

2 **SHB 1990** - S AMD TO HSC COMM AMD (S2474.2) - 373

3 By Senators Hargrove, Kohl-Welles, Long and Thibaudeau

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5 On page 5, beginning on line 10 of the amendment, strike all of
6 section 3 and insert the following:

7 "NEW SECTION. **Sec. 3.** The legislature intends by enactment of
8 sections 3 through 13 of this act to simplify the process of, and
9 reduce the expense in, employing health care professionals by reducing
10 unnecessary background checks and allowing portability of information
11 among employers of persons in the health care field. The legislature
12 also intends to reduce costs to the state patrol by allowing a current
13 background check on a person seeking a health care professional
14 credential to be used by more than one employer.

15 **Sec. 4.** RCW 18.130.040 and 1998 c 243 s 16 are each amended to
16 read 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
19 under the chapters specified in this section. This chapter does not
20 apply to any business or profession not licensed under the chapters
21 specified in this section.

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

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

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

26 (iii) Midwives licensed under chapter 18.50 RCW;

27 (iv) Ocularists licensed under chapter 18.55 RCW;

28 (v) Massage operators and businesses licensed under chapter 18.108
29 RCW;

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

31 (vii) Acupuncturists licensed under chapter 18.06 RCW;

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

34 (ix) Respiratory care practitioners licensed under chapter 18.89
35 RCW;

1 (x) Persons registered or certified under chapter 18.19 RCW;
2 (xi) Persons registered as nursing pool operators under chapter
3 18.52C RCW;
4 (xii) Nursing assistants registered or certified under chapter
5 18.88A RCW;
6 (xiii) Health care assistants certified under chapter 18.135 RCW;
7 (xiv) Dietitians and nutritionists certified under chapter 18.138
8 RCW;
9 (xv) Chemical dependency professionals certified under chapter
10 18.205 RCW;
11 (xvi) Sex offender treatment providers certified under chapter
12 18.155 RCW;
13 (xvii) Persons licensed and certified under chapter 18.73 RCW or
14 RCW 18.71.205;
15 (xviii) Persons registered as adult family home providers and
16 resident managers under RCW 18.48.020;
17 (xix) Denturists licensed under chapter 18.30 RCW; and
18 (xx) Orthotists and prosthetists licensed under chapter 18.200 RCW.
19 (b) The boards and commissions having authority under this chapter
20 are as follows:
21 (i) The podiatric medical board as established in chapter 18.22
22 RCW;
23 (ii) The chiropractic quality assurance commission as established
24 in chapter 18.25 RCW;
25 (iii) The dental quality assurance commission as established in
26 chapter 18.32 RCW;
27 (iv) The board of hearing and speech as established in chapter
28 18.35 RCW;
29 (v) The board of examiners for nursing home administrators as
30 established in chapter 18.52 RCW;
31 (vi) The optometry board as established in chapter 18.54 RCW
32 governing licenses issued under chapter 18.53 RCW;
33 (vii) The board of osteopathic medicine and surgery as established
34 in chapter 18.57 RCW governing licenses issued under chapters 18.57 and
35 18.57A RCW;
36 (viii) The board of pharmacy as established in chapter 18.64 RCW
37 governing licenses issued under chapters 18.64 and 18.64A RCW;

1 (ix) The medical quality assurance commission as established in
2 chapter 18.71 RCW governing licenses and registrations issued under
3 chapters 18.71 and 18.71A RCW;

4 (x) The board of physical therapy as established in chapter 18.74
5 RCW;

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

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

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

12 (xiv) The veterinary board of governors as established in chapter
13 18.92 RCW.

14 (3) In addition to the authority to discipline license holders, the
15 disciplining authority has the authority to grant or deny licenses
16 based on the conditions and criteria established in this chapter
17 (~~and~~), the chapters specified in subsection (2) of this section, and
18 sections 6 and 7 of this act, except as provided in section 11 of this
19 act. This chapter also governs any investigation, hearing, or
20 proceeding relating to denial of licensure or issuance of a license
21 conditioned on the applicant's compliance with an order entered
22 pursuant to RCW 18.130.160 by the disciplining authority.

23 (4) All disciplining authorities shall adopt procedures to ensure
24 substantially consistent application of this chapter, the Uniform
25 Disciplinary Act, among the disciplining authorities listed in
26 subsection (2) of this section.

