officers and employees
9 under the administrative control of this department shall be
10 determined by the director of commerce and consumer affairs
11 subject only to applicable personnel laws.

12 (f) The director of commerce and consumer affairs may
13 appoint a hearings officer or officers not subject to chapter 76
14 to hear and decide any case or controversy regarding licenses
15 and the application and enforcement of rules involving any of
16 the boards, commissions, or regulatory programs within the
17 department of commerce and consumer affairs[-]; provided that
18 hearings officers may also conduct contested case hearings for
19 other state agencies pursuant to section 91- . The hearings
20 officer or officers shall have power to issue subpoenas,
21 administer oaths, hear testimony, find facts, and make



1 conclusions of law and a recommended decision; provided that the
2 conclusions and decisions shall be subject to review and
3 redetermination by the officer, board, or commission which would
4 have heard the case in the first instance in the absence of a
5 hearings officer. The review shall be conducted in accordance
6 with chapter 91.

7 (g) The director of commerce and consumer affairs may
8 appoint an information officer not subject to chapter 76 who
9 shall ensure the prompt and efficient handling of consumer
10 inquiries and the development of a strong consumer education
11 program.

12 (h) The director may appoint a complaints and enforcement
13 officer not subject to chapter 76 who shall facilitate the
14 receipt, arbitration, investigation, prosecution, and hearing of
15 complaints regarding any person who furnishes commodities,
16 services, or real estate for which a license, registration, or
17 certificate is required from the department or any board,
18 commission, or regulatory program thereunder. In representing
19 the State in bringing any action to enjoin unlicensed,
20 unregistered, or uncertified activities, the department of
21 commerce and consumer affairs' attorneys shall be empowered to



1 exercise all authority granted to the attorney general and to
2 the director of the office of consumer protection under sections
3 [~~487-12, 487-14,~~] 480-3.1, 480-15, 480-15.1, 480-20(c), [and]
4 480-22, 487-12, and 487-14, as these sections now exist and as
5 they subsequently may be amended. The attorneys also shall be
6 empowered to exercise all authority granted to the attorney
7 general and to the responsible attorneys of the various counties
8 under section 92F-13 in all cases involving documents and
9 records within the custody or control of the regulated
10 industries complaints office.

11 (i) The functions and authority previously exercised by
12 the treasurer [~~+~~], except funds custody, cash management, debt
13 management, and administering of veterans loans transferred to
14 the department of budget and finance [~~+~~], as constituted are
15 transferred to the department of commerce and consumer affairs
16 established by this chapter.

17 (j) In the course of an investigation of matters affecting
18 the interest of consumers, depositors, or investors, or of any
19 other matter within the jurisdiction of the department, the
20 director shall have the power to subpoena witnesses, examine
21 witnesses under oath, and require the production of books,



1 papers, documents, or objects that the director deems relevant
2 or material to the inquiry. Upon application by the director,
3 obedience to the subpoena may be enforced by the circuit court
4 in the county in which the person subpoenaed resides or is found
5 in the same manner as a subpoena issued by the clerk of a
6 circuit court.

7 The director shall appoint and commission one or more
8 investigators as the exigencies of the public service may
9 require. Persons appointed and commissioned under this section
10 may serve subpoenas and serve process and orders pursuant to
11 section 634-21. Nothing in this subsection shall be construed
12 to entitle persons appointed and commissioned by the director to
13 retirement benefits applicable to police officers under chapter
14 88.

15 (k) The director may adopt, amend, or repeal rules
16 pursuant to chapter 91 to effectuate the purposes of all laws
17 within the jurisdiction of the department of commerce and
18 consumer affairs. The director's authority to adopt rules shall
19 not modify, impair, or otherwise affect the power of boards and
20 commissions placed within the department of commerce and
21 consumer affairs for administrative purposes from adopting,



1 amending, or repealing rules, except as provided for in
2 subsection (1).

3 (1) Any law to the contrary notwithstanding, the director
4 of commerce and consumer affairs may:

5 (1) Establish, increase, decrease, or repeal fees relating
6 to any aspect of the registration, certification,
7 licensure, or any other administrative process for all
8 laws within the jurisdiction of the department.

