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MEMORANDUM

TO: ASSEMBLY HOUSING COMMITTEE

FROM: RICHARD STAFF, WRA GENERAL COUNSEL

DATE: OCTOBER 16, 1997

SUBJECT: AB 334, REGULATION OF HOME INSPECTORS
EFFECT ON LIABILITY OF REAL ESTATE LICENSEES

I would like to thank the Chair and the members of the Assembly Housing Committee for the opportunity to provide this written testimony to supplement the oral testimony presented at the October 16, 1997 hearing on AB 334. This memorandum has been prepared specifically to address the issue of the impact of AB 334 on the liability of real estate licensees. A vocal minority within the home inspection industry has argued that AB 334 has been introduced to limit the liability of real estate licensees. It may be worth noting that despite this group's repeated assertions that the real estate industry will be somehow relieved of liability if AB 334 becomes law, at no time has there been any reasoned legal analysis provided to support their argument. This memo will establish the fact that AB 334 does not limit the liability of real estate licensees. Furthermore, this memo will address how AB 334 takes a very balanced approach to addressing the need of the public to be free from overreaching disclaimers of liability and the need of home inspectors to be free from unreasonable levels of liability.

In 1994 the Wisconsin Legislature passed one of the most comprehensive revisions of real estate agency and disclosure laws ever seen in the US These revisions insured that all parties to a real estate transaction, sellers, buyers, and their attorneys, would have a clear understanding of the agency and disclosure duties owed to them by the real estate licensees working in the transaction. These provisions, found at Wis. Stats. §452.133[1], and previous disclosure duty clarifications found at Wis. Stats. §452.23[2] are not modified by AB 334 in any way.

Wisconsin is one of relatively few states in the country which require real estate licensees to perform a reasonably competent and diligent inspection of the property to insure that the licensees discover observable property defects. (Wis. Adm. Code §RL 24.07(1)[3]. Wisconsin's mandatory property condition report law, Wis. Stats. Chapter 709, insures that the seller provides the broker with all information the seller has regarding property defects. Armed with this knowledge, a real estate licensee has a duty to disclose <u>all</u> known material adverse facts to <u>all</u> parties, in writing and in a timely fashion. A broker has the duty to disclose all known material adverse facts, including those relating to the condition of the property and those affecting the transaction in a broader sense (e.g. future highway expansion, health concerns affecting the neighborhood, plant closings, etc.). Current law allows licensees to deliver reports generated by 3rd party experts such as title companies, surveyors, municipal record keepers, environmental

engineers, and home inspectors, to fulfill the licensee's duty to disclose known material adverse facts (Wis. Stats. §452.23(2)(b). However, licensees who are aware of defects not covered by the 3rd party's report are in no way relieved of any duty to disclose those additional defects that the licensee is aware of.

What impact will regulation of home inspectors have on these duties and a licensee's liability for misrepresentation? No impact at all. The disclosure duties under Wis. Stats. Chapter 452 will remain in effect. The licensee's duty to inspect and disclose under Wis. Adm. Code §RL 24.07 is not modified in any way. Whether a broker uses a copy of a newspaper article, a seller's property condition report, a broker's inspection report, a home inspector's report, or some combination of these to make this written disclosure, will have no impact on the broker's duty to disclose known defects. In every transaction the broker will have a duty to disclose all defects the broker knew or should have known. The courts will continue to use these disclosure laws to determine when a real estate licensee is liable for misrepresentation. Absent a change in the underlying disclosure law, home inspector regulation will not change levels of broker liability.

This brings us to the precise reason why certain home inspectors are actively opposing passage of AB 334. Because they have been unregulated, home inspectors have been able to avoid liability for their own negligence, either through use of legally enforceable disclaimers or through the use of disclaimers which are likely unenforceable in court, but which the home inspector uses anyway in hopes of convincing the consumer into thinking that the consumer has no legal rights. A review of samples of the provisions of the home inspection industry's standardized inspection reports will demonstrate the extent to which certain home inspectors have sought to avoid any meaningful responsibility for injuries caused by the home inspector's negligence.

The most common liability provision in home inspector contracts is language which limits the home inspector's liability for mistakes made by the inspector. These provisions state, in effect, that even if the inspector's mistakes cost the client tens of thousands of dollars, the most the inspector will compensate the client is the fee paid for the inspection. The following language (and the other form language which follows) was taken from a leading Wisconsin home inspector's standard report:

> LIABILITY AND RIGHT OF REINSPECTION: This contract limits the liability of HomEx to the CLIENT to the amount of consideration paid by the CLIENT to HomEx (the contract price). HomEx assumes no liability for consequential damages suffered by the CLIENT. In the event of a claim by the CLIENT that a component part of the premises which was inspected by HomEx was not in the condition reported by HomEx, the CLIENT agrees to notify HomEx at least 72 hours prior to repairing or placing such component of the failure, appearance of defect or need for repair or replacement of the component. The CLIENT further agrees that if the repair or replacement is done without giving HomEx the required notice, that HomEx will have no liability to the CLIENT for the cost of such repair or replacement.

While this provision may seem onerous at best, the home inspection contract only gets worse. Home inspectors understand that under Wisconsin's common law, any professional, including a home inspector, may be liable for damages to any person who could be reasonably foreseen to be injured by the inspector's negligence. For example, if a home inspector mistakenly told a buyer that a perfectly sound roof needed replacement, and because of this report the buyer canceled the

buyer's contract with the seller, the seller would be able to pursue the home inspector for damages under Wisconsin's common law. Because they are not regulated, Wisconsin home inspectors have attempted to shift this risk of liability for the inspector's negligence from the inspector to the inspector's client. Standard language found in home inspection contracts includes:

> INDEMNITY: The report of inspection produced by HomEx is for the exclusive use of the CLIENT. No other person or entity may rely on the report issued pursuant to this contract. In the event that any person, not a party to this contract, makes any claim against HomEx arising out of the services performed by HomEx under this contract, the CLIENT agrees to indemnify, defend and hold harmless HomEx from any and all damages, expenses, costs and attorney's fees arising from such a claim.

Finally, the last roadblock laid in front of a consumer attempting to obtain compensation for injuries suffered because of the apparent negligence of the home inspector, involves the threat that the consumer might have to pay the inspector's attorney fees if the client is unsuccessful in court. While the right to attorney fees is legally available to any party who negotiates for it in a contract, the use of unilateral attorney fees provisions, particularly in conjunction with the previously discussed language, is unheard of in regulated professions. While many contracts drafted in the United States have bilateral provisions which provide that the successful party is entitled to attorney fees, the practice of inserting a form provision for the benefit of the inspector alone screams out for regulation. Sample attorney fee language is:

> ATTORNEY'S FEES: If I(Client) make a claim against the inspector/surveyor or company for any alleged error, omission or other act arising out of this work and fail to prove such claim, I will pay all attorney's fees, arbitrator's fees', legal expenses and costs incurred by the inspector/surveyor or company in the defense of the claim.

The WRA is not aware of any other profession associated with a real estate transaction which is allowed to enter into contracts with their clients which: 1) limit damages to fees paid; 2) require the client to indemnify the professional from claims made by other parties against the professional, based on the professional's negligence; and 3) require the client to pay the professional's cost of defending any unsuccessful claim brought by the client against the profession (without requiring the professional to pay the client's defense costs for unsuccessful claims brought by the professional). While it is not altogether clear whether these disclaimer's would be upheld in court of law, perception becomes reality for home inspection clients who will believe that they have no effective legal rights in the relationship.

Simply because we have recognized that AB 334 does not limit the liability of real estate licensees, and that some home inspectors have taken advantage of the current lack of regulation to abuse the rights of their clients, does not mean that AB 334 is a one sided effort to heighten liability for home inspectors. In fact, the net effect of AB 334 should be a reduction of liability for home inspectors accompanied by assurances for the clients of these inspectors that they will be able to seek compensation when damages are caused by negligent home inspectors.

How can this be done? Section 449.976 will insure consumers may pursue claims for actual damages which result from the inspector's negligence. Conversely, AB 334 also includes many provisions which will provide significant liability relief to home inspectors. Section 440.977 reduces the statute of limitations on claims against home inspectors to two years (from 3 or 6

years) and restricts liability to the parties in the transaction for which the report was prepared. This would eliminate inspector liability when the inspection report is distributed by the seller to subsequent buyers. Furthermore, the standards of practice established in AB 334 and in the administrative rules to be developed by the Department of Regulation and Licensing, will significantly reduce liability by clearly defining a home inspector's duties and responsibilities. Only when the home inspection industry has uniform standards of practice set forth in the law will sellers, buyers, attorneys and other real estate professionals be able to avoid the liability concerns which arise from differing expectations of the services provided by home inspectors.

In conclusion, while AB 334 will have a no effect on the liability of real estate licensees, it presents a well reasoned and balanced response to the liability concerns of home inspectors and, most importantly, it insures that consumers of home inspection services will have meaningful recourse if the are injured by a home inspectors negligent acts.

FOOTNOTES

1. 452.133 Duties of brokers.

(1) DUTIES TO ALL PARTIES TO A TRANSACTION. In providing brokerage services to a party to a transaction, a broker shall do all of the following:

(a) Provide brokerage services to all parties to the transaction honestly, fairly and in good faith.

(b) Diligently exercise reasonable skill and care in providing brokerage services to all parties.

(c) Disclose to each party all material adverse facts that the broker knows and that the party does not know or cannot discover through reasonably vigilant observation, unless the disclosure of a material adverse fact is prohibited by law.

(d) Keep confidential any information given to the broker in confidence, or any information obtained by the broker that he or she knows a reasonable party would want to be kept confidential, unless the information must be disclosed under par. (c) or s. 452.23 or is otherwise required by law to be disclosed or the party whose interests may be adversely affected by the disclosure specifically authorizes the disclosure of particular confidential information. A broker shall continue to keep the information confidential after the transaction is complete and after the broker is no longer providing brokerage services to the party.

(e) Provide accurate information about market conditions that affect a transaction, to any party who requests the information, within a reasonable time of the party's request, unless disclosure of the information is prohibited by law.

(f) Account for all property coming into the possession of a broker that belongs to any party within a reasonable time of receiving the property.

(g) When negotiating on behalf of a party, present contract proposals in an objective and unbiased manner and disclose the advantages and disadvantages of the proposals.

(2) DUTIES TO A CLIENT. In addition to his or her duties under sub. (1), a broker providing brokerage services to his or her client shall do all of the following:

(a) Loyally represent the client's interests by placing the client's interests ahead of the interests of any other party, unless loyalty to a client violates the broker's duties under sub. (1) or s. 452.137 (2).

(b) Disclose to the client all information known by the broker that is material to the transaction and that is not known by the client or discoverable by the client through reasonably vigilant observation, except for confidential information under sub. (1) (d) and other information the disclosure of which is prohibited by law.

(c) Fulfill any obligation required by the agency agreement, and any order of the client that is within the scope of the agency agreement, that are not inconsistent with another duty that the broker has under this chapter or any other law.

2. 452.23 Disclosures, investigations and inspections by brokers and salespersons.

(1) A broker or salesperson may not disclose to any person in connection with the sale, exchange, purchase or rental of real property information, the disclosure of which constitutes unlawful discrimination in housing under s. 101.22 or unlawful discrimination based on handicap under 42 USC 3604, 3605, 3606 or 3617.

(2) A broker or salesperson is not required to disclose any of the following to any person in connection with the sale, exchange, purchase or rental of real property:

(a) That the property was the site of a specific act or occurrence, if the act or occurrence had no effect on the physical condition of the property or any structures located on the property.

(b) Except as provided in sub. (3), information relating to the physical condition of the property or any other information relating to the real estate transaction, if a written report that discloses the information has been prepared by a qualified 3rd party and provided to the person. In this paragraph, "qualified 3rd party" means a federal, state or local governmental agency, or any person

whom the broker, salesperson or a party to the real estate transaction reasonably believes has the expertise necessary to meet the industry standards of practice for the type of inspection or investigation that has been conducted by the 3rd party in order to prepare the written report.

(c) The location of any adult family home, as defined in s. 50.01 (1), community-based residential facility, as defined in s. 50.01 (1g), or nursing home, as defined in s. 50.01 (3), in relation to the location of the property.

(3) A broker or salesperson shall disclose to the parties to a real estate transaction any facts known by the broker or salesperson that contradict any information included in a written report described under sub. (2) (b).

(4) In performing an investigation or inspection and in making a disclosure in connection with a real estate transaction, a broker or salesperson shall exercise the degree of care expected to be exercised by a reasonably prudent person who has the knowledge, skills and training required for licensure as a broker or salesperson under this chapter.

