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# ***Crane Operators***

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***SUNRISE REVIEW***

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**SUNRISE REVIEW OF CRANE OPERATORS  
(18.118 RCW)**

Report to the Committee on Commerce & Labor,  
Washington State House of Representatives  
Representative Art Wang, Chair

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State of Washington

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## SUNRISE REVIEW OF CRANE OPERATORS

### Executive Summary

Accidents involving cranes, derricks, and related hoisting devices have posed a problem, particularly to the construction industry in the United States and Canada. Reportedly, one-fifth of construction fatalities stem from accidents involving cranes. Some states and provinces have responded by requiring licensing of crane operators.

Washington State's experience with respect to crane-related accidents - indeed with industrial accidents in general - fortunately differs from much of the nation. Since 1980, crane accidents have been responsible for only .5% of construction-related fatalities, and the number of crane accidents have dropped by more than 50%. Large mobile cranes in particular have a good safety record. It appears that this record is due to a combination of training, education, and safety code enforcement involving organized labor, management, and the state Department of Labor & Industries.

The Department of Licensing's Sunrise Review of crane operators revealed no evidence that licensing of this group would significantly increase the safety of the general public or of the worksite. Adequate rulemaking authority exists under the Occupational Safety and Health Act and the Washington Industrial Safety and Health Act to assure worksite safety. Our review did point to the possible need for enhanced data gathering regarding industrial accidents of all type, particularly of the type that would allow more effective targeting of education and enforcement programs by the Department of Labor & Industries and the private sector.

Therefore, we recommend:

- 1) that no licensing of crane operators be required at this time;
- 2) that the Legislature undertake a separate review of existing budget levels for enforcement and inspection in the Department of Labor & Industries to determine whether an increase in such levels might reasonably be expected to produce a corresponding decrease in industrial accidents, including crane accidents; and
- 3) that the Legislature and the Department of Labor & Industries jointly examine the possibility of enhancing the Department's ability to collect, analyze, and disseminate data concerning the occurrence and cause of industrial accidents.

## INTRODUCTION

### The Sunrise Review Process

In 1987, the Washington State Legislature established as state policy that: (1) new or additional regulation of business professions be imposed only in those cases where such regulation is necessary to protect the public interest, and (2) that, if imposed, any new or additional regulation be set at the least restrictive level possible.

Chapter 514, Laws of 1987 (18.118 RCW) designated the Department of Licensing's Research Office as the unit of state government responsible for what is commonly known as the "Sunrise Review" process, whereby an independent review of proposed regulation could be carried out "removed from the political process". However, the Legislature remains the sole authority for establishment of any professional or occupational regulation.

The Sunrise Review of crane operators was initiated by written request from the chairman of the House Committee on Commerce and Labor to the director of the Department. A thorough analysis of the issues was carried out by DOL research staff according to the guidelines and criteria set forth in 18.118 RCW. Questions which must be address include the danger, if any, to public health and safety from unregulated practice as well as an analysis of the most cost-beneficial and least restrictive methods of public protection. (See Appendix A)

### Sunrise Review of Crane Operators

The request to conduct a Sunrise Review of possible regulation of crane operators stemmed from proposals (HB 1365/PSHB 1365) originally introduced during the 1988 Legislature by Representative Art Wang et al. HB 1365 originally sought licensing of all crane operators while the proposed substitute would have excluded certain classes of cranes, such as devices under 14 tons hoisting capacity, stationery cranes, etc.

The Department of Licensing Research Office conducted the Sunrise Review between March and September 1988. Staff identified and analyzed issues and held discussions with legislative staff; representatives of affected state agencies, including the Department of Labor & Industries; private sector representatives, including labor unions, general contractors; and industrial safety experts from the United States and Canada with special expertise in crane accident analysis and prevention.