9 Amendments to fee assessments shall be made pursuant
10 to chapter 91;

11 (2) Assess fees for copies in any form of media of the
12 computerized records of the business registration
13 division or for electronic access to the computerized
14 information on a one-time or on-going basis. The fees
15 charged for the copies or access may include billing
16 service fees, network usage fees, and computer
17 consultant fees. In adopting these fees, the director
18 shall take into account the intent to make the
19 division self-supporting. To this end, the fees may
20 reflect the commercial value of the service or
21 information provided. In the case of requests for



1 records by a nonprofit organization, the director may
 2 reduce or waive the fees. This paragraph shall
 3 control in any instance where there is a conflict
 4 between this paragraph and any other statute; and

5 (3) Assess fees for copies of consumer and business
 6 educational publications prepared or issued by the
 7 department. Fees collected under this paragraph shall
 8 be deposited into the compliance resolution fund under
 9 subsection (o). In the case of requests for copies by
 10 a nonprofit organization, the director may reduce or
 11 waive the fees. For purposes of this paragraph,
 12 "consumer and business educational publications" does
 13 not include copies of statutes or administrative
 14 rules.

15 The fees collected by the professional and vocational
 16 licensing division and the business registration division shall
 17 be deposited into the compliance resolution fund under
 18 subsection (o).

19 The director may appoint program specialists, not subject
 20 to chapter 76, to assist with the activities of the professional
 21 and vocational licensing division.



1 (m) Notwithstanding section 92-17 or any other law to the
2 contrary, all boards, commissions, and regulatory programs
3 placed within the department of commerce and consumer affairs
4 for administrative purposes shall delegate their authority to
5 receive, arbitrate, investigate, and prosecute complaints to the
6 department.

7 (n) Each board and commission, as well as the director, by
8 written order, may delegate to the executive secretary or other
9 personnel of the department any of its powers or duties as it
10 deems reasonable and proper for the administration of the
11 licensing laws that are within the jurisdiction of the
12 department of commerce and consumer affairs. The delegated
13 powers and duties may be exercised by the executive secretary or
14 other personnel of the department in the name of the board,
15 commission, or the director. However, neither a board, a
16 commission, nor the director shall delegate the authority to
17 adopt, amend, or repeal rules or take final disciplinary action
18 against a licensee.

19 (o) Every person licensed under any chapter within the
20 jurisdiction of the department of commerce and consumer affairs
21 and every person licensed subject to chapter 485A or registered



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1 under chapter 467B shall pay upon issuance of a license, permit,
2 certificate, or registration a fee and a subsequent annual fee
3 to be determined by the director and adjusted from time to time
4 to ensure that the proceeds, together with all other fines,
5 income, and penalties collected under this section, do not
6 surpass the annual operating costs of conducting compliance
7 resolution activities required under this section. The fees may
8 be collected biennially or pursuant to rules adopted under
9 chapter 91, and shall be deposited into the special fund
10 established under this subsection. Every filing pursuant to
11 chapter 514E or section 485A-202(a)(26) shall be assessed, upon
12 initial filing and at each renewal period in which a renewal is
13 required, a fee that shall be prescribed by rules adopted under
14 chapter 91, and that shall be deposited into the special fund
15 established under this subsection. Any unpaid fee shall be paid
16 by the licensed person, upon application for renewal,
17 restoration, reactivation, or reinstatement of a license, and by
18 the person responsible for the renewal, restoration,
19 reactivation, or reinstatement of a license, upon the
20 application for renewal, restoration, reactivation, or
21 reinstatement of the license. If the fees are not paid, the



1 director may deny renewal, restoration, reactivation, or
2 reinstatement of the license. The director may establish,
3 increase, decrease, or repeal the fees when necessary pursuant
4 to rules adopted under chapter 91. The director may also
5 increase or decrease the fees pursuant to section 92-28.

6 There is created in the state treasury a special fund to be
7 known as the compliance resolution fund to be expended by the
8 director's designated representatives as provided by this
9 subsection. Notwithstanding any law to the contrary, all
10 revenues, fees, and fines collected by the department shall be
11 deposited into the compliance resolution fund. Unencumbered
12 balances existing on June 30, 1999, in the cable television fund
13 under chapter 440G, the division of consumer advocacy fund under
14 chapter 269, the financial institution examiners' revolving
15 fund, section 412:2-109, the special handling fund, section
16 414-13, and unencumbered balances existing on June 30, 2002, in
17 the insurance regulation fund, section 431:2-215, shall be
18 deposited into the compliance resolution fund. This provision
19 shall not apply to the drivers education fund underwriters fee,
20 sections 431:10C-115 and 431:10G-107, insurance premium taxes
21 and revenues, revenues of the workers' compensation special



1 compensation fund, section 386-151, the captive insurance
2 administrative fund, section 431:19-101.8, the insurance
3 commissioner's education and training fund, section 431:2-214,
4 the medical malpractice patients' compensation fund as
5 administered under section 5 of Act 232, Session Laws of Hawaii
6 1984, and fees collected for deposit in the office of consumer
7 protection restitution fund, section 487-14, the real estate
8 appraisers fund, section 466K-1, the real estate recovery fund,
9 section 467-16, the real estate education fund, section 467-19,
10 the contractors recovery fund, section 444-26, the contractors
11 education fund, section 444-29, the condominium education trust
12 fund, section 514B-71, and the mortgage foreclosure dispute
13 resolution special fund, section 667-86. Any law to the
14 contrary notwithstanding, the director may use the moneys in the
15 fund to employ, without regard to chapter 76, hearings officers
16 and attorneys. All other employees may be employed in
17 accordance with chapter 76. Any law to the contrary
18 notwithstanding, the moneys in the fund shall be used to fund
19 the operations of the department. The moneys in the fund may be
20 used to train personnel as the director deems necessary and for
21 any other activity related to compliance resolution.