History: 1989 a. 341.

3. RL 24.07 Inspection and disclosure duties.

(1) INSPECTION OF REAL ESTATE. (a) General requirement. A licensee, when engaging in real estate practice which involves real estate improved with a structure, shall conduct a reasonably competent and diligent inspection of accessible areas of the structure and immediately surrounding areas of the property to detect observable, material adverse facts. A licensee, when engaging in real estate practice which involves vacant land, shall, if the vacant land is accessible, conduct a reasonably competent and diligent inspection of the vacant land to detect observable material adverse facts.

(b) Listing broker. When listing real estate and prior to execution of the listing contract, a licensee shall inspect the real estate as required by sub. (1), and shall make inquiries of the seller on the condition of the structure mechanical systems and other relevant aspects of the property as applicable. The licensee shall request that the seller provide a written response to the licensee's inquiry.

(c) Other licensees. Licensees, other than listing brokers, shall inspect the real estate as required by sub. (1) prior to or during the showing of the property, unless the licensee is not given access for a showing.

MTT CONSULTANTS INC.
PO Box 2041 Madison, Wisconsin 53701-2041
Licensed Professional Engineers
(608) 335-4099

October 16, 1997

Carol Owens, Chair
Assembly Housing Committee
State of Wisconsin Legislature
Madison, Wisconsin 53706

Re: 1997 Assembly Bill 334

Madam Chair,

My name is Nicholas U. Smith and I am president and sole owner of MTT Consultants Inc., a firm involved primarily in real estate inspections. I am a licensed professional engineer in the State of Wisconsin with 20 years of inspection and construction experience.

With regard to 1997 Assembly Bill 334 for the regulation of home inspectors, MTT Consultants urges passage of this bill, with minor modification as suggested below. The requirements of this bill will offer protection for the consumer in a presently unregulated industry and establish technical standards for inspectors that choose to become "Wisconsin registered", while placing no prohibition on existing or future inspectors from conducting business. While I personally believe inspectors should be fully licensed, this legislation offers a good compromise with those that propose to maintain a completely unregulated profession.

As a licensed engineer with other state certifications, I am aware of the requirements utilized by the State for certifications and licensing. As with all regulation, the implementation of inspector technical standards and qualifications, and rules of conduct, must be fair and representative of the requirements of the real estate industry. Real estate inspections have evolved primarily as a result of a purchaser's right, set forth in the standardized Real Estate "Offer to Purchase Agreement", to determine the presence of any major defects. Unfortunately, no definition is available for this condition, and has been left to the subjective interpretation of the inspector. We believe the testing and reporting requirements of this legislation should clearly outline for the consumer and inspector those conditions that constitute a "major defect". A registered inspector can then elect, as many presently do and as allowed by the legislation, to expand their investigations beyond major items into additional areas to enhance technical quality and consumer satisfaction.

The one provision of this legislation which we strongly oppose is the requirement in 440.977 Liability of Wisconsin registered home inspectors, for a 2 year statute of limitation on cause of action. Any limitation beyond one year is an unwarranted reallocation of risk with attendant economic impacts.

In the case of new construction, most residential construction contracts limit the contractor's guarantee period to one year. For those inspectors, such as myself, that inspect new construction, we would in essence be providing an additional one year

protection of a contractor's work.

If a minor condition remains undetected during an inspection for major defects, and a buyer neglects to discover and repair such a condition during normal maintenance, 2 years is sufficient time for major damage to occur from water intrusion, freeze/thaw cycles, or progressive failure. The inspector could be subjected to unwarranted suits.

In the case of equipment, most manufacturer guarantees and home warranties are for one year. The inspector could potentially be subjected to unwarranted suits during the second year.

Given the reallocation of risk and attendant liability, insurance underwriters would undoubtedly raise the rates for Errors and Omissions insurance, possibly to unacceptable levels. A dramatic increase in fees may result, which could prove burdensome to low income and first time home buyers, and possibly detrimental to the profession as a whole.

We strongly urge the Committee reconsider this language and reduce the limitation to one year.

Thank you for this opportunity to express my opinion.

Very truly yours,

Nicholas U. Smith P.E.
President

cc: Dan Vrakas
Johnnie Morris-Tatum
Neal Kedzie
Steve Wieckert
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[redacted]

Office (608) [redacted]
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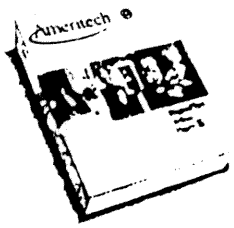

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by Bob Scheele

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Continued Next Page

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AFSCME International
8033 Excelsior Drive, Ste. A, Madison, WI 53717-1903

FAX PRIORITY

Date: 10-16-97
Number of pages including cover sheet: 4

To: Rep. Carol Owens
attn: Jackie
Phone: 267-7990
Fax phone: 282-3653
cc:

From: Jennifer Gronavin
Phone: 608/836-6666
Fax phone: 608/836-3333

REMARKS: ☐ Urgent ☐ For your review ☐ Reply ASAP ☐ Please comment

Testimony for 10 a.m. hearing.

The plumber phoned his boss who contacted the city building inspector. They arrived and after inspection indicated that the plumbing had been done by an amateur (in this case the previous

October 16, 1997

Representative Carol Owens
Chair, Assembly Committee on Housing
& Members

Dear Representative Owens & Committee Members:

I am writing to express my support for Assembly Bills 321 and 334. I am sorry that I am unable to offer my testimony in person.

In August of 1992 we moved from the Upper Peninsula to Green Bay and purchased a home. We had our home inspected and paid over $200.00 for the inspection. We entered into the purchase agreement feeling confident about our purchase.

Our first inkling of problems occured immediately. The dishwasher which had been identified as functional was in fact not. While it ran water through the system it did not clean. We replaced the appliance to the tune of $500.00. We also experienced numerous clogged drains and water leaks in the basement. We were on a first name basis with the drain repairman. None were particularly serious and we chalked it up to a 40 year old plumbing system. During the summer of 1993 we noticed a noxious odor from the hardwood floors when the weather turned humid and warm. After numerous cleaning and odor removal services we ended up sanding and refinishing the floors at considerable expense.

Finally, in August of 1993 we brought in a plumber. After a quick inspection of our basement piping he came upstairs and indicated that he could not do any repairs until the plumbing was reviewed by the city building inspector. The plumbing work was not done to code and in some instances parts were used that are prohibited by law in Wisconsin. None of the defects were noted on the inspection form filled out by the home owner or inspector. The plumbing defects were in full view and exposed.

The plumber phoned his boss who contacted the city building inspector. They arrived and after inspection indicated that the plumbing had been done by an amateur (in this case the previous

owner who was a car salesman by profession) and that no permit had been applied for by the homeowner. I asked how these discrepancies occured since I had the home inspected prior to purchase and none of these items were noted. They exchanged knowing glances and told me that anyone could hang out their shingle and represent themselves as a home inspector. In addition to noting the plumbing problems the city building inspector also found a hole in our chimney. This could have resulted in a build up of carbon monoxide in our home bad a backdraft occured. This was not just an inconvenience but a potential life threatening situation to our family. This was also in full view of the inspector. The plumbing repairs cost me $1,200.

I contacted the home inspector and previous owners and related what had occured. I asked them to sit down and resolve the situation in a neighborly fashion. My overtures were rebuffed. The previous owner lied and indicated that he had in fact applied for a remodeling permit from the city. He also said that his realtor had not informed him of his obligation to disclose defects in the home. This in spite of his completion of a defect form he completed. When I asked the home inspector why he had not noted the city code violations he responded "I am not required by law to provide that type of information". What then is he required to provide? If home inspectors are not required to identify violations of the city code which is designed to protect the health and safety of consumers then what value is their service?

I also contacted the seller's realtor and spent several months trying to get all three parties to the table but to no avail. I was left with no choice but to file a claim in small claims court. This was a time consuming and ardous process. All three parties hired attorneys. The attorneys attempted to intimidate and bluff me into withdrawing my claim. They threatened an appeal if I won in small claims and tried to coerce me into signing a disclaimer absolving them of any future liability if I won. I declined and indicated that I was prepared to have my day in court. The day prior to our court date they agreed to my terms and settled.

I am fortunate in that my educational and professional background have trained me to work through this type of situation. My concern

lies with those who have neither the understanding, resources or perserverance to right these types of wrongs. After I filed my claim I received numerous calls from individuals who had similar experiences and were researching the claims filed.

Clearly the current system does not work and the two aforementioned bills attempt to address this problem. I am not familiar with the standards of the American Society of Home Inspectors and would recommend that AB321 include a requirement that inspectors must be knowledgeable of and report any code violations in the communities in which they work. I am also supportive of the testing requirement included in AB 334. I would recommend that those who do not take the test and become a registered home inspector be required to disclose this information to potential clients.

I believed and I'm sure others do as well that this profession is licensed and regulated. After all, cosmetologists and interior designers are and their work does not entail the degree of responsibility for health and safety that a home inspector does.

Our family was fortunate. We were merely inconvenienced and agitated by this experience. The outcome could have been quite different however if the hole in our chimney resulted in carbon monoxide poisoning that could have debilitated or worse, killed our family.

I am more than happy to respond to any questions with regards to my testimony. I am sorry a work conflict prevents me from appearing before you today.

Thank you for your consideration of my testimony.

Sincerely,

Jennifer Grondin

Jennifer Grondin
21 Maple Grove Court
Madison, WI 53719
(608) 277-5703

WISCONSIN
REALTORS®
ASSOCIATION

REALTOR®

OCT 14 1997

4801 Forest Run Road, Suite 201
Madison, Wisconsin 53704-7337
608-241-2047 • in WI 1-800-279-1972
Fax 608-241-2901 • E-mail wra@wra.org
URL http://www.wra.org

DAVE STARK, GRI, President

WILLIAM MALKASIAN, CAE, Executive Vice President

TO: All Legislators

FROM: Michael Theo
Vice President for Public Affairs

DATE: October 13, 1997

RE: AB 334 / SB 186 - Regulation of Home Inspectors

The Wisconsin REALTORS Association (WRA) strongly endorses and supports AB 334 and SB 186, companion bills designed to protect Wisconsin housing consumers by regulating residential home inspectors.

NEED FOR LEGISLATION

Currently, anyone can call themselves a home inspector. Wisconsin requires no specific qualifications, establishes no industry standards of practice or ethical conduct, and most importantly, no accountability to the consumer.

We estimate nearly 70% of all residential real estate transactions now involve a home inspection. With an estimated 97,400 homes sold in Wisconsin in 1996, approximately 65,900 home inspections occurred last year alone. With the median home selling price of $97,600, home inspectors were involved in an estimated $6.4 billion worth of transactions in 1996 alone.

Despite the magnitude of the obvious potential problems, state law contains no regulations pertaining to home inspections. This wholly unregulated environment has created a wide discrepancy in the quality of home inspections. Incompetent inspectors practice side-by-side with competent inspectors, leaving consumers without a clue on how to distinguish them. Incompetent inspectors have obstructed numerous real estate transactions unnecessarily, often leaving sellers and brokers baffled and angry.

WHY NOT JUST SUE?

The only consumer recourse today is costly litigation. However, this option is rarely pursued for two important reasons. First, there exists no industry or professional standards upon which to adjudicate an inspectors work. Second, many inspection report forms include explicit disclaimers that limit an inspectors liability for misrepresentations or mistakes they may make.

This is wrong. With the full support of REALTORS, consumer demand for quality home inspections will continue to increase. However, without this legislation, consumers and

REALTORS can expect to experience an increasing number of incompetent inspections and needlessly botched transactions. AB 334 and SB 186 provide vital consumer protections during what is most likely the single biggest economic purchase of a consumer's life.

PROVISIONS OF THE BILL

This legislation is the product of several years of work, which began with a special advisory committee established by Department of Regulation and Licensing (DRL) Secretary Marlene Cummings in 1991. These bills now enjoy the support of the Department and the Real Estate Board. Highlights of the bill include the following:

1. Use of the term "State Registered Home Inspector": AB 334 and SB 186 establish a voluntary state "registry" for home inspectors. No one is compelled to register. However, to use the term "state registered home inspector" an individual must pass a state examination and on-going continuing education requirements to be established by the DRL by administrative rule.

2. Standards of Practice: The bill specifies minimum standards of practice by requiring state registered home inspectors to perform a reasonably competent and diligent inspection to detect observable conditions of residential real property being inspected. By providing this minimal standard, which does not exist today, consumers will have recourse for poor inspections.

