

2003-2004
SESSION LAWS
OF THE
STATE OF WASHINGTON

2003 THIRD SPECIAL SESSION
FIFTY-EIGHTH LEGISLATURE

Convened December 5, 2003. Adjourned December 5, 2003.

2004 REGULAR SESSION
FIFTY-EIGHTH LEGISLATURE

Convened January 12, 2004. Adjourned March 11, 2004.



Published at Olympia by the Statute Law Committee under
Chapter 6, Laws of 1969.

DENNIS W. COOPER
Code Reviser

<http://slc.leg.wa.gov>

WASHINGTON SESSION LAWS GENERAL INFORMATION

1. EDITIONS AVAILABLE.

- (a) *General Information.* The session laws are printed successively in two editions:
- (i) a temporary pamphlet edition consisting of a series of one or more paper bound books, which are published as soon as possible following the session, at random dates as accumulated; followed by
 - (ii) a permanent hardbound edition containing the accumulation of all laws adopted in the legislative session. Both editions contain a subject index and tables indicating Revised Code of Washington sections affected.
- (b) *Where and how obtained - price.* Both the temporary and permanent session laws may be ordered from the Statute Law Committee, Legislative Building, P.O. Box 40552, Olympia, Washington 98504-0552. The temporary pamphlet edition costs \$21.68 per set (\$20.00 plus \$1.68 for state and local sales tax at 8.4%). The permanent edition costs \$75.88 per set (\$35.00 per volume plus \$5.88 for state and local sales tax at 8.4%). All orders must be accompanied by payment.

2. PRINTING STYLE - INDICATION OF NEW OR DELETED MATTER

Both editions of the session laws present the laws in the form in which they were enacted by the legislature. This style quickly and graphically portrays the current changes to existing law as follows:

- (a) In amendatory sections
 - (i) underlined matter is new matter.
 - (ii) deleted matter is (~~lined out and bracketed between double parentheses~~).
- (b) Complete new sections are prefaced by the words NEW SECTION.

3. PARTIAL VETOES

- (a) Vetoed matter is *printed in bold italics*.
- (b) Pertinent excerpts of the governor's explanation of partial vetoes are printed at the end of the chapter concerned.

4. EDITORIAL CORRECTIONS. Words and clauses inserted in the session laws under the authority of RCW 44.20.060 are enclosed in [brackets].

5. EFFECTIVE DATE OF LAWS

- (a) The state Constitution provides that unless otherwise qualified, the laws of any session take effect ninety days after adjournment sine die. The Secretary of State has determined the pertinent date for the Laws of the 2004 regular session to be June 10, 2004 (midnight June 9th).
- (b) Laws that carry an emergency clause take effect immediately upon approval by the Governor.
- (c) Laws that prescribe an effective date take effect upon that date.

6. INDEX AND TABLES

A cumulative index and tables of all 2003 3rd special session and 2004 laws may be found at the back of the final pamphlet edition and the permanent hardbound edition.

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WASHINGTON LAWS

2003 THIRD SPECIAL SESSION

WASHINGTON LAWS

2004 REGULAR SESSION

CHAPTER 1

[House Bill 2297]

2004 PRESIDENTIAL PRIMARY

AN ACT Relating to the cancellation of the 2004 presidential primary; amending RCW 29.19.020 and 29A.56.020; providing an effective date; providing expiration dates; and declaring an emergency.

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

Sec. 1. RCW 29.19.020 and 1995 1st sp.s. c 20 s 1 are each amended to read as follows:

(1) On the fourth Tuesday in May of each year in which a president of the United States is to be nominated and elected, a presidential primary shall be held at which voters may vote for the nominee of a major political party for the office of president. The secretary of state may propose an alternative date for the primary no later than the first day of August of the year before the year in which a president is to be nominated and elected.

(2) No later than the first day of September of the year before the year in which a presidential nominee is selected, the state committee of any major political party that will use the primary results for candidates of that party may propose an alternative date for that primary.

(3) If an alternative date is proposed under subsection (1) or (2) of this section, a committee consisting of the chair and the vice-chair of the state committee of each major political party, the secretary of state, the majority leader and minority leader of the senate, and the speaker and the minority leader of the house of representatives shall meet and, if affirmed by a two-thirds vote of the members of the committee, the date of the primary shall be changed. The committee shall meet and decide on the proposed alternate date not later than the first day of October of the year before the year in which a presidential nominee is selected. The secretary of state shall convene and preside over the meeting of the committee. A committee member other than a legislator may appoint, in writing, a designee to serve on his or her behalf. A legislator who is a member of the committee may appoint, in writing, another legislator to serve on his or her behalf.

(4) If an alternate date is approved under this section, the secretary of state shall adopt rules under RCW 29.19.070 to adjust the deadlines in RCW 29.19.030 and related provisions of this chapter to correspond with the date that has been approved.

(5) No presidential primary may be held in 2004.

Sec. 2. RCW 29A.56.020 and 2003 c 111 s 1402 are each amended to read as follows:

(1) On the fourth Tuesday in May of each year in which a president of the United States is to be nominated and elected, a presidential primary shall be held at which voters may vote for the nominee of a major political party for the office of president. The secretary of state may propose an alternative date for the primary no later than the first day of August of the year before the year in which a president is to be nominated and elected.

(2) No later than the first day of September of the year before the year in which a presidential nominee is selected, the state committee of any major

political party that will use the primary results for candidates of that party may propose an alternative date for that primary.

(3) If an alternative date is proposed under subsection (1) or (2) of this section, a committee consisting of the chair and the vice-chair of the state committee of each major political party, the secretary of state, the majority leader and minority leader of the senate, and the speaker and the minority leader of the house of representatives shall meet and, if affirmed by a two-thirds vote of the members of the committee, the date of the primary shall be changed. The committee shall meet and decide on the proposed alternate date not later than the first day of October of the year before the year in which a presidential nominee is selected. The secretary of state shall convene and preside over the meeting of the committee. A committee member other than a legislator may appoint, in writing, a designee to serve on his or her behalf. A legislator who is a member of the committee may appoint, in writing, another legislator to serve on his or her behalf.

(4) If an alternate date is approved under this section, the secretary of state shall adopt rules under RCW 29A.04.620 to adjust the deadlines in RCW 29A.56.030 and related provisions of this chapter to correspond with the date that has been approved.

(5) No presidential primary may be held in 2004.

NEW SECTION. Sec. 3. Section 1 of this act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately.

NEW SECTION. Sec. 4. Section 1 of this act expires July 1, 2004.

NEW SECTION. Sec. 5. Section 2 of this act takes effect July 1, 2004.

NEW SECTION. Sec. 6. Section 2 of this act expires January 1, 2005.

Passed by the House December 5, 2003.

Passed by the Senate December 5, 2003.

Approved by the Governor December 9, 2003.

Filed in Office of Secretary of State December 9, 2003.

CHAPTER 1

[Initiative 841]

ERGONOMICS REGULATIONS

AN ACT Relating to repealing state ergonomics regulations unless a uniform federal standard is required; adding new sections to chapter 49.17 RCW; and creating a new section.

Be it enacted by the People of the State of Washington:

NEW SECTION. Sec. 1. A new section is added to chapter 49.17 RCW to read as follows:

Washington must aid businesses in creating new jobs. Governor Locke's competitiveness council has identified repealing the state ergonomics regulations as a top priority for improving the business climate and creating jobs in Washington state. A broad coalition of democrats and republicans have introduced bills repeatedly to bring legislative oversight to this issue. This measure will repeal an expensive, unproven rule. This measure will aid in creating jobs and employing the people of Washington.

NEW SECTION. Sec. 2. A new section is added to chapter 49.17 RCW to read as follows:

For the purposes of this section, "state ergonomics regulations" are defined as the rules addressing musculoskeletal disorders, adopted on May 26, 2000, by the director of the department of labor and industries, and codified as WAC 296-62-05101 through 296-62-05176. The state ergonomics regulations, filed on May 26, 2000, by the director and codified as WAC 296-62-05101 through 296-62-05176 are repealed. The director shall not have the authority to adopt any new or amended rules dealing with musculoskeletal disorders, or that deal with the same or similar activities as these rules being repealed, until and to the extent required by congress or the federal occupational safety and health administration.

NEW SECTION. Sec. 3. The provisions of this act are to be liberally construed to effectuate the intent, policies, and purposes of this act.

NEW SECTION. Sec. 4. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected.

Originally filed in Office of Secretary of State January 29, 2003.

Approved by the People of the State of Washington in the General Election on November 4, 2003.

CHAPTER 2

[Engrossed Substitute House Bill 2546]

HIGH TECHNOLOGY TAX INCENTIVES

AN ACT Relating to high technology and research and development tax incentives; amending RCW 82.63.005, 82.04.4452, 82.63.010, 82.63.020, 82.63.030, 82.63.045, 82.63.070, and 82.04.190; adding new sections to chapter 82.04 RCW; providing an effective date; and providing expiration dates.

Be it enacted by the Legislature of the State of Washington:

Sec. 1. RCW 82.63.005 and 1994 sp.s. c 5 s 1 are each amended to read as follows:

The legislature finds that high-wage, high-skilled jobs are vital to the economic health of the state's citizens, and that targeted tax incentives will encourage the formation of high-wage, high-skilled jobs. The legislature also finds that tax incentives should be subject to the same rigorous requirements for efficiency and accountability as are other expenditure programs, and that tax incentives should therefore be focused to provide the greatest possible return on the state's investment.

The legislature also finds that high-technology businesses are a vital and growing source of high-wage, high-skilled jobs in this state, and that the high-technology sector is a key component of the state's effort to encourage economic diversification. However, the legislature finds that many high-technology businesses incur significant costs associated with research and development and pilot scale manufacturing many years before a marketable product can be produced, and that current state tax policy discourages the growth of these companies by taxing them long before they become profitable.

The legislature further finds that stimulating growth of high-technology businesses early in their development cycle, when they are turning ideas into marketable products, will build upon the state's established high-technology base, creating additional research and development jobs and subsequent manufacturing facilities.

For these reasons, the legislature hereby establishes a program of business and occupation tax credits for qualified research and development expenditures. The legislature also hereby establishes a tax deferral program for high-technology research and development and pilot scale manufacturing facilities. The legislature declares that these limited programs serve the vital public purposes of incenting expenditures in research and development, supporting, and sustaining as they develop new technologies and products, and creating quality employment opportunities in this state. The legislature further declares its intent to create a contract within the meaning of Article I, section 23 of the state Constitution as to those businesses that make capital investments in consideration of the tax deferral program established in this chapter.

Sec. 2. RCW 82.04.4452 and 2000 c 103 s 7 are each amended to read as follows:

(1) In computing the tax imposed under this chapter, a credit is allowed for each person whose research and development spending during the year in which the credit is claimed exceeds 0.92 percent of the person's taxable amount during the same calendar year.

(2) The credit ~~((is equal to))~~ shall be calculated as follows: (a) Determine the greater of the amount of qualified research and development expenditures of a person or eighty percent of amounts received by a person other than a public educational or research institution in compensation for the conduct of qualified research and development~~((, multiplied))~~; (b) subtract 0.92 percent of the person's taxable amount from the amount determined under (a) of this subsection; (c) multiply the amount determined under (b) of this subsection by the rate provided in RCW 82.04.260(3) in the case of a nonprofit corporation or nonprofit association engaging within this state in research and development, and the person's average tax rate ~~((provided in RCW 82.04.290(2)))~~ for every other person.

(3) Any person entitled to the credit provided in subsection (2) of this section as a result of qualified research and development conducted under contract may assign all or any portion of the credit to the person contracting for the performance of the qualified research and development.

(4) The credit, including any credit assigned to a person under subsection (3) of this section, shall be taken against taxes due for the same calendar year in which the qualified research and development expenditures are incurred. The credit, including any credit assigned to a person under subsection (3) of this section, for each calendar year shall not exceed the lesser of two million dollars or the amount of tax otherwise due under this chapter for the calendar year.

(5) Any person taking the credit, including any credit assigned to a person under subsection (3) of this section, whose research and development spending during the calendar year in which the credit is claimed fails to exceed 0.92 percent of the person's taxable amount during the same calendar year shall be liable for payment of the additional taxes represented by the amount of credit taken together with interest, but not penalties. Interest shall be due at the rate provided for delinquent excise taxes retroactively to the date the credit was taken until the taxes are paid. Any credit assigned to a person under subsection (3) of this section that is disallowed as a result of this section may be taken by the person who performed the qualified research and development subject to the limitations set forth in subsection (4) of this section.

(6) Any person claiming the credit, and any person assigning a credit as provided in subsection (3) of this section, shall file an ~~((affidavit))~~ annual report in a form prescribed by the department which shall include the amount of the credit claimed, ~~((an estimate of))~~ the ~~((anticipated))~~ qualified research and development expenditures during the calendar year for which the credit is claimed, ~~((an estimate of))~~ and the taxable amount during the calendar year for which the credit is claimed, and such additional information as the department may prescribe. The report is due by March 31st following any year a credit is taken.

(7)(a) The legislature finds that accountability and effectiveness are important aspects of setting tax policy. In order to make policy choices regarding the best use of limited state resources the legislature needs information on how a tax incentive is used.

(b) A person claiming the credit shall agree to ~~((supply the department with information necessary to measure the results of the tax credit program for qualified research and development expenditures))~~ complete an annual survey. The annual survey is in addition to the annual report due under subsection (6) of this section. The survey is due by March 31st following any year in which a credit is taken. The survey shall include the amount of the tax credit taken, the number of new products or research projects by general classification, and the number of trademarks, patents, and copyrights associated with the research and development activities for which a credit was taken. The survey shall also include the following information for employment positions in Washington:

(i) The number of total employment positions;

(ii) Full-time, part-time, and temporary employment positions as a percent of total employment;

(iii) The number of employment positions according to the following wage bands: Less than thirty thousand dollars; thirty thousand dollars or greater, but

less than sixty thousand dollars; and sixty thousand dollars or greater. A wage band containing fewer than three individuals may be combined with another wage band; and

(iv) The number of employment positions that have employer-provided medical, dental, and retirement benefits, by each of the wage bands.

(c) The department may request additional information necessary to measure the results of the tax credit program, to be submitted at the same time as the survey.

(d) All information collected under this subsection, except the amount of the tax credit taken, is deemed taxpayer information under RCW 82.32.330 and is not disclosable. Information on the amount of tax credit taken is not subject to the confidentiality provisions of RCW 82.32.330 and may be disclosed to the public upon request except that persons taking less than ten thousand dollars of credit during the period covered by the survey may request the department to treat the tax credit amount as confidential under RCW 82.32.330.

(e) If a person fails to complete the survey required under this subsection by the due date, the person entitled to the credit provided in subsection (2) of this section is not eligible to take or assign the credit provided in subsection (2) of this section in the year the person failed to complete the survey.

(8) The department shall use the information from subsection (7) of this section to prepare summary descriptive statistics by category. No fewer than three taxpayers shall be included in any category. The department shall report these statistics to the legislature each year by September 1st.

(9) The department shall use the information ~~((required under))~~ from subsection (7) of this section to ~~((perform three assessments on))~~ study the tax credit program authorized under this section. ~~((The assessments will take place in 1997, 2000, and 2003. The department shall prepare reports on each assessment and deliver their reports by September 1, 1997, September 1, 2000, and September 1, 2003. The assessments))~~ The department shall report to the legislature by December 1, 2009, and December 1, 2013. The reports shall measure the effect of the program on job creation, the number of jobs created for Washington residents, company growth, the introduction of new products, the diversification of the state's economy, growth in research and development investment, the movement of firms or the consolidation of firms' operations into the state, and such other factors as the department selects.

~~((9))~~ (10) For the purpose of this section:

(a) "Average tax rate" means a person's total tax under this chapter for the reporting period divided by the taxpayer's total taxable income under this chapter for the reporting period.

(b) "Qualified research and development expenditures" means operating expenses, including wages, compensation of a proprietor or a partner in a partnership as determined under rules adopted by the department, benefits, supplies, and computer expenses, directly incurred in qualified research and development by a person claiming the credit provided in this section. The term does not include amounts paid to a person other than a public educational or research institution to conduct qualified research and development. Nor does the term include capital costs and overhead, such as expenses for land, structures, or depreciable property.

~~((b))~~ (c) "Qualified research and development" shall have the same meaning as in RCW 82.63.010.

~~((e))~~ (d) "Research and development spending" means qualified research and development expenditures plus eighty percent of amounts paid to a person other than a public educational or research institution to conduct qualified research and development.

~~((d))~~ (e) "Taxable amount" means the taxable amount subject to the tax imposed in this chapter required to be reported on the person's combined excise tax returns during the year in which the credit is claimed, less any taxable amount for which a credit is allowed under RCW 82.04.440.

~~((10))~~ (11) This section expires ~~((December 31, 2004))~~ January 1, 2015.

Sec. 3. RCW 82.63.010 and 1995 1st sp.s. c 3 s 12 are each amended to read as follows:

Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Advanced computing" means technologies used in the designing and developing of computing hardware and software, including innovations in designing the full spectrum of hardware from hand-held calculators to super computers, and peripheral equipment.

(2) "Advanced materials" means materials with engineered properties created through the development of specialized processing and synthesis technology, including ceramics, high value-added metals, electronic materials, composites, polymers, and biomaterials.

(3) "Applicant" means a person applying for a tax deferral under this chapter.

(4) "Biotechnology" means the application of technologies, such as recombinant DNA techniques, biochemistry, molecular and cellular biology, genetics and genetic engineering, cell fusion techniques, and new bioprocesses, using living organisms, or parts of organisms, to produce or modify products, to improve plants or animals, to develop microorganisms for specific uses, to identify targets for small molecule pharmaceutical development, or to transform biological systems into useful processes and products or to develop microorganisms for specific uses.

(5) "Department" means the department of revenue.

(6) "Electronic device technology" means technologies involving microelectronics; semiconductors; electronic equipment and instrumentation; radio frequency, microwave, and millimeter electronics; optical and optoelectrical devices; and data and digital communications and imaging devices.

(7) "Eligible investment project" means an investment project which either initiates a new operation, or expands or diversifies a current operation by expanding, renovating, or equipping an existing facility. The lessor or owner of the qualified building is not eligible for a deferral unless:

(a) The underlying ownership of the buildings, machinery, and equipment vests exclusively in the same person~~((-or unless))~~; or

(b)(i) The lessor by written contract agrees to pass the economic benefit of the deferral to the lessee ~~((in the form of reduced rent payments))~~;

(ii) The lessee that receives the economic benefit of the deferral agrees in writing with the department to complete the annual survey required under RCW 82.63.020(2); and

(iii) The economic benefit of the deferral passed to the lessee is no less than the amount of tax deferred by the lessor and is evidenced by written documentation of any type of payment, credit, or other financial arrangement between the lessor or owner of the qualified building and the lessee.

(8) "Environmental technology" means assessment and prevention of threats or damage to human health or the environment, environmental cleanup, and the development of alternative energy sources.

(9) "Investment project" means an investment in qualified buildings or qualified machinery and equipment, including labor and services rendered in the planning, installation, and construction or improvement of the project.

(10) "Person" has the meaning given in RCW 82.04.030 and includes state universities as defined in RCW 28B.10.016.

(11) "Pilot scale manufacturing" means design, construction, and testing of preproduction prototypes and models in the fields of biotechnology, advanced computing, electronic device technology, advanced materials, and environmental technology other than for commercial sale. As used in this subsection, "commercial sale" excludes sales of prototypes or sales for market testing if the total gross receipts from such sales of the product, service, or process do not exceed one million dollars.

(12) "Qualified buildings" means construction of new structures, and expansion or renovation of existing structures for the purpose of increasing floor space or production capacity used for pilot scale manufacturing or qualified research and development, including plant offices and other facilities that are an essential or an integral part of a structure used for pilot scale manufacturing or qualified research and development. If a building is used partly for pilot scale manufacturing or qualified research and development, and partly for other purposes, the applicable tax deferral shall be determined by apportionment of the costs of construction under rules adopted by the department.

(13) "Qualified machinery and equipment" means fixtures, equipment, and support facilities that are an integral and necessary part of a pilot scale manufacturing or qualified research and development operation. "Qualified machinery and equipment" includes: Computers; software; data processing equipment; laboratory equipment, instrumentation, and other devices used in a process of experimentation to develop a new or improved pilot model, plant process, product, formula, invention, or similar property; manufacturing components such as belts, pulleys, shafts, and moving parts; molds, tools, and dies; vats, tanks, and fermenters; operating structures; and all other equipment used to control, monitor, or operate the machinery. For purposes of this chapter, qualified machinery and equipment must be either new to the taxing jurisdiction of the state or new to the certificate holder, except that used machinery and equipment may be treated as qualified machinery and equipment if the certificate holder either brings the machinery and equipment into Washington or makes a retail purchase of the machinery and equipment in Washington or elsewhere.

(14) "Qualified research and development" means research and development performed within this state in the fields of advanced computing, advanced materials, biotechnology, electronic device technology, and environmental technology.

(15) "Recipient" means a person receiving a tax deferral under this chapter.

(16) "Research and development" means activities performed to discover technological information, and technical and nonroutine activities concerned with translating technological information into new or improved products, processes, techniques, formulas, inventions, or software. The term includes exploration of a new use for an existing drug, device, or biological product if the new use requires separate licensing by the federal food and drug administration under chapter 21, C.F.R., as amended. The term does not include adaptation or duplication of existing products where the products are not substantially improved by application of the technology, nor does the term include surveys and studies, social science and humanities research, market research or testing, quality control, sale promotion and service, computer software developed for internal use, and research in areas such as improved style, taste, and seasonal design.

(17)(a) "Initiation of construction" means the date that a building permit is issued under the building code adopted under RCW 19.27.031 for:

(i) Construction of the qualified building, if the underlying ownership of the building vests exclusively with the person receiving the economic benefit of the deferral;

(ii) Construction of the qualified building, if the economic benefits of the deferral are passed to a lessee as provided in subsection (7) of this section; or

(iii) Tenant improvements for a qualified building, if the economic benefits of the deferral are passed to a lessee as provided in subsection (7) of this section.

(b) "Initiation of construction" does not include soil testing, site clearing and grading, site preparation, or any other related activities that are initiated before the issuance of a building permit for the construction of the foundation of the building.

(c) If the investment project is a phased project, "initiation of construction" shall apply separately to each phase.

Sec. 4. RCW 82.63.020 and 1994 sp.s. c 5 s 4 are each amended to read as follows:

(1) Application for deferral of taxes under this chapter must be made before initiation of construction of, or acquisition of equipment or machinery for the investment project. The application shall be made to the department in a form and manner prescribed by the department. The application shall contain information regarding the location of the investment project, the applicant's average employment in the state for the prior year, estimated or actual new employment related to the project, estimated or actual wages of employees related to the project, estimated or actual costs, time schedules for completion and operation, and other information required by the department. The department shall rule on the application within sixty days.

(2)(a) The legislature finds that accountability and effectiveness are important aspects of setting tax policy. In order to make policy choices regarding the best use of limited state resources the legislature needs information on how a tax incentive is used.

(b) Applicants for deferral of taxes under this chapter shall agree to ((supply the department with nonproprietary information necessary to measure the results of the tax deferral program for high technology research and development and pilot scale manufacturing facilities)) complete an annual survey. If the economic benefits of the deferral are passed to a lessee as provided in RCW 82.63.010(7),

the lessee shall agree to complete the annual survey and the applicant is not required to complete the annual survey. The survey is due by March 31st of the year following the calendar year in which the investment project is certified by the department as having been operationally complete and the seven succeeding calendar years. The survey shall include the amount of tax deferred, the number of new products or research projects by general classification, and the number of trademarks, patents, and copyrights associated with activities at the investment project. The survey shall also include the following information for employment positions in Washington:

(i) The number of total employment positions;

(ii) Full-time, part-time, and temporary employment positions as a percent of total employment;

(iii) The number of employment positions according to the following wage bands: Less than thirty thousand dollars; thirty thousand dollars or greater, but less than sixty thousand dollars; and sixty thousand dollars or greater. A wage band containing fewer than three individuals may be combined with another wage band; and

(iv) The number of employment positions that have employer-provided medical, dental, and retirement benefits, by each of the wage bands.

(c) The department may request additional information necessary to measure the results of the deferral program, to be submitted at the same time as the survey.

(d) All information collected under this subsection, except the amount of the tax deferral taken, is deemed taxpayer information under RCW 82.32.330 and is not disclosable. Information on the amount of tax deferral taken is not subject to the confidentiality provisions of RCW 82.32.330 and may be disclosed to the public upon request.

(3) The department shall use the information from this section to prepare summary descriptive statistics by category. No fewer than three taxpayers shall be included in any category. The department shall report these statistics to the legislature each year by September 1st.

(4) The department shall use the information to ~~((perform three assessments or))~~ study the tax deferral program authorized under this chapter. ~~((The assessments will take place in 1997, 2000, and 2003.))~~ The department shall ~~((prepare reports on each assessment and deliver their reports by September 1, 1997, September 1, 2000, and September 1, 2003))~~ report to the legislature by December 1, 2009, and December 1, 2013. The ~~((assessments))~~ reports shall measure the effect of the program on job creation, the number of jobs created for Washington residents, company growth, the introduction of new products, the diversification of the state's economy, growth in research and development investment, the movement of firms or the consolidation of firms' operations into the state, and such other factors as the department selects.

Sec. 5. RCW 82.63.030 and 1994 sp.s. c 5 s 5 are each amended to read as follows:

(1) Except as provided in subsection (2) of this section, the department shall issue a sales and use tax deferral certificate for state and local sales and use taxes due under chapters 82.08, 82.12, and 82.14 RCW on each eligible investment project.

(2) No certificate may be issued for an investment project that has already received a deferral under chapter 82.60 or 82.61 RCW or this chapter, except that an investment project for qualified research and development that has already received a deferral may also receive an additional deferral certificate for adapting the investment project for use in pilot scale manufacturing.

(3) This section shall expire (~~July~~) January 1, ((2004)) 2015.

Sec. 6. RCW 82.63.045 and 2000 c 106 s 10 are each amended to read as follows:

(1) Except as provided in subsection (2) of this section, taxes deferred under this chapter need not be repaid.

(2)(a) If, on the basis of (~~a report~~) survey under RCW 82.63.020 or other information, the department finds that an investment project is used for purposes other than qualified research and development or pilot scale manufacturing at any time during the calendar year in which the investment project is certified by the department as having been operationally completed, or at any time during any of the seven succeeding calendar years, a portion of deferred taxes shall be immediately due according to the following schedule:

| Year in which use occurs | % of deferred taxes due |
|--------------------------|-------------------------|
| 1 | 100% |
| 2 | 87.5% |
| 3 | 75% |
| 4 | 62.5% |
| 5 | 50% |
| 6 | 37.5% |
| 7 | 25% |
| 8 | 12.5% |

(b) If a recipient of the deferral fails to complete the annual survey required under RCW 82.63.020 by the date due, 12.5 percent of the deferred tax shall be immediately due. If the economic benefits of the deferral are passed to a lessee as provided in RCW 82.63.010(7), the lessee shall be responsible for payment to the extent the lessee has received the economic benefit.

(c) If an investment project is used for purposes other than qualified research and development or pilot scale manufacturing at any time during the calendar year in which the investment project is certified as having been operationally complete and the recipient of the deferral fails to complete the annual survey due under RCW 82.63.020, the portion of deferred taxes immediately due is the amount on the schedule in (a) of this subsection. If the economic benefits of the deferral are passed to a lessee as provided in RCW 82.63.010(7), the lessee shall be responsible for payment to the extent the lessee has received the economic benefit.

(3) The department shall assess interest at the rate provided for delinquent taxes, but not penalties, retroactively to the date of deferral. The debt for deferred taxes will not be extinguished by insolvency or other failure of the recipient. Transfer of ownership does not terminate the deferral. The deferral is

transferred, subject to the successor meeting the eligibility requirements of this chapter, for the remaining periods of the deferral.

~~((3))~~ (4) Notwithstanding subsection (2) of this section, deferred taxes on the following need not be repaid:

(a) Machinery and equipment, and sales of or charges made for labor and services, which at the time of purchase would have qualified for exemption under RCW 82.08.02565; and

(b) Machinery and equipment which at the time of first use would have qualified for exemption under RCW 82.12.02565.

Sec. 7. RCW 82.63.070 and 1994 sp.s. c 5 s 9 are each amended to read as follows:

Applications ~~((and other information))~~ received by the department under this chapter are not confidential and are subject to disclosure.

