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Student Loan Defaults and Professional Licenses

Legislation allowing professional licensing institutions to revoke the licenses of individuals who have failed to repay their student loans has been passed in several states and introduced in several others. The professional licensing institutions to which the bills apply differs from state to state, but the general procedural structure of the bills are quite similar across states. The bills give power to the licensing boards to revoke or deny renewal of professional or occupational licenses upon receipt of information from an education loan administrator that the individual has defaulted on their loan or has somehow failed to fulfill the loans obligations. The states require the licensing boards provide a due process hearing to the licensee. The constitutionality of these laws has not been questioned specifically. Nevertheless, the constitutionality of similar laws which deny or suspend professional licenses for those who have defaulted on child support payments stood up in an Arizona Supreme Court Case.

The states that have passed such laws include New Jersey, Texas, Missouri, Georgia, Colorado and Iowa, and similar bills have been introduced in Pennsylvania, Nebraska, Hawaii and South Dakota.

Texas

A Texas bill, HB 1755, was passed in June of 2001 that provides Texas licensing authorities the right to suspend a professional license, deny application for a license, deny license renewal or take other disciplinary action against a person who has defaulted on a student loan or has breached a student loan repayment contract or scholarship contract. The bill is limited in its applicability, and only pertains to four licensing authorities. These are the Texas Board of Chiropractic Examiners, State Board of Dental Examiners, Texas State Board of Podiatric Medical Examiners and the Texas State Board of Medical Examiners.

The bill states that these licensing boards may take action against a person upon receipt of information from a governmental entity that administers student loans, student loan repayments or scholarship programs that the person has defaulted or breached their contract. The licensing agencies are required to provide an opportunity for a hearing to a licensee before the agency takes action concerning the non-renewal of the license, however, beyond that general

requirement for a hearing each licensing agency adopts its own rules necessary to carry out the license agency duties.

The licensing authority may rescind any disciplinary or non-renewal action upon receiving information that the person has entered an agreement with the loan administration to repay the student loan, perform the service obligation, or pay any damages required by the student loan repayment or scholarship contract, or has taken any other action resulting in the person's no longer being in default or in breach of their loan or contract. In this case the loan corporation will provide the person with a certificate declaring the person has entered into a repayment agreement on the defaulted loan. Likewise, the licensing authority may reinstate the disciplinary action if the person once again fails to fulfill their agreement with the loan association to repay.

New Jersey

Senate bill number 57 was signed into law on April 9, 1999. This bill allows the director or board of a professional licensing institution to suspend certain licenses, registrations and certifications for failure to repay student loans. A hearing, which allows the debtor due process, is held by the director or board before the licenses is suspended. A license may be reinstated once the debtor provides the professional licensing institutions with a written statement from the lender or guarantor saying that the debtor has paid off the loan or has a repayment plan. A separate part of the bill allows the Supreme Court of New Jersey to establish a process for the suspension of the license of any practicing attorney for nonpayment or defaulting on a State or federal educational loan (<http://www.njleg.state.nj.us/bills/BillView.asp>).

In the State of New Jersey there are 41 boards and committees that regulate over 80 professions and occupations. There are about 600,000 New Jersey residents that are licensed by these boards and committees (<http://www.state.nj.us/lps/ca/boards.htm>).

Georgia

On April 20, 1998, Governor Roy Barnes signed HB 884 which amended the Official Code of Georgia Annotated to allow for the denial, suspension or revocation of various pesticide contractors, mortgage lenders, brokers, check cashers, registered forester, pharmacists, insurance agents, and real estate appraisers licenses for a failure to repay student loans.

The Bill establishes that the Georgia Higher Education Assistance Corporation which administers educational loans through the Georgia Higher Education Loan Program will maintain a state-wide certified list of borrowers who are in default of their student loans and have not made satisfactory arrangements to repay the loan. "Default" is defined by federal law under the Higher Education Act of 1965. The Georgia Higher Education Assistance Corporation will update the list monthly and submit it to each licensing entity. When the licensing agencies receive the certified list they notify the agency of all applicants or licensees that are on the list. The agency is then responsible for notifying all of the individuals that are on the list that the agency will request that the licensing agency suspend all licenses or withhold issuance or renewal.