The bill also requires DRL rules to specify what a registered home inspection report must contain and the duties a registered home inspector is not required to do as part of the inspection.

3. Prohibited Practices: Perhaps most importantly, the bill specifies prohibited practices. Under the bill, inspectors are prohibited from disclaiming liability or limiting the amount of his/her liability for negligence or intentional wrongdoing. Moreover, a home inspector is precluded for two years from doing repairs on the same property they have inspected - thus eliminating a significant incentive to defraud consumers which exists today.

The bill also creates a two-year period for a person to bring a cause of action for damages resulting from an act or omission of a state registered inspector and prohibits altogether the risk for home inspectors being sued by a person who is not a party to the transaction for which the inspection was conducted.

4. Enforcement: Finally, the bill authorized DRL to reprimand state registered home inspectors or to deny, limit, suspend or revoke their state registration if they engage in unprofessional conduct.

VALUE AND RESPONSIBILITIES

We strongly support the greater use of home inspections in residential real estate transactions. Competent, third party home inspections by qualified inspectors add real value to every real estate transaction.

Opponents are simply wrong to allege the goal of this legislation is to some how limit REALTOR liability. This legislation will in no way limit the liability , duties or responsibilities of real estate licensees in Wisconsin.

REALTORS have long supported the notion that the more information buyers and sellers have, the better the chances of a successful transaction. We have demonstrated this by helping pass legislation requiring sellers to disclose what they know about their property to all buyers and by helping pass strong agency law revisions to precisely define what services and duties consumers can expect from their real estate agent. These real estate consumer protection laws have become national models.

We believe the vast majority of home inspectors operating in Wisconsin today support this legislation, despite claims of a vocal minority who seek to protect their ability to waive liability for their mistakes and misrepresentations. No other business in Wisconsin enjoys such protection at the consumer's expense.

CONCLUSION

Recognizing the importance and inherent risks, the state currently regulates all professionals related to a real estate transaction, including real estate brokers, salespeople, appraisers, bankers, mortgage bankers, title insurers, architects, lawyers, and professional engineers. Only home inspectors remain unregulated. Accurate home inspections will benefit all of these parties to a transaction as well as buyers and sellers.

We therefore strongly urge your support for AB 334 and SB 186.

STATE OF WISCONSIN

To Land Committee Members

Date 10/15/97 Time 3:50

WHILE YOU WERE OUT

M Mark Plotkin

of Milwaukee

Phone

Telephoned	✓	Please Call	
Called to See You		Rush	
Returned Your Call		Will Call Again	

Message Supports AB 321 and is against ~~AB~~ 334. He is registered with the American Society of Home Inspectors for the Milwaukee area. J.D.

Party Receiving Call

10/14/97

Received a call from : Linda Bastian
Hometown Realty
Fond du Lac

Taken by: Jacque

She opposes AB 321 and supports AB 334/SB 186

- she had customers who purchased a home a few months ago. The inspector said he checked all the windows. After they moved into the house, they noticed a problem with the windows and found out they were rotted out. When they approached this with the home inspector, he said that he was not responsible for things that were missed. They ended up taking him to court and when asked why he checked they were okay…he said that he didn't check those windows because of the weather conditions that day. Since he didn't note that on his check list, Linda's customers won in court.
- she feels this probably happens on several occasions and the inspectors get away with it by saying "they are not responsible" for missed items.
- we need regulations so that we have good, responsible home inspectors out in the field.

1997 Session

[X] ORIGINAL [ ] UPDATE
[ ] CORRECTED [ ] SUPPLEMENTAL

LRB or Bill No./Adm. Rule No.
AB 334
(-2009/1)
Amendment No. if Applicable

FISCAL ESTIMATE

OA-2048 (R10/94)

Subject
The regulation of home inspectors

Fiscal Effect

State [ ] No State Fiscal Effect

Check columns below only if bill makes a direct appropriation or affects a sum sufficient appropriation.

[ ] Increase Existing Appropriation
[ ] Decrease Existing Appropriation
[ ] Create New Appropriation
[ ] Increase Existing Revenues
[ ] Decrease Existing Revenues

[X] Increase Costs - May be possible to Absorb Within Agency's Budget [ ] Yes [X] No
[ ] Decrease Costs

Local: [ ] No local government costs

1. [ ] Increase Costs
   [ ] Permissive [ ] Mandatory
2. [ ] Decrease Costs
   [ ] Permissive [ ] Mandatory
3. [ ] Increase Revenues
   [ ] Permissive [ ] Mandatory
4. [ ] Decrease Revenues
   [ ] Permissive [ ] Mandatory
5. Types of Local Governmental Units Affected:
   [ ] Towns [ ] Villages [ ] Cities
   [ ] Counties [ ] Others
   [ ] School Districts [ ] WTCS Districts

Fund Sources Affected
[ ] GPR [ ] FED [X] PRO [ ] PRS [ ] SEG-S

Affected Ch. 20 Appropriations
20.165 (1) (g) and 20.165 (1) (i)

Assumptions Used in Arriving at Fiscal Estimate

This bill establishes a voluntary registry of home inspectors and restricts the use of the title "Wisconsin Registered Home Inspector."

The bill requires the department to promulgate rules defining the standards of practice for home inspectors and standards of practice for acceptable examination performance by an applicant for registration. The department is authorized to create emergency rules in order to have standards in place when the regulation takes effect. Costs associated with publishing emergency administrative rules are $700.

The department estimates that at least 350 home inspectors will register during the first year of regulation, with an additional 100 inspectors in each year thereafter. The department is basing its estimate on the fact that ASHI (American Society of Home Inspectors) estimates that there are 200 home inspectors who advertise in the Yellow Pages in the state. Since this bill allows anyone who fulfills all the application requirements to be registered as a home inspector, the department believes that there will be additional people registering as home inspectors. The department bases its opinion on the fact that in a statewide survey of licensed Realtors in Wisconsin, the 302 respondents estimated that an average of 66.75 percent of all residential real estate transactions involve a third party home inspector. Applying this estimate to 1996 home resales in which 97,400 homes were resold in 1996, approximately 65,900 real estate home sales involved a third party inspector in 1996. During the first year of registration, the department estimates that it will receive revenue of $13,650 in initial credential fees and receive approximately $3,900 in initial credential fees annually thereafter. During the first renewal period, the department estimates that it will receive $18,450 in renewal fees.

The department will be required to develop an examination for home inspector registration because it does not know if there is an approvable exam available which will comply with the home inspection examination requirement. In developing an examination, it will be necessary to conduct a job analysis, have test specification meetings, and question writing and

Long-Range Fiscal Implications
The department's Division of Enforcement may need additional staff to investigate and prosecute complaints if the number of complaints increases substantially from its original estimate.

Agency/Prepared by: (Name & Phone No.)	Authorized Signature/Telephone No.	Date
Department of Regulation & Licensing Patricia C. McCormack (267-2435)		5/20/97

and review meetings with subject matter experts. It would be necessary to administer the exams at least twice a year and also maintain the exams to test current knowledge and codes. The department estimates that it will need a 250 question examination. Two forms would be needed for purposes of retakes and test security. The costs associated with test administration will depend on candidate volume. The average cost per candidate is estimated to be $16 each in addition to the costs associated with exam development.

The initial costs for exam development include the following:

Job Analysis: 2 committee meetings @ $1,000 each, plus $500 for postage	$2,500
Specification Writing: 2 committee meetings @ $1,000 each	$2,000
Writer Training meeting (includes 100 questions)	$1,000
Home Writing: 400 more questions @ $6 each	$2,400
Question Review: 5 meetings	$5,000
TOTAL	**$12,900**

The department will incur costs of $1,000 per year for printing of laws, applications, informational materials, committee meeting packets and rules and $1,000 per year for postage relating to mailing application materials, copies of the registration law, registration certificates, verifications, committee meeting packets and other general correspondence.

The department believes that if there are as many as 65,000 home inspections per year, there could likely be a high number of complaints. Based on the estimate of 350 home inspectors, the department estimates that there will be approximately 70 complaints a year (20 percent of the number of registered home inspectors) filed against home inspectors. Based on these assumptions, the department believes that it will need 1.0 FTE Consumer Specialist to handle complaints involving home inspectors. Total costs for this position annually include $24,100 for salary, $9,004 for fringe benefits, and $6,091 for supplies and services. One-time costs associated with this position are estimated to be $4,515.

FISCAL ESTIMATE WORKSHEET

1997 Session

Detailed Estimate of Annual Fiscal Effect | [X] ORIGINAL | [ ] UPDATE | LRB or Bill No./Adm. Rule No. | Amendment No.

DOA-2047 (R10/94) | [ ] CORRECTED | [ ] SUPPLEMENTAL | AB 334 |

ject

ie regulation of home inspectors

I. **One-time Costs or Revenue Impacts for State and/or Local Government (do not include in annualized fiscal effect):**

One-time costs associated with the office furniture and computer station for the consumer specialist are $4,515.

II. Annualized Costs:	Annualized Fiscal impact on State funds from: Increased Costs	Decreased Costs
A. State Costs by Category		
State Operations - Salaries and Fringes	$ 33,104 (20.165(1) (g))	$ -
(FTE Position Changes)	(1.0 FTE)	(- FTE)
State Operations - Other Costs	8,791(g); 12,900 (i)	-
Local Assistance		-
Aids to Individuals or Organizations		-
TOTAL State Costs by Category	41,895 (g); 12,900 (i)	$ -
B. State Costs by Source of Funds	**Increased Costs**	**Decreased Costs**
GPR	$	$ -
FED		-
PRO/PRS	41,895 (g); 12,900 (i)	-
SEG/SEG-S		-
III. State Revenues- Complete this only when proposal will increase or decrease state revenues (e.g., tax increase, decrease in license fee, etc.)	**Increased Rev.**	**Decreased Rev.**
GPR Taxes	$	$ -
GPR Earned		
FED		-
PRO/PRS	13,650 (g); 5,600 (i)	
SEG/SEG-S		-
TOTAL State Revenues	$ 13,650 (g); 5,600 (i)	$

NET ANNUALIZED FISCAL IMPACT

	STATE	LOCAL
NET CHANGE IN COSTS	$ 41,895 (20.165 (1) (g)) 12,900(20.165 (1) (i))	$
NET CHANGE IN REVENUES	$ 13,650 (20.165 (1) (g)) 5,600(20.165(1) (i))	$

ncy/Prepared by: (Name & Phone No.)	Authorized Signature/Telephone No.	Date
Department of Regulation & Licensing **Patricia C. McCormack** (267-2435)		5/20/97

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Plumbing II Inspector #6077

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Arsenic test		
Including onsite sampling	$56.00	10-14 days
Lead test		
Including onsite sampling	$56.00	10-14 days
Radon gas - air analysis		
Includes two samples - basement & 1st floor	$84.00	7-10 days
Atrazine scan		
Includes onsite sampling	$48.00	7-10 days
Well Inspection for real estate and financial purposes		
Includes water tests for bacteriological contamination and nitrates	$136.00	
Septic Inspection for real estate and financial purposes	$120.00	
Additional for summer digging to expose septic tank cover	$24.00	
Septic pumping can be included for cost plus 15% handling charge		
Follow-up site visits as required	$28.00	
Combination Inspection - Includes Water Test, Well and Septic Inspection described above	$204.00	
Well Cleaning - Including chlorination and flushing of the well and water system	$92.00	
Additional for treatment of the water heater	$12.00	
Two water tests two weeks apart after cleaning	$56.00	
For additional savings the following tests can be added to the above:		
Nitrates (already included on above well inspections)	$20.00	4-5 days
Fluoride	$20.00	4-5 days
Arsenic	$36.00	10-14 days
Lead	$36.00	10-14 days
Radon - air analysis	$64.00	7-10 days
Atrazine Scan	$28.00	7-10 days
Well Cleaning - shock chlorination (does not include treatment of water heater)	$68.00	

WATER WATCH
P.O. Box 741
Neenah WI 54957-0741
Phone (414) 841-3901
Fax (414) 725-4400

October 26, 1995

Representative Carol Owens
P.O. Box 8953
Madison WI 53708

Dear Rep. Owens;

Thank you for your call today regarding real estate inspectors. I appreciate and also share your concern about uniformity of requirements.

The real estate industry seems to have made some progress in this area but more can be done. Some of their forms require well and septic inspections to be performed by a professional with appropriate certification. (I'm not real sure of the current language but the intent is there.)