Sec. 8. RCW 82.04.190 and 2002 c 367 s 2 are each amended to read as follows:

"Consumer" means the following:

(1) Any person who purchases, acquires, owns, holds, or uses any article of tangible personal property irrespective of the nature of the person's business and including, among others, without limiting the scope hereof, persons who install, repair, clean, alter, improve, construct, or decorate real or personal property of or for consumers other than for the purpose (a) of resale as tangible personal property in the regular course of business or (b) of incorporating such property as an ingredient or component of real or personal property when installing, repairing, cleaning, altering, imprinting, improving, constructing, or decorating such real or personal property of or for consumers or (c) of consuming such property in producing for sale a new article of tangible personal property or a new substance, of which such property becomes an ingredient or component or as a chemical used in processing, when the primary purpose of such chemical is to create a chemical reaction directly through contact with an ingredient of a new article being produced for sale or (d) purchases for the purpose of consuming the property purchased in producing ferrosilicon which is subsequently used in producing magnesium for sale, if the primary purpose of such property is to create a chemical reaction directly through contact with an ingredient of ferrosilicon;

(2)(a) Any person engaged in any business activity taxable under RCW 82.04.290; (b) any person who purchases, acquires, or uses any telephone service as defined in RCW 82.04.065, other than for resale in the regular course of business; (c) any person who purchases, acquires, or uses any service defined in RCW 82.04.050(2)(a) or any amusement and recreation service defined in RCW 82.04.050(3)(a), other than for resale in the regular course of business; and (d) any person who is an end user of software;

(3) Any person engaged in the business of contracting for the building, repairing or improving of any street, place, road, highway, easement, right of way, mass public transportation terminal or parking facility, bridge, tunnel, or trestle which is owned by a municipal corporation or political subdivision of the state of Washington or by the United States and which is used or to be used primarily for foot or vehicular traffic including mass transportation vehicles of any kind as defined in RCW 82.04.280, in respect to tangible personal property

when such person incorporates such property as an ingredient or component of such publicly owned street, place, road, highway, easement, right of way, mass public transportation terminal or parking facility, bridge, tunnel, or trestle by installing, placing or spreading the property in or upon the right of way of such street, place, road, highway, easement, bridge, tunnel, or trestle or in or upon the site of such mass public transportation terminal or parking facility;

(4) Any person who is an owner, lessee or has the right of possession to or an easement in real property which is being constructed, repaired, decorated, improved, or otherwise altered by a person engaged in business, excluding only (a) municipal corporations or political subdivisions of the state in respect to labor and services rendered to their real property which is used or held for public road purposes, and (b) the United States, instrumentalities thereof, and county and city housing authorities created pursuant to chapter 35.82 RCW in respect to labor and services rendered to their real property. Nothing contained in this or any other subsection of this definition shall be construed to modify any other definition of "consumer";

(5) Any person who is an owner, lessee, or has the right of possession to personal property which is being constructed, repaired, improved, cleaned, imprinted, or otherwise altered by a person engaged in business;

(6) Any person engaged in the business of constructing, repairing, decorating, or improving new or existing buildings or other structures under, upon, or above real property of or for the United States, any instrumentality thereof, or a county or city housing authority created pursuant to chapter 35.82 RCW, including the installing or attaching of any article of tangible personal property therein or thereto, whether or not such personal property becomes a part of the realty by virtue of installation; also, any person engaged in the business of clearing land and moving earth of or for the United States, any instrumentality thereof, or a county or city housing authority created pursuant to chapter 35.82 RCW. Any such person shall be a consumer within the meaning of this subsection in respect to tangible personal property incorporated into, installed in, or attached to such building or other structure by such person, except that consumer does not include any person engaged in the business of constructing, repairing, decorating, or improving new or existing buildings or other structures under, upon, or above real property of or for the United States, or any instrumentality thereof, if the investment project would qualify for sales and use tax deferral under chapter 82.63 RCW if undertaken by a private entity;

(7) Any person who is a lessor of machinery and equipment, the rental of which is exempt from the tax imposed by RCW 82.08.020 under RCW 82.08.02565, with respect to the sale of or charge made for tangible personal property consumed in respect to repairing the machinery and equipment, if the tangible personal property has a useful life of less than one year. Nothing contained in this or any other subsection of this section shall be construed to modify any other definition of "consumer";

(8) Any person engaged in the business of cleaning up for the United States, or its instrumentalities, radioactive waste and other byproducts of weapons production and nuclear research and development; and

(9) Until July 1, 2003, any person engaged in the business of conducting environmental remedial action as defined in RCW 82.04.2635(2).

NEW SECTION. Sec. 9. A new section is added to chapter 82.04 RCW to read as follows:

This chapter does not apply to amounts received by any person for research and development under the federal small business innovation research program (114 Stat. 2763A; 15 U.S.C. Sec. 638 et seq.).

NEW SECTION. Sec. 10. A new section is added to chapter 82.04 RCW to read as follows:

This chapter does not apply to amounts received by any person for research and development under the federal small business technology transfer program (115 Stat. 263; 15 U.S.C. Sec. 638 et seq.).

NEW SECTION. Sec. 11. Sections 9 and 10 of this act take effect July 1, 2004.

Passed by the House January 30, 2004.

Passed by the Senate February 10, 2004.

Approved by the Governor February 19, 2004.

Filed in Office of Secretary of State February 19, 2004.

CHAPTER 3

[Engrossed Substitute House Bill 2933]

COLLECTIVE BARGAINING

AN ACT Relating to clarifying collective bargaining processes for individual providers; amending RCW 74.39A.270, 74.39A.300, 74.39A.901, 41.56.030, and 41.56.113; adding a new section to chapter 41.04 RCW; adding a new section to chapter 43.01 RCW; and declaring an emergency.

Be it enacted by the Legislature of the State of Washington:

Sec. 1. RCW 74.39A.270 and 2002 c 3 s 6 are each amended to read as follows:

(1) Solely for the purposes of collective bargaining and as expressly limited under subsections (2) and (3) of this section, the ((authority)) governor is the public employer, as defined in chapter 41.56 RCW, of individual providers, who, solely for the purposes of collective bargaining, are public employees(;) as defined in chapter 41.56 RCW(, of the authority). To accommodate the role of the state as payor for the community-based services provided under this chapter and to ensure coordination with state employee collective bargaining under chapter 41.80 RCW and the coordination necessary to implement RCW 74.39A.300, the public employer shall be represented for bargaining purposes by the governor or the governor's designee appointed under chapter 41.80 RCW. The governor or governor's designee shall periodically consult with the authority during the collective bargaining process to allow the authority to communicate issues relating to the long-term in-home care services received by consumers.

(2) Chapter 41.56 RCW governs the ((employment)) collective bargaining relationship between the ((authority)) governor and individual providers, except as otherwise expressly provided in this chapter ((3, Laws of 2002)) and except as follows:

(a) The only unit appropriate for the purpose of collective bargaining under RCW 41.56.060 is a statewide unit of all individual providers;

(b) The showing of interest required to request an election under RCW 41.56.060 is ten percent of the unit, and any intervener seeking to appear on the ballot must make the same showing of interest;

(c) The mediation and interest arbitration provisions of RCW 41.56.430 through 41.56.470 and 41.56.480 apply, except that:

(i) With respect to commencement of negotiations between the governor and the bargaining representative of individual providers, negotiations shall be commenced by May 1st of any year prior to the year in which an existing collective bargaining agreement expires;

(ii) With respect to factors to be taken into consideration by an interest arbitration panel, the panel shall consider the financial ability of the state to pay for the compensation and fringe benefit provisions of a collective bargaining agreement; and

(iii) The decision of the arbitration panel is not binding on the legislature and, if the legislature does not approve the request for funds necessary to implement the compensation and fringe benefit provisions of the arbitrated collective bargaining agreement, is not binding on the authority or the state;

(d) Individual providers do not have the right to strike; and

(e) Individual providers who are related to, or family members of, consumers or prospective consumers are not, for that reason, exempt from this chapter ((3, Laws of 2002)) or chapter 41.56 RCW.

(3) Individual providers who are public employees ((of the authority)) solely for the purposes of collective bargaining under subsection (1) of this section are not, for that reason, employees of the state, its political subdivisions, or an area agency on aging for any purpose. Chapter 41.56 RCW applies only to the governance of the collective bargaining relationship between the employer and individual providers as provided in subsections (1) and (2) of this section.

(4) Consumers and prospective consumers retain the right to select, hire, supervise the work of, and terminate any individual provider providing services to them. Consumers may elect to receive long-term in-home care services from individual providers who are not referred to them by the authority.

(5) In implementing and administering this chapter ((3, Laws of 2002)), neither the authority nor any of its contractors may reduce or increase the hours of service for any consumer below or above the amount determined to be necessary under any assessment prepared by the department or an area agency on aging.

(6) Except as expressly limited in this section and RCW 74.39A.300, the wages, hours, and working conditions of individual providers are determined solely through collective bargaining as provided in this chapter. No agency or department of the state, other than the authority, may establish policies or rules governing the wages or hours of individual providers. However, this subsection does not modify:

(a) The department's authority to establish a plan of care for each consumer and to determine the hours of care that each consumer is eligible to receive;

(b) The department's authority to terminate its contracts with individual providers who are not adequately meeting the needs of a particular consumer, or to deny a contract under RCW 74.39A.095(8);

(c) The consumer's right to assign hours to one or more individual providers selected by the consumer within the maximum hours determined by his or her plan of care;

(d) The consumer's right to select, hire, terminate, supervise the work of, and determine the conditions of employment for each individual provider providing services to the consumer under this chapter;

(e) The department's obligation to comply with the federal medicaid statute and regulations and the terms of any community-based waiver granted by the federal department of health and human services and to ensure federal financial participation in the provision of the services; and

(f) The legislature's right to make programmatic modifications to the delivery of state services under this title, including standards of eligibility of consumers and individual providers participating in the programs under this title, and the nature of services provided. The governor shall not enter into, extend, or renew any agreement under this chapter that does not expressly reserve the legislative rights described in this subsection (6)(f).

(7)(a) The state, the department, the authority, the area agencies on aging, or their contractors under this chapter (~~(3, Laws of 2002)~~) may not be held vicariously or jointly liable for the action or inaction of any individual provider or prospective individual provider, whether or not that individual provider or prospective individual provider was included on the authority's referral registry or referred to a consumer or prospective consumer. The existence of a collective bargaining agreement, the placement of an individual provider on the referral registry, or the development or approval of a plan of care for a consumer who chooses to use the services of an individual provider and the provision of case management services to that consumer, by the department or an area agency on aging, does not constitute a special relationship with the consumer.

(b) The members of the board are immune from any liability resulting from implementation of this chapter (~~(3, Laws of 2002)~~).

~~((7))~~ (8) Nothing in this section affects the state's responsibility with respect to ~~(the state payroll system or)~~ unemployment insurance for individual providers. However, individual providers are not to be considered, as a result of the state assuming this responsibility, employees of the state.

Sec. 2. RCW 74.39A.300 and 2002 c 3 s 9 are each amended to read as follows:

(1) Upon meeting the requirements of subsection (2) of this section, the governor must submit, as a part of the proposed biennial or supplemental operating budget submitted to the legislature under RCW 43.88.030, a request for funds necessary to administer chapter 3, Laws of 2002 and to implement ~~((any))~~ the compensation and fringe benefits provisions of a collective bargaining agreement entered into under RCW 74.39A.270 or for legislation necessary to implement ~~((any))~~ such agreement ~~((within ten days of the date on which the agreement is ratified or, if the legislature is not in session, within ten days after the next legislative session convenes)).~~

(2) A request for funds necessary to implement the compensation and fringe benefits provisions of a collective bargaining agreement entered into under RCW 74.39A.270 shall not be submitted by the governor to the legislature unless such request:

(a) Has been submitted to the director of financial management by October 1st prior to the legislative session at which the request is to be considered; and

(b) Has been certified by the director of financial management as being feasible financially for the state or reflects the binding decision of an arbitration panel reached under RCW 74.39A.270(2)(c).

(3) The legislature must approve or reject the submission of the request for funds as a whole. If the legislature rejects or fails to act on the submission, any such agreement will be reopened solely for the purpose of renegotiating the funds necessary to implement the agreement.

~~((2))~~ (4) When any increase in individual provider wages or benefits is negotiated or agreed to ~~((by the authority))~~, no increase in wages or benefits negotiated or agreed to under this chapter ~~((3, Laws of 2002))~~ will take effect unless and until, before its implementation, the department has determined that the increase is consistent with federal law and federal financial participation in the provision of services under Title XIX of the federal social security act.

~~((3))~~ (5) The governor shall periodically consult with the joint committee on employment relations established by RCW 41.80.010 regarding appropriations necessary to implement the compensation and fringe benefits provisions of any collective bargaining agreement and, upon completion of negotiations, advise the committee on the elements of the agreement and on any legislation necessary to implement such agreement.

(6) After the expiration date of any collective bargaining agreement entered into under RCW 74.39A.270, all of the terms and conditions specified in any such agreement remain in effect until the effective date of a subsequent agreement, not to exceed one year from the expiration date stated in the agreement, except as provided in RCW 74.39A.270(6)(f).

(7) If, after the compensation and benefit provisions of an agreement are approved by the legislature, a significant revenue shortfall occurs resulting in reduced appropriations, as declared by proclamation of the governor or by resolution of the legislature, both parties shall immediately enter into collective bargaining for a mutually agreed upon modification of the agreement.

NEW SECTION. Sec. 3. A new section is added to chapter 41.04 RCW to read as follows:

Individual providers, as defined in RCW 74.39A.240, are not employees of the state or any of its political subdivisions and are specifically and entirely excluded from all provisions of this title, except as provided in RCW 74.39A.270.

NEW SECTION. Sec. 4. A new section is added to chapter 43.01 RCW to read as follows:

RCW 43.01.040 through 43.01.044 do not apply to individual providers under RCW 74.39A.220 through 74.39A.300.

Sec. 5. RCW 74.39A.901 and 1993 c 508 s 11 are each amended to read as follows:

If any part of this ~~((æt))~~ chapter or a collective bargaining agreement under this chapter is found by a court of competent jurisdiction to be in conflict with federal requirements that are a prescribed condition to the allocation of federal funds to the state, the conflicting part of this ~~((æt))~~ chapter or the agreement is inoperative solely to the extent of the conflict and with respect to the agencies

directly affected, and this finding does not affect the operation of the remainder of this ((aet)) chapter or the agreement in its application to the agencies concerned. The rules under this ((aet)) chapter shall meet federal requirements that are a necessary condition to the receipt of federal funds by the state.

Sec. 6. RCW 41.56.030 and 2002 c 99 s 2 are each amended to read as follows:

As used in this chapter:

(1) "Public employer" means any officer, board, commission, council, or other person or body acting on behalf of any public body governed by this chapter, or any subdivision of such public body. For the purposes of this section, the public employer of district court or superior court employees for wage-related matters is the respective county legislative authority, or person or body acting on behalf of the legislative authority, and the public employer for nonwage-related matters is the judge or judge's designee of the respective district court or superior court.

(2) "Public employee" means any employee of a public employer except any person (a) elected by popular vote, or (b) appointed to office pursuant to statute, ordinance or resolution for a specified term of office as a member of a multimember board, commission, or committee, whether appointed by the executive head or body of the public employer, or (c) whose duties as deputy, administrative assistant or secretary necessarily imply a confidential relationship to (i) the executive head or body of the applicable bargaining unit, or (ii) any person elected by popular vote, or (iii) any person appointed to office pursuant to statute, ordinance or resolution for a specified term of office as a member of a multimember board, commission, or committee, whether appointed by the executive head or body of the public employer, or (d) who is a court commissioner or a court magistrate of superior court, district court, or a department of a district court organized under chapter 3.46 RCW, or (e) who is a personal assistant to a district court judge, superior court judge, or court commissioner, or (f) excluded from a bargaining unit under RCW 41.56.201(2)(a). For the purpose of (e) of this subsection, no more than one assistant for each judge or commissioner may be excluded from a bargaining unit.

(3) "Bargaining representative" means any lawful organization which has as one of its primary purposes the representation of employees in their employment relations with employers.

(4) "Collective bargaining" means the performance of the mutual obligations of the public employer and the exclusive bargaining representative to meet at reasonable times, to confer and negotiate in good faith, and to execute a written agreement with respect to grievance procedures and collective negotiations on personnel matters, including wages, hours and working conditions, which may be peculiar to an appropriate bargaining unit of such public employer, except that by such obligation neither party shall be compelled to agree to a proposal or be required to make a concession unless otherwise provided in this chapter.

(5) "Commission" means the public employment relations commission.

(6) "Executive director" means the executive director of the commission.

(7) "Uniformed personnel" means: (a) Law enforcement officers as defined in RCW 41.26.030 employed by the governing body of any city or town with a

population of two thousand five hundred or more and law enforcement officers employed by the governing body of any county with a population of ten thousand or more; (b) correctional employees who are uniformed and nonuniformed, commissioned and noncommissioned security personnel employed in a jail as defined in RCW 70.48.020(5), by a county with a population of seventy thousand or more, and who are trained for and charged with the responsibility of controlling and maintaining custody of inmates in the jail and safeguarding inmates from other inmates; (c) general authority Washington peace officers as defined in RCW 10.93.020 employed by a port district in a county with a population of one million or more; (d) security forces established under RCW 43.52.520; (e) fire fighters as that term is defined in RCW 41.26.030; (f) employees of a port district in a county with a population of one million or more whose duties include crash fire rescue or other fire fighting duties; (g) employees of fire departments of public employers who dispatch exclusively either fire or emergency medical services, or both; or (h) employees in the several classes of advanced life support technicians, as defined in RCW 18.71.200, who are employed by a public employer.

(8) "Institution of higher education" means the University of Washington, Washington State University, Central Washington University, Eastern Washington University, Western Washington University, The Evergreen State College, and the various state community colleges.

(9) "Home care quality authority" means the authority under chapter 74.39A RCW.

(10) "Individual provider" means an individual provider as defined in RCW 74.39A.240(4) who, solely for the purposes of collective bargaining, is ~~((employed by the home care quality authority))~~ a public employee as provided in RCW 74.39A.270.

Sec. 7. RCW 41.56.113 and 2002 c 99 s 1 are each amended to read as follows:

(1) Upon the written authorization of an individual provider within the bargaining unit and after the certification or recognition of the bargaining unit's exclusive bargaining representative, the state as payor, but not as the employer, shall, subject to subsection (3) of this section, deduct from the payments to an individual provider the monthly amount of dues as certified by the secretary of the exclusive bargaining representative and shall transmit the same to the treasurer of the exclusive bargaining representative.

(2) If the ~~((home care quality authority))~~ governor and the exclusive bargaining representative of a bargaining unit of individual providers enter into a collective bargaining agreement that:

(a) Includes a union security provision authorized in RCW 41.56.122, the state as payor, but not as the employer, shall, subject to subsection (3) of this section, enforce the agreement by deducting from the payments to bargaining unit members the dues required for membership in the exclusive bargaining representative, or, for nonmembers thereof, a fee equivalent to the dues; or

(b) Includes requirements for deductions of payments other than the deduction under (a) of this subsection, the state, as payor, but not as the employer, shall, subject to subsection (3) of this section, make such deductions upon written authorization of the individual provider.

(3)(a) The initial additional costs to the state in making deductions from the payments to individual providers under this section shall be negotiated, agreed upon in advance, and reimbursed to the state by the exclusive bargaining representative.

(b) The allocation of ongoing additional costs to the state in making deductions from the payments to individual providers under this section shall be an appropriate subject of collective bargaining between the exclusive bargaining representative and the ~~((home care quality authority))~~ governor unless prohibited by another statute. If no collective bargaining agreement containing a provision allocating the ongoing additional cost is entered into between the exclusive bargaining representative and the ~~((home care quality authority))~~ governor, or if the legislature does not approve funding for the collective bargaining agreement as provided in RCW 74.39A.300, the ongoing additional costs to the state in making deductions from the payments to individual providers under this section shall be negotiated, agreed upon in advance, and reimbursed to the state by the exclusive bargaining representative.

NEW SECTION. Sec. 8. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected.

NEW SECTION. Sec. 9. This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately.

Passed by the House March 4, 2004.

Passed by the Senate February 25, 2004.

Approved by the Governor March 9, 2004.

Filed in Office of Secretary of State March 9, 2004.

CHAPTER 4

[House Bill 2418]

LEOFFRS—DISABLED MEMBERS

AN ACT Relating to providing benefits to certain disabled members of the law enforcement officers' and fire fighters' retirement system plan 2; amending RCW 41.26.470; and creating a new section.

Be it enacted by the Legislature of the State of Washington:

Sec. 1. RCW 41.26.470 and 2001 c 261 s 2 are each amended to read as follows:

(1) A member of the retirement system who becomes totally incapacitated for continued employment by an employer as determined by the director shall be eligible to receive an allowance under the provisions of RCW 41.26.410 through 41.26.550. Such member shall receive a monthly disability allowance computed as provided for in RCW 41.26.420 and shall have such allowance actuarially reduced to reflect the difference in the number of years between age at disability and the attainment of age fifty-three.

(2) Any member who receives an allowance under the provisions of this section shall be subject to such comprehensive medical examinations as required by the department. If such medical examinations reveal that such a member has recovered from the incapacitating disability and the member is no longer entitled

to benefits under Title 51 RCW, the retirement allowance shall be canceled and the member shall be restored to duty in the same civil service rank, if any, held by the member at the time of retirement or, if unable to perform the duties of the rank, then, at the member's request, in such other like or lesser rank as may be or become open and available, the duties of which the member is then able to perform. In no event shall a member previously drawing a disability allowance be returned or be restored to duty at a salary or rate of pay less than the current salary attached to the rank or position held by the member at the date of the retirement for disability. If the department determines that the member is able to return to service, the member is entitled to notice and a hearing. Both the notice and the hearing shall comply with the requirements of chapter 34.05 RCW, the Administrative Procedure Act.

(3) Those members subject to this chapter who became disabled in the line of duty on or after July 23, 1989, and who receive benefits under RCW 41.04.500 through 41.04.530 or similar benefits under RCW 41.04.535 shall receive or continue to receive service credit subject to the following:

(a) No member may receive more than one month's service credit in a calendar month.

(b) No service credit under this section may be allowed after a member separates or is separated without leave of absence.

(c) Employer contributions shall be paid by the employer at the rate in effect for the period of the service credited.

(d) Employee contributions shall be collected by the employer and paid to the department at the rate in effect for the period of service credited.

(e) State contributions shall be as provided in RCW 41.45.060 and 41.45.067.

(f) Contributions shall be based on the regular compensation which the member would have received had the disability not occurred.

(g) The service and compensation credit under this section shall be granted for a period not to exceed six consecutive months.

(h) Should the legislature revoke the service credit authorized under this section or repeal this section, no affected employee is entitled to receive the credit as a matter of contractual right.

(4)(a) If the recipient of a monthly retirement allowance under this section dies before the total of the retirement allowance paid to the recipient equals the amount of the accumulated contributions at the date of retirement, then the balance shall be paid to the member's estate, or such person or persons, trust, or organization as the recipient has nominated by written designation duly executed and filed with the director, or, if there is no such designated person or persons still living at the time of the recipient's death, then to the surviving spouse, or, if there is neither such designated person or persons still living at the time of his or her death nor a surviving spouse, then to his or her legal representative.

(b) If a recipient of a monthly retirement allowance under this section died before April 27, 1989, and before the total of the retirement allowance paid to the recipient equaled the amount of his or her accumulated contributions at the date of retirement, then the department shall pay the balance of the accumulated contributions to the member's surviving spouse or, if there is no surviving spouse, then in equal shares to the member's children. If there is no surviving spouse or children, the department shall retain the contributions.

(5) Should the disability retirement allowance of any disability beneficiary be canceled for any cause other than reentrance into service or retirement for service, he or she shall be paid the excess, if any, of the accumulated contributions at the time of retirement over all payments made on his or her behalf under this chapter.

(6) A member who becomes disabled in the line of duty, and who ceases to be an employee of an employer except by service or disability retirement, may request a refund of one hundred fifty percent of the member's accumulated contributions. Any accumulated contributions attributable to restorations made under RCW 41.50.165(2) shall be refunded at one hundred percent. A person in receipt of this benefit is a retiree.

(7) A member who becomes disabled in the line of duty shall be entitled to receive a minimum retirement allowance equal to ten percent of such member's final average salary. The member shall additionally receive a retirement allowance equal to two percent of such member's average final salary for each year of service beyond five, and shall have the allowance actuarially reduced to reflect the difference in the number of years between age at disability and the attainment of a ~~of~~ fifty -three. An additional benefit shall not result in a total monthly benefit greater than that provided in subsection (1) of this section.

NEW SECTION. Sec. 2. This act applies to all members, subject to section 1 of this act, who become or became disabled in the line of duty on or after January 1, 2001.

Passed by the House February 11, 2004.

Passed by the Senate March 2, 2004.

Approved by the Governor March 11, 2004.

Filed in Office of Secretary of State March 11, 2004.

CHAPTER 5

[House Bill 2419]

LEOFFRS—KILLED IN ACTION

AN ACT Relating to calculating the retirement allowance of a member of the law enforcement officers' and fire fighters' retirement system plan 2 who is killed in the course of employment; and amending RCW 41.26.510.

Be it enacted by the Legislature of the State of Washington:

Sec. 1. RCW 41.26.510 and 2000 c 247 s 1001 are each amended to read as follows:

(1) Except as provided in RCW 11.07.010, if a member or a vested member who has not completed at least ten years of service dies, the amount of the accumulated contributions standing to such member's credit in the retirement system at the time of such member's death, less any amount identified as owing to an obligee upon withdrawal of accumulated contributions pursuant to a court order filed under RCW 41.50.670, shall be paid to the member's estate, or such person or persons, trust, or organization as the member shall have nominated by written designation duly executed and filed with the department. If there be no such designated person or persons still living at the time of the member's death, such member's accumulated contributions standing to such member's credit in the retirement system, less any amount identified as owing to an obligee upon

withdrawal of accumulated contributions pursuant to a court order filed under RCW 41.50.670, shall be paid to the member's surviving spouse as if in fact such spouse had been nominated by written designation, or if there be no such surviving spouse, then to such member's legal representatives.

(2) If a member who is eligible for retirement or a member who has completed at least ten years of service dies, the surviving spouse or eligible child or children shall elect to receive either:

(a) A retirement allowance computed as provided for in RCW 41.26.430, actuarially reduced by the amount of any lump sum benefit identified as owing to an obligee upon withdrawal of accumulated contributions pursuant to a court order filed under RCW 41.50.670 and actuarially adjusted to reflect a joint and one hundred percent survivor option under RCW 41.26.460 and if the member was not eligible for normal retirement at the date of death a further reduction as described in RCW 41.26.430; if a surviving spouse who is receiving a retirement allowance dies leaving a child or children of the member under the age of majority, then such child or children shall continue to receive an allowance in an amount equal to that which was being received by the surviving spouse, share and share alike, until such child or children reach the age of majority; if there is no surviving spouse eligible to receive an allowance at the time of the member's death, such member's child or children under the age of majority shall receive an allowance share and share alike calculated as herein provided making the assumption that the ages of the spouse and member were equal at the time of the member's death; or

(b)(i) The member's accumulated contributions, less any amount identified as owing to an obligee upon withdrawal of accumulated contributions pursuant to a court order filed under RCW 41.50.670; or

(ii) If the member dies on or after July 25, 1993, one hundred fifty percent of the member's accumulated contributions, less any amount identified as owing to an obligee upon withdrawal of accumulated contributions pursuant to a court order filed under RCW 41.50.670. Any accumulated contributions attributable to restorations made under RCW 41.50.165(2) shall be refunded at one hundred percent.

(3) If a member who is eligible for retirement or a member who has completed at least ten years of service dies after October 1, 1977, and is not survived by a spouse or an eligible child, then the accumulated contributions standing to the member's credit, less any amount identified as owing to an obligee upon withdrawal of accumulated contributions pursuant to a court order filed under RCW 41.50.670, shall be paid:

(a) To an estate, a person or persons, trust, or organization as the member shall have nominated by written designation duly executed and filed with the department; or

(b) If there is no such designated person or persons still living at the time of the member's death, then to the member's legal representatives.

(4) The retirement allowance of a member who is killed in the course of employment, as determined by the director of the department of labor and industries, is not subject to an actuarial reduction. The member's retirement allowance is computed under RCW 41.26.420.

Passed by the House February 11, 2004.

Passed by the Senate March 2, 2004.

Approved by the Governor March 11, 2004.
Filed in Office of Secretary of State March 11, 2004.

CHAPTER 6

[Substitute House Bill 2462]

TEACHER COTTAGES

AN ACT Relating to teacher cottages in nonhigh school districts totally surrounded by water, serving fewer than forty students; and amending RCW 28A.335.240 and 28A.335.130.

Be it enacted by the Legislature of the State of Washington:

Sec. 1. RCW 28A.335.240 and 1969 ex.s. c 223 s 28A.60.181 are each amended to read as follows:

(1) The board of directors of a second class school district shall build schoolhouses and teachers' cottages when directed by a vote of the district to do so(~~(-The board of directors of a second class school district))~~ and may purchase real property for any school district purpose.

(2) The board of directors of a second class nonhigh school district that is totally surrounded by water and serves fewer than forty students also may authorize the construction of teachers' cottages without a vote of the district using funds from the district's capital projects fund or general fund. Rental and other income from the cottages, including sale of the cottages, may be deposited, in whole or in part, into the school district's general fund, debt service fund, or capital projects fund as determined by the board of directors.

Sec. 2. RCW 28A.335.130 and 1983 c 59 s 14 are each amended to read as follows:

Except as provided in RCW 28A.335.240(1), the proceeds from any sale of school district real property by a board of directors shall be deposited to the debt service fund and/or the capital projects fund, except for amounts required to be expended for the costs associated with the sale of such property, which moneys may be deposited into the fund from which the expenditure was incurred.

Passed by the House February 12, 2004.

Passed by the Senate March 2, 2004.

Approved by the Governor March 11, 2004.

Filed in Office of Secretary of State March 11, 2004.

CHAPTER 7

[Substitute House Bill 2507]

COUNTY, CITY EMPLOYEES—WAGE OVERPAYMENTS

AN ACT Relating to the recoupment of county and city employee salary and wage overpayments; and amending RCW 49.48.200 and 49.48.210.

