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HOUSE BILL 1395

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State of Washington

59th Legislature

2005 Regular Session

By Representatives Wood, Conway and Condotta; by request of Department of Licensing

Read first time 01/21/2005. Referred to Committee on Commerce & Labor.

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, 18.39.020, 18.220.040, 18.220.130, 18.220.140, 18.165.170,  
4 18.170.180, 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 and 18.85.343.

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

8 **Sec. 1.** RCW 18.140.160 and 2002 c 86 s 239 are each amended to  
9 read as follows:

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

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

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

18 (3) Continuing to act as a state-licensed or state-certified real

1 estate appraiser when his or her license or certificate is on an  
2 expired status;

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

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

8 (6) Being affiliated as an employee or independent contractor with  
9 a state-licensed or state-certified real estate appraiser when the  
10 appraiser's license or certificate has been revoked due to disciplinary  
11 action;

12 (7) Failure or refusal without good cause to exercise reasonable  
13 diligence in developing an appraisal, preparing an appraisal report, or  
14 communicating an appraisal; and

15 (8) Negligence or incompetence in developing an appraisal,  
16 preparing an appraisal report, or communicating an appraisal.

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

19 In addition to the unprofessional conduct described in RCW  
20 18.235.130 and 18.185.280, the following conduct, acts, or conditions  
21 constitute unprofessional conduct:

22 (1) Violating any of the provisions of this chapter or the rules  
23 adopted under this chapter;

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

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

33 (4) Assigning or transferring any license issued pursuant to the  
34 provisions of this chapter, except as provided in RCW 18.185.030 and  
35 18.185.250;

36 (5) Conversion of any money or contract, deed, note, mortgage, or  
37 other evidence of title, to his or her own use or to the use of his or

1 her principal or of any other person, when delivered to him or her in  
2 trust or on condition, in violation of the trust or before the  
3 happening of the condition; and failure to return any money or  
4 contract, deed, note, mortgage, or other evidence of title within  
5 thirty days after the owner is entitled to possession, and makes demand  
6 for possession, shall be prima facie evidence of conversion;

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

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

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

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

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

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

20 (12) Using the services of an unlicensed bail bond recovery agent  
21 or using the services of a bail bond recovery agent without issuing the  
22 proper contract;

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

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

28 (15) Performing the functions of a bail bond recovery agent without  
29 being both (a) licensed under this chapter or supervised by a licensed  
30 bail bond recovery agent under RCW 18.185.290; and (b) under contract  
31 with a bail bond agent.

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

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

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

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

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

10 The ((director)) board may promulgate rules, make specific  
11 decisions, orders and rulings, including therein demands and findings,  
12 and take other necessary action for the implementation and enforcement  
13 of ((his)) the board's duties under this chapter.

14 **Sec. 5.** RCW 18.39.020 and 1987 c 150 s 30 are each amended to read  
15 as follows:

16 It is ((a violation of RCW 18.130.190)) unlawful for any person to  
17 act or hold himself out as a funeral director or embalmer or discharge  
18 any of the duties of a funeral director or embalmer as defined in this  
19 chapter unless the person has a valid license under this chapter. It  
20 is unlawful for any person to ((open up)) establish, maintain, or  
21 operate a funeral establishment without a valid establishment license  
22 ((and without having at all times at least one funeral director to  
23 supervise and direct the business conducted therefrom)).

24 **Sec. 6.** RCW 18.220.040 and 2002 c 86 s 261 are each amended to  
25 read as follows:

26 The director has the following authority in administering this  
27 chapter:

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

30 (2) To adopt fees as provided in RCW 43.24.086;

31 (3) To administer licensing examinations approved by the board and  
32 to adopt or recognize examinations prepared by other organizations as  
33 approved by the board; and

34 (4) To adopt standards of professional conduct and practice as  
35 approved by the board((; and

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

6       **Sec. 7.** RCW 18.220.130 and 2002 c 86 s 263 are each amended to  
7 read as follows:

8       In addition to the unprofessional conduct described in RCW  
9 18.235.130, the following conduct, acts, and conditions constitute  
10 unprofessional conduct:

11       (1) Violating any of the provisions of this chapter or the rules  
12 adopted under this chapter;