Additional input was solicited through statewide publicity and the scheduling of a widely-advertised public meeting held August 10, 1988. Specific invitations to the meeting were

extended to interested state agency officials, chairpersons of affected House and Senate Committees, legislative staff, labor union representatives, general contractors association representatives, crane companies, and others. Written comments were also solicited and encouraged, both from those unable to attend the public meeting and those attending.

## BACKGROUND

### Overview: Crane Accidents

Over the past 25 years, increasing attention has been paid to crane accidents in the United States, Canada, and Europe. Factors include the relatively high proportion of serious crane and hoisting device construction accidents, frequently resulting in fatal injuries; and the cost in terms of insurance claims of crane-related accidents. In addition, crane accidents - particularly those involving large devices - receive a great deal of public and media attention when they do occur.

The definitive study of mobile crane accidents was first issued in 1981 by Donald E. Dickie, a registered professional engineer and manager of the research department of the Construction Safety Association of Ontario (Canada). Dickie, widely considered the U.S. and Canada's top expert in crane accident analysis and prevention, placed crane accidents into four basic categories: support failure, failure to use outriggers, operator error, and structural failure of the equipment itself. The latter category - structural failure - makes up only 10% to 15% of crane accidents, at most. More than half of the accidents in the U.S., Canada, and Europe relate to machine set up, while the remaining accidents involve operator error in terms of handling of the equipment. While stationary cranes are involved in a smaller proportion of accidents than mobile cranes, those accidents which do occur tend to involve operator error more often than mobile crane accidents, where set up and stability problems are more likely to occur.

In Washington State, crane-related accidents represent a smaller portion of all construction accidents than the national averages for the U.S. and Canada. The Dickie report, updated in the mid-1980's, found that craning contributed to about 20% of the fatal accidents in the U.S. and Canadian construction industry. In Washington State, crane-related fatal accidents have amounted to less than .5%, distributed among cranes of all types and sizes.

Crane and derrick accidents have, in fact, been on the decline for most of the past decade in Washington State, as have all industrial accidents, dropping more than 50% between 1980 and 1987. The number of fatal accidents involving craning has averaged less than one death per year during the same period.

Moreover, no crane-related accident has involved a multiple fatality during the period 1980-1987 in Washington State.

The direct causes of crane accidents are sometimes difficult to pin down accurately. While some operator error-related accidents are clearly the result of lack of adequate training and/or experience on the part of the operator, others have involved skilled and experienced operators who were otherwise impaired in their judgement or subjected to pressures, resulting in lack of normal safety precautions. In most cases, crane accidents involve more than one factor, including tight or unrealistic scheduling of work tasks and other outside pressures, inaccurate weights on loads, improper modification of equipment (bypassing the deadman's switch being one of the most common), unstable building sites, or failure to use stabilizing equipment, such as outriggers.

### **Current Regulatory Practices**

Crane operators and their employers are currently subject to state and federal laws and regulations concerning occupational safety and health, including the Federal Occupational Safety and Health Act (OSHA) and the Washington Industrial Safety and Health Act (WISHA), both of which are administered in Washington State by the Department of Labor & Industries. The Department, through programs of education and inspection & enforcement, emphasizes accident prevention and safety education as well as citing workers or employers who violate state safety codes.

In Washington State, labor unions, industrial organizations, and individual employers such as public utility companies have developed safety awareness and education programs, including joint efforts aimed at reducing industrial accidents. Occupational training is also being increasingly emphasized, with the development of union-sponsored and other training facilities.

In recent years, economics has been a driving force in encouraging more accident prevention, training, and related programs. Industrial insurance premiums have risen substantially as wages, costs of health care, and other associated costs have increased and the employer's safety experience is factored into the cost of these premiums. Employers in general have clearly recognized that accident prevention is good business.

### **Industry Practices & Safety Profiles**

There are a wide variety of practices and safety records with respect to crane operation in Washington State. The machinery involved ranges from massive stationery devices such as those used in public ports to load and unload containers down to small cranes mounted on the rear of a flatbed truck, used to load and unload building materials. Also included are the so-called

"cherry pickers", truck-mounted booms with a basket at the end, most often seen in operation by electric utility, telephone, or other public utility company employees.

