

**ACT 111**

S.B. NO. 1168

A Bill for an Act Relating to Professional and Vocational Licensing.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. The legislature finds that consumers of services must be protected against dangers such as ignorance, incompetence, and fraud on the part of members of various professions and occupations. Through the licensing process, the State grants permission to a person to engage in a profession or vocation upon finding that the person has attained the degree of competency and integrity necessary to ensure the protection of the health, safety, and welfare of consumers. A uniform licensing process is necessary to ensure consistency and reasonableness in the regulation of the professions and vocations. The legislature declares, on the basis of the foregoing findings, that the consumers of services provided by members of various professions and vocations will be protected by a uniform licensing process.

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

**“CHAPTER  
UNIFORM PROFESSIONAL AND VOCATIONAL  
LICENSING ACT**

**PART I. GENERAL PROVISIONS**

§ -1 **Short title.** This chapter shall be known as and may be cited as the Uniform Professional and Vocational Licensing Act.

§ -2 **General definitions.** As used in this chapter:

“Board” means any board or commission which is created and authorized by statute to issue a professional or vocational license, and is established within or transferred to the department for administrative purposes or subject to the administrative control or supervision of the director.

“Department” means the department of commerce and consumer affairs.

“Director” means the director of commerce and consumer affairs.

“Executive secretary” or equivalent expressions means the individual employed by the department subject to chapters 76 and 77, who shall assist the licensing authority in administering this chapter, its licensing laws, rules, and orders, and who shall perform such other ministerial duties and delegated functions as authorized by law.

“Forfeit” or “forfeiture” means the immediate and automatic termination or cancellation without any prior consultation with the licensee of a license issued by a board, caused by a licensee’s voluntary or involuntary failure to comply with the requirements for maintaining or renewing a license.

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

“Licensee” means the person in whose name the licensing authority grants a license.

“Licensing authority” or “authority” means the director, or any licensing board or commission under the administrative control of the director pursuant to section 26-9(c), authorized by statute to grant or to deny licenses.

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

“Person” includes an individual, partnership, joint venture, corporation, association, business, trust, or any organized group of persons or legal entity, or any combination thereof.

“Program” means any regulatory program in which the director is authorized by law to grant or to deny a license to a person seeking permission to engage in a profession or vocation.

“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.

“Restore” or “restoration” means the permission to engage in a profession or vocation granted by the applicable licensing authority to a person whose license has been previously forfeited or suspended by the licensing authority.

**§ -3 Applicability; prevailing provisions; construction.** (a) The provisions of this chapter shall only be applicable to the professions and vocations required by law to be regulated by the licensing authority.

(b) Unless otherwise stated in this chapter, the provisions of chapters 26, 26H, 91, 92 and the licensing laws for the respective profession or vocation shall prevail. The provisions of this chapter shall apply whenever the provisions of chapters 26, 26H, 91, 92 and the licensing laws for the respective profession or vocation are silent.

(c) This chapter shall be liberally construed to protect the health, safety, and welfare of consumers of services provided by a profession or vocation regulated by the licensing authority.

**§ -4 Rules.** The licensing authority may adopt rules pursuant to chapter 91 to effectuate this chapter and its licensing laws, and to carry out its purpose of protecting the health, safety, and welfare of consumers of services provided by a profession or vocation regulated by the licensing authority. The enumeration of specific matters which may properly be made the subject of rules shall not be construed to limit the licensing authority's broad general power to make all rules necessary to fully effectuate the purpose of this chapter.

## PART II. ORGANIZATION

**§ -5 Conditions of office.** (a) Each member of a board shall be selected and shall serve under the provisions of section 26-34, and before beginning a term of office, shall take an oath of office before a notary public, or other officer empowered to administer oaths.

(b) Each member of a board shall serve without pay. However, the actual and necessary traveling expenses incurred in connection with the performance of the member's official duties shall be paid by the department, upon the presentation of vouchers approved by the department.

**§ -6 Organization of boards.** (a) Immediately upon the qualification and appointment of the original members, and annually thereafter, the board shall elect one member as chair and one member as vice-chair. In the absence of both the chair and the vice-chair to preside at a meeting, the members present shall select a chair pro tem.

