

**ACT 133**

H.B. NO. 736

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

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

SECTION 1. During the regular session of 2002, the legislature recognized that individuals who received state or federal student loans for their college degrees also secured something of value that could not be lost or taken away, and which would give the borrower a continuing, lifelong economic benefit. The legislature also found that student loan recipients must make every effort to honor their financial obligations, which are guaranteed by taxpayer dollars in the event of default. Thus, H.B. No. 2752, H.D. 1, S.D. 1, C.D. 1, was passed by the legislature and subsequently signed into law by the governor as Act 226, Session Laws of Hawaii 2002 (Act 226), effectively providing for professional or vocational license sanctions upon default by the borrower.

The purpose of this Act is to address a perceived lack of due process in Act 226, by requiring that a license may be denied or suspended under Act 226 only if the agency administering the loan provides the licensing authority with certification of the default, breach, or noncompliance based on a judgment from a state district or circuit court.

SECTION 2. Chapter 436C, Hawaii Revised Statutes, is amended by adding two new sections to be appropriately designated and to read as follows:

**“§436C-A Judicial certification.** (a) The certification of an administering entity under section 436C-2(a) shall be based on the judgment of a district or circuit court in this State that:

- (1) Specifies the amount of the default;
- (2) Finds that the education of the licensee or license applicant was financed by the student loan, student loan repayment contract, or scholarship contract that is in default;
- (3) Finds that the licensee or license applicant has the ability to cure the default without undue financial hardship; and
- (4) Includes proof of service of notice to the licensee or license applicant that the judgment will be reported to the licensing authority with a direction to suspend the license, deny the application for a license, or deny the application for renewal or reinstatement of the license;

provided that no finding under paragraph (3) shall be required in the case of a default judgment or if the licensee or license applicant fails to petition the court as provided in section 436C-B.

(b) A licensing authority shall act on the certification of an administering entity under section 436C-2 only if the certification complies with this section.

**§436C-B Judicial finding of financial hardship; guidelines.** If a licensee or license applicant who is the subject of a certification issued pursuant to section 436C-A declares to the court that the default cannot be cured without financial hardship, the court may consider the following in determining whether financial hardship exists:

- (1) That the administering entity had notice of the defendant’s financial hardship prior to initiation of civil proceedings in the form of a completed statement of financial status and a request for deferment, forbearance, loan consolidation, extension of the repayment schedule, or a graduated or income-sensitive repayment plan;
- (2) Findings made pursuant to section 636-4;
- (3) The earning potential and borrowing capacity of the licensee or license applicant and any spouse relative to the cost of reasonable necessities; and
- (4) Avoidance of extreme and inequitable changes in the licensee’s or license applicant’s income.”

SECTION 3. Section 436C-1, Hawaii Revised Statutes, is amended by adding a new definition to be appropriately inserted and to read as follows:

““Licensing authority” means any unit of state government, including agencies, departments, boards, commissions, authorities, the supreme court, or any other entity within the State authorized by statute to grant or deny a license.”

SECTION 4. Section 189-2, Hawaii Revised Statutes, is amended to read as follows:

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

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

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

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

(e) The department shall suspend, shall refuse to renew, reinstate, or restore, or shall deny any license issued under this section if the department has received certification from the child support enforcement agency pursuant to section 576D-13 that the licensee or applicant is not in compliance with an order of support or has failed to comply with a subpoena or warrant relating to a paternity or child support proceeding. The department shall issue, renew, reinstate, or restore such a license only upon receipt of authorization from the child support enforcement agency, the office of child support hearings, or the family court.

(f) The department shall not renew or reinstate, or shall deny or suspend any license or application, if the department has received certification from an administering entity pursuant to chapter 436C that the licensee or applicant is in default or breach of any obligation under any student loan, student loan repayment contract, or scholarship contract that financed the licensee’s or applicant’s education, or has failed to comply with a repayment plan.

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

- (1) Suspend the license;
- (2) Deny the application or request for renewal of the license; or
- (3) Deny the request for reinstatement of the license,

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

SECTION 5. Section 302A-807, Hawaii Revised Statutes, is amended by amending subsection (e) to read as follows:

“(e) The board shall not renew or reinstate, or shall deny[;] or suspend[; or revoke,] any license, credential, or application, if the board has received certification from an administering entity pursuant to chapter 436C that the licensee or applicant is in default or breach of any obligation under any student loan, student loan repayment contract, or scholarship contract[;] that financed the licensee’s or applicant’s education, or has failed to comply with a repayment plan. [Unless]

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

- (1) Suspend the license;
- (2) Deny the application or request for renewal of the license; or
- (3) Deny the request for reinstatement of the license,

and unless otherwise provided by law, [the board] shall renew, reinstate, or grant the license or credential only upon receipt of an authorization from the administering entity.”

