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Real Estate Appraisers

SUNRISE REVIEW

PRESENTED BY:
THOMAS CARPENTER, Ph.D.

STATE OF WASHINGTON
DEPARTMENT OF LICENSING

Mary Faulk, *Director*

SUNRISE REVIEW OF REAL ESTATE APPRAISERS
(18.118 RCW)

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

Prepared by
Research Staff
Department of Licensing
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SUNRISE REVIEW OF REAL ESTATE APPRAISERS

Executive Summary

The attempt to regulate the real estate appraisal industry in Washington is part of a national movement by some real estate appraiser associations to obtain licensure (although what they usually propound is voluntary certification) from state legislatures.

The problem of fraudulent or faulty real estate appraisals has come to public notice in recent years primarily because of the insolvency of federally insured savings and loans and banks. Proponents of regulation cite the fraudulent appraisal as the primary cause of this condition, a fact not substantiated in either the state or federal record. However, even in those instances where the appraisal is at fault, the evidence has indicated that it is through fraud and collusion rather a lack of competency which could be cured by licensing.

The Department of Licensing in its review of possible regulation of real estate appraisers found that sufficient regulatory and other authority now exists at both the state and federal levels to deal with improper conduct on the part of real estate appraisers in terms of fraud and collusion between appraiser and client in lending institutions. We did not find a problem of competency among appraisers, a fact that is buttressed by the fact that the primary (and almost exclusive clientele) of the real estate appraiser is educated and knowledgeable of the factors that comprise an appraisal and whether or not there is reason to suspect significant over or under value.

As a result of the Sunrise Review, it is recommended:

1) that no certification or licensing of real estate appraisers be required at the present time;
2) that the Legislature consider memorializing Congress to take no action mandating the states to establish certification of real estate appraisers;
3) that, in the event federal legislation requires state certification of appraisers, the Legislature act to provide only the minimal level of such certification required to meet federal standards;
4) that the Legislature undertake a separate review of appropriate administrative and statute law relating to financial institutions, criminal fraud, and related matters, to determine whether present legal tools are sufficient to protect the public, not only in matters of fraudulent appraisals but also other matters relating to the financial industry.

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 real estate appraisers 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 addressed 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. Among the alternatives examined are the regulation of business employers rather than employee practitioners; the regulation of program or service rather than the individual practitioner; and the licensure hierarchy of registration, certification, and licensing. (See Appendix A)

Sunrise Review of Real Estate Appraisers

The request to conduct a Sunrise Review of possible regulation of real estate appraisers stemmed from proposals (HB 1109 & Senate striking amendment) originally introduced during the 1987 Legislature. HB 1109, introduced by Representative John O'Brien et al, originally sought certification of appraisals, rather than appraisers, while the Senate striking amendment to HB 1109 proposed voluntary certification of real estate appraisers similar to model legislation advocated by a group of professional organizations under the aegis of the Appraisal Foundation, headquartered in Chicago, Illinois.

The Department of Licensing Research Office conducted the Sunrise Review between March and September 1988. Staff identified and analyzed relevant issues and held discussions with legislative staff; representatives of affected state agencies, including the Department of Licensing's Division of Business and

Professions; private sector representatives, including individual real estate appraisers, professional associations, and financial institutions; and federal officials, including members of Congress, congressional staff, representatives of the Department of Housing and Urban Development, and other concerned federal agencies. Also consulted were other states which had instituted or rejected various forms of regulation of real estate appraisers.

Additional input was solicited through statewide publicity and the scheduling of a widely-advertised public meeting held August 15, 1988. Specific invitations to the meeting were extended to interested state agency officials, chairpersons of affected House and Senate Committees, legislative staff, real estate appraisers, and representatives of appraiser professional organizations and financial institutions. Written comment was solicited and encouraged from those attending the meeting as well as those unable to attend.

BACKGROUND

Problems in the Real Estate Appraisal Industry

A wide variety of real estate appraisal practices were reviewed in the course of our analysis, including those conducted by the public sector for property tax, right-of-way, and other public purposes, as well as appraisals carried out by the private sector in marriage dissolutions, estate settlement, etc. The principal focus, however, relates to that segment of the profession which serves the needs of financial institutions involved in residential, agricultural and commercial real estate lending, since these are the areas of real estate appraisal in which the greatest amount of activity exists and the source of most controversy over appraisal quality.

