

ACT 226

H.B. NO. 2752

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

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

SECTION 1. The legislature finds that individuals who default on state or federal student loans and scholarship contracts create a significant taxpayer liability. At present, the only sanction against defaulters in Hawaii is the federal government's exclusion of medical professionals from participation in medicaid and medicare, resulting in the loss of clinical services to the most needy in our communities. The legislature finds that those individuals who have received a substantial economic benefit from their student loans at the expense of taxpayers should be required to honor their service or loan commitments.

The purpose of this Act is to encourage repayment of student loans administered by the State and the federal government as well as deter future defaulters by providing, among other things and as a last resort, for the suspension, denial, or nonrenewal of licenses for professions and vocations regulated by the State. This Act shall not apply to a person who obtained a nonfederal student loan administered by another state.

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

**“CHAPTER
STUDENT LOAN DEFAULTS**

§ -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.

“Applicable licensing authority” means the director of commerce and consumer affairs, or any licensing board or commission under the administrative control of the director of commerce and consumer affairs, the director of health, the insurance commissioner, or the supreme court.

“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 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.

§ -2 Professional and vocational license sanction for default of student loan or scholarship contract. (a) In addition to any other acts or conditions provided by law, the applicable licensing authority shall not renew or reinstate, or shall deny, suspend, or revoke 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; or
- (2) At least sixty days past due with payments under a repayment plan.

The applicable licensing authority in receipt of the certification shall not renew or reinstate, or shall deny, suspend, or revoke the license or application without further review or hearing.

(b) The applicable licensing authority shall renew, reinstate, or grant the license 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 applicable 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.”

SECTION 3. Chapter 436B, Hawaii Revised Statutes, is amended by adding a new section to part V to be appropriately designated and to read as follows:

“§436B- Denial, suspension, or revocation of license for default of student loan or scholarship contract. In addition to any other acts or conditions provided by law, the licensing authority shall not renew or reinstate, or shall deny, suspend, or revoke, any license or application, if the department has received certification from an administering entity pursuant to chapter that the licensee or applicant is in default or breach of any obligation under any student loan, student loan repayment contract, or scholarship contract, or has failed to comply with a repayment plan. Unless otherwise provided by law, the licensing authority shall renew, reinstate, or grant the license only upon receipt of an authorization from the administering entity. Chapter 91 and sections 92-17, 436B-18, 436B-20, 436B-21, 436B-24, and 436B-25 shall not apply to a license suspension or denial under this section.”

SECTION 4. Chapter 302A,¹ Hawaii Revised Statutes, is amended to read as follows:

“§302A-807 Refusal, suspension, revocation, and reinstatement of licenses and credentials. (a) The board shall serve as the final adjudicator for appeals relating to licensing and credentialing, including the issuance or nonissuance of licenses and credentials, and the suspension, nonrenewal, and revocation of licenses and credentials.

(b) The board shall establish procedures for the conduct of proceedings for the consideration of requests filed with the board. In every case to revoke or suspend a license or credential, the board shall give the person concerned written notice that a request has been filed with the board. The board shall conduct a hearing in conformity with chapter 91, and shall provide for confidentiality of the proceedings to protect the parties. In all proceedings before it, the board may administer oaths, compel the attendance of witnesses and production of documentary evidence, and examine witnesses. In case of disobedience by any person to any order of the board or to any subpoena issued by the board, or the refusal of any witness to testify to any matter that the person may be questioned lawfully, any circuit judge, on application of the board or a member thereof, shall compel obedience in the case of disobedience of the requirements of a subpoena issued by a circuit court or a refusal to testify.

(c) Any applicant who has been refused a license or credential, or any licensee or credential holder whose license or credential has been suspended or revoked, shall have the right to appeal the board’s decision to the circuit court of the circuit in which the applicant, licensee, or credential holder resides in the manner provided in chapter 91; provided that out-of-state resident applicants shall file their appeals in the first circuit court.

(d) Upon revocation of a license or credential, the board may disclose the name, birthdate, social security number, and any other pertinent information about the former holder of the license or credential:

- (1) To the department; and
- (2) For the purpose of exchanging information under chapter 315 with other national or state teacher certification agencies about school personnel who have had licenses or credentials revoked.

(e) The board shall not renew or reinstate, or shall deny, suspend, or revoke, any license, credential, or application, if the board has received certification from an administering entity pursuant to chapter _____ that the licensee or applicant is in default or breach of any obligation under any student loan, student loan repayment contract, or scholarship contract, or has failed to comply with a repayment plan. Unless otherwise provided by law, the board shall renew, reinstate, or grant the license or credential only upon receipt of an authorization from the administering entity.”

