

JAN 26 2009

A BILL FOR AN ACT

RELATING TO ATTORNEYS.

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

1 SECTION 1. Section 605-14, Hawaii Revised Statutes, is
2 amended to read as follows:

3 "§605-14 Unauthorized practice of law prohibited. (a) It
4 shall be unlawful for any person, firm, association, or
5 corporation to engage in or attempt to engage in or to offer to
6 engage in the practice of law, or to do or attempt to do or
7 offer to do any act constituting the practice of law, except and
8 to the extent that the person, firm, or association is licensed
9 or authorized so to do by an appropriate court, agency, or
10 office or by a statute of the State or of the United States.

11 Nothing contained in sections 605-14 to 605-17 [~~contained~~] shall
12 be construed to prohibit the preparation or use by any party to
13 a transaction of any legal or business form or document used in
14 the transaction."

15 (b) For the purposes of this section, "practice of law"
16 means the provision of professional legal advice or services by
17 a person, firm, association, or corporation. "Practice of law"



1 does not include the provision of services by a person, firm,
2 association, or corporation licensed or authorized under
3 chapters 431, 453, 464, 466, or 467; provided that the person,
4 firm, association, or corporation acts according to the terms of
5 the license or authorization and does not provide or profess to
6 provide professional legal advice, services based on legal
7 competency, or standing in the law."

8 SECTION 2. Section 431:3-201, Hawaii Revised Statutes, is
9 amended to read as follows:

10 "§431:3-201 Authority required. (a) No person shall act,
11 purport to act, or advertise the person's services as an insurer
12 and no insurer shall transact insurance business in this State
13 other than as authorized by a certificate of authority granted
14 to it by the commissioner; except as to [~~such~~] transactions as
15 are expressly otherwise provided in this code.

16 (b) The investigation and adjustment of claims in this
17 State arising under insurance contracts issued by an
18 unauthorized insurer, except surplus line insurance issued
19 pursuant to section 431:8-301, shall be deemed to constitute the
20 transaction of insurance in this State, unless the [~~same~~]
21 investigation and adjustment of claims are isolated or
22 nonrecurring transactions.



1 (c) Every certificate of authority shall include but not
2 be limited to:

3 (1) The name of the insurer and the classes of insurance
4 it is authorized to transact in this State; or

5 (2) The name of and location of the principal office of
6 its attorney-in-fact if a reciprocal insurer.

7 (d) An insurer who possesses a certificate of authority in
8 good standing under this chapter and applicable rules shall not
9 be deemed to be engaged in the practice of law when providing
10 services within the scope of the insurer's certificate of
11 authority."

12 SECTION 3. Section 453-2, Hawaii Revised Statutes, is
13 amended to read as follows:

14 **"§453-2 License required; exceptions.** (a) Except as
15 otherwise provided by law, no person shall practice medicine or
16 surgery in the State, either gratuitously or for pay, or offer
17 to practice medicine or surgery in the State, or advertise or
18 announce one's self, either publicly or privately, as prepared
19 or qualified to practice medicine or surgery in the State, or
20 append the letters "Dr.", "M.D.", or "D.O." to one's name with
21 the intent to imply that the person is a practitioner of
22 medicine or surgery, without having a valid unrevoked license or



1 a limited and temporary license obtained from the Hawaii medical
2 board.

3 (b) Nothing herein shall:

4 (1) Apply to so-called Christian Scientists; provided that
5 the Christian Scientists practice the religious tenets
6 of their church without pretending a knowledge of
7 medicine or surgery;

8 (2) Prohibit service in the case of emergency or the
9 domestic administration of family remedies;

10 (3) Apply to any commissioned medical officer in the
11 United States armed forces or public health service
12 engaged in the discharge of one's official duty, nor
13 to any practitioner of medicine and surgery from
14 another state when in actual consultation, including
15 in-person, mail, electronic, telephonic, fiber-optic,
16 or other telemedicine consultation with a licensed
17 physician or osteopathic physician of this State, if
18 the physician or osteopathic physician from another
19 state at the time of consultation is licensed to
20 practice in the state in which the physician or
21 osteopathic physician resides; provided that:



- 1 (A) The physician or osteopathic physician from
2 another state shall not open an office, or
3 appoint a place to meet patients in this State,
4 or receive calls within the limits of the State
5 for the provision of care for a patient who is
6 located in this State;
- 7 (B) The licensed physician or osteopathic physician
8 of this State retains control and remains
9 responsible for the provision of care for the
10 patient who is located in this State; and
- 11 (C) The laws and rules relating to contagious
12 diseases are not violated;
- 13 (4) Prohibit services rendered by any person certified
14 under part II of this chapter to provide emergency
15 medical services, or any physician assistant, when the
16 services are rendered under the direction and control
17 of a physician or osteopathic physician licensed in
18 this State except for final refraction resulting in a
19 prescription for spectacles, contact lenses, or visual
20 training as performed by an oculist or optometrist
21 duly licensed by the State. The direction and control
22 shall not be construed in every case to require the



