

ACT 279

S.B. NO. 385

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

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

SECTION 1. Section 189-2, Hawaii Revised Statutes, is amended to read as follows:

“§189-2 Commercial marine license. (a) No person shall take marine life for commercial purposes whether the marine life is caught or taken within or outside of the State, without first obtaining a commercial marine license as provided in this section.

(b) Additionally, any person providing vessel charter services in the State for the taking of marine life in or outside of the State shall obtain a commercial marine license.

(c) The department may adopt rules pursuant to chapter 91 necessary for the purpose of this section and to set fees for commercial marine licensing.

(d) The fees for commercial marine licenses and duplicate commercial marine licenses shall be established by the department by rules adopted in accordance with chapter 91.

(e) The department shall suspend, shall refuse to renew, reinstate, or restore, or shall deny any license issued under this section if the department has received certification from the child support enforcement agency pursuant to 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. The department shall issue, renew, reinstate, or restore ~~[such a]~~ an affected license only upon receipt of authorization from the child support enforcement agency, the office of child support hearings, or the family court.

~~[(f) The department shall not renew or reinstate, or shall deny or suspend any license or application, if the department has received certification from an administering entity pursuant to chapter 436C that the licensee or applicant is 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 has failed to comply with a repayment plan.~~

~~The department 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.]”~~

SECTION 2. Section 302A-807, Hawaii Revised Statutes, is amended to read as follows:

“§302A-807 Refusal, suspension, revocation, and reinstatement of licenses.

(a) The board shall serve as the final adjudicator for appeals relating to licensing, including the issuance or nonissuance of licenses, and the condition, suspension, nonrenewal, and revocation of licenses.

(b) The board shall establish procedures for the conduct of proceedings for the consideration of requests filed with the board. In every case to condition, revoke, or suspend a license, 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 any licensee whose license has been conditioned, suspended, or revoked, shall have the right to appeal the board's decision to the circuit court of the circuit in which the applicant or licensee 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, the board may disclose the name, birthdate, social security number, and any other pertinent information about the former holder of the license:

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

~~[(e) The board shall not renew or reinstate, or shall deny or suspend any license or application, if the board has received certification from an administering entity pursuant to chapter 436C that the licensee or applicant is 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 has failed to comply with a repayment plan.~~

~~The board 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.]”~~

SECTION 3. Section 321-15, Hawaii Revised Statutes, is amended to read as follows:

“§321-15 Biennial registration; fees, failure to register; 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 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 sanitation and environmental health special 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 or suspend any license or application, if the department has received certification from an administering entity pursuant to chapter 436C that the licensee or applicant is 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 has failed to comply with a repayment plan.~~

The department 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 grant, renew, or reinstate the license only upon receipt of an authorization from the administering entity.]”

SECTION 4. 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 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 license issued under this article through wilful misrepresentation or fraud, or has failed to pass any examination required by section 431:9-206;
- (4) If the licensee has misappropriated, converted to the licensee's own use, or illegally withheld moneys required to be held in a fiduciary capacity;
- (5) If the licensee, with intent to deceive, has 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; or
- (8) 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 the causes that 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 436C that the licensee or applicant is 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 has failed to comply with a repayment plan.

The commissioner 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.

(e) The commissioner may suspend, revoke, or refuse to extend any license for any cause specified in this article by an order:

- (1) Given to the licensee not fewer than fifteen days prior to the effective date thereof, subject to the right of the licensee to have a hearing as provided in section 431:2-308, and pending that hearing, the license shall be suspended; or
- (2) Made after a hearing, conducted as provided in section 431:2-308, effective ten days after the date the order is given to the licensee, subject to the right of the licensee to appeal to the circuit court of the first judicial circuit of this State as provided in chapter 91.]”

SECTION 5. Section 431:9A-112, Hawaii Revised Statutes, is amended to read as follows:

“§431:9A-112 License denial, nonrenewal, suspension, or revocation.

(a) The commissioner may deny, place on probation, suspend, revoke, or refuse to issue or renew an insurance producer's license and may levy a civil penalty in accordance with articles 2 and 3, or any combination of these actions, for any of the following causes:

- (1) Providing incorrect, misleading, incomplete, or materially untrue information in the license application;
- (2) Violating any law, or violating any rule, subpoena, or order of the commissioner or of another state's commissioner;
- (3) Obtaining or attempting to obtain a license through misrepresentation or fraud;
- (4) Improperly withholding, misappropriating, or converting any moneys or properties received in the course of doing business;
- (5) Intentionally misrepresenting the terms of an actual or proposed insurance contract or application for insurance;
- (6) Having been convicted of a felony;
- (7) Having admitted to or been found to have committed any insurance unfair trade practice or fraud;
- (8) Using fraudulent, coercive, or dishonest practice or demonstrating incompetence, untrustworthiness, or financial irresponsibility in the conduct of business in this State or elsewhere;
- (9) Having an insurance producer license or its equivalent denied, placed on probation, suspended, or revoked in any other state, province, district, or territory;
- (10) Forging another's name on an application or on any document related to a transaction;
- (11) Improperly using notes or any other reference material while taking an examination for an insurance license;
- (12) Accepting insurance business from a person who is not licensed;