It is my intent to carefully document the performance of a particular septic system with test data that is clearly obtained and repeatable by any other inspector. I wish that other inspectors used similar methods to document system performance.

I am not in business to fail every system that isn't installed according to the current code. There are a lot of systems in operation that are working just fine, (ie.accepting sewage at an acceptable rate and not creating a sanitary hazard). Not all of these systems are in proper soil and if a component of the system failed. (ie. cracked tank or stopped drain field) the entire system would need to be brought up to current code. In our area of the state that usually means a mound type system or holding tank.

I understand my job to be one of providing understanding of the situation for the buyer and the seller. (I wish I could guarantee systems. None of us can or do.) If a system is creating a sanitary hazard or not working it needs to be replaced before a house is sold. I have been able to allow buyers to purchase systems that are quite slow - but still working, and a lot less expensive than replacement with a mound or holding tank.

I mentioned WOWDA (Wisconsin Onsite Waste Disposal Association) They are attempting to standardize the efforts and provide uniformity in the business. They may need to create an auxiliary association for inspectors to do an even better job.

The Home Inspectors, (building inspectors) seem to have an organization and a certification procedure already in place.

I trust our own professional organizations in cooperation with the state real estate organization can do a lot to regulate and standardize without troubling state government with the task. You may however, need to get involved.

Sincerely,

Lee V. Smoll
Licensed Pump Installer Permit No. 6142
Licensed Plumbing II Inspector No. 6077

WATER TESTING, WELL & SEPTIC INSPECTIONS

Talked 10-9-97

STATE OF WISCONSIN good he knows of problem

To CAROL

Date 10/9/97 Time 3:10pm

WHILE YOU WERE OUT

M Rep. VRAKAS

of

Phone (414) 367-5201

Telephoned	✓	Please Call	
Called to See You		Rush	
Returned Your Call		Will Call Again	

Message Returning your call/ stopped by on the Home Inspector Bill.

Party Receiving Call

Who is your potential buyer - Plumbing Inspector - certified Pump installer license -

Lee Smale - 725-6631

Waterwatch 841-3901 - $200.00 arsenic and 50.00 Radon 65.00

Home Inspector -

Home Inspector 426-0259

Home Inspection 233-6444

WOSA Hartford -

Clean Water Testing 733-7590

Mike Feurstenberg was here

CST Certified soil tester - Perk test analysis. allowed margined Rate of absorption of drainfield.

HOME EXAMINER, INC.
4903 W Woodlawn Ct
Milwaukee, WI 53208
414/475-1696

REP. CAROL OWENS

HomEx

HOME EXAMINER, INC.

4903 W. Woodlawn Ct. • Milwaukee, WI 53208

414/475-1696

John A. Geiger

ASHI

Member: American Society of Home Inspectors

Wisconsin Association of Home Inspectors (WAHI) Position Statement on Regulation

June 1997

I. The facts do not support the necessity for licensing, either mandatory or voluntary. The Department of Agriculture, Trade and Consumer Protection has had only a total of 9 complaints over the previous three years. The better Business Bureau also receives only a few complaints a year.

II. It is not economical for the state to administer, or for the profession to support, any meaningful licensing activity with only 150 to 200 inspectors in the state. Even with projected growth of the profession, the financial burden on the participants will discourage participation for a voluntary system, further weakening regulatory effectiveness.

III. A voluntary system of licensing (or registration) undermines the higher qualifications already in place with the professional societies. Uninformed consumers might place a higher reliance on the "state registration" than the well founded, time tested and publicly accepted credentials now provided through the professional societies. The state program purported to protect consumers will actually mislead consumers into choosing less qualified "state registered" inspectors.

IV. The public has access to information to make an informed choice. Inspectors are generally chosen by home buyers on the basis of recommendations, either from friends or acquaintances who have used inspectors, or from real estate sales people who see the work of many inspectors. In addition, the professional societies have quite a bit of media exposure, telling the public of the experience, testing and credentials of the members. The low number of consumer complaints indicate that the "market regulation" of the profession is working and working very well.

V. Qualifications, standards, reporting methods, etc., are best left to the practitioners and should not be controlled by a government agency which derives a large portion of its budget from real estates sales regulation. ***Inspectors work for home buyers, real estate sales people work for sellers.*** Obviously, the goals, interests and responsibilities of these two groups are in conflict and regulation sought by a sales association against the wishes of the inspectors should be avoided.

VI. The bill supported by home inspectors, Assembly Bill 321, would put an end to the claims by the Wisconsin Realtors Association (WRA) that there is a hidden, pent-up consumer frustration with inspectors. WRA's three attempts since 1991 to show the need for consumer protection have not convinced legislators. And, we anticipate WRA will be back again in 1999. AB 321 is a low cost way to provide a method to monitor the profession. If there actually turns out to be a problem, the profession can cooperate in a legitimate, meaningful, effective method of licensing. Legislation similar to AB 321 was recently put into effect in California; it is a workable method of monitoring the profession. Please report favorably on AB 321 and let inspectors get back to serving our clients, the home buyers of this state.

The Council of State Governments

OCCUPATIONAL LICENSING:

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Questions a Legislator Should Ask

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The Council is a joint agency of all the state governments—created, supported, and directed by them. It conducts research on state programs and problems; maintains an information service available to state agencies, officials, and legislators; issues a variety of publications; assists in state-federal liaison; promotes regional and state-local cooperation; and provides staff for affiliated organizations.

HEADQUARTERS OFFICE
(606) 252-2291
Iron Works Pike
P.O. Box 11910
Lexington, Kentucky 40578

EASTERN OFFICE
(212) 221-3630
1500 Broadway, 18th Floor
New York, New York 10036

MIDWESTERN OFFICE
(312) 236-4011
203 North Wabash Avenue
Chicago, Illinois 60601

SOUTHERN OFFICE
(404) 266-1271
3384 Peachtree Road, N.E.
Atlanta, Georgia 30326

WESTERN OFFICE
(415) 986-3760
720 Sacramento Street, 3rd Floor
San Francisco, California 94108

WASHINGTON OFFICE
(202) 624-5450
Hall of the States
444 North Capitol Street
Washington, D.C. 20001

Occupational Licensing: Questions a Legislator Should Ask

Benjamin Shimberg
Associate Director
Center for Occupational and Professional Assessment
Educational Testing Service
Princeton, New Jersey

and

Doug Roederer
Special Assistant
The Council of State Governments
Lexington, Kentucky

Editor
Ralph J. Marcelli

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Contents

Foreword

In 1952 the Council of State Governments published *Occupation Licensing Legislation in the States.* That publication reported licensure of mo than 70 occupations, trades, and professions—from abstractors to yac salesmen. Today state government has a renewed interest in occupational a professional licensing as a result, in part, of the increasing number of requests f licensure.

The Council of State Governments is pleased to join with the Education Testing Service (ETS) in publication of this guide. It is intended to assist sta policymakers confronting decisions regarding the credentialing of vario occupations and professions.

The material was prepared by Dr. Benjamin Shimberg, Associate Directo Center for Occupational and Professional Assessment, ETS, with assistan from Doug Roederer of the Council of State Governments' staff. The Council indebted to the authors and a number of individuals who gave generously of the time in reviewing early drafts of this manuscript. They include Mrs. Kare Greene, Manpower Analyst, Employment and Training Administration, U.S Department of Labor; Mrs. Ruth Herrink, Director, Virginia Department Professional and Occupational Regulation; Ms. Corrine Larson, Director, ar Dr. Colleen Coughlan, Supervisor of Special Studies, Health Manpow Program, Minnesota Department of Health; Dr. Raymond Salman, Directo Division of Professional Licensing Services, New York State Department Education; Neil Duncliffe, Lexington Office, and Alec Sutherland, Midwester Office, the Council of State Governments; Dr. Albert P. Maslow, Director, an Dr. Gordon Cook, Staff Associate, Center for Occupational and Professiona Assessment, ETS.

Lexington, Kentucky
March 1978

Herbert L. Wiltsee
Executive Director
The Council of State Governments

Introduction

Licensing is a process by which an agency of government grants permission to an individual to engage in a given occupation upon finding that the applicant has attained the minimal degree of competency required to ensure that the public health, safety, and welfare will be reasonably well protected.

Licensing makes it illegal for anyone who does not hold a valid license to engage in the occupation, profession, trade, etc. covered by the statute. Thus, the power to license can be used to deny individuals the legal opportunity to earn livelihoods in their chosen fields. This is an awesome power—one that must be exercised judiciously.

The public seems to have accepted licensing as a restriction that is needed to protect society from incompetents and charlatans. Proponents of licensing—especially trade and professional groups—maintain that licensing benefits the public by assuring consumers of high-quality goods and services.

Critics of licensing believe otherwise. Consumer groups are asking, "Who benefits most from licensing, the public or the group being regulated?" They cite studies funded by the U.S. Department of Labor, and other agencies, which show that licensing boards often use their powers to restrict the supply of practitioners. These restrictions, say consumers, eventually affect what they must pay for services. (Selected references relating to licensing and certification are at the end of the report.)

The Federal Trade Commission (FTC) has noted that many licensing boards prohibit price advertising and that a few also prohibit competitive bidding. The FTC recently proposed rules that would outlaw such restrictions. In the meantime, the U.S. Supreme Court has decided that it is unconstitutional for licensing boards to prohibit pharmacists from advertising the price of prescription drugs or lawyers the cost of certain services. The Antitrust Division of the U.S. Department of Justice has also initiated legal action against the State Board of Accountancy in Texas, charging that its rules against competitive bidding by accountants violate the federal antitrust laws.

Nevertheless, many new licensing laws continue to be enacted each year. At a recent session, one state legislature considered bills to license auctioneers, home improvement contractors, pet groomers, sex therapists, television repairmen, electrologists, data processors, appraisers, professional salespersons, and a dozen other groups. Faced by such an onslaught, how can legislators decide when

it would be in the public interest to license members of an occupation?* What questions should legislators ask? What alternative forms of regulation should be considered before licensure is granted?

This booklet attempts to put licensing into perspective by calling attention to a number of issues that should be considered:

- Deciding whether state governments should regulate an occupational group at all.
- Drafting the regulatory statute so that it is fair to practitioners and consumers alike.
- Establishing an administrative structure that promotes accountability and public confidence.

These issues are discussed in Chapter 1.

Chapter 2 provides a guide for questioning groups that are seeking regulation of an occupation. The questions may be posed in written form to give sponsors of the legislation ample opportunity to assemble the necessary data, or they can be put orally during the course of hearings on the legislation.

Chapter 3 describes efforts in three states—California, Minnesota, and Virginia—to bring about change in their regulatory structures. In each instance, names of key contacts are provided for those wishing more information.

*Throughout this report, the term occupation should be understood as including those who engage in an occupation, profession, trade, etc.

1. Guidelines for Occupational Regulation

The following guidelines for planning or reviewing a regulatory program grew out of a series of regional conferences convened in 1975 and 1976 for the purpose of identifying ways to improve occupational regulation.[1] Participants in the conferences included legislators, administrators of state licensing programs, attorneys general, and consumer officials. The problems, issues, and concerns voiced by participants and the solutions proposed provided the basic material from which the guidelines and accompanying text were developed.

Should State Government Regulate an Occupational Group?

Regulation should meet a public need.

Requests for licensure seldom come from an outraged public seeking to end some intolerable abuse. Usually they are made by occupational associations acting on behalf of practitioners.

Unfortunately, consumers are rarely on hand at legislative hearings when such regulatory proposals are under consideration. They should be, but in most areas they are poorly organized and lack the skills and resources to assemble and effectively present data which would show the likely impact of regulation on their pocketbooks. In a few states, legislatures have created consumer advocacy agencies to intercede on behalf of consumers before legislative committees and regulatory boards. The Consumer's Council in Massachusetts and the Office of the Public Advocate in New Jersey are two such agencies which show promise of providing consumers with at least a small voice in regulatory matters.

Proponents of licensure, be they the public or an occupational group, frequently argue that regulation is needed to protect the public health, safety, and welfare. Often, however, the occupational group is the major beneficiary of a licensure law. Licensed practitioners gain an exclusive right to deliver services. They may then ask the board, made up of fellow practitioners, to use its powers to restrict entry into the field by setting high education and experience requirements, giving difficult tests, and erecting barriers to keep out practitioners from other states. Thus, the licensed group may establish monopoly conditions which enable it to control the availability and cost of services and restrict competition by prohibiting advertising and competitive bidding. Such practices often operate to raise costs to consumers.

