

ACT 322

H.B. NO. 1885

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:

SECTION 1. Section 26-9, Hawaii Revised Statutes, is amended to read as follows:

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

(b) The department shall protect the interests of consumers, depositors, and investors throughout the State. It shall set standards and enforce all laws and rules

governing the licensing and operation of, and register and supervise the conduct of, trades, businesses, and professions, including banks, insurance companies, brokerage firms, and other financial institutions.

(c) The board of acupuncture, board of public accountancy, board of barbers, board of cosmetology, boxing commission, board of chiropractic examiners, contractors license board, board of dental examiners, board of electricians and plumbers, elevator mechanics licensing board, board of professional engineers, architects, surveyors, and landscape architects, board of hearing aid dealers and fitters, board of massage[,] therapy, board of medical examiners, motor vehicle industry licensing board, motor vehicle repair industry board, board of examiners in naturopathy, board of nursing, board of examiners of nursing home administrators, board of dispensing opticians, board of examiners in optometry, board of osteopathic examiners, pest control board, board of pharmacy, board of physical therapy, board of psychology, board of private detectives and guards, real estate commission, board of veterinary examiners, board of speech pathology and audiology, and any board, commission, program, or entity created pursuant to or specified by statute in furtherance of the purpose of this section including but not limited to section 26H-4, or chapters 484, 514A, and 514E [are] shall be placed within the department of commerce and consumer affairs for administrative purposes.

(d) Except as otherwise provided by this chapter, the functions, duties, and powers, subject to the administrative control of the director of commerce and consumer affairs, and the composition of each board and commission shall be as [heretofore] provided by law.

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

(f) The director of commerce and consumer affairs may appoint a hearings officer or officers not subject to chapters 76 and 77 to hear and decide any case or controversy regarding licenses and the application and enforcement of rules involving any of the boards, commissions, or regulatory programs within the department of commerce and consumer affairs. The hearings officer or officers shall have power to issue subpoenas, administer oaths, hear testimony, find facts, and make conclusions of law and a recommended decision; provided that the conclusions and decisions shall be subject to review and redetermination by the officer, board, or commission which would have heard the case in the first instance in the absence of a hearings officer. The review shall be conducted in accordance with chapter 91.

(g) The director of commerce and consumer affairs may appoint an information officer not subject to chapters 76 and 77 who shall ensure the prompt and efficient handling of consumer inquiries and the development of a strong consumer education program.

(h) The director may appoint a complaints and enforcement officer not subject to chapters 76 and 77 who shall facilitate the receipt, arbitration, investigation, prosecution, and hearing of complaints regarding any person who furnishes commodities, services, or real estate for which a license, registration, or certificate is required from the department or any board, commission, or regulatory program thereunder. In representing the State in bringing any action to enjoin unlicensed, unregistered, or uncertified activities, the department of commerce and consumer affairs' attorneys shall be empowered to exercise all authority granted to the attorney general and to the director of the office of consumer protection under sections 487-12, 487-14, 480-3.1, 480-15, 480-15.1, 480-20(c), and 480-22, as these sections now exist and as they subsequently may be amended. The attorneys also shall be empowered to exercise all authority granted to the attorney general and to the

responsible attorneys of the various counties under section [92-51] 92F-13 in all cases involving documents and records within the custody or control of the regulated industries complaints office.

(i) The functions and authority previously exercised by the treasurer (except funds custody, cash management, debt management, and administering of veterans loans transferred to the department of budget and finance) as constituted are transferred to the department of commerce and consumer affairs established by this chapter. The director of commerce and consumer affairs also shall be the commissioner of securities.

(j) In the course of an investigation of matters affecting the interest of consumers, depositors, or investors, or of any other matter within the jurisdiction of the department, the director shall have the power to subpoena witnesses, examine [them] witnesses under oath, and require the production of books, papers, documents, or objects [which] that the director deems relevant or material to the inquiry. Upon application by the director, obedience to the subpoena may be enforced by the circuit court in the county [where] in which the person subpoenaed resides or is found in the same manner as a subpoena issued by the clerk of a circuit court.