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

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

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

21       **Sec. 8.** RCW 18.220.140 and 2000 c 253 s 15 are each amended to  
22 read as follows:

23       The procedures governing adjudicative proceedings before agencies  
24 under chapter 34.05 RCW govern all hearings before the ~~((director or~~  
25 ~~his or her designee))~~ board. Upon a finding that a license holder or  
26 applicant has committed unprofessional conduct, the ~~((director))~~ board  
27 may issue an order providing for one or any combination of the  
28 following:

29       (1) Revocation of the license;

30       (2) Suspension of the license for a fixed or indefinite term;

31       (3) Restriction or limitation of the practice;

32       (4) Issuance of a civil fine not to exceed five thousand dollars  
33 for each violation;

34       (5) Requiring satisfactory completion of a specific program of  
35 remedial education or treatment;

36       (6) Monitoring of the practice by a peer approved by the director;

- 1 (7) Reprimand or censure;
- 2 (8) Compliance with conditions of probation for a designated period
- 3 of time;
- 4 (9) Withholding of a license request;
- 5 (10) Refund of fees billed to and collected from the consumer; or
- 6 (11) Other corrective action.

7 Any of the actions under this section may be totally or partly  
8 stayed by the director. All costs associated with compliance with  
9 orders issued under this section are the obligation of the license  
10 holder or applicant.

11 **Sec. 9.** RCW 18.165.170 and 2002 c 86 s 246 are each amended to  
12 read as follows:

13 The director or the director's designee has the following authority  
14 in administering this chapter:

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

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

19 (3) To adopt standards of professional conduct or practice;

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

27 (5) To employ such administrative and clerical staff as necessary  
28 for the enforcement of this chapter.

29 **Sec. 10.** RCW 18.170.180 and 2002 c 86 s 249 are each amended to  
30 read as follows:

31 The director or the director's designee has the following authority  
32 in administering this chapter:

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

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

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

8 (4) To employ such administrative and clerical staff as necessary  
9 for the enforcement of this chapter.

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

12 The definitions in this section apply throughout this chapter  
13 unless the context clearly requires otherwise.

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

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

16 (3) "Director" means the director of the department or director's  
17 designee.

18 (4) "Disciplinary action" means sanctions identified in RCW  
19 18.235.110.

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

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

31 (7) "Unlicensed practice" means:

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

35 (b) Representing to a (~~consumer~~) person, through offerings,  
36 advertisements, or use of a professional title or designation, that the

1 individual or business is qualified to practice a profession or operate  
2 a business identified in RCW 18.235.020 without holding a valid,  
3 unexpired, unrevoked, and unsuspended license to do so.

4 **Sec. 12.** RCW 18.235.020 and 2002 c 86 s 103 are each amended to  
5 read as follows:

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

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

13 (i) Auctioneers under chapter 18.11 RCW;

14 (ii) Bail bond agents and bail bond recovery agents under chapter  
15 18.185 RCW;

16 (iii) Camping resorts' operators and salespersons under chapter  
17 19.105 RCW;

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

19 (v) Cosmetologists, barbers, manicurists, and estheticians under  
20 chapter 18.16 RCW;

21 (vi) Court reporters under chapter 18.145 RCW;

22 (vii) Employment agencies under chapter 19.31 RCW;

23 (viii) For hire vehicle operators under chapter 46.72 RCW;

24 (ix) Limousines under chapter 46.72A RCW;

25 (x) Notaries public under chapter 42.44 RCW;

26 (xi) Private investigators under chapter 18.165 RCW;

27 (xii) Professional boxing, martial arts, and wrestling under  
28 chapter 67.08 RCW;

29 (xiii) Real estate appraisers under chapter 18.140 RCW;

30 (xiv) Real estate brokers and salespersons under chapters 18.85 and  
31 18.86 RCW;

32 (xv) Security guards under chapter 18.170 RCW;

33 (xvi) Sellers of travel under chapter 19.138 RCW;

34 (xvii) Timeshares and timeshare salespersons under chapter 64.36  
35 RCW; and

36 (xviii) Whitewater river outfitters under chapter 79A.60 RCW.