(b) Each board shall meet not less than twice a year at a time and place determined by the board.

(c) The majority of the members to which the board is entitled shall constitute a quorum. The concurrence of a majority of the quorum shall be necessary to make any action taken by the board valid. Each board shall conduct its meetings in accordance with chapters 91 and 92.

**§ -7 Powers and duties of licensing authority.** In addition to any other powers and duties authorized by law, each licensing authority may:

- (1) Adopt, amend, or repeal rules, issue declaratory rulings or informal non-binding interpretations, and conduct contested case proceedings pursuant to chapter 91;
- (2) Grant, deny, forfeit, renew, or restore licenses, including the issuance of conditional licenses;
- (3) Revoke, suspend or otherwise limit the license of any licensee for any violation of the provisions in this chapter, the licensing laws, any rule or order of the licensing authority;

- (4) Develop requirements for licensure;
- (5) Investigate and conduct hearings regarding any violation of this chapter, the licensing laws, and any rule or order of the licensing authority;
- (6) Monitor the scope of practice of the profession or vocation regulated by the licensing authority;
- (7) Prepare, administer, and grade examinations, provided that the licensing authority may contract with a testing agency to provide such services, and the licensing authority may also reserve the right to modify, amend, change or regrade the examination;
- (8) Create fact-finding committees which may make recommendations to the licensing authority for its deliberations;
- (9) Contract with qualified persons, including investigators, who may be exempt from the provisions of chapters 76 and 77 and who shall assist the licensing authority in exercising its powers and duties; and
- (10) Subpoena witnesses, administer oaths, and receive affidavits and oral testimony, including telephonic communications, and do any and all things necessary or incidental to the exercise of the licensing authority's power and duties, including the authority to conduct contested case proceedings under chapter 91.

**§ -8 Delegation of authority.** (a) The board shall delegate to the department the authority to receive, arbitrate, investigate, and prosecute any complaint against a licensee.

(b) A licensing authority may delegate to the executive secretary, or other designee, any of its powers or duties as it deems reasonable and proper. The delegation of powers and duties by the licensing authority shall be made in accordance with the procedures set forth in section -6(c). However, the licensing authority shall not delegate its discretionary functions resulting in a final decision, including but not limited to the following:

- (1) Adopting, amending, or repealing rules;
- (2) Ordering disciplinary action against a licensee, including the revocation, suspension, or imposition of conditions or fines; and
- (3) Granting, denying, or otherwise conditioning license applications, unless the granting, denying, or conditioning of a license does not require the exercise of the licensing authority's expertise and discretion.

### **PART III. APPLICATION FOR LICENSURE**

**§ -9 Action on applications.** Unless otherwise provided by law, each licensing authority shall take the following actions within one year after the filing of a complete application for licensure:

- (1) If it deems appropriate, conduct an investigation of the applicant; and
- (2) Notify the applicant in writing by mail of the decision regarding the application for licensure. If the application has been denied, written notice of the decision shall specifically state the reason for denying the application and shall inform the applicant of the right to a hearing under chapter 91.

**§ -10 Application for licensure.** (a)<sup>1</sup> Application for a license shall be made under oath on a form to be furnished by the licensing authority. The form

may require the applicant to provide the following:

- (1) The applicant's full name;
- (2) A statement that the applicant is beyond the age of majority;
- (3) The applicant's current residence, business, and mailing addresses;
- (4) The applicant's social security number;
- (5) The applicant's employment during the ten years immediately preceding the date of the filing of the application, with names and addresses of each employer;
- (6) The applicant's educational background;
- (7) The date and place of any conviction of a penal crime directly related to the profession or vocation in which the applicant is applying for licensure, unless the conviction has been expunged or annulled, or is otherwise precluded from consideration by section 831-3.1;
- (8) A current photograph of the applicant; and
- (9) Any other information the licensing authority may require to investigate the applicant's qualifications for licensure.