To determine whether an occupational group should be licensed, each proposed licensure program should be carefully scrutinized to determine the precise nature and seriousness of the need. There are many situations where the public needs to be protected from dangers posed by unqualified practitioners, but

not every service represents a threat to the public health, safety, and welfare if a practitioner is unqualified.

The overriding questions that a state must answer when evaluating the need for licensing are: (1) whether the unlicensed practice of an occupation poses a serious risk to the consumers' life, health, and safety or economic well-being; (2) whether potential users of the occupational service can be expected to possess the knowledge needed to properly evaluate the qualifications of those offering services; and (3) whether benefits to the public clearly outweigh any potential harmful effects such as a decrease in the availability of practitioners, higher costs of goods and services, and restrictions on optimum utilization of personnel.

Government should provide only the minimum level of regulation.

Even when an analysis of need shows that there are compelling reasons to regulate an occupation, it does not necessarily follow that licensure is the most appropriate mechanism for doing so. Licensure restricts the scope of practice so that it becomes illegal for unlicensed individuals to provide the services in question. That is why licensure should be used only as the remedy of last resort.

Before legislators agree to license persons in an occupation, other regulatory approaches short of licensure need to be explored. Among the alternatives to individual licensing are the enforcement or strengthening of existing statutes relating to deceptive or unfair trade practices. Another is the assignment of inspection or other supervisory authority to an existing agency, i.e., a department of health or department of licensing and registration. A third alternative is to license establishments rather than individuals. For example, restaurants are licensed, not the individuals who prepare and serve food.

If none of these approaches is considered adequate by a state, it may be necessary to consider ways to regulate individuals. However, the method of regulation and the degree to which it restricts practice should bear some relationship to the seriousness of the harm that is likely to result from the absence of regulation. Two approaches, less restrictive than licensing, are registration and certification.

Registration is an appropriate form of regulation when the threat to life, health, safety, and economic well-being is relatively small and when other forms of legal redress are available to the public. In its simplest form, registration requires that an individual file his or her name and address with a designated agency. There is usually no preentry screening by a regulatory board. Registration in this form does little more than provide a roster of practitioners. However, it is also possible to have a registration requirement in combination with minimum practice standards set by the agency. Thus, while registration would not be exclusionary, it would subject registrants to minimum standards and thereby provide some protection to the public.

Certification is a form of regulation which grants recognition to individuals who have met predetermined qualifications set by a state agency. Only those who meet the qualifications may legally use the designated title. However, noncertified individuals may offer similar services to the public as long as they do not describe themselves as being "certified." Certification is especially appropriate when the public needs assistance in identifying competent practitioners, but where the risks to health and safety are not severe enough to warrant licensure.

There is considerable confusion surrounding the terms "registered" and "certified." Indeed, they are sometimes used interchangeably with licensure. For example, "registered nurses" are actually licensed nurses because it is illegal for anyone to practice nursing unless he or she has been granted a license by a state nursing board. Confusion is further compounded by the fact that many nongovernmental agencies, such as professional societies, offer "certification" to those who meet predetermined qualifications.

If nothing else, the confusion in terms reflects a search for alternatives to the more stringent remedy of occupational licensing. Examples of state experimentation with these alternatives are found in Chapter 3.

If an occupation is to be licensed, its scope of practice should be coordinated with existing statutes to avoid fragmentation and inefficiency in the delivery of services.

Occupational groups seeking mandatory licensing usually argue that it is necessary to have their scope of practice defined broadly in order to prevent unqualified persons from engaging in any aspect of the occupation. However, as technology expands and new occupational categories emerge, members of occupational groups often find that the existing broad scope of practice statements bring them into conflicts with already licensed occupational groups. Such conflicts may prevent them from functioning in areas where they are qualified by training to provide services.

Restrictions imposed by overly broad scope of practice statements stem, in part, from a failure to recognize that many groups within a system (such as the health delivery system) have overlapping functions. When such groups are granted mandatory licensure based on broad scope of practice statements, certain undesirable consequences, such as fragmentation of services, underutilization of manpower, and unnecessary proliferation of occupational categories, are likely to result.

A field becomes fragmented when many discrete specialty groups, each with its own scope of practice statement, obtain licensure. Fragmentation may be signaled when an already licensed group seeks to prevent an emerging group with a different occupational label from sharing the work.

Underutilization occurs when paraprofessionals, medical auxiliaries, or groups which combine parts of several already regulated occupations find that their utilization within the delivery system is impeded by jurisdictional conflicts

and by prohibitions against the delegation of functions. Such an uncoordinated delivery system forces employers to hire one of each kind of practitioner. The state policy focus should be on competence and efficiency and the avoidance of exclusive allocation of functions to certain named groups.

Proliferation or pressure to license new occupational categories sometimes happens when practice restrictions of one group prevent members of another group from providing services that the latter group is qualified to provide. For example, in some states psychologists have claimed that the provision of personal-social advisement services by counselors (with M.A. or Ph.D. degrees) constitutes an infringement on the Psychology Practice Act. The group prevented from practicing—in this case, counselors—is then likely to seek its own licensure law in order to gain statutory recognition that would legitimatize its activities.

Rather than license a new and discrete occupation, the legislature might consider alternatives such as narrowing the overly broad existing definition of scope of practice or including the new group within the definition of competent practitioners.

Licensure Laws Should Be Fair and Operate to Protect Practitioners and Consumers Alike

Requirements and evaluation procedures for entry into an occupation should be clearly related to safe and effective practice.

Regulatory laws are often exclusionary because they include requirements—such as age, years of formal education, citizenship, high license fees, and residency—which bear little or no relationship to effective performance on the job. Irrelevant requirements should be eliminated.

The completion of an approved training program and certain experience requirements are usually reasonable requirements. Yet even such requirements can become exclusionary if the time involved in training is excessive or if needless restrictions are imposed. For example, a requirement that an applicant's experience must have been acquired in a specific city or state would be difficult to justify as reasonable.

While most applicants for entry into a regulated occupation usually apply after completion of an approved program of training, the law should make allowances for those who may have acquired their competence outside the formal educational system—in the armed services, for example. It should also be recognized that for certain occupations no formal training programs presently exist. Drug and alcohol counselors, for example, often acquire their knowledge of chemical dependency through on-the-job training and experience. Ways must be found to evaluate such individuals, not in terms of their formal training, but in terms of their demonstrated competence to perform the functions required by the job.

Indeed, all testing and evaluation procedures used in making licensing or certification decisions need to be scrutinized to be sure that they are fair to candidates and that they meet professional testing standards. Further, in those fields where employers are required by law to hire only individuals who are licensed or certified, the state boards or agencies which issue these credentials should be aware that they may be subject to the proposed "Uniform Guidelines on Employee Selection Procedures."[2] These uniform guidelines stipulate that evaluation procedures which affect employment decisions must not discriminate unfairly against members of minority groups, women, or other classes protected under Title VII of the Civil Rights Act of 1964. In addition, when the tests used in the licensing or certification process result in significant disparities in passing rates among various applicant groups, and there is a legal challenge, the board or agency which issued the license or certificate may be required to demonstrate that its procedures, including the test in question, meet the standards set forth in the uniform guidelines.

Every out-of-state licensee or applicant should have fair and reasonable access to the credentialing process.

When two states have a reciprocity arrangement, licensed practitioners from one state will be licensed by the other without further examination. However, where no such agreement exists, licensed applicants from other states may be required to undergo the entire licensing process—including written and performance examinations—regardless of their experience or qualifications. This can work a real hardship on qualified practitioners who have been out of school for many years because examinations used for initial entry tend to emphasize what is currently being taught in occupational training programs. With the passage of time, most professionals forget many of the theoretical concepts as well as specific occupational information that they learned while in school, especially if these are seldom used in their day-to-day practice. However, as they encounter new problems and situations in the course of their practice, they must acquire new knowledge and skills in order to meet these challenges successfully. Thus, the test used to screen recent graduates may not be the best or the most effective way to assess the competence of those who have been out in practice for a number of years.

Hardships can also be created by the examination process itself. In dentistry, for example, out-of-state licensees and applicants must supply their own patients for the clinical portion of the examination. The applicant must often literally walk the streets in search of individuals in need of specific types of dental work who are willing to have the work done during the course of the licensing examination. Such people are often hard to find.

Many people believe that licensure by endorsement is a more equitable procedure. Under such an arrangement, individuals who are already licensed in one state may submit their credentials for evaluation by the state to which they wish to migrate. Applicants who are as qualified as those practitioners in the state who were graduated at about the same time would be licensed without requiring them to take the initial application examination.

In order for such endorsement licensing to work, states need to adopt standards of entry that are roughly comparable to those of other states. One technique is to make use of national examinations, when such examinations are available. If an applicant has already passed an examination which is similar or equivalent to the examination given by his new state, the need for reexamination should be questioned. Any state agency that wishes to adopt standards substantially higher than those which prevail elsewhere should be required to demonstrate that these higher standards would clearly be in the public interest and not calculated to exclude qualified practitioners from entering the state.

Once granted, a credential should remain valid only for that period during which the holder can provide evidence of continued competency.

Regulatory agencies usually make a strenuous effort to ensure that applicants are initially competent, but they are often much less zealous in monitoring the competence of practitioners after they have been licensed. Thus, the public has no assurance that licensees have kept abreast of developments and can still provide high-quality services.

A number of strategies have been proposed for assuring continued competence. While many states have adopted mandatory continuing education as a condition of relicensure, there is no evidence available to indicate that mandatory continuing education assures competence. Indeed, consumer groups are asking whether the cost of such education, which ultimately must be borne by the public, will provide consumers with anyy added protection against incompetent practitioners.

The idea of reexamination as a condition of relicensure has been strongly resisted by licensees. However, a number of nongovernmental medical specialty certification boards have recently demonstrated that it is possible to develop written tests and performance measures which simulate important aspects of the physician's work. It remains to be seen whether periodic reexamination is a practical and cost-effective way of dealing with the problem of continued competency.

Peer professional evaluation—through direct observation or review of records—has been proposed as a procedure that might be used in place of or as a supplement to periodic reexamination. Unfortunately, doubts about the dependability of peer review procedures have been raised. Studies show that qualified experts often do not agree as to what constitutes acceptable performance; neither do they apply standards uniformly. Clearly, more attention needs to be paid to defining "acceptable performance" and to training evaluators in the use of standards before peer review procedures are widely applied.

A vigorous enforcement and discipline policy for those found unfit to practice has also been proposed. This approach assumes (1) that most practitioners, acting in their own self-interest, make an effort to keep abreast of their fields; and (2) only a small minority, for a variety of reasons, fails to maintain its competence. Two such minorities are inactive and high-risk practitioners.

At present most inactive practitioners can preserve their right to practice by simply paying the renewal fee. By keeping their licenses in force, they are able to resume practice at any time even though they may have failed to maintain their competence. States should consider requiring that practitioners who have been inactive for a substantial period to demonstrate that they are still competent.

A system needs to be developed to identify high-risk practitioners against whom numerous complaints or malpractice actions are lodged. If there is evidence of negligence or incompetence following an investigation, such individuals should be subject to disciplinary action. Serious offenders could have their licenses suspended or revoked. Less serious offenders could be placed on probation, required to participate in relevant continuing education programs, or to work under supervision for a stated period.

This "enforcement" approach is selective as it is concerned only with those practitioners who are the subject of complaints. In this respect it is likely to be more cost-effective than a system which subjects all practitioners to rigid educational or evaluation procedures.

The Regulatory Structure and Board Composition Should Promote Accountability and Public Confidence

The public should be involved in the regulatory process.

For many years, trade and professional groups fostered the idea that only members of their own occupational group were qualified to make judgments about entrance standards, examination content, or disciplinary matters. This professional mystique argued that the public had no role to play in the regulatory process.

In recent years this view has been challenged. Consumers now argue that since regulation affects their vital interests, they have a right to share in the decisionmaking process. They point out that every day laymen legislators and jurors must make decisions in highly technical areas. They are able to do so by utilizing the testimony of experts to set forth the facts and clarify the issues.

There has been a growing movement to place public members on regulatory boards to ensure that there will be input from groups other than those representing the regulated occupation. Those who favor the idea believe that the

presence of public members will help to break up the in-group psychology that often prevails when all board members are practitioners. Ideally, public members will provide a point of view otherwise absent on a board composed solely of license holders.

Initial experience with public members often was not favorable because those appointed lacked the qualifications for effective service on a board. Recent experience suggests that public members can make significant contributions when they have backgrounds equipping them to deal with problems and issues likely to come before the board, a strong interest in serving, sufficient time to devote to board activities, and prior experience in community affairs so that they know how to get things done in the public arena.