SECTION 5. Chapter¹ 321-15, Hawaii Revised Statutes, is amended to read as follows:

“§321-15 Biennial registration; fees, failure to register¹; denial, suspension, or revocation of a license. (a) Every person holding a license to practice any occupation specified in section 321-13(a)(1) shall reregister with the department of health every other year in accordance with the rules of the department, before February 1 except where superseded by federal law, and shall pay a reregistration fee. The failure, neglect, or refusal of any person holding such a license to reregister or pay the reregistration fee, after thirty days of delinquency, shall constitute a forfeiture of the person’s license; provided that the license shall be restored upon written application therefor together with a payment of all delinquent fees and an additional late reregistration fee that may be established by the director of health. All fees collected pursuant to this section shall be deposited into the environmental health education fund established under section 321-27.

(b) The department shall suspend, refuse to renew, reinstate, or restore, or deny any license or application if the department has received certification from the child support enforcement agency pursuant to the terms of section 576D-13 that the licensee or applicant is not in compliance with an order of support as defined in section 576D-1 or has failed to comply with a subpoena or warrant relating to a paternity or child support proceeding. Unless otherwise provided by law, the department shall grant, renew, restore, or reinstate a license only upon receipt of an authorization from the child support enforcement agency, office of child support hearings, or family court.

(c) The department shall not renew or reinstate, or shall deny, suspend, or revoke, any license or application, if the department has received certification from an administering entity pursuant to chapter _____ that the licensee or applicant is in default or breach of any obligation under any student loan, student loan repayment contract, or scholarship contract, or has failed to comply with a repayment plan. Unless otherwise provided by law, the department shall grant, renew, or reinstate a license only upon receipt of an authorization from the administering entity.”

SECTION 6. Section 431:9-235, Hawaii Revised Statutes, is amended to read as follows:

“§431:9-235 Denial, suspension, revocation of licenses. (a) The commissioner may suspend, revoke, or refuse to extend any license issued under this article or any surplus lines broker’s license for any cause specified in any other provision of this article, or for any of the following causes:

- (1) For any cause for which issuance of the license could have been refused had it then existed and been known to the commissioner;
- (2) If the licensee wilfully violates or knowingly participates in the violation of any provision of this code;
- (3) If the licensee has obtained or attempted to obtain any such license through wilful misrepresentation or fraud, or has failed to pass any examination required by section 431:9-206;
- (4) If the licensee has misappropriated, or converted to the licensee's own use, or has illegally withheld moneys required to be held in a fiduciary capacity;
- (5) If the licensee has, with intent to deceive, materially misrepresented the terms or effect of any insurance contract; or has engaged or is about to engage in any fraudulent transaction;
- (6) If the licensee has been guilty of any unfair practice or fraud as defined in article 13;
- (7) If in the conduct of the licensee's affairs under the license, the licensee has shown oneself to be a source of injury and loss to the public;
- (8) If the licensee issues or purports to issue any binder as to any insurer named therein as to which the licensee is not then authorized so to bind; or
- (9) If the licensee has dealt with, or attempted to deal with, insurance or to exercise powers relative to insurance outside the scope of the licensee's licenses.

(b) The license of any partnership or corporation may be so suspended, revoked, or refused for any of such causes as relate to any individual designated in the license to exercise its powers.

(c) The holder of any license which has been revoked or suspended shall surrender the license certificate to the commissioner at the commissioner's request.

(d) The commissioner shall not renew or reinstate, or shall deny, suspend, or revoke, any license or application, if the commissioner has received certification from an administering entity pursuant to chapter _____ that the licensee or applicant is in default or breach of any obligation under any student loan, student loan repayment contract, or scholarship contract, or has failed to comply with a repayment plan. Unless otherwise provided by law, the commissioner shall renew, reinstate, or grant a license only upon receipt of an authorization from the administering entity."

SECTION 7. Section 457-9, Hawaii Revised Statutes, is amended to read as follows:

"§457-9 Renewal of license[-]; denial, suspension, or revocation of license for default of student loan or scholarship contract. (a) The license of every person licensed under this chapter shall expire on June 30 of every odd-numbered year and shall be renewed biennially, except as provided in this section. Biennially in each odd-numbered year, the board shall make available an application for renewal of license before the deadline set forth by the board to every person to whom a license was issued or renewed during the biennium. The applicant shall complete the application and submit it to the board with a renewal fee and any required documents on or before the deadline set forth by the board. The applicant shall provide documents from proper agencies or parties relating to any disciplinary action taken or pending in this State or any other state in the United States or any territory or possession under the jurisdiction of the United States within the two years prior to application for renewal of license. Upon receipt of the application and fee the board shall verify the accuracy of the application and issue to the applicant a certificate of renewal for the biennium expiring two years hence on the deadline set

forth by the board. The renewal shall render the holder thereof a legal practitioner of nursing for the period stated on the renewal form.