Be it enacted by the Legislature of the State of Washington:

Sec. 1. RCW 49.48.200 and 2003 c 77 s 1 are each amended to read as follows:

(1) Debts due the state or a county or city for the overpayment of wages to ~~((state))~~ their respective employees may be recovered by the employer by deductions from subsequent wage payments as provided in RCW 49.48.210, or by civil action. If the overpayment is recovered by deduction from the

employee's subsequent wages, each deduction shall not exceed: (a) Five percent of the employee's disposable earnings in a pay period other than the final pay period; or (b) the amount still outstanding from the employee's disposable earnings in the final pay period. The deductions from wages shall continue until the overpayment is fully recouped.

(2) Nothing in (~~chapter 77, Laws of 2003~~) this section or RCW 49.48.210 or 49.48.220 prevents: (a) An employee from making payments in excess of the amount specified in subsection (1)(a) of this section to an employer; or (b) an employer and employee from agreeing to a different overpayment amount than that specified in the notice in RCW 49.48.210(1) or to a method other than a deduction from wages for repayment of the overpayment amount.

Sec. 2. RCW 49.48.210 and 2003 c 77 s 2 are each amended to read as follows:

(1) Except as provided in subsection (10) of this section, when an employer determines that an employee was overpaid wages, the employer shall provide written notice to the employee. The notice shall include the amount of the overpayment, the basis for the claim, a demand for payment within twenty calendar days of the date on which the employee received the notice, and the rights of the employee under this section.

(2) The notice may be served upon the employee in the manner prescribed for the service of a summons in a civil action, or be mailed by certified mail, return receipt requested, to the employee at his or her last known address.

(3) Within twenty calendar days after receiving the notice from the employer that an overpayment has occurred, the employee may request, in writing, that the employer review its finding that an overpayment has occurred. The employee may choose to have the review conducted through written submission of information challenging the overpayment or through a face-to-face meeting with the employer. If the request is not made within the twenty-day period as provided in this subsection, the employee may not further challenge the overpayment and has no right to further agency review, an adjudicative proceeding, or judicial review.

(4) Upon receipt of an employee's written request for review of the overpayment, the employer shall review the employee's challenge to the overpayment. Upon completion of the review, the employer shall notify the employee in writing of the employer's decision regarding the employee's challenge. The notification must be sent by certified mail, return receipt requested, to the employee at his or her last known address.

(5) If the employee is dissatisfied with the employer's decision regarding the employee's challenge to the overpayment, the employee may request an adjudicative proceeding governed by the administrative procedure act, chapter 34.05 RCW or, in the case of a county or city employee, an adjudicative proceeding provided pursuant to ordinance or resolution of the county or city. The employee's application for an adjudicative proceeding must be in writing, state the basis for contesting the overpayment notice, and include a copy of the employer's notice of overpayment. The application must be served on and received by the employer within twenty-eight calendar days of the employee's receipt of the employer's decision following review of the employee's challenge. Notwithstanding RCW 34.05.413(3), agencies may not vary the requirements of

this subsection (5) by rule or otherwise. The employee must serve the employer by certified mail, return receipt requested.

(6) If the employee does not request an adjudicative proceeding within the twenty-eight-day period, the amount of the overpayment provided in the notice shall be deemed final and the employer may proceed to recoup the overpayment as provided in this section and RCW 49.48.200.

(7) Where an adjudicative proceeding has been requested, the presiding or reviewing officer shall determine the amount, if any, of the overpayment received by the employee.

(8) If the employee fails to attend or participate in the adjudicative proceeding, upon a showing of valid service, the presiding or reviewing officer may enter an administrative order declaring the amount claimed in the notice sent to the employee after the employer's review of the employee's challenge to the overpayment to be assessed against the employee and subject to collection action by the ~~((state))~~ employer as provided in RCW 49.48.200.

(9) Failure to make an application for a review by the employer as provided in subsections (3) and (4) of this section or an adjudicative proceeding within twenty-eight calendar days of the date of receiving notice of the employer's decision after review of the overpayment shall result in the establishment of a final debt against the employee in the amount asserted by the employer, which debt shall be collected as provided in RCW 49.48.200.

(10) When an employer determines that an employee covered by a collective bargaining agreement was overpaid wages, the employer shall provide written notice to the employee. The notice shall include the amount of the overpayment, the basis for the claim, and the rights of the employee under the collective bargaining agreement. Any dispute relating to the occurrence or amount of the overpayment shall be resolved using the grievance procedures contained in the collective bargaining agreement.

(11) As used in ~~((chapter 77, Laws of 2003))~~ this section or RCW 49.48.210 and 49.48.220:

(a) "City" means city or town;

(b) "Employer" means the state of Washington or a county or city, and any of its agencies, institutions, boards, or commissions; and

~~((b))~~ (c) "Overpayment" means a payment of wages for a pay period that is greater than the amount earned for a pay period.

NEW SECTION. Sec. 3. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected.

Passed by the House February 16, 2004.

Passed by the Senate March 2, 2004.

Approved by the Governor March 11, 2004.

Filed in Office of Secretary of State March 11, 2004.

CHAPTER 8

[Substitute House Bill 3158]

TAX EXEMPTION—COMPUTER EQUIPMENT

AN ACT Relating to exempting from sales and use tax computer equipment used primarily in printing or publishing; adding a new section to chapter 82.08 RCW; adding a new section to chapter 82.12 RCW; and creating a new section.

Be it enacted by the Legislature of the State of Washington:

NEW SECTION. Sec. 1. (1) The legislature finds that the manufacturer's machinery and equipment sales and use tax exemption is vital to the continued development of economic opportunity in this state, including the development of new businesses and the expansion or modernization of existing businesses.

(2) The legislature finds that the printing and publishing industries have not been able to realize the benefits of the manufacturer's machinery and equipment sales and use tax exemption to the same extent as other manufacturing industries due to dramatic changes in business methods caused by computer technology not contemplated when the manufacturer's machinery and equipment sales and use tax exemption was adopted. As a result of these changes in business methods, a substantial amount of computer equipment used by printers and publishers is not eligible for the manufacturer's machinery and equipment sales and use tax exemption because the computer equipment is not used within the manufacturing site.

(3) The legislature further finds that additional incentives for printers and publishers need to be adopted to provide these industries with similar benefits as the manufacturer's machinery and equipment sales and use tax exemption provides for other manufacturing industries, and in recognition of the rapid rate of technological advancement in business methods undergone by the printing and publishing industries. The legislature intends to accomplish this by providing a sales and use tax exemption to printers and publishers for computer equipment, not otherwise eligible for the manufacturer's machinery and equipment sales and use tax exemption, used primarily in the printing or publishing of printed material, and for labor and services rendered in respect to installing, repairing, cleaning, altering, or improving such computer equipment.

NEW SECTION. Sec. 2. A new section is added to chapter 82.08 RCW to read as follows:

(1) The tax levied by RCW 82.08.020 shall not apply to sales, to a printer or publisher, of computer equipment, including repair parts and replacement parts for such equipment, when the computer equipment is used primarily in the printing or publishing of any printed material, or to sales of or charges made for labor and services rendered in respect to installing, repairing, cleaning, altering, or improving the computer equipment. This exemption applies only to computer equipment not otherwise exempt under RCW 82.08.02565.

(2) A person taking the exemption under this section must keep records necessary for the department to verify eligibility under this section. This exemption is available only when the purchaser provides the seller with an exemption certificate in a form and manner prescribed by the department. The seller shall retain a copy of the certificate for the seller's files.

(3) The definitions in this subsection (3) apply throughout this section, unless the context clearly requires otherwise.

(a) "Computer" has the same meaning as in RCW 82.04.215.

(b) "Computer equipment" means a computer and the associated physical components that constitute a computer system, including monitors, keyboards, printers, modems, scanners, pointing devices, and other computer peripheral equipment, cables, servers, and routers. "Computer equipment" also includes digital cameras and computer software.

(c) "Computer software" has the same meaning as in RCW 82.04.215.

(d) "Primarily" means greater than fifty percent as measured by time.

(e) "Printer or publisher" means a person, as defined in RCW 82.04.030, who is subject to tax under RCW 82.04.280(1).

(4) "Computer equipment" does not include computer equipment that is used primarily for administrative purposes including but not limited to payroll processing, accounting, customer service, telemarketing, and collection. If computer equipment is used simultaneously for administrative and nonadministrative purposes, the administrative use shall be disregarded during the period of simultaneous use for purposes of determining whether the computer equipment is used primarily for administrative purposes.

NEW SECTION. Sec. 3. A new section is added to chapter 82.12 RCW to read as follows:

(1) The provisions of this chapter do not apply in respect to the use, by a printer or publisher, of computer equipment, including repair parts and replacement parts for such equipment, when the computer equipment is used primarily in the printing or publishing of any printed material, or to labor and services rendered in respect to installing, repairing, cleaning, altering, or improving the computer equipment. This exemption applies only to computer equipment not otherwise exempt under RCW 82.12.02565.

(2) For the purposes of this section, the definitions in section 2 of this act apply.

Passed by the House February 16, 2004.

Passed by the Senate March 2, 2004.

Approved by the Governor March 11, 2004.

Filed in Office of Secretary of State March 11, 2004.

CHAPTER 9

[Engrossed Second Substitute Senate Bill 5216]

COMPETENCY EXAMINATIONS

AN ACT Relating to forensic competency and sanity examinations; and amending RCW 10.77.060.

Be it enacted by the Legislature of the State of Washington:

Sec. 1. RCW 10.77.060 and 2000 c 74 s 1 are each amended to read as follows:

(1)(a) Whenever a defendant has pleaded not guilty by reason of insanity, or there is reason to doubt his or her competency, the court on its own motion or on the motion of any party shall either appoint or request the secretary to designate at least two qualified experts or professional persons, one of whom shall be approved by the prosecuting attorney, to examine and report upon the mental condition of the defendant. The signed order of the court shall serve as authority

for the experts to be given access to all records held by any mental health, medical, educational, or correctional facility that relate to the present or past mental, emotional, or physical condition of the defendant. At least one of the experts or professional persons appointed shall be a developmental disabilities professional if the court is advised by any party that the defendant may be developmentally disabled. Upon agreement of the parties, the court may designate one expert or professional person to conduct the examination and report on the mental condition of the defendant. For purposes of the examination, the court may order the defendant committed to a hospital or other suitably secure public or private mental health facility for a period of time necessary to complete the examination, but not to exceed fifteen days from the time of admission to the facility. If the defendant is being held in jail or other detention facility, upon agreement of the parties, the court may direct that the examination be conducted at the jail or other detention facility.

(b) When a defendant is ordered to be committed for inpatient examination under this subsection (1), the court may delay granting bail until the defendant has been evaluated for competency or sanity and appears before the court. Following the evaluation, in determining bail the court shall consider: (i) Recommendations of the expert or professional persons regarding the defendant's competency, sanity, or diminished capacity; (ii) whether the defendant has a recent history of one or more violent acts; (iii) whether the defendant has previously been acquitted by reason of insanity or found incompetent; (iv) whether it is reasonably likely the defendant will fail to appear for a future court hearing; and (v) whether the defendant is a threat to public safety.

(2) The court may direct that a qualified expert or professional person retained by or appointed for the defendant be permitted to witness the examination authorized by subsection (1) of this section, and that the defendant shall have access to all information obtained by the court appointed experts or professional persons. The defendant's expert or professional person shall have the right to file his or her own report following the guidelines of subsection (3) of this section. If the defendant is indigent, the court shall upon the request of the defendant assist him or her in obtaining an expert or professional person.

(3) The report of the examination shall include the following:

- (a) A description of the nature of the examination;
- (b) A diagnosis of the mental condition of the defendant;
- (c) If the defendant suffers from a mental disease or defect, or is developmentally disabled, an opinion as to competency;

(d) If the defendant has indicated his or her intention to rely on the defense of insanity pursuant to RCW 10.77.030, an opinion as to the defendant's sanity at the time of the act;

(e) When directed by the court, an opinion as to the capacity of the defendant to have a particular state of mind which is an element of the offense charged;

(f) An opinion as to whether the defendant should be evaluated by a county designated mental health professional under chapter 71.05 RCW, and an opinion as to whether the defendant is a substantial danger to other persons, or presents a substantial likelihood of committing criminal acts jeopardizing public safety or

security, unless kept under further control by the court or other persons or institutions.

(4) The secretary may execute such agreements as appropriate and necessary to implement this section.

Passed by the Senate February 17, 2004.

Passed by the House March 2, 2004.

Approved by the Governor March 11, 2004.

Filed in Office of Secretary of State March 11, 2004.

CHAPTER 10

[Engrossed Substitute Senate Bill 6125]

WATER CONSERVANCY BOARD ALTERNATES

AN ACT Relating to alternate members of a water conservancy board; and amending RCW 90.80.010, 90.80.035, 90.80.050, 90.80.070, and 90.80.120.

Be it enacted by the Legislature of the State of Washington:

Sec. 1. RCW 90.80.010 and 2001 c 237 s 7 are each amended to read as follows:

The following definitions apply throughout this chapter, unless the context clearly requires otherwise.

(1) "Alternate" means an individual: (a) Who is appointed by the county legislative authority or authorities under RCW 90.80.050(3); (b) who is trained under the requirements of RCW 90.80.040; and (c) who, while serving as a replacement for an absent or recused commissioner: (i) May serve and vote as a commissioner; (ii) is subject to any requirement applicable to a commissioner; and (iii) counts toward a quorum.

(2) "Board" means a water conservancy board created under this chapter.

~~((2))~~ (3) "Commissioner" means an individual who is appointed by the county legislative authority or authorities as a member of a water conservancy board under RCW 90.80.050(1), or an alternate appointed under RCW 90.80.050(3) while serving as a replacement for an absent or recused commissioner.

~~((3))~~ (4) "Department" means the department of ecology.

~~((4))~~ (5) "Director" means the director of the department of ecology.

~~((5))~~ (6) "Record of decision" means the conclusion reached by a water conservancy board regarding an application for a transfer filed with the board.

~~((6))~~ (7) "Transfer" means a transfer, change, amendment, or other alteration of a part or all of a water right authorized under RCW 90.03.380, 90.03.390, or 90.44.100.

Sec. 2. RCW 90.80.035 and 2001 c 237 s 8 are each amended to read as follows:

(1) If a county is the only county having lands comprising a water resource inventory area as defined in chapter 173-500 WAC, the county may elect to establish a water conservancy board for the water resource inventory area, rather than for the entire county.

(2) Counties having lands within a water resource inventory area may jointly petition the department for establishment of a water conservancy board for the water resource inventory area. Counties may jointly petition the

department to establish boards serving multiple counties or one or more water resource inventory areas. For any of these multicounty options, the counties must reach their joint determination on the decision to file the petition, on the proposed bylaws, and on other matters relating to the establishment and operation of the board in accordance with the provisions of this chapter and chapter 39.34 RCW, the interlocal cooperation act. Each county must meet the requirements of RCW 90.80.020(2). The counties must jointly determine the sufficiency of a petition under RCW 90.80.020(3) and each county legislative authority must hold a hearing in its county.

(3) If establishment of a multicounty water conservancy board under any of the options provided in subsection (2) of this section is approved by the department, the counties must jointly appoint the board commissioners and jointly appoint members to fill vacancies as they occur, and may jointly appoint alternates in accordance with the provisions of this chapter and chapter 39.34 RCW.

(4) A board established for more than one county or for one or more water resource inventory areas has the same powers as other boards established under this chapter. The board has no jurisdiction outside the boundaries of the water resource inventory area or areas or the county or counties, as applicable, for which it has been established, except as provided in this chapter.

(5) The counties establishing a board for a multiple county area must designate a lead county for purposes of providing a single point of contact for communications with the department. The lead county shall forward the information required in RCW 90.80.030(1) for each county.

Sec. 3. RCW 90.80.050 and 2001 c 237 s 10 are each amended to read as follows:

(1) A water conservancy board constitutes a public body corporate and politic and a separate unit of local government in the state. Each board shall consist of three commissioners appointed by the county legislative authority or authorities as applicable for six-year terms. The county legislative authority or authorities shall stagger the initial appointment of commissioners so that the first commissioners who are appointed shall serve terms of two, four, and six years, respectively, from the date of their appointment. The county legislative authority or authorities may appoint two additional commissioners, for a total of five. If the county or counties elect to appoint five commissioners, the initial terms of the additional commissioners shall be for three and five-year terms respectively. All vacancies shall be filled for the unexpired term.

(2) The county legislative authority or authorities shall consider, but are not limited in appointing, nominations to the board by people or entities petitioning or requesting the creation of the board. The county legislative authority or authorities shall ensure that at least one commissioner is an individual water right holder who diverts or withdraws water for use within the area served by the board. The county legislative authority or authorities must appoint one person who is not a water right holder. If the county legislative authority or authorities choose not to appoint five commissioners, and as of May 10, 2001, there is no commissioner on an existing board who is not a water right holder, the county or counties are not required to appoint a new commissioner until the first vacancy occurs. In making appointments to the board, the county legislative authority or authorities shall choose from among persons who are residents of the county or

counties or a county that is contiguous to the county that the water conservancy board is to serve.

(3) The county legislative authority or authorities may appoint up to two alternates to serve in a reserve capacity as replacements for absent or recused commissioners, and while serving in that capacity an alternate may serve for all or any portion of a meeting of the board. Alternates do not hold an appointed commissioner position on a board as set forth under subsection (1) of this section. An alternate shall be appointed to serve a six-year term.

(4) No commissioner may participate in a record of decision of a board until he or she has successfully completed the necessary training required under RCW 90.80.040. Commissioners shall serve without compensation, but are entitled to reimbursement for necessary travel expenses in accordance with RCW 43.03.050 and 43.03.060 and costs incident to receiving training.

Sec. 4. RCW 90.80.070 and 2001 c 237 s 11 are each amended to read as follows:

(1) A person proposing a transfer of a water right may elect to file an application with a water conservancy board, if a board has been established for the geographic area where the water is or would be diverted, withdrawn, or used. If the person has already filed an application with the department, the person may request that the department convey the application to the conservancy board with jurisdiction and the department must promptly forward the application. A board is not required to process an application filed with the board. If a board decides that it will not process an application, it must return the application to the applicant and must inform the applicant that the application may be filed with the department. An application to the board for a transfer shall be made on a form provided by the department. A board may require an applicant to submit within a reasonable time additional information as may be required by the board in order to review and act upon the application. At a minimum, the application shall include information sufficient to establish to the board's satisfaction that a right to the quantity of water being transferred exists, and a description of any applicable limitations on the right to use water, including the point of diversion or withdrawal, place of use, source of supply, purpose of use, quantity of use permitted, time of use, period of use, and the place of storage.

(2) The applicant for any proposed water right transfer may apply to a board for a record of decision on a transfer if the water proposed to be transferred is currently diverted, withdrawn, or used within the geographic area in which the board has jurisdiction, or would be diverted, withdrawn, or used within the geographic area in which the board has jurisdiction if the transfer is approved. In the case of a proposed water right transfer in which the water is currently diverted or withdrawn or would be diverted or withdrawn outside the geographic boundaries of the county or the water resource inventory area where the use is proposed to be made, the board shall hold a public hearing in the county of the diversion or withdrawal or proposed diversion or withdrawal. The board shall provide for prominent publication of notice of the hearing in a newspaper of general circulation published in the county in which the hearing is to be held for the purpose of affording an opportunity for interested persons to comment upon the application. If an application is for a transfer of water out of the water resource inventory area that is the source of the water, the board shall consult with the department regarding the application.

(3) After an application for a transfer is filed with the board, the board shall publish notice of the application and send notice to state agencies in accordance with the requirements of RCW 90.03.280. In addition, the board shall send notice of the application to any Indian tribe with reservation lands that would be, but for RCW 90.80.055(2), within the area in which the board has jurisdiction. The board shall also provide notice of the application to any Indian tribe that has requested that it be notified of applications. Any person may submit comments and other information to the board regarding the application. The comments and information may be submitted in writing or verbally at any public meeting of the board to discuss or decide on the application. The comments must be considered by the board in making its record of decision.

(4) If a majority of the board determines that the application is complete, and that the transfer is in accordance with RCW 90.03.380, 90.03.390, or 90.44.100, the board must issue a record of decision approving the transfer, subject to review by the director. In making its record of decision, the board must consider among other things whether the proposed transfer can be made without detriment or injury to existing water rights, including rights established for instream flows. The board must include in its record of decision any conditions that are deemed necessary for the transfer to qualify for approval under the applicable laws of the state. The basis for the record of decision of the board must be documented in a report of examination. The board's proposed approval must clearly state that the applicant is not permitted to proceed to effect the proposed transfer until a final decision is made by the director. In making its record of decision, the board must consider among other things whether the proposed transfer can be made without detriment or injury to existing water rights, including rights established for instream flows.

(5) If a majority of the board determines that the application cannot be approved under the applicable laws of the state of Washington, the board must make a record of decision denying the application together with its report of examination documenting its record of decision. The board's record of decision is subject to review by the director under RCW 90.80.080.

(6) When alternates appointed under the provisions of RCW 90.80.050(3) are serving as commissioners on a board, a majority vote of the board must include at least one commissioner appointed under the provisions of RCW 90.80.050(1).

(7) An alternate when serving as a commissioner in the review of an application before the board shall:

(a) Review the written record before the board and any exhibits provided for the review or provided at the hearing if a hearing was held;

(b) Review any audio or video recordings made of the proceedings on the application; and

(c) Conduct a site visit if a site visit by other commissioners acting on the application has been previously conducted.

(8) An alternate serving as a commissioner shall be guided by the conflict of interest standards applicable to all commissioners under RCW 90.80.120. The board shall provide notice of an alternate sitting as a commissioner to the applicant and other participants in proceedings before the board in a timely manner to provide sufficient time for any challenges for conflict of interest to be made prior to the board's decision on the application.

Sec. 5. RCW 90.80.120 and 2001 c 237 s 15 are each amended to read as follows:

(1) A commissioner of a water conservancy board shall not engage in any act which is in conflict with the proper discharge of the official duties of a commissioner. A commissioner is deemed to have a conflict of interest if he or she:

(a) Has an ownership interest in a water right subject to an application for approval before the board;

(b) Receives or has a financial interest in an application submitted to the board or a project, development, or venture related to the approval of the application; or

(c) Solicits, accepts, or seeks anything of economic value as a gift, gratuity, or favor from any person, firm, or corporation involved in the application.

(2) In the event of a recusal of an appointed commissioner, an alternate may serve as a commissioner on a board and may act upon the official board business for which the conflict of interest exists.

(3) The department shall return a record of decision to a conservancy board without action where the department determines that any member of a board has violated subsection (1) of this section.

(a) If a person seeking to rely on this section to disqualify a commissioner knows of the basis for disqualification before the time the board issues a record of decision, the person must request the board to have the commissioner recuse himself or herself from further involvement in processing the application, or be barred from later raising that challenge.

(b) If the commissioner does not recuse himself or herself or if the person becomes aware of the basis for disqualification after the board issues a record of decision but within the time period under RCW 90.80.080(3) for filing objections with the department, the person must raise the challenge with the department. If the department determines that the commissioner should be disqualified under this section, the director must remand the record of decision to the board for reconsideration and resubmission of a record of decision. The disqualified commissioner shall not participate in any further board review of the application. The department's decision on whether to remand a record of decision under this section may only be appealed at the same time and in the same manner as an appeal of the department's decision to affirm, modify, or reverse the record of decision after remand.

(c) If the person becomes aware of the basis for disqualification after the time for filing objections with the department, the person may raise the challenge in an appeal of the department's final decision under RCW 90.80.090.

Passed by the Senate February 9, 2004.

Passed by the House March 2, 2004.

Approved by the Governor March 11, 2004.

Filed in Office of Secretary of State March 11, 2004.

CHAPTER 11

[Senate Bill 6177]

CRIMINAL IMPERSONATION

AN ACT Relating to criminal impersonation; amending RCW 9A.60.040 and 9A.60.045; prescribing penalties; and providing an effective date.

Be it enacted by the Legislature of the State of Washington:

Sec. 1. RCW 9A.60.040 and 2003 c 53 s 78 are each amended to read as follows:

(1) A person is guilty of criminal impersonation in the first degree if the person:

(a) Assumes a false identity and does an act in his or her assumed character with intent to defraud another or for any other unlawful purpose; or

(b) Pretends to be a representative of some person or organization or a public servant and does an act in his or her pretended capacity with intent to defraud another or for any other unlawful purpose.

(2) Criminal impersonation in the first degree is a ~~((gross misdemeanor))~~ class C felony.

Sec. 2. RCW 9A.60.045 and 2003 c 53 s 79 are each amended to read as follows:

(1) A person is guilty of criminal impersonation in the second degree if the person:

(a) Claims to be a law enforcement officer or creates an impression that he or she is a law enforcement officer; and

(b) Under circumstances not amounting to criminal impersonation in the first degree, does an act with intent to convey the impression that he or she is acting in an official capacity and a reasonable person would believe the person is a law enforcement officer.

(2) Criminal impersonation in the second degree is a gross misdemeanor.

NEW SECTION. **Sec. 3.** This act takes effect July 1, 2004.

Passed by the Senate February 13, 2004.

Passed by the House March 2, 2004.

Approved by the Governor March 11, 2004.

Filed in Office of Secretary of State March 11, 2004.

CHAPTER 12

[Engrossed Senate Bill 6180]

GENETIC TESTING—EMPLOYMENT

AN ACT Relating to genetic testing as a condition of employment; and adding a new section to chapter 49.44 RCW.

Be it enacted by the Legislature of the State of Washington:

NEW SECTION. **Sec. 1.** A new section is added to chapter 49.44 RCW to read as follows:

It shall be unlawful for any person, firm, corporation, or the state of Washington, its political subdivisions, or municipal corporations to require, directly or indirectly, that any employee or prospective employee submit genetic

information or submit to screening for genetic information as a condition of employment or continued employment.

"Genetic information" for purposes of this chapter, is information about inherited characteristics that can be derived from a DNA-based or other laboratory test, family history, or medical examination. "Genetic information" for purposes of this chapter, does not include: (1) Routine physical measurements, including chemical, blood, and urine analysis, unless conducted purposefully to diagnose genetic or inherited characteristics; and (2) results from tests for abuse of alcohol or drugs, or for the presence of HIV.

Passed by the Senate February 12, 2004.

Passed by the House March 2, 2004.

Approved by the Governor March 11, 2004.

Filed in Office of Secretary of State March 11, 2004.

CHAPTER 13

[Engrossed Substitute Senate Bill 6352]

INMATES—TELEPHONE SERVICE

AN ACT Relating to selection of telephone calling systems for offenders in state correctional facilities; amending RCW 9.73.095; and creating a new section.

Be it enacted by the Legislature of the State of Washington:

NEW SECTION. Sec. 1. The legislature finds that the current telephone service for offender calls from department of corrections facilities is based on outdated technology that provides neither the most secure nor the most accountable system available and is provided at a high cost to the offenders' families. The legislature, in budget provisions, has required the secretary of corrections to investigate other systems as offender telephone service contracts came due for renewal. The legislature now finds that the current statute prevents the secretary of corrections from using systems that provide greater security, more offender accountability, and lower costs. Therefore, the legislature intends to remove this barrier while retaining the intent of the statute to provide safe, accountable, and affordable telephone services.

Sec. 2. RCW 9.73.095 and 1998 c 217 s 2 are each amended to read as follows:

(1) RCW 9.73.030 through 9.73.080 and 9.73.260 shall not apply to employees of the department of corrections in the following instances: Intercepting, recording, or divulging any telephone calls from an ~~((inmate))~~ offender or resident of a state correctional facility; or intercepting, recording, or divulging any monitored nontelephonic conversations in ~~((inmate))~~ offender living units, cells, rooms, dormitories, and common spaces where ~~((inmates))~~ offenders may be present. For the purposes of this section, "state correctional facility" means a facility that is under the control and authority of the department of corrections, and used for the incarceration, treatment, or rehabilitation of convicted felons.

(2)(a) All personal calls made by ~~((inmates))~~ offenders shall be ~~((collect calls only))~~ made using a calling system approved by the secretary of corrections which is at least as secure as the system it replaces. In approving one or more calling systems, the secretary of corrections shall consider the safety of the

public, the ability to reduce telephone fraud, and the ability of offender families to select a low-cost option.

(b) The calls ~~((with))~~ shall be "operator announcement" type calls. The operator shall notify the receiver of the call that the call is coming from a prison ~~((inmate))~~ offender, and that it will be recorded and may be monitored.

(3) The department of corrections shall adhere to the following procedures and restrictions when intercepting, recording, or divulging any telephone calls from an ~~((inmate))~~ offender or resident of a state correctional facility as provided for by this section. The department shall also adhere to the following procedures and restrictions when intercepting, recording, or divulging any monitored nontelephonic conversations in ~~((inmate))~~ offender living units, cells, rooms, dormitories, and common spaces where ~~((inmates))~~ offenders may be present:

(a) Unless otherwise provided for in this section, after intercepting or recording any conversation, only the superintendent and his or her designee shall have access to that recording.

(b) The contents of any intercepted and recorded conversation shall be divulged only as is necessary to safeguard the orderly operation of the correctional facility, in response to a court order, or in the prosecution or investigation of any crime.

