

ACT 164

S.B. NO. 1286

A Bill for an Act Relating to Private Trade, Vocational, and Technical Schools.

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

SECTION 1. The legislature finds that private trade, vocational, and technical schools provide specialized training for a number of professions in the State, including massage therapy, health care, tax preparation, and maritime activities.

Currently, section 302A-425, Hawaii Revised Statutes, prohibits such schools and other private organizations or corporations from operating for the purpose of teaching any trade, occupation, or vocation prior to being licensed

by the department of education. The department of education has had this responsibility since 1939, when the focus of regulation was to ensure the quality of education and instruction at schools providing post-secondary training below the college level.

The legislature finds that Act 57, Session Laws of Hawaii 1998, amended section 302A-425, Hawaii Revised Statutes, to declare that the purpose of such regulation is to protect consumers from false, deceptive, misleading, and unfair practices, and to ensure adequate educational quality. The legislature also finds that Auditor's Report No. 02-08, *A Study on the Licensing of Private Trade, Vocational, and Technical Schools*, acknowledged that the declaration of purpose added to section 302A-425, Hawaii Revised Statutes, brought into question the appropriateness of the program's administrative placement within the department of education.

In 2015, the legislature passed S.C.R. No. 46, S.D. 2, regular session of 2015, which requested the department of commerce and consumer affairs and department of education to convene a working group to evaluate and review the current licensing program for private trade, vocational, and technical schools. The working group jointly recommended that the licensure program be narrowed in scope, but were unable to come to any other joint recommendations.

The department of education's primary mission is kindergarten to twelfth grade education, and does not include the provision of post-secondary education or the regulation of post-secondary institutions. The legislature finds that the department of education does not currently have the capacity or expertise in the specialized curricula of the various private trade, vocational, and technical schools currently under its licensing jurisdiction to effectively administer the requirements of section 302A-425, Hawaii Revised Statutes.

Accordingly, the purpose of this Act is to clarify the scope of the private trade, vocational, and technical school licensure program; clarify the types of schools the department of education is required to license; and establish a licensing fee to ensure the program's sustainability.

SECTION 2. Chapter 302A, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

“§302A- Private trade, vocational, and technical school licensure special fund. There is created in the state treasury a special fund to be designated as the private trade, vocational, and technical school licensure special fund into which shall be deposited:

- (1) All revenues and fees collected by the department pursuant to section 302A-425; and
- (2) Appropriations from the general fund of the State.

Moneys in the private trade, vocational, and technical school licensure special fund shall be used to fund activities related to the licensure requirements established under section 302A-425, including funding for permanent staff positions and administrative and operational costs.”

SECTION 3. Section 302A-101, Hawaii Revised Statutes, is amended as follows:

1. By amending the definition of “license” to read:

““License” means the recognition granted by the Hawaii teacher standards board to an individual to practice the profession of teaching. This definition shall not apply to the term “license” as it is used in sections 302A-425 [to 302A-427.] and 302A-426.”

2. By amending the definition of “private trade, vocational, or technical school” to read:

““Private trade, vocational, or technical school” means ~~[any plan or method used by any person or persons, firm, or any other]~~ an organization or corporation ~~[for giving]~~ that provides instruction in any form or manner in any trade, occupation, or vocation for a consideration, reward, or promise of whatever nature, ~~[including correspondence schools located within the State,]~~ except ~~[as follows]:~~

- (1) Schools maintained, or classes conducted, by employers for their own employees where no fee or tuition is charged;
- (2) Courses of instruction given by any fraternal society, benevolent order, or professional organization to its members, which courses are not operated for profit;
- ~~[(3) Flying schools qualified under the Federal Aviation Administration;~~
- ~~(4)]~~ (3) Classes conducted for less than five students at one and the same time;
- ~~[(5)]~~ (4) Classes or courses of instruction that are conducted for twenty or fewer class sessions during any twelve-month period;
- ~~[(6)]~~ (5) Avocational, hobby, recreation, or health classes or courses;
- ~~[(7)]~~ (6) Courses of instruction on religious subjects given under the auspices of a religious organization; and
- ~~[(8)]~~ (7) Schools registered or authorized by the department of commerce and consumer affairs or by boards and commissions placed in the department of commerce and consumer affairs for administrative purposes.”

SECTION 4. Section 302A-425, Hawaii Revised Statutes, is amended to read as follows:

“§302A-425 ~~[License required for]~~ Licensure of private trade, vocational, or technical school. ~~[No private trade, vocational, or technical school shall be operated by any person or persons, firm, or any other private organization or corporation for the purpose of teaching any trade, occupation, or vocation unless there is first secured from the department a license issued in accordance with sections 302A-424 to 302A-428 and in such form as the department may direct.]~~ (a) The department shall license private trade, vocational, and technical schools as necessary for:

- (1) Compliance with federal regulations or accreditation requirements;
- (2) Qualifying the private trade, vocational, or technical school for federal, state, or private funding; or
- (3) Qualifying graduates of the private trade, vocational, or technical school for professional licensure.