The task of the real estate appraiser, simply stated, is to estimate as fairly and as accurately as possible the "market value" of a piece of real property. According to Dr. Hal Smith of the University of Florida, writing in the Journal of Real Estate Research, market value is defined as "the most probable price in terms of money which a property should bring in a competitive and open market under all conditions requisite to a fair sale, the buyer and seller, each acting prudently, knowledgeably, and assuming the price is not affected by undue stimulus."

Smith goes on to say that implicit in this definition "is the consummation of a sale as of a specified date and the passing of title from seller to buyer under conditions whereby: (1) buyer and seller are typically motivated; (2) both parties are well informed or well advised, and each acts in his or her own best interest; (3) a reasonable time is allowed for exposure in the

open market; (4) payment is made in cash or its equivalent; (5) financing, if any, is on terms generally available in the community at the specified date and typical for the property type in its locale; and, (6) the price represents a normal consideration for the property sold, unaffected by special financing amount and/or terms, services, fees, costs, or credits incurred in the transaction. These conditions," Smith adds, " must also apply to the sale prices of comparable properties, or, if they do not, adjustments should be made to reflect the hypothetical notion that they do."

Needless to say, the criteria stated above indicate the complexity of the real estate appraisal process and the need for appraisers to gather and analyze a great deal of information. Yet, even with training, experience, and the assistance of modern computers, database management systems, etc., attaining this traditional definition of market value is virtually impossible. How can an appraiser know what motivates a buyer and seller? How can the appraiser know that buyers and sellers were well advised or knowledgeable? In practice, the real estate appraisal is, at best, a subjective decision on the part of the appraiser, relying in part on logic and in part on intuition. Thus, two appraisers, acting independently, will virtually always come up with two different market values, even when utilizing the same data. The disparity between the two appraisals can, and often is, substantial.

The major focus of attention in the real estate industry in recent years has not been the issue of whether two appraisals differ, but how much a given appraisal differs from the actual price the property will sell for in the "real world" marketplace, particularly in the case of foreclosure.

A 1986 report of investigations by the Government Operations Committee of the United State House of Representatives cited evidence that faulty and fraudulent real estate appraisals were becoming a "serious national problem", costing taxpayers, lenders, and insurers billions of dollars. The congressional investigators said that at least $130 million in losses by private mortgage insurance companies over a two year period could be attributed to inaccurate and fraudulent appraisals, as could at least $42 million of the Veterans Administration's 1985 losses from its loan guaranty fund.

However, during the past 2-1/2 to 3 years, the House Subcommittee on Commerce, Consumer, and Monetary Affairs sampled 800 of the nation's 3,200 federally chartered savings and loan associations and estimated real estate overvaluations totalling only <u>$3 million</u> out of many billions of dollars in lending activity. This would appear to raise some question as to whether the problems identified by Congressional investigators actually stem from exaggerated appraisals or whether there exist other

problems in the lending industry and in the administration of FHA, VA and other federal lending programs.

The issue of faulty and fraudulent real estate appraisals came to a head in recent years in large measure as a result of insolvency of hundreds of federally insured banks and savings & loan associations. In the rash of finger pointing that followed congressional hearings on this serious problem, real estate appraisals were singled out as being a major contributing factor leading to insolvency of many institutions. As long as inflation rates were high and the economy was rapidly growing, overvalued properties didn't present a problem. However, in states like Texas which experienced a substantial drop in inflation rates along with the rest of the nation, coupled with drastic deterioration of the local, oil industry-sensitive economy, property overvaluations reportedly had a profound effect on solvency of at least some financial institutions.