Who operates these devices and how much training or experience they have depends in large measure on the industry involved, the existence of collective bargaining agreements, and the method of operation of the individual company. While the Department of Labor & Industries has only limited statistics relating to causes of crane-related accidents, anecdotal evidence obtained through written and oral comment during the Sunrise Review process helped to develop a fairly accurate profile of where and how the majority of crane-related accidents occur.

While there have been accidents involving virtually all sizes of cranes, in all industries, the best safety record appears to be in two categories, the operation of large, mobile cranes involved in the construction industry - particularly those operated by specialized subcontractors - and the operation of "cherry picker" cranes or boom trucks by employees of public utility companies.

Although there has been at least one recent fatal accident involving stationery crane operation in association with port activity, the safety record of crane operation in this industry segment is also relatively good overall.

In all three categories listed above, the personnel involved in operation are usually well-trained, experienced, and "in charge" of their particular operation, that is, in the position to refuse to perform an unsafe operation or succumb to outside pressure to take "shortcuts" that compromise safety. However, information gathered in our analysis indicates that the smaller the hoisting equipment, the less specialized the personnel used to operate it. Frequently, such equipment is leased or owned directly by contractors and is operated by general laborers or supervisory personnel. The incidence of accidents involving smaller cranes is much greater than with larger equipment. It needs to be pointed out, however, there is far more of smaller equipment (e.g. under 14 tons hoisting capacity) in use, involving many more operational personnel.

## FINDINGS

### Licensing of Crane Operators

Washington State's experience with respect to crane accidents has been compared to nationwide statistics for the United States and Canada. While requiring certain training or experience levels for crane operators in certain categories might have some positive effect, there is little evidence that licensing of all operators would substantially improve on the



rate of accident reduction experienced over the past decade. Licensing does not guarantee competence nor lack of impairment (as is evidenced in driver licensing, for example), nor would it insulate the operator against undue pressure to abandon reasonable safety practices.

There is even less evidence to support the limiting of licensing to operators of mobile cranes above 14 tons hoisting capacity, such as proposed in Substitute House Bill 1365. On the average, this category includes the best trained operators with the best safety record in the craning field.

### **Enforcement**

The Department of Labor & Industries has the responsibility to oversee training, safety education, and safety code enforcement. Over the past decade, industrial accidents as a whole have declined over 50%, in large measure an indication of the success of both public and private safety awareness, training, and accident prevention efforts led by the Department, in partnership with private sector labor and management. Our analysis indicates the possibility exists for even further reduction of industrial accidents of all kinds, including those involving cranes, by increasing even slightly the number of L & I enforcement personnel available in the field to undertake on-site safety inspections and to make available to such personnel enhanced statistical information related to accident occurrence and causes so that preventative measures can be taken.

### **CONCLUSION**

Existing federal and state occupational safety regulations together with public and private training, accident prevention, and safety awareness programs, appear to be working to reduce industrial accidents of all types, including those involving cranes. It is unlikely that requiring licensing of operators of large cranes (or even all crane operators) would be a cost-effective means of improving the existing pattern. A more effective measure might be to provide additional, modest resources for enforcement of existing regulation, perhaps encouraging targeting of worksites where the safety risks are greatest. This type of effort would be enhanced even further by improved accident data collection and analysis and targeted safety awareness and accident prevention programs.

### **RECOMMENDATIONS**

In view of the above findings, following are three recommendations to the Legislature:

- 1) that no licensing of crane operators be required at this time;

(13) "State agency" includes every state office, department, board, commission, regulatory entity, and agency of the state, and, where provided by law, programs and activities involving less than the full responsibility of a state agency. [1987 c 514 § 5.]

