



GOV. MSG. NO. **516**

EXECUTIVE CHAMBERS  
HONOLULU

LINDA LINGLE  
GOVERNOR

April 23, 2010

The Honorable Colleen Hanabusa, President  
and Members of the Senate  
Twenty-Fifth State Legislature  
State Capitol, Room 409  
Honolulu, Hawaii 96813

Dear Madam President and Members of the Senate:

This is to inform you that on April 23, 2010, the following bill was signed into law:

SB2898 SD1 HD1

A BILL FOR AN ACT  
RELATING TO DIVERSION PROGRAM FOR  
CHEMICALLY DEPENDANT NURSES.  
**ACT 054 (10)**

Sincerely,



LINDA LINGLE

Approved by the Governor

on APR 23 2010

THE SENATE  
TWENTY-FIFTH LEGISLATURE, 2010  
STATE OF HAWAII

ACT 054  
S.B. NO. 2898  
S.D. 1  
H.D. 1

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## A BILL FOR AN ACT

RELATING TO DIVERSION PROGRAM FOR CHEMICALLY DEPENDANT NURSES.

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

1           SECTION 1. In enacting Act 106, Session Laws of Hawaii  
2 1993, the legislature found that nursing is a stressful  
3 occupation and some nurses attempt to cope with the pressures of  
4 their jobs by consuming alcohol and drugs. Accordingly, the  
5 legislature established a diversion program for nurses with  
6 chemical dependency problems and placed the program under the  
7 oversight of the board of nursing.

8           The diversion program established by chapter 334D, Hawaii  
9 Revised Statutes, requires a third-party sponsor to objectively  
10 evaluate, counsel, monitor progress, and provide ongoing support  
11 for rehabilitative services. Under existing law, that third-  
12 party sponsor is the Hawaii Nurses Association (HNA) and since  
13 the diversion program is a component of the HNA's peer  
14 assistance program, only nurses who have been reported by HNA  
15 are able to participate. The legislature finds that the public  
16 would be better served by allowing the board of nursing to  
17 recognize programs that are provided by additional sponsors and  
18 meet the board's requirements.

SB2898 HD1 HMS 2010-2494



1 Existing law also precludes the board of nursing from  
2 disciplining nurses who abide by the terms and conditions of the  
3 diversion program. The legislature finds that the public  
4 health, safety, and welfare would be better served by continuing  
5 the policy of no disciplinary action against a nurse who has  
6 successfully complied with a diversion program and has been  
7 successfully rehabilitated but also allowing the board of  
8 nursing to take action when nurses are noncompliant.

9 Finally, the legislature finds that reporting requirements  
10 in the existing law are obsolete since the board of nursing is  
11 already required to comply with state and federal law regarding  
12 reporting, and the data bank maintained by the National Council  
13 of State Boards of Nursing has aligned its reporting  
14 requirements with federal law.

15 SECTION 2. Section 334D-1, Hawaii Revised Statutes, is  
16 amended to read as follows:

17 "[~~+~~]**\$334D-1**[~~+~~] **Findings and purpose.** [~~Nursing is a~~  
18 ~~stressful occupation and some nurses may be tempted to escape~~  
19 ~~the pressures of their job by consuming alcohol or taking drugs.~~  
20 ~~Many times nurses do not realize that they have developed a~~  
21 ~~chemical dependency problem, and that they need help before the~~  
22 ~~problem gets worse.~~



1       ~~The legislature finds that there is no formal peer program~~  
2       ~~to assist nurses who have developed a chemical dependency~~  
3       ~~problem. There is, however, an informal peer program operated~~  
4       ~~by the Hawaii Nurses Association. This is a peer assistance~~  
5       ~~program for nurses who have not been reported to the department~~  
6       ~~of commerce and consumer affairs because of a chemical~~  
7       ~~dependency problem. The diversion program created by this~~  
8       ~~chapter is a component of the Hawaii Nurses Association's peer~~  
9       ~~assistance program, and is intended for nurses who have been~~  
10       ~~reported to the department of commerce and consumer affairs.]~~

11       The purpose of this chapter is to establish a diversion  
12       program for nurses with chemical dependency problems and to  
13       place the program under the [auspices] oversight of the board of  
14       nursing [~~for oversight purposes. It is the intent of this~~  
15       ~~chapter that nurses who are abiding by the terms and conditions~~  
16       ~~of the diversion program shall not be subject to further~~  
17       ~~disciplinary action for their chemical dependency problems by~~  
18       ~~the board of nursing]. The intent of the diversion program  
19       established by this chapter is to develop a voluntary  
20       alternative to traditional disciplinary actions that provides  
21       adequate protections for the public health, safety, and  
22       welfare."~~