While public members may not know much about the technical aspects of an occupation, they may nevertheless contribute to board deliberations by raising questions about such topics as the appropriateness of entrance requirements, board rules, tests, fees, and disciplinary procedures.

How many public members should be on a board? There is no simple answer, but if impact is the major criterion, one public member is probably too few, two would be the minimum, and three or four would increase the likelihood that the impact of public members would be felt, particularly if the board had from seven to 10 members. In California, the legislature has decreed that for certain boards a majority shall be public members. (See Chapter 3 for a case study of the California experience.)

Complaints should be investigated and resolved in a manner which is satisfactory and credible to the public.

Many regulatory agencies are perceived as overly protective of those whom they regulate. This has led consumers to question whether professionally dominated boards are willing to deal forcefully with their peers when complaints are received from the public. Consumers also express doubts that they will receive a fair hearing before boards composed solely of licensed practitioners.

To remedy the situation, a number of states have centralized complaint handling in independent agencies whose staffs are not beholden to the regulatory board or the occupational group. Where investigation reveals that a practitioner has been incompetent or has violated board rules, such agencies can initiate disciplinary action promptly without awaiting consent from the board.

The decision of an independent agency is more likely to satisfy the consumer as a fair decision than one rendered by the practitioner's peers. Unfortunately, disciplining an errant practitioner will seldom provide relief to the client who has suffered physical injury or financial loss. A number of states have established restitution funds to which all licensed attorneys and real estate brokers contribute. Such funds are used to reimburse clients for determinable losses caused by unscrupulous practitioners. This spares clients the necessity of seeking relief in the courts, with all the attendant costs and long delays. However, the court route remains open should the client wish to use it.

Procedures for evaluating the qualifications of applicants and disciplinary proceedings against licencees should be conducted in a fair and expeditious manner.

The constitutional rights of applicants are not always safeguarded in the present system which makes the regulatory board virtually the sole judge of who shall and shall not be credentialed. For example, applicants who are rejected on the basis of qualifications or for failing an examination may be forced to take their appeal to the same board that passed on their qualifications initially, or which was responsible for preparing and grading the examination that they failed. Arguing that such applicants always have recourse to the courts ignores the simple truth that litigation is both costly and time consuming. If licensed practitioners cannot work, they are unlikely to have the resources to pursue a lengthy legal battle. Clearly, the solution lies in providing applicants with an independent administrative appeal route either through the centralized licensing agency or through a separate board, such as that provided by the New York State Board of Regents.

The licensee who is charged with incompetence or unprofessional conduct faces the loss of his or her livelihood and is entitled to due process protection. Such protection is absent when members of a regulatory board serve multiple functions (investigator, prosecutor, judge, and jury). Once again, such investigations should be conducted by an independent unit. Where probable cause is found, the evidence should be presented before a hearing officer or an administrative judge to establish the facts and determine whether a law or board rule has been violated. To avoid allegations of favoritism, some boards rely on the hearing officer to recommend appropriate sanctions.[3]

In a number of states, boards find that they are enjoined from taking disciplinary action against errant practitioners while civil or criminal actions against such practitioners are still pending. This means that a licensee charged with negligence, incompetence, or serious breach of conduct may continue to provide services even when the evidence suggests that he or she could be a menace to society. To rectify such situations, states are granting regulatory agencies emergency powers which will enable them to suspend an individual's license for a given period where continued practice would not be in the public interest.

The purpose of regulation is to protect the public, not the economic interest of the occupational group.

Boards sometimes make decisions that serve the economic interests of the occupational group rather than those of the public. For example, a board may

tighten entry qualifications or raise the passing score in order to limit the supply of practitioners. They may also pass rules that prohibit price advertising or competitive bidding. Such rules often characterize competitive practices as "unprofessional conduct." Restrictions on the flow of truthful information concerning fees, qualifications, and professional attainments clearly hamper the consumer's ability to shop for services. Competition is lessened, thereby reducing downward pressure on fees.

Many licensing statutes substantially adopt the private ethical code of the profession. These ethical codes are the source of many anticompetitive rules and statutory provisions. Lawmakers should be wary of edifying into public law ethical codes clearly designed to serve and "dignify" the profession. One possible unintended effect of giving specific legislative sanction to prohibitions against competitive bidding, for example, might be to place such practices beyond the reach of federal antitrust law.[4]

The administrative structure should promote efficiency, policy coordination, and public accountability.

While autonomous regulatory boards continue to exist in many states, there is a growing realization that such an arrangement, besides being inefficient from the standpoint of optimal use of state resources, makes coordination and effective oversight very difficult.

Three widespread practices tend to contribute to board autonomy. They are (1) boards are often housed in their own building or rented office space, physically separated from other offices of state government; (2) boards frequently generate their own revenue through the collection of license fees, and thus exist outside the usual budget and appropriation mechanisms of the legislature; and (3) trade and professional associations frequently are vested with the power to nominate board candidates. This practice contributes to the notion that the board is an extension of the association rather than an arm of state government.

Some states have created umbrella agencies to provide administrative, clerical, and fiscal services to the various boards. These are usually "housekeeping" agencies headed by an administrator who has no authority to coordinate board activities or to question board policies. This lack of coordination sometimes results in the setting of standards or promulgation of rules by a board without taking into consideration the probable impact that these may have on other boards or agencies.

Some critics of such "housekeeping" agencies say that the authority of the administrator needs to be strengthened if policy coordination is to occur. They urge that the director have power to hire and fire board staff, control board budgets, review and approve proposed rules and regulations, initiate and conduct investigations, provide legal services to boards, and see that disciplinary

proceedings are conducted expeditiously and with adequate due process safeguards. Under such an arrangement, boards would be largely advisory. They would concentrate on formulating and proposing policies, establishing professional or technical standards, developing examinations, and recommending sanctions in disciplinary matters.

Occupational groups tend to be critical of the strong administrator approach, arguing that there is not sufficient evidence of wrongdoing to suggest that such a proposal is necessary. Moreover, they believe that such an arrangement places too much power in the hands of a single individual. To counter this latter criticism, it has been proposed that, as an alternative to a strong director, rulemaking and decisionmaking authority be placed in a board or commission made up of public members without financial, educational, or marital ties to any of the regulated occupations. Such a group would be better able to evaluate proposed rules and other board actions from a public interest viewpoint. In New York State, for example, where professional boards serve primarily in an advisory capacity, the New York State Board of Regents, a lay board, has decisionmaking authority.

The system used to finance regulatory activities can contribute to the accountability of individual boards and to the effectiveness of the overall regulatory program.

The tradition of financing regulatory activities out of income from fees has contributed to the strength and durability of many autonomous boards. Because such boards do not have to come before the legislature to obtain funds, they are seldom required to justify their budgets or to demonstrate that they are serving an important public purpose. In a very real sense, the fiscal autonomy of boards contributes to their lack of accountability. Moreover, when any of these boards has income in excess of their expenses, such funds are usually placed in segregated accounts under the control of the boards. Board members tend to think of these funds as belonging to the occupational group to be used solely for the benefit of the group.

Many people view a change in the financial structure of licensing as an effective way to make boards more accountable. They argue that since regulation is intended to protect the public, all regulatory activities should be funded, at least in part, by the taxpayers at large. They urge that any income from fees go directly into the general fund and that individual boards be allocated their operating expenses through the normal budgetary process.

Those who oppose this general fund approach express a concern that the legislature may increase regulatory fees solely for the purpose of obtaining additional revenue and that this would constitute an unfair tax on practitioners in regulated occupations. Fears are also expressed that in periods of financial stringency, board budgets would be cut and regulatory activities curtailed, even when income from fees is adequate to support the program.

Some of these fears have been allayed in states which place all income from fees into an account administered by the umbrella agency. Operating budgets for the various boards are allocated by the agency on the basis of need. This pooling arrangement makes it possible to use funds from financially strong occupational boards—usually those with a large number of licensees—to help defray the operating expenses of the smaller and financially weaker boards. Income from fees also covers the cost of operating the agency and providing all boards with essential services. The agency is, of course, accountable to the legislature for the overall effectiveness of the regulatory program.

2. Questions Legislators Should Ask

Questions legislators should ask of groups seeking regulation follow and have been drawn from a variety of sources. For example, the Bateman Commission Report to the New Jersey Legislature[5] was one of the earliest efforts to develop licensing criteria and procedures for scrutinizing applicant groups to determine (1) whether a need for regulation exists and (2) what mode of regulation would be most appropriate.

Staffs of the Educational Testing Service and the Council of State Governments have attempted to synthesize material from these and other sources in order to provide a comprehensive list of questions that legislators may wish to ask of groups sponsoring regulatory legislation. Not all questions will be applicable in every situation. However, the topics covered provide a useful checklist not only for legislators but also for groups sponsoring legislation as well.

What Is the Problem?

- Has the public been harmed because the occupational group has not been regulated?
  - To what extent has the public's health, safety, or economic well-being been harmed?
- Can the claims of proponents of regulation be documented?

Why Should the Occupational Group Be Regulated?

- Who are the users of services offered?
  - Are they members of the general public who lack knowledge necessary to evaluate qualifications of those offering services?
  - Are they institutions or qualified professionals who have the knowledge to evaluate qualifications?
- What is the extent of autonomy of practitioners?
  - Is there a high degree of independent judgment required of practitioners?
  - How much skill and experience are required in making these judgments?
  - Do practitioners customarily work on their own or under supervision?
  - If supervised, is supervisor covered by regulatory statute?

    Note: There is little justification for licensure if practitioners work under supervision. If regulation is needed, it should be the supervisor who is regulated.

What Efforts Have Been Made to Address the Problems?

- Has the occupational group established a code of ethics?
  - To what extent has it been accepted and enforced?
- Has the occupational group established complaint-handling procedures for resolving disputes between practitioners and public?
  - How effective has this been?
- Has a nongovernmental certification program been established to assist the public in identifying qualified practitioners?
- Could the use of applicable laws or existing standards solve problems?
  - Use of unfair and deceptive trade practices laws.
  - Use of civil laws such as injunctions, cease and desist orders, etc.
  - Use of criminal laws such as prohibitions against cheating, false pretenses, deceptive advertising, etc.
  - Use of existing standards such as construction codes, product safety standards, etc.
- Would strengthening existing laws or standards help to deal with the problem?

Have Alternatives to Licensure Been Considered?

- Use of an existing agency under legislative control.
- Regulation of business employer rather than individual practitioner, e.g., licensing restaurants rather than cooks or waiters/waitresses.
- Registration of practitioners coupled with minimum standards set by state agency.
- Certification of practitioners, thereby restricting use of title to those who have demonstrated competence. Occupational group, however, would not have control of field of practice.
- Why would the use of the above not be adequate to protect the public interest?
  - Why would licensing be more effective?

Will the Public Benefit from Regulation of the Occupation?

- How will regulation help public identify qualified practitioners?
- How will regulation assure that practitioners are competent?
  - What standards are proposed for granting credentials?
  - Are all standards job related?
  - How do these standards compare with those of other states?
  - If standards differ from those of other states, can the difference be justified?
  - Are there training and experience requirements?
    - —Are these requirements of excessive duration when compared with other states? Why?
    - —Does training include supervised field experience? If so, is an additional experience requirement justified?
  - Are there restrictions on where or how experience may be acquired? Why?
  - Will alternative routes of entry be recognized?
    - —Will applicants who have not gone through prescribed training/experience be eligible for licensure or certification?
    - —Will licensure or certification in another state automatically allow an individual to be credentialed in this state?
  - Will applicants for licensure or certification be required to pass an examination?
    - —Does an examination already exist?
    - —Does it meet professional and legal testing standards (see footnote 2 on proposed uniform quidelines)?
    - —If no test exists, who will develop it and how will development cost be met?
  - Is there a "grandfather" clause in licensure?
    - —Why is it necessary?
    - —Will such practitioners be required to take a test at a later date?
- What assurance will the public have that the individuals credentialed by the state have maintained their competence?
  - Will license or certificate carry expiration date?
  - Will renewal be based solely on payment of fee?
  - Will renewal require periodic examination, peer review, evidence of continuing education or other procedures for continued competence?
- How will complaints of the public against practitioners be handled?
  - Will there be a method for receiving complaints?
  - Will there be an effective procedure for disciplining incompetent or unethical practitioners?
  - What grounds will there be for suspension or revocation of credentials?
- Is it feasible to establish a restitution fund so that the public will be able to recover money lost through actions of unscrupulous practitioners?