27 **Sec. 5.** RCW 18.130.020 and 1995 c 336 s 1 are each amended to read
28 as follows:

29 Unless the context clearly requires otherwise, the definitions in
30 this section apply throughout this chapter.

31 (1) "Disciplining authority" means the agency, board, or commission
32 having the authority to take disciplinary action against a holder of,
33 or applicant for, a professional or business license upon a finding of
34 a violation of this chapter or a chapter specified under RCW
35 18.130.040.

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

37 (3) "Secretary" means the secretary of health or the secretary's
38 designee.

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

2 (5) "Commission" means any of the commissions specified in RCW
3 18.130.040.

4 (6) "Unlicensed practice" means:

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

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

13 (7) "Disciplinary action" means sanctions identified in RCW
14 18.130.160.

15 (8) "Practice review" means an investigative audit of records
16 related to the complaint, without prior identification of specific
17 patient or consumer names, or an assessment of the conditions,
18 circumstances, and methods of the professional's practice related to
19 the complaint, to determine whether unprofessional conduct may have
20 been committed.

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

23 (10) "License," "licensing," and "licensure" shall be deemed
24 equivalent to the terms "license," "licensing," "licensure,"
25 "certificate," "certification," and "registration" as those terms are
26 defined in RCW 18.120.020.

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

31 (12) "Unsupervised access" means access, for more than a nominal
32 period of time, outside the presence of: Another person who has
33 cleared a background check; or any relative or guardian of the child or
34 vulnerable adult to which the individual may have unsupervised access.
35 For the purposes of this subsection, a person has "cleared a background
36 check" when the disciplining authority, using the results of its
37 background check investigation, determines, solely for purposes of this
38 chapter, that the individual is suitable to have unsupervised access to
39 children or vulnerable adults.

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

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

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

9 (a) A fingerprint-based state background check through the state
10 patrol; and

11 (b) A national conviction record check through the federal bureau
12 of investigation.

13 (3) The disciplining authority shall:

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

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

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

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

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

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

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

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

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

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

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

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

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

15 (a) An adverse dependency adjudication in which there is a final
16 adverse adjudication in a dependency action under chapter 13.34 RCW
17 that includes a finding of physical or sexual abuse, neglect, or
18 exploitation of a child;

19 (b) Decisions that include final decisions issued by the secretary
20 of health, the secretary of social and health services, a disciplining
21 authority under this chapter, the personnel appeals board, or the
22 director of licensing, that include a finding of abuse, abandonment,
23 neglect, or exploitation of a child or vulnerable adult; or

24 (c) Protection orders that include court orders, other than ex
25 parte or temporary orders, issued for the purpose of protecting someone
26 from contact, harassment, or domestic violence. Protection orders
27 include: Criminal no-harassment orders issued under chapter 9A.46 RCW;
28 civil antiharassment protection orders issued under chapter 10.14 RCW;
29 domestic violence no-contact orders issued under chapter 10.99 RCW;
30 dissolution decree restraining orders issued under chapter 26.09 RCW;
31 nonparental custody action restraining orders issued under chapter
32 26.10 RCW; uniform parentage act restraining orders issued under
33 chapter 26.26 RCW; domestic violence protection orders issued under
34 chapter 26.50 RCW; and orders for protection of vulnerable adults
35 issued under chapter 74.34 RCW.

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

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

4 (2) The disciplining authority shall conduct a background check,
5 under the schedule adopted under subsection (3) of this section, on
6 each individual applying for a renewal or reinstatement of a license.
7 The background check shall include a state background check through the
8 state patrol, which need not be fingerprint-based unless the authority
9 has reasonable cause to believe a fingerprint-based background check is
10 necessary.

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

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

18 (a) Shall deny a renewal or reinstatement of a license to an
19 individual whose background check reveals a conviction for any offense
20 in section 8(2) of this act or an offense in section 8(3) of this act
21 if it is less than ten years from the date of conviction or release
22 from confinement, whichever is later, unless the disciplining authority
23 finds good cause to grant a renewed or reinstated license. In
24 determining whether good cause exists, the disciplining authority shall
25 consider the criteria in subsection (6) of this section; and

26 (b) May deny a renewal or reinstatement of a license to an
27 individual whose background check reveals: (i) A conviction for any
28 offense in section 8(3) of this act; (ii) an adverse civil or
29 administrative proceeding, dependency adjudication, or protection
30 order; or (iii) a conviction for any offense identified in rule under
31 subsection (5) of this section.

32 (5) The disciplining authority may identify, by rule, additional
33 offenses that are directly related to an individual's suitability to
34 obtain a renewed or reinstated license and that may disqualify an
35 individual, for an appropriate period of time, from renewing or
36 reinstating the license. The rules may distinguish between offenses
37 for which a disqualification must be made and offenses for which an
38 individual may be disqualified by the disciplining authority.

