



Hawaii

Human Resources LEGAL FACT SHEET

Disclaimer: This fact sheet summarizes state laws and regulations on a variety of human resource issues for dairy farms, including wages, paystubs, deductions, child labor and more. It is not intended to provide legal advice. The fact sheet is simply an overview of select issues with a high-level explanation of key requirements for each one, with links to more information and resources throughout the document. This fact sheet does not include all legal requirements for dairies. It was created in January 2019, and while it will be periodically updated, it may not reflect the current state of the law on every topic covered. Dairies should also review the federal fact sheet because employers—depending on size—may be required to comply with some or all of the applicable federal laws and regulations as well. By using this fact sheet you understand that there is no attorney-client relationship between you and the attorneys who were involved in developing the fact sheet. This fact sheet should not be used as a substitute for competent legal advice from a licensed attorney.

ARE THERE HAWAII STATE LAWS PERTAINING TO DAIRY FARMS ABOUT:

HIRING

TOPIC	ANSWER	DETAILS
Notice of Payday / Pay Rate ¹	YES	The employer must disclose information about pay rate and the day, hour, and place of payment in writing when hiring an employee. After hire, the employer must issue written notification to each employee or post in an accessible place a notice about any changes to the pay arrangements before the time of the change.
Reporting ²	YES	<p><u>New Hire reports</u> must be submitted as follows:</p> <ul style="list-style-type: none"> When an employer hires a new employee, or rehires an employee, the employer shall report the hiring to the Department of Labor and Industrial Relations on forms provided or approved by the department. An employer may report such hires individually or on list form when reporting five or more new hires at the same time. The report shall contain: <ul style="list-style-type: none"> The name and address of the employer; The employer's unemployment insurance account number; The name and social security account number of the employee; The date of hire; and Such other relevant and reasonable information as requested by the department. An employer shall report these new hires to the department within five working days after the first day of employment of such employees.

WAGES

TOPIC	ANSWER	DETAILS
Paydays ³	YES	Employers must pay employees <u>at least bi-monthly</u> on regular paydays designated in advance by the employer.
Final Pay ⁴	YES	<p>If an employee is discharged for any reason, the employer must pay the employee's wages in full either:</p> <ul style="list-style-type: none"> At the time of discharge. On the next working day following discharge, if the discharge occurs at a time and under conditions that prevent an employer from making immediate payment. <p>When an employee quits or resigns, the employer must pay the employee's wages at the time of resignation only if the employee gave notice of at least one pay period. Otherwise, the employer has until the next regular payday either through normal pay channels or through the mail (if requested).</p>

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WAGES

(Continued)