1 personal presence of the supervising and controlling
2 physician or osteopathic physician. Any physician or
3 osteopathic physician who employs or directs a person
4 certified under part II of this chapter to provide
5 emergency medical services, or a physician assistant,
6 shall retain full professional and personal
7 responsibility for any act that constitutes the
8 practice of medicine when performed by the certified
9 person or physician assistant;

10 (5) Prohibit automated external defibrillation by:

11 (A) Any first responder personnel certified by the
12 department of health to provide automated
13 external defibrillation when it is rendered under
14 the medical oversight of a physician or
15 osteopathic physician licensed in this State; or

16 (B) Any person acting in accordance with section
17 663-1.5(e); or

18 (6) Prohibit a radiologist duly licensed to practice
19 medicine and provide radiology services in another
20 state from using telemedicine while located in this
21 State to provide radiology services to a patient who



1 is located in the state in which the radiologist is
2 licensed. For the purposes of this paragraph:

3 "Radiologist" means a doctor of medicine or a
4 doctor of osteopathy certified in radiology by the
5 American Board of Radiology or the American Board of
6 Osteopathy.

7 "Telemedicine" means the use of
8 telecommunications services, as that term is defined
9 in section 269-1, including real-time video
10 conferencing-based communication, secure interactive
11 and non-interactive web-based communication, and
12 secure asynchronous information exchange, to transmit
13 patient medical information, such as diagnostic-
14 quality digital images and laboratory results for
15 medical interpretation and diagnosis, and deliver
16 health care services and information to parties
17 separated by distance.

18 (c) Nothing in this chapter shall prohibit healing
19 practices by traditional Hawaiian healers engaged in traditional
20 [Native] native Hawaiian healing practices, [~~both as~~] recognized
21 and certified as such by any kupuna council convened by Papa Ola
22 Lokahi. No person or organization involved with the selection



1 of kupuna council members, the convening of a kupuna council, or
2 the certification process of healers under this subsection shall
3 be sued or held liable for any cause of action that may arise
4 out of their participation in the selection, convening, or
5 certification process. Nothing in this chapter shall limit,
6 alter, or otherwise adversely affect any rights of practice of
7 traditional [~~Native~~] native Hawaiian healing pursuant to the
8 Constitution of the State of Hawaii.

9 (d) A physician or osteopathic physician who possesses a
10 valid unrevoked license or a limited temporary license in good
11 standing under this chapter and applicable rules shall not be
12 deemed to be engaged in the practice of law when providing
13 services within the scope of the physician or osteopathic
14 physician's license or temporary license."

15 SECTION 4. Section 464-2, Hawaii Revised Statutes, is
16 amended to read as follows:

17 "§464-2 Licensing of practicing engineers, etc. (a) In
18 order to safeguard life, health, and property, no person except
19 those exempted by sections 464-3 and 464-5 shall practice
20 professional engineering, architecture, land surveying or
21 landscape architecture in the State unless the person is duly
22 licensed under this chapter.



1 (b) A person practicing professional engineering,
2 architecture, land surveying, or landscape architecture who
3 possesses a valid unrevoked license in good standing under this
4 chapter and applicable rules shall not be deemed to be engaged
5 in the practice of law when providing services within the scope
6 of the professional engineer, architect, land surveyor, or
7 landscape architect's license."

8 SECTION 5. Section 466-5, Hawaii Revised Statutes, is
9 amended to read as follows:

10 "**§466-5 License of certified public accountant.** (a) A
11 license and a permit are required to practice public
12 accountancy. The board may license and grant the designation of
13 "certified public accountant" to any person who has met the
14 following criteria:

- 15 (1) [~~Attained~~] Has attained eighteen years of age;
- 16 (2) Possesses a history of competence, trustworthiness,
17 and fair dealing;
- 18 (3) [~~Educational~~] Satisfies the educational requirements
19 of this section or section 466-5.5;
- 20 (4) [~~Experience~~] Satisfies the experience requirements of
21 subsection (d);



1 credited toward the experience requirements in
2 subsection (d).

