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SENATE BILL 5582

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State of Washington                      60th Legislature                      2007 Regular Session

By Senators Clements and Kohl-Welles; by request of Department of Licensing

Read first time 01/24/2007.                      Referred to Committee on Labor, Commerce, Research & Development.

1            AN ACT Relating to the uniform regulation of business and  
2 professions; amending RCW 18.140.160, 18.185.110, 18.185.120,  
3 19.16.410, 18.220.040, 18.220.130, 18.220.050, 18.165.170, 18.170.180,  
4 18.235.005, 18.235.010, 18.235.020, 18.235.040, 18.235.050, 18.235.080,  
5 18.235.090, 18.235.100, 18.235.110, 18.235.130, 18.235.150, and  
6 18.235.210; and repealing RCW 18.140.175, 18.85.343, 18.220.140,  
7 18.220.150, 18.220.170, and 18.220.180.

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

9            **Sec. 1.** RCW 18.140.160 and 2005 c 339 s 14 are each amended to  
10 read as follows:

11            In addition to the unprofessional conduct described in RCW  
12 18.235.130, the director may take disciplinary action for the following  
13 conduct, acts, or conditions:

14            (1) Failing to meet the minimum qualifications for state  
15 certification, licensure, or registration established by or pursuant to  
16 this chapter;

17            (2) Paying money other than the fees provided for by this chapter  
18 to any employee of the director or the commission to procure state  
19 certification, licensure, or registration under this chapter;

1 (3) Continuing to act as a state-certified real estate appraiser,  
2 state-licensed real estate appraiser, or state-registered appraiser  
3 trainee when his or her certificate, license, or registration is on an  
4 expired status;

5 (4) Violating any provision of this chapter or any lawful rule made  
6 by the director pursuant thereto;

7 (5) Issuing an appraisal report on any real property in which the  
8 appraiser has an interest unless his or her interest is clearly stated  
9 in the appraisal report; (~~and~~)

10 (6) Being affiliated as an employer, independent contractor, or  
11 supervisory appraiser of a state-certified real estate appraiser,  
12 state-licensed real estate appraiser, or state-registered appraiser  
13 trainee whose certification, license, or registration is currently in  
14 a suspended or revoked status;

15 (7) Failure or refusal without good cause to exercise reasonable  
16 diligence in performing an appraisal practice under this chapter,  
17 including preparing an oral or written report to communicate  
18 information concerning an appraisal practice; and

19 (8) Negligence or incompetence in performing an appraisal practice  
20 under this chapter, including preparing an oral or written report to  
21 communicate information concerning an appraisal practice.

22 **Sec. 2.** RCW 18.185.110 and 2004 c 186 s 9 are each amended to read  
23 as follows:

24 In addition to the unprofessional conduct described in RCW  
25 18.235.130, the following conduct, acts, or conditions constitute  
26 unprofessional conduct:

27 (1) Violating any of the provisions of this chapter or the rules  
28 adopted under this chapter;

29 (2) Failing to meet the qualifications set forth in RCW 18.185.020  
30 (~~and~~), 18.185.030, and 18.185.250;

31 (3) Knowingly committing, or being a party to, any material fraud,  
32 misrepresentation, concealment, conspiracy, collusion, trick, scheme,  
33 or device whereby any other person lawfully relies upon the word,  
34 representation, or conduct of the licensee. However, this subsection  
35 (3) does not prevent a bail bond recovery agent from using any pretext  
36 to locate or apprehend a fugitive criminal defendant or gain any  
37 information regarding the fugitive;

1 (4) Assigning or transferring any license issued pursuant to the  
2 provisions of this chapter, except as provided in RCW 18.185.030 or  
3 18.185.250;

4 (5) Conversion of any money or contract, deed, note, mortgage, or  
5 other evidence of title, to his or her own use or to the use of his or  
6 her principal or of any other person, when delivered to him or her in  
7 trust or on condition, in violation of the trust or before the  
8 happening of the condition; and failure to return any money or  
9 contract, deed, note, mortgage, or other evidence of title within  
10 thirty days after the owner is entitled to possession, and makes demand  
11 for possession, shall be prima facie evidence of conversion;

12 (6) Failing to keep records, maintain a trust account, or return  
13 collateral or security, as required by RCW 18.185.100;

14 (7) Any conduct in a bail bond transaction which demonstrates bad  
15 faith, dishonesty, or untrustworthiness;

