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SENATE BILL 6058

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State of Washington

52nd Legislature

1992 Regular Session

By Senator L. Smith

Read first time 01/14/92. Referred to Committee on Commerce & Labor.

1 AN ACT Relating to tax consultants and preparers; adding a new  
2 chapter to Title 18 RCW; creating a new section; and prescribing  
3 penalties.

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

5 NEW SECTION. **Sec. 1.** Unless the context clearly requires  
6 otherwise, the definitions in this section apply throughout this  
7 chapter.

8 (1) "Department" means the department of licensing.

9 (2) "Director" means the director of the department of licensing.

10 (3) "Tax consultant" means any person who is licensed under this  
11 chapter to provide advice on limiting personal income tax liability or  
12 to prepare or assist in the preparation of personal income tax returns  
13 for another, for valuable consideration.

1 (4) "Tax preparer" means a person who is licensed under this  
2 chapter to prepare personal income tax returns for another for valuable  
3 consideration.

4 NEW SECTION. **Sec. 2.** This chapter does not apply to:

5 (1) A full-time or part-time employee hired to fill a permanent  
6 position who, in connection with his or her duties as an employee, has  
7 the responsibility of preparing income tax returns for the business of  
8 the employer only;

9 (2) A certified public accountant or public accountant holding a  
10 license under RCW 18.04.215;

11 (3) An attorney at law while performing his or her duties;

12 (4) A person employed by a local, state, or federal government  
13 agency, but only in the performance of his or her official duties.

14 NEW SECTION. **Sec. 3.** After June 30, 1993, except as otherwise  
15 provided:

16 (1) A person shall not provide advice on limiting personal income  
17 tax liability or prepare or assist in the preparation of personal  
18 income tax returns for another, for valuable consideration, or  
19 represent that the person is so engaged, unless the person is licensed  
20 as a tax consultant under this chapter.

21 (2) A tax preparer may prepare or assist in the preparation of  
22 personal income tax returns only under the direct supervision of a  
23 licensed tax consultant and subject to such conditions and limitations  
24 as the director may impose.

25 NEW SECTION. **Sec. 4.** (1) Every applicant for a license as a  
26 tax preparer must:

27 (a) Be at least eighteen years of age;

1 (b) Possess a high school diploma or have passed an equivalency  
2 examination;

3 (c) Present evidence satisfactory to the director that the  
4 applicant has successfully completed not less than eighty hours of  
5 coursework in basic personal income tax law, theory, and practice at an  
6 educational institution approved by the director; and

7 (d) Pass an examination that the director constructs to measure the  
8 applicant's knowledge of personal income tax law, theory, and practice.

9 (2) In addition to the requirements of subsection (1) of this  
10 section, every applicant for a tax consultant's license must:

11 (a) Present evidence of active employment as a tax preparer in this  
12 or another state for a minimum of seven hundred eighty hours during at  
13 least two of the last five years. Certification by one or more  
14 licensed tax consultants that the applicant has been employed as a tax  
15 preparer under his or her direct supervision and satisfied the seven  
16 hundred eighty hour employment requirement shall be considered evidence  
17 satisfactory to the director of the applicant's employment as a tax  
18 preparer for the period specified. If an applicant has worked less  
19 than a cumulative of seven hundred eighty hours in at least two of the  
20 last five years, the director may consider the number of hours  
21 employed, the number of years employed, the number of tax returns  
22 prepared, other certificates or degrees held by the applicant, and  
23 whether the work contributed to the professional competence of the  
24 individual in determining if the applicant has met the work experience  
25 requirement; and

26 (b) Pass an examination that the director constructs to measure the  
27 applicant's knowledge of personal income tax law, theory, and practice.  
28 The examination for a tax consultant's license shall differ from the  
29 examination for a tax preparer's license in that it shall be more

1 demanding and require a significantly higher degree of knowledge of  
2 personal income tax law, theory, and practice.

