
A BILL FOR AN ACT

RELATING TO THE DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS.

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

1 SECTION 1. The legislature finds that the administration
2 of the laws involving the registration of businesses and related
3 entities is among the many responsibilities of the department of
4 commerce and consumer affairs. As evidence that an entity is
5 properly registered, the department of commerce and consumer
6 affairs issues a document known as a certificate of good
7 standing.

8 The legislature further finds that the term certificate of
9 good standing is misleading because it leads the public into
10 believing that the entity has complied with all government
11 requirements, while it is only an indication that the entity is
12 properly registered with one department of the State. Some
13 businesses have exploited this misunderstanding by prominently
14 displaying a certificate of good standing while simultaneously
15 refusing to pay applicable taxes and disregarding labor laws.



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1 The purpose of this Act is to reduce public confusion by
2 renaming the certificate of good standing to certificate of
3 registration.

4 SECTION 2. Section 26-9, Hawaii Revised Statutes, is
5 amended to read as follows:

6 "**§26-9 Department of commerce and consumer affairs.** (a)
7 The department of commerce and consumer affairs shall be headed
8 by a single executive to be known as the director of commerce
9 and consumer affairs.

10 (b) The department shall protect the interests of
11 consumers, depositors, and investors throughout the State. It
12 shall set standards and enforce all laws and rules governing the
13 licensing and operation of, and register and supervise the
14 conduct of, trades, businesses, and professions, including
15 banks, insurance companies, brokerage firms, and other financial
16 institutions.

17 (c) The board of acupuncture, board of public accountancy,
18 board of barbering and cosmetology, boxing commission, Hawaii
19 board of chiropractic, contractors license board, board of
20 dentistry, board of electricians and plumbers, elevator
21 mechanics licensing board, board of professional engineers,



1 architects, surveyors, and landscape architects, board of
2 massage therapy, Hawaii medical board, motor vehicle industry
3 licensing board, motor vehicle repair industry board, board of
4 naturopathic medicine, board of nursing, Hawaii board of
5 optometry, pest control board, board of pharmacy, board of
6 physical therapy, board of psychology, board of private
7 detectives and guards, real estate commission, Hawaii board of
8 veterinary medicine, board of speech pathology and audiology,
9 and any board, commission, program, or entity created pursuant
10 to or specified by statute in furtherance of the purpose of this
11 section including but not limited to section 26H-4, or chapters
12 484, 514B, and 514E shall be placed within the department of
13 commerce and consumer affairs for administrative purposes.

14 The public utilities commission shall be placed, for
15 administrative purposes only, within the department of commerce
16 and consumer affairs. Notwithstanding section 26-9(e), (f),
17 (g), (h), (j), (k), (l), (m), (n), (p), (q), (r), and (s), and
18 except as permitted by sections 269-2 and 269-3, the department
19 of commerce and consumer affairs shall not direct or exert
20 authority over the day-to-day operations or functions of the
21 commission. (d) Except as otherwise provided by this



1 chapter, the functions, duties, and powers, subject to the
2 administrative control of the director of commerce and consumer
3 affairs, and the composition of each board and commission shall
4 be as provided by law.

5 (e) Notwithstanding any provision to the contrary, the
6 employment, appointment, promotion, transfer, demotion,
7 discharge, and job descriptions of all officers and employees
8 under the administrative control of this department shall be
9 determined by the director of commerce and consumer affairs
10 subject only to applicable personnel laws.

11 (f) The director of commerce and consumer affairs may
12 appoint a hearings officer or officers not subject to chapter 76
13 to hear and decide any case or controversy regarding licenses
14 and the application and enforcement of rules involving any of
15 the boards, commissions, or regulatory programs within the
16 department of commerce and consumer affairs. The hearings
17 officer or officers shall have power to issue subpoenas,
18 administer oaths, hear testimony, find facts, and make
19 conclusions of law and a recommended decision; provided that the
20 conclusions and decisions shall be subject to review and
21 redetermination by the officer, board, or commission which would



1 have heard the case in the first instance in the absence of a
2 hearings officer. The review shall be conducted in accordance
3 with chapter 91.

4 (g) The director of commerce and consumer affairs may
5 appoint an information officer not subject to chapter 76 who
6 shall ensure the prompt and efficient handling of consumer
7 inquiries and the development of a strong consumer education
8 program.