3 (c) A person shall be exempt from the requirements in
4 subsection (b) or section 466-5.5 if that person:

5 (1) Holds a current license as a public accountant under
6 section 466-6; or

7 (2) Holds, and has continued to hold, a valid comparable
8 certificate, registration, or license of certified
9 public accountant of another state for a period of not
10 less than ten years preceding the date of the person's
11 application under this section, and has been in active
12 practice of public accountancy in one or more states
13 for a period of not less than five years preceding the
14 date of the application.

15 (d) Each applicant shall present satisfactory evidence in
16 the form of a certified statement from present or former
17 employer(s) that the applicant has met one of the following
18 experience requirements for license:

19 (1) Completion of one thousand five hundred chargeable
20 hours in the performance of audits involving the
21 application of generally accepted accounting



1 principles and auditing standards earned while in
2 public accounting practice; or

- 3 (2) Completion of two years of professional experience in
4 [~~public accountancy practice~~] the practice of public
5 accountancy as defined in section 466-3. Completion
6 of experience in private or government accounting or
7 auditing work, deemed by the board to be equivalent to
8 professional experience in [~~public accountancy~~
9 ~~practice~~] the practice of public accountancy as
10 defined in section 466-3, may be substituted for all
11 or part of the two years of professional experience in
12 public accounting practice. The nature, variety, and
13 depth of acceptable private or government accounting
14 or auditing experience shall be defined by the board
15 in its rules.

16 (e) The examination required [~~to be passed~~] for licensure
17 shall test the applicant's knowledge of the subjects of
18 accounting theory, accounting practice, auditing, and other
19 related subjects as the board may specify by rule. The board
20 shall prescribe the methods of [~~applying~~] application for and
21 [~~conducting~~] conduct of the examination, including methods for
22 grading papers and determining [a] the passing grade required



1 ~~[by an applicant]~~ for a license; provided that the board shall,
2 to the extent possible, ~~[see to it]~~ ensure that the methods of
3 grading ~~[of]~~ the examination and the passing ~~[grades]~~ grade
4 required for a license are ~~[uniform]~~ in accord with those
5 applicable in all other states. The board may use the Uniform
6 Certified Public Accountant Examination and Advisory Grading
7 Service of the American Institute of Certified Public
8 Accountants~~[7]~~ and may contract with third parties to perform
9 the administrative services with respect to the examination as
10 the board deems appropriate to assist it in performing its
11 duties herein.

12 (f) The board may allow an applicant to sit for the
13 Uniform Certified Public Accountant Examination, if the
14 applicant has met at least one of the following~~[+]~~
15 qualifications:

- 16 (1) Baccalaureate degree in accounting conferred by a
17 college or university acceptable to the board; ~~[or]~~
18 (2) Baccalaureate degree with a major in a subject other
19 than in accounting, plus eighteen semester hours of
20 upper division or graduate level accounting or
21 auditing subjects, conferred by a college or
22 university acceptable to the board; or



1 (3) Baccalaureate degree or its equivalent in accounting,
2 conferred by a college or university outside of the
3 United States, and submission of a letter of
4 acceptance from an accredited United States college or
5 university to its advanced degree program or an
6 educational equivalency report prepared by an
7 evaluator approved by the board.

8 (g) The board shall prescribe the terms and conditions
9 under which an applicant who has taken the examination
10 prescribed in subsection (e), but who has not satisfactorily
11 completed the examination, may be given credit for any part
12 thereof that the applicant has satisfactorily completed. The
13 board may also provide a specific length of time for an
14 applicant to apply for reexamination.

15 (h) A person who passed the Uniform Certified Public
16 Accountant Examination under the laws of another state may be
17 exempted from taking the examination required pursuant to
18 subsections (a)(5) and (e). The board shall prescribe the
19 methods and requirements for exemption from examination
20 requirements. The board shall prescribe the methods and
21 requirements for exemption for the holder of a valid comparable



1 certificate, registration, or license and a degree from a
2 foreign country.

3 (i) A person who, on January 1, 1974, holds a license of
4 certified public accountant issued under the laws of this State
5 theretofore existing shall not be required to obtain an
6 additional license of certified public accountant under this
7 chapter, but shall otherwise be subject to all the provisions of
8 this chapter; and the license theretofore issued shall, for all
9 purposes, be considered a license issued under this chapter and
10 subject to the provisions herein.

11 (j) Licenses shall be effective for a period not exceeding
12 two years and shall be renewable biennially on or before
13 December 31 of every odd-numbered year upon application to the
14 board.

15 (k) The board may renew the license of a certified public
16 accountant who completes a renewal application and fulfills the
17 following requirements:

- 18 (1) Holds a valid and current license; and
- 19 (2) Paid appropriate fees and assessments.