The director shall appoint and commission one or more investigators to serve subpoenas as the exigencies of the public service may require. Subpoenas served by persons appointed and commissioned by the director shall have the same force and effect as subpoenas served by police officers or deputy sheriffs. Nothing in this subsection shall be construed to entitle persons commissioned and appointed by the director to retirement benefits applicable to police officers under chapter 88.

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

(l) Any law to the contrary notwithstanding, the director of commerce and consumer affairs may establish, increase, decrease, or repeal fees relating to any aspect of the registration, certification, [or] licensure, or any other administrative process for all laws within the jurisdiction of the department. The fee assessed shall bear a reasonable relationship between the revenue derived from the fee and the cost or value of services rendered. Amendments to fee assessments shall be made pursuant to chapter 91.

Effective July 1, 1994, the fees collected by the professional and vocational licensing division and the business registration division shall be deposited into the compliance resolution fund under subsection (o) and shall be used to defray administrative costs, including personnel costs associated with these two programs and costs incurred by supporting offices and divisions.

The director may appoint program specialists, not subject to chapter 76 and 77, to assist with the activities of the professional and vocational licensing division.

(m) Notwithstanding section 92-17 or any other law to the contrary, all boards, commissions, and regulatory programs placed within the department of commerce and consumer affairs for administrative purposes shall delegate their authority to receive, arbitrate, investigate, and prosecute complaints to the department.

(n) Each board and commission, as well as the director, by written order, may delegate to the executive secretary or other personnel of the department any of its powers or duties as it deems reasonable and proper for the administration of the licensing laws in section 26H-4 which are within the jurisdiction of the department of commerce and consumer affairs. The delegated powers and duties may be

exercised by the executive secretary or other personnel of the department in the name of the board, commission, or the director. The board, commission, and director shall not, however, delegate its authority to adopt, amend, or repeal rules, or take final disciplinary action against a licensee.

(o) Every person licensed under any chapter subject to section 26H-4, other than chapter 468, and every person licensed subject to chapter 485 or registered under chapter 467B shall pay upon issuance of a license, permit, certificate, or registration a fee of \$10 and a subsequent annual fee of \$10, which may be collected biennially or pursuant to rules adopted under chapter 91,¹ and which shall be deposited into the special fund established under this subsection. Every filing pursuant to chapter 514E or section 485-6(15) shall be assessed, upon initial filing and at each renewal period[, where] in which a renewal is required, a fee [which] that shall be prescribed by rules adopted under chapter 91, and [which] that shall be deposited into the special fund established under this subsection. Any unpaid fee shall be paid by the licensed person, upon application for renewal, restoration, reactivation, or reinstatement of a license, and by the person responsible for the renewal, restoration, reactivation, or reinstatement of a license, upon the application for renewal, restoration, reactivation,¹ or reinstatement of the license. If the fees are not paid, the director may deny renewal, restoration, reactivation, or reinstatement of the license. The director may establish, increase, decrease, or repeal the fees when necessary pursuant to rules adopted under chapter 91.

There is created in the state treasury a special fund to be known as the compliance resolution fund to be expended by the director's designated representatives as provided by this subsection. Notwithstanding any law to the contrary, the moneys in the fund shall consist of annual fees collected under this subsection,² [and] section 514A-95,² [and] penalties or fines assessed as a result of action brought by department personnel,² and penalties,² [or] fines,² or reimbursement of costs or attorneys fees assessed as a result of actions brought for violations of chapters 480 and 487. Any law to the contrary notwithstanding, the director may use the moneys in the fund to employ, without regard to chapters 76 and 77, hearings officers, investigators, attorneys, accountants, and other necessary personnel[.] to implement this subsection. In addition, the moneys in the fund shall defray all other administrative costs, including personnel costs of operating the regulated industries complaints office and costs incurred by supporting offices and divisions. The moneys in the fund may be used to train [such] personnel as the director [finds] deems necessary, and for any other activity related to compliance resolution.