§ -11 **License requirements.** In addition to any other requirements provided by law, the licensing authority may also require the applicant to provide the following:

- (1) A complete application with every applicable fee;
- (2) Attestation that the applicant is beyond the age of majority prior to the date of the application; in the case of a partnership applicant, each general partner shall attest that each partner is beyond the age of majority;
- (3) Proof that the applicant is competent, trustworthy, fair, and has financial integrity;
- (4) Proof that the applicant has satisfied all applicable business registration requirements prior to applying for licensure; and
- (5) Proof that the applicant is a United States citizen or an alien authorized to work in the United States.

§ -12 **Criminal conviction.** When an applicant has been convicted of a penal crime directly related to the profession, vocation, or occupation for which licensure is sought, and it is determined that the conviction may be considered under section 831-3.1, the department, executive secretary, or the licensing authority's designee may request the following documents from the applicant:

- (1) Copies of any court records, orders, or other documents that state the facts and statutes upon which the applicant was convicted, the verdict of the court with regard to that conviction, the sentence imposed, and the actual terms of the sentence; and
- (2) Affidavits from any parole officer, employer, or other persons who can attest to a firm belief that the applicant has been sufficiently rehabilitated to warrant public trust.

§ -13 **Renewal of license.** (a) Each licensee shall be responsible for timely renewing the licensee's license and satisfying the renewal requirements provided by law.

(b) At the time of license renewal, each licensee shall submit a completed renewal application and all applicable fees, and shall comply with any other requirement provided by law. A completed renewal application sent by United States mail shall be considered timely filed if the envelope bears a postmark of the required renewal date.

(c) The failure to timely renew a license, the failure to pay all applicable fees, the dishonoring of any check upon first deposit, or the failure to comply with any other requirement provided by law, shall cause the license to be automatically forfeited.

§ **-14 Restoration of forfeited license.** (a)<sup>1</sup> A license which has been forfeited may be restored by the licensing authority within one year after the date of forfeiture upon compliance with the licensing renewal requirements provided by law and upon written application and payment of all applicable renewal fees, penalty fees, compliance resolution fund fees and, if applicable, recovery fund assessments. Any person who fails to have the person's license restored within one year from the date of forfeiture may be required by the licensing authority to reapply for licensure as a new applicant.

§ **-15 Fees and expenses.** No applicant or licensee shall be granted a license pursuant to the licensing laws unless the appropriate fees have been paid. Unless otherwise provided by law, the director shall establish the amount for all fees and expenses by rules adopted pursuant to chapter 91. The fees to be established by the director may include but not be limited to an application fee, filing fee, license fee, renewal fee, examination fee, and other reasonable and necessary fees related to the department's administrative costs. Unless otherwise provided by law, the fees shall be deposited in the general fund of the State.

#### **PART IV. LICENSEE REPORTING REQUIREMENTS**

§ **-16 Notice of judgments, penalties.** (a) Each licensee shall provide written notice within thirty days to the licensing authority of any judgment, award, disciplinary sanction, order, or other determination, which adjudges or finds that the licensee is civilly, criminally, or otherwise liable for any personal injury, property damage, or loss caused by the licensee's conduct in the practice of the licensee's profession or vocation. A licensee shall also give notice of such determinations made in other jurisdictions.

(b) In addition to any other penalties provided by law, the failure of a licensee to comply with the provisions of this section is a violation punishable by a fine of not less than \$100 for the first violation, \$250 to \$500 for the second violation, and \$500 to \$1,000 for subsequent violations. Any action taken to impose or collect the fine provided for in this subsection shall not be considered a criminal action.

§ **-17 Filing of current addresses.** Each licensee shall file with the licensing authority the licensee's current mailing, business, and residence address. It shall be the licensee's duty to provide written notice to the licensing authority of any change of address. Failure of the licensee to provide such notice shall absolve the licensing authority, executive secretary, or any designee from any duty to provide notice of any matter required by law to be provided the licensee.

#### **PART V. LICENSING SANCTIONS**

§ **-18 Disciplinary action.** In addition to the licensing sanctions or remedies provided by section 92-17 against any licensee, the licensing authority may also impose conditions or limitations upon a licensee's license after a hearing conducted in accordance with chapter 91. The violation of any condition or

limitation on a licensee's license may be cause to impose additional sanctions against the licensee. Unless otherwise provided by law, any fine imposed by the licensing authority after a hearing in accordance with chapter 91 shall be no less than \$100 for each violation, and each day's violation may be deemed a separate violation.