16 (8) Violation of an order to cease and desist that is issued by the  
17 director under (~~this~~) chapter 18.235 RCW;

18 (9) Wearing, displaying, holding, or using badges not approved by  
19 the department;

20 (10) Making any statement that would reasonably cause another  
21 person to believe that the bail bond recovery agent is a sworn peace  
22 officer;

23 (11) Failing to carry a copy of the contract or to present a copy  
24 of the contract as required under RCW 18.185.270(1);

25 (12) Using the services of an unlicensed bail bond recovery agent  
26 or using the services of a bail bond recovery agent without issuing the  
27 proper contract;

28 (13) Misrepresenting or knowingly making a material misstatement or  
29 omission in the application for a license;

30 (14) Using the services of a person performing the functions of a  
31 bail bond recovery agent who has not been licensed by the department as  
32 required by this chapter; or

33 (15) Performing the functions of a bail bond recovery agent without  
34 being both (a) licensed under this chapter or supervised by a licensed  
35 bail bond recovery agent under RCW 18.185.290; and (b) under contract  
36 with a bail bond agent.

1       **Sec. 3.** RCW 18.185.120 and 2002 c 86 s 252 are each amended to  
2 read as follows:

3       In addition to those powers set forth in RCW 18.235.030, the  
4 director or the director's designee has the authority:

5       (1) To order restitution to the person harmed by the licensee; or

6       (2) To enter into an assurance of discontinuance in lieu of issuing  
7 a statement of charges or conducting a hearing. The assurance shall  
8 consist of a statement of the law in question and an agreement to not  
9 violate the stated provision. The applicant or license holder shall  
10 not be required to admit to any violation of the law, and the assurance  
11 shall not be construed as such an admission. Violation of an assurance  
12 under this subsection is grounds for disciplinary action.

13       **Sec. 4.** RCW 19.16.410 and 1971 ex.s. c 253 s 32 are each amended  
14 to read as follows:

15       The ~~((director))~~ board may ~~((promulgate))~~ adopt rules, make  
16 specific decisions, orders, and rulings, including therein demands and  
17 findings, and take other necessary action for the implementation and  
18 enforcement of ~~((his))~~ the board's duties under this chapter.

19       **Sec. 5.** RCW 18.220.040 and 2002 c 86 s 261 are each amended to  
20 read as follows:

21       The director has the following authority in administering this  
22 chapter:

23       ~~(1) ((To adopt, amend, and rescind rules approved by the board as  
24 deemed necessary to carry out this chapter;~~

25       ~~(2))~~ To adopt fees as provided in RCW 43.24.086; and

26       ~~((3))~~ (2) To administer licensing examinations approved by the  
27 board ~~((and to adopt or recognize examinations prepared by other  
28 organizations as approved by the board;~~

29       ~~(4) To adopt standards of professional conduct and practice as  
30 approved by the board; and~~

31       ~~(5) To enter into an assurance of discontinuance in lieu of issuing  
32 a statement of charges or conducting a hearing. The assurance shall  
33 consist of a statement of the law in question and an agreement to not  
34 violate the stated provision. Violation of an assurance under this  
35 subsection is grounds for disciplinary action)).~~

1       **Sec. 6.** RCW 18.220.130 and 2002 c 86 s 263 are each amended to  
2 read as follows:

3       In addition to the unprofessional conduct described in RCW  
4 18.235.130, the following conduct, acts, and conditions constitute  
5 unprofessional conduct:

6       (1) Violating any of the provisions of this chapter or the rules  
7 adopted under this chapter;

8       (2) Not meeting the qualifications for licensing set forth by this  
9 chapter; or

10       (3) ~~((Failure to comply with an assurance of discontinuance entered  
11 into with the director; or~~

12       ~~(4))~~ Committing any other act, or failing to act, which act or  
13 failure are customarily regarded as being contrary to the accepted  
14 professional conduct or standard generally expected of those practicing  
15 geology.