Will Regulation Be Harmful to the Public?

- Will competition be restricted by the occupational group, e.g., prohibiting price advertising?
- Will the occupational group control the supply of practitioners?
  - By standards more restrictive than necessary?
  - By restricting entry of those from other states who have substantially similar qualifications?
- Will regulation prevent the optimum utilization of personnel?
  - Will "scope of practice" prevent individuals from other occupational groups from providing services for which they are qualified by training and experience?
- Will regulation increase costs of goods and services to consumers?
- Will regulation decrease availability of practitioners?

- Are there safeguards in law to ensure that the occupational group does not use its powers to promote self-interest over those of public?

How Will the Regulatory Activity Be Administered?

- Will the regulatory entity be composed only of members of occupation?
  - Will there be public members on the regulatory entity? In what percentage?
- What powers will regulatory entity have?
  - Will it review qualifications, examinations, investigations, and disciplining of practitioners?
  - Will it promulgate rules and codes of conduct?
- Will actions of regulatory entity be subject to review?
  - By whom?
  - Will reviewing authority have power to override regulatory entity actions? Which ones?
- How would cost of administering regulatory entity be financed?
  - How will fees be set?
  - Will income from fees go into general fund, departmental fund, or special account controlled by regulatory entity?

Who Is Sponsoring the Regulatory Program?

- Are members of the public sponsoring regulatory program?
- What associations, organizations, or other groups in the state represent practitioners?
  - Approximately how many practitioners belong to each group?
  - What are the different levels of practice in each group?
- Which of the above groups are actively involved in sponsoring regulatory programs?
  - Are other groups supporting the effort? If not, why?

Why Is Regulation Being Sought?

- Is the occupational group seeking to enhance its status by having its own regulatory law?
- Is the occupational group claiming it is prevented from rendering services for which its members are qualified by "scope of practice" statement of another occupation?
  - If so, what efforts have been made to resolve differences?
- Is the occupational group seeking licensure in order to gain reimbursement under federal-state programs or private insurers, e.g., Medicare or Blue Cross?
- Is the public seeking greater accountability of the occupational group?

3. Several Case Studies

Questions are being asked about state schemes for regulating occupations. In some states legislators have undertaken comprehensive studies aimed at producing major structural changes in the licensing system. In others, legislators have focused on specific problems, such as the process by which decisions are made to license or not to license an occupation and whether the scope of practice for an occupation should be expanded. There has also been growing interest in devising ways to make boards more accountable. Placing public members on boards represents one such effort.

This chapter presents case studies illustrating approaches that three states have taken in dealing with licensing issues. These case studies are not offered as models to be emulated, but rather as examples of how legislators can break out of conventional molds to deal with regulatory problems.

California Public Member Act

A frequent criticism of licensing boards composed entirely of members of the regulated occupation has been that such boards sometimes use their powers to promote the interests of the occupational group rather than those of the public. Some of the ways in which they may do so are by setting excessively high entry standards or promulgating rules that unduly restrict competition.

In recent years a number of states have added one or more public members (citizens with no particular interest in the occupation or profession governed by the board) to licensing boards in an effort to ensure that the interests of the public would be represented in decisionmaking. Such appointments were often viewed as "tokenism" since public members often lacked qualifications and therefore had relatively little impact on the regulatory process.

To increase public confidence in the regulatory process, S.B. 2116 (known as the Public Member Bill) was introduced into the California legislature in 1977. This act, coupled with S. B. 1039 and S.B. 1987, provided for a majority of public members on all boards except the health-related boards and accountancy, where the ratio is one-third public members to two-thirds licensee members. These bills were enacted and went into effect on January 1, 1977. The California Public Member law recognizes the public policy nature of many decisions faced by regulatory boards and it institutes a system that ensures that these decisions will be made by a board containing a diversity of perspectives.

The Department of Consumer Affairs (the agency assigned responsibility for regulatory boards) conducted a wide-ranging "talent search" to identify prospective board members who were either knowledgeable about the occupation or who had background or specialized skills that would enable them to contribute to the work of the board. Among the initial group of appointees were a no-fee physician offering medical services to ghetto residents to the Board of Medical Examiners, a black female law professor specializing in Title VII of the Civil Rights Act to the Board of Dental Examiners, a lawyer/accountant to the Contractor's Board, and a legal aid attorney to the Collection Agency Advisory Board. Perhaps the most widely publicized appointment was that of Robert Truehaft to the Board of Funeral Directors and Embalmers. Mr. Truehalf is the husband of Jessica Mitford, author of *The American Way of Death.* Another appointment that attracted wide attention was that of an ex-convict to the Board of Vocational Nurses and Psychiatric Technicians. It has been alleged that this board had been pursuing a policy of denying licensure to ex-offenders.

The department feels its experience with public members has been highly rewarding. It now has substantial citizen participation which has brought a new perspective to board meetings and decisions. Assumptions of the past are being challenged and a broader range of skills is available for problemsolving.

To orient and educate new public and licensee board members, the department has scheduled periodic orientation sessions of one to two days duration and it has developed an *Orientation Manual* that details the administrative and disciplinary processes.

A board member newsletter, *Boardialogue,* describing board member activity and experience and containing information and news of interest to board members, is prepared and distributed every other month.

A congress of board members, made up of one elected delegate from each of the 38 boards, is being organized. The purpose of the congress is to provide a forum for the exchange of information, to develop positions on legislation affecting several boards, to formulate and discuss licensing issues, and to advise the director on future directions.

For further information contact: Mr. Richard Spohn
Director
Department of Consumer Affairs
1020 N Street
Sacramento, California 95814
(916) 445-4465

A Process for Screening Occupational Groups Seeking Regulation

Minnesota

In an effort to halt the unnecessary proliferation of licensing boards and to achieve greater coordination among existing boards, in 1976 the Minnesota legislature enacted an omnibus credentialing act, which amended an earlier law—the Allied Health Manpower Credentialing Act of 1973. This legislation requires that all health and other human services groups seeking to become regulated go through a review process carried out by the Minnesota Department of Health, Division of Health Manpower, for the Human Services Occupations Advisory Council (HSOAC) which advises the commissioner of the Department of Health.

Any group requesting regulation must first fill out a detailed applicant questionnaire documenting the need for regulation based on factors in authorizing legislation (Minn. Stat., Sec. 214.001). After it has been accepted by the commissioner and HSOAC, the completed questionnaire becomes a public document available for inspection by all interested parties. Staff reviews the application and circulates copies to related occupational groups, appropriate government agencies, and consumer groups. Recipients are invited to point out errors or exaggerations and to comment on problems that may arise if the regulatory proposal is implemented.

A number of public forums are then scheduled in various parts of the state so that interested parties may testify and answer questions with respect to the need for regulation, the mode of regulation, and the type of administrative structure. The forums are conducted by members of a subcommittee of HSOAC. The 26-member council is made up of representatives of the 10 existing health licensing boards, two other regulated groups, three related state agencies, and 11 members appointed by the governor, including five members from groups not credentialed at the present time. HSOAC is staffed by the Division of Health Manpower.

The application, staff reports, minutes, other data, written comments, and testimony received at the public forum are reviewed by the subcommittee. A recommendation, accompanied by supporting documentation, is then transmitted to the full council.

The recommendation may take three forms:

(1) No regulation of the occupation is warranted.

(2) The occupational group should be registered, with administrative authority to be vested in one of the existing health-related licensing boards or in the Minnesota Department of Health. Under registration (known elsewhere as "statutory certification" or "permissive licensure") only practitioners meeting certain qualifications may use a particular title. It would not be illegal for unregistered practitioners in other occupational groups to perform similar tasks, but only those listed on the official register could use the designated title. A recommendation to register a group may be implemented without action by the legislature.

(3) The occupational group should be licensed, either through one of the existing boards, through the Minnesota Department of Health, or through the creation of a separate board. If the recommendation to license is forwarded by HSOAC to the commissioner of the Department of Health and if the commissioner agrees, he will transmit it to the legislature for appropriate action.

Following recommendation 2, administrative rules for the registration of the group are developed through the assistance of a technical advisory group and comments received through public forums held by HSOAC. When the final draft of the rules is completed, the commissioner of the Department of Health authorizes a public hearing.

Since the inception of the applicant group evaluation process in 1974, nine credentialing decisions have been made. Five decisions for registration were for emergency medical technicians, environmental health specialists, speech language pathologists or audiologists, chemical dependency generalists, and contact lens technicians. In three cases no credentialing—neither licensure nor registration—was recommended. These groups were behavioral analysts, medical laboratory personnel, and ophthalmic medical assistants. One preliminary licensure recommendation for X-ray machine operators is being refined to determine placement of responsibility and to define competency and training levels. If licensure is recommended, this recommendation will be brought to the legislature with all the background work completed for a bill and adequate data to support the recommendation.

Supporters of the program believe that it has helped to reduce unnecessary proliferation of licensure and the further fragmentation of health and human services personnel. An added benefit may be the opportunity which HSOAC provides for interdisciplinary dialogue. This dialogue may encourage licensing board members and others to examine the complexity of the health care delivery system and the issues involved in training, regulating, and utilizing health and human services manpower. With the knowledge gained, decisions can be made from a broader and more informed perspective.

For further information contact: Ms. Corrine Larson
Director, Division of Health Manpower
Minnesota Department of Health
717 SE Delaware Street
Minneapolis, MN 55440
(612) 296-5393

Virginia

The volume of requests for the creation of new regulatory boards and the need for supplemental legislation dealing with existing boards led the Virginia General Assembly in 1972 to pass Joint Resolution 41, directing the Virginia Advisory Legislative Council to study the statutes relating to professions and occupations and their administration.

The report of the committee (H.D. 31), issued in 1974, recommended the creation of a Commission for Professional and Occupational Regulation. The commission consisted of the director of the Department of Professional and Occupational Regulation as chairperson, the commissioner of the Department of Agriculture and Commerce, the commissioner of the Department of Health, the commissioner of the Department of Labor and Industry, and three public members. In 1977, under a reorganization act, most licensing was transferred to the Department of Commerce. The name of the commission was changed to the Board of Commerce. It now consists of nine public members.

The Board of Commerce (like its predecessor) is charged with the responsibility for determining whether professions and occupations not presently regulated should be regulated and, if so, what degree of regulation should be imposed. The legislation specified that the board shall recommend to the legislature only that degree of regulation needed to protect the public health, safety, and welfare. Before recommending any new regulation, the board is directed to consider as alternatives (1) possible statutory changes in civil or criminal law, and (2) possible statutory changes to grant an appropriate state agency power to impose sufficient inspection and injunction procedures.

If these approaches are deemed inadequate, the board is then directed to consider registration or certification as possible alternatives to mandatory licensing. The following criteria are to be considered in determining the proper degree of regulation.

(1) Whether the practitioner performs a service for individuals involving a hazard to the public health, safety, or welfare, if unregulated.

(2) The views of a substantial portion of the people who do not practice the particular profession, trade, or occupation.

(3) The number of states which have regulatory provisions similar to those proposed.

(4) Whether there is sufficient demand for the service for which there is no substitute not likewise regulated and this service is required by a substantial portion of the population.

(5) Whether the profession, trade, or occupation requires high standards of public responsibility, character, and performance of each individual engaged in the profession, trade, or occupation, as evidenced by established and published codes of ethics.

(6) Whether the profession, trade, or occupation requires such skill that the public generally is not qualified to select a competent practitioner without some assurance that he has met minimum qualifications.

(7) Whether the professional, trade, or occupational associations do not adequately protect the public from incompetent, unscrupulous or irresponsible members of the profession, trade, or occupation.

(8) Whether current laws which pertain to public health, safety, and welfare generally are ineffective or inadequate.

(9) Whether the characteristics of the profession, trade, or occupation make it impractical or impossible to prohibit those practices of the profession, trade, or occupation which are detrimental to the public health, safety, and welfare.

(10) Whether the practitioner performs a service for others which may have a detrimental effect on third parties relying on the expert knowledge of the practitioner.

All requests for licensing must be considered by the Board of Commerce before going to the legislature. The board requires each applicant group to submit detailed information relating to the criteria listed in the law. Hearings are held to give the applicant group an opportunity to present its case and for other groups to appear in support of or in opposition to the request. After the board has reached a decision, it transmits its recommendations to the legislature, along with supporting documentation. If the recommendation is in favor of regulation, a detailed set of agreed-upon rules and regulations must be presented to the legislature before action is taken. In this way the legislature knows beforehand what standards and procedures will be used by the regulatory board, even though these details are not incorporated into the regulatory statute.