**18.118.030 Applicants for regulation—Information.** After July 26, 1987, if appropriate, applicant groups shall explain each of the following factors to the extent requested by the legislative committees of reference:

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

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

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

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

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

(ii) The extent to which practitioners are supervised;

(2) The efforts made to address the problem:

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

(i) Establish a code of ethics; or

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

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

(3) The alternatives considered:

(a) Regulation of business employers or practitioners rather than employee practitioners;

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

(c) Registration of all practitioners;

(d) Certification of all practitioners;

(e) Other alternatives;

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

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

(4) The benefit to the public if regulation is granted:

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

(b) Whether the public can identify qualified practitioners;

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

(i) Whether the proposed regulatory entity would be a board composed of members of the profession and public members, or a state agency, or both, and, if appropriate, their respective responsibilities in administering the system of registration, certification, or licensure, including

the composition of the board and the number of public members, if any; the powers and duties of the board or state agency regarding examinations and for cause revocation, suspension, and nonrenewal of registrations, certificates, or licenses; the promulgation of rules and canons of ethics; the conduct of inspections; the receipt of complaints and disciplinary action taken against practitioners; and how fees would be levied and collected to cover the expenses of administering and operating the regulatory system;

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

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

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

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

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

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

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

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

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

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

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

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

(6) The maintenance of standards:

potential for the harm is easily recognizable and not remote or dependent upon tenuous argument;

(b) The public needs and can reasonably be expected to benefit from an assurance of initial and continuing professional ability; and

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

(3) After evaluating the criteria in subsection (2) of this section and considering governmental and societal costs and benefits, if the legislature finds that it is necessary to regulate a business profession not previously regulated by law, the least restrictive alternative method of regulation should be implemented, consistent with the public interest and this section:

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

(b) Where a service is being performed for individuals involving a hazard to the public health, safety, or welfare, the regulation should impose inspection requirements and enable an appropriate state agency to enforce violations by injunctive relief in court, including, but not limited to, regulation of the business activity providing the service rather than the employees of the business;

(c) Where the threat to the public health, safety, or economic well-being is relatively small as a result of the operation of the business profession, the regulation should implement a system of registration;

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

(e) Where apparent that adequate regulation cannot be achieved by means other than licensing, the regulation should implement a system of licensing. [1987 c 514 § 4.]

**18.118.020 Definitions.** The definitions contained in this section shall apply throughout this chapter unless the context clearly requires otherwise.

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

(2) "Business professions" means those business occupations or professions which are not health professions under chapter 18.120 RCW and includes, in addition to real estate brokers and salespersons under chapter 18.85 RCW, the following professions and occupations: Accountancy under chapter 18.04 RCW; architects under chapter 18.08 RCW; auctioneering under chapter 18.11 RCW; cosmetologists, barbers, and manicurists under chapter 18.16 RCW; contractors under chapter 18.27 RCW; debt adjusting under chapter 18.28 RCW; engineers and surveyors under chapter 18.43 RCW; escrow agents under chapter 18.44 RCW; landscape architects

under chapter 18.96 RCW; water well construction under chapter 18.104 RCW; plumbers under chapter 18.106 RCW; and art dealers under chapter 18.110 RCW.

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

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

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

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

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

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

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

(10) "Public member" means an individual who is not, and never was, a member of the business profession being regulated or the spouse of a member, or an individual who does not have and never has had a material financial interest in either the rendering of the business professional service being regulated or an activity directly related to the profession being regulated.

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

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

fine art by the art dealer directly or indirectly for the art dealer's own account until the purchase price is paid in full to the artist. No property which is trust property under this section is subject to the claims, liens, or security interests of the creditors of the art dealer. [1981 c 33 § 2.]

**18.110.030 Contract required—Provisions.** (1) An art dealer may accept a work of fine art on a fee, commission, or other compensation basis, on consignment from the artist only if prior to or at the time of acceptance the art dealer enters into a written contract with the artist which states:

(a) The value of the work of fine art;

(b) The minimum price for the sale of the work of fine art; and

(c) The fee, commission, or other compensation basis of the art dealer.