(c) All conversations that are recorded under this section, unless being used in the ongoing investigation or prosecution of a crime, or as is necessary to assure the orderly operation of the correctional facility, shall be destroyed one year after the intercepting and recording.

(4) So as to safeguard the sanctity of the attorney-client privilege, the department of corrections shall not intercept, record, or divulge any conversation between an ~~((inmate))~~ offender or resident and an attorney. The department shall develop policies and procedures to implement this section. The department's policies and procedures implemented under this section shall also recognize the privileged nature of confessions made by an offender to a member of the clergy or a priest in his or her professional character, in the course of discipline enjoined by the church to which he or she belongs as provided in RCW 5.60.060(3).

(5) The department shall notify in writing all ~~((inmates))~~ offenders, residents, and personnel of state correctional facilities that their nontelephonic conversations may be intercepted, recorded, or divulged in accordance with the provisions of this section.

(6) The department shall notify all visitors to state correctional facilities who may enter ~~((inmate))~~ offender living units, cells, rooms, dormitories, or common spaces where ~~((inmates))~~ offenders may be present, that their conversations may be intercepted, recorded, or divulged in accordance with the provisions of this section. The notice required under this subsection shall be accomplished through a means no less conspicuous than a general posting in a location likely to be seen by visitors entering the facility.

Passed by the Senate February 16, 2004.

Passed by the House March 2, 2004.

Approved by the Governor March 11, 2004.

Filed in Office of Secretary of State March 11, 2004.

CHAPTER 14

[Senate Bill 6372]

STATE PARKS CENTENNIAL

AN ACT Relating to the Washington state parks centennial; adding a new chapter to Title 79A RCW; providing an expiration date; and declaring an emergency.

Be it enacted by the Legislature of the State of Washington:

NEW SECTION. Sec. 1. Washington state parks will mark its centennial year in 2013. The legislature finds it fitting to commemorate the Washington state parks centennial through a coordinated effort by the state parks and recreation commission, the governor, the legislature, and the people of the state of Washington by implementing the Washington state parks centennial 2013 plan developed by the state parks and recreation commission in response to the directive of the legislature in section 347, chapter 26, Laws of 2003 1st sp. sess.

NEW SECTION. Sec. 2. (1) The Washington state parks centennial advisory committee is established, composed of eleven members selected as follows:

(a) The chair and vice-chair of the state parks and recreation commission, who shall serve as the chair and vice-chair of the committee;

(b) A representative of the governor;

(c) A member of each of the two largest caucuses of the senate, appointed by the president of the senate;

(d) A member of each of the two largest caucuses of the house of representatives, appointed by the speaker of the house of representatives;

(e) The director of the office of financial management or his or her designee; and

(f) Three members of the public, appointed by the chair of the commission, consisting of a representative of the commission employees, a representative of private sector donors, and a representative of state park users.

(2) The committee will be staffed by the commission and by other staff as may be provided by the legislature, the governor, the office of financial management, or other sources that choose to donate staff assistance.

(3) The committee will meet at the call of the chair.

NEW SECTION. Sec. 3. Nonlegislative committee members will be reimbursed for travel expenses as provided in RCW 43.03.050 and 43.03.060. Legislative members will be reimbursed as provided in RCW 44.04.120.

NEW SECTION. Sec. 4. (1) The Washington state parks centennial advisory committee will develop a proposal to implement the centennial 2013 plan. The proposal must include:

(a) A complete description of the policy and fiscal components of the plan;

(b) The roles of the commission, the governor, the legislature, the public, and other entities in implementing the plan;

(c) Time frames for implementing the plan;

(d) Cost estimates for implementing the plan, including total estimated costs for each component of the plan, and estimates on a yearly or biennial basis for implementing the plan in phases.

(2) The commission will review and may revise the plan. The commission will submit a draft proposal to the office of financial management and the fiscal committees of the legislature, no later than September 1, 2004. That proposal

must include at least the portion of the plan that would need to be considered during the 2005 legislative session to be implemented during the 2005-07 biennium. The commission will submit the complete proposal to the office of financial management and the appropriate policy and fiscal committees of the legislature no later than January 1, 2005. Thereafter, the commission must submit revised proposals to the office of financial management and the appropriate policy and fiscal committees of the legislature no later than June 30 of each even-numbered year.

NEW SECTION. Sec. 5. This act expires December 31, 2013.

NEW SECTION. Sec. 6. Sections 1 through 5 of this act constitute a new chapter in Title 79A RCW.

NEW SECTION. Sec. 7. This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately.

Passed by the Senate February 16, 2004.

Passed by the House March 5, 2004.

Approved by the Governor March 12, 2004.

Filed in Office of Secretary of State March 12, 2004.

CHAPTER I5

[Substitute Senate Bill 6384]

DOMESTIC VIOLENCE—PENALTIES, PROGRAM PAYMENT

AN ACT Relating to penalties against convicted domestic violence offenders to pay for domestic violence programs; amending RCW 3.50.100, 3.62.090, 10.82.070, 3.46.120, 3.62.040, and 35.20.220; reenacting and amending RCW 3.62.020; adding a new section to chapter 10.99 RCW; creating a new section; and prescribing penalties.

Be it enacted by the Legislature of the State of Washington:

NEW SECTION. Sec. 1. The legislature recognizes that domestic violence is a growing and more visible public safety problem in Washington state than ever before, and that domestic violence-related incidents have a significant bearing on overall law enforcement and court caseloads. The legislature further recognizes the growing costs associated with domestic violence prevention and advocacy programs established by local governments and by community-based organizations.

It is the legislature's intent to establish a penalty in law that will hold convicted domestic violence offenders accountable while requiring them to pay penalties to offset the costs of domestic violence advocacy and prevention programs. It is the legislature's intent that the penalties imposed against convicted domestic violence offenders under section 2 of this act be used for established domestic violence prevention and prosecution programs. It is the legislature's intent that the revenue from the penalty assessment shall be in addition to existing sources of funding to enhance or help prevent the reduction and elimination of domestic violence prevention and prosecution programs.

NEW SECTION. Sec. 2. A new section is added to chapter 10.99 RCW to read as follows:

(1) All superior courts, and courts organized under Title 3 or 35 RCW, may impose a penalty assessment not to exceed one hundred dollars on any person

convicted of a crime involving domestic violence. The assessment shall be in addition to, and shall not supersede, any other penalty, restitution, fines, or costs provided by law.

(2) Revenue from the assessment shall be used solely for the purposes of establishing and funding domestic violence advocacy and domestic violence prevention and prosecution programs in the city or county of the court imposing the assessment. Revenue from the assessment shall not be used for indigent criminal defense. If the city or county does not have domestic violence advocacy or domestic violence prevention and prosecution programs, cities and counties may use the revenue collected from the assessment to contract with recognized community-based domestic violence program providers.

(3) The assessment imposed under this section shall not be subject to any state or local remittance requirements under chapter 3.46, 3.50, 3.62, 7.68, 10.82, or 35.20 RCW.

(4) For the purposes of this section, "convicted" includes a plea of guilty, a finding of guilt regardless of whether the imposition of the sentence is deferred or any part of the penalty is suspended, or the levying of a fine. For the purposes of this section, "domestic violence" has the same meaning as that term is defined under RCW 10.99.020 and includes violations of equivalent local ordinances.

(5) When determining whether to impose a penalty assessment under this section, judges are encouraged to solicit input from the victim or representatives for the victim in assessing the ability of the convicted offender to pay the penalty, including information regarding current financial obligations, family circumstances, and ongoing restitution.

Sec. 3. RCW 3.50.100 and 1995 c 291 s 3 are each amended to read as follows:

(1) Costs in civil and criminal actions may be imposed as provided in district court. All fees, costs, fines, forfeitures and other money imposed by any municipal court for the violation of any municipal or town ordinances shall be collected by the court clerk and, together with any other noninterest revenues received by the clerk, shall be deposited with the city or town treasurer as a part of the general fund of the city or town, or deposited in such other fund of the city or town, or deposited in such other funds as may be designated by the laws of the state of Washington.

(2) Except as provided in section 2 of this act, the city treasurer shall remit monthly thirty-two percent of the noninterest money received under this section, other than for parking infractions, and certain costs to the state treasurer. "Certain costs" as used in this subsection, means those costs awarded to prevailing parties in civil actions under RCW 4.84.010 or 36.18.040, or those costs awarded against convicted defendants in criminal actions under RCW 10.01.160, 10.46.190, or 36.18.040, or other similar statutes if such costs are specifically designated as costs by the court and are awarded for the specific reimbursement of costs incurred by the state, county, city, or town in the prosecution of the case, including the fees of defense counsel. Money remitted under this subsection to the state treasurer shall be deposited as provided in RCW 43.08.250.

(3) The balance of the noninterest money received under this section shall be retained by the city and deposited as provided by law.

(4) Penalties, fines, bail forfeitures, fees, and costs may accrue interest at the rate of twelve percent per annum, upon assignment to a collection agency. Interest may accrue only while the case is in collection status.

(5) Interest retained by the court on penalties, fines, bail forfeitures, fees, and costs shall be split twenty-five percent to the state treasurer for deposit in the public safety and education account as provided in RCW 43.08.250, twenty-five percent to the state treasurer for deposit in the judicial information system account as provided in RCW 2.68.020, twenty-five percent to the city general fund, and twenty-five percent to the city general fund to fund local courts.

Sec. 4. RCW 3.62.020 and 1995 c 301 s 31 and 1995 c 291 s 5 are each reenacted and amended to read as follows:

(1) Except as provided in subsection (4) of this section, all costs, fees, fines, forfeitures and penalties assessed and collected in whole or in part by district courts, except costs, fines, forfeitures and penalties assessed and collected, in whole or in part, because of the violation of city ordinances, shall be remitted by the clerk of the district court to the county treasurer at least monthly, together with a financial statement as required by the state auditor, noting the information necessary for crediting of such funds as required by law.

(2) Except as provided in section 2 of this act, the county treasurer shall remit thirty-two percent of the noninterest money received under subsection (1) of this section except certain costs to the state treasurer. "Certain costs" as used in this subsection, means those costs awarded to prevailing parties in civil actions under RCW 4.84.010 or 36.18.040, or those costs awarded against convicted defendants in criminal actions under RCW 10.01.160, 10.46.190, or 36.18.040, or other similar statutes if such costs are specifically designated as costs by the court and are awarded for the specific reimbursement of costs incurred by the state or county in the prosecution of the case, including the fees of defense counsel. Money remitted under this subsection to the state treasurer shall be deposited as provided in RCW 43.08.250.

(3) The balance of the noninterest money received by the county treasurer under subsection (1) of this section shall be deposited in the county current expense fund.

(4) All money collected for county parking infractions shall be remitted by the clerk of the district court at least monthly, with the information required under subsection (1) of this section, to the county treasurer for deposit in the county current expense fund.

(5) Penalties, fines, bail forfeitures, fees, and costs may accrue interest at the rate of twelve percent per annum, upon assignment to a collection agency. Interest may accrue only while the case is in collection status.

(6) Interest retained by the court on penalties, fines, bail forfeitures, fees, and costs shall be split twenty-five percent to the state treasurer for deposit in the public safety and education account as provided in RCW 43.08.250, twenty-five percent to the state treasurer for deposit in the judicial information system account as provided in RCW 2.68.020, twenty-five percent to the county current expense fund, and twenty-five percent to the county current expense fund to fund local courts.

Sec. 5. RCW 3.62.090 and 2003 c 380 s 1 are each amended to read as follows:

(1) There shall be assessed and collected in addition to any fines, forfeitures, or penalties assessed, other than for parking infractions, by all courts organized under Title 3 or 35 RCW a public safety and education assessment equal to seventy percent of such fines, forfeitures, or penalties, which shall be remitted as provided in chapters 3.46, 3.50, 3.62, and 35.20 RCW. The assessment required by this section shall not be suspended or waived by the court.

(2) There shall be assessed and collected in addition to any fines, forfeitures, or penalties assessed, other than for parking infractions and for fines levied under RCW 46.61.5055, and in addition to the public safety and education assessment required under subsection (1) of this section, by all courts organized under Title 3 or 35 RCW, an additional public safety and education assessment equal to fifty percent of the public safety and education assessment required under subsection (1) of this section, which shall be remitted to the state treasurer and deposited as provided in RCW 43.08.250. The additional assessment required by this subsection shall not be suspended or waived by the court.

(3) This section does not apply to the fee imposed under RCW 46.63.110(7) (~~(8)~~), the penalty imposed under RCW 46.63.110(8), or the penalty assessment imposed under section 2 of this act.

Sec. 6. RCW 10.82.070 and 1995 c 292 s 3 are each amended to read as follows:

(1) All sums of money derived from costs, fines, penalties, and forfeitures imposed or collected, in whole or in part, by a superior court for violation of orders of injunction, mandamus and other like writs, for contempt of court, or for breach of the penal laws shall be paid in cash by the person collecting the same, within twenty days after the collection, to the county treasurer of the county in which the same have accrued.

(2) Except as provided in section 2 of this act, the county treasurer shall remit monthly thirty-two percent of the money received under this section except for certain costs to the state treasurer for deposit as provided under RCW 43.08.250 and shall deposit the remainder as provided by law. "Certain costs" as used in this subsection, means those costs awarded to prevailing parties in civil actions under RCW 4.84.010 or 36.18.040, or those costs awarded against convicted defendants in criminal actions under RCW 10.01.160, 10.46.190, or 36.18.040, or other similar statutes if such costs are specifically designated as costs by the court and are awarded for the specific reimbursement of costs incurred by the state or county in the prosecution of the case, including the fees of defense counsel. Costs or assessments awarded to dedicated accounts, state or local, are not subject to this state allocation or to RCW 7.68.035.

(3) All fees, fines, forfeitures and penalties collected or assessed by a district court because of the violation of a state law shall be remitted as provided in chapter 3.62 RCW as now exists or is later amended. All fees, fines, forfeitures, and penalties collected or assessed by a superior court in cases on appeal from a lower court shall be remitted to the municipal or district court from which the cases were appealed.

Sec. 7. RCW 3.46.120 and 1995 c 291 s 2 are each amended to read as follows:

(1) All money received by the clerk of a municipal department including penalties, fines, bail forfeitures, fees and costs shall be paid by the clerk to the city treasurer.

(2) Except as provided in section 2 of this act, the city treasurer shall remit monthly thirty-two percent of the noninterest money received under this section, other than for parking infractions, and certain costs to the state treasurer. "Certain costs" as used in this subsection, means those costs awarded to prevailing parties in civil actions under RCW 4.84.010 or 36.18.040, or those costs awarded against convicted defendants in criminal actions under RCW 10.01.160, 10.46.190, or 36.18.040, or other similar statutes if such costs are specifically designated as costs by the court and are awarded for the specific reimbursement of costs incurred by the state, county, city, or town in the prosecution of the case, including the fees of defense counsel. Money remitted under this subsection to the state treasurer shall be deposited as provided in RCW 43.08.250.

(3) The balance of the noninterest money received under this section shall be retained by the city and deposited as provided by law.

(4) Penalties, fines, bail forfeitures, fees, and costs may accrue interest at the rate of twelve percent per annum, upon assignment to a collection agency. Interest may accrue only while the case is in collection status.

(5) Interest retained by the court on penalties, fines, bail forfeitures, fees, and costs shall be split twenty-five percent to the state treasurer for deposit in the public safety and education account as provided in RCW 43.08.250, twenty-five percent to the state treasurer for deposit in the judicial information system account as provided in RCW 2.68.020, twenty-five percent to the city general fund, and twenty-five percent to the city general fund to fund local courts.

Sec. 8. RCW 3.62.040 and 1995 c 291 s 6 are each amended to read as follows:

(1) Except as provided in subsection (4) of this section, all costs, fines, forfeitures and penalties assessed and collected, in whole or in part, by district courts because of violations of city ordinances shall be remitted by the clerk of the district court at least monthly directly to the treasurer of the city wherein the violation occurred.

(2) Except as provided in section 2 of this act, the city treasurer shall remit monthly thirty-two percent of the noninterest money received under this section, other than for parking infractions and certain costs, to the state treasurer. "Certain costs" as used in this subsection, means those costs awarded to prevailing parties in civil actions under RCW 4.84.010 or 36.18.040, or those costs awarded against convicted defendants in criminal actions under RCW 10.01.160, 10.46.190, or 36.18.040, or other similar statutes if such costs are specifically designated as costs by the court and are awarded for the specific reimbursement of costs incurred by the state, county, city, or town in the prosecution of the case, including the fees of defense counsel. Money remitted under this subsection to the state treasurer shall be deposited as provided in RCW 43.08.250.

(3) The balance of the noninterest money received under this section shall be retained by the city and deposited as provided by law.

(4) All money collected for city parking infractions shall be remitted by the clerk of the district court at least monthly to the city treasurer for deposit in the city's general fund.

(5) Penalties, fines, bail forfeitures, fees, and costs may accrue interest at the rate of twelve percent per annum, upon assignment to a collection agency. Interest may accrue only while the case is in collection status.

(6) Interest retained by the court on penalties, fines, bail forfeitures, fees, and costs shall be split twenty-five percent to the state treasurer for deposit in the public safety and education account as provided in RCW 43.08.250, twenty-five percent to the state treasurer for deposit in the judicial information system account as provided in RCW 2.68.020, twenty-five percent to the city general fund, and twenty-five percent to the city general fund to fund local courts.

Sec. 9. RCW 35.20.220 and 1995 c 291 s 4 are each amended to read as follows:

(1) The chief clerk, under the supervision and direction of the court administrator of the municipal court, shall have the custody and care of the books, papers and records of said court; he shall be present by himself or deputy during the session of said court, and shall have the power to swear all witnesses and jurors, and administer oaths and affidavits, and take acknowledgments. He shall keep the records of said court, and shall issue all process under his hand and the seal of said court, and shall do and perform all things and have the same powers pertaining to his office as the clerks of the superior courts have in their office. He shall receive all fines, penalties and fees of every kind, and keep a full, accurate and detailed account of the same; and shall on each day pay into the city treasury all money received for said city during the day previous, with a detailed account of the same, and taking the treasurer's receipt therefor.

(2) Except as provided in section 2 of this act, the city treasurer shall remit monthly thirty-two percent of the noninterest money received under this section, other than for parking infractions and certain costs to the state treasurer. "Certain costs" as used in this subsection, means those costs awarded to prevailing parties in civil actions under RCW 4.84.010 or 36.18.040, or those costs awarded against convicted defendants in criminal actions under RCW 10.01.160, 10.46.190, or 36.18.040, or other similar statutes if such costs are specifically designated as costs by the court and are awarded for the specific reimbursement of costs incurred by the state, county, city, or town in the prosecution of the case, including the fees of defense counsel. Money remitted under this subsection to the state treasurer shall be deposited as provided in RCW 43.08.250.

(3) The balance of the noninterest money received under this section shall be retained by the city and deposited as provided by law.

(4) Penalties, fines, bail forfeitures, fees, and costs may accrue interest at the rate of twelve percent per annum, upon assignment to a collection agency. Interest may accrue only while the case is in collection status.

(5) Interest retained by the court on penalties, fines, bail forfeitures, fees, and costs shall be split twenty-five percent to the state treasurer for deposit in the public safety and education account as provided in RCW 43.08.250, twenty-five percent to the state treasurer for deposit in the judicial information system account as provided in RCW 2.68.020, twenty-five percent to the city general fund, and twenty-five percent to the city general fund to fund local courts.

Passed by the Senate March 8, 2004.

Passed by the House March 2, 2004.

Approved by the Governor March 15, 2004.

Filed in Office of Secretary of State March 15, 2004.

CHAPTER 16

[House Bill 2473]

WEAPONS POSSESSION—COURTHOUSES

AN ACT Relating to possession of weapons in courthouse buildings; and amending RCW 9.41.300.

Be it enacted by the Legislature of the State of Washington:

Sec. 1. RCW 9.41.300 and 1994 sp.s. c 7 s 429 are each amended to read as follows:

(1) It is unlawful for any person to enter the following places when he or she knowingly possesses or knowingly has under his or her control a weapon:

(a) The restricted access areas of a jail, or of a law enforcement facility, or any place used for the confinement of a person (i) arrested for, charged with, or convicted of an offense, (ii) held for extradition or as a material witness, or (iii) otherwise confined pursuant to an order of a court, except an order under chapter 13.32A or 13.34 RCW. Restricted access areas do not include common areas of egress or ingress open to the general public;

(b) Those areas in any building which are used in connection with court proceedings, including courtrooms, jury rooms, judge's chambers, offices and areas used to conduct court business, waiting areas, and corridors adjacent to areas used in connection with court proceedings. The restricted areas do not include common areas of ingress and egress to the building that is used in connection with court proceedings, when it is possible to protect court areas without restricting ingress and egress to the building. The restricted areas shall be the minimum necessary to fulfill the objective of this subsection (1)(b).

In addition, the local legislative authority shall provide either a stationary locked box sufficient in size for pistols and key to a weapon owner for weapon storage, or shall designate an official to receive weapons for safekeeping, during the owner's visit to restricted areas of the building. The locked box or designated official shall be located within the same building used in connection with court proceedings. The local legislative authority shall be liable for any negligence causing damage to or loss of a weapon either placed in a locked box or left with an official during the owner's visit to restricted areas of the building.

The local judicial authority shall designate and clearly mark those areas where weapons are prohibited, and shall post notices at each entrance to the building of the prohibition against weapons in the restricted areas;

(c) The restricted access areas of a public mental health facility certified by the department of social and health services for inpatient hospital care and state institutions for the care of the mentally ill, excluding those facilities solely for evaluation and treatment. Restricted access areas do not include common areas of egress and ingress open to the general public; or

(d) That portion of an establishment classified by the state liquor control board as off-limits to persons under twenty-one years of age.

(2) Cities, towns, counties, and other municipalities may enact laws and ordinances:

(a) Restricting the discharge of firearms in any portion of their respective jurisdictions where there is a reasonable likelihood that humans, domestic animals, or property will be jeopardized. Such laws and ordinances shall not abridge the right of the individual guaranteed by Article I, section 24 of the state Constitution to bear arms in defense of self or others; and

(h) Restricting the possession of firearms in any stadium or convention center, operated by a city, town, county, or other municipality, except that such restrictions shall not apply to:

(i) Any pistol in the possession of a person licensed under RCW 9.41.070 or exempt from the licensing requirement by RCW 9.41.060; or

(ii) Any showing, demonstration, or lecture involving the exhibition of firearms.

(3)(a) Cities, towns, and counties may enact ordinances restricting the areas in their respective jurisdictions in which firearms may be sold, but, except as provided in (b) of this subsection, a business selling firearms may not be treated more restrictively than other businesses located within the same zone. An ordinance requiring the cessation of business within a zone shall not have a shorter grandfather period for businesses selling firearms than for any other businesses within the zone.

(b) Cities, towns, and counties may restrict the location of a business selling firearms to not less than five hundred feet from primary or secondary school grounds, if the business has a storefront, has hours during which it is open for business, and posts advertisements or signs observable to passersby that firearms are available for sale. A business selling firearms that exists as of the date a restriction is enacted under this subsection (3)(b) shall be grandfathered according to existing law.

(4) Violations of local ordinances adopted under subsection (2) of this section must have the same penalty as provided for by state law.

(5) The perimeter of the premises of any specific location covered by subsection (1) of this section shall be posted at reasonable intervals to alert the public as to the existence of any law restricting the possession of firearms on the premises.

(6) Subsection (1) of this section does not apply to:

(a) A person engaged in military activities sponsored by the federal or state governments, while engaged in official duties;

(b) Law enforcement personnel, except that subsection (1)(b) of this section does apply to a law enforcement officer who is present at a courthouse building as a party to an action under chapter 10.14, 10.99, or 26.50 RCW, or an action under Title 26 RCW where any party has alleged the existence of domestic violence as defined in RCW 26.50.010; or

(c) Security personnel while engaged in official duties.

(7) Subsection (1)(a) of this section does not apply to a person licensed pursuant to RCW 9.41.070 who, upon entering the place or facility, directly and promptly proceeds to the administrator of the facility or the administrator's designee and obtains written permission to possess the firearm while on the premises or checks his or her firearm. The person may reclaim the firearms upon leaving but must immediately and directly depart from the place or facility.

(8) Subsection (1)(c) of this section does not apply to any administrator or employee of the facility or to any person who, upon entering the place or facility, directly and promptly proceeds to the administrator of the facility or the administrator's designee and obtains written permission to possess the firearm while on the premises.

(9) Subsection (1)(d) of this section does not apply to the proprietor of the premises or his or her employees while engaged in their employment.

(10) Any person violating subsection (1) of this section is guilty of a gross misdemeanor.

(11) "Weapon" as used in this section means any firearm, explosive as defined in RCW 70.74.010, or instrument or weapon listed in RCW 9.41.250.

Passed by the House February 10, 2004.

Passed by the Senate March 2, 2004.

Approved by the Governor March 15, 2004.

Filed in Office of Secretary of State March 15, 2004.

CHAPTER 17

[Second Engrossed House Bill 1645]

DOMESTIC VIOLENCE, SEXUAL ASSAULT, STALKING—VICTIM PROTECTION IN RENTAL HOUSING

AN ACT Relating to protection of victims of domestic violence, sexual assault, or stalking in the rental of housing; adding new sections to chapter 59.18 RCW; creating a new section; repealing RCW 59.18.356; and declaring an emergency.

Be it enacted by the Legislature of the State of Washington:

NEW SECTION. Sec. 1. The legislature finds and declares that:

(1) Domestic violence, sexual assault, and stalking are widespread societal problems that have devastating effects for individual victims, their children, and their communities. Victims of violence may be forced to remain in unsafe situations because they are bound by residential lease agreements. The legislature finds that the inability of victims to terminate their rental agreements hinders or prevents victims from being able to safely flee domestic violence, sexual assault, or stalking. The legislature further finds that victims of these crimes who do not have access to safe housing are more likely to remain in or return to abusive or dangerous situations. Also, the legislature finds that victims of these crimes are further victimized when they are unable to obtain or retain rental housing due to their history as a victim of these crimes. The legislature further finds that evidence that a prospective tenant has been a victim of domestic violence, sexual assault, or stalking is not relevant to the decision whether to rent to that prospective tenant.

(2) By this act, the legislature intends to increase safety for victims of domestic violence, sexual assault, and stalking by removing barriers to safety and offering protection against discrimination.

NEW SECTION. Sec. 2. A new section is added to chapter 59.18 RCW to read as follows:

The definitions in this section apply throughout this section and sections 3 through 5 of this act unless the context clearly requires otherwise.

(1) "Domestic violence" has the same meaning as set forth in RCW 26.50.010.

(2) "Sexual assault" has the same meaning as set forth in RCW 70.125.030.

(3) "Stalking" has the same meaning as set forth in RCW 9A.46.110.

(4) "Qualified third party" means any of the following people acting in their official capacity:

(a) Law enforcement officers;

(b) Persons subject to the provisions of chapter 18.120 RCW;

(c) Employees of a court of the state;

(d) Licensed mental health professionals or other licensed counselors;

(e) Employees of crime victim/witness programs as defined in RCW 7.69.020 who are trained advocates for the program; and

(f) Members of the clergy as defined in RCW 26.44.020.

(5) "Household member" means a child or adult residing with the tenant other than the perpetrator of domestic violence, stalking, or sexual assault.

(6) "Tenant screening service provider" means any nongovernmental agency that provides, for a fee, background information on prospective tenants to landlords.

(7) "Credit reporting agency" has the same meaning as set forth in RCW 19.182.010(5).

NEW SECTION. Sec. 3. A new section is added to chapter 59.18 RCW to read as follows:

(1)(a) If a tenant notifies the landlord in writing that he or she or a household member was a victim of an act that constitutes a crime of domestic violence, sexual assault, or stalking, and either (a)(i) or (ii) of this subsection applies, then subsection (2) of this section applies:

(i) The tenant or the household member has a valid order for protection under one or more of the following: Chapter 26.50 or 26.26 RCW or RCW 9A.46.040, 9A.46.050, 10.14.080, 10.99.040 (2) or (3), or 26.09.050; or

(ii) The tenant or the household member has reported the domestic violence, sexual assault, or stalking to a qualified third party acting in his or her official capacity and the qualified third party has provided the tenant or the household member a written record of the report signed by the qualified third party.

(b) When a copy of a valid order for protection or a written record of a report signed by a qualified third party, as required under (a) of this subsection, is made available to the landlord, the tenant may terminate the rental agreement and quit the premises without further obligation under the rental agreement or under chapter 59.12 RCW. However, the request to terminate the rental agreement must occur within ninety days of the reported act, event, or circumstance that gave rise to the protective order or report to a qualified third party. A record of the report to a qualified third party that is provided to the tenant or household member shall consist of a document signed and dated by the qualified third party stating: (i) That the tenant or the household member notified him or her that he or she was a victim of an act or acts that constitute a crime of domestic violence, sexual assault, or stalking; (ii) the time and date the act or acts occurred; (iii) the location where the act or acts occurred; (iv) a brief description of the act or acts of domestic violence, sexual assault, or stalking; and (v) that the tenant or household member informed him or her of the name of the alleged perpetrator of the act or acts. The record of the report provided to the

tenant or household member shall not include the name of the alleged perpetrator of the act or acts of domestic violence, sexual assault, or stalking. The qualified third party shall keep a copy of the record of the report and shall note on the retained copy the name of the alleged perpetrator of the act or acts of domestic violence, sexual assault, or stalking. The record of the report to a qualified third party may be accomplished by completion of a form provided by the qualified third party, in substantially the following form:

[Name of organization, agency, clinic, professional service provider]

I and/or my (household member) am/is a victim of

. . . domestic violence as defined by RCW 26.50.010.

