

ACT 205

H.B. NO. 2485-74

A Bill for an Act Relating to the Employment and Licensing of Convicted Persons.

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

SECTION 1. **Purpose.** The purpose of this Act is to encourage and contribute to the rehabilitation of convicted persons and to assist those persons in their assumption of the responsibilities of citizenship. To this end, the legislature finds it a well-established principle of American jurisprudence that an occupation and equal access thereto is “property” within the meaning of Article I, section 4, of the Hawaii Constitution, which guarantees that, “No person shall be deprived of life, liberty or property without due process of law...”

SECTION 2. Chapter 731, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

“Sec. 731- Prior convictions; criminal records; noncriminal standards.

(a) A person shall not be disqualified from employment by the State or any of its political subdivisions or agencies, or be disqualified to practice, pursue, or engage in any occupation, trade, vocation, profession, or business for which a permit, license, registration, or certificate is required by the State or any of its political subdivisions or agencies, solely by reason of a prior conviction of a crime.

(b) The following criminal records shall not be used, distributed, or disseminated by the State or any of its political subdivisions or agencies in connection with an application for any said employment, permit, license, registration, or certificate:

- (1) Records of arrest not followed by a valid conviction;
- (2) Convictions which have been annulled or expunged;
- (3) Convictions of a penal offense for which no jail sentence may be imposed.

Except as provided in paragraphs (1) to (3), the State or any of its political subdivisions or agencies may consider as a possible justification for the refusal, suspension, or revocation of any employment or of any permit, license, registration, or certificate, any conviction of a penal offense when such offense directly relates (a) to the applicant's possible performance in the job applied for, or (b) to the employee's possible performance in the job which he holds, or (c) to the applicant's or holder's possible performance in the occupation, trade, vocation, profession, or business for which a permit, license, registration, or certificate is applied for or held.

For the purpose of this subsection, such refusal, suspension, or revocation may occur only when the agency determines, after investigation in accordance with chapter 91, that the person so convicted has not been sufficiently rehabilitated to warrant the public trust; provided that discharge from probation or parole supervision, or a period of two years after final discharge or release from any term of imprisonment, without subsequent criminal conviction, shall be deemed rebuttable prima facie evidence of sufficient rehabilitation.

(c) When considering noncriminal standards such as good moral character, temperate habits, habitual intemperate use of intoxicants, trustworthiness, and the like, in the granting, renewal, suspension, or revocation of any employment or any such permit, license, registration, or certificate, the agency shall not take into consideration the conviction of any crime except as provided by subsection (b). Nothing in this section shall be construed to otherwise affect a proceeding before any agency which does not involve the conviction of a crime.

(d) This section shall prevail over any other law which purports to govern the denial or issuance of any permit, license, registration, or certificate by the State or any of its political subdivisions or agencies."

1. Section 286-91 is amended by amending subsection (c) to read:

"(c) No driving instructor's license shall be issued to an applicant:

(1) Unless he:

- (A) Has attained the age of majority;
 - (B) Is certified as an instructor in driver education and training by the department of education pursuant to sections 299-1 and 299-2;
 - (C) Is physically able to operate safely a motor vehicle;
 - (D) Is able to train others in the operation of a motor vehicle; and
 - (E) Holds an Hawaii operator's license for the category of vehicle that he shall use in his instruction; or
- (2) If he formerly held a license in the State as driving instructor, which license was revoked or suspended and never reinstated; or
 - (3) If he knowingly makes a false statement or conceals a material fact in his application; and

(4) Unless the applicant pays a fee of \$10.”

2. Section 407-35 is amended to read:

“**Sec. 407-35 License for agent.** It shall be unlawful for any building and loan association doing business within the State to employ any agent for the purpose of soliciting the sale of stock, savings certificates, or investment certificates unless he is first licensed by the director of regulatory agencies, and no agent representing any building and loan association doing business within the State shall solicit the sale of stock in the company unless he is first licensed by the director.

No license shall be issued to any applicant for an agent’s license until the applicant has first made and filed in the office of the director an application upon a form to be prescribed and furnished by the director, which must show the applicant’s name, business and residence address, the name of the company to be represented, present occupation, occupation for the last twelve months, and such other information as the director may require. If the director is satisfied that the applicant is a fit and proper person to engage in the sale of stock he shall issue the license. The director may revoke the license of any agent for misrepresentation or when satisfied that the agent is not a fit and proper person to be engaged in the business of selling building and loan association stock or investment certificates.

Each agent granted a license under this provision shall pay an annual fee to the director of \$2.

Every agent’s license shall expire on June 30 next following its issuance. The license shall be renewed annually upon application to the director.”

3. Section 431-402 is amended by amending subsection (a) to read:

“(a) The insurance commissioner may suspend, revoke, or refuse to extend any license issued under sections 431-361 to 431-407 or any surplus line broker’s license for any cause specified in any other provision of this chapter, 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 chapter.
- (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 sections 431-370 to 431-371.
- (4) If the licensee has misappropriated, or converted to his 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 sections 431-641 to 431-646.
- (7) If in the conduct of his affairs under the license, the licensee has shown himself to be a source of injury and loss to the public.

- (8) If the licensee has dealt with, or attempted to deal with, insurance or to exercise powers relative to insurance outside the scope of his licenses.”

4. Section 437-28 is amended by amending subsection (b) to read:

“(b) Grounds for suspension, revocation, or denial of issuance or renewal of a license. The board may, after notice and hearing as provided in chapter 91, and subject to appeal to the circuit court of the circuit in which the board has jurisdiction under the procedure and rules prescribed from time to time by the laws of the State or the applicable rules of the courts pertaining to appeals to circuit courts, suspend, revoke, or deny the renewal of any license, or prior to such notice and hearing deny the issuance of any license if it finds that the applicant or holder, or any officer, director, general manager, trustee, partner, or stockholder owning more than a ten per cent interest of such applicant or holder:

- (1) Has intentionally made a false statement of a material fact in his application for a license or in any other statement required by this chapter or has obtained or attempted to obtain a license by fraud or misrepresentation; or
- (2) Has failed to comply, observe, or adhere to any provision of this chapter or any other law relating to the sale, taxing, or licensing of motor vehicles or any rule, regulation, or order made pursuant to this chapter; or
- (3) Has committed a fraudulent act in selling, purchasing, or otherwise dealing in motor vehicles or has misrepresented the terms and conditions of a sale, purchase, or contract for sale or purchase of a motor vehicle or any interest therein including an option to purchase such motor vehicles; or
- (4) Has engaged in his business under a past or present license issued pursuant to this chapter, in such a manner as to cause injury to the public or to those with whom he is dealing; or
- (5) Has failed to comply, observe, or adhere to any law in any other respect on account whereof the board may deem him to be an unfit or improper person to hold a license; or
- (6) Has failed to meet or maintain the conditions and requirements necessary to qualify for the issuance of a license; or
- (7) Is insolvent or has filed or is the subject of petition for bankruptcy, wage earner's plan, or financial reorganization plan; or has made or proposes to make an assignment for benefit of creditors; or
- (8) In the case of an individual applicant or holder of a license, is not at least eighteen years of age; in the case of a partnership applicant or holder of a license, if any general or limited partner thereof is not at least eighteen years of age; or
- (9) Has charged more than the legal rate of interest on the sale or purchase or attempted sale or purchase or in arranging the sale or purchase of motor vehicle or any interest therein including an option to purchase; or

- (10) Has violated any of the laws pertaining to false advertising or to retail installment sales in the offering, solicitation, selling, or purchasing, or arranging to sell or purchase a motor vehicle or any interest therein; or
- (11) Has wilfully failed or refused to perform any unequivocal and indisputable obligation under any written agreement involving the sale or purchase of a motor vehicle or any interest therein including an option to purchase; or
- (12) Has been denied the issuance of a license under this chapter for substantial culpable cause or for having had a license issued under this chapter suspended, revoked, or the renewal thereof denied for substantial culpable cause; or
- (13) Has entered or has attempted to enter or proposes to enter into any contract or agreement contrary to this chapter or any rule or regulation adopted thereunder; or
- (14) Has been or is engaged or proposes to engage in the business of selling new motor vehicles as a dealer or auction without a proper franchise therefor; or
- (15) Has at any time employed or utilized or attempted or proposed to employ or utilize any person not licensed under this chapter who is required to be so licensed; or
- (16) Being a salesman or dealer:
 - (A) Has required a purchaser of motor vehicles as a condition of sale and delivery thereof to purchase special features, appliances, accessories, or equipment not desired or requested by the purchaser; provided that this prohibition shall not apply as to special features, appliances, accessories, or equipment which are ordinarily installed on the vehicle when received or acquired by the dealer; or
 - (B) Has represented and sold as an unused motor vehicle any motor vehicle which has been operated as a demonstrator, leased, or U-drive motor vehicle; or
 - (C) Has sold a new motor vehicle without providing or securing for the purchaser the standard factory new car warranty for the vehicle, unless the dealer or salesman clearly notes in writing on the sales contract that the new motor vehicle is sold without the standard factory warranty; or
- (17) Being an applicant or holder of a dealer's license:
 - (A) Has sold or proposed to sell new motor vehicles without providing for the maintenance of a reasonable inventory of parts for such new vehicles or without providing and maintaining adequate repair facilities and personnel for such new vehicles at either the main licensed premises or at any branch location; or
 - (B) Has employed or proposed to employ any salesman who is not duly licensed under this chapter; or
 - (C) Has sold or proposed to sell new motor vehicles without being franchised therefor; or

- (18) Being an applicant or holder of an auction's license:
 - (A) Has employed or proposed to employ any auctioneer who is not licensed under this chapter; or
 - (B) Has sold or proposed to sell new motor vehicles without being franchised therefor; or
- (19) Being an applicant for a salesman's license:
 - (A) Does not intend to be employed as a salesman for a licensed motor vehicle dealer; or
 - (B) Does not intend to be employed as a salesman as his principal occupation; or
 - (C) Intends to be employed as a salesman for more than one dealer; or
- (20) Being a motor vehicle auctioneer, does not intend to be employed as such by a licensed auction under this chapter; or
- (21) Being a manufacturer, factory branch, factory representative, distributor, distributor branch, or distributor representative:
 - (A) Has attempted to coerce or has coerced any dealer in this State to enter into any agreement with such manufacturer, factory branch, factory representative, distributor, distributor branch, or distributor representative, or any other party, to perform any act not required by or to refrain from performing any act contrary to the reasonable requirements of the franchise agreement with such dealer, by threatening to cancel the franchise agreement or by threatening to refuse at the expiration of the current franchise agreement, to enter a new franchise agreement with such dealer; or
 - (B) Has attempted to coerce or coerced any dealer in this State to enter into any agreement with such manufacturer, factory branch, factory representative, distributor, distributor branch, or distributor representative, or any other party, to perform any act not required by or to refrain from performing any act not contrary to the reasonable requirements of the franchise agreement with such dealer, by awarding or threatening to award a franchise to another person for the sale of the same make of any motor vehicle in the same sales area of responsibility covered by the existing franchise agreement of the dealer; or
 - (C) Has attempted to or has cancelled or failed to renew the franchise agreement of any dealer in this State without good faith, as defined herein. Upon such cancellation or failure to renew the franchise agreement, the party cancelling or failing to renew the franchise agreement shall, at the dealer's option, either compensate the dealer at the fair market going business value for the dealer's capital investment, which shall include but not be limited to the going business value of the business, goodwill, property and improvement owned or leased by the dealer for the purpose of the franchise, inventory of parts and motor vehicles possessed by the dealer in connection with the franchise,

plus reasonable attorney's fees incurred in collecting such compensation; provided such investment shall have been made with reasonable and prudent judgment for the purpose of the franchise agreement; or compensate the dealer for his damages including attorney's fees as aforesaid, resulting from the cancellation or failure to renew the franchise agreement. As used herein, "good faith" means the duty of each party to any franchise agreement fully to comply with that agreement, or to act in a fair and equitable manner towards each other; or

