
SENATE BILL 5091

State of Washington

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By Senators Kohl-Welles, Kline, Keiser, Franklin, and McDermott

Read first time 01/13/09. Referred to Committee on Labor, Commerce & Consumer Protection.

1 AN ACT Relating to the regulation of certain trades by the
2 department of labor and industries; amending RCW 18.118.020; and adding
3 a new chapter to Title 18 RCW.

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

5 NEW SECTION. **Sec. 1.** (1) The purpose of this chapter is to
6 establish guidelines for the regulation of construction trades or
7 construction-related trades generally overseen in some capacity by the
8 department of labor and industries. This chapter applies when a trade
9 seeks legislation to increase its scope of practice or the level of
10 regulation of the trade, or when a trade seeks regulation of
11 construction trades or construction-related trades not licensed or
12 regulated on the effective date of this section. This chapter also
13 applies when a legislator or a legislative committee requests that the
14 department determine whether a trade should be regulated by the state.
15 This chapter is not intended and shall not be construed to: (a) Apply
16 to any regulatory entity created before the effective date of this
17 section, except as provided in this chapter; (b) affect the powers and
18 responsibilities of the superintendent of public instruction or
19 Washington professional educator standards board under RCW 28A.410.210

1 and 28A.410.010; (c) apply to or interfere in any way with the practice
2 of religion or to any kind of treatment by prayer; (d) apply to any
3 remedial or technical amendments to any statutes that licensed or
4 regulated activity before the effective date of this section; and (e)
5 apply to proposals relating solely to continuing education. The
6 legislature declares that all individuals should be permitted to enter
7 into a profession unless there is an overwhelming need for the state to
8 protect the interests of the public by restricting entry into the
9 profession. When such a need is identified, the regulation adopted by
10 the state should be set at the least restrictive level consistent with
11 the public interest to be protected.

12 (2) It is the intent of this chapter that no regulation shall be
13 imposed upon any profession except for the purpose of protecting the
14 public interest and the interest of the worker. Generally, a trade
15 should be regulated by the state only when:

16 (a) Unregulated practice can clearly harm or endanger the health,
17 safety, or welfare of the public, or the worker, and the potential for
18 the harm is easily recognizable and not remote or dependent upon
19 tenuous argument;

20 (b) The public or the worker needs and can reasonably be expected
21 to benefit from an assurance of initial and continuing professional
22 ability; and

23 (c) The public or the worker cannot be effectively protected by
24 other means in a more cost-beneficial manner.

25 (3) After evaluating the criteria in subsection (2) of this section
26 and considering governmental, societal, and worker costs and benefits,
27 if the department determines that it is necessary to regulate a trade
28 not previously regulated by law, the least restrictive alternative
29 method of regulation should be recommended, consistent with the public
30 interest and this section:

31 (a) When existing common law and statutory civil actions and
32 criminal prohibitions are not sufficient to eradicate existing harm,
33 the regulation should provide for stricter civil actions and criminal
34 prosecutions;

35 (b) When a service is being performed for individuals involving a
36 hazard to the public or the worker's health, safety, or welfare, the
37 regulation should impose inspection requirements and enable the

1 department to enforce violations by injunctive relief in court
2 including, but not limited to, regulation of the trade activity
3 providing the service rather than the employees of the business;

4 (c) When the threat to the public or worker health, safety, or
5 economic well-being is relatively small as a result of the operation of
6 the trade, the regulation should implement a system of registration;

7 (d) When the consumer may have a substantial basis for relying on
8 the services of a practitioner, the regulation should implement a
9 system of certification; or

10 (e) When apparent that adequate regulation cannot be achieved by
11 means other than licensing, the regulation should implement a system of
12 licensing.

13 NEW SECTION. **Sec. 2.** The definitions in this section apply

14 throughout this chapter unless the context clearly requires otherwise.

15 (1) "Applicant group" includes any trade professional group or
16 organization, any individual, or any other interested party that
17 proposes that any trade group not presently regulated be regulated or
18 that proposes legislation to substantially increase the scope of
19 practice or the level of regulation of the profession.

20 (2) "Certification" means a voluntary process by which a statutory
21 regulatory entity grants recognition to an individual who (a) has met
22 certain prerequisite qualifications specified by that regulatory
23 entity, and (b) may assume or use "certified" in the title or
24 designation to perform prescribed professional tasks.