16       **Sec. 7.** RCW 18.220.050 and 2002 c 86 s 262 are each amended to  
17 read as follows:

18       The board has the following authority in administering this  
19 chapter:

20       (1) To ~~((establish))~~ adopt, amend, and rescind rules~~((, including  
21 board organization and assignment of terms, and meeting frequency and  
22 timing, for adoption by the director))~~ as deemed necessary to carry out  
23 this chapter;

24       (2) To establish the minimum qualifications for applicants for  
25 licensure as provided by this chapter;

26       (3) To approve the method of administration for examinations  
27 required by this chapter or by rule ~~((as established by the director)).~~  
28 To ~~((approve the adoption))~~ adopt or ~~((recognition of))~~ recognize  
29 examinations prepared by other organizations ~~((for adoption by the  
30 director)).~~ To set the time and place of examinations with the  
31 approval of the director;

32       (4) To ~~((establish and review))~~ adopt standards of professional  
33 conduct and practice ~~((for adoption by the director)).~~ Rules of  
34 professional conduct will be consistent with those outlined for  
35 engineers and land surveyors; and

36       (5) To designate specialties of geology to be licensed under this  
37 chapter.

1           **Sec. 8.** RCW 18.165.170 and 2002 c 86 s 246 are each amended to  
2 read as follows:

3           The director or the director's designee has the following authority  
4 in administering this chapter:

5           (1) To adopt, amend, and rescind rules as deemed necessary to carry  
6 out this chapter;

7           (2) To enter into contracts for professional services determined to  
8 be necessary for adequate enforcement of this chapter; and

9           (3) To adopt standards of professional conduct or practice((+

10          ~~(4) To enter into an assurance of discontinuance in lieu of issuing~~  
11 ~~a statement of charges or conducting a hearing. The assurance shall~~  
12 ~~consist of a statement of the law in question and an agreement to not~~  
13 ~~violate the stated provision. The applicant or license holder shall~~  
14 ~~not be required to admit to any violation of the law, and the assurance~~  
15 ~~shall not be construed as such an admission. Violation of an assurance~~  
16 ~~under this subsection is grounds for disciplinary action; and~~

17          ~~(5) To employ such administrative and clerical staff as necessary~~  
18 ~~for the enforcement of this chapter)).~~

19           **Sec. 9.** RCW 18.170.180 and 2002 c 86 s 249 are each amended to  
20 read as follows:

21           The director or the director's designee has the following authority  
22 in administering this chapter:

23           (1) To adopt, amend, and rescind rules as deemed necessary to carry  
24 out this chapter;

25           (2) To adopt standards of professional conduct or practice; and

26           ~~(3) ((To enter into an assurance of discontinuance in lieu of~~  
27 ~~issuing a statement of charges or conducting a hearing. The assurance~~  
28 ~~shall consist of a statement of the law in question and an agreement to~~  
29 ~~not violate the stated provision. The applicant or license holder~~  
30 ~~shall not be required to admit to any violation of the law, and the~~  
31 ~~assurance shall not be construed as such an admission. Violation of an~~  
32 ~~assurance under this subsection is grounds for disciplinary action; and~~

33           ~~(4))~~ To employ such administrative and clerical staff as necessary  
34 for the enforcement of this chapter.

35           **Sec. 10.** RCW 18.235.005 and 2002 c 86 s 101 are each amended to  
36 read as follows:

1       It is the intent of the legislature to consolidate disciplinary  
2 procedures for the licensed businesses and professions under the  
3 (~~business and professions division of the~~) department of licensing by  
4 providing a uniform disciplinary act (~~for businesses and professions~~)  
5 with standardized procedures for the regulation of businesses and  
6 professions and the enforcement of laws, the purpose of which is to  
7 assure the public of the adequacy of business and professional  
8 competence and conduct.

9       It is also the intent of the legislature that all businesses and  
10 professions newly credentialed by the state and regulated by the  
11 (~~business and professions division of the~~) department of licensing  
12 come under this chapter.

13       **Sec. 11.** RCW 18.235.010 and 2002 c 86 s 102 are each amended to  
14 read as follows:

15       The definitions in this section apply throughout this chapter  
16 unless the context clearly requires otherwise.

17       (1) "Board" means those boards specified in RCW 18.235.020(2)(b).

18       (2) "Department" means the department of licensing.

19       (3) "Director" means the director of the department or director's  
20 designee.

21       (4) "Disciplinary action" means sanctions identified in RCW  
22 18.235.110.

23       (5) "Disciplinary authority" means the director, board, or  
24 commission having the authority to take disciplinary action against a  
25 holder of, or applicant for, a professional or business license upon a  
26 finding of a violation of this chapter or a chapter specified under RCW  
27 18.235.020.