1 (b) The boards and commissions having authority under this chapter  
2 are as follows:

3 (i) The state board of registration for architects established in  
4 chapter 18.08 RCW;

5 (ii) The cemetery board established in chapter 68.05 RCW;

6 (iii) The Washington state collection agency board established in  
7 chapter 19.16 RCW;

8 (iv) The state board of registration for professional engineers and  
9 land surveyors established in chapter 18.43 RCW governing licenses  
10 issued under chapters 18.43 and 18.210 RCW;

11 (v) The state board of funeral directors and embalmers established  
12 in chapter 18.39 RCW;

13 (vi) The state board of registration for landscape architects  
14 established in chapter 18.96 RCW; and

15 (vii) The state geologist licensing board established in chapter  
16 18.220 RCW.

17 (3) In addition to the authority to discipline license holders, the  
18 disciplinary authority may grant or deny licenses based on the  
19 conditions and criteria established in this chapter and the chapters  
20 specified in subsection (2) of this section. This chapter also governs  
21 any investigation, hearing, or proceeding relating to denial of  
22 licensure or issuance of a license conditioned on the applicant's  
23 compliance with an order entered under RCW 18.235.110 by the  
24 disciplinary authority.

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

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

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

32 (2) Upon request of a board or commission, to appoint not more than  
33 three pro tem members as provided in this subsection. Individuals  
34 appointed as pro tem members of a board or commission must meet the  
35 same minimum qualifications as regular members of the board or  
36 commission. While serving as a pro tem board or commission member, a  
37 person so appointed has all the powers, duties, and immunities, and is

1 entitled to the entitlements, including travel expenses in accordance  
2 with RCW 43.03.050 and 43.03.060, of a regular member of the board or  
3 commission; and

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

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

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

23 (2) If a hearing is requested, the time of the hearing must be  
24 fixed by the disciplinary authority as soon as convenient, but the  
25 hearing may not be held earlier than thirty days after service of  
26 charges or intent to deny upon the license holder or applicant, unless  
27 the disciplinary authority has issued a summary suspension or summary  
28 restriction, for which a hearing may be held sooner than thirty days  
29 after service of charges.

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

32 An order pursuant to proceedings authorized by this chapter, after  
33 due notice and findings in accordance with this chapter and chapter  
34 34.05 RCW, or an order of summary suspension entered under this  
35 chapter, takes effect immediately upon its being served. The final  
36 order, if appealed to the court, may not be stayed pending the appeal

1 unless the disciplinary authority or court to which the appeal is taken  
2 enters an order staying the order of the disciplinary authority, which  
3 stay shall provide for terms necessary to protect the public.

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

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

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

11 A person whose license has been suspended or revoked under this  
12 chapter may petition the disciplinary authority for reinstatement after  
13 an interval of time and upon conditions determined by the disciplinary  
14 authority in the order suspending or revoking the license. The  
15 disciplinary authority shall act on the petition in accordance with the  
16 adjudicative proceedings provided under chapter 34.05 RCW and may  
17 impose such conditions as authorized by RCW 18.235.110. The  
18 disciplinary authority may require successful completion of an  
19 examination as ((~~+~~)) a condition of reinstatement.

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

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

- 25 (a) Revocation of the license for an interval of time;
- 26 (b) Suspension of the license for a fixed or indefinite term;
- 27 (c) Restriction or limitation of the practice;
- 28 (d) Satisfactory completion of a specific program of remedial  
29 education or treatment;
- 30 (e) Monitoring of the practice in a manner directed by the  
31 disciplinary authority;
- 32 (f) Censure or reprimand;
- 33 (g) Compliance with conditions of probation for a designated period  
34 of time;

1 (h) Payment of a fine for each violation found by the disciplinary  
2 authority, not to exceed five thousand dollars per violation. The  
3 disciplinary authority must consider aggravating or mitigating  
4 circumstances in assessing any fine. Funds received must be deposited  
5 in the related program account;

6 (i) Denial of an initial or renewal license application for an  
7 interval of time; or

8 (j) Other corrective action.

9 (2) The disciplinary authority may require reimbursement to the  
10 disciplinary authority for the investigative costs incurred in  
11 investigating the matter that resulted in issuance of an order under  
12 this section, but only if any of the sanctions in subsection (1)(a)  
13 through (j) of this section is ordered.