1 SECTION 3. Section 334D-3, Hawaii Revised Statutes, is  
2 amended to read as follows:

3 "[+]§334D-3[+] **Diversion program.** (a) There is  
4 established a diversion program for chemically dependent  
5 nurses[-] which shall be administered and monitored by a  
6 professional association[-] or other entity approved by the  
7 board. The function of the diversion program shall be to assess  
8 and, where appropriate, rehabilitate chemically dependent nurses  
9 whose competencies may be impaired and to provide treatment so  
10 that nurses are able to return to or continue the practice of  
11 nursing in a manner that is beneficial to the public.

12 (b) The board shall adopt rules in accordance with chapter  
13 91 setting forth the requirements for program approval and  
14 maintenance.

15 (c) Participation in the diversion program shall be  
16 voluntary.

17 (d) If a nurse is subject to penalties, including  
18 revocation, suspension, or limitation of license and fines, and  
19 desires to effect a compromise settlement, the regulated  
20 industries complaint office and the nurse may enter into a  
21 settlement agreement subject to approval and order of the board  
22 and acceptance by the diversion program.



1 (e) The names of nurses who fail to comply with the terms  
2 and conditions of the diversion program shall be reported to:

3 (1) The executive [~~secretary~~] officer of the board; and

4 (2) The regulated industries complaints office[+],

5 within three business days after the failure to comply becomes  
6 known to the individuals monitoring the nurse and the individual  
7 designated by the [~~professional association~~] monitoring entity  
8 to report the failure to comply.

9 (f) Nurses who participate in the diversion program  
10 pursuant to this chapter shall provide evidence verified by  
11 licensed professional health care providers of successful  
12 completion of all terms and conditions of the program and of  
13 sufficient rehabilitation to safely practice nursing, as  
14 provided by rules adopted by the board pursuant to chapter 91.

15 (g) A nurse who fully complies with this chapter and the  
16 rules adopted by the board pursuant to this chapter, and who  
17 completes all the requirements of a diversion program approved  
18 by the board, shall not be subject to further disciplinary  
19 action by the board for the cause described in section 457-  
20 12(a)(4).

21 (h) A nurse admitted to the diversion program who fails to  
22 comply with the requirements of this chapter, the rules adopted



1 by the board pursuant to this chapter, or the requirements of  
2 the diversion program may be subject to disciplinary action in  
3 accordance with section 457-12 and chapter 436B."

4 SECTION 4. Section 334D-5, Hawaii Revised Statutes, is  
5 amended to read as follows:

6 "~~[(f)]§334D-5[(f)]~~ **Records.** ~~[(a) Nurses who comply with all~~  
7 ~~the terms and conditions of the diversion program shall not be~~  
8 ~~reported to the National Council of State Board of Nursing's~~  
9 ~~Data Bank unless sanctions have been taken.~~

10 ~~(b)]~~ All records of a nurse participating in a [peer  
11 assistance] diversion program that [do not involve reporting]  
12 are not required by law to[, or disciplinary action by,] be  
13 reported to the board [of nursing] or the regulated industries  
14 complaints office and do not involve disciplinary action by  
15 those entities shall be privileged and shall not be subject to  
16 discovery or subpoena[-] by any person or entity other than a  
17 law enforcement agency investigating the conduct of the nurse,  
18 the board, or the regulated industries complaints office.



1        For purposes of this section:

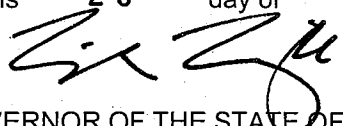
2        "Law enforcement agency" means any county police  
3 department, the department of public safety, and any federal,  
4 state, or county public body that employs law enforcement  
5 officers.

6        "Law enforcement officer" means any public servant, whether  
7 employed by the United States, State, or county, vested by law  
8 with a duty to maintain public order or, to make arrests for  
9 offenses or to enforce the criminal laws, whether that duty  
10 extends to all offenses or is limited to a specific class of  
11 offenses."

12        SECTION 5. Statutory material to be repealed is bracketed  
13 and stricken. New statutory material is underscored.

14        SECTION 6. This Act shall take effect upon its approval.

APPROVED this 23 day of APR, 2010



GOVERNOR OF THE STATE OF HAWAII