28       (6) "License," "licensing," and "licensure" are deemed equivalent  
29 to the terms "license," "licensing," "licensure," "certificate,"  
30 "certification," and "registration" as those terms are defined in RCW  
31 18.118.020. Each of these terms, and the term "appointment" under  
32 chapter 42.44 RCW, are interchangeable under the provisions of this  
33 chapter.

34       (7) "Unlicensed practice" means:

35       (a) Practicing a profession or operating a business identified in  
36 RCW 18.235.020 without holding a valid, unexpired, unrevoked, and  
37 unsuspended license to do so; or

1 (b) Representing to a ((~~consumer~~)) person, through offerings,  
2 advertisements, or use of a professional title or designation, that the  
3 individual or business is qualified to practice a profession or operate  
4 a business identified in RCW 18.235.020 without holding a valid,  
5 unexpired, unrevoked, and unsuspended license to do so.

6 **Sec. 12.** RCW 18.235.020 and 2006 c 219 s 13 are each amended to  
7 read as follows:

8 (1) This chapter applies only to the director and the boards and  
9 commissions having jurisdiction in relation to the businesses and  
10 professions licensed under the chapters specified in this section.  
11 This chapter does not apply to any business or profession not licensed  
12 under the chapters specified in this section.

13 (2)(a) The director has authority under this chapter in relation to  
14 the following businesses and professions:

15 (i) Auctioneers under chapter 18.11 RCW;

16 (ii) Bail bond agents and bail bond recovery agents under chapter  
17 18.185 RCW;

18 (iii) Camping resorts' operators and salespersons under chapter  
19 19.105 RCW;

20 (iv) Commercial telephone solicitors under chapter 19.158 RCW;

21 (v) Cosmetologists, barbers, manicurists, and estheticians under  
22 chapter 18.16 RCW;

23 (vi) Court reporters under chapter 18.145 RCW;

24 (vii) Driver training schools and instructors under chapter 46.82  
25 RCW;

26 (viii) Employment agencies under chapter 19.31 RCW;

27 (ix) For hire vehicle operators under chapter 46.72 RCW;

28 (x) Limousines under chapter 46.72A RCW;

29 (xi) Notaries public under chapter 42.44 RCW;

30 (xii) Private investigators under chapter 18.165 RCW;

31 (xiii) Professional boxing, martial arts, and wrestling under  
32 chapter 67.08 RCW;

33 (xiv) Real estate appraisers under chapter 18.140 RCW;

34 (xv) Real estate brokers and salespersons under chapters 18.85 and  
35 18.86 RCW;

36 (xvi) Security guards under chapter 18.170 RCW;

37 (xvii) Sellers of travel under chapter 19.138 RCW;



1 (xviii) Timeshares and timeshare salespersons under chapter 64.36  
2 RCW; and  
3 (xix) Whitewater river outfitters under chapter 79A.60 RCW.  
4 (b) The boards and commissions having authority under this chapter  
5 are as follows:  
6 (i) The state board of registration for architects established in  
7 chapter 18.08 RCW;  
8 (ii) The cemetery board established in chapter 68.05 RCW;  
9 (iii) The Washington state collection agency board established in  
10 chapter 19.16 RCW;  
11 (iv) The state board of registration for professional engineers and  
12 land surveyors established in chapter 18.43 RCW governing licenses  
13 issued under chapters 18.43 and 18.210 RCW;  
14 (v) The state board of funeral directors and embalmers established  
15 in chapter 18.39 RCW;  
16 (vi) The state board of registration for landscape architects  
17 established in chapter 18.96 RCW; and  
18 (vii) The state geologist licensing board established in chapter  
19 18.220 RCW.  
20 (3) In addition to the authority to discipline license holders, the  
21 disciplinary authority may grant or deny licenses based on the  
22 conditions and criteria established in this chapter and the chapters  
23 specified in subsection (2) of this section. This chapter also governs  
24 any investigation, hearing, or proceeding relating to denial of  
25 licensure or issuance of a license conditioned on the applicant's  
26 compliance with an order entered under RCW 18.235.110 by the  
27 disciplinary authority.