. . . sexual assault as defined by RCW 70.125.030.

. . . stalking as defined by RCW 9A.46.110.

Briefly describe the incident of domestic violence, sexual assault, or stalking:

The incident(s) that I rely on in support of this declaration occurred on the following date(s) and time(s): and at the following location(s) .

The incident(s) that I rely on in support of this declaration were committed by the following person(s):

I state under penalty of perjury under the laws of the state of Washington that the foregoing is true and correct. Dated at (city) . ., Washington, this . . . day of . . . , 20. .

.....
Signature of Tenant or
Household Member

I verify that I have provided to the person whose signature appears above the statutes cited in RCW 59.18.— (section 3 of this act) and that the individual was a victim of an act that constitutes a crime of domestic violence, sexual assault, or stalking, and that the individual informed me of the name of the alleged perpetrator of the act.

Dated this . . . day of . . . , 20. .

.....
Signature of authorized officer/employee of
(Organization, agency, clinic, professional
service provider)

(2) A tenant who terminates a rental agreement under this section is discharged from the payment of rent for any period following the last day of the month of the quitting date. The tenant shall remain liable for the rent for the month in which he or she terminated the rental agreement unless the termination is in accordance with RCW 59.18.200(1). Notwithstanding lease provisions that allow for forfeiture of a deposit for early termination, a tenant who terminates under this section is entitled to the return of the full deposit, subject to RCW 59.18.020 and 59.18.280. Other tenants who are parties to the rental agreement, except household members who are the victims of sexual assault, stalking, or domestic violence, are not released from their obligations under the rental agreement or other obligations under this chapter.

(3) The provision of verification of a report under subsection (1)(b) of this section does not waive the confidential or privileged nature of the communication between a victim of domestic violence, sexual assault, or stalking with a qualified third party pursuant to RCW 5.60.060, 70.123.075, or

70.125.065. No record or evidence obtained from such disclosure may be used in any civil, administrative, or criminal proceeding against the victim unless a written waiver of applicable evidentiary privilege is obtained, except that the verification itself, and no other privileged information, under subsection (1)(b) of this section may be used in civil proceedings brought under this section.

NEW SECTION. Sec. 4. A new section is added to chapter 59.18 RCW to read as follows:

(1) A landlord may not terminate a tenancy, fail to renew a tenancy, or refuse to enter into a rental agreement based on the tenant's or applicant's or a household member's status as a victim of domestic violence, sexual assault, or stalking, or based on the tenant or applicant having terminated a rental agreement under section 3 of this act.

(2) A landlord who refuses to enter into a rental agreement in violation of this section may be liable to the tenant or applicant in a civil action for damages sustained by the tenant or applicant. The prevailing party may also recover court costs and reasonable attorneys' fees.

(3) It is a defense to an unlawful detainer action under chapter 59.12 RCW that the action to remove the tenant and recover possession of the premises is in violation of subsection (1) of this section.

(4) This section does not prohibit adverse housing decisions based upon other lawful factors within the landlord's knowledge.

NEW SECTION. Sec. 5. A new section is added to chapter 59.18 RCW to read as follows:

(1) A tenant who has obtained a court order from a court of competent jurisdiction granting him or her possession of a dwelling unit to the exclusion of one or more cotenants may request that a lock be replaced or configured for a new key at the tenant's expense. The landlord shall, if provided a copy of the order, comply with the request and shall not provide copies of the new keys to the tenant restrained or excluded by the court's order. This section does not release a cotenant, other than a household member who is the victim of domestic violence, sexual assault, or stalking, from liability or obligations under the rental agreement.

(2) A landlord who replaces a lock or configures for a new key of a residential housing unit in accordance with subsection (1) of this section shall be held harmless from liability for any damages that result directly from the lock change.

NEW SECTION. Sec. 6. RCW 59.18.356 (Threatening behavior—Violation of order for protection—Termination of agreement—Financial obligations) and 1992 c 38 s 7 are each repealed.

NEW SECTION. Sec. 7. This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately.

Passed by the House March 8, 2004.

Passed by the Senate March 4, 2004.

Approved by the Governor March 15, 2004.

Filed in Office of Secretary of State March 15, 2004.

CHAPTER 18

[Substitute Senate Bill 6161]

DOMESTIC VIOLENCE BY LAW ENFORCEMENT OFFICERS

AN ACT Relating to general authority Washington law enforcement agencies adopting policies addressing domestic violence committed or allegedly committed by general authority Washington peace officers; amending RCW 10.99.020; adding a new section to chapter 10.99 RCW; and creating new sections.

Be it enacted by the Legislature of the State of Washington:

NEW SECTION. Sec. 1. The legislature reaffirms its determination to reduce the incident rate of domestic violence. The legislature finds it is appropriate to help reduce the incident rate of domestic violence by addressing the need for improved coordination and accountability among general authority Washington law enforcement agencies and general authority Washington peace officers when reports of domestic violence are made and the alleged perpetrator is a general authority Washington peace officer. The legislature finds that coordination and accountability will be improved if general authority Washington law enforcement agencies adopt policies that meet statewide minimum requirements for training, reporting, interagency cooperation, investigation, and collaboration with groups serving victims of domestic violence. The legislature intends to provide maximum flexibility to general authority Washington law enforcement agencies, consistent with the purposes of this act, in their efforts to improve coordination and accountability when incidents of domestic violence committed or allegedly committed by general authority Washington peace officers are reported.

Sec. 2. RCW 10.99.020 and 2000 c 119 s 5 are each amended to read as follows:

Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Agency" means a general authority Washington law enforcement agency as defined in RCW 10.93.020.

(2) "Association" means the Washington association of sheriffs and police chiefs.

(3) "Family or household members" means spouses, former spouses, persons who have a child in common regardless of whether they have been married or have lived together at any time, adult persons related by blood or marriage, adult persons who are presently residing together or who have resided together in the past, persons sixteen years of age or older who are presently residing together or who have resided together in the past and who have or have had a dating relationship, persons sixteen years of age or older with whom a person sixteen years of age or older has or has had a dating relationship, and persons who have a biological or legal parent-child relationship, including stepparents and stepchildren and grandparents and grandchildren.

~~((2))~~ (4) "Dating relationship" has the same meaning as in RCW 26.50.010.

~~((3))~~ (5) "Domestic violence" includes but is not limited to any of the following crimes when committed by one family or household member against another:

(a) Assault in the first degree (RCW 9A.36.011);

- (b) Assault in the second degree (RCW 9A.36.021);
 - (c) Assault in the third degree (RCW 9A.36.031);
 - (d) Assault in the fourth degree (RCW 9A.36.041);
 - (e) Drive-by shooting (RCW 9A.36.045);
 - (f) Reckless endangerment (RCW 9A.36.050);
 - (g) Coercion (RCW 9A.36.070);
 - (h) Burglary in the first degree (RCW 9A.52.020);
 - (i) Burglary in the second degree (RCW 9A.52.030);
 - (j) Criminal trespass in the first degree (RCW 9A.52.070);
 - (k) Criminal trespass in the second degree (RCW 9A.52.080);
 - (l) Malicious mischief in the first degree (RCW 9A.48.070);
 - (m) Malicious mischief in the second degree (RCW 9A.48.080);
 - (n) Malicious mischief in the third degree (RCW 9A.48.090);
 - (o) Kidnapping in the first degree (RCW 9A.40.020);
 - (p) Kidnapping in the second degree (RCW 9A.40.030);
 - (q) Unlawful imprisonment (RCW 9A.40.040);
 - (r) Violation of the provisions of a restraining order, no-contact order, or protection order restraining or enjoining the person or restraining the person from going onto the grounds of or entering a residence, workplace, school, or day care, or prohibiting the person from knowingly coming within, or knowingly remaining within, a specified distance of a location (RCW 10.99.040, 10.99.050, 26.09.300, 26.10.220, 26.26.138, 26.44.063, 26.44.150, 26.50.060, 26.50.070, 26.50.130, 26.52.070, or 74.34.145);
 - (s) Rape in the first degree (RCW 9A.44.040);
 - (t) Rape in the second degree (RCW 9A.44.050);
 - (u) Residential burglary (RCW 9A.52.025);
 - (v) Stalking (RCW 9A.46.110); and
 - (w) Interference with the reporting of domestic violence (RCW 9A.36.150).
- ((4)) (6) "Employee" means any person currently employed with an agency.

(7) "Sworn employee" means a general authority Washington peace officer as defined in RCW 10.93.020, any person appointed under RCW 35.21.333, and any person appointed or elected to carry out the duties of the sheriff under chapter 36.28 RCW.

(8) "Victim" means a family or household member who has been subjected to domestic violence.

NEW SECTION. Sec. 3. A new section is added to chapter 10.99 RCW to read as follows:

(1) By December 1, 2004, the association shall develop a written model policy on domestic violence committed or allegedly committed by sworn employees of agencies. In developing the policy, the association shall convene a work group consisting of representatives from the following entities and professions:

(a) Statewide organizations representing state and local enforcement officers;

(b) A statewide organization providing training and education for agencies having the primary responsibility of serving victims of domestic violence with emergency shelter and other services; and

(c) Any other organization or profession the association determines to be appropriate.

(2) Members of the work group shall serve without compensation.

(3) The model policy shall provide due process for employees and, at a minimum, meet the following standards:

(a) Provide prehire screening procedures reasonably calculated to disclose whether an applicant for a sworn employee position:

(i) Has committed or, based on credible sources, has been accused of committing an act of domestic violence;

(ii) Is currently being investigated for an allegation of child abuse or neglect or has previously been investigated for founded allegations of child abuse or neglect; or

(iii) Is currently or has previously been subject to any order under RCW 26.44.063, this chapter, chapter 10.14 or 26.50 RCW, or any equivalent order issued by another state or tribal court;

(b) Provide for the mandatory, immediate response to acts or allegations of domestic violence committed or allegedly committed by a sworn employee of an agency;

(c) Provide to a sworn employee, upon the request of the sworn employee or when the sworn employee has been alleged to have committed an act of domestic violence, information on programs under RCW 26.50.150;

(d) Provide for the mandatory, immediate reporting by employees when an employee becomes aware of an allegation of domestic violence committed or allegedly committed by a sworn employee of the agency employing the sworn employee;

(e) Provide procedures to address reporting by an employee who is the victim of domestic violence committed or allegedly committed by a sworn employee of an agency;

(f) Provide for the mandatory, immediate self-reporting by a sworn employee to his or her employing agency when an agency in any jurisdiction has responded to a domestic violence call in which the sworn employee committed or allegedly committed an act of domestic violence;

(g) Provide for the mandatory, immediate self-reporting by a sworn employee to his or her employing agency if the employee is currently being investigated for an allegation of child abuse or neglect or has previously been investigated for founded allegations of child abuse or neglect, or is currently or has previously been subject to any order under RCW 26.44.063, this chapter, chapter 10.14 or 26.50 RCW, or any equivalent order issued by another state or tribal court;

(h) Provide for the performance of prompt separate and impartial administrative and criminal investigations of acts or allegations of domestic violence committed or allegedly committed by a sworn employee of an agency;

(i) Provide for appropriate action to be taken during an administrative or criminal investigation of acts or allegations of domestic violence committed or allegedly committed by a sworn employee of an agency. The policy shall provide procedures to address, in a manner consistent with applicable law and the agency's ability to maintain public safety within its jurisdiction, whether to relieve the sworn employee of agency-issued weapons and other agency-issued

property and whether to suspend the sworn employee's power of arrest or other police powers pending resolution of any investigation;

(j) Provide for prompt and appropriate discipline or sanctions when, after an agency investigation, it is determined that a sworn employee has committed an act of domestic violence;

(k) Provide that, when there has been an allegation of domestic violence committed or allegedly committed by a sworn employee, the agency immediately make available to the alleged victim the following information:

(i) The agency's written policy on domestic violence committed or allegedly committed by sworn employees;

(ii) Information, including but not limited to contact information, about public and private nonprofit domestic violence advocates and services; and

(iii) Information regarding relevant confidentiality policies related to the victim's information;

(l) Provide procedures for the timely response, consistent with chapters 42.17 and 10.97 RCW, to an alleged victim's inquiries into the status of the administrative investigation and the procedures the agency will follow in an investigation of domestic violence committed or allegedly committed by a sworn employee;

(m) Provide procedures requiring an agency to immediately notify the employing agency of a sworn employee when the notifying agency becomes aware of acts or allegations of domestic violence committed or allegedly committed by the sworn employee within the jurisdiction of the notifying agency; and

(n) Provide procedures for agencies to access and share domestic violence training within their jurisdiction and with other jurisdictions.

(4) By June 1, 2005, every agency shall adopt and implement a written policy on domestic violence committed or allegedly committed by sworn employees of the agency that meet the minimum standards specified in this section. In lieu of developing its own policy, the agency may adopt the model policy developed by the association under this section. In developing its own policy, or before adopting the model policy, the agency shall consult public and private nonprofit domestic violence advocates and any other organizations and professions the agency finds appropriate.

(5)(a) Except as provided in this section, not later than June 30, 2006, every sworn employee of an agency shall be trained by the agency on the agency's policy required under this section.

(b) Sworn employees hired by an agency on or after March 1, 2006, shall, within six months of beginning employment, be trained by the agency on the agency's policy required under this section.

(6)(a) By June 1, 2005, every agency shall provide a copy of its policy developed under this section to the association and shall provide a statement notifying the association of whether the agency has complied with the training required under this section. The copy and statement shall be provided in electronic format unless the agency is unable to do so. The agency shall provide the association with any revisions to the policy upon adoption.

(b) The association shall maintain a copy of each agency's policy and shall provide to the governor and legislature not later than January 1, 2006, a list of those agencies that have not developed and submitted policies and those

agencies that have not stated their compliance with the training required under this section.

(c) The association shall, upon request and within its resources, provide technical assistance to agencies in developing their policies.

NEW SECTION. Sec. 4. The code reviser shall correct any cross-references to RCW 10.99.020 that are changed by this act.

Passed by the Senate February 3, 2004.

Passed by the House March 2, 2004.

Approved by the Governor March 15, 2004.

Filed in Office of Secretary of State March 15, 2004.

CHAPTER 19

[Third Engrossed Substitute House Bill 2195]

STATE ACADEMIC STANDARDS

AN ACT Relating to state academic standards; amending RCW 28A.230.090, 28A.195.010, 28A.200.010, 28A.305.220, 28A.655.070, and 28A.655.030; adding a new section to chapter 28A.655 RCW; adding a new section to chapter 28A.155 RCW; adding a new section to chapter 28A.180 RCW; adding a new section to chapter 28A.230 RCW; creating new sections; repealing RCW 28A.655.060; and declaring an emergency.

Be it enacted by the Legislature of the State of Washington:

PART 1

CERTIFICATE OF ACADEMIC ACHIEVEMENT

NEW SECTION. Sec. 101. A new section is added to chapter 28A.655 RCW to read as follows:

CERTIFICATE REQUIREMENTS. (1) The high school assessment system shall include but need not be limited to the Washington assessment of student learning, opportunities for a student to retake the content areas of the assessment in which the student was not successful, and if approved by the legislature pursuant to subsection (11) of this section, one or more objective alternative assessments for a student to demonstrate achievement of state academic standards. The objective alternative assessments for each content area shall be comparable in rigor to the skills and knowledge that the student must demonstrate on the Washington assessment of student learning for each content area.

(2) Subject to the conditions in this section, a certificate of academic achievement shall be obtained by most students at about the age of sixteen, and is evidence that the students have successfully met the state standard in the content areas included in the certificate. With the exception of students satisfying the provisions of section 104 of this act, acquisition of the certificate is required for graduation from a public high school but is not the only requirement for graduation.

(3) Beginning with the graduating class of 2008, with the exception of students satisfying the provisions of section 104 of this act, a student who meets the state standards on the reading, writing, and mathematics content areas of the high school Washington assessment of student learning shall earn a certificate of academic achievement. If a student does not successfully meet the state

standards in one or more content areas required for the certificate of academic achievement, then the student may retake the assessment in the content area up to four times at no cost to the student. If the student successfully meets the state standards on a retake of the assessment then the student shall earn a certificate of academic achievement. Once objective alternative assessments are authorized pursuant to subsection (11) of this section, a student may use the objective alternative assessments to demonstrate that the student successfully meets the state standards for that content area if the student has retaken the Washington assessment of student learning at least once. If the student successfully meets the state standards on the objective alternative assessments then the student shall earn a certificate of academic achievement. The student's transcript shall note whether the certificate of academic achievement was acquired by means of the Washington assessment of student learning or by an alternative assessment.

(4) Beginning with the graduating class of 2010, a student must meet the state standards in science in addition to the other content areas required under subsection (3) of this section on the Washington assessment of student learning or the objective alternative assessments in order to earn a certificate of academic achievement.

(5) The state board of education may not require the acquisition of the certificate of academic achievement for students in home-based instruction under chapter 28A.200 RCW, for students enrolled in private schools under chapter 28A.195 RCW, or for students satisfying the provisions of section 104 of this act.

(6) A student may retain and use the highest result from each successfully completed content area of the high school assessment.

(7) Beginning with the graduating class of 2006, the highest scale score and level achieved in each content area on the high school Washington assessment of student learning shall be displayed on a student's transcript. In addition, beginning with the graduating class of 2008, each student shall receive a scholar's designation on his or her transcript for each content area in which the student achieves level four the first time the student takes that content area assessment.

(8) Beginning in 2006, school districts must make available to students the following options:

(a) To retake the Washington assessment of student learning up to four times in the content areas in which the student did not meet the state standards if the student is enrolled in a public school; or

(b) To retake the Washington assessment of student learning up to four times in the content areas in which the student did not meet the state standards if the student is enrolled in a high school completion program at a community or technical college. The superintendent of public instruction and the state board for community and technical colleges shall jointly identify means by which students in these programs can be assessed.

(9) Students who achieve the standard in a content area of the high school assessment but who wish to improve their results shall pay for retaking the assessment, using a uniform cost determined by the superintendent of public instruction.

(10) Subject to available funding, the superintendent shall pilot opportunities for retaking the high school assessment beginning in the 2004-05

school year. Beginning no later than September 2006, opportunities to retake the assessment at least twice a year shall be available to each school district.

(11) The office of the superintendent of public instruction shall develop options for implementing objective alternative assessments, which may include an appeals process, for students to demonstrate achievement of the state academic standards. The objective alternative assessments shall be comparable in rigor to the skills and knowledge that the student must demonstrate on the Washington assessment of student learning and be objective in its determination of student achievement of the state standards. Before any objective alternative assessments are used by a student to demonstrate that the student has met the state standards in a content area required to obtain a certificate, the legislature shall formally approve the use of any objective alternative assessments through the omnibus appropriations act or by statute or concurrent resolution.

(12) By December 15, 2004, the house of representatives and senate education committees shall obtain information and conclusions from recognized, independent, national assessment experts regarding the validity and reliability of the high school Washington assessment of student learning for making individual student high school graduation determinations.

(13) To help assure continued progress in academic achievement as a foundation for high school graduation and to assure that students are on track for high school graduation, each school district shall prepare plans for students as provided in this subsection (13).

(a) Student learning plans are required for eighth through twelfth grade students who were not successful on any or all of the content areas of the Washington assessment for student learning during the previous school year. The plan shall include the courses, competencies, and other steps needed to be taken by the student to meet state academic standards and stay on track for graduation. This requirement shall be phased in as follows:

(i) Beginning no later than the 2004-05 school year ninth grade students as described in this subsection (13)(a) shall have a plan.

(ii) Beginning no later than the 2005-06 school year and every year thereafter eighth grade students as described in this subsection (13)(a) shall have a plan.

(iii) The parent or guardian shall be notified, preferably through a parent conference, of the student's results on the Washington assessment of student learning, actions the school intends to take to improve the student's skills in any content area in which the student was unsuccessful, strategies to help them improve their student's skills, and the content of the student's plan.

(iv) Progress made on the student plan shall be reported to the student's parents or guardian at least annually and adjustments to the plan made as necessary.

(b) Beginning with the 2005-06 school year and every year thereafter, all fifth grade students who were not successful in one or more of the content areas of the fourth grade Washington assessment of student learning shall have a student learning plan.

(i) The parent or guardian of a student described in this subsection (13)(b) shall be notified, preferably through a parent conference, of the student's results on the Washington assessment of student learning, actions the school intends to

take to improve the student's skills in any content area in which the student was unsuccessful, and provide strategies to help them improve their student's skills.

(ii) Progress made on the student plan shall be reported to the student's parents or guardian at least annually and adjustments to the plan made as necessary.

NEW SECTION. Sec. 102. CERTIFICATE REPORTS REQUIRED ON THE CUT SCORES REQUIRED TO ACHIEVE THE CERTIFICATE, OBJECTIVE ALTERNATIVE ASSESSMENTS, AND ISSUES RELATED TO VALIDITY AND RELIABILITY. (1) The academic achievement and accountability commission shall review and adjust, if necessary, the performance standards needed to meet the high school standards and obtain a certificate of academic achievement as provided in section 101 of this act. The commission shall include in its review consideration of various conjunctive and compensatory score models, including the use of the standard error of measurement, into the decision regarding the award of the certificate of academic achievement. To assist in its deliberations, the commission shall seek advice from a committee that includes parents, practicing classroom teachers and principals, administrators, staff, and other interested parties. If the commission makes any adjustment of the student performance standards, then the commission shall present the recommended performance standard to the education committees of the house of representatives and the senate by November 30th of the school year in which the changes will take place to permit the legislature to take statutory action before the changes are implemented if such action is deemed warranted by the legislature.

(2) The office of the superintendent of public instruction shall develop options for implementing objective alternative assessments, which may include an appeals process, for students to demonstrate achievement of the state academic standards. The objective alternative assessments shall be comparable in rigor to the skills and knowledge that the student must demonstrate on the Washington assessment of student learning and be objective in its determination of student achievement of the state standards.

(a) By September 1, 2004, the office of the superintendent of public instruction shall report its recommendations for objective alternative assessments to the governor, the state board of education, and the house of representatives and senate education committees.

(b) In its deliberations, the office of the superintendent of public instruction shall consult with parents, administrators, practicing classroom teachers including teachers in career and technical education, practicing principals, appropriate agencies, professional organizations, assessment experts, and other interested parties.

(c) Through the omnibus appropriations act, or by statute or concurrent resolution, the legislature shall formally approve the use of any objective alternative assessments before its implementation as a part of the high school assessment system.

(3) By September 15, 2004, the superintendent of public instruction shall develop recommendations on the best practices that may be used with students who need additional assistance to meet the requirements of the certificate of academic achievement.

(4) By November 30, 2004, the superintendent of public instruction and the state board of education shall provide to the house of representatives and senate education committees all available pertinent studies, information, and independent third-party analyses on the validity and reliability of the high school assessment system, especially as it pertains to the use of the system for individual student decisions.

Sec. 103. RCW 28A.230.090 and 1997 c 222 s 2 are each amended to read as follows:

CERTIFICATE OF ACADEMIC ACHIEVEMENT - STATE BOARD OF EDUCATION HIGH SCHOOL GRADUATION REQUIREMENTS, INCLUDING LOCAL DETERMINATION OF INDIVIDUAL STUDENT SUCCESS. (1) The state board of education shall establish high school graduation requirements or equivalencies for students.

(a) Any course in Washington state history and government used to fulfill high school graduation requirements is encouraged to include information on the culture, history, and government of the American Indian peoples who were the first inhabitants of the state.

(b) The certificate of academic achievement requirements under section 101 of this act or the certificate of individual achievement requirements under section 104 of this act are required for graduation from a public high school but are not the only requirements for graduation.

(c) Any decision on whether a student has met the state board's high school graduation requirements for a high school and beyond plan shall remain at the local level.

(2) In recognition of the statutory authority of the state board of education to establish and enforce minimum high school graduation requirements, the state board shall periodically reevaluate the graduation requirements and shall report such findings to the legislature in a timely manner as determined by the state board.

(3) Pursuant to any requirement for instruction in languages other than English established by the state board of education or a local school district, or both, for purposes of high school graduation, students who receive instruction in American sign language or one or more American Indian languages shall be considered to have satisfied the state or local school district graduation requirement for instruction in one or more languages other than English.

(4) If requested by the student and his or her family, a student who has completed high school courses before attending high school shall be given high school credit which shall be applied to fulfilling high school graduation requirements if:

(a) The course was taken with high school students, if the academic level of the course exceeds the requirements for seventh and eighth grade classes, and the student has successfully passed by completing the same course requirements and examinations as the high school students enrolled in the class; or

(b) The academic level of the course exceeds the requirements for seventh and eighth grade classes and the course would qualify for high school credit, because the course is similar or equivalent to a course offered at a high school in the district as determined by the school district board of directors.

(5) Students who have taken and successfully completed high school courses under the circumstances in subsection (4) of this section shall not be

required to take an additional competency examination or perform any other additional assignment to receive credit. (~~Subsection (4) of this section shall also apply to students enrolled in high school on April 11, 1990, who took the courses before attending high school.~~)

(6) At the college or university level, five quarter or three semester hours equals one high school credit.

NEW SECTION. Sec. 104. A new section is added to chapter 28A.155 RCW to read as follows:

CERTIFICATE OF INDIVIDUAL ACHIEVEMENT. Beginning with the graduating class of 2008, students served under this chapter, who are not appropriately assessed by the high school Washington assessment system as defined in section 101 of this act, even with accommodations, may earn a certificate of individual achievement. The certificate may be earned using multiple ways to demonstrate skills and abilities commensurate with their individual education programs. The determination of whether the high school assessment system is appropriate shall be made by the student's individual education program team. For these students, the certificate of individual achievement is required for graduation from a public high school, but need not be the only requirement for graduation. When measures other than the high school assessment system as defined in section 101 of this act are used, the measures shall be in agreement with the appropriate educational opportunity provided for the student as required by this chapter. The superintendent of public instruction shall develop the guidelines for determining which students should not be required to participate in the high school assessment system and which types of assessments are appropriate to use.

When measures other than the high school assessment system as defined in section 101 of this act are used for high school graduation purposes, the student's high school transcript shall note whether that student has earned a certificate of individual achievement.

Nothing in this section shall be construed to deny a student the right to participation in the high school assessment system as defined in section 101 of this act, and, upon successfully meeting the high school standard, receipt of the certificate of academic achievement.

NEW SECTION. Sec. 105. A new section is added to chapter 28A.180 RCW to read as follows:

The office of the superintendent of public instruction and the state board for community and technical colleges shall jointly develop a program plan to provide a continuing education option for students who are eligible for the state transitional bilingual instruction program and who need more time to develop language proficiency but who are more age-appropriately suited for a postsecondary learning environment than for a high school. In developing the plan, the superintendent of public instruction shall consider options to formally recognize the accomplishments of students in the state transitional bilingual instruction program who have completed the twelfth grade but have not earned a certificate of academic achievement. By December 1, 2004, the agencies shall report to the legislative education and fiscal committees with any recommendations for legislative action and any resources necessary to implement the plan.

Sec. 106. RCW 28A.195.010 and 1993 c 336 s 1101 are each amended to read as follows:

CERTIFICATE OF ACADEMIC ACHIEVEMENT - PRIVATE SCHOOL STUDENTS EXEMPTED. The legislature hereby recognizes that private schools should be subject only to those minimum state controls necessary to insure the health and safety of all the students in the state and to insure a sufficient basic education to meet usual graduation requirements. The state, any agency or official thereof, shall not restrict or dictate any specific educational or other programs for private schools except as hereinafter in this section provided.

Principals of private schools or superintendents of private school districts shall file each year with the state superintendent of public instruction a statement certifying that the minimum requirements hereinafter set forth are being met, noting any deviations. After review of the statement, the state superintendent will notify schools or school districts of those deviations which must be corrected. In case of major deviations, the school or school district may request and the state board of education may grant provisional status for one year in order that the school or school district may take action to meet the requirements. The state board of education shall not require private school students to meet the student learning goals, obtain a certificate of academic achievement, or a certificate of individual achievement to graduate from high school, to master the essential academic learning requirements, or to be assessed pursuant to section 101 of this act. However, private schools may choose, on a voluntary basis, to have their students master these essential academic learning requirements, take the assessments, and obtain a certificate of academic achievement or a certificate of individual achievement. Minimum requirements shall be as follows:

(1) The minimum school year for instructional purposes shall consist of no less than one hundred eighty school days or the equivalent in annual minimum program hour offerings as prescribed in RCW 28A.150.220.

(2) The school day shall be the same as that required in RCW 28A.150.030 and 28A.150.220, except that the percentages of total program hour offerings as prescribed in RCW 28A.150.220 for basic skills, work skills, and optional subjects and activities shall not apply to private schools or private sectarian schools.

(3) All classroom teachers shall hold appropriate Washington state certification except as follows:

(a) Teachers for religious courses or courses for which no counterpart exists in public schools shall not be required to obtain a state certificate to teach those courses.

(b) In exceptional cases, people of unusual competence but without certification may teach students so long as a certified person exercises general supervision. Annual written statements shall be submitted to the office of the superintendent of public instruction reporting and explaining such circumstances.