- (D) Has delayed delivery of or refused to deliver without cause, any new motor vehicle to a dealer, franchised to sell the new motor vehicle, within a reasonable time after receipt of a written order for the vehicle from the dealer. The delivery to another dealer of a motor vehicle of the same model and similarly equipped as the vehicle ordered by a dealer who has not received delivery thereof, but who had placed his written order for the vehicle prior to the order of the dealer receiving the vehicle, shall be prima facie evidence of a delayed delivery of, or refusal to deliver, a new motor vehicle without cause. The nondelivery of a new motor vehicle to a dealer within sixty days after receipt of a written order for the vehicle from a dealer shall also be prima facie evidence of delayed delivery of, or refusal to deliver, a new motor vehicle without cause; provided that the delayed delivery of, or refusal to deliver, a motor vehicle shall be deemed with cause if the manufacturer establishes that the delay or refusal to deliver is due to a shortage or curtailment of material, labor, transportation, utility service, labor, or production difficulty, or other similar cause beyond the reasonable control of the manufacturer; or
- (E) Has discriminated against any of their franchised dealers in this State by directly or indirectly charging such dealer more for a new motor vehicle or services, parts, or accessories therefor or a higher rate of transportation for transporting such vehicle from the manufacturing or assembly plant to such dealer or any portion of such distance, than is charged to any other of their franchised dealers in other states for the same make, model, and year of a new motor vehicle or for the same services, parts, or accessories therefor or for similar transportation for such vehicle during the same period. A manufacturer, factory branch, factory representative, distributor, distributor branch, or distributor representative who provides or causes to be provided greater transportation benefits for a new motor vehicle as aforesaid to any of their franchised dealers in other states than is provided to any of their franchised dealers in this State for the same or lesser price or charge than that imposed upon such franchised dealer in this State during the same period is deemed to have so discriminated against such franchised dealer in this

State. Evidence of similar discriminatory practice against franchised dealers in other states shall not constitute a defense to or justification of the commission of such discriminatory act against the franchised dealer in this State. The intent and purpose of this subparagraph is to eliminate inequitable pricing policies set by manufacturers, factory branches, factory representatives, distributors, distributor branches, or distributor representatives which result in higher prices of new motor vehicles to the consumer in this State. This subparagraph shall be liberally interpreted to effect such intent and purpose and in the application thereof, the substance and effect and not the form of the acts and transactions shall be primarily considered in determining whether a discriminatory act has been committed. Nothing contained in this subparagraph (E) shall prohibit establishing delivered prices or destination charges to dealers in this State which reasonably reflect the seller's total transportation costs incurred in the manufacture or delivery of such products to such dealers, including costs which are related to the geographical distances, modes and costs of transportation involved in shipments to this State, or which meet those lower prices established by competitors; or

- (F) Has required a dealer of new motor vehicles in this State as a condition of sale and delivery of new motor vehicles to purchase special features, appliances, accessories, or equipment not desired or requested by such dealer; provided that this prohibition shall not apply to special features, appliances, accessories, or equipment, except heaters, which are regularly installed on that particular model of new motor vehicles as "standard" equipment or to special features, appliances, accessories, or equipment which are an integral part of such new motor vehicles and cannot be removed therefrom without substantial expense.

5. Section 438-5 is amended by amending subsection (b) to read:

"(b) The board may suspend or revoke a certificate of a person guilty of fraud in passing the examination or at any time guilty of grossly unprofessional or dishonest conduct, or addicted to liquor or drugs to such a degree as to render him unfit to practice any of the occupations classified under this chapter, or knowingly advertising by means of false or deceptive statements, or failing to display the certificates as provided in section 438-9."

6. Section 439-19 is amended by amending subsection (b) to read:

"(b) The board may revoke or suspend any certificate whether covering the registration of an apprentice, student, operator, instructor, school, or shop, for any of the following causes:

- (1) Professional misconduct, gross carelessness, or manifest incapacity;
- (2) Violation of any of the provisions of this chapter or the rules and regulations promulgated pursuant thereto or any other law which applies to him in the occupation covered by the certificate;
- (3) Making any false representation or promise through advertising or

otherwise or in any manner dealing fraudulently or dishonestly in the occupation covered by the certificate;

(4) Habitual intemperance in use of alcoholic beverages or addiction to the use of narcotic drugs; or

(5) Failing to display the certificate as provided in this chapter.

No certificate shall be suspended for longer than two years.”

7. Section 441-23 is amended to read:

“Sec. 441-23 Revocation, suspension, and renewal of authority licenses.

The cemetery board may revoke any authority license, or suspend the right of the licensee to use the license, or refuse to renew any such license for any of the following causes:

(1) Any dishonest or fraudulent act as a cemetery or pre-need funeral authority which causes substantial damage to another;

(2) Making repeated misrepresentations or false promises through advertising or otherwise;

(3) Wilful violation of this chapter or the rules and regulations promulgated pursuant thereto;

(4) Commingling the money or other property of others with his own;

(5) Adjudicated insane or incompetent;

(6) Selling or offering to sell any cemetery property, pre-need interment or pre-need funeral services based on speculation or promises of profit from resale.

No license shall be suspended for longer than two years and no person whose license has been revoked shall be eligible to apply for a new license until the expiration of two years.”

8. Section 441-26 is amended to read:

“Sec. 441-26 No cemetery or pre-need funeral salesman license issued

when. No cemetery or pre-need funeral salesman license shall be issued:

(1) To any person unless he has filed an application therefor;

(2) To any person who does not possess a good character and reputation for honesty, truthfulness, and fair dealing;

(3) To any person unless the person is of the age of eighteen years or more;

(4) To any person unless he files with the board a bond as required by section 441-27.”

9. Section 441-28 is amended to read:

“Sec. 441-28 Revocation, suspension and renewal of salesman licenses.

The cemetery board may revoke any salesman license, or suspend the right of the licensee to use the license, or refuse to renew the license, for any of the following causes:

(1) Making any misrepresentation concerning any cemetery property, pre-need interment or pre-need funeral services transaction;

(2) Making any false promises concerning any cemetery property, pre-need interment or pre-need funeral services transaction of a character likely to mislead another;

- (3) Making repeated misrepresentations or false promises through advertising or otherwise;
- (4) When a salesman acts or attempts to act or represents, or attempts to represent an authority other than his employer;
- (5) Failing, within reasonable time to account for any moneys belonging to others which may be in the possession or under the control of the licensee;
- (6) Any other conduct constituting fraudulent or dishonest dealings;
- (7) When a salesman fails to file with the board a written statement setting forth the name of the authority by whom he is employed;
- (8) Violation of this chapter or the rules and regulations promulgated pursuant thereto;
- (9) Commingling the money or other property of others with his own;
- (10) Adjudicated insane or incompetent;
- (11) When a salesman sells or offers to sell any cemetery property, pre-need interment or pre-need funeral services based on speculation or promises of profit from resale.

