

CHAPTER 436B
PROFESSIONAL AND VOCATIONAL LICENSING ACT

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PART I. GENERAL PROVISIONS

§436B-1 Short title. This chapter shall be known as and may be cited as the Professional and Vocational Licensing Act.

§436B-2 General definitions. As used in this chapter:

"Board" means any board or commission which is created and authorized by statute to issue a professional or vocational license, and is established within or transferred to the department for administrative purposes or subject to the administrative control or supervision of the director.

"Department" means the department of commerce and consumer affairs.

"Director" means the director of commerce and consumer affairs.

"Executive secretary" or equivalent expressions means the individual employed by the department subject to chapters 76 and 77, who shall assist the licensing authority in administering this chapter, its licensing laws, rules, and orders, and who shall perform such other ministerial duties and delegated functions as authorized by law.

"Forfeit" or "forfeiture" means the immediate and automatic termination or cancellation without any prior consultation with the licensee of a license issued by a board, caused by a licensee's voluntary or involuntary failure to comply with the requirements for maintaining or renewing a license.

"License" means the permission to engage in a profession or vocation granted by the applicable licensing authority to a person who has satisfied every requirement for licensure, and shall include any registration, certificate, or other document issued by the licensing authority reflecting proof of permission.

"Licensee" means the person in whose name the licensing authority grants a license.

"Licensing authority" or "authority" means the director, or any licensing board or commission under the administrative control of the director pursuant to section 26-9(c), authorized by statute to grant or to deny licenses.

"Licensing laws" means the applicable chapter providing for the regulation, licensing, and practice of a profession or vocation by the licensing authority.

"Person" includes an individual, partnership, joint venture, corporation, association, business, trust, or any organized group of persons or legal entity, or any combination thereof.

"Program" means any regulatory program in which the director is authorized by law to grant or to deny a license to a person seeking permission to engage in a profession or vocation.

"Reinstate" or "reinstatement" means the permission to engage in a profession or vocation granted by the applicable licensing authority to a person whose license has been previously suspended by the licensing authority.

"Renew" or "renewal" means the permission to engage in a profession or vocation granted by the applicable licensing authority to a licensee who has applied for an extension of a current and valid license.

"Restore" or "restoration" means the permission to engage in a profession or vocation granted by the applicable licensing authority to a person whose license has been previously forfeited by the licensing authority.

§436B-3 Applicability; prevailing provisions; construction. (a) The provisions of this chapter shall only be applicable to the professions and vocations required by law to be regulated by the licensing authority.

(b) Unless otherwise stated in this chapter, chapters 26, 26H, 91, and 92 and the licensing laws or rules for the respective profession or vocation shall prevail. This chapter shall apply whenever chapters 26, 26H, 91, and 92 and the licensing laws or rules for the respective profession or vocation are silent.

(c) This chapter shall be liberally construed to protect the health, safety, and welfare of consumers of services provided by a profession or vocation regulated by the licensing authority.

§436B-4 Rules. The licensing authority may adopt rules pursuant to chapter 91 to effectuate this chapter and its licensing laws, and to carry out its purpose of protecting the health, safety, and welfare of consumers of services provided by a profession or vocation regulated by the licensing authority. The enumeration of specific matters which may properly be made the subject of rules shall not be construed to limit the licensing authority's broad general power to make all rules necessary to fully effectuate the purpose of this chapter.

PART II. ORGANIZATION

§436B-5 Conditions of office. (a) Each member of a board shall be selected and shall serve under the provisions of section 26-34, and before beginning a term of office, shall take an oath of office before a notary public, or other officer empowered to administer oaths.

(b) Each member of a board shall serve without pay. However, the actual and necessary traveling expenses incurred in connection with the performance of the member's official duties shall be paid by the department, upon the presentation of vouchers approved by the department.

§436B-6 Organization of boards. (a) Immediately upon the qualification and appointment of the original members, and annually thereafter, the board shall elect one member as chair and one member as vice-chair. In the absence of both the chair and the vice-chair to preside at a meeting, the members present shall select a chair pro tem.

(b) Each board shall meet not less than twice a year at a time and place determined by the board.