28 **Sec. 13.** RCW 18.235.040 and 2002 c 86 s 105 are each amended to  
29 read as follows:

30 (~~In addition to the authority specified in RCW 18.235.030,~~) The  
31 director has the following additional authority:

32 (1) To employ investigative, administrative, and clerical staff as  
33 necessary for the enforcement of this chapter, except as provided  
34 otherwise by statute;

35 (2) Upon request of a board or commission, to appoint not more than  
36 three pro tem members as provided in this subsection. Individuals  
37 appointed as pro tem members of a board or commission must meet the

1 same minimum qualifications as regular members of the board or  
2 commission. While serving as a pro tem board or commission member, a  
3 person so appointed has all the powers, duties, and immunities, and is  
4 entitled to the entitlements, including travel expenses in accordance  
5 with RCW 43.03.050 and 43.03.060, of a regular member of the board or  
6 commission; and

7 (3) To establish fees to be paid for witnesses, expert witnesses,  
8 and consultants used in any investigation or adjudicative proceedings  
9 as authorized by RCW 34.05.446.

10 **Sec. 14.** RCW 18.235.050 and 2002 c 86 s 106 are each amended to  
11 read as follows:

12 (1) If the disciplinary authority determines, upon investigation,  
13 that there is reason to believe (~~a violation of RCW 18.235.130 has~~  
14 ~~occurred, a statement of charge or charges may be prepared and served~~  
15 ~~upon the license holder or applicant. The statement of charge or~~  
16 ~~charges must be accompanied by a notice that the license holder or~~  
17 ~~applicant may request a hearing to contest the charge or charges)) that  
18 a license holder or applicant for a license has violated RCW 18.235.130  
19 or has not met a minimum eligibility criteria for licensure, the  
20 disciplinary authority may prepare and serve the license holder or  
21 applicant a statement of charge, charges, or intent to deny. A notice  
22 that the license holder or applicant may request a hearing to contest  
23 the charge, charges, or intent to deny must accompany the statement.  
24 The license holder or applicant must file a request for a hearing with  
25 the disciplinary authority within twenty days after being served the  
26 statement of charges or statement of intent to deny. The failure to  
27 request a hearing constitutes a default, whereupon the disciplinary  
28 authority may enter a decision on the facts available to it.~~

29 (2) If a (~~hearing is requested, the time of the hearing must be~~  
30 ~~fixed by the disciplinary authority as soon as convenient, but the~~  
31 ~~hearing may not be held earlier than thirty days after service of~~  
32 ~~charges upon the license holder or applicant, unless the disciplinary~~  
33 ~~authority has issued a summary suspension or summary restriction, for~~  
34 ~~which a hearing may be held sooner than thirty days after service of~~  
35 ~~charges)) license holder or applicant for a license requests a hearing,  
36 the disciplinary authority must fix the time of the hearing as soon as  
37 convenient, but not earlier than thirty days after the service of~~

1 charge, charges, or intent to deny. The disciplinary authority may  
2 hold a hearing sooner than thirty days only if the disciplinary  
3 authority has issued a summary suspension or summary restriction.

4 **Sec. 15.** RCW 18.235.080 and 2002 c 86 s 109 are each amended to  
5 read as follows:

6 An order pursuant to proceedings authorized by this chapter, after  
7 due notice and findings in accordance with this chapter and chapter  
8 34.05 RCW, or an order of summary suspension entered under this  
9 chapter, takes effect immediately upon its being served. The final  
10 order, if appealed to the court, may not be stayed pending the appeal  
11 unless the disciplinary authority or court to which the appeal is taken  
12 enters an order staying the order of the disciplinary authority, which  
13 stay shall provide for terms necessary to protect the public.

14 **Sec. 16.** RCW 18.235.090 and 2002 c 86 s 110 are each amended to  
15 read as follows:

16 (~~An individual~~) A person who has been disciplined or (~~whose~~  
17 ~~license~~) has been denied a license by a disciplinary authority may  
18 appeal the decision as provided in chapter 34.05 RCW.

19 **Sec. 17.** RCW 18.235.100 and 2002 c 86 s 111 are each amended to  
20 read as follows:

21 A person whose license has been suspended or revoked under this  
22 chapter may petition the disciplinary authority for reinstatement after  
23 an interval of time and upon conditions determined by the disciplinary  
24 authority in the order suspending or revoking the license. The  
25 disciplinary authority shall act on the petition in accordance with the  
26 adjudicative proceedings provided under chapter 34.05 RCW and may  
27 impose such conditions as authorized by RCW 18.235.110. The  
28 disciplinary authority may require successful completion of an  
29 examination as (~~+~~) a condition of reinstatement.