9 (h) The director may appoint a complaints and enforcement
10 officer not subject to chapter 76 who shall facilitate the
11 receipt, arbitration, investigation, prosecution, and hearing of
12 complaints regarding any person who furnishes commodities,
13 services, or real estate for which a license, registration, or
14 certificate is required from the department or any board,
15 commission, or regulatory program thereunder. In representing
16 the State in bringing any action to enjoin unlicensed,
17 unregistered, or uncertified activities, the department of
18 commerce and consumer affairs' attorneys shall be empowered to
19 exercise all authority granted to the attorney general and to
20 the director of the office of consumer protection under sections
21 487-12, 487-14, 480-3.1, 480-15, 480-15.1, 480-20(c), and 480-



1 22, as these sections now exist and as they subsequently may be
2 amended. The attorneys also shall be empowered to exercise all
3 authority granted to the attorney general and to the responsible
4 attorneys of the various counties under section 92F-13 in all
5 cases involving documents and records within the custody or
6 control of the regulated industries complaints office.

7 (i) The functions and authority previously exercised by
8 the treasurer (except funds custody, cash management, debt
9 management, and administering of veterans loans transferred to
10 the department of budget and finance) as constituted are
11 transferred to the department of commerce and consumer affairs
12 established by this chapter.

13 (j) In the course of an investigation of matters affecting
14 the interest of consumers, depositors, or investors, or of any
15 other matter within the jurisdiction of the department, the
16 director shall have the power to subpoena witnesses, examine
17 witnesses under oath, and require the production of books,
18 papers, documents, or objects that the director deems relevant
19 or material to the inquiry. Upon application by the director,
20 obedience to the subpoena may be enforced by the circuit court
21 in the county in which the person subpoenaed resides or is found



1 in the same manner as a subpoena issued by the clerk of a
2 circuit court.

3 The director shall appoint and commission one or more
4 investigators as the exigencies of the public service may
5 require. Persons appointed and commissioned under this section
6 may serve subpoenas and serve process and orders pursuant to
7 section 634-21. Nothing in this subsection shall be construed
8 to entitle persons appointed and commissioned by the director to
9 retirement benefits applicable to police officers under chapter
10 88.

11 (k) The director may adopt, amend, or repeal rules
12 pursuant to chapter 91 to effectuate the purposes of all laws
13 within the jurisdiction of the department of commerce and
14 consumer affairs. The director's authority to adopt rules shall
15 not modify, impair, or otherwise affect the power of boards and
16 commissions placed within the department of commerce and
17 consumer affairs for administrative purposes from adopting,
18 amending, or repealing rules, except as provided for in
19 subsection (l).

20 (l) Any law to the contrary notwithstanding, the director
21 of commerce and consumer affairs may:



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- 1 (1) Establish, increase, decrease, or repeal fees relating
2 to any aspect of the registration, certification,
3 licensure, or any other administrative process for all
4 laws within the jurisdiction of the department.
5 Amendments to fee assessments shall be made pursuant
6 to chapter 91;
- 7 (2) Assess fees for copies in any form of media of the
8 computerized records of the business registration
9 division or for electronic access to the computerized
10 information on a one-time or on-going basis. The fees
11 charged for the copies or access may include billing
12 service fees, network usage fees, and computer
13 consultant fees. In adopting these fees, the director
14 shall take into account the intent to make the
15 division self-supporting. To this end, the fees may
16 reflect the commercial value of the service or
17 information provided. In the case of requests for
18 records by a nonprofit organization, the director may
19 reduce or waive the fees. This paragraph shall
20 control in any instance where there is a conflict
21 between this paragraph and any other statute; and



1 (3) Assess fees for copies of consumer and business
2 educational publications prepared or issued by the
3 department. Fees collected under this paragraph shall
4 be deposited into the compliance resolution fund under
5 subsection (o). In the case of requests for copies by
6 a nonprofit organization, the director may reduce or
7 waive the fees. For purposes of this paragraph,
8 "consumer and business educational publications" does
9 not include copies of statutes or administrative
10 rules.

11 The fees collected by the professional and vocational
12 licensing division and the business registration division shall
13 be deposited into the compliance resolution fund under
14 subsection (o).

15 The director may appoint program specialists, not subject
16 to chapter 76, to assist with the activities of the professional
17 and vocational licensing division.

18 (m) Notwithstanding section 92-17 or any other law to the
19 contrary, all boards, commissions, and regulatory programs
20 placed within the department of commerce and consumer affairs
21 for administrative purposes shall delegate their authority to



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1 receive, arbitrate, investigate, and prosecute complaints to the
2 department.