No license shall be suspended for longer than two years and no person whose license has been revoked shall be eligible to apply for a new license until the expiration of two years."

10. Section 442-9 is amended by amending subsection (a) to read:

"(a) The board of chiropractic examiners shall refuse to issue or may order any license issued under this chapter to be revoked or suspended at any time in a proceeding before the board upon any one or more of the following grounds:

- (1) Procuring or aiding or abetting in procuring a criminal abortion;
- (2) Employing what is popularly known as a "capper" or "steerer;"
- (3) Obtaining a fee on the assurance that a manifestly incurable disease can be permanently cured;
- (4) Wilfully betraying a professional secret;
- (5) Making any untruthful statement in advertising one's practice or business under this chapter;
- (6) False, fraudulent, or deceptive advertising;
- (7) Advertising directly or indirectly, or in substance upon any card, sign, newspaper advertisement, or other written or printed sign of advertisement that the holder of such license or his employer or employee will treat, cure, or attempt to treat or cure any venereal disease, or will treat or cure, or attempt to treat or cure, any person afflicted with any sexual disease, lost manhood, sexual weakness, or sexual disorder or any disease of the sexual organs;
- (8) Being habitually intemperate;
- (9) Habitually using any habit-forming drug, such as opium, or any of its derivatives, morphine, heroin, cocaine, or any other habit-forming drug;
- (10) The advertising of any means whereby the monthly periods of women can be regulated or the menses reestablished if suppressed;
- (11) Procuring a license through fraudulent misrepresentation or deceit;

- (12) Professional misconduct or gross carelessness or manifest incapability in the practice of chiropractic;
- (13) Violating section 453-2.”

11. Section 443-25 is amended to read:

“**Sec. 443-25 Grounds for suspension or revocation of licenses.** Failure to comply with this chapter, any lawful order of the collection agency advisory board, or any rule or regulation promulgated by the board, is sufficient cause for suspension or revocation of any license issued pursuant to this chapter.”

12. Section 444-17 is amended to read:

“**Sec. 444-17 Revocation, suspension, and renewal of licenses.** The contractors license board may revoke any license issued hereunder, or suspend the right of the licensee to use such licenses, or refuse to renew any such license for any of the following causes:

- (1) Any dishonest or fraudulent or deceitful act as a contractor which causes a substantial damage to another;
- (2) Engaging in any unfair or deceptive act or practice as prohibited by section 480-2;
- (3) Abandonment of any construction project or operation without reasonable or legal excuse;
- (4) Wilful diversion of funds or property received for prosecution or completion of a specific construction project or operation, or for a specified purpose in the prosecution or completion of any construction project or operation, and the use thereof for any other purpose;
- (5) Wilful departure from, or wilful disregard of plans or specifications in any material respect without consent of the owner or his duly authorized representative, which is prejudicial to a person entitled to have the construction project or operation completed in accordance with such plans and specifications;
- (6) Wilful violation of any law of the State, or of any political subdivision thereof, relating to building, including any violation of any applicable rule or regulation of the department of health, or of any applicable safety or labor law;
- (7) Failure to make and keep records showing all contracts, documents, records, receipts, and disbursements by a licensee of all his transactions as a contractor for a period of not less than three years after completion of any construction project or operation to which the records refer or to permit inspection of such records by the board;
- (8) When the licensee being a copartnership or a joint venture permits any member or employee of such copartnership or joint venture who does not hold a license to have the direct management of the contracting business thereof;
- (9) When the licensee being a corporation permits any officer or employee of such corporation who does not hold a license to have the direct management of the contracting business thereof;
- (10) Misrepresentation of a material fact by an applicant in obtaining a license;

- (11) Failure of a licensee to complete in a material respect any construction project or operation for the agreed price if such failure is without legal excuse;
- (12) Wilful failure in any material respect to comply with this chapter or the rules and regulations promulgated pursuant thereto;
- (13) Wilful failure or refusal to prosecute a project or operation to completion with reasonable diligence;
- (14) Wilful failure to pay when due a debt incurred for services or materials rendered or purchased in connection with his operations as a contractor when he has the ability to pay or when he has received sufficient funds therefor as payment for the particular operation for which the services or materials were rendered or purchased;
- (15) The false denial of any debt due or the validity of the claim therefor with intent to secure for licensee, his employer, or other person, any discount of such debt or with intent to hinder, delay, or defraud the person to whom such debt is due;
- (16) Failure to secure or maintain workmen's compensation insurance when not authorized to act as a self-insurer under chapter 386;
- (17) Knowingly entering into a contract with an unlicensed contractor involving work or activity for the performance of which licensing is required under this chapter.

No license shall be suspended for longer than two years and no person whose license is revoked shall be eligible to apply for a new license until the expiration of two years."

13. Section 448-17 is amended to read:

"Sec. 448-17 Refusal, revocation, suspension, and restoration of licenses.

The board of dental examiners shall refuse to issue a license to any applicant who fails to meet all of the requirements imposed by this chapter and may refuse to issue one to any applicant who has previously done any act which would if done by a licensee authorize the revocation or suspension of his license.

The board may suspend or revoke any license issued under this chapter for any of the following reasons:

- (1) Fraud in procuring license;
- (2) Habitual intoxication or addiction to the use of drugs;
- (3) Wilful or repeated violations of the rules of the department of health;
- (4) Acceptance of a fee for service as a witness, without the knowledge of the court, in addition to the fee allowed by the court;
- (5) Division of fees or agreeing to split or divide the fees received for dental services with any person for bringing or referring a patient;
- (6) Assisting in the care or treatment of a patient, without the knowledge of the patient or his legal representative;
- (7) Employing, procuring, inducing, aiding, or abetting a person not licensed or registered as a dentist to engage in the practice of dentistry;
- (8) Making any misrepresentations or false promises, directly or indirectly, to influence, persuade, or induce dental patronage;

- (9) Professional connection or association with, or lending his name to another for, the illegal practice of dentistry by another, or professional connection or association with any person, firm, or corporation holding himself, themselves, or itself out in any manner contrary to this chapter;
- (10) By false or fraudulent representations, obtaining or seeking to obtain practice or money or any other thing of value;
- (11) Practicing, either in the State or elsewhere, under a name other than his own;
- (12) Any other improper, unprofessional, or dishonorable conduct in the practice of dentistry.