(4) An approved private school may operate an extension program for parents, guardians, or persons having legal custody of a child to teach children in their custody. The extension program shall require at a minimum that:

(a) The parent, guardian, or custodian be under the supervision of an employee of the approved private school who is certified under chapter 28A.410 RCW;

(b) The planning by the certified person and the parent, guardian, or person having legal custody include objectives consistent with this subsection and subsections (1), (2), (5), (6), and (7) of this section;

(c) The certified person spend a minimum average each month of one contact hour per week with each student under his or her supervision who is enrolled in the approved private school extension program;

(d) Each student's progress be evaluated by the certified person; and

(e) The certified employee shall not supervise more than thirty students enrolled in the approved private school's extension program.

(5) Appropriate measures shall be taken to safeguard all permanent records against loss or damage.

(6) The physical facilities of the school or district shall be adequate to meet the program offered by the school or district: PROVIDED, That each school building shall meet reasonable health and fire safety requirements. ~~((However, the state board shall not require private school students to meet the student learning goals, obtain a certificate of mastery to graduate from high school, to master the essential academic learning requirements, or to be assessed pursuant to RCW 28A.630.885. However, private schools may choose, on a voluntary basis, to have their students master these essential academic learning requirements, take these assessments, and obtain certificates of mastery.))~~ A residential dwelling of the parent, guardian, or custodian shall be deemed to be an adequate physical facility when a parent, guardian, or person having legal custody is instructing his or her child under subsection (4) of this section.

(7) Private school curriculum shall include instruction of the basic skills of occupational education, science, mathematics, language, social studies, history, health, reading, writing, spelling, and the development of appreciation of art and music, all in sufficient units for meeting state board of education graduation requirements.

(8) Each school or school district shall be required to maintain up-to-date policy statements related to the administration and operation of the school or school district.

All decisions of policy, philosophy, selection of books, teaching material, curriculum, except as in subsection (7) ~~((above))~~ of this section provided, school rules and administration, or other matters not specifically referred to in this section, shall be the responsibility of the administration and administrators of the particular private school involved.

Sec. 107. RCW 28A.200.010 and 1995 c 52 s 1 are each amended to read as follows:

CERTIFICATE OF ACADEMIC ACHIEVEMENT - STUDENTS IN HOME-BASED INSTRUCTION EXEMPTED. (1) Each parent whose child is receiving home-based instruction under RCW 28A.225.010(4) shall have the duty to:

~~((4))~~ (a) File annually a signed declaration of intent that he or she is planning to cause his or her child to receive home-based instruction. The statement shall include the name and age of the child, shall specify whether a certificated person will be supervising the instruction, and shall be written in a format prescribed by the superintendent of public instruction. Each parent shall file the statement by September 15th of the school year or within two weeks of the beginning of any public school quarter, trimester, or semester with the

superintendent of the public school district within which the parent resides or the district that accepts the transfer, and the student shall be deemed a transfer student of the nonresident district. Parents may apply for transfer under RCW 28A.225.220;

~~((2))~~ (b) Ensure that test scores or annual academic progress assessments and immunization records, together with any other records that are kept relating to the instructional and educational activities provided, are forwarded to any other public or private school to which the child transfers. At the time of a transfer to a public school, the superintendent of the local school district in which the child enrolls may require a standardized achievement test to be administered and shall have the authority to determine the appropriate grade and course level placement of the child after consultation with parents and review of the child's records; and

~~((3))~~ (c) Ensure that a standardized achievement test approved by the state board of education is administered annually to the child by a qualified individual or that an annual assessment of the student's academic progress is written by a certificated person who is currently working in the field of education. The state board of education shall not require these children to meet the student learning goals, master the essential academic learning requirements, to take the assessments, or to obtain a certificate of ~~((mastery pursuant to RCW 28A.630.885))~~ academic achievement or a certificate of individual achievement pursuant to sections 101 and 104 of this act. The standardized test administered or the annual academic progress assessment written shall be made a part of the child's permanent records. If, as a result of the annual test or assessment, it is determined that the child is not making reasonable progress consistent with his or her age or stage of development, the parent shall make a good faith effort to remedy any deficiency.

(2) Failure of a parent to comply with the duties in this section shall be deemed a failure of such parent's child to attend school without valid justification under RCW 28A.225.020. Parents who do comply with the duties set forth in this section shall be presumed to be providing home-based instruction as set forth in RCW 28A.225.010(4).

Sec. 108. RCW 28A.305.220 and 1984 c 178 s 1 are each amended to read as follows:

DEVELOPMENT OF STANDARDIZED HIGH SCHOOL TRANSCRIPTS—SCHOOL DISTRICTS TO INFORM STUDENTS OF IMPORTANCE. (1) The state board of education shall develop for use by all public school districts a standardized high school transcript. The state board of education shall establish clear definitions for the terms "credits" and "hours" so that school programs operating on the quarter, semester, or trimester system can be compared.

(2) The standardized high school transcript shall include the following information:

(a) The highest scale score and level achieved in each content area on the high school Washington assessment of student learning or other high school measures successfully completed by the student as provided by sections 101 and 104 of this act;

(b) All scholar designations as provided by section 101 of this act;

(c) A notation of whether the student has earned a certificate of individual achievement or a certificate of academic achievement by means of the Washington assessment of student learning or by an alternative assessment.

(3) Transcripts are important documents to students who will apply for admission to postsecondary institutions of higher education. Transcripts are also important to students who will seek employment upon or prior to graduation from high school. It is recognized that student transcripts may be the only record available to employers in their decision-making processes regarding prospective employees. The superintendent of public instruction shall require school districts to inform annually all high school students that prospective employers may request to see transcripts and that the prospective employee's decision to release transcripts can be an important part of the process of applying for employment.

NEW SECTION. Sec. 109. The superintendent of public instruction shall study the effect of the certificate of academic achievement and the certificate of individual achievement requirements on dropout rates and report the findings to the legislature and the academic achievement and accountability commission by October 1, 2010. The superintendent of public instruction shall include any related recommendations for decreasing the dropout rate in the report.

PART 2 ESSENTIAL ACADEMIC LEARNING REQUIREMENTS AND ASSESSMENTS

NEW SECTION. Sec. 201. ESSENTIAL ACADEMIC LEARNING REQUIREMENTS AND ASSESSMENTS - REPORT REQUIRED ON ASSESSMENTS AND OTHER OPTIONS FOR MEETING THE ESSENTIAL ACADEMIC LEARNING REQUIREMENTS IN SOCIAL STUDIES, THE ARTS, AND HEALTH AND FITNESS. (1) A comprehensive education involves the entire domain of human knowledge to participate productively in our democratic society. All Washington students should have some appreciation of mathematical and scientific principles and structures, a broad awareness of social, economic, and political systems and developments and an appreciation of the arts and humanities, and the elements of good personal health.

(2) By September 1, 2004, the superintendent of public instruction, after consultation with parents, practicing classroom teachers and principals, education organizations, and other interested parties, shall report to the governor, the state board of education, and the house of representatives and senate education committees regarding state classroom-based assessment models, other assessment options, and/or other strategies approved by the superintendent of public instruction to assure continued support and attention to the essential academic learning requirements in social studies, the arts, and health and fitness in elementary, middle, and high schools. The options shall include a recommended timeline to implement those recommendations the legislature adopts. The options may include recommendations on the design, administration, scoring, and reporting of classroom or performance-based assessments for these content areas. The report shall outline progress regarding:

(a) The development of the state classroom-based assessment models, other assessments, and/or other strategies;

(b) Plans for staff development; and
 (c) The funding resources necessary to fully implement the recommendations.

(3) All classroom-based assessment models shall be designed in consultation with practicing classroom teachers.

(4) The classroom-based assessment models, other assessment options, and/or other strategies shall be available for voluntary use beginning with the 2005-06 school year.

NEW SECTION. Sec. 202. ESSENTIAL ACADEMIC LEARNING REQUIREMENTS AND ASSESSMENTS - REPORTS REQUIRED ON THE ESSENTIAL ACADEMIC LEARNING REQUIREMENTS, THE RESULTS OF INDEPENDENT RESEARCH ON ALIGNMENT AND TECHNICAL REVIEW, AND THE FEASIBILITY OF RETURNING ASSESSMENT BEFORE THE END OF THE SCHOOL YEAR. (1) Subject to available funding, the superintendent of public instruction shall report to the governor, the state board of education, and the house of representatives and senate education committees on the results of independent research on the alignment and technical review of the reading, writing, and science content areas of the Washington assessment of student learning for elementary and middle grades and for high school. The review shall be comparable to the research conducted on the mathematics assessments and shall be reported in accordance with the following timelines:

(a) In the content areas of reading and writing by November 1, 2005; and

(b) In the content area of science by November 1, 2006.

(2) The superintendent of public instruction shall report to the governor, the state board of education, and the house of representatives and senate education committees on the review, prioritization, and identification of the essential academic learning requirements and grade level content expectations in accordance with the following timelines:

(a) In the content areas of reading, writing, and mathematics by November 1, 2004;

(b) In the content area of science by November 1, 2005;

(c) In the content area of social studies by November 1, 2008;

(d) In the content area of the arts by November 1, 2008; and

(e) In the content area of health and fitness by November 1, 2009.

(3) By November 30, 2004, the superintendent of public instruction shall report to the governor, the state board of education, and the house of representatives and senate education committees on the feasibility of returning the results of the Washington assessment of student learning, including individual student performance information, to schools, teachers, and parents in the same school year in which the assessment is administered.

NEW SECTION. Sec. 203. A new section is added to chapter 28A.230 RCW to read as follows:

ESSENTIAL ACADEMIC LEARNING REQUIREMENTS AND ASSESSMENTS. By the end of the 2008-09 school year, school districts shall have in place in elementary schools, middle schools, and high schools assessments or other strategies to assure that students have an opportunity to learn the essential academic learning requirements in social studies, the arts, and

health and fitness. Beginning with the 2008-09 school year, school districts shall annually submit an implementation verification report to the office of the superintendent of public instruction.

Sec. 204. RCW 28A.655.070 and 1999 c 388 s 501 are each amended to read as follows:

ESSENTIAL ACADEMIC LEARNING REQUIREMENTS AND ASSESSMENTS - DUTIES OF THE SUPERINTENDENT OF PUBLIC INSTRUCTION. (1) The superintendent of public instruction shall develop essential academic learning requirements that identify the knowledge and skills all public school students need to know and be able to do based on the student learning goals in RCW 28A.150.210, develop student assessments, and implement the accountability recommendations and requests regarding assistance, rewards, and recognition of the academic achievement and accountability commission.

(2) The superintendent of public instruction shall:

(a) Periodically revise the essential academic learning requirements, as needed, based on the student learning goals in RCW 28A.150.210. Goals one and two shall be considered primary. To the maximum extent possible, the superintendent shall integrate goal four and the knowledge and skill areas in the other goals in the essential academic learning requirements; and

(b) Review and prioritize the essential academic learning requirements and identify, with clear and concise descriptions, the grade level content expectations to be assessed on the Washington assessment of student learning and used for state or federal accountability purposes. The review, prioritization, and identification shall result in more focus and targeting with an emphasis on depth over breadth in the number of grade level content expectations assessed at each grade level. Grade level content expectations shall be articulated over the grades as a sequence of expectations and performances that are logical, build with increasing depth after foundational knowledge and skills are acquired, and reflect, where appropriate, the sequential nature of the discipline. The office of the superintendent of public instruction, within seven working days, shall post on its web site any grade level content expectations provided to an assessment vendor for use in constructing the Washington assessment of student learning.

(3) In consultation with the academic achievement and accountability commission, the superintendent of public instruction shall maintain and continue to develop and revise a statewide academic assessment system in the content areas of reading, writing, mathematics, and science for use in the elementary, middle, and high school years designed to determine if each student has mastered the essential academic learning requirements identified in subsection (1) of this section. School districts shall administer the assessments under guidelines adopted by the superintendent of public instruction. The academic assessment system shall include a variety of assessment methods, including criterion-referenced and performance-based measures.

(4) If the superintendent proposes any modification to the essential academic learning requirements or the statewide assessments, then the superintendent shall, upon request, provide opportunities for the education committees of the house of representatives and the senate to review the assessments and proposed modifications to the essential academic learning requirements before the modifications are adopted.

(5)(a) The assessment system shall be designed so that the results under the assessment system are used by educators as tools to evaluate instructional practices, and to initiate appropriate educational support for students who have not mastered the essential academic learning requirements at the appropriate periods in the student's educational development.

~~((5))~~ (b) Assessments measuring the essential academic learning requirements in the content area of science shall be available for mandatory use in middle schools and high schools by the 2003-04 school year and for mandatory use in elementary schools by the 2004-05 school year unless the legislature takes action to delay or prevent implementation of the assessment.

(6) By September 2007, the results for reading and mathematics shall be reported in a format that will allow parents and teachers to determine the academic gain a student has acquired in those content areas from one school year to the next.

(7) To assist parents and teachers in their efforts to provide educational support to individual students, the superintendent of public instruction shall provide as much individual student performance information as possible within the constraints of the assessment system's item bank. The superintendent shall also provide to school districts:

(a) Information on classroom-based and other assessments that may provide additional achievement information for individual students; and

(b) A collection of diagnostic tools that educators may use to evaluate the academic status of individual students. The tools shall be designed to be inexpensive, easily administered, and quickly and easily scored, with results provided in a format that may be easily shared with parents and students.

(8) To the maximum extent possible, the superintendent shall integrate knowledge and skill areas in development of the assessments.

~~((6))~~ (9) Assessments for goals three and four of RCW 28A.150.210 shall be integrated in the essential academic learning requirements and assessments for goals one and two.

~~((7))~~ (10) The superintendent shall develop assessments that are directly related to the essential academic learning requirements, and are not biased toward persons with different learning styles, racial or ethnic backgrounds, or on the basis of gender.

~~((8))~~ (11) The superintendent shall consider methods to address the unique needs of special education students when developing the assessments under this section.

~~((9))~~ (12) The superintendent shall consider methods to address the unique needs of highly capable students when developing the assessments under this section.

(13) The superintendent shall post on the superintendent's web site lists of resources and model assessments in social studies, the arts, and health and fitness.

Sec. 205. RCW 28A.655.030 and 2002 c 37 s 1 are each amended to read as follows:

ESSENTIAL ACADEMIC LEARNING REQUIREMENTS AND ASSESSMENTS - DUTIES OF THE ACADEMIC ACHIEVEMENT AND ACCOUNTABILITY COMMISSION. The powers and duties of the academic

achievement and accountability commission shall include, but are not limited to the following:

(1) For purposes of statewide accountability, the commission shall:

(a) Adopt and revise performance improvement goals in reading, writing, science, and mathematics by subject and grade level as the commission deems appropriate to improve student learning, once assessments in these subjects are required statewide. The goals shall be consistent with student privacy protection provisions of RCW 28A.655.090(7) and shall not conflict with requirements contained in Title I of the federal elementary and secondary education act of 1965, as amended. The goals may be established for all students, economically disadvantaged students, limited English proficient students, students with disabilities, and students from disproportionately academically underachieving racial and ethnic backgrounds. The commission may establish school and school district goals addressing high school graduation rates and dropout reduction goals for students in grades seven through twelve. ~~((The goals shall be in addition to any goals adopted in RCW 28A.655.050. The commission may also revise any goal adopted in RCW 28A.655.050.))~~ The commission shall adopt the goals by rule. However, before each goal is implemented, the commission shall present the goal to the education committees of the house of representatives and the senate for the committees' review and comment in a time frame that will permit the legislature to take statutory action on the goal if such action is deemed warranted by the legislature;

(b) Identify the scores students must achieve in order to meet the standard on the Washington assessment of student learning and, for high school students, to obtain a certificate of academic achievement. The commission shall also determine student scores that identify levels of student performance below and beyond the standard. The commission shall consider the incorporation of the standard error of measurement into the decision regarding the award of the certificates. The commission shall set such performance standards and levels in consultation with the superintendent of public instruction and after consideration of any recommendations that may be developed by any advisory committees that may be established for this purpose. The initial performance standards and any changes recommended by the commission in the performance standards for the tenth grade assessment shall be presented to the education committees of the house of representatives and the senate by November 30th of the school year in which the changes will take place to permit the legislature to take statutory action before the changes are implemented if such action is deemed warranted by the legislature. The legislature shall be advised of the initial performance standards and any changes made to the elementary level performance standards and the middle school level performance standards;

(c) Adopt objective, systematic criteria to identify successful schools and school districts and recommend to the superintendent of public instruction schools and districts to be recognized for two types of accomplishments, student achievement and improvements in student achievement. Recognition for improvements in student achievement shall include consideration of one or more of the following accomplishments:

(i) An increase in the percent of students meeting standards. The level of achievement required for recognition may be based on the achievement goals

established by the legislature (~~(under RCW 28A.655.050)~~) and by the commission under (a) of this subsection;

(ii) Positive progress on an improvement index that measures improvement in all levels of the assessment; and

(iii) Improvements despite challenges such as high levels of mobility, poverty, English as a second language learners, and large numbers of students in special populations as measured by either the percent of students meeting the standard, or the improvement index.

When determining the baseline year or years for recognizing individual schools, the commission may use the assessment results from the initial years the assessments were administered, if doing so with individual schools would be appropriate;

(d) Adopt objective, systematic criteria to identify schools and school districts in need of assistance and those in which significant numbers of students persistently fail to meet state standards. In its deliberations, the commission shall consider the use of all statewide mandated criterion-referenced and norm-referenced standardized tests;

(e) Identify schools and school districts in which state intervention measures will be needed and a range of appropriate intervention strategies, beginning no earlier than June 30, 2001, and after the legislature has authorized a set of intervention strategies. Beginning no earlier than June 30, 2001, and after the legislature has authorized a set of intervention strategies, at the request of the commission, the superintendent shall intervene in the school or school district and take corrective actions. This chapter does not provide additional authority for the commission or the superintendent of public instruction to intervene in a school or school district;

(f) Identify performance incentive systems that have improved or have the potential to improve student achievement;

(g) Annually review the assessment reporting system to ensure fairness, accuracy, timeliness, and equity of opportunity, especially with regard to schools with special circumstances and unique populations of students, and a recommendation to the superintendent of public instruction of any improvements needed to the system;

(h) Annually report by December 1st to the legislature, the governor, the superintendent of public instruction, and the state board of education on the progress, findings, and recommendations of the commission. The report may include recommendations of actions to help improve student achievement;

(i) By December 1, 2000, and by December 1st annually thereafter, report to the education committees of the house of representatives and the senate on the progress that has been made in achieving (~~(the reading goal under RCW 28A.655.050 and any additional)~~) goals adopted by the commission;

(j) Coordinate its activities with the state board of education and the office of the superintendent of public instruction;

(k) Seek advice from the public and all interested educational organizations in the conduct of its work; and

(l) Establish advisory committees, which may include persons who are not members of the commission;

(2) Holding meetings and public hearings, which may include regional meetings and hearings;

(3) Hiring necessary staff and determining the staff's duties and compensation. However, the office of the superintendent of public instruction shall provide staff support to the commission until the commission has hired its own staff, and shall provide most of the technical assistance and logistical support needed by the commission thereafter. The office of the superintendent of public instruction shall be the fiscal agent for the commission. The commission may direct the office of the superintendent of public instruction to enter into subcontracts, within the commission's resources, with school districts, teachers, higher education faculty, state agencies, business organizations, and other individuals and organizations to assist the commission in its deliberations; and

(4) Receiving per diem and travel allowances as permitted under RCW 43.03.050 and 43.03.060.

NEW SECTION. Sec. 206. ESSENTIAL ACADEMIC LEARNING REQUIREMENTS AND ASSESSMENTS - RCW 28A.655.060 REPEALED. RCW 28A.655.060 (Essential academic learning requirements—Statewide academic assessment system—Certificate of mastery—Educational pathways—Accountability—Reports and recommendations—Washington commission on student learning, creation and expiration) and 2001 2nd sp.s. c 20 s 1, 1999 c 373 s 501, 1998 c 225 s 1, & 1997 c 268 s 1 are each repealed.

**PART 3
MISCELLANEOUS**

NEW SECTION. Sec. 301. Part headings and captions used in this act are not any part of the law.

NEW SECTION. Sec. 302. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected.

NEW SECTION. Sec. 303. This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately.

Passed by the House March 8, 2004.

Passed by the Senate March 4, 2004.

Approved by the Governor March 18, 2004.

Filed in Office of Secretary of State March 18, 2004.

CHAPTER 20

[Engrossed Substitute Senate Bill 5877]

LEARNING ASSISTANCE PROGRAM

AN ACT Relating to the learning assistance program; adding new sections to chapter 28A.165 RCW; and repealing RCW 28A.165.010, 28A.165.012, 28A.165.030, 28A.165.040, 28A.165.050, 28A.165.060, 28A.165.070, 28A.165.080, and 28A.165.090.

Be it enacted by the Legislature of the State of Washington:

NEW SECTION. Sec. 1. PURPOSE. The learning assistance program requirements in this chapter are designed to: (1) Promote the use of assessment data when developing programs to assist underachieving students; and (2) guide

school districts in providing the most effective and efficient practices when implementing programs to assist underachieving students. Further, this chapter provides the means by which a school district becomes eligible for learning assistance program funds and the distribution of those funds.

NEW SECTION. Sec. 2. DEFINITIONS. Unless the context clearly indicates otherwise the definitions in this section apply throughout this chapter.

(1) "Approved program" means a program submitted to and approved by the office of the superintendent of public instruction and conducted pursuant to the plan that addresses the required elements as provided for in this chapter.

(2) "Basic skills areas" means reading, writing, and mathematics as well as reading associated with these skills.

(3) "Participating student" means a student in kindergarten through grade eleven who scores below standard for his or her grade level on the statewide assessments and who is identified in the approved plan to receive services. Beginning with the 2007-2008 school year, "participating student" means a student in kindergarten through grade twelve who scores below standard for his or her grade level on the statewide assessments and who is identified in the approved plan to receive services.

(4) "Statewide assessments" means one or more of the several basic skills assessments administered as part of the state's student assessment system, and assessments in the basic skills areas administered by local school districts.

(5) "Underachieving students" means students with the greatest academic deficits in basic skills as identified by the statewide assessments.

NEW SECTION. Sec. 3. PROGRAM PLAN. By July 1st of each year, a participating school district shall submit the district's plan for using learning assistance funds to the office of the superintendent of public instruction for approval. For the 2004-05 school year, school districts must identify the program activities to be implemented from section 4 of this act and are encouraged to implement the elements in subsections (1) through (8) of this section. Beginning in the 2005-06 school year, the program plan must identify the program activities to be implemented from section 4 of this act and implement all of the elements in subsections (1) through (8) of this section. The school district plan shall include the following:

(1) District and school-level data on reading, writing, and mathematics achievement as reported pursuant to chapter 28A.655 RCW and relevant federal law;

(2) Processes used for identifying the underachieving students to be served by the program, including the identification of school or program sites providing program activities;

(3) How accelerated learning plans are developed and implemented for participating students. Accelerated learning plans may be developed as part of existing student achievement plan process such as student plans for achieving state high school graduation standards, individual student academic plans, or the achievement plans for groups of students. Accelerated learning plans shall include:

(a) Achievement goals for the students;

(b) Roles of the student, parents, or guardians and teachers in the plan;

(c) Communication procedures regarding student accomplishment; and

(d) Plan reviews and adjustments processes;

(4) How state level and classroom assessments are used to inform instruction;

(5) How focused and intentional instructional strategies have been identified and implemented;

(6) How highly qualified instructional staff are developed and supported in the program and in participating schools;

(7) How other federal, state, district, and school resources are coordinated with school improvement plans and the district's strategic plan to support underachieving students; and

(8) How a program evaluation will be conducted to determine direction for the following school year.

NEW SECTION. Sec. 4. PROGRAM ACTIVITIES. Use of best practices magnifies the opportunities for student success. The following are services and activities that may be supported by the learning assistance program:

(1) Extended learning time opportunities occurring:

(a) Before or after the regular school day;

(b) On Saturday; and

(c) Beyond the regular school year;

(2) Professional development for certificated and classified staff that focuses on:

(a) The needs of a diverse student population;

(b) Specific literacy and mathematics content and instructional strategies;

and

(c) The use of student work to guide effective instruction;

(3) Consultant teachers to assist in implementing effective instructional practices by teachers serving participating students;

(4) Tutoring support for participating students; and

(5) Outreach activities and support for parents of participating students.

NEW SECTION. Sec. 5. PLAN APPROVAL PROCESS. A participating school district shall annually submit a program plan to the office of the superintendent of public instruction for approval. The program plan must address all of the elements in section 3 of this act and identify the program activities to be implemented from section 4 of this act.

School districts achieving state reading and mathematics goals as prescribed in chapter 28A.655 RCW shall have their program approved once the program plan and activities submittal is completed.

School districts not achieving state reading and mathematics goals as prescribed in chapter 28A.655 RCW and that are not in a state or federal program of school improvement shall be subject to program approval once the plan components are reviewed by the office of the superintendent of public instruction for the purpose of receiving technical assistance in the final development of the plan.

School districts with one or more schools in a state or federal program of school improvement shall have their plans and activities reviewed and approved in conjunction with the state or federal program school improvement program requirements.

NEW SECTION. Sec. 6. FUNDS—ELIGIBILITY—DISTRIBUTION. Each school district with an approved program is eligible for state funds provided for the learning assistance program. The funds shall be appropriated for the learning assistance program in accordance with the biennial appropriations act. The distribution formula is for school district allocation purposes only. The distribution formula shall be based on an assessment of students and on one or more family income factors measuring economic need. Beginning with the 2005-06 school year, fifty percent of the distribution formula shall be based on an assessment of students and fifty percent shall be based on one or more family income factors measuring economic need.

NEW SECTION. Sec. 7. MONITORING. To ensure that school districts are meeting the requirements of an approved program, the superintendent of public instruction shall monitor such programs no less than once every four years. Individual student records shall be maintained at the school district.

NEW SECTION. Sec. 8. RULES. The superintendent of public instruction shall adopt rules in accordance with chapter 34.05 RCW that are necessary to implement this chapter.

NEW SECTION. Sec. 9. CAPTIONS NOT LAW. Captions used in this act are not any part of the law.

NEW SECTION. Sec. 10. The following acts or parts of acts are each repealed:

- (1) RCW 28A.165.010 (Intent) and 1989 c 233 s 1 & 1987 c 478 s 1;
 - (2) RCW 28A.165.012 (Program created) and 1987 c 478 s 2;
 - (3) RCW 28A.165.030 (Definitions) and 1999 c 78 s 1, 1990 c 33 s 148, & 1987 c 478 s 3;
 - (4) RCW 28A.165.040 (Application for state funds—Needs assessment—Plan) and 1990 c 33 s 149, 1989 c 233 s 2, & 1987 c 478 s 4;
 - (5) RCW 28A.165.050 (Identification of students—Coordination of use of funds) and 1987 c 478 s 5;
 - (6) RCW 28A.165.060 (Services or activities under program) and 1989 c 233 s 3 & 1987 c 478 s 6;
 - (7) RCW 28A.165.070 (Eligibility for funds—Distribution of funds—Development of allocation formula) and 1995 1st sp.s. c 13 s 1, 1993 sp.s. c 24 s 520, 1990 c 33 s 150, & 1987 c 478 s 7;
 - (8) RCW 28A.165.080 (Monitoring) and 1990 c 33 s 151 & 1987 c 478 s 8;
- and
- (9) RCW 28A.165.090 (Rules) and 1990 c 33 s 152 & 1987 c 478 s 9.

NEW SECTION. Sec. 11. Sections 1 through 9 of this act are each added to chapter 28A.165 RCW.

Passed by the Senate March 10, 2004.

Passed by the House March 5, 2004.

Approved by the Governor March 18, 2004.

Filed in Office of Secretary of State March 18, 2004.

CHAPTER 21

[Substitute Senate Bill 6211]

SCHOOL LEVY BASE

AN ACT Relating to school district levy base calculations; amending RCW 28A.500.020 and 84.52.0531; and providing an expiration date.

Be it enacted by the Legislature of the State of Washington:

Sec. 1. RCW 28A.500.020 and 1999 c 317 s 2 are each amended to read as follows:

(1) Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(a) "Prior tax collection year" means the year immediately preceding the year in which the local effort assistance shall be allocated.

(b) "Statewide average twelve percent levy rate" means twelve percent of the total levy bases as defined in RCW 84.52.0531 (3) and (4) summed for all school districts, and divided by the total assessed valuation for excess levy purposes in the prior tax collection year for all districts as adjusted to one hundred percent by the county indicated ratio established in RCW 84.48.075.

(c) The "district's twelve percent levy amount" means the school district's maximum levy authority after transfers determined under RCW 84.52.0531(2) (a) through (c) divided by the district's maximum levy percentage determined under RCW 84.52.0531(~~((4))~~) (5) multiplied by twelve percent.

(d) The "district's twelve percent levy rate" means the district's twelve percent levy amount divided by the district's assessed valuation for excess levy purposes for the prior tax collection year as adjusted to one hundred percent by the county indicated ratio.

(e) "Districts eligible for local effort assistance" means those districts with a twelve percent levy rate that exceeds the statewide average twelve percent levy rate.

(2) Unless otherwise stated all rates, percents, and amounts are for the calendar year for which local effort assistance is being calculated under this chapter.