3 (3) If, in the judgment of the director, an applicant has, in  
4 combination, the experience to qualify for a tax consultant's or  
5 preparer's license but does not meet or cannot present evidence of  
6 strict compliance with the requirements of subsection (2)(a) of this  
7 section, the director may allow some of the applicant's education or  
8 experience to substitute one for the other.

9 (4) Nothing in this section shall be construed to allow a waiver  
10 of, or substitution for, any qualifications needed for a tax  
11 consultant's or tax preparer's license other than those specifically  
12 described in subsection (3) of this section.

13 NEW SECTION. **Sec. 5.** (1) A corporation, firm, or partnership,  
14 through individuals who are licensed within this state to provide  
15 advice on limiting personal income tax liability or to prepare or  
16 assist in the preparation of personal income tax returns for another,  
17 for valuable consideration, may engage in such activities and represent  
18 that it is so engaged if the corporation, firm, or partnership  
19 designates and annually reports to the director the authorized  
20 individuals responsible for: (a) Providing advice on limiting personal  
21 income tax liability or preparing or assisting in the preparation of  
22 personal income tax returns for another; and (b) commercial decisions  
23 of the corporation, firm, or partnership.

24 (2) A corporation, firm, or partnership is not relieved of  
25 responsibility for the conduct or acts of its agents, employees, or  
26 officers by reason of compliance with subsection (1) of this section,  
27 and a licensed tax consultant or tax preparer is not relieved of  
28 responsibility for professional services performed by reason of

1 employment by or relationship with such corporation, firm, or  
2 partnership.

3 (3) A corporation, firm, or partnership shall not engage in any of  
4 the activities under subsection (1) of this section if the tax  
5 consultant, the tax preparer, the proprietor, a partner, a principal,  
6 an officer, director or manager, or a shareholder of the corporation,  
7 is:

8 (a) An individual whose license as a tax consultant or tax preparer  
9 is permanently revoked by the director;

10 (b) An individual to whom the director has refused to issue or  
11 renew a license;

12 (c) An individual whose occupational license, permit, or  
13 registration has been revoked or refused by another state regulatory  
14 agency or the internal revenue service; or

15 (d) A corporation, firm, or partnership prohibited from engaging in  
16 activities under subsection (1) of this section.

17 (4) For purposes of this section:

18 (a) "Shareholder" means:

19 (i) If the corporation is publicly traded, a shareholder that owns  
20 more than ten percent in value of the outstanding stock of the  
21 corporation; or

22 (ii) If the corporation is not publicly traded, any shareholder.

23 (b) "Publicly traded" means traded on an established securities  
24 market.

25 (5) If, after June 30, 1993, a corporation, firm, or partnership  
26 must sever a relationship in order that it may engage or may continue  
27 to engage in providing advice on limiting personal income tax liability  
28 or tax preparation activities in compliance with this section, the  
29 corporation, firm, or partnership shall be allowed a reasonable time to  
30 sever the relationship. Except as provided under subsection (6) of

1 this section, the time allowed to sever a relationship shall not exceed  
2 one hundred eighty days after the director gives notice that severance  
3 is required. The notice shall include a statement affording an  
4 opportunity for hearing on the issue of severance. The notice and all  
5 proceedings conducted under this section shall be in accordance with  
6 the provisions of the administrative procedure act, chapter 34.05 RCW.

7 (6) If a hearing is requested under subsection (5) of this section  
8 or if an appeal is taken of the director's order following hearing, the  
9 director or court may allow additional time for the affected parties to  
10 comply with any order requiring severance.

11 NEW SECTION. **Sec. 6.** (1) Applications for a tax preparer's  
12 license or tax consultant's license required under this chapter shall  
13 be filed with the director on a form provided by the director. The  
14 director may require any information and documentation that reasonably  
15 relates to the need to determine whether the applicant meets the  
16 licensing criteria.