**§ -19 Grounds for revocation, suspension, renewal, restoration, denial, or condition of licenses.** In addition to any other acts or conditions provided by law, the licensing authority may deny, revoke, suspend, refuse to renew or restore, or condition in any manner, any license for any one or more of the following acts or conditions on the part of the licensee or the applicant thereof:

- (1) Failure to meet or maintain the conditions and requirements necessary to qualify for the granting of a license;
- (2) Engaging in false, fraudulent, or deceptive advertising, or making untruthful or improbable statements;
- (3) Being addicted to, dependent on, or a habitual user of a narcotic, barbiturate, amphetamine, hallucinogen, opium, or cocaine, or other drugs or derivatives of a similar nature;
- (4) Practicing the licensed profession or vocation while impaired by alcohol, drugs, physical disability, or mental instability;
- (5) Procuring a license through fraud, misrepresentation, or deceit;
- (6) Aiding and abetting an unlicensed person to directly or indirectly perform activities requiring a license;
- (7) Professional misconduct, incompetence, gross negligence, or manifest incapacity in the practice of the licensed profession or vocation;
- (8) Failure to maintain a record or history of competency, trustworthiness, fair dealing, and financial integrity;
- (9) Conduct or practice contrary to recognized standards of ethics for the licensed profession or vocation;
- (10) Violating any condition or limitation upon which the conditional license was issued;
- (11) Engaging in business under a past or present license issued pursuant to the licensing laws, in a manner causing injury to one or more members of the public;
- (12) Failure to comply, observe, or adhere to any law in a manner such that the licensing authority deems the applicant or holder to be an unfit or improper person to hold a license;
- (13) Revocation, suspension, or other disciplinary action by another state or federal agency against a licensee or applicant for any reason provided by the licensing laws and this section;
- (14) Criminal conviction, whether by nolo contendere or otherwise, of a penal crime directly related to the qualifications, functions, or duties of the licensed profession or vocation;
- (15) Failure to report in writing to the licensing authority any disciplinary decision issued against the licensee or the applicant in another jurisdiction;
- (16) Employing, utilizing, or attempting to employ or utilize at any time any person not licensed under the licensing laws where licensure is required; or
- (17) Violating this chapter, the applicable licensing laws, or any rule or order of the licensing authority.

§ -20 **Restoration of suspended license.** A person whose license has been suspended may apply for restoration of the license to the extent authorized by law and upon complete compliance with any term or condition imposed by the order of suspension. The application for restoration shall be accompanied by all applicable fees, including but not limited to restoration fees, any compliance resolution fund fees, and any recovery fund assessments.

§ -21 **Revoked license.** A person may apply for a new license after two years from the effective date of the revocation of the license by filing an application and complying with all current requirements for new applicants. The licensing authority may waive any applicable education or examination requirements upon being satisfied that the applicant whose license has been previously revoked, has submitted documentation that the applicant has maintained equivalent knowledge, competence and qualifications through work experience, training, or education.

§ -22 **Relinquishment no bar to jurisdiction.** The forfeiture, nonrenewal, surrender, or voluntary relinquishment of a license by a licensee shall not bar jurisdiction by the licensing authority to proceed with any investigation, action, or proceeding to revoke, suspend, condition, or limit the licensee's license.

§ -23 **Summary suspension.** Notwithstanding any law to the contrary, the licensing authority may cause the immediate suspension or restriction of a license, subject to subsequent notice and hearing or other adequate procedures, upon a specific determination by the licensing authority that the failure to take such an action may result in (1) an immediate and unreasonable threat to personal safety or (2) fraud or misrepresentation upon consumers, and that, for the protection of the public from the possible consequences of practices, the licensee's license should be immediately suspended or restricted.