1 A separate special subaccount of the compliance resolution
2 fund, to be known as the post-secondary education authorization
3 special subaccount, shall be established for fees collected by
4 the department of commerce and consumer affairs pursuant to
5 chapter 305J. The special subaccount shall be governed by
6 section 305J-19.

7 As used in this subsection, unless otherwise required by
8 the context, "compliance resolution" means a determination of
9 whether:

- 10 (1) Any licensee or applicant under any chapter subject to
11 the jurisdiction of the department of commerce and
12 consumer affairs has complied with that chapter;
- 13 (2) Any person subject to chapter 485A has complied with
14 that chapter;
- 15 (3) Any person submitting any filing required by chapter
16 514E or section 485A-202(a)(26) has complied with
17 chapter 514E or section 485A-202(a)(26);
- 18 (4) Any person has complied with the prohibitions against
19 unfair and deceptive acts or practices in trade or
20 commerce; or
- 21 (5) Any person subject to chapter 467B has complied with



1 that chapter;
2 and includes work involved in or supporting the above functions,
3 licensing, or registration of individuals or companies regulated
4 by the department, consumer protection, and other activities of
5 the department.

6 The director shall prepare and submit an annual report to
7 the governor and the legislature on the use of the compliance
8 resolution fund. The report shall describe expenditures made
9 from the fund including non-payroll operating expenses.

10 (p) Any law to the contrary notwithstanding, the
11 department of commerce and consumer affairs, or any board or
12 commission placed within it for administrative purposes, may
13 contract with professional testing services to prepare,
14 administer, and grade examinations and tests for license
15 applicants. For these purposes, the department may require
16 applicants to pay the examination fee directly to the testing
17 agency.

18 (q) Any law to the contrary notwithstanding, when any type
19 of bond or insurance required to be maintained by any licensee
20 under a regulatory program of the department of commerce and
21 consumer affairs, or of any board or commission assigned to the



1 department of commerce and consumer affairs, cannot reasonably
2 be secured, the department, board, or commission may provide by
3 rule for alternative forms of security to the consumer so long
4 as that alternate security is no less than that provided by the
5 type of bond or insurance initially required.

6 (r) Notwithstanding any other law to the contrary, the
7 department of commerce and consumer affairs, or any board or
8 commission placed within it for administrative purposes, may
9 change any license renewal date by rules adopted in accordance
10 with chapter 91.

11 (s) The director of commerce and consumer affairs may
12 establish advisory committees, the members of which shall serve
13 as consultants to the boards and to the director in their review
14 of licensees referred for possible disciplinary action and as
15 experts to the department for investigations and professional
16 vocational licensing matters. Each advisory committee shall be
17 appointed by the director from a list of licensees submitted
18 annually by the board or by referral from the regulated industry
19 for which an advisory committee is appointed. Each member of
20 the committee shall serve until a new committee is established



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1 or until the particular case for which the member was designated
2 a consultant or expert has been concluded.


3 All members of the advisory committee shall serve
4 voluntarily and without compensation, but shall be paid
5 reasonable allowances for travel and expenses that may be
6 incurred as a result of performance of their duties on the
7 committee. The costs shall be paid by the department.

8 Any member of the advisory committee shall be immune from
9 civil liability for any act done in connection with this
10 subsection.

11 (t) The director shall arrange for hearings officers
12 appointed under subsection (f) to conduct contested case
13 hearings for other state agencies pursuant to section 91- ."

14 SECTION 3. Statutory material to be repealed is bracketed
15 and stricken. New statutory material is underscored.

16 SECTION 4. This Act shall take effect upon its approval.
17

INTRODUCED BY: 
JAN 22 2021



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Report Title:

Contested Case Hearings; Hearings Officers; Department of Commerce and Consumer Affairs; State Agencies

Description:

Requires any state agency that does not have hearings officers on its staff to arrange with the department of commerce and consumer affairs to have its contested case hearings heard by hearings officers of the department. Allows the department of commerce and consumer affairs to charge a fee for conducting these hearings.

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