30 **Sec. 18.** RCW 18.235.110 and 2002 c 86 s 112 are each amended to  
31 read as follows:

32 (1) Upon finding unprofessional conduct, the disciplinary authority  
33 may issue an order providing for one or any combination of the  
34 following:

- 1 (a) Revocation of the license for an interval of time;
- 2 (b) Suspension of the license for a fixed or indefinite term;
- 3 (c) Restriction or limitation of the practice;
- 4 (d) Satisfactory completion of a specific program of remedial  
5 education or treatment;
- 6 (e) Monitoring of the practice in a manner directed by the  
7 disciplinary authority;
- 8 (f) Censure or reprimand;
- 9 (g) Compliance with conditions of probation for a designated period  
10 of time;
- 11 (h) Payment of a fine for each violation found by the disciplinary  
12 authority, not to exceed five thousand dollars per violation. The  
13 disciplinary authority must consider aggravating or mitigating  
14 circumstances in assessing any fine. Funds received must be deposited  
15 in the related program account;
- 16 (i) Denial of an initial or renewal license application for an  
17 interval of time; or
- 18 (j) Other corrective action.
- 19 (2) The disciplinary authority may require reimbursement to the  
20 disciplinary authority for the investigative costs incurred in  
21 investigating the matter that resulted in issuance of an order under  
22 this section, but only if any of the sanctions in subsection (1)(a)  
23 through (j) of this section is ordered.
- 24 (3) Any of the actions under this section may be totally or partly  
25 stayed by the disciplinary authority. In determining what action is  
26 appropriate, the disciplinary authority must first consider what  
27 sanctions are necessary to protect the public health, safety, or  
28 welfare. Only after these provisions have been made may the  
29 disciplinary authority consider and include in the order requirements  
30 designed to rehabilitate the license holder or applicant. All costs  
31 associated with compliance with orders issued under this section are  
32 the obligation of the license holder or applicant.
- 33 (4) The licensee or applicant may enter into a stipulated  
34 disposition of charges that includes one or more of the sanctions of  
35 this section, but only after a statement of charges has been issued and  
36 the licensee has been afforded the opportunity for a hearing and has  
37 elected on the record to forego such a hearing. The stipulation shall  
38 either contain one or more specific findings of unprofessional conduct

1 or a statement by the licensee acknowledging that evidence is  
2 sufficient to justify one or more specified findings of unprofessional  
3 conduct. The stipulations entered into under this subsection are  
4 considered formal disciplinary action for all purposes.

5 **Sec. 19.** RCW 18.235.130 and 2002 c 86 s 114 are each amended to  
6 read as follows:

7 The following conduct, acts, or conditions constitute  
8 unprofessional conduct for any license holder or applicant under the  
9 jurisdiction of this chapter:

10 (1) The commission of any act involving moral turpitude,  
11 dishonesty, or corruption relating to the practice of the person's  
12 profession or operation of the person's business, whether the act  
13 constitutes a crime or not. At the disciplinary hearing a certified  
14 copy of a final holding of any court of competent jurisdiction is  
15 conclusive evidence of the conduct of the license holder or applicant  
16 upon which a conviction or the final holding is based. Upon a  
17 conviction, however, the judgment and sentence is conclusive evidence  
18 at the ensuing disciplinary hearing of the guilt of the license holder  
19 or applicant of the crime described in the indictment or information,  
20 and of the person's violation of the statute on which it is based. For  
21 the purposes of this (~~section~~) subsection, conviction includes all  
22 instances in which a plea of guilty or nolo contendere is the basis for  
23 the conviction and all proceedings in which the sentence has been  
24 deferred or suspended. Except as specifically provided by law, nothing  
25 in this (~~section~~) subsection abrogates the provisions of chapter  
26 9.96A RCW. However, RCW 9.96A.020 does not apply to a person who is  
27 required to register as a sex offender under RCW 9A.44.130;

28 (2) Misrepresentation or concealment of a material fact in  
29 obtaining or renewing a license or in reinstatement thereof;

30 (3) Advertising that is false, deceptive, or misleading;

31 (4) Incompetence, negligence, or malpractice that results in harm  
32 or damage to (~~a consumer~~) another or that creates an unreasonable  
33 risk (~~that a consumer may be harmed or damaged~~) of harm or damage to  
34 another;

35 (5) The suspension, revocation, or restriction of a license to  
36 engage in any business or profession by competent authority in any