However, to characterize real estate appraisers as even the major actors involved in the nations' bank and thrift problems of recent years would be, at best, an oversimplification. There are many factors which have led to these problems, including fraud, embezzlement and other criminal actions on the part of owners and officers of financial institutions; pressure from and/or collusion with field representatives and other agents of financial institutions to overvalue property; laxity on the part of lending officers, loan committees, and government agencies responsible for monitoring appraisals; failure of federal and state prosecutors to enforce existing laws related to fraud, and the host of changes in the profile of the real estate and financial industries, contributing to flux and instability in the marketplace and erosion of ethical standards.

In Texas, for example, the multi-billion insolvency of 100-150 thrift institutions is attributable at least as much to fraud on the part of owners and top management, insider lending, and other improper lending practices as it is to faulty or fraudulent appraisals. Where fraudulent appraisals were involved, more often than not it was a case of collusion between the lender and the appraiser, or coercion on the part of the lender. Faulty appraisals, where the appraiser's competence is questionable, appear to amount to a very small percentage of the appraisals involved in the Texas insolvencies.

Fortunately, many states - including Washington State- have fared much better than Texas, California, and others when it comes to problems with real estate appraisals. Several states we surveyed, including Virginia and Hawaii, have completed extensive studies of the real estate appraisal industry and found no significant problems, adopting the stance that "if it isn't broken, don't fix it". There is more than a little evidence that rigorous regulation of financial institutions themselves has more

to do with limiting the problem of property overvaluation, whether related to appraiser competence or honesty, than licensing or certification of appraisers. Some financial industry experts, including senior auditors with several large Washington State - based financial institutions, contend that active internal and external auditing and examining procedures serve to prevent major problems resulting from bad appraisals.

While there is no question that inaccurate appraisals involving significant overvaluation of real property can and do create serious problems for lending institutions, there is little if any evidence to indicate that the greatest portion of inaccurate appraisals result from poorly trained or incompetent appraisers. One Seattle appraiser told the Department of Licensing, "Incompetency of the appraiser is not the issue. The appraiser, in order to survive, is often simply doing that which is expected of him or her for the benefit of their employer or client. The appraiser is the handy scapegoat when things go bad."

Current Regulatory Practices

There are a wide variety of state and federal laws which currently impact real estate appraisals, particularly those undertaken to support lending activities of banks, thrift institutions, mortgage companies, federal agencies, etc. In addition, various national appraiser organizations and their local affiliates attempt to impose and enforce professional standards and codes of ethics, though the rigor of enforcement varies significantly from organization to organization.

The marketplace has traditionally been the principal regulator of the real estate appraiser. In the past, incompetent or faulty appraisals seldom made it past the review process of lending institutions. The higher value the property, the more rigorous was the review and auditing process. Federal agencies such as HUD involved in lending or in loan guarantees maintain their own review process, as well as fraud control procedures. Simply stated, an incompetent appraiser seldom survives in the business for very long, assuming relatively normal market conditions.

Unfortunately, deregulation of the banking industry, changes in dynamics of the mortgage lending field as a whole, and lack of rigor on the part of many federal and state law enforcement officials in the prosecution of even clear cut cases of fraud in real estate appraisals have contributed to problems in this area. An auditor with a major financial institution headquartered in Washington State expressed his frustration when he described how a seller had obtained a clearly fraudulent appraisal of a piece of income property (including a photograph that was actually that of a newer building in far better condition, physically located some distance away from the subject property), but when the

documentation clearly proving violation of federal and state laws was presented to prosecutors, no action was taken. "White collar crime doesn't seem to get the prosecutors excited," the banker said. "If someone walks into a bank with a gun and steals $100, the FBI and local police are quick to respond. But if someone steals $100,000 through a fraudulent appraisal, there seems to be a lack of interest in following through."

Federal concerns in the area of faulty and fraudulent appraisals have led to legislation being introduced by Congressman Doug Barnard (D-Georgia) and others that would require federally funded or guaranteed real estate loans to be subject to appraisals made by state-certified appraisers, though many states do not have a certification process (including Washington State). This is one of the factors prompting some professional organizations to actively seek appraiser certification legislation in each state. Otherwise, should the so-called Barnard bill pass, appraisers in states not having certification programs might not be eligible to appraise for FHA, VA and similar loans, a major source of income for many appraisers.