(c) The majority of the members to which the board is entitled shall constitute a quorum. The concurrence of a majority of the members to which the board is entitled shall be necessary to make any action taken by the board valid. Each board shall conduct its meetings in accordance with chapters 91 and 92.

§436B-7 Powers and duties of licensing authority. In addition to any other powers and duties authorized by law, each licensing authority may:

- (1) Adopt, amend, or repeal rules, issue declaratory rulings or informal non-binding interpretations, and conduct contested case proceedings pursuant to chapter 91;
- (2) Grant, deny, convert, forfeit, renew, reinstate or restore licenses, including the issuance of conditional licenses;
- (3) Revoke, suspend, or otherwise limit the license of any licensee for any violation of the provisions in this chapter, the licensing laws, or any rule or order of the licensing authority;
- (4) Develop requirements for licensure through the applicable licensing laws or rules;
- (5) Investigate and conduct hearings regarding any violation of this chapter, the licensing laws, and any rule or order of the licensing authority;
- (6) Monitor the scope of practice of the profession or vocation regulated by the licensing authority;
- (7) Prepare, administer, and grade examinations; provided that the licensing authority may contract with a testing agency to provide those services, and the licensing authority may also reserve the right to modify, amend, change, or regrade the examination;
- (8) Create fact-finding committees which may make recommendations to the licensing authority for its deliberations;
- (9) Contract with qualified persons including investigators who may be exempt from chapters 76 and 77 and who shall assist the licensing authority in exercising its powers and duties; and
- (10) Subpoena witnesses and documents, administer oaths, and receive affidavits and oral testimony, including telephonic communications, and do any and all things necessary or incidental to the exercise of the licensing authority's power and duties, including the authority to conduct contested case proceedings under chapter 91.

§436B-8 Delegation of authority. (a) The board shall delegate to the department the authority to receive, arbitrate, investigate, and prosecute any complaint against a licensee.

(b) A licensing authority may delegate to the executive secretary, or other designee, any of its powers or duties as it deems reasonable and proper. The delegation of powers and duties by

the licensing authority shall be made in accordance with the procedures set forth in section 436B-6(c). However, the licensing authority shall not delegate its discretionary functions resulting in a final decision, including but not limited to the following:

- (1) Adopting, amending, or repealing rules;
- (2) Ordering disciplinary action against a licensee, including the revocation, suspension, or imposition of conditions or fines; provided that summary suspensions may be delegated; and
- (3) Granting, denying, or otherwise conditioning license applications, unless the granting, denying, or conditioning of a license does not require the exercise of the licensing authority's expertise and discretion.

§436B-8.5 Review of examinations. The department, in its discretion, may allow an applicant to review the most recent examination failed by the applicant, provided that under no circumstances shall the licensing authority or the department allow an examination to be copied.

PART III. APPLICATION FOR LICENSURE

§436B-9 Action on applications; abandoned applications. (a) Unless otherwise provided by law, each licensing authority shall take the following actions within one year after the filing of a complete application for licensure:

- (1) If it deems appropriate, conduct an investigation of the applicant; and
- (2) Notify the applicant in writing by mail of the decision regarding the application for licensure. If the application has been denied, written notice of the decision shall state specifically the reason for denying the application and shall inform the applicant of the right to a hearing under chapter 91.

(b) An application shall be considered to be abandoned if an applicant fails to provide evidence of continued efforts to complete the licensing process for two consecutive years; provided that the failure to provide evidence of continued efforts includes but is not limited to:

- (1) Failure to submit the required documents and other information requested by the licensing authority within two consecutive years from the last date the documents or other information were requested; or
- (2) Failure to provide the licensing authority with any written communication during two consecutive years indicating that the applicant is attempting to complete the licensing process, including but not limited to attempting to complete the examination requirement; and provide further that the licensing authority may extend the above time periods by rule. The licensing authority shall not be required to act on any abandoned application, and the application may be destroyed by the licensing authority or its delegate. If the application is deemed abandoned by the licensing authority, the applicant shall be required to reapply for licensure and comply with the licensing requirements in effect at the time of reapplication.

