

ACT 198

S.B. NO. 155

A Bill for an Act Relating to Athletic Trainers.

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

SECTION 1. The legislature finds that Hawaii is one of only three states that does not currently regulate the practice of athletic training. The legislature further finds that the continued lack of regulation creates the risk that individuals who have lost or are unable to obtain licensure in another state will move to Hawaii to practice, thereby putting the public in danger and degrading the standards of the profession.

The legislature finds that there is a pressing and immediate need to regulate the profession of athletic training to protect the public health, safety, and welfare. This need is particularly important since athletic trainers often work with elementary and secondary school-aged children. Regulation of athletic trainers will ensure that participants in athletic activities receive prompt, specialized emergency care as well as appropriate follow-up treatment and rehabilitation and meet appropriate criteria before being returned to play. Regulation will require that athletic trainers demonstrate minimum competency in the field, as is required for other health care professionals. Finally, regulation will provide a means for members of the public, other members of the profession, and the Board of Certification, Inc., to assist in maintaining quality standards by reporting ethics violations or disciplinary action to the State's regulatory agency.

The legislature finds that the requirements of section 26H-6, Hawaii Revised Statutes, were met by the passage of Act 108, Session Laws of Hawaii 2010, requesting that the auditor perform a sunrise analysis of the regulatory measures contained in this Act. Therefore, the legislature finds that there is no procedural impediment to regulating the currently unregulated industry of athletic trainers through passage of this Act.

SECTION 2. The Hawaii Revised Statutes is amended by adding a new chapter to be appropriately designated and to read as follows:

**“CHAPTER
ATHLETIC TRAINERS**

§ -1 Title. This chapter shall be known as the Athletic Trainer Registration Act.

§ -2 Definitions. As used in this chapter:

“Athlete” means a person who prepares for or participates in organized sports or sports-related activities, amateur or recreational sports involving athletic competition, including interscholastic, intercollegiate, intramural, semiprofessional, or professional sports activities.

“Athletic injury” means an injury that affects the preparation for or participation in organized sports or sports-related activities, or amateur or recreational sports involving athletic competition, including interscholastic, intercollegiate, intramural, semiprofessional, or professional sports activities.

“Athletic trainer” means an individual, whether or not registered under this chapter, who engages in the practice of athletic training or represents oneself to be an athletic trainer.

“Department” means the department of commerce and consumer affairs.

“Director” means the director of commerce and consumer affairs.

“Practice of athletic training” refers to the application by an athletic trainer, whether or not registered under this chapter and without regard to certification by any certifying body, of principles and methods to:

- (1) Prevent athletic injuries;
- (2) Recognize, evaluate, and assess athletic injuries and conditions;
- (3) Provide immediate care of athletic injuries, including common emergency medical care;
- (4) Treat, rehabilitate, and recondition athletic injuries;
- (5) Administer athletic training services and organization; and
- (6) Educate athletes;

provided that the practice of athletic training does not include provision of medical services as defined in section 453-1, occupational therapy services as defined in section 457G-1, or physical therapy or physical therapy services as defined in section 461J-1.

“Treating physician” means a physician or osteopathic physician licensed under chapter 453 who, within the licensee’s scope of practice and individual competency, is responsible for the athletic training services provided by an athletic trainer and oversees the practice of athletic training by an athletic trainer.

§ -3 Athletic trainer program. There is established an athletic trainer program within the department to be administered by the director.

§ -4 Registration required. No person shall engage in the practice of athletic training or represent, advertise, or announce oneself, either publicly or privately, as an athletic trainer, nor use in connection with the person’s name or place of business the words “registered athletic trainer”, “athletic trainer”, “ATC”, or any other words, letters, abbreviations, or insignia indicating or implying that the person is an athletic trainer unless the person meets the qualifications established by this chapter and has registered with the department.

§ -5 Exemptions. This chapter is not intended to restrict the practice of other licensed healthcare providers practicing within their own recognized scopes of practice and shall not apply to:

- (1) An individual who possesses a valid license issued under chapter 453, 457G, or 461J who, when acting within the scope of practice allowable under the individual's license, performs the same or similar functions as an individual registered pursuant to this chapter;
- (2) Students in an educational program for athletic trainers who participate in activities conducted as part of the educational program under the supervision and guidance of a registered athletic trainer registered under this chapter;
- (3) An individual serving in the armed forces of the United States, the United States Public Health Service, the Department of Veterans Affairs, or any other federal agency who engages in activities regulated under this chapter as a part of the individual's employment;
- (4) An individual who is invited to conduct a lecture, clinic, or demonstration regarding the practice of athletic training by a school, professional association, professional society, or other similar entity approved by the department by rule pursuant to chapter 91; provided that the individual does not establish a place of business or regularly engage in the practice of athletic training within the State;
- (5) An individual who possesses a valid license, registration, or certification from another jurisdiction who accompanies an athlete or team of athletes into this State for a temporary period; provided that the individual shall only attend to the needs of that athlete or team of athletes and those persons who travel with that athletic group or team in a capacity other than as a spectator;
- (6) An individual who possesses a valid license, registration, or certification from another jurisdiction who is invited to engage in the practice of athletic training under the supervision and control of a sponsoring entity for a limited time and solely for a special event; or
- (7) An individual who is an athletic trainer and a patient to himself or herself or gratuitous athletic training by a friend or family member who does not represent himself or herself to be an athletic trainer.

Nothing in this chapter shall be construed to limit or prohibit the administration of routine assistance or first aid by a person who is not a registered athletic trainer for injuries or illnesses sustained at an athletic event or program.

§ -6 Registration requirements. (a) Commencing January 1, 2013, athletic trainers shall:

- (1) Register with the department by providing the athletic trainer's name, business address, a current, active, and unencumbered certification from the Board of Certification, Inc., including the certification number, and information on any complaints filed against the athletic trainer with the Board of Certification, Inc., or with any state agency that regulates athletic trainers, including the status and disposition of all complaints;
 - (2) Have completed the educational and certification requirements of the Board of Certification, Inc.;
 - (3) Renew the athletic trainer's registration every three years by providing the information required by paragraph (1); and
 - (4) Notify the department of any changes in registration information within thirty days of the change.
- (b) The department shall maintain a current list of the names and business addresses of athletic trainers registered under subsection (a).

(c) Records of a registrant's certification from the Board of Certification, Inc., shall be public records.

§ -7 Duties of treating physician. A treating physician shall provide direction to an athletic trainer by verbal order when in the presence of the athletic trainer or by written order or written athletic training service plans or protocols when a treating physician is not present with the athletic trainer.

§ -8 Requirements to maintain registration. (a) An athletic trainer shall have and maintain current and active status certification from the Board of Certification, Inc., as a condition of registration. Failure, refusal, or neglect of any registrant to maintain in full force and effect, a current and active status certification shall cause the automatic forfeiture of the registration of the athletic trainer, effective as of the date of the change of the registrant's certification status.

(b) The department shall not restore the forfeited license until satisfactory proof of the active status of the certification is submitted to the department. The department may assess a fee not to exceed \$1,000 or restrict or place conditions on the registration as a condition of a restoration of a forfeited registration.

(c) The registrant may, within sixty days after receipt of the notification of the forfeiture, request an administrative hearing to review the forfeiture pursuant to chapter 91.

§ -9 Powers and duties of the director. In addition to any other powers and duties authorized by law, the director shall have the powers and duties to:

- (1) Adopt, amend, and repeal rules in accordance with chapter 91 to carry out the purposes of this chapter;
- (2) Issue and renew registrations pursuant to this chapter and deny or refuse to renew registrations for failure to comply with this chapter;
- (3) Suspend or revoke any registration for any violation of this chapter, chapter 436B, or for any violation of rules adopted by the director pursuant to this chapter;
- (4) Establish fees; and
- (5) Administer, coordinate, and enforce this chapter.

§ -10 Fees; disposition. Application fees paid pursuant to this chapter shall not be refundable. Pursuant to section 26-9(1), the director shall establish registration, renewal, restoration, and other fees and penalties relating to the administration of this chapter. Fees and penalties assessed pursuant to this chapter shall be used to defray costs incurred by the department in implementing this chapter.

§ -11 Renewal of registration; fees. Registrations shall be renewed, upon the payment of a renewal fee, triennially not earlier than ninety days before June 30. Failure to renew a registration shall result in a forfeiture of the registration. Registrations that have been forfeited may be restored within one year of the expiration date upon payment of renewal and restoration fees. Failure to restore a registration within one year of the date of its expiration shall result in the automatic termination of the registration and the person may be required to reapply for registration as a new applicant. All renewal and restoration fees shall be determined by the director.