17 (2) After receipt of an application for a license, the director  
18 shall conduct an investigation to determine whether the facts set forth  
19 in the application are true.

20 NEW SECTION. **Sec. 7.** (1) The provisions of this chapter  
21 relating to the licensing for regulatory purposes of tax preparers and  
22 tax consultants are exclusive. No governmental subdivision of this  
23 state may enact any laws or rules licensing, for regulatory purposes,  
24 such persons, except as provided in subsections (2) and (3) of this  
25 section.

26 (2) This section shall not be construed to prevent a political  
27 subdivision of this state from levying a business license fee, business  
28 and occupation tax, or other tax upon tax preparers or tax consultants

1 if such fees or taxes are levied on other types of businesses within  
2 its boundaries.

3 (3) This section shall not be construed to prevent this state from  
4 licensing or regulating tax preparers or tax consultants with respect  
5 to activities performed or offered that are not of a personal income  
6 tax nature.

7 NEW SECTION. **Sec. 8.** Tax preparers and tax consultants whose  
8 duties require them to operate across state lines may operate in this  
9 state if they are properly registered and certified in another state  
10 with training, insurance, and certification requirements that the  
11 director finds are at least equal to the requirements of this state.  
12 Out-of-state tax preparers and tax consultants shall register with the  
13 state of Washington's department of licensing before they may practice  
14 in Washington.

15 NEW SECTION. **Sec. 9.** Persons acting as tax consultants or tax  
16 preparers prior to the effective date of this act shall be licensed  
17 without regard to the requirements under section 4 of this act. They  
18 shall be granted a license after presenting evidence of the employment  
19 to the department. The department shall adopt rules concerning what is  
20 adequate proof.

21 NEW SECTION. **Sec. 10.** The following acts are prohibited and  
22 constitute grounds for disciplinary action or denial, suspension, or  
23 revocation of any license under this chapter, as deemed appropriate by  
24 the director:

25 (1) Knowingly violating any of the provisions of this chapter or  
26 the rules adopted under this chapter;

1 (2) Practicing fraud, deceit, or misrepresentation in any of the  
2 activities covered by this chapter;

3 (3) Knowingly making a material misstatement or omission in the  
4 application for a license;

5 (4) Conviction of a gross misdemeanor or felony or the commission  
6 of any act involving moral turpitude, dishonesty, or corruption,  
7 whether or not the act constitutes a crime. If the act constitutes a  
8 crime, conviction in a criminal proceeding is not a condition precedent  
9 to disciplinary action. Upon such a conviction, however, the judgment  
10 and sentence is conclusive evidence at the ensuing disciplinary hearing  
11 of the guilt of the licensee or applicant of the crime described in the  
12 indictment or information, and of the person's violation of the statute  
13 on which it is based. For the purposes of this section, conviction  
14 includes all instances in which a plea of guilty or nolo contendere is  
15 the basis for the conviction and all proceedings in which the sentence  
16 has been deferred or suspended. Nothing in this section abrogates  
17 rights guaranteed under chapter 9.96A RCW;

18 (5) Misrepresentation or concealment of a material fact in  
19 obtaining a license or in reinstatement thereof;

20 (6) Advertising that is false, fraudulent, or misleading;

21 (7) Incompetence or negligence;

22 (8) Suspension, revocation, or restriction of the individual's  
23 license to practice the profession by competent authority in any state,  
24 federal, or foreign jurisdiction, a certified copy of the order,  
25 stipulation, or agreement being conclusive evidence of the revocation,  
26 suspension, or restriction;

27 (9) Failure to cooperate with the director by:

28 (a) Not furnishing any necessary papers or documents requested by  
29 the director for purposes of conducting an investigation for



1 disciplinary action, denial, suspension, or revocation of a license  
2 under this chapter;

3 (b) Not furnishing in writing a full and complete explanation  
4 covering the matter contained in a complaint filed with the department;  
5 or