§436B-10 Application and requirements for licensure. (a) Application for a license shall be made on an application form to be furnished by the licensing authority. An applicant shall provide the following information on the application form:

- (1) The applicant's legal name;
 - (2) Affirmation that the applicant is beyond the age of majority;
 - (3) The applicant's current residence, business and mailing addresses, and phone numbers;
 - (4) The applicant's social security number if the licensing authority is authorized by federal law to require the disclosure;
 - (5) The date and place of any conviction of a penal crime directly related to the profession or vocation in which the applicant is applying for licensure, unless the conviction has been expunged or annulled, or is otherwise precluded from consideration by section 831-3.1;
 - (6) Proof that the applicant is a United States citizen, a United States national, or an alien authorized to work in the United States;
 - (7) Disclosure of similar licensure in any state or territory;
 - (8) Disclosure of disciplinary action by any state or territory against any license held by the applicant; and
 - (9) Any other information the licensing authority may require to investigate the applicant's qualifications for licensure. Failure to provide the above information and pay the required fees shall be grounds to deny the application for licensure.
- (b) In addition to any other requirements provided by law, all applicants shall be:
- (1) Beyond the age of majority; and
 - (2) A United States citizen, a United States national, or an alien authorized to work in the United States.

§436B-11 Additional licensure requirements. In addition to any other requirements provided by law, the licensing authority may also require by rule that the applicant provide the following:

- (1) In the case of a partnership applicant, each general partner shall attest that each partner is beyond the age of majority;
- (2) Proof that the applicant is competent, trustworthy, fair, and has financial integrity; and
- (3) Proof that the applicant has satisfied all applicable business registration requirements prior to applying for licensure.

§436B-12 Criminal conviction. When an applicant has been convicted of a penal crime directly related to the profession, vocation, or occupation for which licensure is sought, and it is determined that the conviction may be considered under section 831-3.1, the department, executive secretary, or the licensing authority's designee may request the following documents from the applicant:

- (1) Copies of any court records, orders, or other documents that state the facts and statutes upon which the applicant was convicted, the verdict of the court with regard to that conviction, the sentence imposed, and the actual terms of the sentence; and
- (2) Affidavits from any parole officer, employer, or other persons who can attest to a firm belief that the applicant has been sufficiently rehabilitated to warrant public trust.

§436B-13 Renewal of license. (a) Each licensee shall be responsible for timely renewing the licensee's license and satisfying the renewal requirements provided by law.

(b) At the time of license renewal, each licensee shall submit a completed renewal application and all applicable fees, and shall comply with any other requirement provided by law. A completed renewal application sent by United States mail shall be considered timely filed if the envelope bears a postmark of the required renewal date.

(c) The failure to timely renew a license, the failure to pay all applicable fees, the dishonoring of any check upon first deposit, or the failure to comply with any other requirement provided by law, shall cause the license to be automatically forfeited.

§436B-13.3 Inactive license; reactivation of inactive license. (a) Unless otherwise provided by law, each licensing authority may allow a licensee to place its license on inactive status and provide conditions for the reactivation of the license.

(b) If a licensing authority desires to authorize an inactive license status, the licensing authority may decide to accept in total the provisions in subsection (c) to immediately effectuate an inactive license status. If a licensing authority desires to establish provisions for an inactive license status that differ from the provisions in subsection (c), the licensing authority may establish those alternative provisions by rules adopted pursuant to chapter 91.

(c) The following general provisions shall be applied by the licensing authority:

- (1) Upon written request by a licensee during the licensure period or at renewal, and upon payment of an inactive license fee, the licensing authority shall place that licensee's active license on an inactive status;
- (2) A licensee may continue on inactive status for the biennial or triennial period, whichever is applicable;
- (3) A licensee on inactive status shall be considered as unlicensed and shall not engage in the practice of the licensed profession or vocation. Any person who violates this prohibition shall be subject to discipline under this chapter and the laws and rules of the licensing authority for that license;
- (4) It shall be the responsibility of each licensee on inactive status to maintain knowledge of current licensing and renewal requirements; and
- (5) A licensee may request to reactivate the license at any time during the licensure period or at renewal by completing an application for reactivation and fulfilling all requirements in effect at the time of application to return the license to active status, including the payment of an activation fee and other fees that may be required. The licensing authority may require information from the applicant to ensure the applicant is fit to engage in the profession, including but not limited to reporting

license sanctions, pending disciplinary actions, or conviction of a crime in which the conviction has not been annulled or expunged.