The purpose of the licensing and regulation is to protect consumers against practices by private trade, vocational, or technical schools that are false, deceptive, misleading, or unfair, and to help ensure adequate educational quality at private trade, vocational, or technical schools. The department shall not be responsible for review of curriculum or assurance of program quality for those private trade, vocational, and technical schools whose curriculum or program falls outside of the department’s mission.

(b) A private trade, vocational, or technical school that requires licensure under subsection (a) shall submit the following to the department in such form as the department may direct:

- (1) Proof that the school is accredited by an accrediting commission of career schools and colleges, accrediting council for continuing

education and training, or an accrediting bureau of health education schools; provided that in lieu of such accreditation, the school may provide a letter from the relevant state, federal, or other licensing authority demonstrating that the private trade, vocational, or technical school's curriculum is sufficient to prepare a graduate to qualify for professional licensure;

- (2) Proof of current business registration demonstrating good standing;
- (3) A copy of the school's current general excise tax license, including a current tax clearance; and
- (4) Proof that the school has secured a surety bond in the sum of \$50,000, payable in a form satisfactory to the department, to provide indemnification to any student suffering a financial loss as a result of the school not fulfilling its obligations under the terms of its license; provided that the bonding requirement may be reduced at the discretion of the department.

(c) A private trade, vocational, or technical school applying for initial licensure after December 31, 2017, shall pay an initial license fee of \$2,000 to the department upon application for licensure under this section.

(d) Every two years following the date of initial licensure, a private trade, vocational, or technical school shall apply for a renewal license by:

- (1) Submitting all documents required under subsection (b), with updated information as appropriate;
- (2) Submitting a list of complaints officially filed within the past two years with any state or federal government agency or directly with the school; and
- (3) For any application for license renewal submitted after December 31, 2017, paying a renewal licensure fee of \$2,000.

(e) Complaints alleging unfair or deceptive acts or practices by a private trade, vocational, or technical school shall be filed with the appropriate branch of the department of commerce and consumer affairs for review, investigation, and appropriate recommendation for action, including appeals from action taken.

(f) Fees collected pursuant to this section shall be deposited into the private trade, vocational, and technical school licensure special fund.

(g) The department may adopt reasonable rules relating to the implementation of this section and section 302A-426."

SECTION 5. Section 302A-426, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) The department, after notice and opportunity for a hearing, may suspend or revoke a license at any time when, in the judgment of the department, the licensee is not complying with [~~sections 302A-424 to 302A-428~~] section 302A-425 or the rules that may be adopted by the board. The notice of hearing shall be served personally or sent to the licensee by registered or certified mail with return receipt at the licensee's last known address."

SECTION 6. Section 302A-424, Hawaii Revised Statutes, is repealed.

SECTION 7. Section 302A-427, Hawaii Revised Statutes, is repealed.

SECTION 8. Section 302A-428, Hawaii Revised Statutes, is repealed.

SECTION 9. All rules, policies, procedures, guidelines, and other material adopted or developed by the department of education to implement sections

302A-424 to 302A-428, Hawaii Revised Statutes, except those rules, policies, procedures, guidelines, and other material adopted or developed that affect the initial licensure fee and renewal licensure fee, shall remain in full force and effect until amended or repealed pursuant to chapter 91, Hawaii Revised Statutes. All licenses current as of the effective date of this Act shall remain valid until the expiration of the licensure term, at which point the private trade, vocational, or technical school shall be required to apply for initial licensure under section 302A-425, Hawaii Revised Statutes.

SECTION 10. There is appropriated out of the general revenues of the State of Hawaii the sum of \$60,000 or so much thereof as may be necessary for fiscal year 2017-2018 and the same sum or so much thereof as may be necessary for fiscal year 2018-2019 to be deposited into the private trade, vocational, and technical school licensure special fund.

SECTION 11. There is appropriated out of the private trade, vocational, and technical school licensure special fund the sum of \$100,000 or so much thereof as may be necessary for fiscal year 2017-2018 and the same sum or so much thereof as may be necessary for fiscal year 2018-2019 for administrative costs associated with licensure of private trade, vocational, or technical schools, including establishing one permanent full-time equivalent (1.0 FTE) position within the department of education.

The sums appropriated shall be expended by the department of education for the purposes of this Act.

SECTION 12. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.¹

SECTION 13. This Act shall take effect on July 1, 2017.

(Approved July 11, 2017.)

Note

1. Edited pursuant to HRS §23G-16.5.