The board may restore any license revoked under this section whenever it determines that such restoration will not endanger the public health and safety or the reputation of the profession.”

14. Section 451A-13 is amended to read:

“**Sec. 451A-13 Grounds for disciplinary action.** The board may deny, revoke, or suspend any license, certificate of endorsement, or temporary permit issued under this chapter or otherwise discipline upon proof that a person has:

- (1) Obtained a license, certificate of endorsement or temporary permit by fraud or deceit;
- (2) Obtained a fee or the making of a sale by fraud or misrepresentation;
- (3) Employed with knowledge, directly or indirectly, any suspended or unregistered person to perform any work covered by this chapter;
- (4) Applied, caused or promoted for advertising, the use of any matter, promotional literature, testimonial, guarantee, warranty, label, brand, insignia, or any other representation which is misleading, deceptive or untruthful;
- (5) Advertised a particular model or type of hearing aid for sale which in fact is not immediately available and where it is established that the purpose was to obtain prospects for the sale of a different model or type;
- (6) Represented that the service or advice of a person licensed to practice medicine will be used or made available in the selection, fitting, adjustment, maintenance, or repair of hearing aids when that is not true, or used the words “doctor,” “clinic” or similar words, abbreviations or symbols related to the medical profession when it is not accurate;
- (7) Permitted the use of a license by another;
- (8) Advertised a product or used a manufacturer’s name or trademark which implies a relationship which in fact does not exist;
- (9) Given or offered to give, directly or indirectly, money or anything of value to any person who advises another in a professional capacity as an inducement to influence him or have him influence others to purchase or contract to purchase products sold or offered for sale by a hearing aid dealer or fitter, or influencing persons to refrain from dealing in the products of competitors;

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- (10) Engaged in the fitting and selling of hearing aids under a false name or alias with fraudulent intent;
- (11) Sold a hearing aid to a person who has not been given tests utilizing appropriate established procedures and instrumentation in fitting of hearing aids;
- (12) Committed gross incompetence or negligence in fitting and selling hearing aids;
- (13) Violated any provisions of this chapter and any rules and regulations."

15. Section 453-8 is amended to read:

"Sec. 453-8 Revocation or suspension of licenses. Any license to practice medicine and surgery may be revoked or suspended by the board of medical examiners at any time in a proceeding before the board for any one or more of the following acts or conditions on the part of the holder of such license:

- (1) Procuring, or aiding or abetting in procuring, a criminal abortion;
- (2) Employing what is popularly known as a "capper" or "steerer";
- (3) Obtaining a fee on the assurance that a manifestly incurable disease can be permanently cured;
- (4) Wilfully betraying a professional secret;
- (5) Making any untruthful and improbable statement in advertising one's medical or surgical practice or business;
- (6) False, fraudulent, or deceptive advertising;
- (7) Advertising any medicine, or any means, whereby the monthly periods of women can be regulated or the menses reestablished if suppressed;
- (8) Being habitually intemperate;
- (9) Habitually using any habit-forming drug, such as opium or any of its derivatives, morphine, heroin, cocaine, or any other habit-forming drug;
- (10) Procuring a license through fraud, misrepresentation, or deceit;
- (11) Professional misconduct or gross carelessness or manifest incapacity in the practice of medicine or surgery;
- (12) Violation of the conditions or limitations upon which a limited and temporary license is issued.

If any such license is revoked or suspended by the board for any act or condition listed in this section, the holder of the license shall be in writing notified by the board of the revocation or suspension. Any license to practice medicine and surgery which has been revoked under this section may be restored by the board of medical examiners."

16. Section 455-6 is amended to read:

"Sec. 455-6 Powers and authority of the board. The state board of examiners in naturopathy may:

- (1) Adopt and use a seal to be affixed to all official acts of the board;
- (2) Make rules and regulations to determine the means, terms, translations, and definitions relating to the practice of naturopathy in the State;

- (3) Revoke or suspend any license issued to any person to practice naturopathy upon any of the following causes:
- (A) Procuring or aiding or abetting in the procuring of a criminal abortion;
 - (B) Obtaining of or any attempt to obtain a license to practice naturopathy through fraud, misrepresentation, bribery, or deceit;
 - (C) Continued practice by a person knowingly having an infectious or contagious disease;
 - (D) Advertising by means of knowingly false or deceptive statements;
 - (E) Advertising, practicing, or attempting to practice under a name other than one's own;
 - (F) Habitual drunkenness, or addiction to the use of morphine, cocaine, or other habit-forming drugs;
 - (G) Professional misconduct, gross carelessness, neglect, or manifest incapacity; any one or more of the causes having been proved to the satisfaction of the board.

The board may not suspend or revoke a license, however, for any of these causes unless the person accused has been given at least twenty days' notice, in writing, and a public hearing in conformity with chapter 91.

The board may compel the attendance of witnesses and the production of relevant books and papers for the investigation of matters that may come before them and the presiding officer of the board may administer the requisite oaths.

In case any license is revoked for any of the causes named in this section, the holder thereof shall be immediately notified of the revocation, in writing, by the board. Licenses to practice naturopathy may be restored by the board."

17. Section 457-12 is amended by amending subsection (a) to read:

"(a) The board shall have the power to deny, revoke, or suspend any license to practice nursing as a registered nurse or as a licensed practical nurse issued by the board or applied for in accordance with this chapter, or otherwise to discipline a licensee upon proof that the person:

- (1) Is guilty of fraud or deceit in procuring or attempting to procure a license to practice nursing as a registered nurse or as a licensed practical nurse; or
- (2) Is guilty of gross immorality; or
- (3) Is unfit or incompetent by reason of negligence, habits, or other causes; or
- (4) Is habitually intemperate or is addicted to the use of habit-forming drugs; or
- (5) Is mentally incompetent; or
- (6) Is guilty of unprofessional conduct; or
- (7) Has wilfully or repeatedly violated any of the provisions of this chapter."