It should be pointed out that there some hypocrisy involved on the part of the federal government with respect to regulation of appraisers. At the same time the Congress is pointing the finger of blame at appraisers with respect to faulty and fraudulent appraisals, the federal government has implemented a rule change actually reducing the penalties for appraisers and other vendors (e.g. defense contractors) providing shoddy products or engaging in fraud. Previously, fee appraisers committing fraud involving an FHA, VA or other federal loan could be barred from appraising for the feds for up to 5 years. Debarment has now been reduced to just 3 years. In addition, law enforcement and fraud control personnel involved in investigation and prevention of improper practices involving FHA, VA and other federal lending programs were reduced in relative terms at a time when lending activity was on the rise.

As indicated above, there are a number of private, professional appraiser organizations now advocating some form of state regulation of appraisers. The primary reason cited by these groups for their advocacy, which began long before the so-called Barnard bill was introduced, is their desire to improve the level of professionalism among appraisers. There are, however, a number of other issues involved:

(1) While a number of the larger, national appraisers organizations have codes of ethics, some organizations don't have any real enforcement mechanism and others are finding enforcement both increasingly expensive and ineffectual. Ethics complaints cost some organizations millions of dollars to process each year, but their fear of costly litigation places limits on how far such

groups will actually take disciplinary action. Some of these organizations admit they'd sooner pass the costs and the headaches on to state regulatory agencies.

(2) The dynamics of the real estate market saw a large number of new appraisers enter the profession earlier in this decade. However, the dynamics once again have changed, and now there is a surplus of appraisers in many areas of the country. As one appraiser from Silverdale, Washington observed, "this whole issue of certification has a lot to do with limiting the size of the profession, and limiting competition".

(3) Continuing professional education is a growing - and potentially very lucrative - industry. This appears to be one reason why some national groups that are geared up to provide this type of continuing education are advocating voluntary certification while others without such programs prefer straight licensing (usually with "grandfathering" of those currently working in the field). Advocates of voluntary certification opposed licensing - particularly with "grandfathering"- allegedly because it would "do nothing to get rid of the incompetents". However, it is clear that licensing as opposed to certification would neither reduce competition in the near term nor encourage appraisers to seek continuing education services.

Those states which have chosen to regulate the appraisal industry specifically have adopted one of three basic models: (1) traditional licensing; (2) certification of appraisals, rather than the appraisers themselves; and, (3) voluntary certification of appraisers. Each method of regulation has it proponents and its critics. However, in terms of dealing with what appears to be the major problem in the industry - fraudulent appraisals - none of these methods, licensing, appraisal certification, or certification of appraisers has shown itself to be particularly effective.

Oregon, for example, has what is regarded as a strict licensing law. However, recently one Oregon-based thrift institution interested in finding a buyer submitted an appraisal to a Washington-based bank that inflated the value of its real property by $3 million. The appraisal was signed by a licensed appraiser, who is apparently still practicing his profession. Despite many such cases (although most are less blatant), the National Association of Real Estate Licensing Law Officials (NARELLO) has taken the position that, if regulation is to occur, licensing is the preferred method. It should be pointed out, however, that such organizations can't be considered disinterested parties in these matters.

California chose to adopt the avenue of appraisal, rather than appraiser certification. However, other than increasing the costs of appraisals, the law has had little effect on industry

practices. California is currently reviewing its approach to appraisal industry regulation in light of this experience. While this approach to regulation might serve as an alternative by regulating the service rather than the practitioner, it does not enjoy widespread appeal for the industry, the clients or the regulators..

Louisiana is an example of a state which has chosen to pursue voluntary certification of appraisers. However, there is no evidence that certification has had any substantive effect on real estate appraisal practices in that state or in others adopting the voluntary certification mode. Studies undertaken on similar proposals, however, have indicated that voluntary certification has had little effect on protecting the general public while at the same time it tends to drive up costs of appraisals. Such certification would primarily affect appraisers whose main source of income is carrying out appraisals for financial institutions, the vast majority of which are already equipped to weed out incompetent appraisers without the state's help. At the same time, individual citizens seeking appraisals outside the financial institution framework would have little protection. A second problem is that voluntary certification would create the impression with some people that non-certified appraisers were by definition less competent than those with certification, when there exists a number of legitimate reasons for an appraiser to choose not to pursue voluntary certification.