(2) An art dealer who accepts a work of fine art on a fee, commission, or other compensation basis, on consignment from the artist may use or display the work of fine art or a photograph of the work of fine art or permit the use or display of the work or photograph only if:

(a) Notice is given to users or viewers that the work of fine art is the work of the artist; and

(b) The artist gives prior written consent to the particular use or display.

(3) Any portion of a contract which waives any provision of this chapter is void. [1981 c 33 § 3.]

**18.110.040 Violations—Penalties—Attorney fees.** An art dealer violating RCW 18.110.030 is liable to the artist for fifty dollars plus actual damages, including incidental and consequential damages, sustained as a result of the violation. If an art dealer violates RCW 18.110.030, the artist's obligation for compensation to the art dealer is voidable. In an action under this section the court may, in its discretion, award the artist reasonable attorney's fees. [1981 c 33 § 4.]

**18.110.900 Application of chapter.** This chapter applies to any work of fine art accepted on consignment on or after July 26, 1981. If a work of fine art is accepted on consignment on or after July 26, 1981 under a contract made before that date, this section applies only to the extent that it does not conflict with the contract. [1981 c 33 § 5.]

**18.110.905 Construction—Chapter controls over any conflicting provision of Title 62A RCW.** See RCW 62A.1-110.

## Chapter 18.118

### REGULATION OF BUSINESS PROFESSIONS

#### Sections

18.118.005	Legislative findings—Intent.
18.118.010	Purpose—Intent.
18.118.020	Definitions.
18.118.030	Applicants for regulation—Information.
18.118.040	Applicants for regulation—Written report—Recommendation of department of licensing.

18.118.900 Severability—1987 c 514.

**18.118.005 Legislative findings—Intent.** The legislature recognizes the value of an analytical review, removed from the political process, of proposals for increased regulation of real estate and other business professions which the legislature already regulates, as well as of proposals for regulation of professions not currently regulated. The legislature further finds that policies and standards set out for regulation of the health professions in chapter 18.120 RCW have equal applicability to other professions. To further the goal of governmental regulation only as necessary to protect the public interest and to promote economic development through employment, the legislature expands the scope of chapter 18.120 RCW to apply to business professions. The legislature intends that the reviews of proposed business profession regulation be conducted by the department of licensing's policy and research rather than regulatory staff and that the reviews be conducted and recommendations made in an impartial manner. Further, the legislature intends that the department of licensing provide sufficient staffing to conduct the reviews. [1987 c 514 § 3.]

**18.118.010 Purpose—Intent.** (1) The purpose of this chapter is to establish guidelines for the regulation of the real estate profession and other business professions which may seek legislation to substantially increase their scope of practice or the level of regulation of the profession, and for the regulation of business professions not licensed or regulated on July 26, 1987: *Provided*, that the provisions of this chapter are not intended and shall not be construed to: (a) Apply to any regulatory entity created prior to July 26, 1987, except as provided in this chapter; (b) affect the powers and responsibilities of the superintendent of public instruction or state board of education under RCW 28A.04.120 and 28A.70.005; (c) apply to or interfere in any way with the practice of religion or to any kind of treatment by prayer; (d) apply to any remedial or technical amendments to any statutes which licensed or regulated activity before July 26, 1987; and (e) apply to proposals relating solely to continuing education. The legislature believes that all individuals should be permitted to enter into a business profession unless there is an overwhelming need for the state to protect the interests of the public by restricting entry into the profession. Where such a need is identified, the regulation adopted by the state should be set at the least restrictive level consistent with the public interest to be protected.

(2) It is the intent of this chapter that no regulation shall be imposed upon any business profession except for the exclusive purpose of protecting the public interest. All bills introduced in the legislature to regulate a business profession for the first time should be reviewed according to the following criteria. A business profession should be regulated by the state only when:

(a) Unregulated practice can clearly harm or endanger the health, safety, or welfare of the public, and the

APPENDIX A

Chapter 18.118

REGULATION OF BUSINESS PROFESSIONS

- 2) that the Legislature undertake a separate review of existing budget levels for enforcement and inspection in the Department of Labor & Industries to determine whether an increase in such levels might reasonably be expected to produce a corresponding decrease in industrial accidents, including crane accidents; and
- 3) that the Legislature and the Department of Labor & Industries jointly examine the possibility of enhancing the Department's ability to collect, analyze, and disseminate data concerning the occurrence and cause of industrial accidents.