18. Section 457-19 is amended to read:

"Sec. 457-19 Grounds for disciplinary action. The board of nursing may deny, revoke, or suspend any license to practice nursing issued by the board

or applied for in accordance with this chapter, or otherwise discipline a licensee upon proof that the person:

- (1) Is guilty of fraud or deceit in procuring or attempting to procure a license to practice nursing; or
- (2) Is guilty of gross immorality; or
- (3) Is unfit or incompetent by reason of gross negligence, or, a communicable disease which endangers others; or
- (4) Is habitually intemperate or is addicted to the use of habit-forming drugs; or
- (5) Is mentally incompetent; or
- (6) Is guilty of professional misconduct; or
- (7) Has wilfully or repeatedly violated this chapter.”

19. Section 459-9 is amended to read:

“Sec. 459-9 Refusal to permit examination or issue certificate; grounds for. The board of examiners in optometry may refuse to admit persons to its examinations or to issue the certificates for any of the following causes:

- (1) Presentation to the board of any certificate or testimony which was illegally or fraudulently obtained, or when fraud or deceit has been practiced in passing an examination;
- (2) Other grossly unprofessional or dishonorable conduct of a character likely to deceive or defraud the public, or habits of intemperance, or drug addiction calculated to destroy the accuracy of the work of an optometrist;
- (3) Advertising in the following manner:
 - (A) At a stipulated price or any variation of such a price or as being free, any of the following: the examination or treatment of the eyes, the furnishing of optometric services; or the furnishing of a lens, lenses, glasses, or the frames or fittings thereof;
 - (B) By any means whatsoever, directly or indirectly, to offer lens, lenses, glasses, or frames or fittings thereof at a discount or as a premium for the purchase of any article of merchandise;
 - (C) By means of false and deceptive statements or by statements which tend to deceive or defraud; or to claim superiority over fellow optometrists; or to publish reports of cases or certificates of same in any public advertising media;
 - (D) In conjunction with any nonlicensed person or groups of individuals by permitting the use of his name, professional title, or profession;
- (4) Directly or indirectly accepting employment to practice optometry from any person not having a valid, unrevoked certificate of registration as an optometrist or from any company or corporation;
- (5) Making of a house-to-house canvass either in person or through solicitors or associates for the purpose of selling, advertising, or soliciting the sale of eyeglasses, spectacles, lenses, frames, mountings, eye examinations, or optometric services; peddling of eyeglasses, spectacles, or lenses from house-to-house or on the streets or highways notwithstanding any law for the licensing of peddlers;

- (6) Renting space, subleasing departments, or otherwise occupying space to practice optometry on the premises of a commercial (mercantile) concern. Optometric practices must be under the registered optometrist's ownership and under his exclusive control. It must not be in conjunction with a scheme or plan with a commercial (mercantile) concern. The prescription files must be the sole property of the optometrist. The office must be definite and apart from the space occupied by any commercial (mercantile) concern so that all signs are separate and distinct from the commercial (mercantile) concern and all entrances to the premises must be separate and definite in character such that there could be no misleading interpretation that his practice is in any way associated with a commercial (mercantile) concern;
- (7) Soliciting or receiving, directly or indirectly, any price differential, rebate, refund, discount, commission, credit, kickback, or other such allowance, whether in the form of money or otherwise, from a dispensing optician for or on account of referring or sending to the dispensing optician of any intended or prospective wearer or user of any article or appliance prepared or furnished by a dispensing optician, or for or on account of any service or article furnished by the dispensing optician to any such intended or prospective wearer or user;
- (8) Using any name in connection with his practice other than the name under which he is licensed to practice, or failing to comply with the following provisions, to wit: all signs, cards, stationery, or other advertising must clearly identify the individual optometrist using or presenting the same and must be free from any ambiguity or possibility of misinterpretation as to such identity;
- (9) Employing or utilizing any unlicensed individual to perform optometric services in connection with refraction or visual training without directly and personally supervising the individuals in the performances of the services;
- (10) Using or displaying cards, public media for advertising, and signs in the following manner:
 - (A) Using professional cards containing other than his name, profession, address, telephone numbers, specialties, office hours, and words indicating examination by appointment. The cards when used shall not be larger in size than two inches by three and one-half inches.
 - (B) Using any public media such as newspaper of general circulation, directory (other than annual listing in directories), magazine, radio, television, slide, or film, for any advertising. Provided, an optometrist may announce in the newspapers only, not to exceed two column width by three inches height, for a period not to exceed three consecutive weeks for any one occasion, the opening, removal, or closing of an office, or resumption

of practice after an absence, or any change in address or telephone number.

- (C) Displaying any sign containing other than his name, profession, address, telephone numbers, specialties, office hours, and the words "eyes examined" or "eye examinations." The signs when used shall not be luminous or illuminated and the letters shall not be more than four inches in height when used at street level and not more than seven inches in height when used above street level."

20. Section 460-12 is amended to read:

"Sec. 460-12 Refusal and revocation of license. The board may refuse to issue a license, or may suspend or revoke any license at any time in a proceeding before the board upon any one or more of the following grounds:

- (1) Procuring or aiding or abetting in procuring a criminal abortion;
- (2) Employing what are popularly known as "cappers" or "steerers";
- (3) Obtaining any fee on the assurance that a manifestly incurable disease can be permanently cured;
- (4) Wilfully betraying a professional secret;
- (5) Making any untruthful and improbable statement in advertising one's practice or business under this chapter;
- (6) False, fraudulent, or deceptive advertising;
- (7) Advertising any medicine or any means whereby the monthly periods of women can be regulated or the menses reestablished if suppressed;
- (8) Being habitually intemperate;
- (9) Habitual use of any habit-forming drug such as opium, or any of its derivatives, morphine, heroin, cocaine, or any other habit-forming drug;
- (10) Procuring a license through fraud, misrepresentation, or deceit;
- (11) Professional misconduct, gross carelessness and manifest incapacity in the practice of osteopathy."