The licensing authority may order the summary suspension of the license for a period not to exceed twenty days. The order of suspension shall be served upon the licensee at the same time as the notice of hearing for disciplinary action, and the hearing shall be scheduled prior to the expiration of the order of suspension. The period of suspension prior to the hearing shall not be extended except upon request of the licensee for a reasonable continuance to adequately prepare the licensee's defense. Any attempt by the licensee to continue the licensed activity while the license has been summarily suspended shall of itself be sufficient to warrant a permanent revocation of the license and shall subject the licensee to all penalties prescribed by this chapter, the applicable licensing laws, or any rule or order of the licensing authority.

§ -24 **Hearings.** Unless otherwise provided by law, any proceeding before the licensing authority to take disciplinary action or other licensing sanctions against a licensee shall be conducted in accordance with chapter 91.

§ -25 **Judicial review by circuit court.** Any person aggrieved by a final decision and order of the board in a "contested case", as defined in chapter 91, is entitled to judicial review thereof by the circuit court of the circuit in which the board making the final decision and order has jurisdiction. The review shall be as provided by chapter 91.



## VI. CIVIL AND CRIMINAL SANCTION

§ -26 **No compensation for unlicensed activity; civil action.** The failure of any person to maintain a current and a valid license prior to engaging in any activity requiring licensure by the licensing authority shall prevent such person from recovering in a civil action for work or services performed or materials or supplies furnished, or both, on a contract or on any legal basis to recover the reasonable value thereof.

§ -27 **Civil and criminal sanctions for unlicensed activity; fines; injunctive relief; damages; forfeiture.** (a) Any licensee aiding or abetting an unlicensed person to directly or indirectly evade this chapter or the applicable licensing laws, or combining or conspiring with an unlicensed person, or permitting one's license to be used by an unlicensed person, or acting as agent, partner, associate, or otherwise, of an unlicensed person with the intent to evade this chapter or the applicable licensing laws may be fined up to \$1,000 for the first offense; up to \$2,000 or, if applicable, forty per cent of the total contract price, whichever is greater, for the second offense; and up to \$5,000 or, if applicable, forty per cent of the total contract price, whichever is greater, for any subsequent offense. For purposes of this section, "contract price" means the total monetary consideration offered by the consumer for the provision of goods and services.

(b) Any person, who engages in an activity requiring a license issued by the licensing authority and who fails to obtain the required license, or who uses any word, title, or representation to induce the false belief that the person is licensed to engage in the activity, other than a circumstance of first instance involving the inadvertent failure to renew a previously existing license, shall be guilty of a misdemeanor and be subject to a fine of not more \$1,000 or imprisoned not more than one year, or both, and each day's violation shall be deemed a separate offense.

(c) The department, licensing authority, or any person may maintain a suit to enjoin the performance or the continuance of any act or acts by a person acting without a license where a license is required by law, and if injured thereby, for the recovery of damages. The department may also seek the imposition of fines provided by subsection (a) except where the recovery of damages is requested, the plaintiff or petitioner in a suit for an injunction need not allege or prove actual damages to prevail. Reasonable attorney fees and costs shall be allowed by the court to the plaintiff or petitioner as the prevailing party.

(d) All tools, implements, armamentariums, documents, materials, or any other property used by any person to provide professional or vocational services without a license required by law shall be subject to forfeiture under the provisions of chapter 712A.

§ -28 **Remedies or penalties cumulative.** Unless otherwise expressly provided, the remedies or penalties provided by this chapter are cumulative to each other and to the remedies or penalties available under all other laws of this State.

§ -29 **Severability.** If any provision of this chapter or the application thereof to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the chapter which can be given effect without the invalid provision or application, and to this end the provisions of this chapter are severable."

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

**"§26H-4 Repeal dates.** (a) The following sections are hereby repealed effective December 31, 1990:

- (1) Sections 321-13 to 321-15 (laboratory directors, laboratory technologists, laboratory supervisors, and laboratory technicians)

(b) The following chapters are hereby repealed effective December 31, 1991:

- (1) Chapter 458 (Board of Dispensing Opticians)
- (2) Chapter 460J (Pest Control Board)
- (3) Chapter 462A (Pilotage)
- (4) Chapter 468K (Travel Agencies)

(c) The following chapters and sections are hereby repealed effective December 31, 1992:

- (1) Chapter 446 (Debt Adjusters)
- (2) Chapter 467D (Social Workers)
- (3) Sections 321-13 to 321-15 only as they relate to sanitarians
- (4) Sections 445-21 to 38 (Auctions)
- (5) Sections 445-131 to 136 (Pawnbrokers)
- (6) Sections 445-171 to 172 (Secondhand Dealers)
- (7) Sections 445-231 to 235 (Scrap Dealers)

(d) The following chapters are hereby repealed effective December 31, 1993:

- (1) Chapter 452 (Board of Massage)
- (2) Chapter 453 (Board of Medical Examiners)
- (3) Chapter 460 (Board of Osteopathic Examiners)
- (4) Chapter 461J (Board of Physical Therapy)
- (5) Chapter 463E (Podiatry)

(e) The following chapters are hereby repealed effective December 31, 1994:

- (1) Chapter 447 (Dental Hygienists)
- (2) Chapter 457 (Board of Nursing)
- (3) Chapter 457A (Nurse Aides)
- (4) Chapter 457B (Board of Examiners of Nursing Home Administrators)
- (5) Chapter 461 (Board of Pharmacy)

(f) The following chapters are hereby repealed effective December 31, 1995:

- (1) Chapter 437 (Motor Vehicle Industry Licensing Board)
- (2) Chapter 437B (Motor Vehicle Repair Industry Board)
- (3) Chapter 440 (Boxing Commission)
- (4) Chapter 448H (Elevator Mechanics Licensing Board)
- (5) Chapter 451A (Board of Hearing Aid Dealers and Fitters)

(g) The following chapters [and sections] are hereby repealed effective December 31, 1996:

- (1) Chapter 321, Part XXX (Tattoo Artists)
- (2) Chapter 321, Part XXXI, (Midwives)
- (3) Chapter 448F (Electrologists)
- (4) Chapter 466J (Board of Radiologic Technology)
- (5) Sections 321-13 to 321-15 (laboratory directors, laboratory technologists, laboratory supervisors, laboratory technicians, and sanitarians)

- (6) Sections 431:10A-116(4) and 432:1-605 (Mammogram Screening)
- (h) The following chapters are hereby repealed effective December 31,
- 1997:
  - (1) Chapter 438 (Board of Barbers)
  - (2) Chapter 448 (Board of Dental Examiners)
  - (3) Chapter 455 (Board of Examiners in Naturopathy)
  - (4) Chapter 459 (Board of Examiners in Optometry)
  - (5) Chapter 471 (Board of Veterinary Examiners)
- (i) The following chapters are hereby repealed effective December 31,
- 1998:
  - (1) Chapter 373 (Commercial Employment Agencies)
  - (2) Chapter 441 (Cemetery and Funeral Trusts)
  - (3) Chapter 443B (Collection Agencies)
  - (4) Chapter 463 (Board of Private Detectives and Guards)
  - (5) Chapter 468 (Solicitors; Business of Taking Orders)
- (j) The following chapters are hereby repealed effective December 31,
- 1999:
  - (1) Chapter 436E (Board of Acupuncture)
  - (2) Chapter 442 (Board of Chiropractic Examiners)
  - (3) Chapter 444 (Contractors License Board)
  - (4) Chapter 448E (Board of Electricians and Plumbers)
  - (5) Chapter 464 (Professional Engineers, Architects, Surveyors and Landscape Architects)
  - (6) Chapter 465 (Board of Psychology)
  - (7) Chapter 468E (Speech Pathology and Audiology)
- (k) The following chapters are hereby repealed effective December 31,
- 2000:
  - (1) Chapter 439 (Board of Cosmetology)
  - (2) Chapter 448F (Electrologists)
  - (3) Chapter 454 (Mortgage Brokers and Solicitors)
  - (4) Chapter 454D (Real Estate Collection Servicing Agents)
  - (5) Chapter 466 (Board of Public Accountancy)
  - (6) [Chapter 466K (Real Estate Appraisers)
  - (7)] Chapter 467 (Real Estate Commission)

SECTION 4. Statutory material to be repealed is bracketed.

SECTION 5. This Act shall take effect on July 1, 1991.

(Approved May 10, 1991.)

**Note**

- 1. So in original.