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**SENATE BILL 6318**

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**State of Washington 64th Legislature 2016 Regular Session**

**By** Senators Baumgartner, Conway, Litzow, and Hobbs

AN ACT Relating to ownership, maintenance, and operation of an office within the practice of dentistry; amending RCW 18.32.020; and adding a new section to chapter 18.32 RCW.

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

**Sec.**  RCW 18.32.020 and 2011 c 336 s 477 are each amended to read as follows:

Subject to section 2 of this act, a person practices dentistry, within the meaning of this chapter, who (1) represents himself or herself as being able to diagnose, treat, remove stains and concretions from teeth, operate or prescribe for any disease, pain, injury, deficiency, deformity, or physical condition of the human teeth, alveolar process, gums, or jaw, or (2) offers or undertakes by any means or methods to diagnose, treat, remove stains or concretions from teeth, operate or prescribe for any disease, pain, injury, deficiency, deformity, or physical condition of the same, or take impressions of the teeth or jaw, or (3) owns, maintains, or operates an office for the practice of dentistry, or (4) engages in any of the practices included in the curricula of recognized and approved dental schools or colleges, or (5) professes to the public by any method to furnish, supply, construct, reproduce, or repair any prosthetic denture, bridge, appliance, or other structure to be worn in the human mouth.

The fact that a person uses any dental degree, or designation, or any card, device, directory, poster, sign, or other media whereby he or she represents himself or herself to be a dentist, shall be prima facie evidence that such person is engaged in the practice of dentistry.

X-ray diagnosis as to the method of dental practice in which the diagnosis and examination is made of the normal and abnormal structures, parts, or functions of the human teeth, the alveolar process, maxilla, mandible or soft tissues adjacent thereto, is hereby declared to be the practice of dentistry. Any person other than a regularly licensed physician or surgeon who makes any diagnosis or interpretation or explanation, or attempts to diagnose or to make any interpretation or explanation of the registered shadow or shadows of any part of the human teeth, alveolar process, maxilla, mandible or soft tissues adjacent thereto by the use of X-ray is declared to be engaged in the practice of dentistry, medicine, or surgery.

The practice of dentistry includes the performance of any dental or oral and maxillofacial surgery. "Oral and maxillofacial surgery" means the specialty of dentistry that includes the diagnosis and surgical and adjunctive treatment of diseases, injuries, and defects of the hard and soft tissues of the oral and maxillofacial region.

NEW SECTION. **Sec.**  A new section is added to chapter 18.32 RCW to read as follows:

(1) A person does not own, maintain, or operate an office within the practice of dentistry for the purposes of this chapter if:

(a)(i) A person who, pursuant to a management or other personal services agreement, provides services to a dentist licensed pursuant to this chapter or a group practice of dentists licensed pursuant to this chapter meets the following standards:

(A) The agency agreement is set out in writing and signed by the parties;

(B) The agency agreement covers all of the services the agent provides to the principal for the term of the agreement and specifies the services to be provided by the agent;

(C) If the agency agreement is intended to provide for the services of the agent on a periodic, sporadic, or part-time basis, rather than on a full-time basis for the term of the agreement, the agreement specifies exactly the schedule of the intervals, their precise length, and the exact charge for the intervals;

(D) The term of the agency agreement is for not less than one year, does not exceed that which is reasonable and necessary for a commercially reasonable business purpose of the agreement, and in no event exceeds five years;

(E) The aggregate compensation paid to the agent over the term of the agreement is set in advance, is consistent with fair market value in arms-length transactions and is not determined in a manner that takes into account the volume or value of any referrals or business otherwise generated between the parties;

(F) The services performed under the agency agreement do not involve the counseling or promotion of a business arrangement or other activity that violates any state or federal law; and

(G) The aggregate services contracted for do not exceed those which are reasonably necessary to accomplish the commercially reasonable business purpose of the services.

(ii) The equity interests in a group practice of dentists that is party to an agency agreement authorized by this section must be held by dentists licensed pursuant to this chapter who practice in the group, and the group must meet the definition of "group practice" in section 1877(h)(4) of the federal social security act and related regulations.

(iii) For purposes of this subsection (1)(a):

(A) "Agent" means any person, other than a bona fide employee of the principal, who has an agreement to perform services for, or on behalf of, the principal.

(B) "Principal" means a dentist licensed pursuant to this chapter or group of dentists licensed pursuant to this chapter.

(C) Compensation is considered "set in advance" only if: (I) The aggregate compensation over the term of the agreement is fixed; and (II) it does not include any percentage-based component.

(D) Compensation is considered "consistent with fair market value" only if: (I) It is consistent with the value in arm's-length transactions; and (II) it is included in a service agreement as the result of bona fide bargaining between well-informed parties to the agreement who are not otherwise in a position to generate business for the other party.