21. Section 460J-15 is amended by amending subsection (a) to read:

"(a) The board may revoke, suspend, or refuse to renew any license issued hereunder, for any of the following causes:

- (1) Departure from, or disregard of, plans or specifications in the performance of pest control work in any material respect, without consent of the owner or his authorized representative;
- (2) Disregard and violation of any law of the State, or of any political subdivision thereof, relating to building, including any violation of any applicable rule or regulation of the department of health, or of any applicable safety or labor law;
- (3) Misrepresentation of a material fact by the applicant in obtaining a license;
- (4) Failure on the part of a licensee to complete any operation or construction repairs for the price stated in the contract for such operation or construction repairs or in any modification of such contract;
- (5) Failure to comply with this chapter, or any rule or regulation adopted by the board, or the furnishing of a report of inspection without the

making of a bona fide inspection of the premises for wood-destroying pests;

- (6) The commission of any grossly negligent or fraudulent act by the licensee as an operator;
- (7) The negligent handling or use of any poisonous exterminating agent without regard to public safety;
- (8) Fraud or misrepresentation, after inspection, by any licensee engaged in pest control work or any infestation or infection of wood-destroying pests found in property or structures, or respecting any conditions of the structure that would ordinarily subject structures to attack by wood-destroying pests whether or not a report was made pursuant to sections 460J-19 and 460J-20;
- (9) Failure of an operator to make and keep all inspection reports, contracts, documents, and records, other than financial records, for a period of not less than two years after completion of any work or operation for the control of wood-destroying pests;
- (10) Wilful failure to pay when due a debt incurred for services or material rendered or purchased in connection with his operations as an operator when he has the ability to pay or when he has received sufficient funds therefor as payment for the particular operation for which the services or materials were rendered or purchased;
- (11) The false denial of any debt due or the validity of the claim therefore with intent to secure for the licensee, his employer, or other person, any discount of such debt or with intent to hinder, delay, or defraud the person to whom such debt is due;
- (12) Failure to secure or maintain workmen's compensation insurance when not authorized to act as a self-insurer under chapter 386;
- (13) Knowingly entering into a contract with an unlicensed operator involving work or activity for the performance of which licensing is required under this chapter.

No license shall be suspended for longer than two years and no person whose license is revoked shall be eligible to apply for a new license until the expiration of two years."

22. Section 462-11 is amended to read:

"Sec. 462-11 License revoked when. The board of photography may revoke any license then in force if the holder thereof is found guilty by the board of fraudulent practices or wilful misrepresentation in the conduct of his business.

No license shall be revoked except after a hearing thereon, at which hearing at least a majority of the board shall be present. The attorney general shall act as the legal adviser of the board. Written notice of the proposed hearing shall be mailed to the holder of such license at his last known address at least twenty days before the date thereof, stating the basis or cause for such proposed action or revocation, and appointing a time and place for the hearing. At the hearing the board may compel the attendance of witnesses, administer oaths, and examine witnesses under oath. The board shall keep

a complete record of all proceedings with respect to the revocation of any license.”

23. Section 463-6 is amended to read:

“**Sec. 463-6 Private detective; qualifications for license.** The board of detectives and guards may grant a private detective license to any suitable citizen of the United States and to any suitable corporation, partnership, or association making written application therefor. The applicant, if an individual, or the principal detective of a corporation, shall have been a resident of the State for not less than one year immediately prior to the filing of application for license, shall be not less than twenty-five years of age, shall have a high school education or its equivalent, and shall have had experience reasonably equivalent to at least four years of full-time investigational work. Any licensee may employ as many agents, operatives, and assistants as he deems necessary for the conduct of his business, provided such licensee, or the principal detective if a corporation is the employer, shall be held responsible for the acts of those employees while they are acting within the scope and purpose of the licensee’s business. Employees shall have an eighth grade education or its equivalent.”

24. Section 463-8 is amended to read:

“**Sec. 463-8 Guard; Qualifications for license.** The board of detectives and guards may grant a guard or a guard agency license to any suitable citizen of the United States and to any suitable corporation, partnership, or association making written application therefor. The applicant, if an individual, or the principal guard in the case of a corporation, shall have been a resident of the State for not less than one year immediately prior to the filing of application for license, shall be not less than twenty-five years of age, shall have a high school education or its equivalent, and shall have had experience reasonably equivalent to at least four years of full-time guard work. Any licensee may employ as many agents, operatives, and assistants as he deems necessary for the conduct of his business, provided such licensee, or the principal guard if the employer is a corporation, shall be held responsible for the acts of those employees while they are acting within the scope and purpose of the licensee’s business. Employees shall have an eighth grade education or its equivalent.”

25. Section 463E-6 is amended to read:

“**Sec. 463E-6 Revocation and suspension of license.** Any license to practice podiatry may be revoked or suspended by the board of medical examiners at any time in a proceeding before the board for any one or more of the following acts or conditions on the part of the holder of the license:

- (1) Employing what is popularly known as a “capper” or “steerer”;
- (2) Obtaining any fee on the assurance that a manifestly incurable disease can be permanently cured;
- (3) Wilfully betraying a professional secret;
- (4) Advertising one’s podiatrist business with any untruthful and improbable statement;
- (5) False or fraudulent advertising;
- (6) Being habitually intemperate;

- (7) Habitually using any habit-forming drug;
- (8) Procuring a license through fraud, misrepresentation, or deceit;
- (9) Violation of section 453-2;
- (10) Professional misconduct or gross carelessness or manifest incapacity in the practice of podiatry;
- (11) Engaging in the practice of podiatry other than as defined in section 463E-1."

26. Section 465-13 is amended to read:

"Sec. 465-13 Denial, suspension, revocation of certificate. The board of certification for practicing psychologists shall refuse to grant a certificate to any applicant and may revoke or suspend any certificate upon any of the following grounds:

- (1) Habitual use of narcotic drugs or any other substance which impairs the intellect and judgment to such an extent as to incapacitate the applicant or certificate holder for the practice of psychology;
- (2) Habitual drunkenness;
- (3) Violation of this chapter;
- (4) Any unethical practice of psychology as defined by the board in accordance with its own rules and regulations."