20 (l) Failure to renew a license on or before December 31 of
21 every odd-numbered year, shall constitute a forfeiture of
22 license. Continued practice in public accountancy without



1 renewing or restoring a license and permit shall constitute
2 unlicensed activity. Any person engaged in unlicensed activity
3 shall be subject to sections 466-9, 466-11, 487-13, and 26-9.

4 (m) The board shall specify the method and requirements of
5 application for restoration of a forfeited license. The date of
6 restoration of the license shall be the date of board approval
7 of the restoration. Restorations shall not be retrospective.

8 (n) A certified public accountant who possesses a valid
9 unrevoked license and a valid unrevoked permit to actively
10 engage in the practice of public accountancy under this chapter
11 and applicable rules shall not be deemed to be engaged in the
12 practice of law when providing services within the scope of the
13 certified public accountant's license and permit."

14 SECTION 6. Section 466-6, Hawaii Revised Statutes, is
15 amended to read as follows:

16 **"§466-6 License of public accountant.** (a) A license and
17 a permit are required to actively practice public accountancy.

18 A person:

- 19 (1) Who has attained eighteen years of age;
20 (2) Who possesses a history of competence,
21 trustworthiness, and fair dealing;



- 1 (3) Who was serving in the armed forces of the United
2 States on June 15, 1955;
- 3 (4) Who was a resident of the Territory of Hawaii at the
4 time of entering such service in the armed forces; and
- 5 (5) Who at the time of entering such service, met the
6 requirements set forth in subparagraph (A), (B) or (C)
7 of this subsection, shall, upon application to the
8 board within six months after honorable discharge or
9 release from such service, be licensed by the board as
10 a "public accountant":
- 11 (A) Any person who held oneself out to the public as
12 being engaged in the practice of public
13 accountancy and who was engaged in the practice
14 of public accountancy as the person's principal
15 occupation, either on the person's own account or
16 as a member of a firm, or as an employee of a
17 certified public accountant, or public
18 accountant, and was regularly assigned to
19 accountancy engagements;
- 20 (B) Any person who was engaged in accounting or
21 auditing work in the Territory of Hawaii as an
22 employee of the United States, of the Territory,



1 or of any county, in a position in grade GS-9
2 under the territorial classification schedule in
3 effect on March 1, 1955, or the equivalent or
4 higher grade; or

5 (C) Any person who was engaged in private accounting
6 or auditing who has had not less than three years
7 of experience in such work, or in public
8 accounting, or both, and whose experience was of
9 such a character and for a length of time
10 sufficient in the opinion of the board to be
11 substantially equivalent to three years of public
12 accounting experience.

13 (b) Licenses shall be effective for a period not exceeding
14 two years and shall be renewable biennially on or before
15 December 31 of every odd-numbered year upon application to the
16 board.

17 (c) A person who, on January 1, 1974, holds a license of
18 public accountant under the laws of this State theretofore
19 existing, shall not be required to obtain an additional license
20 under this chapter, but shall otherwise be subject to all the
21 provisions of this chapter; and such previous license shall, for



1 all purposes, be considered a license under this chapter and
2 subject to the provisions herein.

3 (d) A public accountant who possesses a valid unrevoked
4 license and a valid unrevoked permit to actively engage in the
5 practice of public accountancy under this chapter and applicable
6 rules shall not be deemed to be engaged in the practice of law
7 when providing services within the scope of the public
8 accountant's license and permit."

9 SECTION 7. Section 467-7, Hawaii Revised Statutes, is
10 amended to read as follows:

11 **"§467-7 Licenses required to act as real estate broker and**
12 **salesperson. (a) No person within the purview of this chapter**
13 **shall act as real estate broker or real estate salesperson, or**
14 **shall advertise, or assume to act as real estate broker or real**
15 **estate salesperson without a license previously obtained under**
16 **and in compliance with this chapter and the rules and**
17 **regulations of the real estate commission.**

18 (b) A real estate broker or real estate salesperson who
19 possesses a valid unrevoked license under this chapter and
20 applicable rules shall not be deemed to be engaged in the
21 practice of law when providing services within the scope of the
22 real estate broker or real estate sales person's license."



S.B. NO. 1044

1 SECTION 8. Statutory material to be repealed is bracketed
2 and stricken. New statutory material is underscored.

3 SECTION 9. This Act shall take effect July 1, 2009.

4

INTRODUCED BY: *Rasuly H. Beh*

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Report Title:

Unauthorized Practice of Law; Professional License

Description:

Allows licensed professionals to provide services within the scope of their license without violating the prohibition on the unauthorized practice of law.

