

ESHB 2879 - S COMM AMD

By Committee on Health & Long-Term Care

1 Strike everything after the enacting clause and insert the
2 following:

3 "Sec. 1. RCW 18.130.090 and 1993 c 367 s 1 are each amended to
4 read as follows:

5 (1) If the disciplining authority determines, upon investigation,
6 that there is reason to believe a violation of RCW 18.130.180 has
7 occurred, a statement of charge or charges (~~shall~~) may be prepared
8 and served upon the license holder or applicant at the earliest
9 practical time. The statement of charge or charges shall be
10 accompanied by a notice that the license holder or applicant may
11 request (~~a hearing~~) an adjudicative proceeding to contest the charge
12 or charges.

13 (a) The license holder or applicant must file a request for
14 ((hearing)) an adjudicative proceeding with the disciplining authority
15 within twenty days after being served the statement of charges.
16 Nothing in this section precludes the license holder and the
17 disciplinary authority from engaging in settlement negotiations and
18 resolving the matter through a settlement. If the twenty-day limit
19 results in a hardship upon the license holder or applicant, he or she
20 may request for good cause an extension not to exceed sixty additional
21 days. If the disciplining authority finds that there is good cause, it
22 shall grant the extension.

23 (b) The failure to request ((a hearing)) an adjudicative proceeding
24 constitutes a default((, whereupon)). The disciplining authority may
25 then enter a decision on the basis of the facts available to it.

26 (2) As an alternative to filing a statement of charge or charges,
27 the disciplining authority may issue to a license holder or applicant
28 a written notice of action identifying the allegations and proposed
29 sanction, except revocation, authorized under RCW 18.130.160. The

1 notice shall state the reasons for the action. The notice shall be
2 sent to the license holder or applicant by certified mail, with return
3 receipt requested.

4 (a) The applicant or license holder has the right to an
5 adjudicative proceeding. If an adjudicative proceeding is requested,
6 the action will be of no effect, other than to identify the allegations
7 and proposed sanctions. The license holder or applicant must file a
8 request for an adjudicative proceeding with the disciplining authority
9 within twenty days after being served the action. If the twenty-day
10 limit results in a hardship upon the license holder or applicant, he or
11 she may request for good cause an extension not to exceed sixty
12 additional days. If the disciplining authority finds that there is
13 good cause, it shall grant the extension.

14 (b) In the event no request for an adjudicative proceeding is filed
15 within the time allowed by (a) of this subsection and the department
16 has received the return receipt from the certified mailing, the action
17 becomes effective.

18 (c) In the event the license holder or applicant can show good
19 cause for failure to receive and reply to the written notice of action
20 and proposed sanction, the license holder or applicant may petition for
21 reconsideration and judicial review according to the rights and
22 privileges established for relief of all agency actions created in
23 chapter 34.05 RCW, the administrative procedure act.

24 (3) If ((a hearing)) an adjudicative proceeding is requested, the
25 time of the ((hearing)) adjudicative proceeding shall be fixed by the
26 disciplining authority as soon as convenient, but the ((hearing))
27 adjudicative proceeding shall not be held earlier than thirty days
28 after service of the charges or notice of action upon the license
29 holder or applicant.

30 **Sec. 2.** RCW 18.130.190 and 2003 c 53 s 141 are each amended to
31 read as follows:

32 (1) The secretary shall investigate complaints concerning practice
33 by unlicensed persons of a profession or business for which a license
34 is required by the chapters specified in RCW 18.130.040. In the
35 investigation of the complaints, the secretary shall have the same

1 authority as provided the secretary under RCW 18.130.050 and
2 18.130.060.

3 (2) The secretary may issue a notice of intention to issue a cease
4 and desist order to any person whom the secretary has reason to believe
5 is engaged in the unlicensed practice of a profession or business for
6 which a license is required by the chapters specified in RCW
7 18.130.040. The person to whom such notice is issued may request an
8 adjudicative proceeding to contest the charges. The request for
9 hearing must be filed within twenty days after service of the notice of
10 intention to issue a cease and desist order. The failure to request a
11 hearing constitutes a default, whereupon the secretary may enter a
12 permanent cease and desist order, which may include a civil fine. All
13 proceedings shall be conducted in accordance with chapter 34.05 RCW.

14 (3) If the secretary makes a final determination that a person has
15 engaged or is engaging in unlicensed practice, the secretary may issue
16 a cease and desist order. In addition, the secretary may impose a
17 civil fine in an amount not exceeding one thousand dollars for each day
18 upon which the person engaged in unlicensed practice of a business or
19 profession for which a license is required by one or more of the
20 chapters specified in RCW 18.130.040. The proceeds of such fines shall
21 be deposited to the health professions account.

22 (4) If the secretary makes a written finding of fact that the
23 public interest will be irreparably harmed by delay in issuing an
24 order, the secretary may issue a temporary cease and desist order. The
25 person receiving a temporary cease and desist order shall be provided
26 an opportunity for a prompt hearing. The temporary cease and desist
27 order shall remain in effect until further order of the secretary. The
28 failure to request a prompt or regularly scheduled hearing constitutes
29 a default, whereupon the secretary may enter a permanent cease and
30 desist order, which may include a civil fine.

31 (5) Neither the issuance of a cease and desist order nor payment of
32 a civil fine shall relieve the person so practicing or operating a
33 business without a license from criminal prosecution therefor, but the
34 remedy of a cease and desist order or civil fine shall be in addition
35 to any criminal liability. The cease and desist order is conclusive
36 proof of unlicensed practice and may be enforced under RCW 7.21.060.

1 This method of enforcement of the cease and desist order or civil fine
2 may be used in addition to, or as an alternative to, any provisions for
3 enforcement of agency orders set out in chapter 34.05 RCW.

4 (6) The attorney general, a county prosecuting attorney, the
5 secretary, a board, or any person may in accordance with the laws of
6 this state governing injunctions, maintain an action in the name of
7 this state to enjoin any person practicing a profession or business for
8 which a license is required by the chapters specified in RCW 18.130.040
9 without a license from engaging in such practice or operating such
10 business until the required license is secured. However, the
11 injunction shall not relieve the person so practicing or operating a
12 business without a license from criminal prosecution therefor, but the
13 remedy by injunction shall be in addition to any criminal liability.

14 (7)(a) Unlicensed practice of a profession or operating a business
15 for which a license is required by the chapters specified in RCW
16 18.130.040, unless otherwise exempted by law, constitutes a gross
17 misdemeanor for a single violation.

18 (b) Each subsequent violation, whether alleged in the same or in
19 subsequent prosecutions, is a class C felony punishable according to
20 chapter 9A.20 RCW.

21 (8) All fees, fines, forfeitures, and penalties collected or
22 assessed by a court because of a violation of this section shall be
23 remitted to the health professions account.

24 NEW SECTION. **Sec. 3.** Section 2 of this act takes effect January
25 1, 2005."

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26 On page 1, line 1 of the title, after "procedures;" strike the
27 remainder of the title and insert "amending RCW 18.130.090 and
28 18.130.190; and providing an effective date."

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