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SENATE BILL 5352

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State of Washington                      60th Legislature                      2007 Regular Session

By Senators Kline, Keiser, Fairley, Kohl-Welles and Franklin

Read first time 01/17/2007. Referred to Committee on Judiciary.

1            AN ACT Relating to the burden of proof in disciplinary actions  
2 involving health professionals; adding a new section to chapter 18.130  
3 RCW; and creating a new section.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

5            NEW SECTION.    **Sec. 1.** The legislature finds that, under the  
6 Washington Constitution, the legislative branch of government has the  
7 right to set policy for the disciplining of health professionals.

8            The legislature also finds that, in carefully balancing the  
9 interests of all concerned, the "preponderance of the evidence"  
10 standard of proof in disciplinary actions better calibrates the balance  
11 of interests between the practitioner and the public, given the vital  
12 concern of the people for protection from negligent or dishonest  
13 practitioners, than the "clear and convincing" standard of proof.  
14 Health professionals have a right to due process before a professional  
15 license may be taken away, but the people also have an equally  
16 significant need to protect themselves against incompetent and  
17 dishonest professionals.

18            The state supreme court rejected this interpretation in 2001 in the  
19 case of Bang Nguyen v. Department of Health, 144 Wn.2d 516, 29 P.3d 689

1 (2001), and again in 2006 in the case of Ongom v. State, holding that  
2 due process requires that the minimum constitutional standard of proof  
3 in a health professional license disciplinary proceeding is clear,  
4 cogent, and convincing evidence, rather than a preponderance of the  
5 evidence.

6 The legislature finds that these cases were both incorrectly  
7 decided, and that the court's decisions will expose many of our most  
8 vulnerable citizens to an even greater risk of abuse. Those  
9 Alzheimer's patients, developmentally disabled, mentally ill, and  
10 elderly who depend for their care on licensed health care professionals  
11 often lack the ability to speak out or be heard when they suffer abuse  
12 from their caregivers. As a result of the court's decisions, many of  
13 these vulnerable citizens will be faced with a greater degree of abuse  
14 without an effective remedy.

15 The legislature finds that the obligation of the state to protect  
16 its citizens from negligent care is a significant state interest, and  
17 accordingly reaffirms its intent that the applicable standard of proof  
18 in professional license disciplinary hearings under the uniform  
19 disciplinary act is the preponderance standard.

20 Therefore, the legislature finds that the preponderance standard as  
21 currently adopted by the department of health by rule for all health  
22 professionals subject to the uniform disciplinary act, chapter 18.130  
23 RCW, does not violate principles of due process or equal protection.

24 NEW SECTION. **Sec. 2.** A new section is added to chapter 18.130 RCW  
25 to read as follows:

26 Except as otherwise specifically provided by statute, the burden of  
27 proof in all disciplinary actions under this chapter is a preponderance  
28 of the evidence.

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