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THIRD SUBSTITUTE SENATE BILL 5528

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State of Washington

55th Legislature

1998 Regular Session

By Senate Committee on Human Services & Corrections (originally sponsored by Senators Kohl, Long, Thibaudeau, Franklin, Patterson, Fairley, Winsley, Oke and Rasmussen)

Read first time 02/05/98.

1 AN ACT Relating to protecting children and vulnerable adults by  
2 using background checks; amending RCW 18.130.020; reenacting and  
3 amending RCW 18.130.040; adding new sections to chapter 18.130 RCW;  
4 creating new sections; and providing an effective date.

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

6 NEW SECTION. **Sec. 1.** The legislature intends to simplify the  
7 process of, and reduce the expense in, employing health care  
8 professionals by reducing unnecessary background checks and allowing  
9 portability of information among employers of persons in the health  
10 care field. The legislature also intends to reduce costs to the state  
11 patrol by allowing a current background check on a person seeking a  
12 health care professional credential to be used by more than one  
13 employer.

14 **Sec. 2.** RCW 18.130.040 and 1997 c 392 s 516, 1997 c 334 s 14, 1997  
15 c 285 s 13, and 1997 c 275 s 2 are each reenacted and amended to read  
16 as follows:

17 (1) This chapter applies only to the secretary and the boards and  
18 commissions having jurisdiction in relation to the professions licensed

1 under the chapters specified in this section. This chapter does not  
2 apply to any business or profession not licensed under the chapters  
3 specified in this section.

4 (2)(a) The secretary has authority under this chapter in relation  
5 to the following professions:

6 (i) Dispensing opticians licensed under chapter 18.34 RCW;

7 (ii) Naturopaths licensed under chapter 18.36A RCW;

8 (iii) Midwives licensed under chapter 18.50 RCW;

9 (iv) Ocularists licensed under chapter 18.55 RCW;

10 (v) Massage operators and businesses licensed under chapter 18.108  
11 RCW;

12 (vi) Dental hygienists licensed under chapter 18.29 RCW;

13 (vii) Acupuncturists licensed under chapter 18.06 RCW;

14 (viii) Radiologic technologists certified and X-ray technicians  
15 registered under chapter 18.84 RCW;

16 (ix) Respiratory care practitioners licensed under chapter 18.89  
17 RCW;

18 (x) Persons registered or certified under chapter 18.19 RCW;

19 (xi) Persons registered as nursing pool operators under chapter  
20 18.52C RCW;

21 (xii) Nursing assistants registered or certified under chapter  
22 18.88A RCW;

23 (xiii) Health care assistants certified under chapter 18.135 RCW;

24 (xiv) Dietitians and nutritionists certified under chapter 18.138  
25 RCW;

26 (xv) Sex offender treatment providers certified under chapter  
27 18.155 RCW;

28 (xvi) Persons licensed and certified under chapter 18.73 RCW or RCW  
29 18.71.205;

30 (xvii) Persons registered as adult family home providers and  
31 resident managers under RCW 18.48.020;

32 (xviii) Denturists licensed under chapter 18.30 RCW; and

33 (xix) Orthotists and prosthetists licensed under chapter 18.200  
34 RCW.

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

37 (i) The podiatric medical board as established in chapter 18.22  
38 RCW;

1 (ii) The chiropractic quality assurance commission as established  
2 in chapter 18.25 RCW;

3 (iii) The dental quality assurance commission as established in  
4 chapter 18.32 RCW;

5 (iv) The board of hearing and speech as established in chapter  
6 18.35 RCW;

7 (v) The board of examiners for nursing home administrators as  
8 established in chapter 18.52 RCW;

9 (vi) The optometry board as established in chapter 18.54 RCW  
10 governing licenses issued under chapter 18.53 RCW;

11 (vii) The board of osteopathic medicine and surgery as established  
12 in chapter 18.57 RCW governing licenses issued under chapters 18.57 and  
13 18.57A RCW;

14 (viii) The board of pharmacy as established in chapter 18.64 RCW  
15 governing licenses issued under chapters 18.64 and 18.64A RCW;

16 (ix) The medical quality assurance commission as established in  
17 chapter 18.71 RCW governing licenses and registrations issued under  
18 chapters 18.71 and 18.71A RCW;

19 (x) The board of physical therapy as established in chapter 18.74  
20 RCW;

21 (xi) The board of occupational therapy practice as established in  
22 chapter 18.59 RCW;

23 (xii) The nursing care quality assurance commission as established  
24 in chapter 18.79 RCW governing licenses issued under that chapter;

25 (xiii) The examining board of psychology and its disciplinary  
26 committee as established in chapter 18.83 RCW; and

27 (xiv) The veterinary board of governors as established in chapter  
28 18.92 RCW.