Sec. 2. RCW 84.52.0531 and 1997 c 259 s 2 are each amended to read as follows:

The maximum dollar amount which may be levied by or for any school district for maintenance and operation support under the provisions of RCW 84.52.053 shall be determined as follows:

(1) For excess levies for collection in calendar year 1997, the maximum dollar amount shall be calculated pursuant to the laws and rules in effect in November 1996.

(2) For excess levies for collection in calendar year 1998 and thereafter, the maximum dollar amount shall be the sum of (a) plus or minus (b) and (c) of this subsection minus (d) of this subsection:

(a) The district's levy base as defined in subsections (3) and (4) of this section multiplied by the district's maximum levy percentage as defined in subsection (~~((4))~~) (5) of this section;

(b) For districts in a high/nonhigh relationship, the high school district's maximum levy amount shall be reduced and the nonhigh school district's maximum levy amount shall be increased by an amount equal to the estimated

amount of the nonhigh payment due to the high school district under RCW 28A.545.030(3) and 28A.545.050 for the school year commencing the year of the levy;

(c) For districts in an interdistrict cooperative agreement, the nonresident school district's maximum levy amount shall be reduced and the resident school district's maximum levy amount shall be increased by an amount equal to the per pupil basic education allocation included in the nonresident district's levy base under subsection (3) of this section multiplied by:

(i) The number of full-time equivalent students served from the resident district in the prior school year; multiplied by:

(ii) The serving district's maximum levy percentage determined under subsection (~~((4))~~) (5) of this section; increased by:

(iii) The percent increase per full-time equivalent student as stated in the state basic education appropriation section of the biennial budget between the prior school year and the current school year divided by fifty-five percent;

(d) The district's maximum levy amount shall be reduced by the maximum amount of state matching funds for which the district is eligible under RCW 28A.500.010.

(3) For excess levies for collection in calendar year (~~((1998))~~) 2005 and thereafter, a district's levy base shall be the sum of allocations in (a) through (c) of this subsection received by the district for the prior school year and the amounts determined under subsection (4) of this section, including allocations for compensation increases, plus the sum of such allocations multiplied by the percent increase per full time equivalent student as stated in the state basic education appropriation section of the biennial budget between the prior school year and the current school year and divided by fifty-five percent. A district's levy base shall not include local school district property tax levies or other local revenues, or state and federal allocations not identified in (a) through (c) of this subsection.

(a) The district's basic education allocation as determined pursuant to RCW 28A.150.250, 28A.150.260, and 28A.150.350;

(b) State and federal categorical allocations for the following programs:

(i) Pupil transportation;

(ii) Special education;

(iii) Education of highly capable students;

(iv) Compensatory education, including but not limited to learning assistance, migrant education, Indian education, refugee programs, and bilingual education;

(v) Food services; and

(vi) Statewide block grant programs; and

(c) Any other federal allocations for elementary and secondary school programs, including direct grants, other than federal impact aid funds and allocations in lieu of taxes.

(4) For levy collections in calendar years 2005 through 2007, in addition to the allocations included under subsection (3)(a) through (c) of this section, a district's levy base shall also include the following:

(a) The difference between the allocation the district would have received in the current school year had RCW 84.52.068 not been amended by chapter 19, Laws of 2003 1st sp. sess. and the allocation the district received in the current

school year pursuant to RCW 84.52.068. The office of the superintendent of public instruction shall offset the amount added to a district's levy base pursuant to this subsection (4)(a) by any additional per student allocations included in a district's levy base pursuant to the enactment of an initiative to the people subsequent to the effective date of this section; and

(b) The difference between the allocations the district would have received the prior school year had RCW 28A.400.205 not been amended by chapter 20, Laws of 2003 1st sp. sess. and the allocations the district actually received the prior school year pursuant to RCW 28A.400.205. The office of the superintendent of public instruction shall offset the amount added to a district's levy base pursuant to this subsection (4)(b) by any additional salary increase allocations included in a district's levy base pursuant to the enactment of an initiative to the people subsequent to the effective date of this section.

(5) A district's maximum levy percentage shall be twenty-two percent in 1998 and twenty-four percent in 1999 and every year thereafter; plus, for qualifying districts, the grandfathered percentage determined as follows:

(a) For 1997, the difference between the district's 1993 maximum levy percentage and twenty percent; and

(b) For 1998 and thereafter, the percentage calculated as follows:

(i) Multiply the grandfathered percentage for the prior year times the district's levy base determined under subsection (3) of this section;

(ii) Reduce the result of (b)(i) of this subsection by any levy reduction funds as defined in subsection ~~((5))~~ (6) of this section that are to be allocated to the district for the current school year;

(iii) Divide the result of (b)(ii) of this subsection by the district's levy base; and

(iv) Take the greater of zero or the percentage calculated in (b)(iii) of this subsection.

~~((5))~~ (6) "Levy reduction funds" shall mean increases in state funds from the prior school year for programs included under subsections (3) and (4) of this section: (a) That are not attributable to enrollment changes, compensation increases, or inflationary adjustments; and (b) that are or were specifically identified as levy reduction funds in the appropriations act. If levy reduction funds are dependent on formula factors which would not be finalized until after the start of the current school year, the superintendent of public instruction shall estimate the total amount of levy reduction funds by using prior school year data in place of current school year data. Levy reduction funds shall not include moneys received by school districts from cities or counties.

~~((6))~~ (7) For the purposes of this section, "prior school year" means the most recent school year completed prior to the year in which the levies are to be collected.

~~((7))~~ (8) For the purposes of this section, "current school year" means the year immediately following the prior school year.

~~((8))~~ (9) Funds collected from transportation vehicle fund tax levies shall not be subject to the levy limitations in this section.

~~((9))~~ (10) The superintendent of public instruction shall develop rules and regulations and inform school districts of the pertinent data necessary to carry out the provisions of this section.

NEW SECTION. Sec. 3. This act expires January 1, 2008.

Passed by the Senate March 10, 2004.
Passed by the House March 5, 2004.
Approved by the Governor March 18, 2004.
Filed in Office of Secretary of State March 18, 2004.

CHAPTER 22

[Engrossed Second Substitute House Bill 2295]

CHARTER SCHOOLS

AN ACT Relating to charter schools; amending RCW 28A.150.010; adding new sections to chapter 41.56 RCW; adding new sections to chapter 41.59 RCW; adding a new section to chapter 41.32 RCW; adding a new section to chapter 41.35 RCW; adding a new section to chapter 41.40 RCW; and adding a new chapter to Title 28A RCW.

Be it enacted by the Legislature of the State of Washington:

NEW SECTION. Sec. 1. INTENT. The legislature intends to authorize the establishment of public charter schools within the general and uniform system of public schools for the primary purpose of providing more high-quality learning environments to assist educationally disadvantaged students and other students in meeting the state's academic standards. The legislature intends for charter schools to function as an integral element of the public school system maintained at public expense, free from discrimination, and open to all students in the state, and to be subject to the same or greater academic standards and performance outcomes as other public schools. The legislature intends to encourage school districts to consider using the chartering process as an optional tool to achieve state and federal academic accountability goals. The legislature finds that in addition to providing more high-quality public school choices for families, teachers, and students, public charter schools may be a tool to improve schools in which significant numbers of students persistently fail to meet state or federal standards. The legislature also intends to authorize the use of the chartering process as a state intervention strategy, consistent with the provisions of the federal no child left behind act of 2001, to provide assistance to schools in which significant numbers of students persistently fail to meet state and federal standards. The legislature also intends to ensure accountability of charter schools through the use of performance audits and a comprehensive study of charter schools, and to use the information generated to demonstrate how charter schools can contribute to existing education reform efforts focused on raising student academic achievement.

NEW SECTION. Sec. 2. DEFINITIONS. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Alternate sponsor" means: (a) The board of directors of an educational service district that has agreed to assume the rights and responsibilities of an alternate sponsor and to implement and administer a charter approved by the superintendent of public instruction under section 7 of this act; or (b) the superintendent of public instruction if the superintendent has approved a charter under section 7 of this act.

(2) "Applicant" means a nonprofit corporation that has submitted an application to a sponsor or has filed an appeal with the superintendent of public instruction to obtain approval to operate a charter school. The nonprofit corporation must be either a public benefit nonprofit corporation as defined in

RCW 24.03.490, or a nonprofit corporation as defined in RCW 24.03.005 that has applied for tax-exempt status under section 501(c)(3) of the internal revenue code of 1986 (26 U.S.C. Sec. 501(c)(3)). The nonprofit corporation may not be a sectarian or religious organization and must meet all of the requirements for a public benefit nonprofit corporation before receiving any funding under section 12 of this act.

(3) "Charter school board" means the board of directors appointed or elected by the applicant to manage and operate the charter school, and may include one member of the local school district board of directors who may serve as an ex officio member.

(4) "Charter" means a five-year contract between an applicant and a sponsor or an alternate sponsor. The charter establishes, in accordance with this chapter, the terms and conditions for the management, operation, and educational program of the charter school.

(5) "Charter school" means a public school managed by a charter school board and operating according to the terms of a charter approved under this chapter and includes a new charter school and a conversion charter school.

(6) "Conversion charter school" means a charter school created by converting an existing public school in its entirety to a charter school under this chapter.

(7) "Educationally disadvantaged students" includes students with limited English proficiency; students with special needs, including students with disabilities; economically disadvantaged students, including students who qualify for free and reduced priced meals; students exercising choice options and seeking supplemental services under the federal no child left behind act of 2001; and other students who may be at risk of failing to meet state and federal academic performance standards.

(8) "New charter school" means any charter school created under this chapter that is not a conversion charter school.

(9) "Sponsor" means the board of directors of the school district in which the proposed charter school will be located, if the board has approved a charter or if the board has agreed to administer and implement a charter approved and authorized by the superintendent of public instruction under the appeal process in section 7 of this act.

NEW SECTION. Sec. 3. CHARTER SCHOOLS—POWERS. (1) To carry out its duty to manage and operate the charter school, the charter school board may:

(a) Hire, manage, and discharge any charter school employee in accordance with the terms of this chapter and that school's charter;

(b) Enter into a contract with any school district, or any other public or private entity, also empowered to enter into contracts, for any and all real property, equipment, goods, supplies, and services, including educational instructional services; however, this authority does not permit assigning, delegating, or contracting out the administration and management of a charter school to a for-profit entity;

(c) Rent, lease, or own property, but may not acquire property by eminent domain. All charters and charter school contracts with other public and private entities must include provisions regarding the disposition of the property if the

charter school fails to open as planned or closes, or the charter is revoked or not renewed;

(d) Issue secured and unsecured debt to manage cash flow, improve operations, or finance the acquisition of real property or equipment. The issuance is not a general, special, or moral obligation of the state, the charter school sponsor, the school district in which the charter school is located, or any other political subdivision or agency of the state. Neither the full faith and credit nor the taxing power of the state, the charter school sponsor, the school district in which the charter school is located, or any other political subdivision or agency of the state may be pledged for the payment of the debt;

(e) Accept and administer for the benefit of the charter school and its students, gifts, grants, and donations from other governmental and private entities, excluding sectarian or religious organizations. Charter schools may not accept any gifts or donations the conditions of which violate this chapter.

(2) A charter school may not charge tuition, levy taxes, or issue tax-backed bonds, however it may charge fees for optional noncredit extracurricular events.

(3) Neither a charter school sponsor nor an alternate sponsor is liable for acts or omissions of a charter school or its charter school board, including but not limited to acts or omissions related to the application, the charter, the operation, the performance, and the closure of the charter school.

(4) A local school district board may appoint one of its directors to serve as an ex officio member of the board of directors of a charter school located in the school district.

NEW SECTION. Sec. 4. LEGAL STATUS. A charter school is a public school including one or more of grades kindergarten through twelve, operated by a board of directors appointed or elected by a charter school applicant, according to the terms of a renewable five-year contract granted by a sponsor or an alternate sponsor. A charter school may offer any program or course of study that another public school may offer. A charter school must allow students who are receiving home-based instruction under chapter 28A.200 RCW to participate in its programs on a part-time basis.

NEW SECTION. Sec. 5. CHARTER SCHOOLS—EXEMPTIONS. (1) A charter school shall operate according to the terms of a charter approved by a sponsor or by the superintendent of public instruction under this chapter.

(2) Charter schools are exempt from all state statutes and rules applicable to school districts and school district boards of directors, including but not limited to rules regarding the expenditure of state allocations as provided in section 12 of this act, except those statutes and rules as provided for and made applicable to charter schools in accordance with this chapter and in the school's approved charter.

(3) A charter school's board of directors shall implement a quality management system and conduct annual self-assessments.

(4) All approved charter schools shall:

(a) Comply with state and federal health, safety, parents' rights, civil rights, and nondiscrimination laws, including, but not limited to, the family educational rights and privacy act (20 U.S.C. 1232g), chapter 28A.640 RCW (sexual equality), and Title IX of the education amendments of 1972 (20 U.S.C. Sec.

1681 et seq.) applicable to school districts, and to the same extent as school districts;

(b) Participate in free and reduced priced meal programs to the same extent as is required for other public schools;

(c) Participate in nationally normed standardized achievement tests as required in RCW 28A.230.190, 28A.230.193, and 28A.230.230 and the elementary, middle school, and high school standards, requirements, and assessment examinations as required in chapter 28A.655 RCW;

(d) Employ certificated instructional staff as required in RCW 28A.410.010, however charter schools may hire noncertificated instructional staff of unusual competence and in exceptional cases as specified in RCW 28A.150.260;

(e) Comply with the employee record check requirements in RCW 28A.400.303;

(f) Be subject to financial examinations and audits as determined by the state auditor, including annual audits for legal and fiscal compliance;

(g) Be subject to independent performance audits by a qualified contractor selected jointly by the state auditor and the joint legislative audit and review committee beginning at the conclusion of the third year of the school's operation, and at least once every three years thereafter; however, a charter school is not required to bear the expense of the audits;

(h) Comply with the annual performance report under RCW 28A.655.110;

(i) Follow the performance improvement goals and requirements adopted by the academic achievement and accountability commission by rule under RCW 28A.655.030;

(j) Be subject to the accountability requirements of the federal no child left behind act of 2001, including Title I requirements;

(k) Comply with and be subject to the requirements under the individuals with disabilities education act, as amended in 1997;

(l) Comply with and be subject to the requirements under the federal educational rights and privacy act;

(m) Report at least annually to the board of directors of the school district in which the charter school is located, to the school's alternate sponsor if the school is not sponsored by a school district, and to parents of children enrolled at the charter school on progress toward the student performance goals specified in the charter;

(n) Comply with the open public meetings act in chapter 42.30 RCW and open public records requirements in RCW 42.17.250;

(o) Be subject to and comply with legislation enacted after the effective date of this section governing the operation and management of charter schools; and

(p) Conduct annual self assessments of its quality management program.

(5) A member of a board of directors of a charter school is a board member of a school district for the purposes of public disclosure requirements and must comply with the reporting requirements in RCW 42.17.240.

NEW SECTION. Sec. 6. ADMISSION REQUIREMENTS. (1) To effectuate the primary purpose for which the legislature established charter schools, a charter school must be willing to enroll educationally disadvantaged students and may not limit admission on any basis other than age group and grade level. Consistent with the legislative intent of this chapter, a charter school shall conduct timely outreach and marketing efforts to educationally

disadvantaged students in the school district in which the charter school will be located.

(2) A conversion charter school must be structured to provide sufficient capacity to enroll all students who wish to remain enrolled in the school after its conversion to a charter school, and may not displace students enrolled before the chartering process. If, after enrollment of these students, capacity is insufficient to enroll all other students remaining who have submitted a timely application, the charter school must give enrollment priority to siblings of students who are currently enrolled in the school. Students selected to fill any remaining spaces must be selected only through an equitable selection process, such as a lottery.

(3) A new charter school must enroll all students who submit a timely application if capacity is sufficient. If capacity is insufficient to enroll all students who apply, students must be selected to fill any remaining spaces only through an equitable selection process, such as a lottery. Siblings of enrolled students must be given priority in enrollment.

NEW SECTION. Sec. 7. CHARTER APPLICATION—CHARTERING PROCESS. (1) An applicant may apply to a sponsor or may appeal to the superintendent of public instruction for approval to establish a charter school under this section. An application may not be submitted earlier than eighteen months before, nor later than four months before, the proposed date of opening the school.

(2) The superintendent of public instruction shall establish guidelines for the timely receipt and approval of applications to facilitate the efficient implementation of this act. Guidelines established under this subsection shall reflect efficient processes for the expeditious and orderly start-up of charter schools in a timely manner for the purpose of serving students.

(3) An application for a charter school must be submitted first to the board of directors of the school district in which the proposed charter school will be located, allowing for the board's consideration of the application in accordance with subsections (4) and (5) of this section, before an appeal may be filed with the superintendent of public instruction. A copy of each application submitted to a sponsor also must be provided to the superintendent of public instruction.

(4) The school district board of directors must decide, within forty-five days of receipt of the application, whether to hold a public hearing in the school district to take public comment on the application and, if a hearing is to be held, must schedule it within seventy-five days of receipt of the application. If the school board intends to accept the application, one or more public hearings must be held before granting a charter; however a school board is not required to hold a public hearing before rejecting an application. The school board must either accept or reject the application within one hundred five days after receipt of the application. The one hundred five-day deadline for accepting or rejecting the charter school application may be extended for an additional thirty days if both parties agree in writing.

(5) If the school board does not hold a public hearing or rejects the application after holding one or more public hearings, the school board must notify the applicant in writing of the reasons for that decision. The applicant may submit a revised application for the school board's reconsideration and the school board may provide assistance to improve the application. If the school

board rejects the application after a revised application is submitted, the school board must notify the applicant in writing of the reasons for the rejection.

(6) At the request of the applicant or the sponsor, the superintendent of public instruction may review the charter application and provide technical assistance.

(7) If a school district board does not approve an application to start a new charter school, the applicant may file an appeal to the superintendent of public instruction for further review of the application.

(8) Upon receipt of a request for review, the superintendent must attempt to mediate a resolution between the applicant and the school district board, and may recommend to the applicant and school district board revisions to the application.

(9) If the school district board does not accept the revisions and does not approve the application, the superintendent must review the application. The superintendent, after exercising due diligence and good faith, must approve the application if the superintendent finds: (a) The criteria in section 9 of this act have been met; (b) the approval will be within the annual limits in section 16 (1) and (2) of this act; and (c) the approval is consistent with the legislative intent for which charter schools are authorized and is in the best interests of the children of the proposed school. The superintendent may permit the board of directors of an educational service district to assume the rights and responsibilities of implementing and administering a charter approved under this section, but if no such board agrees to assume the role of alternate sponsor, the superintendent of public instruction shall assume the rights and responsibilities of implementing and administering the charter and shall become the alternate sponsor.

(10) The superintendent must reject the application if the superintendent finds: (a) The criteria in section 9 of this act have not been met; (b) the approval will not be within the annual limits established in section 16 (1) and (2) of this act; or (c) the approval is inconsistent with the legislative intent for which charter schools are authorized and is not in the best interests of the children of the proposed school. If the superintendent rejects the application, the superintendent must notify the applicant in writing of the reasons for the rejection.

(11) Educational service districts and the superintendent of public instruction are encouraged to assist schools and school districts in which significant numbers of students persistently fail to meet state standards with completing the chartering process. Assistance from an educational service district or from the superintendent of public instruction may include, but is not limited to, identifying potential eligible applicants, and assisting with the charter application and approval processes.

(12) Consistent with the corrective action provisions in the federal no child left behind act of 2001, the superintendent of public instruction may use the chartering process as an intervention strategy to meet federal student achievement and accountability requirements. The superintendent may require a local school district board of directors to convert a public school to a charter public school or, if the superintendent determines it would be more appropriate, may require a local school district board of directors to consent to conversion of

the school by an educational service district board of directors or the superintendent.

NEW SECTION. **Sec. 8. APPLICATION REQUIREMENTS.** The charter school application is a proposed contract and must include:

(1) The identification and description of the nonprofit corporation submitting the application, including the names, descriptions, curriculum vitae, and qualifications of the individuals who will operate the school, all of which are subject to verification and review;

(2) The nonprofit corporation's articles of incorporation, bylaws, and most recent financial statement and balance sheet;

(3) A mission statement for the proposed school, consistent with the description of legislative intent in this chapter, including a statement of whether the proposed charter school's primary purpose is to serve educationally disadvantaged students;

(4) A description of the school's educational program, curriculum, and instructional strategies, including but not limited to how the charter school will assist its students, including educationally disadvantaged students, in meeting the state's academic standards;

(5) A description of the school's admissions policy and marketing program, and its deadlines for applications and admissions, including its program for community outreach to families of educationally disadvantaged students;

(6) A description of the school's student performance standards and requirements that must meet or exceed those determined under chapter 28A.655 RCW, and be measured according to the assessment system determined under chapter 28A.655 RCW;

(7) A description of the school's plan to evaluate student performance and the procedures for taking corrective action if student performance at the charter school falls below standards established in its charter;

(8) A description of the financial plan for the school. The plan shall include: (a) A proposed five-year budget of projected revenues and expenditures; (b) a plan for starting the school; (c) a five-year facilities plan; (d) evidence supporting student enrollment projections of at least twenty students; and (e) a description of major contracts planned for administration, management, equipment, and services, including consulting services, leases, improvements, real property purchases, and insurance;

(9) A description of the proposed financial management procedures and administrative operations, which shall meet or exceed generally accepted standards of management and public accounting;

(10) An assessment of the school's potential legal liability and a description of the types and limits of insurance coverage the nonprofit corporation plans to obtain. A liability insurance policy of at least five million dollars is required;

(11) A description of the procedures to discipline, suspend, and expel students;

(12) A description of procedures to assure the health and safety of students, employees, and guests of the school and to comply with applicable federal and state health and safety laws and regulations;

(13) A description of the school's program for parent involvement in the charter school;

(14) Documentation sufficient to demonstrate that the charter school will have the liquid assets available to operate the school on an ongoing and sound financial basis;

(15) Supporting documentation for any additional requirements that are appropriate and reasonably related to operating the charter school that a sponsor or alternate sponsor may impose as a condition of approving the charter; and

(16) A description of the quality management plan for the school, including its specific components.

NEW SECTION. Sec. 9. APPROVAL CRITERIA. A sponsor or alternate sponsor may approve an application for a charter school, if in the sponsor's or alternate sponsor's reasonable judgment, after exercising due diligence and good faith, the sponsor or alternate sponsor finds:

(1) The applicant is an eligible public benefit nonprofit corporation and the individuals it proposes to manage and operate the school are qualified to operate a charter school and implement the proposed educational program that is free from religious or sectarian influence;

(2) The public benefit nonprofit corporation has been approved or conditionally approved by the internal revenue service for tax exempt status under section 501(c)(3) of the internal revenue code of 1986 (26 U.S.C. Sec. 501(c)(3));

(3) The mission statement is consistent with the description of legislative intent and restrictions on charter school operations in this chapter. The sponsor or alternate sponsor must make a finding of whether or not the charter school's primary purpose is to serve educationally disadvantaged students;

(4) The school's educational program, including its curriculum and instructional strategies, is likely to assist its students, including its educationally disadvantaged students, in meeting the state's academic standards;

(5) The school's admissions policy and marketing program is consistent with state and federal law, and includes community outreach to families of educationally disadvantaged students;

(6) The school's proposed educational program includes student academic performance standards and requirements that meet or exceed those determined under chapter 28A.655 RCW and are measured according to the assessment system determined under chapter 28A.655 RCW;

(7) The application includes a viable plan to evaluate pupil performance and procedures to take appropriate corrective action if pupil performance at the charter school falls below standards established in its charter;

(8) The financial plan for the school is designed to reasonably support the charter school's educational program based on a review of the proposed five-year budget of projected revenues, expenditures, and facilities;

(9) The school's financial and administrative operations, including its audits, meet or exceed generally accepted standards of accounting and management;

(10) The assessment of the school's potential legal liability, and the types and limits of insurance coverage the school plans to obtain, are adequate. A minimum liability insurance policy of five million dollars is required;

(11) The procedures the school plans to follow to discipline, suspend, and expel students are reasonable and comply with state and federal law;

(12) The procedures the school plans to follow to assure the health and safety of students, employees, and guests of the school comply with applicable state and federal health and safety laws and regulations;

(13) The school has developed a program for parent involvement in the charter school;

(14) The charter school will have the liquid assets available to operate the school on an ongoing and sound financial basis;

(15) The applicant has met any additional requirements that are appropriate and reasonably related to the operation of a charter school that a sponsor or alternate sponsor imposed as a condition for approval of the charter; and

(16) The quality management plan for the school is adequate.

NEW SECTION. Sec. 10. CHARTER AGREEMENT—AMENDMENT.

(1) A charter application approved by a sponsor or an alternate sponsor with any changes or additions, and signed by an authorized representative of the applicant and the sponsor or alternate sponsor, constitutes a charter. A charter to convert a public school must include provisions for the disposition, including assignment or reassignment, of the employees of the school before its conversion and after conversion.

(2) A charter may be amended during its term at the request of the charter school board of directors and on the approval of the sponsor or alternate sponsor.

(3) A charter may not prohibit and must provide for the application of laws applicable to charter schools or to charter school boards of directors enacted after the effective date of this section.

NEW SECTION. Sec. 11. CHARTER RENEWAL AND REVOCATION.

(1) An approved plan to establish a charter school is effective for five years from the first day of operation. At the conclusion of the first three years of operation, the charter school may apply to the original sponsor or alternate sponsor for renewal. A request for renewal must be submitted no later than six months before the expiration of the charter.

(2) A charter school renewal application must include:

(a) A report on the progress of the charter school in achieving the goals; student performance standards, including the student performance standards adopted by rule by the academic achievement and accountability commission in accordance with RCW 28A.655.030; the number and percentage of educationally disadvantaged students served; and other terms of the charter;

(b) A financial statement that discloses the costs of administration, instruction, and other expenditure objects and activities of the charter school; and

(c) All audit information from independent sources regarding the charter school, if available, and all self assessments and corresponding corrective action plans.

(3) The sponsor or alternate sponsor shall reject the application for renewal if the academic progress of students in the charter school, as measured by the standards and assessments in chapter 28A.655 RCW, is inferior, for the most recent two consecutive years, to the average progress of students in the district in which the charter school is located when similar student populations are compared.

(4) The sponsor or alternate sponsor may reject the application for renewal if any of the following occurred:

(a) The charter school materially violated its charter with the sponsor or alternate sponsor;

(b) The students enrolled in the charter school failed to meet student performance standards identified in the charter, including the student performance standards adopted by rule by the academic achievement and accountability commission in accordance with RCW 28A.655.030;

(c) The charter school failed to meet generally accepted standards of fiscal management; or

(d) The charter school violated provisions in law that have not been waived in accordance with this chapter.

(5) A sponsor or alternate sponsor shall give written notice of its intent not to renew the charter school's request for renewal to the charter school within three months of the request for renewal in order to allow the charter school an opportunity to correct identified deficiencies in its operation. At the request of the board of directors of the charter school, the sponsor or alternate sponsor shall review its decision for nonrenewal within forty-five days of receiving a request for review and supporting documentation sufficient to demonstrate that any deficiencies have been corrected.

(6)(a) The sponsor or alternate sponsor may revoke a previously approved charter before the expiration of the term of the charter, and before application for renewal, if any of the following occurred:

(i) The charter school materially violated its charter with the sponsor or alternate sponsor;

(ii) The charter school failed to meet generally accepted standards of fiscal management; or

(iii) The charter school violated provisions in law that have not been waived in accordance with this chapter.

(b) Except in cases of emergency where the health and safety of children are at risk, a charter may not be revoked unless the sponsor or alternate sponsor first provides:

(i) Written notice to the charter school of the specific violations alleged;

(ii) One or more public hearings in the school district in which the charter school is located; and

(iii) A reasonable opportunity and a sufficient period of time for the charter school to correct the identified deficiencies.

(c) If, after following the procedures in (b) of this subsection, the sponsor or alternate sponsor determines that revoking the charter is necessary to further the intent of this chapter, the sponsor or alternate sponsor may revoke the charter. The sponsor or alternate sponsor shall provide for an appeal process upon such a determination.

(d) If a sponsor or alternate sponsor revokes the charter, the sponsor or alternate sponsor, upon a request by the charter school, shall provide technical assistance to the charter school to complete the plan required and carry out the tasks identified in subsection (7) of this section.

(7) A charter school planning to close or anticipating revocation or nonrenewal of its charter shall provide a plan setting forth a timeline and the

responsible parties for disposition of students and student records and disposition of finances.

(a) Immediately following the decision to close a school, the school must:

(i) Submit to the sponsor or alternate sponsor a list of parent addresses and proof that the school has communicated the impending closure of the school to all parents and staff;

(ii) Assign staff responsible for transition of student records and for providing assistance to students and parents in transferring from the charter school to the district public, private, or home school chosen by the family;

(iii) Provide the names and contact information for staff responsible for transfer of student records, as well as the projected transition tasks and timelines to the sponsor or alternate sponsor, and upon completion of student transition, provide a list of students and a brief description of the disposition of their student records to the sponsor or alternate sponsor.