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

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

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

8 (c) Evidence of conduct subsequent to the conviction or adverse
9 civil or administrative decision relating to the individual's
10 suitability to obtain the renewal or reinstatement, including the
11 individual's conduct while previously licensed; and

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

14 (7) The disciplining authority may, by rule, determine that the
15 requirements of this section do not apply to persons with a license who
16 have: (a) Been subject to at least four updated record checks; (b) not
17 been disqualified for an offense in section 8 of this act; and (c) met
18 other requirements established by the disciplining authority. The
19 disciplining authority may, at any time, conduct a background check for
20 any person meeting the requirements of this section when the authority
21 has probable cause to believe there is a legitimate reason for doing
22 so.

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

25 Subject to section 9 of this act:

26 (1) The disqualification provisions of this section apply to those
27 individuals required to undergo the background checks provided for in
28 section 6 of this act.

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

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

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

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

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

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

8 (a) A violent offense;

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

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

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

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

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

26 (b) A misdemeanor offense, or its federal or out-of-state
27 equivalent, constituting: (i) Assault in the fourth degree under
28 chapter 9A.36 RCW; (ii) unlawful imprisonment under chapter 9A.40 RCW;
29 (iii) criminal mistreatment under chapter 9A.42 RCW; (iv) theft in the
30 third degree under chapter 9A.56 RCW; or (v) custodial interference
31 under chapter 9A.40 RCW; or

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

35 (5) The disciplining authority may identify, by rule, additional
36 offenses that are directly related to an individual's suitability to
37 obtain an initial license and that may disqualify an individual from
38 receiving such a license. The rules may distinguish between offenses
39 for which disqualification must be made and offenses for which

1 disqualification is discretionary, and the appropriate periods of time
2 for which the specified offenses act to disqualify individuals.

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

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

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

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

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

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

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

19 NEW SECTION. **Sec. 9.** A new section is added to chapter 18.130 RCW
20 to read as follows:

21 The disciplining authority shall determine whether the person would
22 be subject to section 8 (2) through (5) of this act. If the authority
23 determines the applicant or licensee would otherwise be disqualified
24 from obtaining, renewing, or reinstating a license, the authority
25 shall, upon the request of the applicant or licensee licensed under
26 this title, hold a hearing on whether to issue or renew the license.
27 In determining whether to issue or renew the license, the disciplining
28 authority shall make its determination using the criteria set forth in
29 section 8(6) of this act. If the disciplining authority determines to
30 issue or renew the license, it shall require the license to include a
31 conspicuous statement indicating the licensee was subject to the
32 appropriate provisions of section 8 (2) through (5) of this act, but
33 was permitted by the authority to continue his or her status as a
34 licensee.

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

1 (1) An individual with a license issued under this chapter shall
2 report to the appropriate disciplining authority any conviction
3 occurring after the effective date of this section for an offense set
4 forth in, or adopted in rule under, section 8 of this act. The report
5 must be made within seven days of the conviction.

6 (2) The disciplining authorities shall adopt rules to implement
7 this section.

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

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

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

16 Any person whose request for a license, renewal, or reinstated
17 license is denied by the disciplining authority pursuant to section 9
18 of this act may appeal the denial to the superior court of the county
19 in which the person resides. The decision of the authority shall be
20 affirmed unless the court finds the denial was arbitrary and
21 capricious.

22 NEW SECTION. **Sec. 12.** The code reviser shall alphabetize the
23 definitions in RCW 18.130.020 and correct any references.

24 NEW SECTION. **Sec. 13.** If any provision of this act or its
25 application to any person or circumstance is held invalid, the
26 remainder of the act or the application of the provision to other
27 persons or circumstances is not affected.

28 NEW SECTION. **Sec. 14.** Sections 1 and 2 of this act are necessary
29 for the immediate preservation of the public peace, health, or safety,
30 or support of the state government and its existing public
31 institutions, and take effect immediately."

1 **SHB 1990** - S AMD TO HSC COMM AMD (S2474.2) - 373
2 By Senators Hargrove, Kohl-Welles, Long and Thibaudeau

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4 On page 5, beginning on line 18 of the title amendment, after "RCW"
5 strike the remainder of the title amendment and insert "43.43.832,
6 43.20A.710, 18.130.040, and 18.130.020; adding new sections to chapter
7 18.130 RCW; creating new sections; and declaring an emergency."

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