- (13) Failing to comply with an administrative or court order imposing a child support obligation; or
- (14) Failing to pay federal or state income taxes or failing to comply with any administrative or court order directing payment of federal or state income taxes[; or
- (15) ~~Receiving certification from an administering entity pursuant to chapter 436C that the licensee or applicant is 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 has failed to comply with a repayment plan].~~

(b) If the commissioner takes action pursuant to subsection (a), the commissioner shall notify the applicant or licensee in writing of the reason for that action. The applicant or licensee may make written demand upon the commissioner within ten days of the date of receipt of the notice for a hearing before the commissioner to determine the reasonableness of the commissioner's action. The hearing shall be held within thirty days of receipt of the written demand and shall be held pursuant to chapter 91[; ~~provided that this subsection shall not apply to an action taken pursuant to subsection (a)(15)~~], and following that action, unless otherwise provided by law, the commissioner shall without further review or hearing renew, reinstate, or grant the license only upon receipt of an authorization from the administering entity.

~~[(c)] The commissioner shall not renew or reinstate any license and shall deny, suspend, or revoke any license or application if the commissioner has received certification from an administering entity pursuant to chapter 436C that the licensee or applicant is in default or is in 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, if the commissioner has received such certification, the commissioner shall renew, reinstate, or grant a license only upon receipt of authorization from the administering entity.~~

~~[(d)]~~ (c) The license of a business entity may be sanctioned pursuant to subsection (a) if the commissioner finds, after hearing, that any other licensee of the business entity has engaged in misconduct under subsection (a) that was known or should have been known by one or more of the entity's partners, officers, or managers acting on behalf of the entity and the violation was neither reported to the commissioner by the entity nor corrective action taken by the entity.

~~[(e)]~~ (d) In addition to or in lieu of any applicable sanction under subsection (a), a licensee may, after hearing, be subject to a civil fine according to article 2.

~~[(f)]~~ (e) The commissioner shall retain the authority to enforce the provisions of and impose any penalty or remedy authorized by this article, chapter 431, 432, or 432D, against any person who is under investigation for or charged with a violation of this article, chapter 431, 432, or 432D, even if that person's license or registration has been surrendered or has lapsed by operation of law."

SECTION 6. 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, student loan repayment contract, or scholarship contract]; inactivation and reactivation of license; restoration of forfeited license.~~ (a) The license of every person licensed or granted prescriptive authority 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 shall also submit, beginning with the July 1, 2019, licensing biennium, a full set of electronic fingerprints for the purpose of obtaining federal and state criminal history record checks in accordance with section 846-2.7 directly to the Hawaii criminal justice data center for processing with the Federal Bureau of Investigation. The applicant shall bear the cost of the fingerprint processing and the application shall not be considered complete until the results of the criminal history record check has been received by the board; and all required documents on or before the deadline set by the board. The applicant shall provide documents from proper agencies or parties of any criminal conviction or 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 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. 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; provided that the person's license may be restored by the board within two years after the date of forfeiture upon compliance with the licensing renewal fees, penalty fees, and compliance resolution fund fees.

A nurse who does not intend to practice nursing in the State and elects to be placed on inactive status shall so indicate in writing during the license renewal period or by so indicating on the license renewal application, and paying inactivation and all appropriate fees. Should the nurse wish to resume nursing at some future time, the nurse shall notify the board in writing and remit the reactivation and renewal fees; submit an application form as provided in subsection (a); and beginning with the July 1, 2019, licensing biennium, submit a full set of electronic fingerprints for the purpose of obtaining federal and state criminal history record checks in accordance with section 846-2.7 directly to the Hawaii criminal justice data center for processing with the Federal Bureau of Investigation. The applicant shall bear the cost of the fingerprint processing and the application shall not be considered complete until the results of the criminal history record check has been received by the board. A nurse who has not actively practiced in this State or any other state in the United States or any territory or possession under the jurisdiction of the United States for more than five years may be required by the board to submit proof of continued competency by retaking and passing the licensing examination or successfully completing appropriate continuing education recognized by the board.

~~[(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 436C that the licensee or applicant is 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 has failed to comply with a repayment plan.]~~

The board, in receipt of a certification pursuant to chapter 436C, as applicable, and without further review or hearing, shall:

- (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.]”

SECTION 7. Section 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 or suspend, any license or application if the board has received certification from an administering entity pursuant to chapter 436C that the licensee or applicant either: is 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 has failed to comply with a repayment plan.

Upon receipt of a certification pursuant to chapter 436C, the board, without further review or hearing shall, as applicable:

- (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.

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. Section 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 that financed the licensee's or applicant's education or shall be in compliance with a repayment plan as provided in chapter 436C.~~

~~The licensing authority shall not renew or reinstate, or shall deny or suspend any license or application, if the licensing authority has received certification from an administering entity pursuant to chapter 436C that the licensee or applicant is 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 has failed to comply with a repayment plan.~~

~~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.]”~~

SECTION 9. Section 436B-19.6, Hawaii Revised Statutes, is repealed.

SECTION 10. Chapter 436C, Hawaii Revised Statutes, is repealed.

SECTION 11. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun before its effective date.

SECTION 12. Statutory material to be repealed is bracketed and stricken.¹ New statutory material is underscored.

SECTION 13. This Act shall take effect upon its approval.

(Became law on July 9, 2019, without the governor's signature, pursuant to Art. III, §16, State Constitution.)

Note

1. Edited pursuant to HRS §23G-16.5.