25 (3) "Department" means the department of labor and industries.

26 (4) "Grandfather clause" means a provision in a regulatory statute
27 applicable to practitioners actively engaged in the regulated
28 profession prior to the effective date of the regulatory statute that
29 exempts the practitioners from meeting the prerequisite qualifications
30 set forth in the regulatory statute to perform prescribed occupational
31 tasks.

32 (5) "Inspection" means the periodic examination of practitioners by
33 a state agency in order to ascertain whether the practitioners'
34 occupation is being carried out in a fashion consistent with the public
35 health, safety, and welfare.

36 (6) "Legislative committees of reference" means the standing

1 legislative committees designated by the respective rules committees of
2 the senate and house of representatives to consider proposed
3 legislation to regulate trades not previously regulated.

4 (7) "License," "licensing," and "licensure" mean permission to
5 engage in a trade which would otherwise be unlawful in the state in the
6 absence of the permission. A license is granted to those individuals
7 who meet prerequisite qualifications to perform prescribed professional
8 tasks and for the use of a particular title.

9 (8) "Practitioner" means an individual who (a) has achieved
10 knowledge and skill by practice, and (b) is actively engaged in a
11 specified trade.

12 (9) "Public member" means an individual who is not, and never was,
13 a member of the trade being regulated or the spouse of a member, or an
14 individual who does not have and never has had a material financial
15 interest in either the rendering of the trade service being regulated
16 or an activity directly related to the profession being regulated.

17 (10) "Registration" means the formal notification which, prior to
18 rendering services, a practitioner shall submit to a state agency
19 setting forth the name and address of the practitioner; the location,
20 nature, and operation of the trade activity to be practiced; and, if
21 required by the regulatory entity, a description of the service to be
22 provided.

23 (11) "Regulatory entity" means any board, commission, agency,
24 division, or other unit or subunit of state government which regulates
25 one or more professions, occupations, industries, trades, businesses,
26 or other endeavors in this state.

27 (12) "State agency" includes every state office, department, board,
28 commission, regulatory entity, and agency of the state, and, where
29 provided by law, programs and activities involving less than the full
30 responsibility of a state agency.

31 (13) "Trade" means activities related to construction, electrical,
32 plumbing, asbestos removal, boiler, elevator, and factory-built
33 structures work. It also includes any work related to one of these
34 trades.

35 NEW SECTION. **Sec. 3.** After the effective date of this section,
36 the department shall determine, by interviewing members of applicant
37 trade groups, discussions with the general public, information received

1 in public hearings as provided in section 4 of this act, and the
2 department's own internal information, if a trade should be regulated
3 or further regulated. The department shall make this determination by
4 reviewing at least the following factors:

5 (1) A definition of the problem and why regulation is necessary:

6 (a) The nature of the potential harm to the public if the trade is
7 not regulated, and the extent to which there is a threat to public
8 health and safety;

9 (b) The extent to which consumers need and will benefit from a
10 method of regulation identifying competent practitioners, indicating
11 typical employers, if any, of practitioners in the trade; and

12 (c) The extent of autonomy a practitioner has, as indicated by:

13 (i) The extent to which the profession calls for independent
14 judgment and the extent of skill or experience required in making the
15 independent judgment; and

16 (ii) The extent to which practitioners are supervised;

17 (2) The efforts made to address the problem:

18 (a) Voluntary efforts, if any, by members of the trade to:

19 (i) Establish a code of ethics or standards of practice; or

20 (ii) Help resolve disputes between practitioners and consumers; and

21 (b) Recourse to and the extent of use of applicable law and whether
22 it could be strengthened to control the problem;

23 (3) The alternatives considered:

24 (a) Regulation of trade employers or practitioners rather than
25 employee practitioners;

26 (b) Regulation of the program or service rather than the individual
27 practitioners;

28 (c) Registration of all practitioners;

29 (d) Certification of all practitioners;

30 (e) Other alternatives;

31 (f) Why the use of the alternatives specified in this subsection
32 are not adequate to protect the public interest; and

33 (g) Why licensing would serve to protect the public interest;

34 (4) The benefit to the public and the worker if regulation is
35 granted:

36 (a) The extent to which the incidence of specific problems present
37 in the unregulated trade can reasonably be expected to be reduced by
38 regulation;