The borrower in default has 20 days from the date of mailing to enter into a satisfactory repayment status. The satisfactory repayment status is that the borrower has agreed to repay the defaulted loan to the agency and a payment has been made within the preceding 60 days. If the borrower in default fails to enter into a satisfactory repayment status or does not respond within 20 days, the agency will send notice to the licensing entity and request that the licenses be suspended or the licensure applications be denied.

All borrowers in default have the right to request an administrative hearing before an administrative law judge of the Office of State Administrative Hearings and judicial review of that hearing. The request for a hearing must be made in writing and must be received by the agency within 20 days of the notice. The hearing will take place within 45 days of the hearing request. The hearing will only address the issues of whether there is an outstanding guaranteed educational loan, if the licensee or applicant is the owner of the loan, if the borrower is in default or if the borrower has entered into a satisfactory repayment status, if the loan has been restructured or discharged under hardship provisions in the Federal Bankruptcy Code. The hearing is subject to appeal.

When the borrower is in satisfactory repayment status or has been determined by the hearing to be unable to comply with the terms of the loan agreement, the agency will mail the borrower and the licensing agency a release to reinstate, renew or issue a license.

In 2001, the Georgia State Legislature expanded the 1998 Bill, authorizing the Secretary of State's Professional Licensing Boards Division which includes nursing, dentistry, chiropractors, engineers, podiatrists, etc. to suspend the professional licenses of those who have defaulted on state-guaranteed student loans (any federal education loan, loan repayment, or service conditional scholarship program).

In 1999, Georgia developed a Professional Licensing Suspension Program which includes the Secretary of State, Real Estate Commission, Insurance Commission, Banking and Finance and Professional Standards Commission (Teachers). The Secretary of State governs over 64 professional licensing entities. The five commissions issued 2,598 initial notices, 1,463 requests to suspend or deny a license and collected from 1,325 borrowers totaling \$3,318,484.53.

Constitutional Issues

Many of the occupational license suspension laws that have been initiated by the states in response to student loan defaults mirror similar legislation on suspending occupational licenses of individuals that have defaulted on child support payments. While there have not been any major decisions on the constitutionality of suspending an occupational license for defaulting on student loans, there has been a precedent setting case with regard to child support payment defaults. Kevin E. McCarthy, a principal analyst of the The Connecticut General Assembly Office of Legislative Research cites that "in 1991, in *Flores v. Board of Psychologist Examiners of Arizona* (No. CV90-33689) the plaintiff unsuccessfully challenged Arizona's occupation license suspension law on equal protection and due process grounds. In its decision, the court held that

the law was reasonably designed to close a loophole in child support enforcement laws” (<http://www.cga.state.ct.us/search/>).

The *Flores* decision has been backed by other state supreme court decisions which has established the precedent that license suspension laws do not violate constitutional due process and equal protection protections. The courts use a rational basis test. “Under this test, due process is provided when the contested law has a reasonable relationship to a proper legislative purpose and is neither arbitrary nor discriminatory” (<http://www.cga.state.ct.us/search/>). The courts have established that a license is a property interest rather than a fundamental right. According to the website for Professional License Revocation and Suspension Disciplinary Proceedings “the license is a valuable property right which for which the licensee has various constitutional rights, including the right not to have the license prematurely terminated, suspended or curtailed without compliance with due process. In other words, a licensee’s license has much the same type of protection as the licensee’s house or bank account” (<http://www.lawmall.com/licenses/>).

Occupational license suspension legislation should address the scope of the law, the nature of sanction, whether the sanction should be stayed, and the nature of the law’s due process protections. Revoking an occupational license will decrease the individual’s income and therefore, make it more difficult to pay the defaulted loans. However, many states have found that license sanctions have been effective in motivating individuals to repay student loans. “License restrictions can take the form of suspension, revocation, or denial of renewal. In addition, the legislature could choose to impose the sanction administratively or through the courts and could make it mandatory or permissive” (<http://www.cga.state.ct.us/search/>).

Sources

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