3 (n) Each board and commission, as well as the director, by
4 written order, may delegate to the executive secretary or other
5 personnel of the department any of its powers or duties as it
6 deems reasonable and proper for the administration of the
7 licensing laws that are within the jurisdiction of the
8 department of commerce and consumer affairs. The delegated
9 powers and duties may be exercised by the executive secretary or
10 other personnel of the department in the name of the board,
11 commission, or the director. However, neither a board, a
12 commission, nor the director shall delegate the authority to
13 adopt, amend, or repeal rules or take final disciplinary action
14 against a licensee.

15 (o) Every person licensed under any chapter within the
16 jurisdiction of the department of commerce and consumer affairs
17 and every person licensed subject to chapter 485A or registered
18 under chapter 467B shall pay upon issuance of a license, permit,
19 certificate, or registration a fee and a subsequent annual fee
20 to be determined by the director and adjusted from time to time
21 to ensure that the proceeds, together with all other fines,



1 income, and penalties collected under this section, do not
2 surpass the annual operating costs of conducting compliance
3 resolution activities required under this section. The fees may
4 be collected biennially or pursuant to rules adopted under
5 chapter 91, and shall be deposited into the special fund
6 established under this subsection. Every filing pursuant to
7 chapter 514E or section 485A-202(a)(26) shall be assessed, upon
8 initial filing and at each renewal period in which a renewal is
9 required, a fee that shall be prescribed by rules adopted under
10 chapter 91, and that shall be deposited into the special fund
11 established under this subsection. Any unpaid fee shall be paid
12 by the licensed person, upon application for renewal,
13 restoration, reactivation, or reinstatement of a license, and by
14 the person responsible for the renewal, restoration,
15 reactivation, or reinstatement of a license, upon the
16 application for renewal, restoration, reactivation, or
17 reinstatement of the license. If the fees are not paid, the
18 director may deny renewal, restoration, reactivation, or
19 reinstatement of the license. The director may establish,
20 increase, decrease, or repeal the fees when necessary pursuant
21 to rules adopted under chapter 91. The director may also



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1 increase or decrease the fees pursuant to section 92-28.

2 There is created in the state treasury a special fund to be
3 known as the compliance resolution fund to be expended by the
4 director's designated representatives as provided by this
5 subsection. Notwithstanding any law to the contrary, all
6 revenues, fees, and fines collected by the department shall be
7 deposited into the compliance resolution fund. Unencumbered
8 balances existing on June 30, 1999, in the cable television fund
9 under chapter 440G, the division of consumer advocacy fund under
10 chapter 269, the financial institution examiners' revolving
11 fund, section 412:2-109, the special handling fund, section
12 414-13, and unencumbered balances existing on June 30, 2002, in
13 the insurance regulation fund, section 431:2-215, shall be
14 deposited into the compliance resolution fund. This provision
15 shall not apply to the drivers education fund underwriters fee,
16 sections 431:10C-115 and 431:10G-107, insurance premium taxes
17 and revenues, revenues of the workers' compensation special
18 compensation fund, section 386-151, the captive insurance
19 administrative fund, section 431:19-101.8, the insurance
20 commissioner's education and training fund, section 431:2-214,
21 the medical malpractice patients' compensation fund as



1 administered under section 5 of Act 232, Session Laws of Hawaii
2 1984, and fees collected for deposit in the office of consumer
3 protection restitution fund, section 487-14, the real estate
4 appraisers fund, section 466K-1, the real estate recovery fund,
5 section 467-16, the real estate education fund, section 467-19,
6 the contractors recovery fund, section 444-26, the contractors
7 education fund, section 444-29, the condominium education trust
8 fund, section 514B-71, and the mortgage foreclosure dispute
9 resolution special fund, section 667-86. Any law to the
10 contrary notwithstanding, the director may use the moneys in the
11 fund to employ, without regard to chapter 76, hearings officers
12 and attorneys. All other employees may be employed in
13 accordance with chapter 76. Any law to the contrary
14 notwithstanding, the moneys in the fund shall be used to fund
15 the operations of the department. The moneys in the fund may be
16 used to train personnel as the director deems necessary and for
17 any other activity related to compliance resolution.

18 A separate special subaccount of the compliance resolution
19 fund, to be known as the post-secondary education authorization
20 special subaccount, shall be established for fees collected by
21 the department of commerce and consumer affairs pursuant to



1 chapter 305J. The special subaccount shall be governed by
2 section 305J-19.

