

JAN 25 2010

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# A BILL FOR AN ACT

RELATING TO RESTORATION OF CERTAIN FORFEITED PROFESSIONAL AND VOCATIONAL LICENSES.

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

1 SECTION 1. Section 442-11, Hawaii Revised Statutes, is  
2 amended to read as follows:

3 "**§442-11 Biennial renewal; fees; failure to renew.** Every  
4 person holding a license to practice chiropractic in the State  
5 shall submit a renewal application with the board of  
6 chiropractic examiners on or before December 31 of each odd-  
7 numbered year and shall pay a renewal fee. If the board has  
8 established continuing education requirements for renewal, the  
9 license shall not be renewed unless proof of compliance with the  
10 requirements is submitted. A renewal notice shall be mailed to  
11 the last known address of all licensed chiropractors on or  
12 before November 30 of each odd-numbered year.

13 The failure, neglect, or refusal of any person holding a  
14 license to practice chiropractic to renew the license or to pay  
15 the renewal fee[~~, after thirty days of delinquency, constitutes~~]  
16 on or before December 31 of each odd-numbered year shall  
17 constitute a forfeiture of the license[~~, provided that the~~

1 ~~license shall be restored upon written application therefor~~  
2 ~~together with proof of compliance with the continuing education~~  
3 ~~requirements, if any, and a payment of all delinquent fees and a~~  
4 ~~penalty fee, if the application and payments are made within a~~  
5 ~~period of one year from the date of the inception of the~~  
6 ~~forfeiture. In the event, however, the forfeiture is permitted~~  
7 ~~to continue over a period of one year, in addition to the~~  
8 ~~foregoing requirements, the person may be required to submit to~~  
9 ~~reexamination and successfully pass the reexamination]. A~~  
10 license that has been forfeited may be restored by the board  
11 within two years after the date of forfeiture upon compliance  
12 with the licensing renewal requirements provided by law and upon  
13 written application and payment of all applicable renewal fees,  
14 penalty fees, and compliance resolution fund fees. The license  
15 of any person who fails to apply for restoration of a forfeited  
16 license within two years from the date of forfeiture shall be  
17 automatically terminated. If a person whose license has been  
18 terminated desires to practice chiropractic again, the person  
19 shall be required to apply for a new license pursuant to and  
20 subject to all applicable laws and rules in effect at the time  
21 of that application."

1 SECTION 2. Section 467-11, Hawaii Revised Statutes, is  
2 amended to read as follows:

3 **"§467-11 Fees; original license and biennial renewals.**

4 (a) All fees for applications, registrations, certificates, and  
5 any license prescribed by this chapter shall be deposited to the  
6 credit of the compliance resolution fund established pursuant to  
7 section 26-9(o), and all fees allocated to the real estate  
8 education fund shall be as provided in rules adopted by the  
9 director of commerce and consumer affairs pursuant to chapter  
10 91.

11 (b) The biennial renewal fee and completed renewal  
12 application shall be submitted to the department of commerce and  
13 consumer affairs on or before the commission prescribed deadline  
14 prior to the expiration date of the license. All real estate  
15 licenses expire on December 31 of an even-numbered year.

16 Failure, neglect, or refusal of any duly licensed real estate  
17 broker or real estate salesperson to pay the biennial renewal  
18 fee and to submit a completed renewal application shall  
19 constitute a forfeiture of the license as of January 1 of the  
20 subsequent odd-numbered year.

21 (c) The forfeited license of an individual real estate  
22 broker or real estate salesperson may be restored [~~upon approval~~

1 ~~of a completed application; payment of the delinquent fees and~~  
2 ~~the penalty fees as provided in the rules adopted by the~~  
3 ~~director of commerce and consumer affairs pursuant to chapter~~  
4 ~~917] upon compliance with the licensing renewal requirements~~  
5 ~~provided by law and upon complete written application and~~  
6 ~~payment of all applicable renewal fees, penalty fees, compliance~~  
7 ~~resolution fund fees, and, if applicable, recovery fund~~  
8 ~~assessments; satisfaction of the applicable requirements in~~  
9 ~~sections 467-8[7] and 467-9, [467-9.5,] and submission of~~  
10 ~~written documentation demonstrating compliance with section~~  
11 ~~467-11.5; and [~~prior to submission of the completed application,~~~~  
12 ~~and], for individual licensees, satisfaction of one of the~~  
13 following as applicable:

14 (1) For a license forfeited for more than one year but  
15 less than four years, the successful completion of the  
16 commission-approved course or courses or passage of  
17 the commission-approved examination; or

18 (2) For a license forfeited for more than four years[7]  
19 but less than five years, the successful passage of  
20 the commission-approved examination.

21 (d) The license of any individual licensed as a real  
22 estate broker or a real estate salesperson who fails to apply

1 for restoration of a forfeited license within five years from  
2 the date of forfeiture shall be automatically terminated. If an  
3 individual whose license has been terminated desires to practice  
4 real estate again, the individual shall apply for a new  
5 salesperson license pursuant to and subject to all applicable  
6 laws and rules in effect at the time of that application.

7 (e) The license of any real estate broker, that is not a  
8 natural person and that fails to apply for restoration of a  
9 forfeited license within one year from the date of forfeiture,  
10 shall be automatically terminated. If an entity with a  
11 terminated real estate broker license desires to practice real  
12 estate again, the entity shall be required to apply for a new  
13 license pursuant to and subject to all applicable laws and rules  
14 in effect at the time of that application.