(b) Any licensee who fails to renew a license as provided in subsection (a) but continues to practice shall be considered an illegal practitioner and shall be subject to the penalties provided for violations of this chapter; provided that the person's license may be restored by the board on satisfactory explanation of the failure to renew and on payment of the renewal fee and a penalty fee.

A nurse who fails to renew a license as provided in subsection (a) and does not engage in nursing in the State for one year after the license has been forfeited shall not be required to pay the renewal or penalty fee; provided that the nurse remains inactive during that year. Should the nurse wish to resume nursing at some future time, the nurse shall notify the board and remit the renewal fee and application form as provided in subsection (a).

(c) Notwithstanding any provision in this chapter to the contrary, the board shall not renew or reinstate, or shall deny, suspend, or revoke, any license or application, if the board has received certification from an administering entity pursuant to chapter _____ that the licensee or applicant is in default or breach of any obligation under any student loan, student loan repayment contract, or scholarship contract, or has failed to comply with a repayment plan. Unless otherwise provided by law, the board shall renew, reinstate, or grant the license only upon receipt of an authorization from the administering entity."

SECTION 8. Chapter¹ 466J-8, Hawaii Revised Statutes, is amended to read as follows:

“§466J-8 Denial, revocation, or suspension of license. (a) The board shall have the power to deny, revoke, or suspend any license issued or applied for in accordance with this chapter, upon proof that the person:

- (1) Is guilty of fraud or deceit in procuring or attempting to procure a license to practice as a radiographer or as a radiation therapy technologist;
- (2) Is mentally incompetent;
- (3) Is guilty of unprofessional conduct; or
- (4) Has knowingly or repeatedly violated this chapter.

(b) Before denying, suspending, or revoking any license pursuant to subsection (a), the board shall furnish the licensee a notice in writing as prescribed by section 91-9 and shall afford the licensee an opportunity to be heard in person and by or with counsel. Any order denying a license, or suspending or revoking a license shall be rendered not later than fifteen days after the hearing, and any aggrieved person may appeal the order as provided in chapter 91.

(c) The board shall suspend, refuse to renew, reinstate, or restore, or deny any license or application if the board has received certification from the child support enforcement agency pursuant to the terms of section 576D-13 that the licensee or applicant is not in compliance with an order of support or has failed to comply with a subpoena or warrant relating to a paternity or child support proceeding. Unless otherwise provided by law, the board shall issue, renew, restore, or reinstate the license only upon receipt of an authorization from the child support enforcement agency, office of child support hearings, or family court. Subsection (b) shall not apply to a license suspension pursuant to this subsection.

(d) The board shall not renew or reinstate, or shall deny, suspend, or revoke, any license or application, if the board has received certification from an administering entity pursuant to chapter _____ that the licensee or applicant is in default or breach of any obligation under any student loan, student loan repayment contract, or scholarship contract, or has failed to comply with a repayment plan. Unless other-

wise provided by law, the board shall renew, reinstate, or grant the license only upon receipt of an authorization from the administering entity.”

SECTION 9. Chapter¹ 605-1, Hawaii Revised Statutes, is amended to read as follows:

“§605-1 Attorneys, qualifications. (a) The supreme court may examine, admit, and reinstate as practitioners in the courts of the State, such persons as it may find qualified for that purpose, who have taken the prescribed oath of office. The supreme court shall have the sole power to revoke or suspend the license of any such practitioner.

(b) In order to be licensed by the supreme court, a person shall be of good moral character, and shall satisfy such residence and other requirements as the supreme court may prescribe.

(c) In addition to other qualifications for licensure and conditions for continuing eligibility to hold a license, applicants for licensure, licensees renewing their licenses, and existing licensees shall be in compliance with an order of support as defined in section 576D-1 and has not failed to comply with a subpoena or warrant relating to a paternity or child support hearing.

(d) In addition to other qualifications for licensure and conditions for continuing eligibility to hold a license, applicants for licensure, licensees renewing their licenses, and existing licensees shall be in compliance with any obligation under any student loan, student loan repayment contract, or scholarship contract, or shall be in compliance with a repayment plan as provided in chapter _____.”

SECTION 10. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.²

SECTION 11. This Act shall take effect upon its approval.

(Approved June 28, 2002.)

Notes

1. So in original.
2. Edited pursuant to HRS §23G-16.5.