

[CHAPTER 436C
LICENSING SANCTIONS FOR STUDENT LOAN DEFAULTS]

Section

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" **§436C-1 Definitions.** As used in this chapter, unless otherwise indicated by the context:

"Administering entity" means the federal or state governmental entity that administers a student loan, student loan repayment, or scholarship program.

"Default" means the failure of the borrower of a student loan to make an installment payment at least two hundred seventy days after the due date, or failure to comply with other terms of the promissory note or written repayment agreement.

"License" means the permission to engage in a profession or vocation granted by the applicable state licensing authority to a person who has satisfied every requirement for licensure, and shall include any registration, certificate, or other document issued by the applicable licensing authority reflecting proof of permission.

"Licensee" means the person in whose name the applicable licensing authority grants a license.

"Licensing authority" means any unit of state government, including agencies, departments, boards, commissions, authorities, the supreme court, or any other entity within the State authorized by statute to grant or deny a license.

"Licensing laws" means the applicable chapter providing for the regulation, licensing, and practice of a profession or vocation by the applicable licensing authority.

"Reinstate" or "reinstatement" means the permission to engage in a profession or vocation granted by the applicable licensing authority to a person whose license has been previously suspended by the applicable licensing authority.

"Renew" or "renewal" means the permission to engage in a profession or vocation granted by the applicable licensing authority to a licensee who has applied for an extension of a current and valid license.

"Repayment plan" means any plan entered into by the borrower with the applicable administering entity to satisfy a delinquent student loan or unfulfilled service obligation.

"Scholarship contract" means a grant made by the State or any of its agencies, or the United States, to a person to support the person while attending a public or private institution of higher education or other post-secondary educational establishment in exchange for the person's agreement to perform a service obligation.

"Student loan" means a loan made or guaranteed by the State or any of its agencies, or the United States, to a person to support the person while attending a public or private institution of higher education or other post-secondary educational establishment.

"Student loan repayment contract" means an agreement by the State or any of its agencies, or the United States, to repay all or part of a person's student loan in exchange for the person's agreement to perform a service obligation. [L 2002, c 226, pt of §2; am L 2003, c 133, §§3, 14]

" §436C-2 Professional and vocational license sanction for default of student loan, student loan repayment contract, or scholarship contract.

(a) In addition to any other acts or conditions provided by law, the licensing authority shall not renew or reinstate, or shall deny or suspend the license or application of any person who has been certified by an administering entity as being:

- (1) In default or breach of any obligation under any student loan, student loan repayment contract, or scholarship contract that financed the licensee's or applicant's education; or
- (2) At least sixty days past due with payments under a repayment plan.

The licensing authority shall not act on the certification of an administering entity unless it is based upon a court judgment that complies with section 436C-3.

(b) The licensing authority in receipt of a certification pursuant to chapter 436C shall, as applicable, and without further review or hearing:

- (1) Suspend the license;
- (2) Deny the application or request for renewal of the license; or

(3) Deny the request for reinstatement of the license, and unless otherwise provided by law, shall renew, reinstate, or grant the license only upon receipt of an authorization from the administering entity stating that the person is making payments or taking other action satisfying the terms of the student loan, student loan repayment contract, or scholarship contract and is no longer in default or breach of the loan or contract.

(c) Any licensing fees paid prior to the denial, suspension, or revocation of a license under the licensing laws shall be forfeited. The licensing authority may charge fees for reinstating a license and to cover the costs of administering this chapter.

(d) This chapter shall not apply to an individual against whom a court order is entered in connection with the default or breach in the nature of a garnishment process or other form of court-ordered repayment. [L 2002, c 226, pt of §2; am L 2003, c 133, §10]

" **[§436C-3] Judicial certification.** (a) The certification of an administering entity under section 436C-2(a) shall be based on the judgment of a district or circuit court in this State that:

- (1) Specifies the amount of the default;
- (2) Finds that the education of the licensee or license applicant was financed by the student loan, student loan repayment contract, or scholarship contract that is in default;
- (3) Finds that the licensee or license applicant has the ability to cure the default without undue financial hardship; and
- (4) Includes proof of service of notice to the licensee or license applicant that the judgment will be reported to the licensing authority with a direction to suspend the license, deny the application for a license, or deny the application for renewal or reinstatement of the license;

provided that no finding under paragraph (3) shall be required in the case of a default judgment or if the licensee or license applicant fails to petition the court as provided in section 436C-4.

(b) A licensing authority shall act on the certification of an administering entity under section 436C-2 only if the certification complies with this section. [L 2003, c 133, pt of §2]

" **[§436C-4] Judicial finding of financial hardship; guidelines.** If a licensee or license applicant who is the subject of a certification issued pursuant to section 436C-3 declares to the court that the default cannot be cured without financial hardship, the court may consider the following in determining whether financial hardship exists:

- (1) That the administering entity had notice of the defendant's financial hardship prior to initiation of civil proceedings in the form of a completed statement of financial status and a request for deferment, forbearance, loan consolidation, extension of the repayment schedule, or a graduated or income-sensitive repayment plan;
- (2) Findings made pursuant to section 636-4;
- (3) The earning potential and borrowing capacity of the licensee or license applicant and any spouse relative to the cost of reasonable necessities; and
- (4) Avoidance of extreme and inequitable changes in the licensee's or license applicant's income. [L 2003, c 133, pt of §2]