Since this screening approach was initiated in 1974, 17 groups have filed formal applications. Of these, seven were recommended for licensure, but only three received approval from the legislature. In addition, two groups were recommended for certification, but neither won approval in the legislature. Each year since 1974, fewer and fewer groups have managed to get through the screening process. In 1977 not a single group was recommended for licensure.

For further information contact: Mrs. Ruth Herrink
Director, Department of Professional and Occupational Regulation
P.O. Box 1-x
Richmond, Virginia 23202
(804) 786-2161

California Experimental Health Manpower Projects

In the early 1970s, the California legislature was besieged with requests to license new health professional groups. At the same time, some groups (nurses particularly) were practicing functions not allowed under the current practice acts. The legislature was faced with making decisions on licensure with minimal or conflicting information and licensing boards were faced, in some cases, with widespread violations of the practice acts.

In 1973 the legislature enacted A.B. 1503. This legislation granted authority to the California Department of Health to waive practice acts or other licensing laws to enable training programs to train practitioners in expanded functions. Responsibility for administering the program is placed in the Department of Health, Office of Health Professions Development (OHPD).

Projects are generally carried out by universities, community colleges, clinics, or hospitals. They must make application for the waiver to OHPD. Applicants must provide information on the nature of the licensing/law practice act for which waiver is being requested; the tasks trainees will be trained to perform; the training program facilities, instructional materials, and faculty; and plans to evaluate the training program and the trainees. A review committee made up of Department of Health program specialists, licensing board members, professional association members, and others conducts an informal review of the proposed training program. Suggestions from the review committee frequently result in changes in the proposed program. Based on the information collected through the process, the Department of Health director makes a final decision on approval of the applications.

Currently 28 projects are in operation. Since the program began in 1973, more than 6,000 trainees have completed the more than 75 training programs. The majority of the projects and trainees have been in the nursing field.

This program is considered quite successful by the Department of Health, licensing boards, professional associations, and the legislature. By providing for experimentation with an expanded scope of practice for a particular group, the legislature has data and experience upon which to base its decisions regarding licensure. The program has contributed to changes in the Nurse Practice Act (1975) and the Dental Practice Act (1976).

This program operates on an annual budget of less than $80,000. While state government does not fund the training programs, the program does offer state policymakers an opportunity to make decisions about the shape of the health care delivery system and on professional licensure matters.[6]

For further information contact: Dale Houghland, Chief
Office of Health Professions Development
California Department of Health
455 Capitol Mall, Suite 130
Sacramento, California 95814
(916) 322-5566

Footnotes

1. Benjamin Shimberg, *Improving Occupational Regulation* (Princeton, N.J.: Educational Testing Service, 1976).

2. Draft uniform guidelines were published in the *Federal Register* on December 30, 1977. It is expected that the guidelines will be issued in final form during the spring of 1978. These guidelines expressly cover licensing and certification boards and agencies. There is some question, however, whether such boards and agencies are subject to the requirements of Title VII when carrying out their licensing or certification responsibilities.

3. See, for example, Ruth J. Herrink, "Should Hearing Officers Replace Occupational-Professional Boards?," *State Government*, vol. 51, no. 1, winter 1978.

4. *Parker* v. *Brown*, 317 U.S. 431 (1943), and several subsequent U.S. Supreme Court decisions, including *Bates* v. *Arizona State Bar*, 97 S.Ct. 1810 (1977), suggest that restrictions on competition specifically authorized by a state acting as sovereign are not subject to the Sherman Antitrust Act.

5. New Jersey Professional and Occupational Licensing Study Committee, *Regulating Professions and Occupations* (Trenton, N.J.: 1971).

6. See, *Health Manpower Licensing: California's Demonstration Projects* (Lexington, Ky.: The Council of State Governments, 1978).

Selected Bibliography

General

Benham, Alexandra and Lee K. "Regulation through the Professions: A Perspective on Information Control." *Journal of Law and Economics*, vol. XVIII, no. 2 (October 1975), pp. 421-47.

Carroll, Sidney L., and Gaston, Robert J. *Occupational Licensing*. Final report for National Science Foundation. Knoxville, Tenn.: University of Tennessee, 1977.

Greene, Karen. *Occupational Licensing and the Supply of Nonprofessional Manpower*. Washington, D.C.: U.S. Department of Labor, 1969. (A publication by Ms. Greene listing all currently regulated occupations in the states and recent regulatory reform efforts will be published during the summer of 1978 by the U.S. Department of Labor.)

Maurizi, Alex R. *Public Policy and the Dental Care Market*. Washington, D.C.: American Enterprise Institute for Public Policy Research, 1977.

MacBride, Owen. "Restrictive Licensing of Dental Paraprofessionals." *Yale Law Journal*, vol. LXXXIII, no. 4 (March 1974), pp. 806-26.

Public Health Service, U.S. Department of Health, Education, and Welfare. *Credentialing Health Manpower*. Washington, D.C.: 1977.

Rayack, Elton. *An Economic Analysis of Occupational Licensure*. Final report for U.S. Department of Labor. Springfield, Va.: NTIS, no. PB 25-86-641AS, 1976.

Sandberg, John S. "Fair Treatment for the Licensed Professional: The Missouri Administrative Hearing Commission." *Missouri Law Review*, vol. XXXVII (1972), pp. 410-80.

Schulman, Michael, and Geesman, John. *Deceptive Packaging: A Close Look at the California State Department of Consumer Affairs*. San Francisco, Calif.: San Francisco Consumer Action, 1974.

Shepard, Lawrence. "Licensure Restrictions and the Cost of Dental Care." *Journal of Law and Economics*, vol. XXI, no. 2 (April 1978), forthcoming.

Shimberg, Benjamin. *Improving Occupational Regulation*. Final report for Employment and Training Administration, U.S. Department of Labor. Princeton, N.J.: Educational Testing Service, 1976.

Shimberg, Benjamin, et al. *Occupational Licensing: Practices and Policies*. Washington, D.C.: Public Affairs Press, 1973.

White, William D. "Dynamic Elements of Regulation: The Case of Occupational Licensure." In *Research in Law and Economics: An Annual Compilation of Research*, edited by Richard O. Zerbe. Greenwich, Conn.: Jai Press, Inc., 1978.

State Reports

Florida. Halstead, John P. *At the Cross Roads: Public Policy for Professional and Occupational Licensing and Examining in Florida*. Tallahassee, Fla.: Committee on Commerce, House of Representatives, 1974.

Hawaii. Department of Regulatory Agencies. *Reviewing the Regulators: Professional and Vocational Licensing*. Honolulu, Hawaii: 1977.

Iowa. Professional and Occupational Licensing Study Committee. *Report to the Legislative Council and the Members of the First Session of the Sixty-sixth General Assembly*. Des Moines, Iowa: 1975.

Kentucky. Interim Joint Committee on Business Organizations and Professions. *State Occupational and Professional Licensing*. Frankfort, Ky.: Kentucky General Assembly, 1975.

Michigan. Owen, Gary M., et al. *Final Report of the Special Committee to Investigate the Department of Licensing and Regulation*. Lansing, Mich.: House of Representatives, 1977.

Minnesota. Management Services Division, Department of Administration. *Occupational Licensing Boards and Host Departments in Minnesota: Part II*. St. Paul, Minn.: 1977.

Montana. Subcommittee on Occupational Licensing and Teacher Certification. *Entry into Montana's Trades, Crafts, and Professions*. Helena, Mont.: Montana Legislative Council, 1976.

New Hampshire. Townsend, Sara M., et al. *Report to the Speaker by the Special Committee on Licensing and Regulatory Boards*. Concord, N.H.: House of Representatives, 1977.

New Jersey. New Jersey Professional and Occupational Licensing Study Commission. *Regulating Professions and Occupations*. Trenton, N.J.: New Jersey Legislature, 1971.

North Carolina. Legislative Research Commission. *Licensing Boards and Small Business Matters*. Raleigh, N.C.: North Carolina General Assembly, 1977.

Oklahoma. Smith, Vivian S. *Legal Credentialing of Health Personnel in Oklahoma: Licensure and Related Practices*. Oklahoma City, Okla.: Health Manpower Information and Liaison Office, University of Oklahoma Health Sciences Center, 1976.

Tennessee. Comptroller of the Treasury, Division of State Audit, Department of Audit. *Report on the Regulatory Process within the Department of Insurance and Department of Public Health*. Nashville, Tenn.: 1977.

Washington. Payne, Paul E., et al. *Licensure Professions and Occupations*. Olympia, Wash.: Commerce Committee, House of Representatives, 1977.

MONDAY, MAY 6, 1996

MILWAUKEE JOURNAL SENTINEL

MORE, NOT LESS, GOVERNMENT?

Groups seek certification from state

But Thompson vows to veto any more 'fence me in' bills

BY STEVEN WALTERS
of the Journal Sentinel staff

Madison — Wisconsin interior designers became the 93rd profession to demand — and get — the state to license, certify, register and otherwise keep track of them last week.

But, moments after Gov. Tommy Thompson posed for pictures as he signed that bill, the governor issued this blunt warning: If any more of these bills are sent to his desk, "they are dead."

The measures are called "fence me in" bills because they help those already in the profession while making it more difficult for new applicants to join the occupation.

"We've got enough 'fence me in' legislation to last a lifetime," Thompson said.

But he may soon have to decide whether to make good on that threat.

Tuesday, the Legislature's budget committee is scheduled to vote on a bill that would add a 94th profession to the list of those that must be certified by the state Regulation and Licensing Department.

Anxiously waiting in the Capitol wings with their own "fence us in, too" plan are armored truck companies, locksmiths and security alarm installers.

The continuing stream of demands — acupuncturists in 1989, dietitians and geologists in '93, interior designers and locksmiths in '96 — is a "national problem," said state Regulation and Licensing Secretary Marlene Cummings.

Massachusetts has 440 regulated occupations and professions, Cummings said.

"It does create a lot of administrative nightmares for this department, especially since we cannot connect it with a consumer benefit," said Cummings, who has run

Please see **GROUPS** *page 7*

Groups/ Many seek certification

From page 1

the agency since January 1987.

And, Cummings said, the demands that the state regulate more professionals run counter to the current trend toward less, not more, government.

Although state licensing can allow some professionals to charge more for their services, Cummings said there are a number of reasons professions seek state licensing.

Some health professionals need to be state-licensed to qualify for payment from insurance companies, Cummings said.

In other cases, an occupation might demand to be licensed because its peers in a neighboring state have won that privilege.

Minnesota already had licensed interior designers, for example, Cummings said.

Wisconsin interior designers expect about 1,200 to apply for state registration, but Cummings said that as many as 1,500 may do so.

Interior designers had first pushed for their own regulatory board, which could draft and change standards for the profession. But Cummings said she fought that and instead won a certification-based system that is easier to administer.

Under the bill, sponsored by Rep. Lolita Schneiders (R-Menomonee Falls) and Senate President Brian Rude (R-Coon Valley), only those who meet certain education, experience and examination standards can be a "Wisconsin Registered Interior Designer."

The bill does not prohibit anyone from actually practicing interior design, however.

Some professions simply don't need state regulation, Cummings said. As an example, she pointed to Wisconsin's 1,7 manicurists, the 21 manicurir instructors and the state's s manicuring schools, all license and regulated by the state.

But, Cummings said, if she other state officials suggest d ing away with the licensing any occupations, those wh make their living in those pr fessions would stir up a politic firestorm that would prever any changes.

Cummings said she is we aware of the push by locksmit and security alarm installers f state licensure or certification.

"That's a troublesome area she said, because those wh would be certified often wo with local police and sheriff departments and the potentia for feuds between the gover ments exists.

If the Legislature insists th the Regulation and Licensin Department monitor those o cupations, "I would have t have more employees," Cum mings said.

'Fence me in' bills

Professions that won state licensure or certification in recent years, and the number of professionals in each as of mid-1995:

1991	
Advanced nurse practitioner	145
Marriage and family therapists	190
Professional counselor	3,081
Social workers (four categories)	19,222
1993	
Interior designers	1,500*

* Estimate

Pending before Legislatur

- Athletic trainers
- Radon mitigators
- Locksmiths
- Burglar alarm installers
- Tattoo artists
- Permanent makeup artist
- Home inspectors
- Paralegals

Source: Wisconsin Regulation and Licensing Department — Journal Sent

THE END

5/19/97

Ron Bochnen

phone # 827-6890

Notify him our our next committee hearing.

Interest of AB 334!

√ left message on answering machine 10/3