TOPIC	ANSWER	DETAILS
Overtime ⁵	YES/NO	<p>Agricultural employers are subject to Hawaii's overtime provisions during any workweek in which they employ twenty or more employees.</p> <p>Dairy farm employers that employ 20 or more individuals in any workweek are subject to the minimum wage and overtime rules but are not required to pay overtime compensation for hours in excess of forty in a workweek to any of the employer's employees during any of twenty different workweeks (exempt workweeks), as selected by the employer, in any yearly period commencing July 1. Agricultural employers subject to the minimum wage and overtime rules must pay an overtime rate of one-half times the employee's regular rate for any hours worked in excess of forty-eight hours during any such exempt workweek.</p> <p>A nonexempt employee in Hawaii cannot be employed for more than 40 hours in any workweek unless she receives at least 1.5 times her regular rate of pay for each hour worked over the 40-hour threshold.</p>
Minimum Wage ⁶	YES/NO	<p>Agricultural employers are subject to Hawaii's minimum wage provisions for each workweek that they employ twenty or more individuals during that workweek.</p> <p>The current minimum wage is \$10.10 per hour.</p>
Reporting Time Pay ⁷	YES/NO	<p>Dairy farmers that do not employ 20 or more employees during a workweek are not subject to reporting time pay requirements for that workweek.</p> <p>However, employers are required to pay for all hours that an employee is "<u>suffered or permitted to work.</u>" Employers are not required to pay employees for canceled shifts. They are also not required to pay employees who report to work, are immediately informed that no work is available, and are allowed to leave. However, if the employee reports to work at his scheduled time and is suffered or permitted to wait for work before being informed no work is available, the employer must compensate the employee at his/her regular rate for the time spent waiting (between scheduled start time and the time the employee is sent home).</p>
Taxes and Withholding ⁸	YES	<p>Generally, unless required by federal or state law or by the court, an employer cannot withhold money from an employee's wages. However, an employee may authorize an employer in writing to retain some deductions.</p> <p>Every employer that has one or more employees in Hawaii must withhold income tax from the wages of both resident and nonresident employees for services performed in Hawaii.</p> <p>A dairy farmer must pay <u>Hawaii Unemployment Insurance</u> taxes if it:</p> <ul style="list-style-type: none"> • Paid \$20,000 or more total cash wages during each calendar quarter in both the current and the preceding calendar years AND if you had in each of the current and the preceding calendar years; <ul style="list-style-type: none"> - Over nine employees performing agricultural labor in any one calendar week, whether or not the same individuals did such labor in each week; OR - Over 19 calendar weeks, whether consecutive or not, in which agricultural labor was performed by the employees. <p>Certain family employment is excluded from coverage requirements (parents, spouse, or children under 21 years of age employed by the child's father or mother).</p>
Bonuses	YES/NO	<p>Hawaii wage and hour law does not explicitly address bonuses. Generally, discretionary bonuses are not considered wages, while nondiscretionary bonuses paid under an agreement are considered wages and protected under wage law.</p> <p>Employers should follow any written policy they have about paying bonuses as a best practice.</p> <p>A nondiscretionary bonus is one where the amount and criteria for getting the bonus are announced in advance. For example, performance goals (like meeting somatic cell count goals) that workers know about in advance. Discretionary bonuses are ones that are not announced in advance, not expected by the employee, and not an incentive for the employee. For example, when the farm reaches a certain financial goal and decides to give all employees a bonus.</p>



WAGES

(Continued)

TOPIC	ANSWER	DETAILS
Pay Stub ⁹	YES/NO	<p>Dairy farmers are that do not employ twenty or more employees in a workweek are not subject to Hawaii's paystub requirements for that workweek. However, pay stubs are best practice.</p> <p>Subject employers must provide wage statements to employees each pay period that are:</p> <ul style="list-style-type: none"> • Legibly printed, typewritten or handwritten, or • In electronic form, if the employee has agreed in writing. <p>Employers may use electronic wage statements if they keep all electronic wage statements for at least six years and employees:</p> <ul style="list-style-type: none"> • Voluntarily agree and provide written authorization to receive wage statements electronically. • Are permitted to cancel the arrangement at any time. • Receive specific written instructions for accessing their wage statements. • Can access their wage statements electronically and have access to a printer to print the statements. <p>Pay stubs must show:</p> <ul style="list-style-type: none"> • The employee's name. • The employer's name. • The employer's address and phone number. • Total hours worked. • Regular and overtime hours. • Straight-time compensation. • Overtime compensation. • Any other compensation, including allowances, if any, claimed as part of the minimum wage (such as holiday or vacation pay). • Total gross compensation. • The amount and purpose of each deduction (such as employment taxes and union dues). • Total net compensation. • Date of payment. • Pay period covered. • Rate or rates of pay and the basis (hourly, salary, piece-rate, and so on), including the overtime rate or rates of pay. For employees paid a piece rate, the applicable piece rate or rates and the number of pieces completed at each rate.
Hours Worked	YES	<p>Hawaii generally follows the methodology under the federal Fair Labor Standards Act (FLSA) for calculating hours worked by an employee. Under Hawaii law, hours employed includes the entire time that an employee worked, if the employer knows or should have known that the work was being performed.</p>
Deductions and Allowances ¹⁰	YES	<p>Generally, unless required by federal or state law or by the court, an employer cannot withhold money from an employee's wages. However, an employee may authorize an employer in writing to retain some deductions or retentions. An employee, however, must not assume the costs of any of the following:</p> <ul style="list-style-type: none"> • Fines, penalties or replacement costs for breakage. • Cash shortage in a common money till, cash box or register used by two or more persons. • Cash shortage in a money till, cash box or register under sole control of the employee if the employee is not given an opportunity to account for all money received at the start of a shift and all money turned in at the end of a shift. • Losses because an employee accepted a dishonored check if the employee is given discretion to accept or reject any check. • Losses because of: defective or faulty workmanship; lost or stolen property; damage to property; and default of customer credit or nonpayment for goods or services received by a customer if these losses are not attributable to an employee's willful or intentional disregard of the employer's interest. • Medical or physical examination or medical report expenses that accrue because of services rendered to an employee or prospective employee, if the examination or report is requested or required by the employer or prospective employer or required by any law or regulation of federal, state or local governments or agencies.