1 (b) Whether the public can identify qualified practitioners;

2 (c) The extent to which the public can be confident that qualified
3 practitioners are competent:

4 (i) Whether the proposed regulatory entity would be a board
5 composed of members of the profession and public members, or a state
6 agency, or both, and, if appropriate, their respective responsibilities
7 in administering the system of registration, certification, or
8 licensure, including the composition of the board and the number of
9 public members, if any; the powers and duties of the board or state
10 agency regarding examinations and for cause revocation, suspension, and
11 nonrenewal of registrations, certificates, or licenses; the adoption of
12 rules and canons of ethics; the conduct of inspections; the receipt of
13 complaints and disciplinary action taken against practitioners; and how
14 fees would be levied and collected to cover the expenses of
15 administering and operating the regulatory system;

16 (ii) If there is a grandfather clause, whether such practitioners
17 will be required to meet the prerequisite qualifications established by
18 the regulatory entity at a later date;

19 (iii) The nature of the standards proposed for registration,
20 certification, or licensure as compared with the standards of other
21 jurisdictions;

22 (iv) Whether the regulatory entity would be authorized to enter
23 into reciprocity agreements with other jurisdictions; and

24 (v) The nature and duration of any training including, but not
25 limited to, whether the training includes a substantial amount of
26 supervised field experience; whether training programs exist in this
27 state; if there will be an experience requirement; whether the
28 experience must be acquired under a registered, certificated, or
29 licensed practitioner; whether there are alternative routes of entry or
30 methods of meeting the prerequisite qualifications; whether all
31 applicants will be required to pass an examination; and, if an
32 examination is required, by whom it will be developed and how the costs
33 of development will be met;

34 (d) Assurance of the public that practitioners have maintained
35 their competence:

36 (i) Whether the registration, certification, or licensure will
37 carry an expiration date; and

1 (ii) Whether renewal will be based only upon payment of a fee, or
2 whether renewal will involve reexamination, peer review, continuing
3 education, or other enforcement;

4 (5) The extent to which regulation might harm the public:

5 (a) The extent to which regulation will restrict entry into the
6 profession:

7 (i) Whether the proposed standards are more restrictive than
8 necessary to ensure safe and effective performance; and

9 (ii) Whether the proposed legislation requires registered,
10 certificated, or licensed practitioners in other jurisdictions who
11 migrate to this state to qualify in the same manner as state applicants
12 for registration, certification, and licensure when the other
13 jurisdiction has substantially equivalent requirements for
14 registration, certification, or licensure as those in this state; and

15 (b) Whether there are similar trades to that of the applicant group
16 which should be included in, or portions of the applicant group which
17 should be excluded from, the proposed legislation;

18 (6) The maintenance of standards:

19 (a) Whether effective quality assurance standards exist in the
20 profession, such as legal requirements associated with specific
21 programs that define or enforce standards, or a code of ethics; and

22 (b) How the proposed legislation will assure quality:

23 (i) The extent to which a code of ethics or standards of practice,
24 if any, will be adopted; and

25 (ii) The grounds for suspension or revocation of registration,
26 certification, or licensure;

27 (7) A description of the group proposed for regulation, including
28 a list of associations, organizations, and other groups representing
29 the practitioners in this state, an estimate of the number of
30 practitioners in each group, and whether the groups represent different
31 levels of practice; and

32 (8) The expected costs of regulation:

33 (a) The impact registration, certification, or licensure will have
34 on the costs of the services to the public; and

35 (b) The cost to the state and to the general public of implementing
36 the proposed legislation.

1 NEW SECTION. **Sec. 4.** (1) The department shall hold a public
2 hearing during which the department will receive public comment on
3 whether a trade should be regulated by the state. At least twenty days
4 before the public hearing, the department shall post on its web site a
5 notice of hearing. The notice must include:

6 (a) The trades for which information is sought;

7 (b) The information requested under section 3 of this act; and

8 (c) When, where, and how members of the general public may present
9 information about the trade.

10 (2) The department shall request names of individuals and
11 organizations that may have information needed for the review from
12 legislators and other identified interested parties. The department
13 must send these individuals and organizations the notice under this
14 section.