6 (c) Not responding to subpoenas issued by the director, whether or  
7 not the recipient of the subpoena is the accused in the proceeding;

8 (10) Failure to comply with an order issued by the director or an  
9 assurance of discontinuance entered into with the disciplining  
10 authority;

11 (11) Aiding or abetting an unlicensed person to practice if a  
12 license is required;

13 (12) Misrepresentation or fraud in any aspect of the conduct of the  
14 business or profession;

15 (13) Failure to adequately supervise employees to the extent that  
16 the public is at risk;

17 (14) Interference with an investigation or disciplinary proceeding  
18 by willful misrepresentation of facts before the director or the  
19 director's authorized representative, or by the use of threats or  
20 harassment against a client or witness to prevent them from providing  
21 evidence in a disciplinary proceeding or any other legal action.

22 NEW SECTION. **Sec. 11.** The director has the following authority  
23 in administering this chapter:

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

26 (2) To issue subpoenas and administer oaths in connection with an  
27 investigation, hearing, or proceeding held under this chapter;

1 (3) To take or cause depositions to be taken and use other  
2 discovery procedures as needed in an investigation, hearing, or  
3 proceeding held under this chapter;

4 (4) To compel attendance of witnesses at hearings;

5 (5) To conduct practice reviews in the course of investigating a  
6 complaint or report of unprofessional conduct;

7 (6) To take emergency action ordering summary suspension of a  
8 license, or restriction or limitation of the licensee's practice  
9 pending proceedings by the director;

10 (7) To use the office of administrative hearings as authorized in  
11 chapter 34.12 RCW to conduct hearings. However, the director or the  
12 director's designee shall make the final decision in the hearing;

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

15 (9) To adopt standards of professional conduct or practice;

16 (10) In the event of a finding of unprofessional conduct by an  
17 applicant or licensee, to impose sanctions against a license applicant  
18 or licensee as provided by this chapter;

19 (11) To enter into an assurance of discontinuance in lieu of  
20 issuing a statement of charges or conducting a hearing. The assurance  
21 shall consist of a statement of the law in question and an agreement to  
22 not violate the stated provision. The applicant or licensee shall not  
23 be required to admit to any violation of the law, and the assurance  
24 shall not be construed as such an admission. Violation of an assurance  
25 under this subsection is grounds for disciplinary action;

26 (12) To designate individuals authorized to sign subpoenas and  
27 statements of charges;

28 (13) To employ such investigative, administrative, and clerical  
29 staff as necessary for the enforcement of this chapter; and

30 (14) To compel the attendance of witnesses at hearings.

1        NEW SECTION.    **Sec. 12.**        A person, including but not limited to  
2 consumers, licensees, corporations, organizations, and state and local  
3 governmental agencies, may submit a written complaint to the department  
4 charging a licensee or applicant with unprofessional conduct and  
5 specifying the grounds for this charge.    If the director determines  
6 that the complaint merits investigation, or if the director has reason  
7 to believe, without a formal complaint, that a licensee or applicant  
8 may have engaged in unprofessional conduct, the director shall  
9 investigate to determine if there has been unprofessional conduct.    A  
10 person who files a complaint under this section in good faith is immune  
11 from suit in any civil action related to the filing or contents of the  
12 complaint.

13        NEW SECTION.    **Sec. 13.**        (1) If the director determines, upon  
14 investigation, that there is reason to believe a violation of this  
15 chapter has occurred, a statement of charges shall be prepared and  
16 served upon the licensee or applicant and notice of this action given  
17 to the employing firm.    The statement of charges shall be accompanied  
18 by a notice that the licensee or applicant may request a hearing to  
19 contest the charges.    The licensee or applicant must file a request for  
20 hearing with the department within twenty days after being served the  
21 statement of charges.    The failure to request a hearing constitutes a  
22 default, whereupon the director may enter an order pursuant to RCW  
23 34.05.440.