RECORD KEEPING

TOPIC	ANSWER	DETAILS
Payroll ¹¹	YES	<p>Employers must keep records for at least six years. The employer's records must contain the following information:</p> <ul style="list-style-type: none"> • <i>Occupation</i> • <i>The employee's name and social security number.</i> • <i>The employer's name.</i> • <i>The employer's address and phone number.</i> • <i>Total hours worked.</i> • <i>Regular and overtime hours.</i> • <i>Straight-time compensation.</i> • <i>Overtime compensation.</i> • <i>Any other compensation, including allowances, if any, claimed as part of the minimum wage (such as holiday or vacation pay).</i> • <i>Total gross compensation.</i> • <i>The amount and purpose of each deduction (such as employment taxes and union dues).</i> • <i>Total net compensation.</i> • <i>Date of payment.</i> • <i>Pay period covered.</i> • <i>Rate or rates of pay and the basis (hourly, salary, piece-rate, and so on), including the overtime rate or rates of pay. For employees paid a piece rate, the applicable piece rate or rates and the number of pieces completed at each rate.</i>
Personnel Files Access	NO	<p>Hawaii does not have any relevant laws for employee access to personnel files for agricultural employees.</p>
Unemployment Insurance ¹²	YES	<p>A dairy farmer must pay Hawaii Unemployment Insurance taxes if it:</p> <ul style="list-style-type: none"> • <i>paid \$20,000 or more total cash wages during each calendar quarter in both the current and the preceding calendar years AND if you had in each of the current and the preceding calendar years:</i> <ul style="list-style-type: none"> - <i>Over nine employees performing agricultural labor in any one calendar week, whether or not the same individuals did such labor in each week; OR</i> - <i>Over 19 calendar weeks, whether consecutive or not, in which agricultural labor was performed by the employees.</i> <p>All subject employers must submit a Form UC-B6, Quarterly Wage, Contribution and Employment and Training Assessment Report form. The form requires employers to report the following:</p> <ul style="list-style-type: none"> • <i>number of covered workers in each month during the quarter;</i> • <i>quarterly contribution;</i> • <i>quarterly wage record;</i> • <i>employment and training assessment; and</i> • <i>amount of payment due.</i> <p>Employers must keep <u>accurate work records</u> of their employees. The following records must be kept for at least five years after the calendar year in which remuneration was earned:</p> <ul style="list-style-type: none"> • <i>For each individual worker:</i> <ul style="list-style-type: none"> - <i>name and social security account number;</i> - <i>type of work performed;</i> - <i>locations where worked and place of residence if worked outside the State;</i> - <i>date hired, rehired or returned to work after temporary layoff;</i> - <i>last day worked, date separated from work and reason for separation;</i> - <i>rate of pay, amount of wages paid for each pay period and dates paid, segregated by cash, gratuities or tips and payments made in any other medium;</i> - <i>amount paid as allowances or reimbursement for traveling or business expenses, date of payment and amounts of such expenditures actually incurred and accounted for by the worker; and</i> - <i>for each pay period in which individual performs services in both subject employment and non-subject work, the hours spent and wages earned in each, shown separately.</i> • <i>A general record of:</i> <ul style="list-style-type: none"> - <i>beginning and ending dates of each pay period; and</i> - <i>total amount of remuneration paid in each quarter for employment, showing separately the portion on which contribution is payable.</i>



RECORD KEEPING

(Continued)

TOPIC	ANSWER	DETAILS
Workers' Compensation ¹³	YES	Every employer must keep a record of all injuries, fatal or otherwise, received by the employer's employees in the course of their employment, when known to the employer or brought to the employer's attention. Within seven working days after having knowledge of the injury, the employer must report it on the WC-1 Employer's Report of Industrial Injury form.
OSHA ¹⁴	YES	Hawaii's reporting requirements are at least as effective as the OSHA requirements. Hawaii requires that all workplace incidents resulting in an employee fatality be reported within 8 hours and that all workplace incidents resulting in an employee inpatient hospitalization, amputation, loss of an eye or property damage in excess of \$25,000, be reported within 24 hours. Dairy farmers are also required to record all workplace injuries and illnesses and complete OSHA Forms 300, 301, and 300A forms. However, if your farm, including all other farms owned in Hawaii, have 10 or less employees at all times in the last calendar year, you do not have to maintain injury and illness records, unless you are informed in writing that you must.
Federal	YES	There are a number of federal record keeping provisions. Refer to the federal fact sheet.