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

- (1) Any licensee or applicant under any chapter subject to section 26H-4, other than chapter 468, has complied with that chapter;
- (2) Any person subject to chapter 485 has complied with that chapter; [or]
- (3) Any person submitting any filing required by chapter 514E or section 485-6(15) has complied with chapter 514E or section 485-6(15);
- (4) Any person has complied with the prohibitions against unfair and deceptive acts or practices in trade or commerce[.]; or
- (5) Any person subject to chapter 467B has complied with that chapter.

The director shall prepare and submit an annual report to the governor and the legislature on the use of the compliance resolution fund. The report shall describe expenditures made from the fund including non-payroll operating expenses. This subsection shall be repealed effective July 1, 2001.

(p) Any law to the contrary notwithstanding, the department of commerce and consumer affairs, or any board or commission placed within it for administrative purposes, may contract with professional testing services to prepare, administer, and grade examinations and tests for license applicants. For these purposes, the

department may require applicants to pay the examination fee directly to the testing agency.

(q) Any law to the contrary notwithstanding, when any type of bond or insurance required to be maintained by any licensee under a regulatory program of the department of commerce and consumer affairs, or of any board or commission assigned to the department of commerce and consumer affairs, cannot reasonably be secured, the department, board, or commission may provide by rule for alternative forms of security to the consumer so long as that alternate security is no less than that provided by the type of bond or insurance initially required.

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

(s) The director of commerce and consumer affairs may establish advisory committees, the members of which shall serve as consultants to the boards in their review of licensees referred for possible disciplinary action and as experts to the department for investigations. Each advisory committee shall be appointed by the director from a list of licensees submitted annually by the board for which an advisory committee is appointed. Each member of the committee shall serve until a new committee is established or until the particular case for which the member was designated a consultant or expert has been concluded.

All members of the advisory committee shall serve voluntarily and without compensation, but shall be paid reasonable allowances for travel and expenses that may be incurred as a result of performance of their duties on the committee. The costs shall be paid by the department.

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

SECTION 2. Section 438-3, Hawaii Revised Statutes, is amended to read as follows:

"§438-3 Creation of state board. There shall be a state board of barbers consisting of seven members who shall be appointed and may be removed by the governor. The members shall be residents of the State and five members must have practiced barbering [in the State] for at least five consecutive years immediately preceding the member's appointment and two shall be public members. Each member shall serve for a term of four years, and until the member's successor is appointed and qualified."

SECTION 3. Section 439-3, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

"(b) Five of the members of the board, at least one of whom shall be from an island other than Oahu, shall be beauty operators who have been licensed to practice [in the State] for at least five years and have been actively and continuously engaged in the practice of cosmetology for that period and two shall be public members."

SECTION 4. Section 442-3, Hawaii Revised Statutes, is amended to read as follows:

"§442-3 Board of examiners. There shall be a board to be known as the "state board of chiropractic examiners," that shall consist of five members. Three members of the board shall be licensees under this chapter and two shall be public

members. As used in this chapter, "board" means the state board of chiropractic examiners.

No person connected with any chiropractic school or college is eligible to appointment as a member of the board. Each member licensed under this chapter shall have practiced chiropractic [in this State] for at least five years immediately prior to the date of appointment."

SECTION 5. Section 444-3, Hawaii Revised Statutes, is amended to read as follows:

"**§444-3 Contractors license board.** (a) There shall be a contractors license board of thirteen members.

(b) Of the board members:

- (1) Ten shall be contractors who have been actively engaged in the contracting business for a period of not less than five years preceding the date of their appointment;
- (2) Five shall be general engineering or building contractors, five shall be specialty contractors, and three shall be noncontractors. No member shall receive any compensation for the member's services, but each shall be reimbursed for necessary traveling expenses incurred in the performance of duties.

[(3)] (c) Each county shall be represented on the board.