SECTION 6. Section 321-15, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

“(c) The department shall not renew or reinstate, or shall deny<sup>[;]</sup> or suspend<sup>[, or revoke,]</sup> any license or application, if the department has received certification from an administering entity pursuant to chapter 436C that the licensee or applicant is in default or breach of any obligation under any student loan, student loan repayment contract, or scholarship contract<sup>[;]</sup> that financed the licensee’s or applicant’s education, or has failed to comply with a repayment plan. ~~[Unless]~~

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

- (1) Suspend the license;
- (2) Deny the application or request for renewal of the license; or
- (3) Deny the request for reinstatement of the license,

and unless otherwise provided by law, ~~[the department]~~ shall grant, renew, or reinstate <sup>[a]</sup> the license only upon receipt of an authorization from the administering entity.”

SECTION 7. Section 431:9-235, Hawaii Revised Statutes, is amended by amending subsection (d) to read as follows:

“(d) The commissioner shall not renew or reinstate, or shall deny, suspend, or revoke any license or application, if the commissioner has received certification from an administering entity pursuant to chapter 436C that the licensee or applicant is in default or breach of any obligation under any student loan, student loan repayment contract, or scholarship contract<sup>[;]</sup> that financed the licensee’s or applicant’s education, or has failed to comply with a repayment plan. ~~[Unless]~~

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

- (1) Suspend the license;
- (2) Deny the application or request for renewal of the license; or
- (3) Deny the request for reinstatement of the license,

and unless otherwise provided by law, ~~[the commissioner]~~ shall renew, reinstate, or grant <sup>[a]</sup> the license only upon receipt of an authorization from the administering entity.”

SECTION 8. Section 431:9A-112, Hawaii Revised Statutes, is amended by amending subsections (a) and (b) to read as follows:

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

- (1) Providing incorrect, misleading, incomplete, or materially untrue information in the license application;
- (2) Violating any law, or violating any rule, subpoena, or order of the commissioner or of another state’s commissioner;
- (3) Obtaining or attempting to obtain a license through misrepresentation or fraud;
- (4) Improperly withholding, misappropriating, or converting any moneys or properties received in the course of doing business;
- (5) Intentionally misrepresenting the terms of an actual or proposed insurance contract or application for insurance;
- (6) Having been convicted of a felony;
- (7) Having admitted to or been found to have committed any insurance unfair trade practice or fraud;
- (8) Using fraudulent, coercive, or dishonest practice or demonstrating incompetence, untrustworthiness, or financial irresponsibility in the conduct of business in this State or elsewhere;

- (9) Having an insurance producer license or its equivalent denied, placed on probation, suspended, or revoked in any other state, province, district, or territory;
- (10) Forging another's name to an application or to any document related to a transaction;
- (11) Improperly using notes or any other reference material while taking an examination for an insurance license;
- (12) Accepting insurance business from a person who is not licensed;
- (13) Failing to comply with an administrative or court order imposing a child support obligation; [øf]
- (14) Failing to pay federal or state income taxes or failing to comply with any administrative or court order directing payment of federal or state income taxes[-]; or
- (15) Receiving certification from an administering entity pursuant to chapter 436C that the licensee or applicant is in default or breach of any obligation under any student loan, student loan repayment contract, or scholarship contract that financed the licensee's or applicant's education, or has failed to comply with a repayment plan.

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

SECTION 9. Section 436B-19.6, Hawaii Revised Statutes, is amended to read as follows:

**“[§436B-19.6] Denial[, or suspension [, or revocation] of license for default of student loan, student loan repayment contract, or scholarship contract.** (a) In addition to any other acts or conditions provided by law, the licensing authority shall not renew or reinstate, or shall deny[, or suspend[, or revoke,] any license or application, if the department has received certification from an administering entity pursuant to chapter 436C that the licensee or applicant is in default or breach of any obligation under any student loan, student loan repayment contract, or scholarship contract that financed the licensee's or applicant's education, or has failed to comply with a repayment plan. [Unless]

(b) The licensing authority in receipt of a certification pursuant to chapter 436C shall, as applicable, and without further review or hearing:

- (1) Suspend the license;
- (2) Deny the application or request for renewal of the license; or
- (3) Deny the request for reinstatement of the license,

and unless otherwise provided by law, [the licensing authority] shall renew, reinstate, or grant the license only upon receipt of an authorization from the administering entity. Chapter 91 and sections 92-17, 436B-18, 436B-20, 436B-21, 436B-24, and 436B-25 shall not apply to a license suspension or denial under this section."