(d) The licensing authority may deny an application for reactivation if the applicant does not fulfill all requirements or for the bases set forth in section 436B-19 or in the laws and rules of the licensing authority for that license. If the licensing authority denies the application, written notice of the denial shall state specifically the reason for denying the reactivation and shall inform the applicant of the right to a hearing under chapter 91. The applicant shall be required to reapply for licensure and comply with the licensing requirements in effect at the time of reapplication.

§436B-14 Restoration of forfeited license. A license which has been forfeited may be restored by the licensing authority within one year after the date of forfeiture upon compliance with the licensing renewal requirements provided by law and upon written application and payment of all applicable renewal fees, penalty fees, compliance resolution fund fees and, if applicable, recovery fund assessments. Any person who fails to have the person's license restored within one year from the date of forfeiture may be required by the licensing authority to reapply for licensure as a new applicant.

§436B-14.5 Extension of licenses for members of the armed forces, national guard, and reserves. (a) Notwithstanding any other law to the contrary, any license held by a member of the armed forces, national guard, or a reserve component that expires, is forfeited, or deemed delinquent while the member is on active duty and deployed during a state or national crisis shall be restored under the restoration requirements provided in this section.

For the purposes of this section, "state or national crisis" includes but is not limited to:

- (1) A situation requiring the proper defense of nation or state;
- (2) A federal or state disaster or emergency;
- (3) A terrorist threat; or
- (4) A homeland security or homeland defense event or action.

(b) The licensing authority shall restore a license upon the payment of the current renewal fee if the member:

- (1) Requests a restoration of the license within one hundred twenty days after being discharged or released from active duty deployment;
- (2) Provides the licensing authority with a copy of the member's order calling the member to active duty deployment and the member's discharge or release orders; and
- (3) If required for renewal, provides documentation to establish the financial integrity of the licensee or to satisfy a federal requirement.

(c) This section:

- (1) Shall not apply to a member who is on scheduled annual or specialized training, or to any person whose license is suspended or revoked, or who otherwise has been adjudicated and is subject to disciplinary action on a license; and
- (2) Shall also apply to a member whose license is current, but will expire within one hundred twenty days of the member's discharge or release from active duty deployment.

§436B-14.6 Licensure by endorsement or licensure by reciprocity; experience requirements. (a) Unless otherwise provided by law, an applicant for licensure by endorsement or licensure by reciprocity who is a nonresident military spouse may demonstrate competency in a specific profession or vocation as determined by the licensing authority in lieu of a requirement that the applicant has worked or practiced in that profession or vocation for a specified period of time prior to the application for licensure by endorsement or licensure by reciprocity.

(b) The licensing authority shall expedite consideration of the application and issuance of a license by endorsement or license by reciprocity to a nonresident military spouse who meets the requirements of this section.

§436B-14.7 Licensure by endorsement or licensure by reciprocity; initial acceptance by affidavit; temporary license; military spouse. (a) If a military spouse holds a current license in another state, district, or territory of the United States with licensure requirements that the licensing authority determines are equivalent to or exceed those established by the licensing authority of this State, that military spouse shall receive a license pursuant to applicable statutes or requirements of the licensing authority of this State regarding licensure by endorsement or licensure by reciprocity; provided that the military spouse:

- (1) Has not committed an act in any jurisdiction that would have constituted grounds for the limitation, suspension, or revocation of a license; has never been censured or had other disciplinary action taken; has not had an application for licensure denied; or has not refused to practice a profession or vocation for which the military spouse seeks licensure;
- (2) Has not been disciplined by a licensing or credentialing entity in another jurisdiction; is not the subject of an unresolved complaint, review procedure, or disciplinary proceeding conducted by a licensing or credentialing entity in another jurisdiction; and has not surrendered membership on any professional staff in any professional association, society, or faculty for another state or licensing jurisdiction while under investigation or to avoid adverse action for acts or conduct similar to acts or conduct which would constitute grounds for disciplinary action in this State;
- (3) Pays any fees required by the licensing authority of this State;
- (4) Submits with the application a signed affidavit stating that application information, including necessary prior employment history, is true and accurate. Upon receiving the affidavit, if the licensing authority issues the license to the military spouse, the licensing authority may revoke the license at any time if the information provided in the application is found to be false; and
- (5) Is the spouse of a military member who is a member in good standing in the active or a reserve component of any of the armed forces of the United States and the military member has orders issued by the appropriate agencies of the armed forces to be stationed in Hawaii for a duration of at least one year.