WORKING CONDITIONS

TOPIC	ANSWER	DETAILS
Bathrooms ¹⁵	YES	Hawaii regulations closely follow the federal Grade A Pasteurized Milk Ordinance. Hawaii regulations and the PMO specify that dairy farms have one or more toilets that are conveniently located, properly constructed, properly operated and maintained in a sanitary manner.
Working Hours	NO	Hawaii does not specify maximum working hours for adults.
Rest and Meal Breaks	NO	Hawaii does not specify regular rest and meal breaks for adults.
Labor Relations ¹⁶	YES	Employees have the right to organize and to form, join or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in lawful, concerted activities for the purpose of collective bargaining or other mutual aid or protection.
Whistleblower Protection ¹⁷	YES	An employer cannot terminate, threaten or otherwise discriminate against an employee regarding the employee's compensation, terms, conditions, location or privileges of employment because: <ul style="list-style-type: none"> • <i>The employee, or a person acting on behalf of the employee, reports or is about to report to the employer, or reports or is about to report to a public body, verbally or in writing, a violation or a suspected violation of:</i> <ul style="list-style-type: none"> - <i>A law, rule, ordinance or regulation, adopted pursuant to Hawaii law, a political subdivision of Hawaii, or the United States; or</i> - <i>A contract executed by Hawaii, a political subdivision of Hawaii, or the United States, unless the employee knows that the report is false; or</i> • <i>An employee is requested by a public body to participate in an investigation, hearing or inquiry held by that public body, or a court action.</i>
Paid Vacation or Sick Leave ¹⁸	NO	Hawaii law does not require paid sick or vacation leave . Employers who choose to provide such benefits must follow their written policy/contract. Employers that provide vacation and sick leave benefits must make their policies available to employees in writing or through a notice posted in a place accessible to the employee pursuant to Haw. Rev. Stat. §388-7(3).



WORKING CONDITIONS

(Continued)

TOPIC	ANSWER	DETAILS
Breaks for Nursing Mothers ¹⁹	YES	<p>Employers with one or more employees must:</p> <ul style="list-style-type: none"> • Provide employees who need to express breast milk with reasonable break time and a location (other than the restroom) to do so. • Post a notice in a conspicuous place. • Use other appropriate means to inform the employees of the protections and obligation under this law. <p>Employers with fewer than 20 employees may not be subject to the requirements of this law if it imposes an undue hardship.</p>
Pregnancy Accommodations and Leave ²⁰	YES	<p>An employer may only take adverse action against a pregnant employee for failure to perform her job due to pregnancy-related performance issues if the employer has first made every reasonable accommodation to the needs of the employee, yet she is still not able to perform the essential functions of her job.</p> <p>Examples of such accommodations may include:</p> <ul style="list-style-type: none"> • Allowing time off from work for doctor's appointments. • Allowing the pregnant employee to sit, instead of stand, while working. • Excusing from, or providing assistance for, lifting tasks. • Reassigning the pregnant employee to a light duty and/or other vacant position. • Allowing more frequent breaks or rest periods. • Allowing the pregnant employee to take sick leave. <p>The statute does not address intermittent leave. However, because pregnancy disability leave must be allowed for a reasonable period of time as determined by the employee's physician at any time she is medically unable to work because of pregnancy, childbirth, or related medical conditions, it is likely that intermittent leave is allowed.</p>
Family and Medical Leave ²¹	YES	<p>An employee may take leave:</p> <ul style="list-style-type: none"> • For the birth or adoption of a child. • When there is a serious health condition, to care for the employee's child, spouse (including partners to a civil union), reciprocal beneficiary or parent. <p>Unlike leave authorized under the federal Family and Medical Leave Act, an employee may not take leave for the employee's own illness.</p> <p>Eligible employees (those who perform services for six consecutive months or more) are entitled to up to four weeks of family leave during each calendar year. Leave for birth of a child must be taken within 12 months after the child's birth.</p> <p>Use of family leave time is limited to four weeks within a 12-month period set by the employer.</p> <p>Federal law may also apply. Please refer to federal fact sheet for more information.</p>
Military and other Service Leave ²²	YES	<p>Employees may take leave to perform military service in the Hawaii National Guard.</p>
Crime Victim and Witness Leave ²³	YES	<p>Hawaii employers with one or more employees are covered under this law. Employees are eligible if they have performed services for hire for the employer for at least six consecutive months and either:</p> <ul style="list-style-type: none"> • Are a victim of domestic or sexual violence. • Have a minor child who is a victim of domestic or sexual violence.
Jury Duty and Witness Leave ²⁴	YES	<p>All Hawaii employers are covered by this law. All employees who serve as a juror or attend court for prospective jury service are eligible for this leave.</p>
Voting Leave ²⁵	YES	<p>Employees are allowed two consecutive hours (excluding any lunch or rest periods) of leave while the polls are open. An employee must be paid unless the employer can verify that the employee took leave but failed to vote. An employee is not eligible for leave if the employee has two consecutive nonworking hours (excluding any lunch or rest periods) while the polls are open in which to vote.</p>
School Activity Leave	NO	<p>Hawaii does not have any relevant laws on school activity leave.</p>