1 state, federal, or foreign jurisdiction. A certified copy of the  
2 order, stipulation, or agreement is conclusive evidence of the  
3 revocation, suspension, or restriction;

4 (6) Failure to cooperate with the disciplinary authority in the  
5 course of an investigation, audit, or inspection authorized by law by:

6 (a) Not furnishing any papers or documents requested by the  
7 disciplinary authority;

8 (b) Not furnishing in writing an explanation covering the matter  
9 contained in a complaint when requested by the disciplinary authority;

10 (c) Not responding to a subpoena issued by the disciplinary  
11 authority, whether or not the recipient of the subpoena is the accused  
12 in the proceeding; or

13 (d) Not providing authorized access, during regular business hours,  
14 to representatives of the disciplinary authority conducting an  
15 investigation, inspection, or audit at facilities utilized by the  
16 license holder or applicant;

17 (7) Failure to comply with an order issued by the disciplinary  
18 authority;

19 (8) Violating any (~~lawful rule~~) of the provisions of this chapter  
20 or the chapters specified in RCW 18.235.020(2) or any rules made by the  
21 disciplinary authority under the chapters specified in RCW  
22 18.235.020(2);

23 (9) Aiding or abetting an unlicensed person to practice or operate  
24 a business or profession when a license is required;

25 (10) Practice or operation of a business or profession beyond the  
26 scope of practice or operation as defined by law or rule;

27 (11) Misrepresentation in any aspect of the conduct of the business  
28 or profession;

29 (12) Failure to adequately supervise or oversee auxiliary staff,  
30 whether employees or contractors, to the extent that consumers may be  
31 harmed or damaged;

32 (13) Conviction of any gross misdemeanor or felony relating to the  
33 practice of the person's profession or operation of the person's  
34 business. For the purposes of this subsection, conviction includes all  
35 instances in which a plea of guilty or nolo contendere is the basis for  
36 conviction and all proceedings in which the sentence has been deferred  
37 or suspended. Except as specifically provided by law, nothing in this

1 ((~~section~~)) subsection abrogates the provisions of chapter 9.96A RCW.  
2 However, RCW 9.96A.020 does not apply to a person who is required to  
3 register as a sex offender under RCW 9A.44.130; ((~~and~~))

4 (14) Interference with an investigation or disciplinary action by  
5 willful misrepresentation of facts before the disciplinary authority or  
6 its authorized representatives, or by the use of threats or harassment  
7 against any consumer or witness to discourage them from providing  
8 evidence in a disciplinary action or any other legal action, or by the  
9 use of financial inducements to any consumer or witness to prevent or  
10 attempt to prevent him or her from providing evidence in a disciplinary  
11 action; and

12 (15) Engaging in unlicensed practice as defined in RCW 18.235.010.

13 **Sec. 20.** RCW 18.235.150 and 2002 c 86 s 116 are each amended to  
14 read as follows:

15 (1) The disciplinary authority may investigate complaints  
16 concerning practice by unlicensed persons of a profession or business  
17 for which a license is required by the chapters specified in RCW  
18 18.235.020. In the investigation of the complaints, the director has  
19 the same authority as provided the disciplinary authority under RCW  
20 18.235.030.

21 (2) The disciplinary authority may issue a notice of intent to  
22 issue a cease and desist order to any person whom the disciplinary  
23 authority has reason to believe is engaged or is about to engage in the  
24 unlicensed practice of a profession or operation of a business for  
25 which a license is required by the chapters specified in RCW  
26 18.235.020.

27 (3) The disciplinary authority may issue a notice of intent to  
28 issue a cease and desist order to any person whom the disciplinary  
29 authority has reason to believe is engaged or is about to engage in an  
30 act or practice constituting a violation of this chapter or the  
31 chapters specified in RCW 18.235.020(2) or a rule adopted or order  
32 issued under those chapters.

33 (4) The person to whom such a notice is issued may request an  
34 adjudicative proceeding to contest the allegations. The notice shall  
35 include a brief, plain statement of the alleged unlicensed activities,  
36 act, or practice constituting a violation of this chapter. The request  
37 for hearing must be filed within twenty days after service of the

1 notice of intent to issue a cease and desist order. The failure to  
2 request a hearing constitutes a default, whereupon the ~~((director))~~  
3 disciplinary authority may enter a permanent cease and desist order,  
4 which may include a civil fine. All proceedings shall be conducted in  
5 accordance with chapter 34.05 RCW.