SECTION 10. Section 436C-2, Hawaii Revised Statutes, is amended by amending its title and subsections (a) through (c) to read as follows:

**“~~[[§436C-2]] Professional and vocational license sanction for default of student loan, student loan repayment contract, or scholarship contract.~~ (a) In addition to any other acts or conditions provided by law, the ~~[applicable]~~ licensing authority shall not renew or reinstate, or shall deny~~[;]~~ ~~or suspend~~[; or revoke]~~~~ the license or application of any person who has been certified by an administering entity as being:**

- (1) In default or breach of any obligation under any student loan, student loan repayment contract, or scholarship contract~~[;]~~ that financed the licensee’s or applicant’s education; or
- (2) At least sixty days past due with payments under a repayment plan.

~~[The applicable licensing authority in receipt of the certification shall not renew or reinstate, or shall deny, suspend, or revoke the license or application without further review or hearing.]~~ The licensing authority shall not act on the certification of an administering entity unless it is based upon a court judgment that complies with section 436C-A.

(b) The ~~[applicable]~~ licensing authority in receipt of a certification pursuant to chapter 436C shall, as applicable, and without further review or hearing:

- (1) Suspend the license;
- (2) Deny the application or request for renewal of the license; or
- (3) Deny the request for reinstatement of the license,

and unless otherwise provided by law, shall renew, reinstate, or grant the license only upon receipt of an authorization from the administering entity stating that the person is making payments or taking other action satisfying the terms of the student loan, student loan repayment contract, or scholarship contract and is no longer in default or breach of the loan or contract.

(c) Any licensing fees paid prior to the denial, suspension, or revocation of a license under the licensing laws shall be forfeited. The ~~[applicable]~~ licensing authority may charge fees for reinstating a license and to cover the costs of administering this chapter.”

SECTION 11. Section 457-9, Hawaii Revised Statutes, is amended as follows:

1. By amending its title to read:

**“§457-9 Renewal of license; denial, suspension, or revocation of license for default of student loan, student loan repayment contract, or scholarship contract.”**

2. By amending subsection (c) to read:

~~“(c) Notwithstanding any provision in this chapter to the contrary, the board shall not renew or reinstate, or shall deny~~[;]~~ ~~or suspend~~[; or revoke]~~~~ any license or application, if the board has received certification from an administering entity pursuant to chapter 436C that the licensee or applicant is in default or breach of any obligation under any student loan, student loan repayment contract, or scholarship contract~~[;]~~ that financed the licensee’s or applicant’s education, or has failed to comply with a repayment plan. ~~[Unless]~~~~

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

- (1) Suspend the license;
- (2) Deny the application or request for renewal of the license; or
- (3) Deny the request for reinstatement of the license,

and unless otherwise provided by law, ~~[the board]~~ shall renew, reinstate, or grant the license only upon receipt of an authorization from the administering entity.”

SECTION 12. Section 466J-8, Hawaii Revised Statutes, is amended by amending subsection (d) to read as follows:

“(d) The board shall not renew or reinstate, or shall deny~~[,]~~ or<sup>1</sup> suspend~~[, or revoke,]~~ any license or application, if the board has received certification from an administering entity pursuant to chapter 436C that the licensee or applicant is in default or breach of any obligation under any student loan, student loan repayment contract, or scholarship contract~~[,]~~ that financed the licensee’s or applicant’s education or has failed to comply with a repayment plan. ~~[Unless]~~

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

- (1) Suspend the license without further review or hearing;
- (2) Deny the application or request for renewal of the license; or
- (3) Deny the request for reinstatement of the license,

and unless otherwise provided by law, ~~[the board]~~ shall renew, reinstate, or grant the license only upon receipt of an authorization from the administering entity.”

SECTION 13. Section 605-1, Hawaii Revised Statutes, is amended by amending subsection (d) to read as follows:

“(d) In addition to other qualifications for licensure and conditions for continuing eligibility to hold a license, applicants for licensure, licensees renewing their licenses, and existing licensees shall be in compliance with any obligation under any student loan, student loan repayment contract, or scholarship contract that financed the licensee’s or applicant’s education or shall be in compliance with a repayment plan as provided in chapter 436C.

The licensing authority shall not renew or reinstate, or shall deny or suspend any license or application, if the licensing authority has received certification from an administering entity pursuant to chapter 436C that the licensee or applicant is in default or breach of any obligation under any student loan, student loan repayment contract, or scholarship contract that financed the licensee’s or applicant’s education or has failed to comply with a repayment plan.

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

- (1) Suspend the license;
- (2) Deny the application or request for renewal of the license; or
- (3) Deny the request for reinstatement of the license,

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

SECTION 14. Section 436C-1, Hawaii Revised Statutes, is amended by deleting the definition of “applicable licensing authority”.

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

SECTION 15. In codifying the new sections added by section 2 of this Act, the revisor of statutes shall substitute appropriate section numbers for the letters used in designating the new sections in this Act.

SECTION 16. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.<sup>2</sup>

**SECTION 17.** This Act shall take effect upon its approval.

(Approved June 4, 2003.)

**Notes**

1. “Or” should be underscored.
2. Edited pursuant to HRS §23G-16.5.