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

(b) How the proposed legislation will assure quality:

(i) The extent to which a code of ethics, if any, will be adopted; and

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

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

(8) The expected costs of regulation:

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

(b) The cost to the state and to the general public of implementing the proposed legislation. [1987 c 514 § 6.]

**18.118.040 Applicants for regulation—Written report—Recommendation of department of licensing.** Applicant groups shall submit a written report explaining the factors enumerated in RCW 18.118.030 to the legislative committees of reference. Applicant groups, other than state agencies created prior to July 26, 1987, shall submit copies of their written report to the department of licensing for review and comment. The department of licensing shall make recommendations based on the report to the extent requested by the legislative committees. [1987 c 514 § 7.]

**18.118.900 Severability—1987 c 514.** If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1987 c 514 § 10.]

## Chapter 18.120

### REGULATION OF HEALTH PROFESSIONS— CRITERIA

#### Sections

18.120.010	Purpose—Criteria.
18.120.020	Definitions.
18.120.030	Applicants for regulation—Information.
18.120.040	Applicants for regulation—Written reports—Recommendations by state health coordinating council.
18.120.050	Continuing education requirements—Legislative proposals—Evidence of effectiveness.
18.120.900	Short title.
18.120.910	Severability—1983 c 168.

*Director of licensing or director's designee ex officio member of health professional licensure and disciplinary boards: RCW 43.24.015.*

*Health professions account—Fees credited—Requirements for biennial budget request: RCW 43.24.072.*

**18.120.010 Purpose—Criteria.** (1) The purpose of this chapter is to establish guidelines for the regulation of health professions not licensed or regulated prior to July 24, 1983, and those licensed or regulated health

professions which seek to substantially increase their scope of practice: *Provided*, That the provisions of this chapter are not intended and shall not be construed to: (a) Apply to any regulatory entity created prior to July 24, 1983, except as provided in this chapter; (b) affect the powers and responsibilities of the superintendent of public instruction or state board of education under RCW 28A.04.120 and 28A.70.005; (c) apply to or interfere in any way with the practice of religion or to any kind of treatment by prayer; and (d) apply to any remedial or technical amendments to any statutes which licensed or regulated activity before July 24, 1983. The legislature believes that all individuals should be permitted to enter into a health profession unless there is an overwhelming need for the state to protect the interests of the public by restricting entry into the profession. Where such a need is identified, the regulation adopted by the state should be set at the least restrictive level consistent with the public interest to be protected.

(2) It is the intent of this chapter that no regulation shall, after July 24, 1983, be imposed upon any health profession except for the exclusive purpose of protecting the public interest. All bills introduced in the legislature to regulate a health profession for the first time should be reviewed according to the following criteria. A health profession should be regulated by the state only when:

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

(b) The public needs and can reasonably be expected to benefit from an assurance of initial and continuing professional ability; and

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

(3) After evaluating the criteria in subsection (2) of this section and considering governmental and societal costs and benefits, if the legislature finds that it is necessary to regulate a health profession not previously regulated by law, the least restrictive alternative method of regulation should be implemented, consistent with the public interest and this section:

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

(b) Where a service is being performed for individuals involving a hazard to the public health, safety, or welfare, the regulation should impose inspection requirements and enable an appropriate state agency to enforce violations by injunctive relief in court, including, but not limited to, regulation of the business activity providing the service rather than the employees of the business;

(c) Where the threat to the public health, safety, or economic well-being is relatively small as a result of the operation of the health profession, the regulation should implement a system of registration;

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