(iv) Nothing in this subsection may be construed to authorize investments in group practices unless those investments meet all of the standards set forth in 42 C.F.R. 1001.952(p);

(b)(i) A person who is party to a management or other personal services agreement with a dentist licensed pursuant to this chapter or a group practice of dentists licensed pursuant to this chapter and who leases space to such a dentist or group practice of dentists meets the following standards:

(A) The lease agreement is set out in writing and signed by the parties;

(B) The lease covers all of the premises leased between the parties for the term of the lease and specifies the premises covered by the lease;

(C) If the lease is intended to provide the lessee with access to the premises for periodic intervals of time, rather than on a full-time basis for the term of the lease, the lease specifies exactly the schedule of the intervals, their precise length, and the exact rent for the intervals;

(D) The term of the lease is for not less than one year;

(E) The aggregate rental charge is set in advance, is consistent with fair market value in arm's-length transactions and is not determined in a manner that takes into account the volume or value of any referrals or business otherwise generated between the parties; and

(F) The aggregate space rented does not exceed that which is reasonably necessary to accomplish the commercially reasonable business purpose of the rental.

(ii) For purposes of this subsection (1)(b), "fair market value" means the value of the rental property for general commercial purposes. "Fair market value" does not include adjustment to reflect the additional value that one party, either the prospective lessee or lessor, would attribute to the property as a result of its proximity or convenience to sources of referrals or business otherwise generated between the parties.

(c)(i) A person who is party to a management or other personal services agreement with a dentist licensed pursuant to this chapter or a group practice of dentists licensed pursuant this chapter and who leases equipment to such a dentist or group practice of dentists meets the following standards:

(A) The lease agreement is set out in writing and signed by the parties;

(B) The lease covers all of the equipment leased between the parties for the term of the lease and specifies the equipment covered by the lease;

(C) If the lease is intended to provide the lessee with use of the equipment for periodic intervals of time, rather than on a full-time basis for the term of the lease, the lease specifies exactly the schedule of the intervals, their precise length, and the exact rent for the interval;

(D) The term of the lease is for not less than one year;

(E) The aggregate rental charge is set in advance, is consistent with fair market value in arm's-length transactions and is not determined in a manner that takes into account the volume or value of any referrals or business otherwise generated between the parties; and

(F) The aggregate equipment rental does not exceed that which is reasonably necessary to accomplish the commercially reasonable business purpose of the rental.

(ii) For purposes of this subsection (1)(c), "fair market value" means the value of the equipment when obtained from a manufacturer or professional distributor. "Fair market value" does not include adjustment to reflect the additional value one party, either the prospective lessee or lessor, would attribute to the equipment as a result of its proximity or convenience to sources of referrals or business otherwise generated between the parties.

(2)(a) A management or other personal services agreement between a person and a dentist licensed pursuant to this chapter or a group practice of dentists licensed pursuant this chapter must be independent of any space or equipment lease agreement between the person or any affiliate of the person and the dentist or group practice of dentists.

(b)(i) The person or affiliate is presumed to have been operating an office for the practice of dentistry within the meaning of RCW 18.32.020 if, within seven hundred thirty days of the termination of a management or other personal service agreement between the agent and the dentist or group practice of dentists, the agent or any affiliate of the agent:

(A) Terminates a space or equipment lease agreement with the dentist or group practice of dentists without the consent of the dentist or group practice of dentists; or

(B) Enters into a new management or other personal service agreement or a new space or equipment lease agreement with a different dentist or group practice of dentists in the same location.

(ii) The agent or affiliate may rebut the presumption in (b)(i) of this subsection (2) with clear and convincing evidence that the space or equipment lease agreement was terminated and the new management or other personal service agreement or new space or equipment lease agreement, if any, were executed for a permissible purpose. For purposes of this subsection, an affiliate of an agent includes, without limitation, any person that has a direct or indirect ownership or investment interest or compensation arrangement with the agent.

(3) The legislature finds that the practices covered by this section are matters vitally affecting the public interest for the purpose of applying the consumer protection act, chapter 19.86 RCW. The unlicensed practice of dentistry by a person who is party to a management or other personal service agreement with a dentist licensed pursuant to this chapter or a group practice of dentists licensed pursuant to this chapter is not reasonable in relation to the development and preservation of business and is an unfair or deceptive act in trade or commerce and an unfair method of competition for the purpose of applying the consumer protection act, chapter 19.86 RCW.

(4) Any employee, independent contractor, or health care professional who reports, in good faith, to the department of health or to any agency or branch of federal, state, or local government practices that may constitute the unlicensed practice of dentistry by a person who is a party to a management or other personal service agreement with a dentist licensed pursuant to this chapter or group practice licensed pursuant to this chapter is a whistleblower. The provisions of RCW 4.24.500 through 4.24.520, providing certain protections to persons who communicate to agencies and branches of federal, state, and local government, apply to these reports, and a person who has been subjected to reprisal or retaliatory action has the remedies provided under chapter 49.60 RCW and RCW 4.24.500 through 4.24.520. The identity of a whistleblower must remain confidential.

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