(b) The licensing authority shall issue to the military spouse a temporary license to allow the military spouse to perform specified services, under the supervision of a professional licensed by this State if appropriate, while completing any requirements necessary for licensure in this State; provided that a temporary license shall only be issued in those professions where

credentials, experience, or passage of a national exam is substantially equivalent to or exceed those established by the licensing authority of this State.

(c) The licensing authority shall expedite consideration of the application and issuance of a license by endorsement, license by reciprocity, or temporary license to a military spouse who meets the requirements of this section.

(d) A license by endorsement or reciprocity issued under subsection (a) shall be valid for the same period of time as a license issued pursuant to the requirements of title 25 for the particular profession; provided that the total time period that a military spouse holds a license issued by endorsement or reciprocity under subsection (a) shall not exceed five years in the aggregate.

§436B-15 Fees and expenses. No applicant or licensee shall be granted a license pursuant to the licensing laws unless the appropriate fees have been paid. Unless otherwise provided by law, the director shall establish the amount for all fees and expenses by rules adopted pursuant to chapter 91. The fees to be established by the director may include but not be limited to an application fee, filing fee, license fee, renewal fee, examination fee, and other reasonable and necessary fees related to the department's administrative costs. Unless otherwise provided by law, the fees shall be deposited with the director to the credit of the compliance resolution fund established pursuant to section 26-9(o).

§436B-15.5 Conversion of license. (a) Notwithstanding any other provision of law to the contrary, a licensee who has converted its form of business entity in accordance with sections 414-271, 414D-207, 415A-16.5, -1102, and 428-902.5, and desires to continue engaging in a profession or vocation subject to this chapter in its new form of business entity shall:

- (1) File an application for conversion of a license and pay the initial application fee specified in the statutes or rules of the profession or vocation, within thirty calendar days after the effective date of the conversion; and
- (2) Continue to meet the other licensing requirements of that profession or vocation.

(b) Failure to comply with the requirements of this section shall cause the license to be automatically forfeited. A licensee whose license is forfeited shall not engage in the profession or vocation until the license is restored or the licensee obtains a new license.

PART IV. LICENSEE REPORTING REQUIREMENTS

§436B-16 Notice of judgments, penalties. (a) Each licensee shall provide written notice within thirty days to the licensing authority of any judgment, award, disciplinary sanction, order, or other determination, which adjudges or finds that the licensee is civilly, criminally, or otherwise liable for any personal injury, property damage, or loss caused by the licensee's conduct in the practice of the licensee's profession or vocation. A licensee shall also give notice of such determinations made in other jurisdictions.

(b) In addition to any other penalties provided by law, the failure of a licensee to comply with the provisions of this section is a violation punishable by a fine of not less than \$100

for the first violation, \$250 to \$500 for the second violation, and \$500 to \$1,000 for subsequent violations. Any action taken to impose or collect the fine provided for in this subsection shall not be considered a criminal action.

§436B-17 Filing of current addresses. Each licensee shall file with the licensing authority the licensee's current mailing, business, and residence address. It shall be the licensee's duty to provide written notice to the licensing authority of any change of address within thirty days of the change. Failure of the licensee to provide the notice shall absolve the licensing authority, executive secretary, or any designee from any duty to provide notice of any matter required by law to be provided the licensee.

