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# A BILL FOR AN ACT

RELATING TO HEALTHCARE.

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

1           SECTION 1. The legislature finds that the practice of  
2 respiratory care in Hawaii affects the public health, safety,  
3 and welfare of people in the State. Accordingly, the practice  
4 of respiratory care should be subject to regulation and control  
5 in order to protect the public from the unqualified practice of  
6 respiratory care and from unprofessional conduct by persons  
7 licensed to practice respiratory care. According to the  
8 American Association for Respiratory Care, Hawaii is one of only  
9 two United States jurisdictions that does not regulate the  
10 practice of respiratory care.

11           The legislature further finds that the practice of  
12 respiratory care is a dynamic and changing science, the practice  
13 of which continues to evolve with more sophisticated techniques  
14 and clinical modalities in patient care.

15           The purpose of this Act is to regulate the practice of  
16 respiratory care by establishing licensure requirements.

1 SECTION 2. The Hawaii Revised Statutes is amended by  
2 adding a new chapter to be appropriately designated and to read  
3 as follows:

4 "CHAPTER

5 RESPIRATORY THERAPISTS

6 § -1 **Definitions.** For the purposes of this chapter:

7 "Department" means the department of commerce and consumer  
8 affairs.

9 "Director" means the director of commerce and consumer  
10 affairs.

11 "Licensed respiratory therapist" means a person:

- 12 (1) Who engages in the practice of respiratory care and  
13 uses the title of licensed respiratory therapist;  
14 (2) Who has been issued a license under this chapter; and  
15 (3) Whose license is in effect and not revoked, suspended,  
16 or encumbered.

17 "Practice of respiratory care" means providing assessment,  
18 therapy, management, rehabilitation, support services for  
19 diagnostic evaluation, education, and care of patients with  
20 deficiencies and abnormalities which affect the pulmonary  
21 system, including:

- 1           (1) Respiratory care services, including the  
2           administration of pharmacological, diagnostic, and  
3           therapeutic care related to respiratory care  
4           procedures necessary for treatment, disease  
5           prevention, rehabilitative, or diagnostic regimens  
6           prescribed by a physician;
- 7           (2) Observation and monitoring of signs, symptoms,  
8           reactions, and physical responses to respiratory care  
9           treatment and diagnostic testing;
- 10          (3) Diagnostic or therapeutic use of:
- 11           (A) Medical gases, excluding general anesthesia;
- 12           (B) Aerosols, humidification, environmental control  
13           systems, or invasive and non-invasive modalities;
- 14           (C) Pharmacological care related to respiratory care  
15           procedures;
- 16           (D) Mechanical or physiological ventilatory support,  
17           including maintenance of natural airways and  
18           insertion and maintenance of artificial airways;
- 19           (E) Cardiopulmonary resuscitation; or
- 20           (F) Respiratory protocol and evaluation or diagnostic  
21           and testing techniques required for  
22           implementation of respiratory care protocols; and

1 (4) The transcription and implementation of the written,  
2 verbal and telecommunicated orders of a physician  
3 pertaining to the practice of respiratory care.

4 "Qualified medical direction" means ready access by a  
5 respiratory therapist to a licensed physician who has specialty  
6 training or experience in the management of acute and chronic  
7 respiratory disorders and who is responsible for the quality,  
8 safety, and appropriateness of the respiratory services provided  
9 by the respiratory therapist.

10 § -2 **Respiratory therapist program.** There is  
11 established a respiratory therapist program within the  
12 department to be administered by the director.

13 § -3 **License required.** (a) Except as specifically  
14 provided in this chapter, no person shall engage in the practice  
15 of respiratory care or use the title "licensed respiratory  
16 therapist" or "respiratory therapist" without a valid license  
17 issued pursuant to this chapter.

18 (b) Any person who violates this section shall be subject  
19 to a fine of not more than \$1,000 for each separate offense.  
20 Each day of each violation shall constitute a separate offense.  
21 The director may initiate a civil action to impose or collect

1 the fine imposed under this section in accordance with rules  
2 adopted by the director.

3       **§ -4 Physician supervision required.** No person shall  
4 practice respiratory care under this chapter except under the  
5 direct order and qualified medical direction of a physician or  
6 osteopathic physician licensed pursuant to chapter 453.