29 (3) In addition to the authority to discipline license holders, the  
30 disciplining authority has the authority to grant or deny licenses  
31 based on the conditions and criteria established in this chapter  
32 (~~and~~), the chapters specified in subsection (2) of this section, and  
33 sections 4 and 5 of this act. This chapter also governs any  
34 investigation, hearing, or proceeding relating to denial of licensure  
35 or issuance of a license conditioned on the applicant's compliance with  
36 an order entered pursuant to RCW 18.130.160 by the disciplining  
37 authority.

38 (4) All disciplining authorities shall adopt procedures to ensure  
39 substantially consistent application of this chapter, the Uniform

1 Disciplinary Act, among the disciplining authorities listed in  
2 subsection (2) of this section.

3 **Sec. 3.** RCW 18.130.020 and 1995 c 336 s 1 are each amended to read  
4 as follows:

5 Unless the context clearly requires otherwise, the definitions in  
6 this section apply throughout this chapter.

7 (1) "Disciplining authority" means the agency, board, or commission  
8 having the authority to take disciplinary action against a holder of,  
9 or applicant for, a professional or business license upon a finding of  
10 a violation of this chapter or a chapter specified under RCW  
11 18.130.040.

12 (2) "Department" means the department of health.

13 (3) "Secretary" means the secretary of health or the secretary's  
14 designee.

15 (4) "Board" means any of those boards specified in RCW 18.130.040.

16 (5) "Commission" means any of the commissions specified in RCW  
17 18.130.040.

18 (6) "Unlicensed practice" means:

19 (a) Practicing a profession or operating a business identified in  
20 RCW 18.130.040 without holding a valid, unexpired, unrevoked, and  
21 unsuspended license to do so; or

22 (b) Representing to a consumer, through offerings, advertisements,  
23 or use of a professional title or designation, that the individual is  
24 qualified to practice a profession or operate a business identified in  
25 RCW 18.130.040, without holding a valid, unexpired, unrevoked, and  
26 unsuspended license to do so.

27 (7) "Disciplinary action" means sanctions identified in RCW  
28 18.130.160.

29 (8) "Practice review" means an investigative audit of records  
30 related to the complaint, without prior identification of specific  
31 patient or consumer names, or an assessment of the conditions,  
32 circumstances, and methods of the professional's practice related to  
33 the complaint, to determine whether unprofessional conduct may have  
34 been committed.

35 (9) "Health agency" means city and county health departments and  
36 the department of health.

37 (10) "License," "licensing," and "licensure" shall be deemed  
38 equivalent to the terms "license," "licensing," "licensure,"

1 "certificate," "certification," and "registration" as those terms are  
2 defined in RCW 18.120.020.

3 (11) "May have unsupervised access" means unsupervised access that  
4 will or may occur as part of an individual's regularly scheduled  
5 activities or work duties or that will or may occur as a likely  
6 consequence of the work environment.

7 (12) "Unsupervised access" means access, for more than a nominal  
8 period of time, outside the presence of: Another person who has  
9 cleared a background check; or any relative or guardian of the child or  
10 vulnerable adult to which the individual may have unsupervised access.  
11 For the purposes of this subsection, a person has "cleared a background  
12 check" when the disciplining authority, using the results of its  
13 background check investigation, determines, solely for purposes of this  
14 chapter, that the individual is suitable to have unsupervised access to  
15 children or vulnerable adults.

16 NEW SECTION. Sec. 4. A new section is added to chapter 18.130 RCW  
17 to read as follows:

18 (1) This section applies to individuals who apply for an initial  
19 license for a health profession under this chapter on or after the  
20 effective date of this section.

21 (2) Under RCW 18.130.050(13), the disciplining authority shall  
22 conduct a background check on each applicant for an initial license.  
23 The background check shall include:

24 (a) A fingerprint-based state background check through the state  
25 patrol; and

26 (b) A national conviction record check through the federal bureau  
27 of investigation.