§ -12 Grounds for denial of registration; revocation and suspension of registration. In addition to any other acts or conditions provided by law, the director may deny or refuse to renew, revoke, suspend, restrict, fine, reprimand, censure, condition, or place the registration of any athletic trainer on probation when the athletic trainer:

- (1) Fails to meet the requirements for registration as provided in this chapter;
- (2) Has a registration or license or certification as an athletic trainer conditioned, suspended, revoked, or denied, or has been refused renewal of registration or license or certification as an athletic trainer;
- (3) Makes a materially false, misleading, deceptive, or fraudulent representation or material omission in the application for registration, including any renewal application;
- (4) Fails to satisfy a civil fine or penalty arising out of any administrative or enforcement action for violation of any state's athletic trainer laws or rules;
- (5) Has a license or registration revoked, suspended or otherwise disciplined by any state or federal agency for any reason that is provided by the applicable laws or rules or by this section;
- (6) Engages in the practice of athletic training while impaired by alcohol or drugs;
- (7) Engages in professional misconduct, incompetence, gross negligence, or manifest incapacity in the practice of athletic training;
- (8) Engages in conduct or a practice contrary to the recognized standards of ethics and professional responsibility as adopted by the National Athletic Trainers Association or the Board of Certification, Inc.;
- (9) Has been convicted or pleaded nolo contendere to a crime directly related to the qualifications, functions, or duties of the practice of athletic training;
- (10) Fails to report in writing to the director any disciplinary action taken against the registrant or applicant in another jurisdiction, including the Board of Certification, Inc., within thirty days of the disciplinary action; provided, however, that the registrant actually knows of the disciplinary action; and
- (11) Violates this chapter, chapter 436B, or any rule or order of the director.

§ -13 Registration indicates permission to engage in the practice of athletic training. A current registration granted under this chapter shall mean that the registered person has met requirements that include minimum practice standards to provide protection to the public and is permitted to use the title of athletic trainer and to engage in the practice of athletic training, subject to any applicable registration restrictions or conditions. In the granting of permission to engage in the practice of athletic training, and consistent with the intent of chapter 436B, the definition of "license" under section 436B-2 is inclusive of a registration issued under this chapter; therefore, an athletic trainer who is registered under this chapter shall be regarded as an athletic trainer who holds a license to practice the profession of athletic training.

§ -14 Civil penalties. Any person who violates any provision of this chapter or the rules of the department adopted pursuant to this chapter shall be

ACT 198

fined not more than \$1,000 and each day's violation or failure to comply shall be deemed a separate offense.

Unless otherwise expressly provided, the remedies or penalties provided in this chapter are cumulative to each other and to the remedies or penalties available under all other laws of this State.

§ -15 Rules. The director may adopt rules pursuant to chapter 91, including rules to establish fees or fines as may be necessary, to effectuate the purpose and to enforce the requirements of this chapter."

SECTION 3. Section 26H-4, Hawaii Revised Statutes, is amended to read as follows:

"§26H-4 Repeal dates for newly enacted professional and vocational regulatory programs. (a) Any professional or vocational regulatory program enacted after January 1, 1994, and listed in this section shall be repealed as specified in this section. The auditor shall perform an evaluation of the program, pursuant to section 26H-5, prior to its repeal date.

(b) Chapter 466D (respiratory therapists) shall be repealed on June 30, 2016.

(c) Chapter (athletic trainers) shall be repealed on June 30, 2018."

SECTION 4. The department of commerce and consumer affairs may employ necessary personnel without regard to chapter 76, Hawaii Revised Statutes, to assist with and prepare for the implementation and continuing functions of chapter , Hawaii Revised Statutes, established pursuant to section 2 of this Act.

SECTION 5. Upon the issuance of a new registration and at each registration renewal period, each athletic trainer shall pay, in addition to the fee established pursuant to section -11, Hawaii Revised Statutes, a surcharge of \$100, which shall be maintained in a separate account within the compliance resolution fund established pursuant to section 26-9(o), Hawaii Revised Statutes. At the end of each quarter, the moneys contained in the separate account established pursuant to this section shall be transferred to the compliance resolution fund until the total transferred amounts equals the amount appropriated in section 6 of this Act. Thereafter, no surcharge shall be assessed, and any funds in excess of the amount appropriated in section 6 of this Act shall be deposited in the compliance resolution fund.

SECTION 6. There is appropriated out of the compliance resolution fund established pursuant to section 26-9(o), Hawaii Revised Statutes, the sum of \$40,000 or so much thereof as may be necessary for fiscal year 2012-2013 to implement the registration of athletic trainers as required by this Act.

The sum appropriated shall be expended by the department of commerce and consumer affairs for the purposes of this Act.

SECTION 7. New statutory material is underscored.

SECTION 8. This Act shall take effect on July 1, 2012; provided that section 2 shall take effect on January 1, 2013.

(Approved July 3, 2012.)