HUMAN RIGHTS

TOPIC	ANSWER	DETAILS
Employment Discrimination ²⁶	YES	<p>Hawaii <u>prohibits employment discrimination</u>, including against the following protected classes:</p> <ul style="list-style-type: none"> • Race. • Sex. • Gender identity or expression. • Sexual orientation. • Age. • Religion. • Color. • Ancestry. • Disability. • Marital status. • Arrest and court record. • Domestic or sexual violence victim status if the domestic or sexual violence victim provides notice or the employer has actual knowledge of the employee's status. • Breast feeding or expressing milk at the workplace. • Genetic information. • Credit history. • Assignment of income for child support obligations. • Association with an individual with a known disability. • Opposing any practice forbidden by the Hawaii Fair Employment Practices Act. <p>Federal law may apply. Please see federal fact sheet for further information.</p>
Harassment/ Sexual Harassment ²⁷	YES	<p>Hawaii's Fair Employment Practices Act (HFEPA) prohibits workplace harassment. Hawaii's prohibition against harassment follows federal decisions and covers individuals who were the subject of the harassment as well as those who were forced to work in an environment where others were harassed. The HFEPA prohibits sexual harassment.</p>
Forced Labor ²⁸	YES	<p>Labor trafficking is a crime in Hawaii. A person commits labor trafficking if the person intentionally or knowingly provides or obtains, or attempts to provide or obtain, another person for labor or services.</p>

HEALTH AND SAFETY

TOPIC	ANSWER	DETAILS
Workers' Compensation ²⁹	YES	<p>Any non-excluded employer having one or more employees, full-time or part-time, permanent or temporary, is required to provide WC coverage for the employees. <u>More details.</u></p>
OSHA ³⁰	YES	<p>Hawaii has an approved OSHA state-plan, which means it is at least as effective as federal OSHA. Hawaii has adopted Fed. OSHA standards verbatim. Please refer to federal fact sheet for further information.</p>
Housing ³¹	YES	<p>A landowner whose agricultural lands are designated as important agricultural lands may develop, construct and maintain farm dwellings and employee housing for farmers, employees and their immediate family members on these lands.</p> <p>"Important agricultural lands" means those lands that:</p> <ul style="list-style-type: none"> • Are capable of producing sustained high agricultural yields when treated and managed according to accepted farming methods and technology; • Contribute to the State's economic base and produce agricultural commodities for export or local consumption; or • Are needed to promote the expansion of agricultural activities and income for the future, even if currently not in production. <p>The plans for farm dwellings and employee housing units shall be supported by agricultural plans that are approved by the department of agriculture.</p>