PART V. LICENSING SANCTIONS

§436B-18 Disciplinary action. In addition to the licensing sanctions or remedies provided by section 92-17 against any licensee, the licensing authority may also impose conditions or limitations upon a licensee's license after a hearing conducted in accordance with chapter 91. The violation of any condition or limitation on a licensee's license may be cause to impose additional sanctions against the licensee. Unless otherwise provided by law, any fine imposed by the licensing authority after a hearing in accordance with chapter 91 shall be no less than \$100 for each violation, and each day's violation may be deemed a separate violation.

§436B-19 Grounds for refusal to renew, reinstate or restore and for revocation, suspension, denial, or condition of licenses. In addition to any other acts or conditions provided by law, the licensing authority may refuse to renew, reinstate or restore or may deny, revoke, suspend, or condition in any manner, any license for any one or more of the following acts or conditions on the part of the licensee or the applicant thereof:

- (1) Failure to meet or maintain the conditions and requirements necessary to qualify for the granting of a license;
- (2) Engaging in false, fraudulent, or deceptive advertising, or making untruthful or improbable statements;
- (3) Being addicted to, dependent on, or a habitual user of a narcotic, barbiturate, amphetamine, hallucinogen, opium, or cocaine, or other drugs or derivatives of a similar nature;
- (4) Practicing the licensed profession or vocation while impaired by alcohol, drugs, physical disability, or mental instability;
- (5) Procuring a license through fraud, misrepresentation, or deceit;
- (6) Aiding and abetting an unlicensed person to directly or indirectly perform activities requiring a license;
- (7) Professional misconduct, incompetence, gross negligence, or manifest incapacity in the practice of the licensed profession or vocation;
- (8) Failure to maintain a record or history of competency, trustworthiness, fair dealing, and financial integrity;

- (9) Conduct or practice contrary to recognized standards of ethics for the licensed profession or vocation;
- (10) Violating any condition or limitation upon which a conditional or temporary license was issued;
- (11) Engaging in business under a past or present license issued pursuant to the licensing laws, in a manner causing injury to one or more members of the public;
- (12) Failure to comply, observe, or adhere to any law in a manner such that the licensing authority deems the applicant or holder to be an unfit or improper person to hold a license;
- (13) Revocation suspension, or other disciplinary action by another state or federal agency against a licensee or applicant for any reason provided by the licensing laws or this section;
- (14) Criminal conviction, whether by nolo contendere or otherwise, of a penal crime directly related to the qualifications, functions, or duties of the licensed profession or vocation;
- (15) Failure to report in writing to the licensing authority any disciplinary decision issued against the licensee or the applicant in another jurisdiction within thirty days of the disciplinary decision;
- (16) Employing, utilizing, or attempting to employ or utilize at any time any person not licensed under the licensing laws where licensure is required; or
- (17) Violating this chapter, the applicable licensing laws, or any rule or order of the licensing authority.

§436B-19.5 Suspension or denial of license for noncompliance with child support order. In addition to any other acts or conditions provided by law, the licensing authority shall refuse to renew, reinstate, or restore, or shall deny or suspend any license if the authority has received certification from the child support enforcement agency pursuant to the terms of 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. Unless otherwise provided by law, the licensing authority shall renew, reinstate, restore, or grant the license only upon receipt of an authorization from the child support enforcement agency, the office of child support hearings, or the family court. Sections 92-17, 436B-20, 436B-21, 436B-24, and 436B-25 shall not apply to a license suspension or denial pursuant to this section.

§436B-19.6 Denial or suspension 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 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.

(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, 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.

§436B-20 Suspended license. No license shall be suspended by the licensing authority for a period exceeding five years. A person whose license has been suspended may apply for reinstatement of the license to the extent authorized by law and upon complete compliance with any term or condition imposed by the order of suspension. The application for reinstatement shall be accompanied by all applicable fees, including but not limited to reinstatement fees, any compliance resolution fund fees, and any recovery fund assessments.

§436B-21 Revoked license. A person may apply for a new license after five years from the effective date of the revocation of the license by filing an application and complying with all current requirements for new applicants. The licensing authority may waive any applicable education or examination requirements upon being satisfied that the applicant whose license has been previously revoked, has submitted documentation that the applicant has maintained equivalent knowledge, competence, and qualifications through work experience, training, or education.