3 As used in this subsection, unless otherwise required by
4 the context, "compliance resolution" means a determination of
5 whether:

6 (1) Any licensee or applicant under any chapter subject to
7 the jurisdiction of the department of commerce and
8 consumer affairs has complied with that chapter;

9 (2) Any person subject to chapter 485A has complied with
10 that chapter;

11 (3) Any person submitting any filing required by chapter
12 514E or section 485A-202(a)(26) has complied with
13 chapter 514E or section 485A-202(a)(26);

14 (4) Any person has complied with the prohibitions against
15 unfair and deceptive acts or practices in trade or
16 commerce; or

17 (5) Any person subject to chapter 467B has complied with
18 that chapter;

19 and includes work involved in or supporting the above functions,
20 licensing, or registration of individuals or companies regulated
21 by the department, consumer protection, and other activities of



1 the department.

2 The director shall prepare and submit an annual report to
3 the governor and the legislature on the use of the compliance
4 resolution fund. The report shall describe expenditures made
5 from the fund including non-payroll operating expenses.

6 (p) Any law to the contrary notwithstanding, the
7 department of commerce and consumer affairs, or any board or
8 commission placed within it for administrative purposes, may
9 contract with professional testing services to prepare,
10 administer, and grade examinations and tests for license
11 applicants. For these purposes, the department may require
12 applicants to pay the examination fee directly to the testing
13 agency.

14 (q) Any law to the contrary notwithstanding, when any type
15 of bond or insurance required to be maintained by any licensee
16 under a regulatory program of the department of commerce and
17 consumer affairs, or of any board or commission assigned to the
18 department of commerce and consumer affairs, cannot reasonably
19 be secured, the department, board, or commission may provide by
20 rule for alternative forms of security to the consumer so long



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1 as that alternate security is no less than that provided by the
2 type of bond or insurance initially required.

3 (r) Notwithstanding any other law to the contrary, the
4 department of commerce and consumer affairs, or any board or
5 commission placed within it for administrative purposes, may
6 change any license renewal date by rules adopted in accordance
7 with chapter 91.

8 (s) The director of commerce and consumer affairs may
9 establish advisory committees, the members of which shall serve
10 as consultants to the boards and to the director in their review
11 of licensees referred for possible disciplinary action and as
12 experts to the department for investigations and professional
13 vocational licensing matters. Each advisory committee shall be
14 appointed by the director from a list of licensees submitted
15 annually by the board or by referral from the regulated industry
16 for which an advisory committee is appointed. Each member of
17 the committee shall serve until a new committee is established
18 or until the particular case for which the member was designated
19 a consultant or expert has been concluded.

20 All members of the advisory committee shall serve
21 voluntarily and without compensation, but shall be paid



1 reasonable allowances for travel and expenses that may be
2 incurred as a result of performance of their duties on the
3 committee. The costs shall be paid by the department.

4 Any member of the advisory committee shall be immune from
5 civil liability for any act done in connection with this
6 subsection.

7 (t) The department of commerce and consumer affairs may
8 issue a certificate of registration to any entity for the
9 purpose of certifying that the corporation, joint venture,
10 limited liability company, limited liability partnership,
11 nonprofit, partnership, or other entity for which any law
12 requires registration with the department of commerce and
13 consumer affairs has complied with applicable statutory
14 requirements within the jurisdiction of the department of
15 commerce and consumer affairs or rules adopted by the department
16 of commerce and consumer affairs; provided that:

17 (1) In addition to any language deemed appropriate by the
18 department of commerce and consumer affairs, the
19 certificate of registration shall state "This
20 certificate is not an indication of compliance with
21 tax laws, labor laws, or any other laws."; and



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1 (2) No certificate of registration shall contain language
2 stating or implying that the entity has complied with
3 any statute or rule outside the jurisdiction of the
4 department of commerce and consumer affairs, including
5 compliance with an entire chapter for which
6 enforcement of any portion is outside the jurisdiction
7 of the department of commerce and consumer affairs.

8 Any certificate of good standing issued by the department
9 of commerce and consumer affairs after June 30, 2022, shall be
10 invalid. Any requirement to maintain or present a certificate
11 of good standing shall be satisfied with the maintenance or
12 presentation of a certificate of registration that would
13 otherwise satisfy the requirements regarding the certificate of
14 good standing."

15 SECTION 3. Sections 8-5, 412:2-105.2, 414-12, 414D-4,
16 425D-4, 443B-3, 443B-4.58, and 514E-10, Hawaii Revised Statutes,
17 are amended by substituting the term "certificate of
18 registration" wherever the term "certificate of good standing"
19 appears, as the context requires.

20 SECTION 4. New statutory material is underscored.

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1 SECTION 5. This Act shall take effect upon its approval.

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INTRODUCED BY: *Frank S. King*

JAN 26 2021



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Report Title:

DCCA; Business Registration; Certificate of Good Standing

Description:

Amends the name of the certificate of good standing issued by the department of commerce and consumer affairs to "certificate of registration."

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