

HOUSE BILL REPORT

HB 2512

As Reported by House Committee On:

State Government

Title: An act relating to the uniform regulation of business and professions pertaining to programs administered by the department of licensing.

Brief Description: Creating the uniform regulation of business and professions act.

Sponsors: Representatives Upthegrove, Schmidt, Miloscia, Romero, Edwards, Jackley, Kenney, Ogden, Chase, Morris, McDermott and Schual-Berke; by request of Governor Locke.

Brief History:

Committee Activity:

State Government: 2/1/02, 2/8/02 [DPS].

Brief Summary of Substitute Bill

- Establishes uniform disciplinary procedures for business and professions regulated by the Department of Licensing.

HOUSE COMMITTEE ON STATE GOVERNMENT

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 6 members: Representatives Romero, Chair; Miloscia, Vice Chair; McDermott, Schindler, Schmidt and Upthegrove.

Staff: Marsha Reilly (786-7135).

Background:

The Department of Licensing regulates businesses and professions. Each business and profession has a separate set of laws regarding disciplinary actions, investigating violations of the law, and imposing sanctions for violations.

The Regulation of Health Professions Uniform Disciplinary Act was passed by the Legislature in 1983 to establish guidelines for the regulation of those health professions not licensed or regulated prior to July 24, 1983.

Summary of Substitute Bill:

Disciplinary procedures are consolidated for the licensed businesses and professions regulated by the Department of Licensing. Authority of the board, commission or department director, grounds for discipline, and available sanctions are defined.

Established Authority

"Disciplinary authorities" are defined as boards or commissions, or the director. All disciplinary authorities may investigate complaints, conduct proceedings pursuant to the Administrative Procedures Act, issue subpoenas, take depositions, conduct practice reviews, perform audits and inspections, and order a summary suspension of business practices. Disciplinary authorities may also grant or deny licenses based on the conditions and criteria established for individual businesses and professions.

"Director" refers to the director of the Department of Licensing or the director's designee. In addition to the authority granted as a disciplinary authority, the director may employ investigative, administrative, and clerical staff as necessary for enforcement; appoint three pro tem members to a board or commission; and establish fees to be paid for witnesses, expert witnesses, and consultants. The following businesses and professions are under the disciplinary authority of the director of the Department of Licensing:

auctioneers; bail bond agents; camping resorts' operators and salespersons; commercial telephone solicitors; cosmetologists, barbers, manicurists, and estheticians; court reporters; employment agencies; for-hire vehicle operators; limousines; notaries public; private investigators; professional boxing, martial arts, and wrestling; real estate appraisers; real estate brokers and salespersons; security guards; sellers of travel; timeshares and timeshare salespersons; white-water river outfitters.

The following businesses and professions are under the disciplinary authority of a board or commission:

the State Board of Registration for Architects; the Cemetery Board; the Washington State Collection Agency Board; the State Board of Registration for Professional Engineers and Land Surveyors; the State Board of Funeral Directors and Embalmers; the State Board of Registration for Landscape Architects; and the State Geologist Licensing Board.

Disciplinary Grounds

If, after an investigation, a disciplinary authority believes that "unprofessional conduct"

has occurred, a statement of charges may be served upon the license holder or applicant. The license holder or applicant must request a hearing within 20 days to contest the charges. If a hearing is not requested, the disciplinary authority may make a decision on the case. If a hearing is requested, it may not be held earlier than 30 days after charges have been made.

"Unprofessional conduct" is uniformly defined for all businesses and professions as:

- an act involving moral turpitude, dishonesty, or corruption relating to the person's practice, whether or not the act constitutes a crime;
- misrepresentation of facts in obtaining a license;
- false, deceptive, or misleading advertising;
- incompetence, negligence, or malpractice resulting in harm or damage to a consumer;

- suspension, revocation, or restriction of a license in another state, federal, or foreign jurisdiction;
- failure to cooperate with the disciplinary authority,
- failure to comply with an order issued by the disciplinary authority;
- violating a lawful rule made by the disciplinary authority;
- aiding or abetting an unlicensed person to practice;
- practice beyond the scope as defined by law or rule;
- misrepresentation in the conduct of business,
- failure to oversee staff to the extent that consumers may be harmed;
- conviction of any gross misdemeanor or felony relative to the profession; and
- interference with an investigation through willful misrepresentation of facts.

Sanctions

Upon a finding of unprofessional conduct, uniform sanctions are specified for all businesses and professions regulated by the department. The disciplinary authority may:

- revoke a license, or suspend it for an indefinite time;
- restrict or limit the practice;
- order completion of a remedial education or treatment program;
- monitor the practice;
- issue a censure or reprimand;
- assign probation;
- issue a fine, not to exceed \$5,000 per violation unless specified by law;
- deny an initial or renewal license application; or
- take other corrective action.

The discipline may be required to pay for investigative costs associated with the action, but only if one of the sanctions listed above is ordered.

An individual who has been disciplined or whose license has been denied may appeal the decision pursuant to the Administrative Procedure Act. A person whose license has been suspended or revoked may petition for reinstatement. The disciplinary authority may require the successful completion of an examination as a condition of reinstatement.

Disciplinary authorities may investigate complaints of unlicensed practice and may issue temporary and permanent cease and desist orders. Disciplinary authorities may also impose a civil fine of not more than \$1,000 for each day that a person engages in unlicensed practice.

If a person or business fails to comply with an order regarding unprofessional conduct or practice without a license, the Attorney General, a county prosecuting attorney, a disciplinary authority or any other person may take action to enjoin the person from violating the order. If a person or business violates such an injunction, they may be found in contempt of court, and the court may assess a civil penalty not to exceed \$25,000. If a person or business fails to pay fines for unprofessional conduct or practicing without a license in a timely manner, disciplinary authorities may enforce the order for payment in superior court.

Substitute Bill Compared to Original Bill:

In assessing fines for unprofessional conduct, the disciplinary authority must consider aggravating or mitigating circumstances. The real estate appraiser commission account is created. Several language clarifications and technical changes are made.

Appropriation: None.

Fiscal Note: Requested on January 27, 2002.

Effective Date of Substitute Bill: Ninety days after adjournment of session in which bill is passed.

Testimony For: The way laws are passed result in incremental implementations which over time are inconsistent. Some businesses have definitions for unprofessional conduct, and other do not. Businesses regulated by the Department of Licensing do not have uniform consistencies in their disciplinary procedures and results in differential treatment. The bill proposed here is similar to the uniform disciplinary bill developed for the health professions many years ago, and will streamline procedures.

Development of a consistent disciplinary structure began three years ago because both businesses and consumers were not clear on procedures. Fee-setting authority is not changed. While a few businesses will have significant change in their processes, many of the businesses covered in this bill will see few changes.

There are concerns that the fines for unprofessional conduct increased from \$1,000 to \$5,000. Language needs to be incorporated to consider mitigating circumstances.

Testimony Against: None.

Testified: (In support) Representative Upthegrove, prime sponsor; Fred Hellberg, Governor's Office; Alan Rathbun and Alan Barnard, Department of Licensing; and Bob Mitchell, Washington Association of Realtors.

(With concerns) T. K. Bentler, Washington State Funeral Directors; and Michael Transue, Pierce County Security Services.