§436B-22 Relinquishment no bar to jurisdiction. The forfeiture, nonrenewal, surrender, or voluntary relinquishment of a license by a licensee shall not bar jurisdiction by the licensing authority to proceed with any investigation, action, or proceeding to revoke, suspend, condition, or limit the licensee's license or fine the licensee.

§436B-23 Summary suspension. Notwithstanding any law to the contrary, the licensing authority or its delegate may cause the immediate suspension or restriction of a license, subject to subsequent notice and hearing or other adequate procedures, upon a specific determination that the failure to take such an action may result in: (1) an immediate and unreasonable threat to personal safety; or (2) fraud or misrepresentation upon consumers, and that, for the protection of the public from the possible consequences of practices, the licensee's license should be immediately suspended or restricted.

The licensing authority or its delegate may order the summary suspension of the license for a period not to exceed twenty days. The order of suspension shall be served upon the licensee at the same time as the notice of hearing for disciplinary action, and the hearing shall be scheduled prior to the expiration of the order of suspension. The period of suspension prior to the hearing shall not be extended beyond twenty days except upon request of the licensee for a reasonable continuance to adequately prepare the licensee's defense. Any attempt by the licensee to continue the licensed activity while the license has been summarily suspended shall of itself be sufficient to warrant a

permanent revocation of the license and shall subject the licensee to all penalties prescribed by this chapter, the applicable licensing laws, or any rule or order of the licensing authority.

§436B-24 Hearings. Unless otherwise provided by law, in every case in which the licensing authority refuses to issue, renew, restore or reinstate a license, or proposes to take disciplinary action or other licensing sanctions against a licensee, the proceeding before the licensing authority shall be conducted in accordance with chapter 91.

In all proceedings before it, the board and each member thereof shall have the same powers respecting administering oaths, compelling the attendance of witnesses and the production of documentary evidence, and examining witnesses as are possessed by circuit courts. In case of disobedience by any person of any order of the board or of a member thereof, or of any subpoena issued by it or a member, or the refusal of any witness to testify to any matter regarding which the witness may be questioned lawfully, any circuit judge, on application by the board or a member thereof, shall compel obedience as in the case of disobedience of the requirements of a subpoena issued by a circuit court, or a refusal to testify therein.

§436B-25 Judicial review by circuit court. Any person aggrieved by a final decision and order of the board in a "contested case", as defined in chapter 91, is entitled to judicial review thereof by the circuit court of the circuit in which the board making the final decision and order has jurisdiction. The review shall be as provided by chapter 91.

PART VI. CIVIL AND CRIMINAL SANCTION

§436B-26 No compensation for unlicensed activity; civil action. The failure of any person to maintain a current and a valid license prior to engaging in any activity requiring licensure by the licensing authority shall prevent such person from recovering in a civil action for work or services performed or materials or supplies furnished, or both, on a contract or on any legal basis to recover the reasonable value thereof.

§436B-26.5 Citation for unlicensed activity; civil penalties. (a) In addition to any other remedy available, the investigator may issue citations to persons acting in the capacity of or engaging in business within the State without having a license previously obtained under and in compliance with this chapter, the licensing laws for the respective profession or vocation, and the rules adopted thereunder.

(b) Each citation shall be in writing and shall describe the basis of the citation, including the specific statutory provisions alleged to have been violated, and may contain an order of abatement, and an assessment of civil penalties as provided in this section. All penalties collected under this section shall be deposited in the special fund established under section 26-9 (o).

(c) Any person who violates this section shall be assessed a civil penalty of not more than \$500 or forty per cent of the total amount of the goods and services provided or to be provided, whichever is greater, for the first violation; not more than \$1,000 or forty per cent of the total

amount of the goods and services provided or to be provided, whichever is greater, for the second violation; and not more than \$5,000 or forty per cent of the total amount of the goods and services provided or to be provided, whichever is greater, for any subsequent violation.

(d) Service of a citation issued under this section shall be made by personal service or by certified mail, restricted delivery, sent to the last known business or residence address of the person cited.

(e) Any person cited under this section may submit a written request to the director for a hearing, within twenty days from the service of the citation, with respect to the violations alleged, the scope of the order of abatement, or the amount of the civil penalties assessed.