[(c)] (d) No one, except the three noncontractor members, shall be eligible for appointment who does not at the time of the member's appointment hold a valid and unexpired license to operate as a contractor."

SECTION 6. Section 448-5, Hawaii Revised Statutes, is amended to read as follows:

"**§448-5 Board of examiners; appointment.** The board of dental examiners shall consist of eleven members, eight of whom shall be practicing dentists who have been engaged in the practice of dentistry [in the State] for a period of five years preceding their several appointments, one of whom shall be a practicing dental hygienist, duly licensed under section 447-1, who has been engaged in the practice of dental hygiene [in the State] for a period of five years preceding appointment, and two of whom shall be public members. No member shall be in any way connected with, or interested financially in, any dental supply company. One member in the practice of dentistry shall be appointed from each of the counties of Hawaii, Maui, and Kauai and five members in the practice of dentistry shall be appointed from the city and county of Honolulu. As used in this chapter, "board" means the board of dental examiners."

SECTION 7. Section 451A-3, Hawaii Revised Statutes, is amended to read as follows:²

"**§451A-3 Appointment, qualifications, term.** There is hereby established a board of hearing aid dealers and fitters which shall consist of seven members. Of the seven members, there shall be at least one hearing aid dealer and fitter, one otolaryngologist, and one audiologist. Each hearing aid dealer and fitter on the board shall have at least five years of experience and shall hold a valid license as a hearing aid dealer and fitter.

All members of the board shall be residents of the State."

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SECTION 8. Section 452-4, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:²

“(b) Three members shall have at least three years of practical experience as licensed massage therapists, who shall be actively employed as massage therapists, and two shall be public members.”

SECTION 9. Section 457-4, Hawaii Revised Statutes, is amended to read as follows:

“**§457-4 Qualifications of board members.** Each member of the board shall be a resident of this State.

Registered nurse members of the board shall possess the following additional qualifications:

- (1) Graduation from a state-accredited educational program to prepare for a registered nurse and at least a bachelor's degree in nursing but preferably a graduate degree in nursing; and
- (2) Have a current, unencumbered license as a registered nurse [in the State]; and
- (3) Have at least five years of experience after graduation in the practice of nursing as a registered nurse and at least three years of active nursing experience as a registered nurse immediately preceding appointment or reappointment.

Licensed practical nurse members of the board shall possess the following additional qualifications:

- (1) Graduation from a state-accredited educational program to prepare for a licensed practical nurse; and
- (2) Have a current, unencumbered license as a licensed practical nurse [in the State]; and
- (3) Have at least five years of successful experience in the practice of nursing as a licensed practical nurse after graduation and at least three years of active nursing experience as a licensed practical nurse immediately preceding appointment or reappointment.”

SECTION 10. Section 459-3, Hawaii Revised Statutes, is amended to read as follows:²

“**§459-3 Board of examiners; members, appointment, qualifications.** There shall be a board to be known as the board of examiners in optometry, for the State. The board shall consist of seven members, five of whom shall be licensed optometrists who have actually engaged in the practice of optometry for at least five years and two of whom shall be public members. One of the five licensed optometrist members shall be from a county other than the city and county of Honolulu. No member of the board shall be a stockholder, member of the faculty, or on a board of trustees of any school of optometry.”

SECTION 11. Section 460J-2, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:²

“(a) There shall be a pest control board of nine members. Six members of the board shall be appointed by the governor; of which four shall have been for a period of not less than five years preceding the date of their appointment, licensed pest control operators actively engaged in the business of pest control; and two shall be public members. Three members of the board shall serve on an ex officio

voting basis: the chairperson of the board of agriculture or the chairperson's representative, the director of health or the director's representative, and the chairperson of the department of entomology of the college of tropical agriculture and human resources of the University of Hawaii or the chairperson's representative. No two members of the board shall be employed by or associated with the same business firm engaged in pest control."