15 NEW SECTION. **Sec. 5.** After the department has conducted its
16 review under this chapter, it shall submit a report with the details of
17 its review as well as its recommendations about regulating the trade to
18 the legislative committees of reference. It shall also post the report
19 on its web site.

20 **Sec. 6.** RCW 18.118.020 and 1987 c 514 s 5 are each amended to read
21 as follows:

22 The definitions contained in this section shall apply throughout
23 this chapter unless the context clearly requires otherwise.

24 (1) "Applicant group" includes any business professional group or
25 organization, any individual, or any other interested party which
26 proposes that any business professional group not presently regulated
27 be regulated or which proposes legislation to substantially increase
28 the scope of practice or the level of regulation of the profession.

29 (2) "Business professions" means those business occupations or
30 professions which are not health professions under chapter 18.120 RCW
31 and includes, in addition to real estate brokers and salespersons under
32 chapter 18.85 RCW, the following professions and occupations:
33 Accountancy under chapter 18.04 RCW; architects under chapter 18.08
34 RCW; auctioneering under chapter 18.11 RCW; cosmetologists, barbers,
35 and manicurists under chapter 18.16 RCW; (~~contractors under chapter~~
36 ~~18.27 RCW;~~) debt adjusting under chapter 18.28 RCW; engineers and

1 surveyors under chapter 18.43 RCW; escrow agents under chapter 18.44
2 RCW; landscape architects under chapter 18.96 RCW; (~~water well~~
3 ~~construction under chapter 18.104 RCW; plumbers under chapter 18.106~~
4 ~~RCW~~) and art dealers under chapter 18.110 RCW.

5 (3) "Certificate" and "certification" mean a voluntary process by
6 which a statutory regulatory entity grants recognition to an individual
7 who (a) has met certain prerequisite qualifications specified by that
8 regulatory entity, and (b) may assume or use "certified" in the title
9 or designation to perform prescribed professional tasks.

10 (4) "Grandfather clause" means a provision in a regulatory statute
11 applicable to practitioners actively engaged in the regulated
12 profession prior to the effective date of the regulatory statute which
13 exempts the practitioners from meeting the prerequisite qualifications
14 set forth in the regulatory statute to perform prescribed occupational
15 tasks.

16 (5) "Inspection" means the periodic examination of practitioners by
17 a state agency in order to ascertain whether the practitioners'
18 occupation is being carried out in a fashion consistent with the public
19 health, safety, and welfare.

20 (6) "Legislative committees of reference" means the standing
21 legislative committees designated by the respective rules committees of
22 the senate and house of representatives to consider proposed
23 legislation to regulate business professions not previously regulated.

24 (7) "License", "licensing", and "licensure" mean permission to
25 engage in a business profession which would otherwise be unlawful in
26 the state in the absence of the permission. A license is granted to
27 those individuals who meet prerequisite qualifications to perform
28 prescribed professional tasks and for the use of a particular title.

29 (8) "Professional license" means an individual, nontransferable
30 authorization to carry on an activity based on qualifications which
31 include: (a) Graduation from an accredited or approved program, and
32 (b) acceptable performance on a qualifying examination or series of
33 examinations.

34 (9) "Practitioner" means an individual who (a) has achieved
35 knowledge and skill by practice, and (b) is actively engaged in a
36 specified business profession.

37 (10) "Public member" means an individual who is not, and never was,
38 a member of the business profession being regulated or the spouse of a

1 member, or an individual who does not have and never has had a material
2 financial interest in either the rendering of the business professional
3 service being regulated or an activity directly related to the
4 profession being regulated.

5 (11) "Registration" means the formal notification which, prior to
6 rendering services, a practitioner shall submit to a state agency
7 setting forth the name and address of the practitioner; the location,
8 nature and operation of the business activity to be practiced; and, if
9 required by the regulatory entity, a description of the service to be
10 provided.

11 (12) "Regulatory entity" means any board, commission, agency,
12 division, or other unit or subunit of state government which regulates
13 one or more professions, occupations, industries, businesses, or other
14 endeavors in this state.

15 (13) "State agency" includes every state office, department, board,
16 commission, regulatory entity, and agency of the state, and, where
17 provided by law, programs and activities involving less than the full
18 responsibility of a state agency.

19 NEW SECTION. **Sec. 7.** Sections 1 through 5 of this act constitute
20 a new chapter in Title 18 RCW.

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