(f) If the person cited under this section timely notifies the director of the request for a hearing, the director shall afford an opportunity for a hearing under chapter 91. The hearing shall be conducted by the director or the director may designate a hearings officer to hold the hearing. The director or any hearings officer designated by the director shall have the power to issue subpoenas, administer oaths, hear testimony, find facts, make conclusions of law, and issue a final order.

(g) If the person cited under this section does not submit a written request to the director for a hearing within twenty days from the receipt of the citation, the citation shall be deemed a final order of the director.

(h) The director may apply to the appropriate court for a judgment to enforce the provisions of any final order issued by the director or designated hearings officer pursuant to this section, including the provision for abatement and civil penalties imposed.

(i) If any party is aggrieved by the decision of the director or the designated hearings officer, the party may appeal in the manner provided in chapter 91 to the circuit court of the circuit in which the party resides or has the party's principal place of business or in which the action in question occurred. The operation of an abatement order shall not be stayed on appeal unless specifically ordered by a court of competent jurisdiction after applying the stay criteria enumerated in section 91-14(c).

(j) The sanctions and disposition authorized under this section shall be separate from and in addition to all other remedies either civil or criminal provided in any other applicable statutory provision.

(k) The director may adopt rules pursuant to chapter 91 necessary for the purpose of this section.

§436B-27 Civil and criminal sanctions for unlicensed activity; fines; injunctive relief; damages; forfeiture. (a) Any licensee aiding or abetting an unlicensed person to directly or indirectly evade this chapter or the applicable licensing laws, or combining or conspiring with an unlicensed person, or permitting one's license to be used by an unlicensed person, or acting as agent, partner, associate, or otherwise, of an unlicensed person with the intent to evade this chapter or the applicable licensing laws may be fined up to \$1,000 for the first offense; up to \$2,000 or, if applicable, forty per cent of the total contract price, whichever is greater, for the second offense; and up to \$5,000 or, if applicable, forty per cent of the total contract price, whichever is greater, for any subsequent offense. For purposes of this section, "contract price" means the total monetary consideration offered by the consumer for the provision of goods and services.

(b) Any person, who engages in an activity requiring a license issued by the licensing authority and who fails to obtain the required license, or who uses any word, title, or representation to induce the false belief that the person is licensed to engage in the activity, other than a licensee who inadvertently fails to maintain licensing requirements under the appropriate licensing statute and who subsequently corrects the failure so that there was no lapse in licensure, shall be guilty of a misdemeanor and each day of unlicensed activity shall be deemed a separate offense.

(c) The department, licensing authority, or any person may maintain a suit to enjoin the performance or the continuance of any act or acts by a person acting without a license where a license is required by law, and if injured thereby, for the recovery of damages. The department may also seek the imposition of fines provided by subsection (a). The plaintiff or petitioner in a suit for an injunction need not allege or prove actual damages to prevail. Reasonable attorney fees and costs shall be allowed by the court to the plaintiff or petitioner as the prevailing party.

(d) All tools, implements, armamentariums, documents, materials, or any other property used by any person to provide professional or vocational services without a license required by law shall be declared forfeited to the State by the court and turned over to the department for disposition as it deems appropriate.

§436B-28 Remedies or penalties cumulative. Unless otherwise expressly provided, the remedies or penalties provided by this chapter are cumulative to each other and to the remedies or penalties available under all other laws of this State.

§436B-29 Severability. If any provision of this chapter or the application thereof to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the chapter which can be given effect without the invalid provision or application, and to this end the provision of this chapter are severable.

Effective July 1, 2012:

ACT 248, SLH 2012, shall be repealed on June 30, 2022.

§436B- Licensure; acceptance of military education, training, or service. Notwithstanding any law to the contrary, every licensing authority subject to this chapter, upon presentation of satisfactory evidence by an applicant, shall consider relevant education, training, or service completed by an individual as a member of the armed forces or reserves of the United States, the national guard of any state, the military reserves of any state, or the navy militia of any state as part of the evaluation process toward the qualification requirements to receive the license. Evidence presented for consideration for fulfillment or partial fulfillment of licensing requirements shall demonstrate substantial equivalency to state standards.