24        (2) If a hearing is requested, the time of the hearing shall be  
25 scheduled but the hearing shall not be held earlier than thirty days  
26 after service of the charges upon the licensee or applicant.    A notice  
27 of hearing shall be issued at least twenty days prior to the hearing,  
28 specifying the time, date, and place of the hearing.

1        NEW SECTION.    **Sec. 14.**        The procedures governing adjudicative  
2 proceedings before agencies under chapter 34.05 RCW, the administrative  
3 procedure act, govern all hearings before the director.

4        NEW SECTION.    **Sec. 15.**        (1) If the director believes a licensee  
5 or applicant may be unable to practice with reasonable skill and safety  
6 to the public by reason of a mental condition, a statement of charges  
7 shall be served on the licensee or applicant and notice shall also be  
8 issued providing an opportunity for a hearing. The hearing shall be  
9 limited to the sole issue of the capacity of the licensee or applicant  
10 to practice with reasonable skill. If the director determines that the  
11 licensee or applicant is unable to practice with reasonable skill for  
12 one of the reasons stated in this subsection, the director shall impose  
13 such sanctions as are deemed necessary to protect the public.

14        (2) In investigating or adjudicating a complaint or report that a  
15 licensee or applicant may be unable to practice with reasonable skill  
16 by reason of a mental condition, the department may require a licensee  
17 or applicant to submit to a mental examination by one or more licensed  
18 or certified health professionals designated by the director. The cost  
19 of the examinations ordered by the department shall be paid by the  
20 department. In addition to any examinations ordered by the department,  
21 the licensee may submit mental examination reports from licensed or  
22 certified health professionals of the licensee or applicant's choosing  
23 and expense. Failure of the licensee or applicant to submit to  
24 examination when directed constitutes grounds for immediate suspension  
25 or withholding of the license, consequent upon which a default and  
26 final order may be entered without the taking of testimony or  
27 presentations of evidence, unless the failure was due to circumstances  
28 beyond the person's control. A determination by a court of competent  
29 jurisdiction that a licensee or applicant is mentally incompetent or

1 mentally ill is presumptive evidence of the licensee or applicant's  
2 inability to practice with reasonable skill. An individual affected  
3 under this section shall at reasonable intervals be afforded an  
4 opportunity to demonstrate that the individual can resume competent  
5 practice with reasonable skill.

6 (3) For the purpose of subsection (2) of this section, an applicant  
7 or licensee governed by this chapter, by making application,  
8 practicing, or filing a license renewal, is deemed to have given  
9 consent to submit to a mental or psychological examination if directed  
10 in writing by the department and further to have waived all objections  
11 to the admissibility or use of the examining health professional's  
12 testimony or examination reports by the director on the ground that the  
13 testimony or reports constitute hearsay or privileged communications.

14 NEW SECTION. **Sec. 16.** Upon a finding that a licensee or  
15 applicant has committed unprofessional conduct or is unable to practice  
16 with reasonable skill, the director may issue an order providing for  
17 one or any combination of the following:

- 18 (1) Revocation of the license;
- 19 (2) Suspension of the license for a fixed or indefinite term;
- 20 (3) Restriction or limitation of the practice;
- 21 (4) Requiring the satisfactory completion of a specific program of  
22 remedial education or treatment;
- 23 (5) Monitoring of the practice by a supervisor approved by the  
24 director;
- 25 (6) Censure or reprimand;
- 26 (7) Compliance with conditions of probation for a designated period  
27 of time;
- 28 (8) Withholding a license request;
- 29 (9) Other corrective action; or

1 (10) Refund of fees billed to and collected from the consumer.

2 Any of the actions under this section may be totally or partly  
3 stayed by the director. All costs associated with compliance with  
4 orders issued under this section are the obligation of the licensee or  
5 applicant.