6 ~~((+3))~~ (5) If the disciplinary authority makes a final  
7 determination that a person has engaged or is engaging in unlicensed  
8 practice or other act or practice constituting a violation of this  
9 chapter, the ~~((director))~~ disciplinary authority may issue a permanent  
10 cease and desist order. In addition, the disciplinary authority may  
11 impose a civil fine in an amount not exceeding one thousand dollars for  
12 each day upon which the person engaged in the unlicensed practice of a  
13 profession or operation of a business for which a license is required  
14 by one or more of the chapters specified in RCW 18.235.020. The  
15 proceeds of such a fine shall be deposited in the related program  
16 account.

17 ~~((+4) If the disciplinary authority makes a written finding of fact~~  
18 ~~that the public interest will be irreparably harmed by delay in issuing~~  
19 ~~an order,))~~ (6) The disciplinary authority may issue a temporary cease  
20 and desist order if a person is engaged or is about to engage in  
21 unlicensed practice or other act or practice constituting a violation  
22 of this chapter if the disciplinary authority makes a written finding  
23 of fact that the public interest will be irreparably harmed by delay in  
24 issuing an order. The person receiving a temporary cease and desist  
25 order shall be provided an opportunity for a prompt hearing. A  
26 temporary cease and desist order shall remain in effect until further  
27 order of the disciplinary authority. The failure to request a prompt  
28 or regularly scheduled hearing constitutes a default, whereupon the  
29 disciplinary authority may enter a permanent cease and desist order,  
30 which may include a civil fine.

31 ~~((+5))~~ (7) The cease and desist order is conclusive proof of  
32 unlicensed practice or other act or practice constituting a violation  
33 of this chapter and may be enforced under RCW 7.21.060. This method of  
34 enforcement of the cease and desist order or civil fine may be used in  
35 addition to, or as an alternative to, any provisions for enforcement of  
36 agency orders set out in chapter 34.05 RCW.

37 ~~((+6))~~ (8) The attorney general, a county prosecuting attorney,  
38 the director, a board or commission, or any person may, in accordance



1 with the laws of this state governing injunctions, maintain an action  
2 in the name of the state of Washington to enjoin any person practicing  
3 a profession or business without a license for which a license is  
4 required by the chapters specified in RCW 18.235.020. All fees, fines,  
5 forfeitures, and penalties collected or assessed by a court because of  
6 a violation of this section shall be deposited in the related program  
7 account.

8 ~~((7))~~ (9) The civil remedies in this section do not limit the  
9 ability to pursue criminal prosecution as authorized in any of the acts  
10 specified in RCW 18.235.020 nor do the civil remedies limit any  
11 criminal sanctions.

12 **Sec. 21.** RCW 18.235.210 and 2002 c 86 s 122 are each amended to  
13 read as follows:

14 (1) This chapter applies to any conduct, acts, or conditions  
15 occurring on or after January 1, 2003.

16 (2) This chapter does not apply to or govern the construction of  
17 and disciplinary action for any conduct, acts, or conditions occurring  
18 prior to January 1, 2003. The conduct, acts, or conditions must be  
19 construed and disciplinary action taken according to the provisions of  
20 law existing at the time of the occurrence in the same manner as if  
21 this chapter had not been enacted.

22 (3) Notwithstanding subsection (2) of this section, this chapter  
23 applies to applications for licensure made on or after January 1, 2003.

24 NEW SECTION. **Sec. 22.** The following acts or parts of acts are  
25 each repealed:

26 (1) RCW 18.140.175 (Cease and desist orders) and 1993 c 30 s 19;

27 (2) RCW 18.85.343 (Violations--Cease and desist orders) and 1997 c  
28 322 s 22, 1989 c 175 s 67, & 1977 ex.s. c 261 s 2;

29 (3) RCW 18.220.140 (Unprofessional conduct--Hearing before  
30 director--Orders) and 2000 c 253 s 15;

31 (4) RCW 18.220.150 (Unprofessional conduct--Written complaint--  
32 Investigation) and 2002 c 86 s 264 & 2000 c 253 s 16;

33 (5) RCW 18.220.170 (Prohibited acts--Class 1 civil infractions) and  
34 2000 c 253 s 18; and

1           (6) RCW 18.220.180 (Violation of chapter--Injunction to restrain--  
2 Director's authority) and 2000 c 253 s 19.

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