28 (3) The disciplining authority shall:

29 (a) Notify the individual applying for an initial license that,  
30 subject to subsection (5) of this section, a background check must be  
31 completed before the license is issued;

32 (b) Require the individual to furnish two full sets of fingerprints  
33 to the state patrol, one of which shall be used for exchange with the  
34 federal bureau of investigation;

35 (c) Require the individual to submit any fees and other information  
36 required by the state patrol in rule;

37 (d) Acknowledge in writing, on a form provided by the state patrol,  
38 that:

1 (i) Federal law prohibits disclosure or dissemination of federal  
2 bureau national conviction records outside of a governmental agency  
3 except to the subject of the record; and

4 (ii) The absence of a state patrol or federal bureau of  
5 investigation record does not mean the individual has no criminal  
6 record, or adverse civil or administrative decision, nor does it  
7 represent a determination by the state patrol that the individual is  
8 suitable to obtain an initial license;

9 (e) Notify the individual of the results of the background check  
10 within ten days after receipt by the disciplining authority if a  
11 conviction record, adverse civil or administrative proceeding,  
12 dependency adjudication, or protection order was found;

13 (f) Restrict use of the background check results to determining the  
14 individual's suitability for an initial license; and

15 (g) Protect from further disclosure or dissemination the results of  
16 the individual's background check unless such further disclosure is  
17 permitted or required by law.

18 (4) The individual applying for his or her initial license shall  
19 pay the expense of the background check and obtaining fingerprint data.

20 (5) The disciplining authority may, by rule, determine appropriate  
21 circumstances for granting a conditional license, pending completion of  
22 the national investigation after the applicant has completed the  
23 fingerprint-based state background check through the state patrol.

24 (6) This section does not limit the authority of the disciplining  
25 authority to investigate the suitability of individuals through other  
26 public records including adverse civil or administrative proceedings.

27 (7) For the purposes of this section, "adverse civil or  
28 administrative proceeding" means:

29 (a) An adverse dependency adjudication in which there is a final  
30 adverse adjudication in a dependency action under chapter 13.34 RCW  
31 that includes a finding of physical or sexual abuse, neglect, or  
32 exploitation of a child;

33 (b) Decisions that include final decisions issued by the secretary  
34 of health, the secretary of social and health services, a disciplining  
35 authority under this chapter, the personnel appeals board, or the  
36 director of licensing, that include a finding of abuse, abandonment,  
37 neglect, or exploitation of a child or vulnerable adult; or

38 (c) Protection orders that include court orders, other than ex  
39 parte or temporary orders, issued for the purpose of protecting someone

1 from contact, harassment, or domestic violence. Protection orders  
2 include: Criminal no-harassment orders issued under chapter 9A.46 RCW;  
3 civil anti-harassment protection orders issued under chapter 10.14 RCW;  
4 domestic violence no-contact orders issued under chapter 10.99 RCW;  
5 dissolution decree restraining orders issued under chapter 26.09 RCW;  
6 nonparental custody action restraining orders issued under chapter  
7 26.10 RCW; uniform parentage act restraining orders issued under  
8 chapter 26.26 RCW; domestic violence protection orders issued under  
9 chapter 26.50 RCW; and orders for protection of vulnerable adults  
10 issued under chapter 74.34 RCW.

11 NEW SECTION. **Sec. 5.** A new section is added to chapter 18.130 RCW  
12 to read as follows:

13 (1) This section applies to individuals who apply for a renewal or  
14 reinstatement of a license for a health profession under this chapter  
15 on or after the effective date of this section.

16 (2) The disciplining authority shall conduct a background check,  
17 under the schedule adopted under subsection (3) of this section, on  
18 each individual applying for a renewal or reinstatement of a license.  
19 The background check shall include a state background check through the  
20 state patrol, which need not be fingerprint-based unless the authority  
21 has reasonable cause to believe a fingerprint-based background check is  
22 necessary.

23 (3) The disciplining authority shall establish a schedule for  
24 conducting the background checks required under subsection (2) of this  
25 section. The schedule shall require all individuals to have a  
26 background check conducted within four years, and at least once every  
27 four years thereafter.