CHILD LABOR

TOPIC	ANSWER	DETAILS
Child Labor ³²	YES	<p>A minor between 16-18 years old may be employed during periods when the minor is not legally required to attend school or when the minor is excused by school authorities from attending school, as long as that the employer of the minor records and keeps on file the number of a valid certificate of age issued to the minor by the department.</p> <p>A minor between 14-16 years old may be employed or permitted to work:</p> <ul style="list-style-type: none"> • <i>During periods when the minor is not legally required to attend school or when the minor is excused by school authorities from attending school;</i> • <i>If the employer of the minor procures and keeps on file a valid certificate of employment;</i> • <i>No more than five hours continuously without an interval of at least 30 consecutive minutes for a rest or lunch period;</i> • <i>Between 7:00 a.m. and 7:00 p.m. of any day; provided that during any authorized school break, the minor may be employed between 6:00 a.m. and 9:00 p.m.;</i> • <i>No more than six consecutive days;</i> • <i>No more than 18 hours in a calendar week during which the minor is legally required to attend school, and no more than forty hours in a calendar week during which the minor is not legally required to attend school or when the minor is excused by school authorities from attending school;</i> • <i>No more than three hours on any school day; and</i> • <i>No more than eight hours on any non-school day.</i> <p>Employers may generally not employ minors under age 14 (except in theatrical productions or coffee harvesting).</p> <p>For employment of all minors, the employer must obtain a certificate of either age or employment from the Hawaii Department of Labor and Industrial Relations (DLIR).</p> <p>A minor employed by the minor's parent or legal guardian are exempt from Hawaii child labor laws provided that such employment is during periods when the minor is not legally required to attend school or when the minor has been excused by school authorities from attending school; in an occupation which has not been declared by rule of the director to be hazardous; and not in connection with adult entertainment.</p>

References

1. Haw. Rev. Stat. § 388-7.
2. Haw. Admin. R. § 12-5-17(f).
3. Haw. Rev. Stat. § 388-2(a).
4. Haw. Rev. Stat. § 388-3.
5. Haw. Rev. Stat. §§ 381-1; 387-3.
6. Haw. Rev. Stat. §§ 387-1; 387-2.
7. Haw. Rev. Stat. § 387-1.
9. Haw. Rev. Stat. § 388-6; Haw. Rev. Stat. § 235-61; Haw. Rev. Stat. § 383-7.
8. Haw. Rev. Stat. § 387-6; § 388-7.
10. Haw. Rev. Stat. § 388-6.
11. Haw. Rev. Stat. § 388-7; Haw. Rev. Stat. § 387-6; Haw. Admin. R. §§ 12-21-5.
12. Haw. Rev. Stat. § 383-1 et seq.
13. Haw. Rev. Stat. § 386-95.
14. Haw. Admin. R. § 12-52.1.
15. Haw. Admin. R. § 11-15-43.
16. Haw. Rev. Stat. § 377-4.
17. Haw. Rev. Stat. § 378-62.
18. Haw. Rev. Stat. §§ 388-1, 3, and 4; Haw. Rev. Stat. § 388-7(3).
19. Haw. Rev. Stat. § 378-92; Haw. Rev. Stat. § 378-92(c); Haw. Rev. Stat. § 378-93.
20. Haw. Rev. Stat. §§ 368-1 to 368-17 and 378-1 to 378-6; Haw. Admin. R. § 12-46-101 to 12-46-111.
21. Haw. Rev. Stat. §§ 398-3(a) and 572B-9; Haw. Admin. R. §§ 12-27-1 and 12-27-6(f); Haw. Admin. R. § 12-27-6(b), (c).
22. Haw. Rev. Stat. § 121-43(a).
23. Haw. Rev. Stat. §§ 378-1 and 378-72(a); Haw. Rev. Stat. §§ 378-71 and 378-72(a).
24. Haw. Rev. Stat. § 612-25; Haw. Rev. Stat. § 612-25(a).
25. Haw. Rev. Stat. § 11-95(a); Haw. Rev. Stat. § 11-95(b).
26. Haw. Rev. Stat. § 378-2.
27. Haw. Rev. Stat. § 378-2(a)(1)(A); Haw. Admin. R. § 12-46-109.
28. Haw. Rev. Stat. § 707-780-782 et seq.
29. Haw. Rev. Stat. § 386-1 et seq.
30. Haw. Admin. R. § 12-208-1.
31. Haw. Rev. Stat. § 205-45.5.
32. Haw. Rev. Stat. § 390-2 et seq.