15 [~~e~~] (f) A real estate broker or real estate salesperson  
16 may place that person's license on an inactive status by filing  
17 an application and setting forth such information as may be  
18 prescribed or required by the commission, and such license shall  
19 be renewed on or before the commission prescribed deadline prior  
20 to the expiration date of the license by payment of the biennial  
21 renewal fee and submission of a completed renewal application.  
22 A real estate broker or real estate salesperson may reactivate

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1 that person's inactive license by satisfying section 467-11.5,  
2 filing an application, and setting forth such information as may  
3 be prescribed or required by the commission, and paying the  
4 proper fee.

5 ~~[(d)]~~ (g) The commission may refund any fee erroneously  
6 paid to it under this section when the commission deems it just  
7 and equitable.

8 ~~[(e)]~~ (h) If beginning on July 1, 1987, the education fund  
9 balance at the end of any fiscal biennium exceeds \$1,200,000,  
10 there shall be a moratorium on such renewal contributions and  
11 the commission shall review and consider a reduction in the same  
12 amount in license fees."

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

15 SECTION 4. This Act shall take effect upon its approval.

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INTRODUCED BY: \_\_\_\_\_

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BY REQUEST

**Report Title:**

Restoration Time Limits; Forfeited Licenses; Chiropractic Examiners; Individual Real Estate Brokers and Salespersons

**Description:**

Establishes times limits to restore forfeited chiropractic examiner licenses and individual real estate broker and salesperson licenses.

JUSTIFICATION SHEET

DEPARTMENT: Commerce and Consumer Affairs

TITLE: A BILL FOR AN ACT RELATING TO RESTORATION OF CERTAIN FORFEITED PROFESSIONAL AND VOCATIONAL LICENSES.

PURPOSE: All Professional and Vocational Licensing Division ("PVL D") licensees are responsible for the timely renewal of their licenses and for satisfying the renewal requirements provided by law. Failure to timely renew a license causes the license to be automatically forfeited. A period of time is provided either by statute or rule to allow for the restoration of a forfeited license. In the majority of cases, professional and vocational licensing laws set forth specific time periods to restore licenses. However, currently, the restoration periods for chiropractic examiner licenses and individual real estate broker and salesperson licenses are open ended. This bill establishes time limits to restore forfeited chiropractic examiner licenses of a period of two years after the date of forfeiture, and to restore forfeited real estate broker and salesperson licenses of a period of five years after the date of forfeiture. The bill also includes a one year restoration period for forfeited real estate brokers other than individuals (i.e., entities). Further, this bill provides that if the licensee fails to apply for the restoration of a forfeited license within the applicable restoration period, the license will be automatically terminated and the person will be required to apply for licensure as a new applicant.

MEANS: Amend sections 442-11 and 467-11, Hawaii Revised Statutes.

JUSTIFICATION: A majority of the Professional and Vocational Licensing Division's licensing



areas already have set time limits to restore forfeited licenses in their laws and or rules. The restoration periods range from sixty days to five years.

At present, there are no set time limits for restoring chiropractic examiner licenses and licenses of individual real estate brokers and salespersons. For both licensing areas, the restoration period is open ended. (Note that real estate brokers other than individuals are required to restore a forfeited license within one year. This one-year restoration period has been followed as a past practice for more than ten years. The text in the proposal is to codify this in the law so there is consolidation and clarity of all forfeiture and restoration provisions.)

This bill proposes that the restoration period for chiropractic examiner licenses be set at two years. This bill also proposes that the restoration period for individual real estate broker and salesperson licenses be set at five years.

It is the position of the Board of Chiropractic Examiners and the Real Estate Commission, which is consistent with the position of the PVL D, that limiting the number of years that a licensee may restore a forfeited license, rather than allowing for open ended restoration periods, protects consumers. Industries evolve in such a way that allowing for restoration periods past these proposed time limits may allow for restoring less than competent and able practitioners. If licenses are not restored within these time limits, applying as a new applicant will assure minimal competency based on licensure requirements including passage of licensure examinations in effect at the time of the new application.

This bill will also provide for consistency among PVL D's other licensing areas since a

majority of the licensing authorities have set restoration periods instead of allowing open ended restoration periods.

The Board of Chiropractic Examiners feels that a two-year time limit to restore a forfeited chiropractic examiner license is consistent with other health-related licensing areas. It also coincides with the renewal of chiropractic examiner licenses.

The Real Estate Commission supports the five-year time limit to restore forfeited individual real estate broker and salesperson licenses because the law currently provides different pathways for restoration that allow licensees to fulfill some of the requirements for licensure, but not all requirements, within a period of four years. To allow more leniency, the Commission set the restoration period at five years, after which to ensure minimal competency and consumer protection, licensure would require that all requirements be met.

Impact on the public: This bill will protect consumers by ensuring that licensees are knowledgeable about the industry's current practices and standards, especially since technologies and techniques are constantly evolving.

Impact on the department and other agencies: It is not anticipated that this bill will negatively impact the department or impact other governmental agencies.

GENERAL FUND:	None.
OTHER FUNDS:	None.
PPBS PROGRAM DESIGNATION:	CCA-105.
OTHER AFFECTED AGENCIES:	None anticipated.

EFFECTIVE DATE: Upon approval.