28 (4) In addition to any other conditions or criteria under this  
29 title, the disciplining authority:

30 (a) Shall deny a renewal or reinstatement of a license to an  
31 individual whose background check reveals a conviction for any offense  
32 in section 6(2) of this act or an offense in section 6(3) of this act  
33 if it is less than ten years from the date of conviction or release  
34 from confinement, whichever is later, unless the disciplining authority  
35 finds good cause to grant a renewed or reinstated license. In  
36 determining whether good cause exists, the disciplining authority shall  
37 consider the criteria in subsection (6) of this section; and

1 (b) May deny a renewal or reinstatement of a license to an  
2 individual whose background check reveals: (i) A conviction for any  
3 offense in section 6(3) of this act; (ii) an adverse civil or  
4 administrative proceeding, dependency adjudication, or protection  
5 order; or (iii) a conviction for any offense identified in rule under  
6 subsection (5) of this section.

7 (5) The disciplining authority may identify, by rule, additional  
8 offenses that are directly related to an individual's suitability to  
9 obtain a renewed or reinstated license and that may disqualify an  
10 individual, for an appropriate period of time, from renewing or  
11 reinstating the license. The rules may distinguish between offenses  
12 for which a disqualification must be made and offenses for which an  
13 individual may be disqualified by the disciplining authority.

14 (6) In determining whether to grant or deny the renewal or  
15 reinstatement of a license on the basis of an individual's background  
16 check results, the disciplining authority shall consider:

17 (a) The age of the individual at the time of the conviction or  
18 adverse civil or administrative decision;

19 (b) The length of time that has passed since the conviction or  
20 adverse civil or administrative decision;

21 (c) Evidence of conduct subsequent to the conviction or adverse  
22 civil or administrative decision relating to the individual's  
23 suitability to obtain the renewal or reinstatement, including the  
24 individual's conduct while previously licensed; and

25 (d) The appropriateness of issuing a license with conditions as  
26 provided for in this chapter.

27 (7) The disciplining authority may, by rule, determine that the  
28 requirements of this section do not apply to persons with a license who  
29 have: (a) Been subject to at least four updated record checks; (b) not  
30 been disqualified for an offense in section 6 of this act; and (c) met  
31 other requirements established by the disciplining authority. The  
32 disciplining authority may, at any time, conduct a background check for  
33 any person meeting the requirements of this section when the authority  
34 has probable cause to believe there is a legitimate reason for doing  
35 so.

36 NEW SECTION. **Sec. 6.** A new section is added to chapter 18.130 RCW  
37 to read as follows:

38 Subject to section 7 of this act:



1 (1) The disqualification provisions of this section apply to those  
2 individuals required to undergo the background checks provided for in  
3 section 4 of this act.

4 (2) An individual is permanently disqualified from obtaining a  
5 license that would allow the individual to have unsupervised access to  
6 children or vulnerable adults if the individual has a conviction record  
7 for any of the following criminal offenses:

8 (a) A serious violent offense as defined in RCW 9.94A.030;

9 (b) A sex offense as defined in RCW 9.94A.030;

10 (c) Any felony offense constituting: (i) Sexual exploitation of a  
11 minor under chapter 9.68A RCW; (ii) criminal mistreatment of a child or  
12 dependent person under chapter 9A.42 RCW; or (iii) the sale or purchase  
13 of a minor child under RCW 9A.64.030; or

14 (d) The federal or out-of-state equivalent to those in (a) through  
15 (c) of this subsection.

16 (3) An individual is disqualified from obtaining a license that  
17 would allow the individual to have unsupervised access to children or  
18 vulnerable adults for a period of at least ten years from the date of  
19 conviction or release from confinement, whichever is longer, if the  
20 individual has a conviction record for any of the following offenses:

21 (a) A violent offense;

22 (b) A sex-related offense under chapter 9.68, 9A.44, or 9A.88 RCW,  
23 that does not constitute a sex offense under RCW 9.94A.030;

24 (c) A felony offense constituting: (i) Malicious harassment under  
25 chapter 9A.36 RCW; (ii) residential burglary under chapter 9A.52 RCW;  
26 (iii) theft in the first degree or theft in the second degree under  
27 chapter 9A.56 RCW; (iv) unlawful issuance of checks or drafts under  
28 chapter 9A.56 RCW; or (v) fraud under chapter 9A.60 RCW; or

29 (d) Any federal or out-of-state equivalent to those in (a) through  
30 (c) of this subsection.