6 NEW SECTION. **Sec. 17.** If an order for payment of a fine is  
7 made as a result of a hearing and timely payment is not made as  
8 directed in the final order, the director may enforce the order for  
9 payment in the superior court in the county in which the hearing was  
10 held. This right of enforcement shall be in addition to any other  
11 rights the director may have as to a licensee ordered to pay a fine,  
12 but shall not be construed to limit a licensee's ability to seek  
13 judicial review.

14 In an action for enforcement of an order of payment of a fine, the  
15 director's order is conclusive proof of the validity of the order of  
16 payment of a fine and the terms of payment.

17 NEW SECTION. **Sec. 18.** (1) The director shall investigate  
18 complaints concerning practice by unlicensed persons of a profession or  
19 business for which a license is required by this chapter. In the  
20 investigation of the complaints, the director shall have the same  
21 authority as provided the director under section 11 of this act. The  
22 director shall issue a cease and desist order to a person after notice  
23 and hearing and upon a determination that the person has violated this  
24 section. If the director makes a written finding of fact that the  
25 public interest will be irreparably harmed by delay in issuing an  
26 order, the director may issue a temporary cease and desist order. The  
27 cease and desist order shall not relieve the person practicing or  
28 operating a business without a license from criminal prosecution

1 therefor, but the remedy of a cease and desist order shall be in  
2 addition to any criminal liability. The cease and desist order is  
3 conclusive proof of unlicensed practice and may be enforced under RCW  
4 7.21.060. This method of enforcement of the cease and desist order may  
5 be used in addition to, or as an alternative to, any provisions for  
6 enforcement of agency orders.

7 (2) The attorney general, a county prosecuting attorney, the  
8 director, or any person may, in accordance with the law of this state  
9 governing injunctions, maintain an action in the name of this state to  
10 enjoin a person without a license practicing a profession or business  
11 for which a license is required by this chapter from engaging in such  
12 practice or operating such business until the required license is  
13 secured. However, the injunction shall not relieve the person  
14 practicing or operating a business without a license from criminal  
15 prosecution therefor, but the remedy by injunction shall be in addition  
16 to any criminal liability.

17 (3) Unlicensed practice of a profession or operating a business for  
18 which a license is required by this chapter, unless otherwise exempted  
19 by law, constitutes a gross misdemeanor. All fees, fines, forfeitures,  
20 and penalties collected or assessed by a court because of a violation  
21 of this section shall be remitted to the department.

22 NEW SECTION. **Sec. 19.** A person or business that violates an  
23 injunction issued under this chapter shall pay a civil penalty, as  
24 determined by the court, of not more than twenty-five thousand dollars,  
25 which shall be paid to the department. For the purpose of this  
26 section, the superior court issuing any injunction shall retain  
27 jurisdiction and the cause shall be continued, and in such cases the  
28 attorney general acting in the name of the state may petition for the  
29 recovery of civil penalties.

1        NEW SECTION.    **Sec. 20.**        The director or individuals acting on  
2 the director's behalf are immune from suit in any action, civil or  
3 criminal, based on disciplinary proceedings or other official acts  
4 performed in the course of their duties in the administration and  
5 enforcement of this chapter.

6        NEW SECTION.    **Sec. 21.**        The director, in implementing and  
7 administering the provisions of this chapter, shall act in accordance  
8 with the administrative procedure act, chapter 34.05 RCW.

9        NEW SECTION.    **Sec. 22.**        If any provision of this act or its  
10 application to any person or circumstance is held invalid, the  
11 remainder of the act or the application of the provision to other  
12 persons or circumstances is not affected.

13        NEW SECTION.    **Sec. 23.**        If specific funding for the purposes of  
14 this act, referencing this act by bill number, is not provided by June  
15 30, 1992, in the supplemental budget, this act is null and void.

16        NEW SECTION.    **Sec. 24.**        Sections 1 through 22 of this act shall  
17 constitute a new chapter in Title 18 RCW.