It is clear that no general agreement exists among members of the appraisal industry itself as to whether it ought to be regulated, and if so, in what manner. Many people who already have the credentials that would be required under voluntary certification advocate that method of regulation. One of the country's largest appraisal organizations, however, opposes regulation in principal, but advocates traditional licensing (with grandfathering of existing practitioners) if regulation is imposed. The majority of appraisers who are members of smaller organizations or who have no professional affiliation at all appear to be mixed, with the majority of those we were able to sample indicating opposition to regulation.

It is also clear that the issue of whether to regulate the profession and how it should be regulated, if at all, is at the center of a battle among several large appraiser professional organizations that are concerned as much with their own power, prestige, and economics, as they are with professional development.

FINDINGS

Certification of Real Estate Appraisers

The Sunrise Review by the Department of Licensing's research staff uncovered little, if any, evidence that certification of real estate appraisers, voluntary or otherwise, would be of significant benefit to the general public. Indeed, there is some evidence that such certification could have the effect of increasing the costs of real estate transactions without providing any real additional benefits in terms of public protection, thus having a negative impact on the state's economy. The same situation holds true for licensing of real estate appraisers.

Enforcement

There appear to be sufficient state and federal laws to deal with cases of fraud by appraisers. The problem seems to be more a lack of rigor in enforcement of these laws than any lack of legal avenues to pursue criminal activity. With respect to competency, market forces would appear to be sufficient to assure a reasonable level of professional ability among appraisers. There is evidence that at least some financial institutions and the federal government itself are eliminating or reducing the internal safeguards against faulty and fraudulent appraisals.

It is clear that at least some appraisal problems result from representatives of financial institutions soliciting fraudulent appraisals, possibly motivated by desire for higher commissions on loan business. A number of appraisers complained to us of the changes which have taken place in the financial industry whereby field representatives and other agents of lending institutions have a vested financial interest in seeing appraisals meet or exceed the sales price on a loan applications. Commissions to lending officers based on production are now typical in the industry and are clearly a source of some of the problems associated with appraisals.

While there may be a need for additional regulation of the client group as an alternative to licensure (see recommendation #4), it is probable that strict enforcement of existing law would curb most abusive practices.

Accuracy of Real Estate Sales Data

One side issue which was uncovered in our analysis is the accuracy of real estate sales data. Assuming both an honest and competent appraiser, he or she is still limited in developing an accurate appraisal by the quality of the data available. Sometimes it is extremely difficult to determine the actual sales price of similar properties, in part because of the inaccuracy or

lack of adequate public documents, Washington's real estate laws, particularly those which provide for use of warranty deeds which are not required to have the real sales price of the property stated thereon, were frequently cited as a problem by lenders, appraisers, and others.

CONCLUSION

The Department of Licensing in its review of possible regulation of real estate appraisers found that sufficient regulatory and other authority now exists at both the state and federal levels to deal with improper conduct on the part of real estate appraisers in terms of fraud and collusion between appraiser and client in lending institutions. We did not find a problem of competency among appraisers, a fact that is buttressed by the fact that the primary (and almost exclusive clientele) of the real estate appraiser is educated and knowledgeable of the factors that comprise an appraisal and whether or not there is reason to suspect significant over or under value.

RECOMMENDATIONS

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

1) that no certification or licensing of real estate appraisers be required at the present time;

2) that the Legislature consider memorializing Congress to take no action mandating the states to establish certification of real estate appraisers;

3) that, in the event federal legislation requires state certification of appraisers, the Legislature act to provide only the minimal level of such certification required to meet federal standards;

4) that the Legislature undertake a separate review of appropriate administrative and statute law relating to financial institutions, criminal fraud, and related matters, to determine whether present legal tools are sufficient to protect the public, not only in matters of fraudulent appraisals but also other matters relating to the financial industry.

APPENDIX A

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

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, nontransferable 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.

(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:

(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.
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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