14 (3) Any of the actions under this section may be totally or partly  
15 stayed by the disciplinary authority. In determining what action is  
16 appropriate, the disciplinary authority must first consider what  
17 sanctions are necessary to protect the public health, safety, or  
18 welfare. Only after these provisions have been made may the  
19 disciplinary authority consider and include in the order requirements  
20 designed to rehabilitate the license holder or applicant. All costs  
21 associated with compliance with orders issued under this section are  
22 the obligation of the license holder or applicant.

23 (4) The licensee or applicant may enter into a stipulated  
24 disposition of charges that includes one or more of the sanctions of  
25 this section, but only after a statement of charges has been issued and  
26 the licensee has been afforded the opportunity for a hearing and has  
27 elected on the record to forego such a hearing. The stipulation shall  
28 either contain one or more specific findings of unprofessional conduct  
29 or a statement by the licensee acknowledging that evidence is  
30 sufficient to justify one or more specified findings of unprofessional  
31 conduct. The stipulations entered into under this subsection are  
32 considered formal disciplinary action for all purposes.

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

35 The following conduct, acts, or conditions constitute  
36 unprofessional conduct for any license holder or applicant under the  
37 jurisdiction of this chapter:

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

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

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

22           (4) Incompetence, negligence, or malpractice that results in harm  
23 or damage to (~~a consumer~~) another or that creates an unreasonable  
24 risk (~~that a consumer may be harmed or damaged~~) of harm or damage to  
25 another;

26           (5) The suspension, revocation, or restriction of a license to  
27 engage in any business or profession by competent authority in any  
28 state, federal, or foreign jurisdiction. A certified copy of the  
29 order, stipulation, or agreement is conclusive evidence of the  
30 revocation, suspension, or restriction;

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

33           (a) Not furnishing any papers or documents requested by the  
34 disciplinary authority;

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

37           (c) Not responding to a subpoena issued by the disciplinary

- 1 authority, whether or not the recipient of the subpoena is the accused  
2 in the proceeding; or
- 3 (d) Not providing authorized access, during regular business hours,  
4 to representatives of the disciplinary authority conducting an  
5 investigation, inspection, or audit at facilities utilized by the  
6 license holder or applicant;
- 7 (7) Failure to comply with an order issued by the disciplinary  
8 authority;
- 9 (8) Violating any (~~lawful rule~~) of the provisions of this chapter  
10 or the chapters specified in RCW 18.235.020(2) or any rules made by the  
11 disciplinary authority under the chapters specified in RCW 18.235.020;
- 12 (9) Aiding or abetting an unlicensed person to practice or operate  
13 a business or profession when a license is required;
- 14 (10) Practice or operation of a business or profession beyond the  
15 scope of practice or operation as defined by law or rule;
- 16 (11) Misrepresentation in any aspect of the conduct of the business  
17 or profession;
- 18 (12) Failure to adequately supervise or oversee auxiliary staff,  
19 whether employees or contractors, to the extent that consumers may be  
20 harmed or damaged;
- 21 (13) Conviction of any gross misdemeanor or felony relating to the  
22 practice of the person's profession or operation of the person's  
23 business. For the purposes of this subsection, conviction includes all  
24 instances in which a plea of guilty or nolo contendere is the basis for  
25 conviction and all proceedings in which the sentence has been deferred  
26 or suspended. Except as specifically provided by law, nothing in this  
27 (~~section~~) subsection abrogates the provisions of chapter 9.96A RCW.  
28 However, RCW 9.96A.020 does not apply to a person who is required to  
29 register as a sex offender under RCW 9A.44.130; (~~and~~)
- 30 (14) Interference with an investigation or disciplinary action by  
31 willful misrepresentation of facts before the disciplinary authority or  
32 its authorized representatives, or by the use of threats or harassment  
33 against any consumer or witness to discourage them from providing  
34 evidence in a disciplinary action or any other legal action, or by the  
35 use of financial inducements to any consumer or witness to prevent or  
36 attempt to prevent him or her from providing evidence in a disciplinary  
37 action; and
- 38 (15) Engaging in unlicensed practice as defined in RCW 18.235.010.