7       **§ -5 Powers and duties of the director.** In addition to  
8 any other powers and duties authorized by law, the director  
9 shall have the power and duties to:

- 10       (1) Grant, deny, renew, refuse to renew, restore,  
11       terminate, reinstate, condition, restrict, suspend, or  
12       revoke a license issued pursuant to this chapter;
- 13       (2) Grant permission to a person to practice respiratory  
14       care and to use the title of "licensed respiratory  
15       therapist" or a description indicating that the person  
16       is a licensed respiratory therapist in this State;
- 17       (3) Adopt, amend, or repeal rules pursuant to chapter 91  
18       as the director finds necessary to carry out this  
19       chapter;
- 20       (4) Administer, coordinate, and enforce this chapter;
- 21       (5) Prepare and administer examinations pursuant to the  
22       requirements of this chapter;

- 1 (6) Establish the criteria for successful passage of an  
2 examination administered pursuant to this chapter;
- 3 (7) Discipline a licensed respiratory therapist on grounds  
4 specified by this chapter or chapter 436B, or for any  
5 violation of rules adopted by the director pursuant to  
6 this chapter;
- 7 (8) Refuse to license a person for failure to meet  
8 licensing requirements of this chapter or for any  
9 reason specified by this chapter as grounds to  
10 discipline a respiratory therapist; and
- 11 (9) Appoint an advisory committee composed of practicing  
12 respiratory therapists to assist with the  
13 implementation of this chapter.

14 § -6 Fees; disposition. (a) Upon issuance of a new  
15 license and at each license renewal period, each respiratory  
16 therapist shall pay a fee of \$ which shall be  
17 deposited into the compliance resolution fund established  
18 pursuant to section 26-9(o), Hawaii Revised Statutes.

19 (b) Application fees paid pursuant to this chapter shall  
20 not be refundable. Pursuant to section 26-9(1), the director  
21 shall establish examination, reexamination, license, renewal,

1 restoration, penalty, and other fees relating to the  
2 administration of this chapter by rule.

3 (c) Fees assessed pursuant to this chapter shall be used  
4 to defray costs incurred by the department in implementing this  
5 chapter.

6 § -7 **Exemptions.** This chapter is not intended to  
7 restrict the practice of other licensed or credentialed  
8 healthcare practitioners practicing within their own recognized  
9 scopes of practice and shall not apply to:

- 10 (1) A person working within the scope of practice or  
11 duties of another licensed profession that overlaps  
12 with the practice of respiratory care; provided that  
13 the person does not purport to be a respiratory  
14 therapist;
- 15 (2) A person working as a sleep technologist whose scope  
16 of work may include, but is not limited to, and who  
17 has passed an examination for, set-up, titration, and  
18 monitoring of continuous positive airway pressure  
19 (CPAP) or bi-level positive airway pressure (BiPAP)  
20 for diagnostic purposes;
- 21 (3) A person enrolled as a student in an accredited  
22 respiratory therapy program where the performance of

- 1 duties that are regulated by this chapter is an  
2 integral part of the student's program of study;
- 3 (4) A person employed by a durable medical equipment  
4 provider who engages in the delivery, assembly, setup,  
5 testing, and demonstration of oxygen and aerosol  
6 equipment upon the order of a physician; provided that  
7 no person providing such services shall be authorized  
8 to assess patients, develop care plans, instruct  
9 patients in taking treatment, or discuss the hazards,  
10 administration, or side effects of medication with  
11 patients;
- 12 (5) A person rendering services in the case of an  
13 emergency or in the domestic administration of family  
14 remedies; or
- 15 (6) A person employed by a federal, state, or county  
16 government agency in a respiratory therapist position,  
17 but only in the course of carrying out the duties and  
18 responsibilities of government employment.

19 **§ -8 Application for license as a respiratory therapist.**

20 The department shall issue a license under this chapter to an  
21 applicant if the applicant provides satisfactory evidence to the  
22 department that the applicant meets the requirements for

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1 licensure contained in this chapter and rules adopted by the  
2 director and if the applicant:

3 (1) Has successfully completed a respiratory therapy  
4 training program at an accredited educational  
5 institution approved by the Committee on Accreditation  
6 for Respiratory Care or its predecessor or successor  
7 agencies;

8 (2) Has passed the Certified Respiratory Therapist  
9 Examination of the National Board for Respiratory  
10 Care, or its successor, within days of  
11 submitting an application; and

12 (3) Has paid all fees for licensure established by the  
13 director.

14 § -9 **Licensure by endorsement.** The director may issue a  
15 license by endorsement to an applicant who holds a current and  
16 unencumbered license as a respiratory therapist in another  
17 state; provided that the requirements for a license in that  
18 state are deemed by the director to be equivalent to or higher  
19 than the current requirements for licensure in this State.