31 (4) An individual may be disqualified from obtaining a license that  
32 would allow the individual to have unsupervised access to children or  
33 vulnerable adults if the individual has a conviction record for any of  
34 the following offenses, regardless of the length of time that has  
35 elapsed since the individual's conviction or release from confinement:

36 (a) Any offense identified in subsection (3) of this section for  
37 which the latter of the date of conviction or release from confinement  
38 is more than ten years old;

1 (b) A misdemeanor offense, or its federal or out-of-state  
2 equivalent, constituting: (i) Assault in the fourth degree under  
3 chapter 9A.36 RCW; (ii) unlawful imprisonment under chapter 9A.40 RCW;  
4 (iii) criminal mistreatment under chapter 9A.42 RCW; (iv) theft in the  
5 third degree under chapter 9A.56 RCW; or (v) custodial interference  
6 under chapter 9A.40 RCW; or

7 (c) Any other offense identified by a disciplining authority by  
8 rule as being directly related to an individual's suitability to obtain  
9 an initial license.

10 (5) The disciplining authority may identify, by rule, additional  
11 offenses that are directly related to an individual's suitability to  
12 obtain an initial license and that may disqualify an individual from  
13 receiving such a license. The rules may distinguish between offenses  
14 for which disqualification must be made and offenses for which  
15 disqualification is discretionary, and the appropriate periods of time  
16 for which the specified offenses act to disqualify individuals.

17 (6) In determining whether to disqualify an individual under  
18 subsections (3) through (5) of this section, the disciplining authority  
19 shall consider:

20 (a) The likelihood and extent that the individual may have  
21 unsupervised access to children or vulnerable adults as a result of the  
22 license;

23 (b) The age of the individual at the time of the conviction;

24 (c) The length of time that has passed since the conviction;

25 (d) Evidence of conduct subsequent to the conviction relating to  
26 the individual's suitability to obtain an initial license; and

27 (e) The appropriateness of issuing a license with conditions as  
28 provided for in this chapter.

29 (7) Prior to denying a license based on an adverse finding in a  
30 background check, the disciplining authority must provide the applicant  
31 with an opportunity for a brief adjudicative proceeding as provided in  
32 RCW 34.05.485 through 34.05.494.

33 NEW SECTION. **Sec. 7.** A new section is added to chapter 18.130 RCW  
34 to read as follows:

35 The disciplining authority shall determine whether the person would  
36 be subject to section 6 (2) through (5) of this act. If the authority  
37 determines the licensee would otherwise be disqualified from renewal of  
38 a license, the authority shall, upon the request of the licensee or

1 applicant licensed under this title, hold a hearing on whether to renew  
2 the license. In determining whether to renew the license, the  
3 disciplining authority shall make its determination using the criteria  
4 set forth in section 6(6) of this act. If the disciplining authority  
5 determines to renew the license, it shall require the license to  
6 include a conspicuous statement indicating the licensee was subject to  
7 the appropriate provisions of section 6 (2) through (5) of this act,  
8 but was permitted by the authority to continue his or her status as a  
9 licensee.

10 NEW SECTION. **Sec. 8.** A new section is added to chapter 18.130 RCW  
11 to read as follows:

12 (1) An individual with a license issued under this chapter shall  
13 report to the appropriate disciplining authority any conviction  
14 occurring after the effective date of this section for an offense set  
15 forth in, or adopted in rule under, section 6 of this act. The report  
16 must be made within seven days of the conviction.

17 (2) The disciplining authorities shall adopt rules to implement  
18 this section.

19 (3) Failure by an individual to report a conviction shall be  
20 considered by the disciplining authority in any application for renewal  
21 or reinstatement of the license.

22 (4) When an individual required to report under subsection (1) of  
23 this section is employed, the individual shall also report the  
24 conviction to his or her employer within seven days of the conviction.

25 NEW SECTION. **Sec. 9.** The code reviser shall alphabetize the  
26 definitions in RCW 18.130.020 and correct any references.

27 NEW SECTION. **Sec. 10.** If any provision of this act or its  
28 application to any person or circumstance is held invalid, the  
29 remainder of the act or the application of the provision to other  
30 persons or circumstances is not affected.

31 NEW SECTION. **Sec. 11.** This act takes effect July 1, 1998.

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