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

3       (1) The disciplinary authority may investigate complaints  
4 concerning practice by unlicensed persons of a profession or business  
5 for which a license is required by the chapters specified in RCW  
6 18.235.020. In the investigation of the complaints, the director has  
7 the same authority as provided the disciplinary authority under RCW  
8 18.235.030.

9       (2) The disciplinary authority may issue a notice of intent to  
10 issue a cease and desist order to any person whom the disciplinary  
11 authority has reason to believe is engaged or is about to engage in the  
12 unlicensed practice of a profession or operation of a business for  
13 which a license is required by the chapters specified in RCW  
14 18.235.020.

15       (3) The disciplinary authority may issue a notice of intent to  
16 issue a cease and desist order to any person whom the disciplinary  
17 authority has reason to believe is engaged or is about to engage in an  
18 act or practice constituting a violation of this chapter or the  
19 chapters specified in RCW 18.235.020 or a rule adopted or order issued  
20 under such chapters.

21       (4) The person to whom such a notice is issued may request an  
22 adjudicative proceeding to contest the allegations. The notice shall  
23 include a brief, plain statement of the alleged unlicensed activities,  
24 or other unlawful activities or practices. The request for hearing  
25 must be filed within twenty days after service of the notice of intent  
26 to issue a cease and desist order. The failure to request a hearing  
27 constitutes a default, whereupon the ~~((director))~~ disciplinary  
28 authority may enter a permanent cease and desist order, which may  
29 include a civil fine. All proceedings shall be conducted in accordance  
30 with chapter 34.05 RCW.

31       ~~((+3))~~ (5) If the disciplinary authority makes a final  
32 determination that a person has engaged or is engaging in unlicensed  
33 practice or other unlawful acts or practices, the ~~((director))~~  
34 disciplinary authority may issue a permanent cease and desist order.  
35 In addition, the disciplinary authority may impose a civil fine in an  
36 amount not exceeding one thousand dollars for each day upon which the  
37 person engaged in the unlicensed practice of a profession or operation

1 of a business for which a license is required by one or more of the  
2 chapters specified in RCW 18.235.020. The proceeds of such a fine  
3 shall be deposited in the related program account.

4 ~~((4) If the disciplinary authority makes a written finding of fact  
5 that the public interest will be irreparably harmed by delay in issuing  
6 an order,))~~

7 (6) The disciplinary authority may issue a temporary cease and  
8 desist order if a person is engaged or is about to engage in unlicensed  
9 practice or other unlawful acts or practices if the disciplinary  
10 authority makes a written finding of fact that the public interest will  
11 be irreparably harmed by delay in issuing an order. The person  
12 receiving a temporary cease and desist order shall be provided an  
13 opportunity for a prompt hearing. A temporary cease and desist order  
14 shall remain in effect until further order of the disciplinary  
15 authority. The failure to request a prompt or regularly scheduled  
16 hearing constitutes a default, whereupon the disciplinary authority may  
17 enter a permanent cease and desist order, which may include a civil  
18 fine.

19 ~~((5))~~ (7) The cease and desist order is conclusive proof of  
20 unlicensed practice or other unlawful acts or practices and may be  
21 enforced under RCW 7.21.060. This method of enforcement of the cease  
22 and desist order or civil fine may be used in addition to, or as an  
23 alternative to, any provisions for enforcement of agency orders set out  
24 in chapter 34.05 RCW.

25 ~~((6))~~ (8) The attorney general, a county prosecuting attorney,  
26 the director, a board or commission, or any person may, in accordance  
27 with the laws of this state governing injunctions, maintain an action  
28 in the name of the state of Washington to enjoin any person practicing  
29 a profession or business without a license for which a license is  
30 required by the chapters specified in RCW 18.235.020. All fees, fines,  
31 forfeitures, and penalties collected or assessed by a court because of  
32 a violation of this section shall be deposited in the related program  
33 account.

34 ~~((7))~~ (9) The civil remedies in this section do not limit the  
35 ability to pursue criminal prosecution as authorized in any of the acts  
36 specified in RCW 18.235.020 nor do the civil remedies limit any  
37 criminal sanctions.



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

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

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

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

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

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

17       (2) RCW 18.85.343 (Violations--Cease and desist orders) and 1997 c  
18 322 s 22, 1989 c 175 s 67, & 1977 ex.s. c 261 s 2.

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