SECTION 12. Section 461-2, Hawaii Revised Statutes, is amended to read as follows:

"§461-2 Board of pharmacy; appointment; qualifications. There shall be a board of pharmacy of seven members.

Five members of the board shall be graduates of a school or college of pharmacy and shall have been licensed as pharmacists and actively engaged in the practice of pharmacy [in the State] for at least five years prior to their appointment and two shall be public members. Four members of the board shall be residents of the city and county of Honolulu and three shall be residents of counties other than the city and county of Honolulu."

SECTION 13. Section 461J-4, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

"(b) Each physical therapist member of the board shall possess a valid permanent license as a physical therapist [in this State] and shall have, after graduation from a school of physical therapy, at least three years of full-time experience or the equivalent in any of the following areas or in any combination of the following: clinical physical therapy services, administration in physical therapy or related health fields, or teaching in an educational program to prepare practitioners of physical therapy."

SECTION 14. Section 464-6, Hawaii Revised Statutes, is amended to read as follows:²

"§464-6 Board of professional engineers, etc., members; appointment; tenure; qualifications. There shall be a state board of professional engineers, architects, surveyors, and landscape architects hereinafter called "the board". The board shall consist of fourteen members, including at least four professional engineers, three professional architects, two professional surveyors, two professional landscape architects, and three public members. Each county shall be represented by at least one member who is a resident of the county. Each member shall hold over after the expiration of the member's term until the member's successor is duly appointed and qualified.

Each member shall have been a resident of the State for at least three years. A member representing the profession shall have been engaged in the practice of the member's profession for at least five years immediately preceding the date of the member's appointment. Any member of the board who incurs expenses in connection with the preparation and grading of examination papers shall be reimbursed for those expenses with the approval of the department."

SECTION 15. Section 465-4, Hawaii Revised Statutes, is amended to read as follows:²

"§465-4 Board of psychology; appointment, qualifications, term, expenses. There is created a board of psychology consisting of seven members. There

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shall be five members representing varied specialties of the profession, each of whom shall be licensed to practice psychology under this chapter and have a minimum of five years of post-doctoral professional experience, and two lay members from the community at large. A lay member shall not be a psychologist, an applicant, or former applicant for licensure as a psychologist.”

SECTION 16. Section 467-3, Hawaii Revised Statutes, is amended to read as follows:²

“**§467-3 Commission, appointments, qualifications, tenure.** There shall be appointed a commission to be known as the real estate commission, to consist of nine members, at least four of whom shall be licensed real estate brokers who have been engaged in business as licensed real estate brokers or salespersons for three years immediately preceding their appointments, each of whom shall be a citizen of the United States and shall have resided in the State for at least three years preceding appointment, and one of whom shall be designated by the appointing power as chairperson. Four members shall be residents of the city and county of Honolulu, one shall be a resident of the county of Hawaii, one shall be a resident of the county of Maui, and one shall be a resident of the county of Kauai and two members shall be public members.

Appointments shall be made for a term of four years, commencing from the date of expiration of the last preceding term and shall be made to expire on June 30. Appointments shall be made so that at least one appointment shall be required each year.

Any vacancy shall be filled by appointment for the unexpired term.”

SECTION 17. Section 471-3, Hawaii Revised Statutes, is amended to read as follows:

“**§471-3 Board of examiners; appointment and removal; qualifications.** A board of veterinary examiners, consisting of seven members, four of whom shall be residents of the city and county of Honolulu and three of whom shall be residents of counties other than the city and county of Honolulu, shall be appointed, and may be removed, by the governor.

Five of the members of the board shall be veterinarians who have been licensed to practice [in the State] for at least five years and shall be actively engaged in the practice of veterinary medicine or, if not active at the time of appointment, shall have been previously so engaged for ten years and two shall be public members.”

SECTION 18. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 19. This Act shall take effect on July 1, 1993; provided that the amendments to section 26-9(o) shall take effect on July 1, 1994.

(Approved June 22, 1993.)

Notes

1. Should be underscored.
2. Section not amended.