27. Section 466-9 is amended by amending subsection (a) to read:

"(a) Causes. The board may, in accordance with the provisions of chapter 91, (1) cancel, revoke, suspend for a period not exceeding two years, or refuse to renew any certificate of certified public accountant, registration of public accountant or permit to practice issued under this chapter, or it may (2) censure a person holding any such certificate, registration or permit, for any one or a combination of the following causes:

- (A) Dishonesty, deceit or fraud in obtaining any certificate, registration or permit to practice issued under the provisions of this chapter.
- (B) Dishonesty, deceit, fraud or gross negligence in the practice of public accountancy.
- (C) Violation of any of the provisions of section 446-10 or of any rule or regulation of the board relating to professional conduct."

28. Section 467-8 is amended to read:

"Sec. 467-8 Prerequisites for licensing. No license hereunder shall be issued to:

- (1) Any person unless he has demonstrated by passing with a grade satisfactory to the real estate commission a written examination given by it and appropriate to the license sought that he has a reasonable knowledge of (A) estates, interests, and rights in real property, (B) the documents or acts or occurrences by which such property is transferred or otherwise affected, (C) the rights and duties of an agent, (D) the laws of the State relating to real estate brokers and salesmen, and (E) such other subjects as the commission determines to be essential for the protection of the general public in its real estate transactions;
- (2) Any person who does not possess a good character and reputation for honesty, truthfulness, and fair dealing;

- (3) Any copartnership unless every member of the copartnership who actively participates in the real estate brokerage business thereof holds a real estate broker's license;
- (4) Any corporation unless the real estate brokerage business thereof is under the direct management of an officer or employee thereof and unless the officer or employee holds a real estate broker's license."

29. Section 467-14 is amended to read:

"Sec. 467-14 Revocation and suspension of licenses. The real estate commission may revoke any license issued hereunder, or suspend the right of the licensee to use the license, for any of the following causes:

- (1) Making any misrepresentation concerning any real estate transaction;
- (2) Making any false promises concerning any real estate transaction of a character likely to mislead another;
- (3) Pursuing a continued and flagrant course of misrepresentation, or making of false promises through advertising or otherwise;
- (4) Without first having obtained the written consent so to do of both parties involved in any real estate transaction, acting for both the parties in connection with the transaction, or collecting or attempting to collect commissions or other compensation for his services from both of such parties;
- (5) When licensee, being a real estate salesman, accepts any commission or other compensation for the performance of any of the acts hereinabove enumerated in the definition of real estate salesman from any person, copartnership, or corporation other than his employer or, being a real estate broker or salesman, employs or compensates one not licensed under this chapter to perform any such act;
- (6) When the licensee, being a real estate salesman, acts or attempts to act as a real estate broker or represents, or attempts to represent, a real estate broker other than his employer;
- (7) Failing, within a reasonable time, to account for any moneys belonging to others which may be in the possession or under the control of the licensee;
- (8) Any other conduct constituting fraudulent or dishonest dealings;
- (9) When the licensee, being a copartnership, permits any member of the copartnership who does not hold a real estate broker's license to actively participate in the real estate brokerage business thereof or permits any employee thereof who does not hold a real estate salesman's license to act as a real estate salesman therefor;
- (10) When the licensee, being a corporation, permits any officer or employee of the corporation who does not hold a real estate broker's license to have the direct management of the real estate brokerage business thereof or permits any officer or employee thereof who does not hold a real estate salesman's license to act as a real estate salesman therefor;

- (11) When the licensee, being a real estate salesman, fails to file with the commission a written statement setting forth the name of the real estate broker by whom he is employed;
- (12) Violating this chapter or the rules and regulations promulgated pursuant thereto;
- (13) Splitting fees with or otherwise compensating others not licensed hereunder for referring business; provided, that a licensed broker may pay a commission to a licensed broker of another state if such broker does not conduct in this State any of the negotiations for which a commission is paid;
- (14) Commingling the money or other property of his principal with his own;
- (15) Adjudicated insane or incompetent.

No license shall be suspended for longer than two years and no person whose license has been revoked shall be eligible to apply for a new license until the expiration of two years."

30. Section 471-10 is amended by amending subsection (b) to read:

"(b) Revocation and suspension. The board may revoke or suspend the license of any veterinarian for any of the following causes:

- (1) Professional misconduct, gross negligence or manifest incapacity;
- (2) Violation of this chapter or any other law which applies to him as a practicing veterinarian;
- (3) Making any false representations or promises through advertising or otherwise or in any manner dealing fraudulently or dishonestly in connection with the practice of veterinary medicine;
- (4) Habitual intemperance in the use of alcoholic beverages or addiction to the use of narcotic or dangerous substances;
- (5) Mental incompetence.

No license shall be suspended for longer than two years."

SECTION 4. Section 378-1, Hawaii Revised Statutes, is amended to read:

"Sec. 378-1 Definitions. As used herein:

- (1) "Person" means one or more individuals, and includes partnerships, associations, or corporations, legal representatives, trustees, trustees in bankruptcy, or receivers.
- (2) "Employment agency" means any person undertaking to procure employees or opportunities to work.
- (3) "Labor organization" means any organization which exists and is constituted for the purpose, in whole or in part, of collective bargaining or of dealing with employers concerning grievances, terms or conditions of employment, or of other mutual aid or protection.
- (4) "Employer" means any person having one or more persons in his employment, and includes any person acting as an agent of an employer, directly or indirectly.
- (5) "Employment" means any service performed by an individual for another person under any contract of hire, express or implied, oral or written, whether lawfully or unlawfully entered into.

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- (6) "Arrest and court records" include any information about an individual having been questioned, apprehended, taken into custody or detention, held for investigation, charged with an offense, served a summons, arrested with or without a warrant, tried, or convicted pursuant to any law enforcement or military authority.

SECTION 5. All laws and parts of laws heretofore enacted which are in conflict with this Act are amended to conform to this Act. All acts passed during this regular session of 1974, whether enacted before or after the passage of this Act, shall be amended to conform to this Act, unless such acts specifically provide that this Act is being amended.

SECTION 6. Statutory material to be repealed is bracketed. New material is underscored. In printing this Act, the revisor of statutes need not include the brackets, the bracketed material, or the underscoring.*

SECTION 7. This Act shall take effect upon its approval.

(Approved June 10, 1974.)

*Edited accordingly.