20 § -10 **Renewal of license.** Licenses shall be renewed  
21 triennially on or before June 30, with the first renewal  
22 deadline occurring on July 1, 2014. Licenses shall be renewed

1 upon the submittal of satisfactory evidence to the department  
2 that the applicant has completed at least six credit hours of  
3 continuing education per year and the payment of a renewal fee  
4 within sixty days before the expiration of the license. Failure  
5 to renew a license shall result in forfeiture of that license.  
6 Licenses that have been forfeited may be restored within one  
7 year of the forfeiture date upon payment of renewal and  
8 restoration fees. Failure to restore a forfeited license within  
9 one year of the date of its expiration shall result in the  
10 automatic termination of the license. A person whose license  
11 has been terminated pursuant to this section shall be required  
12 to reapply for a new license as a new applicant.

13       **§ -11 Grounds for refusal to renew, reinstate, or**  
14 **restore a license and for revocation, suspension, denial, or**  
15 **condition of a license.** (a) In addition to any other acts or  
16 conditions provided by law, the director may refuse to renew,  
17 reinstate, or restore, and may deny, revoke, suspend, or  
18 condition in any manner any license for any one or more of the  
19 following acts or conditions on the part of a licensee or  
20 license applicant:

- 1 (1) Failure to meet or to maintain the conditions and  
2 requirements necessary to qualify for the granting of  
3 a license;
- 4 (2) Engaging in false, fraudulent, or deceptive  
5 advertising, or making untruthful or improbable  
6 statements in advertising;
- 7 (3) Engaging in the practice of respiratory care while  
8 impaired by alcohol, drugs, physical disability, or  
9 mental instability;
- 10 (4) Procurement of a license to practice respiratory care  
11 through fraud, misrepresentation, or deceit;
- 12 (5) Aiding and abetting an unlicensed person to directly  
13 or indirectly perform activities requiring a license  
14 to practice respiratory care;
- 15 (6) Professional misconduct, incompetence, gross  
16 negligence, or manifest incapacity in the practice of  
17 respiratory care;
- 18 (7) Engaging in conduct or practice contrary to recognized  
19 standards of ethics for the practice of respiratory  
20 care;
- 21 (8) Violation of any condition or limitation imposed on a  
22 license to practice respiratory care by the director;

- 1           (9) Engaging in the practice of respiratory care in a  
2           manner that causes injury to one or more members of  
3           the public;
- 4           (10) Failure to comply with, observe, or adhere to any law  
5           in a manner that causes the director to determine that  
6           the applicant or holder is unfit to hold a license;
- 7           (11) Revocation or suspension of a license or other  
8           disciplinary action by any state or federal agency for  
9           any reason provided by the applicable licensing laws  
10          or by this section;
- 11          (12) Conviction or plea of nolo contendere to a crime  
12          directly related to the qualifications, functions, or  
13          duties of the practice of respiratory care;
- 14          (13) Failure to report in writing to the director any  
15          disciplinary decision issued against the licensee or  
16          applicant in another jurisdiction within thirty days  
17          of the disciplinary decision;
- 18          (14) Employment, whether gratuitously or for pay, of any  
19          person not licensed pursuant to this chapter to  
20          perform the functions or duties of the practice of  
21          respiratory care; or

1 (15) Violation of this chapter, chapter 463B, or any rule  
2 or order of the director.

3 (b) Any licensee or applicant who violates this section  
4 may also be fined not more than \$1,000 per violation, as  
5 established by the director by rule."

6 SECTION 3. Section 26H-4, Hawaii Revised Statutes, is  
7 amended to read as follows:

8 **"§26H-4 Repeal dates for newly enacted professional and**  
9 **vocational regulatory programs.** (a) Any professional or  
10 vocational regulatory program enacted after January 1, 1994, and  
11 listed in this section shall be repealed on December 31, 2008.  
12 The auditor shall perform an evaluation of the program, pursuant  
13 to section 26H-5, prior to its repeal date.

14 (b) Chapter (respiratory therapists) shall be repealed  
15 on June 30, \_\_\_\_\_."

16 SECTION 4. The department of commerce and consumer affairs  
17 may employ necessary personnel without regard to chapter 76,  
18 Hawaii Revised Statutes, to assist with the implementation and  
19 continuing functions of this chapter.

20 SECTION 5. There is appropriated out of the compliance  
21 resolution fund established pursuant to section 26-9(o), Hawaii  
22 Revised Statutes, the sum of \$ \_\_\_\_\_ or so much thereof as

1 may be necessary for fiscal year 2011-2012 to implement the  
2 respiratory therapists licensure program.

3 The sum appropriated shall be expended by the department of  
4 commerce and consumer affairs for the purposes of this Act.

5 SECTION 6. New statutory material is underscored.

6 SECTION 7. This Act shall take effect on July 1, 2011.

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**Report Title:**

Respiratory Therapists; Licensure; Appropriation

**Description:**

Creates licensing and regulatory standards for respiratory therapists. (SD1)

*The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.*