(b) Before closing the charter school the charter school board of directors shall:

(i) Identify a trustee who will, through the process of closing the school and for a term of ten years after closing, assume responsibility for school and student records, and notify the sponsor or alternate sponsor of the name and contact information for the trustee;

(ii) Determine the amount of anticipated revenue due to the school as well as anticipated liabilities, and provide a complete asset and liability report to the sponsor or alternate sponsor;

(iii) Create a current and projected payroll and payroll benefits commitment;

(iv) List each employee, job, and the funds necessary to complete the educational calendar balance of the year, the transition of students and records, and the administrative close-down tasks;

(v) Determine the total moneys required to complete contracts;

(vi) Schedule an audit and set aside funds to cover costs; and

(vii) Provide the sponsor or alternate sponsor with a plan to close the school and to dispose of all property owned by the charter school.

NEW SECTION. Sec. 12. FUNDING. (1) The superintendent of public instruction shall provide prompt and timely funding for a charter school including regular apportionment, special education, categorical, student achievement, and other nonbasic education moneys. Allocations shall be based on the statewide average staff mix ratio of all noncharter public schools from the prior school year and the school's actual FTE enrollment, except that vocational education funding for grades nine through twelve shall be provided based on eighteen and one-half percent of the charter school's actual FTE enrollment for grades nine through twelve. Enhanced staff ratio funding provided to school districts through the omnibus appropriations act shall be allocated to a charter school regardless of whether the school maintains the enhanced staffing ratio. A charter school is not eligible for enhanced small school assistance funding. Categorical funding shall be allocated to a charter school based on the same funding criteria used for noncharter public schools, except that the charter school is exempt from rules and statutes regarding the expenditure of these funds. A charter school is eligible to apply for state grants on the same basis as a school district. Those allocations to a charter school that are included in RCW

84.52.0531(3) (a) through (c) shall be included in the levy base of the district in which the charter school is located.

(2) For charter schools sponsored by a school district:

(a) Conversion charter schools are eligible for local levy moneys approved by the voters before the start-up date of the school as determined by the sponsor, and the school district shall allocate levy moneys to a conversion charter school.

(b) New charter schools are not eligible for local levy moneys approved by the voters before the start-up date of the school as determined by the sponsor, and the district shall not allocate those levy moneys to a new school.

(c) For levies submitted to voters after the start-up date of a charter school, the school shall be included in levy planning, budgets, and funding distribution in the same manner as other district-sponsored public schools.

(d) A conversion charter school is eligible for state matching funds for common school construction if a sponsoring school district determines it has received voter approval of local capital funds for the project.

(e) A conversion charter school is entitled to the continued rent-free use of its existing facility, regardless of whether the conversion school is sponsored by the local school district or by an alternate sponsor. The district remains responsible for major repairs and safety upgrades that may be required for the continued use of the facility as a public school. The charter school is responsible for routine maintenance of the facility, including but not limited to, cleaning, painting, gardening, and landscaping.

(3) No local levy money may be allocated to a charter school if the charter school is sponsored by an alternate sponsor.

(4) Within available funds as the legislature may appropriate, new charter schools operating for the primary purpose of serving educationally disadvantaged students under section 16(2) of this act that are not otherwise eligible for levy money shall receive state funding in an amount not greater than the amount the school would have received if eligible.

(5) Sponsors and alternate sponsors shall submit, by November 1st of each year, to the office of the superintendent of public instruction, annual year-end financial information, as prescribed by the superintendent, for each charter school sponsored in the previous school year.

NEW SECTION. Sec. 13. ADMINISTRATION FEE. To offset costs to oversee and administer the charter, a sponsor or an alternate sponsor may retain up to three percent of state funding and local excess levy funding, if applicable, allocated to the charter school. Except for the administration fee in this section, no other offsets or deductions are allowed, whether for central administration or other off-site support services, from a charter school's per-pupil share of state appropriations, local levies, or other funds, unless the charter school has contracted with a school district to obtain specific additional services.

NEW SECTION. Sec. 14. LEAVES OF ABSENCE. If a school district employee makes a written request for an extended leave of absence to work at a charter school, the school district shall grant the request. The school district may require that the request for leave be made up to ninety days before the employee would otherwise have to report for duty. The leave shall be granted for any request for up to two years. If the employee returns to the school district within the two-year period, the employee shall be hired before the district hires anyone

else with fewer years of statewide service, with respect to any position for which the returning employee is certificated or otherwise qualified.

NEW SECTION. Sec. 15. STUDY OF CHARTER SCHOOLS. Subject to funding, the Washington institute for public policy shall study the implementation and effectiveness of this act. The institute shall report to the legislature on the effectiveness of charter schools in raising student achievement and the impact of charter schools. The institute also shall examine and discuss whether and how charter schools have enhanced education reform efforts and recommend whether relaxing or eliminating certain regulatory requirements for other public schools could result in improved school performance at those schools. The institute shall recommend changes to this chapter including improvements that could be made to the application and approval process. A preliminary report of the study is due to the legislature by March 1, 2007, and a final report is due September 1, 2008.

NEW SECTION. Sec. 16. NUMBER OF CHARTER SCHOOLS. (1) A maximum of forty-five new charter schools may be established statewide during the six consecutive years in which new charter schools are authorized to be created under this chapter.

(a) For purposes of this section, a year begins on July 1st and ends on June 30th. In each of the three years beginning July 1, 2004, and ending June 30, 2007, not more than five new charter schools may be established. In each of the three years beginning July 1, 2007, and ending June 30, 2010, not more than ten new charter schools may be established.

(b) These annual allocations are cumulative so that if the maximum number of allowable new charters is not reached in any given year the maximums are increased accordingly for the successive years, but in no case shall the total number exceed forty-five without further legislative authorization.

(c) Applications for charter schools may be submitted on the effective date of this section.

(d) The superintendent of public instruction shall maintain copies of all approved charter applications. An applicant may obtain copies of those applications from the office of the superintendent of public instruction.

(2) Consistent with the legislative intent of this chapter, a majority of the annual number of new charter schools that may be established under subsection (1) of this section are reserved to implement charter schools established for the primary purpose of serving educationally disadvantaged students, and that are located in, or accessible to students who live in, geographic areas in which a large proportion of the students have difficulty meeting state academic content and student achievement standards, or geographic areas, including urban and rural areas, in which a large proportion or number of public schools have been identified for improvement, corrective action, or restructuring under the federal no child left behind act of 2001, as follows:

(a) For new schools allowed during the first year beginning July 1, 2004, a majority are reserved until the thirty-first day after the effective date of this section; and

(b) For new schools allowed during the second through sixth years, a majority are reserved until March 31st of each year.

(3) To ensure compliance with the annual limits for establishing new charter schools, authorization from the superintendent of public instruction must be obtained before implementing an approved charter for a new school. Sponsors and alternate sponsors shall promptly notify the superintendent of public instruction when a charter is approved, and shall indicate whether the charter school's primary purpose is to serve educationally disadvantaged students. Upon the receipt of notice from a sponsor or alternate sponsor that a charter has been approved, the superintendent shall authorize implementing the approved charter establishing the school in compliance with the limits on the maximum number of new charters allowed under subsection (1) of this section and in compliance with the dates until which the majority of new charters each year are reserved under subsection (2) of this section. If the superintendent receives simultaneous notification of approved charters that exceed the annual allowable limits in subsections (1) and (2) of this section, the superintendent shall select approved charters for authorization through a lottery process, and shall assign implementation dates accordingly.

(4) If the number of charters reserved each year under subsection (2) of this section is not reached by the thirty-first day after the effective date of this section, or by March 31st of the second through sixth years, the superintendent of public instruction shall notify the sponsors or alternate sponsors of any other approved charters for which authorization has not been granted under subsection (3) of this section, and shall authorize implementing those charters within the annual limits, regardless of whether those charters meet the requirements of subsection (2) of this section.

(5) The superintendent of public instruction shall notify eligible sponsors and eligible alternate sponsors when the maximum allowable number of new charters has been reached each year. If the maximum number is not reached by the thirty-first day after the effective date of this section, or by March 31st of the second through sixth years, the superintendent shall report on the number of charters approved.

(6) A school district board of directors may establish a conversion charter school during the six consecutive years in which charter schools are authorized under this chapter for any school, including an alternative school, that has failed to make adequate yearly progress for the most recent three consecutive years, or is eligible for school improvement assistance. Determinations regarding adequate yearly progress and eligibility for school improvement assistance must be made by the superintendent of public instruction.

(7) A new charter school or a conversion charter school operating according to the terms of its charter to the satisfaction of its sponsor or alternate sponsor may continue to operate after June 30, 2010, under a charter renewed by its sponsor or alternate sponsor under section 11 of this act.

NEW SECTION. Sec. 17. A new section is added to chapter 41.56 RCW to read as follows:

In addition to the entities listed in RCW 41.56.020, this chapter applies to new charter schools created under chapter 28A.— RCW (sections 1 through 16 and 25 of this act). Notwithstanding RCW 41.56.060 and 41.56.070, the bargaining units of classified employees of a new charter school must be limited to the employees of the new charter school and must be separate from other bargaining units in the school district or educational service district for at least

the first five years of operation of the new charter school. After the five-year period, the employees in a bargaining unit of a new charter school may indicate by a majority vote that they desire to become members of a bargaining unit in the school district in which the new charter school is located.

NEW SECTION. Sec. 18. A new section is added to chapter 41.56 RCW to read as follows:

At the time of creation of a conversion charter school under chapter 28A.— RCW (sections 1 through 16 and 25 of this act), the employees of a conversion charter school remain in any existing appropriate bargaining unit of employees of the school district in which the conversion charter school is located. If an applicant for a charter school or a charter school board requests one or more variances from a collective bargaining agreement that applies to the relevant school district bargaining unit to address needs that are specific to the charter school and the employees of the charter school, the following applies:

(1) At the request of either party, the public employer, in consultation with the applicant or charter school board, and the bargaining representative of the bargaining unit shall negotiate concerning the issues raised in the variance request.

(2) If the parties are unable to conclude an agreement regarding the variance request within twenty days of negotiations, either party may declare an impasse and submit the dispute to the commission for mediation. The commission shall appoint a mediator within two days of the submission. Mediation under this subsection shall continue for up to ten days unless the parties agree otherwise.

NEW SECTION. Sec. 19. A new section is added to chapter 41.59 RCW to read as follows:

In addition to school districts, this chapter applies to new charter schools created under chapter 28A.— RCW (sections 1 through 16 and 25 of this act). Notwithstanding RCW 41.59.070 and 41.59.080, the bargaining units of educational employees of a new charter school must be limited to the educational employees of the new charter school and must be separate from the bargaining units in the school district or educational service district for at least the first five years of operation of the new charter school. After the five-year period, the employees in a bargaining unit of a new charter school may indicate by a majority vote that they desire to become members of a bargaining unit in the school district in which the new charter school is located.

NEW SECTION. Sec. 20. A new section is added to chapter 41.59 RCW to read as follows:

At the time of creation of a conversion charter school under chapter 28A.— RCW (sections 1 through 16 and 25 of this act), the employees of a conversion charter school remain in any existing appropriate bargaining unit of employees of the school district in which the conversion charter school is located. If an applicant for a charter school or a charter school board requests one or more variances from a collective bargaining agreement that applies to the relevant school district bargaining unit to address needs that are specific to the charter school and the employees of the charter school, the following applies:

(1) At the request of either party, the employer, in consultation with the applicant or charter school board, and the exclusive bargaining representative of

the bargaining unit shall negotiate concerning the issues raised in the variance request.

(2) If the parties are unable to conclude an agreement regarding the variance request within twenty days of negotiations, either party may declare an impasse and submit the dispute to the commission for mediation. The commission shall appoint a mediator within two days of the submission. Mediation under this subsection shall continue for up to ten days unless the parties agree otherwise.

NEW SECTION. Sec. 21. A new section is added to chapter 41.32 RCW to read as follows:

This section designates charter schools as employers and charter school employees as members, and applies only if the department of retirement systems receives determinations from the internal revenue service and the United States department of labor that participation does not jeopardize the status of these retirement systems as governmental plans under the federal employees' retirement income security act and the internal revenue code.

NEW SECTION. Sec. 22. A new section is added to chapter 41.35 RCW to read as follows:

This section designates charter schools as employers and charter school employees as members, and applies only if the department of retirement systems receives determinations from the internal revenue service and the United States department of labor that participation does not jeopardize the status of these retirement systems as governmental plans under the federal employees' retirement income security act and the internal revenue code.

NEW SECTION. Sec. 23. A new section is added to chapter 41.40 RCW to read as follows:

This section designates charter schools as employers and charter school employees as members, and applies only if the department of retirement systems receives determinations from the internal revenue service and the United States department of labor that participation does not jeopardize the status of these retirement systems as governmental plans under the federal employees' retirement income security act and the internal revenue code.

Sec. 24. RCW 28A.150.010 and 1969 ex.s. c 223 s 28A.01.055 are each amended to read as follows:

Public schools ((~~shall~~)) means the common schools as referred to in Article IX of the state Constitution and those schools and institutions of learning having a curriculum below the college or university level as now or may be established by law and maintained at public expense, including charter schools under chapter 28A.— RCW (sections 1 through 16 and 25 of this act).

NEW SECTION. Sec. 25. CAPTIONS NOT LAW. Captions used in this chapter are not any part of the law.

NEW SECTION. Sec. 26. Sections 1 through 16 and 25 of this act constitute a new chapter in Title 28A RCW.

NEW SECTION. Sec. 27. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected.

Passed by the House March 10, 2004.

Passed by the Senate March 10, 2004.

Approved by the Governor March 18, 2004.
 Filed in Office of Secretary of State March 18, 2004.

CHAPTER 23

[Substitute Senate Bill 6245]

TEACHER CERTIFICATION

AN ACT Relating to residency teacher certification partnership programs; amending RCW 28A.660.010, 28A.660.020, 28A.660.030, 28A.660.040, 28A.660.050, and 28A.660.901; repealing RCW 28A.660.900; and providing an expiration date.

Be it enacted by the Legislature of the State of Washington:

Sec. 1. RCW 28A.660.010 and 2001 c 158 s 2 are each amended to read as follows:

There is hereby created a statewide partnership grant program to provide new high-quality alternative routes to residency teacher certification. To the extent funds are appropriated for this specific purpose, funds provided under this partnership grant program shall be used solely for school districts, or consortia of school districts, to partner with state-approved higher education teacher preparation programs to provide one or more of ~~((three))~~ four alternative route programs in RCW 28A.660.040, with routes one, two, and three aimed at recruiting candidates to teaching in subject matter shortage areas and areas with shortages due to geographic location. Districts, or consortia of districts, may also include their educational service districts in their partnership grant program. ~~((Partnership programs receiving grants may enroll candidates as early as January 2002.))~~

Sec. 2. RCW 28A.660.020 and 2003 c 410 s 1 are each amended to read as follows:

(1) Each district or consortia of school districts applying for the alternative route certification program shall submit a proposal to the Washington professional educator standards board specifying:

(a) The route or routes the partnership program intends to offer and a detailed description of how the routes will be structured and operated by the partnership;

(b) The number of candidates that will be enrolled per route;

(c) An identification, indication of commitment, and description of the role of approved teacher preparation programs that are partnering with the district or consortia of districts;

(d) An assurance of district provision of adequate training for mentor teachers either through participation in a state mentor training academy or district-provided training that meets state-established mentor-training standards specific to the mentoring of alternative route candidates;

(e) An assurance that significant time will be provided for mentor teachers to spend with the alternative route teacher candidates throughout the internship. Partnerships must provide each candidate with intensive classroom mentoring until such time as the candidate demonstrates the competency necessary to manage the classroom with less intensive supervision and guidance from a mentor;

(f) A description of the rigorous screening process for applicants to alternative route programs, including entry requirements specific to each route, as provided in RCW 28A.660.040; and

(g) The design and use of a teacher development plan for each candidate. The plan shall specify the alternative route coursework and training required of each candidate and shall be developed by comparing the candidate's prior experience and coursework with the state's new performance-based standards for residency certification and adjusting any requirements accordingly. The plan may include the following components:

(i) A minimum of one-half of a school year, and an additional significant amount of time if necessary, of intensive mentorship, starting with full-time mentoring and progressing to increasingly less intensive monitoring and assistance as the intern demonstrates the skills necessary to take over the classroom with less intensive support. For route one and two candidates, before the supervision is diminished, the mentor of the teacher candidate at the school and the supervisor of the teacher candidate from the higher education teacher preparation program must both agree that the teacher candidate is ready to manage the classroom with less intensive supervision. For route three and four candidates, the mentor of the teacher candidate shall make the decision;

(ii) Identification of performance indicators based on the knowledge and skills standards required for residency certification by the state board of education;

(iii) Identification of benchmarks that will indicate when the standard is met for all performance indicators;

(iv) A description of strategies for assessing candidate performance on the benchmarks;

(v) Identification of one or more tools to be used to assess a candidate's performance once the candidate has been in the classroom for about one-half of a school year; and

(vi) A description of the criteria that would result in residency certification after about one-half of a school year but before the end of the program.

(2) To the extent funds are appropriated for this purpose, districts may apply for program funds to pay stipends to trained mentor teachers of interns during the mentored internship. The per intern amount of mentor stipend shall not exceed five hundred dollars.

Sec. 3. RCW 28A.660.030 and 2003 c 410 s 2 are each amended to read as follows:

(1) The professional educator standards board, with support from the office of the superintendent of public instruction, shall select school districts and consortia of school districts to receive partnership grants from funds appropriated by the legislature for this purpose. Factors to be considered in selecting proposals include, but are not limited to:

(a) For routes one, two, and three, the degree to which the district, or consortia of districts in partnership, are currently experiencing teacher shortages;

(b)(i) For routes one, two, three, and four, the degree to which the proposal addresses criteria specified in RCW 28A.660.020 and is in keeping with specifications of program routes in RCW 28A.660.040;

~~((e))~~ (ii) The cost-effectiveness of the proposed program; and

~~((d))~~ (iii) Any demonstrated district and in-kind contributions to the program.

(2) Selection of proposals shall also take into consideration the need to ensure an adequate number of candidates for each type of route in order to evaluate their success.

(3) Funds appropriated for the partnership grant program in this chapter shall be administered by the office of the superintendent of public instruction.

Sec. 4. RCW 28A.660.040 and 2001 c 158 s 5 are each amended to read as follows:

Partnership grants funded under this chapter shall operate one to ~~((three))~~ four specific route programs. Successful completion of the program shall make a candidate eligible for residency teacher certification. For route one and two candidates, the mentor of the teacher candidate at the school and the supervisor of the teacher candidate from the higher education teacher preparation program must both agree that the teacher candidate has successfully completed the program. For route three and four candidates, the mentor of the teacher candidate shall make the determination that the candidate has successfully completed the program.

(1) Partnership grant programs seeking funds to operate route one programs shall enroll currently employed classified instructional employees with transferable associate degrees seeking residency teacher certification with endorsements in special education, bilingual education, or English as a second language. It is anticipated that candidates enrolled in this route will complete both their baccalaureate degree and requirements for residency certification in two years or less, including a mentored internship to be completed in the final year. In addition, partnership programs shall uphold entry requirements for candidates that include:

(a) District or building validation of qualifications, including three years of successful student interaction and leadership as a classified instructional employee;

(b) Successful passage of the statewide basic skills exam, when available; and

(c) Meeting the age, good moral character, and personal fitness requirements adopted by rule for teachers.

(2) Partnership grant programs seeking funds to operate route two programs shall enroll currently employed classified staff with baccalaureate degrees seeking residency teacher certification in subject matter shortage areas and areas with shortages due to geographic location. Candidates enrolled in this route must complete a mentored internship complemented by flexibly scheduled training and coursework offered at a local site, such as a school or educational service district, or online or via video-conference over the K-20 network, in collaboration with the partnership program's higher education partner. In addition, partnership grant programs shall uphold entry requirements for candidates that include:

(a) District or building validation of qualifications, including three years of successful student interaction and leadership as classified staff;

(b) A baccalaureate degree from a regionally accredited institution of higher education. The individual's college or university grade point average may be considered as a selection factor;

(c) Successful completion of the content test, once the state content test is available;

(d) Meeting the age, good moral character, and personal fitness requirements adopted by rule for teachers; and

(e) Successful passage of the statewide basic skills exam, when available.

(3) Partnership grant programs seeking funds to operate route three programs shall enroll individuals with baccalaureate degrees, who are not employed in the district at the time of application (~~(, or who hold emergency substitute certificates)~~). When selecting candidates for certification through route three, districts shall give priority to individuals who are seeking residency teacher certification in subject matter shortage areas or shortages due to geographic locations. For route three only, the districts may include additional candidates in nonshortage subject areas if the candidates are seeking endorsements with a secondary grade level designation as defined by rule by the state board of education. The districts shall disclose to candidates in nonshortage subject areas available information on the demand in those subject areas. Cohorts of candidates for this route shall attend an intensive summer teaching academy, followed by a full year employed by a district in a mentored internship, followed, if necessary, by a second summer teaching academy. In addition, partnership programs shall uphold entry requirements for candidates that include:

(a) Five years' experience in the work force;

(b) A baccalaureate degree from a regionally accredited institution of higher education. The individual's grade point average may be considered as a selection factor;

(c) Successful completion of the content test, once the state content test is available;

(d) External validation of qualifications, including demonstrated successful experience with students or children, such as references [reference] letters and letters of support from previous employers;

(e) Meeting the age, good moral character, and personal fitness requirements adopted by rule for teachers; and

(f) Successful passage of statewide basic skills exams, when available.

(4) Partnership grant programs seeking funds to operate route four programs shall enroll individuals with baccalaureate degrees, who are employed in the district at the time of application, or who hold conditional teaching certificates or emergency substitute certificates. Cohorts of candidates for this route shall attend an intensive summer teaching academy, followed by a full year employed by a district in a mentored internship. In addition, partnership programs shall uphold entry requirements for candidates that include:

(a) Five years' experience in the work force;

(b) A baccalaureate degree from a regionally accredited institution of higher education. The individual's grade point average may be considered as a selection factor;

(c) Successful completion of the content test, once the state content test is available;

(d) External validation of qualifications, including demonstrated successful experience with students or children, such as reference letters and letters of support from previous employers;

(e) Meeting the age, good moral character, and personal fitness requirements adopted by rule for teachers; and

(f) Successful passage of statewide basic skills exams, when available.

Sec. 5. RCW 28A.660.050 and 2003 c 410 s 3 are each amended to read as follows:

The alternative route conditional scholarship program is created under the following guidelines:

(1) The program shall be administered by the higher education coordinating board. In administering the program, the higher education coordinating board has the following powers and duties:

(a) To adopt necessary rules and develop guidelines to administer the program;

(b) To collect and manage repayments from participants who do not meet their service obligations; and

(c) To accept grants and donations from public and private sources for the program.

(2) Participation in the alternative route conditional scholarship program is limited to interns of the partnership grant programs under RCW 28A.660.040. The Washington professional educator standards board shall select interns to receive conditional scholarships.

(3) In order to receive conditional scholarship awards, recipients shall be accepted and maintain enrollment in alternative certification routes through the partnership grant program, as provided in RCW 28A.660.040. Recipients must continue to make satisfactory progress towards completion of the alternative route certification program and receipt of a residency teaching certificate.

(4) For the purpose of this chapter, a conditional scholarship is a loan that is forgiven in whole or in part in exchange for service as a certificated teacher employed in a Washington state K-12 public school. The state shall forgive one year of loan obligation for every two years a recipient teaches in a public school. Recipients that fail to continue a course of study leading to residency teacher certification or cease to teach in a public school in the state of Washington in their endorsement area are required to repay the remaining loan principal with interest.

(5) Recipients who fail to fulfill the required teaching obligation are required to repay the remaining loan principal with interest and any other applicable fees. The higher education coordinating board shall adopt rules to define the terms for repayment, including applicable interest rates, fees, and deferments.

(6) To the extent funds are appropriated for this specific purpose, the annual amount of the scholarship is the annual cost of tuition; fees; and educational expenses, including books, supplies, and transportation for the alternative route certification program in which the recipient is enrolled, not to exceed eight thousand dollars. The board may adjust the annual award by the average rate of resident undergraduate tuition and fee increases at the state universities as defined in RCW 28B.10.016.

(7) The higher education coordinating board may deposit all appropriations, collections, and any other funds received for the program in this chapter in the student loan account authorized in RCW 28B.102.060.

Sec. 6. RCW 28A.660.901 and 2001 c 158 s 8 are each amended to read as follows:

(1) The Washington state institute for public policy shall submit to the education and fiscal committees of the legislature, the governor, the state board of education, and the Washington professional educator standards board, an interim evaluation of partnership grant programs funded under this chapter by December 1, 2002, and a final evaluation by December 1, 2004. If specific funding for the purposes of this section, referencing this section and this act by bill or chapter number, is not provided by June 30, 2001, in the omnibus appropriations act, this section is null and void.

(2) This section expires June 30, 2005.

NEW SECTION. Sec. 7. RCW 28A.660.900 (Expiration of chapter) and 2001 c 158 s 7 are each repealed.

Passed by the Senate March 8, 2004.

Passed by the House March 3, 2004.

Approved by the Governor March 18, 2004.

Filed in Office of Secretary of State March 18, 2004.

CHAPTER 24

[Second Substitute Senate Bill 6304]

ALUMINUM SMELTER TAX RELIEF

AN ACT Relating to tax relief for aluminum smelters; amending RCW 82.04.240, 82.04.270, 82.04.280, 82.04.440, and 82.12.022; adding new sections to chapter 82.04 RCW; adding a new section to chapter 82.08 RCW; adding a new section to chapter 82.12 RCW; adding a new section to chapter 82.16 RCW; adding a new section to chapter 82.32 RCW; creating a new section; providing an effective date; and providing an expiration date.

Be it enacted by the Legislature of the State of Washington:

NEW SECTION. Sec. 1. The legislature recognizes that the loss of domestic manufacturing jobs has become a national concern. Washington state has lost one out of every six manufacturing jobs since July 2000. The aluminum industry has long been an important component of Washington state's manufacturing base, providing family-wage jobs often in rural communities where unemployment rates are very high. The aluminum industry is electricity intensive and was greatly affected by the dramatic increase in electricity prices which began in 2000 and which continues to affect the Washington economy. Before the energy crisis, aluminum smelters provided about 5,000 direct jobs. Today they provide fewer than 1,000 direct jobs. For every job lost in that industry, almost three additional jobs are estimated to be lost elsewhere in the state's economy. It is the legislature's intent to preserve and restore family wage jobs by providing tax relief to the state's aluminum industry.

The electric loads of aluminum smelters provide a unique benefit to the infrastructure of the electric power system. Under the transmission tariff of the Bonneville Power Administration, aluminum smelter loads, whether served with federal or nonfederal power, are subject to short-term interruptions that allow a higher import capability on the transmission interconnection between the northwest and California. These stability reserves allow more power to be imported in winter months, reducing the need for additional generation in the northwest, and would be used to prevent a widespread transmission collapse and

blackout if there were a failure in the transmission interconnection between California and the northwest. It is the legislature's intent to retain these benefits for the people of the state.

NEW SECTION. Sec. 2. A new section is added to chapter 82.04 RCW, to be codified between RCW 82.04.020 and 82.04.220, to read as follows:

(1) "Direct service industrial customer" means the same as in RCW 82.16.0495.

(2) "Aluminum smelter" means the manufacturing facility of any direct service industrial customer that processes alumina into aluminum.

NEW SECTION. Sec. 3. A new section is added to chapter 82.04 RCW to read as follows:

(1) Upon every person who is an aluminum smelter engaging within this state in the business of manufacturing aluminum; as to such persons the amount of tax with respect to such business shall, in the case of manufacturers, be equal to the value of the product manufactured, or in the case of processors for hire, be equal to the gross income of the business, multiplied by the rate of .2904 percent.

(2) Upon every person who is an aluminum smelter engaging within this state in the business of making sales at wholesale of aluminum manufactured by that person, as to such persons the amount of tax with respect to such business shall be equal to the gross proceeds of sales of the aluminum multiplied by the rate of .2904 percent.

(3) This section expires January 1, 2007.

Sec. 4. RCW 82.04.240 and 1998 c 312 s 3 are each amended to read as follows:

Upon every person (~~except persons taxable under RCW 82.04.260 (1), (2), (4), (5), or (6))~~) engaging within this state in business as a manufacturer, except persons taxable as manufacturers under other provisions of this chapter; as to such persons the amount of the tax with respect to such business shall be equal to the value of the products, including byproducts, manufactured, multiplied by the rate of 0.484 percent.

The measure of the tax is the value of the products, including byproducts, so manufactured regardless of the place of sale or the fact that deliveries may be made to points outside the state.

Sec. 5. RCW 82.04.270 and 2003 2nd sp.s. c 1 s 5 are each amended to read as follows:

Upon every person (~~except persons taxable under RCW 82.04.260 (5) or (13), 82.04.298, or 82.04.272)~~) engaging within this state in the business of making sales at wholesale, except persons taxable as wholesalers under other provisions of this chapter; as to such persons the amount of tax with respect to such business shall be equal to the gross proceeds of sales of such business multiplied by the rate of 0.484 percent.

Sec. 6. RCW 82.04.280 and 1998 c 343 s 3 are each amended to read as follows:

Upon every person engaging within this state in the business of: (1) Printing, and of publishing newspapers, periodicals, or magazines; (2) building, repairing or improving any street, place, road, highway, easement, right of way, mass public transportation terminal or parking facility, bridge, tunnel, or trestle which is owned by a municipal corporation or political subdivision of the state

or by the United States and which is used or to be used, primarily for foot or vehicular traffic including mass transportation vehicles of any kind and including any readjustment, reconstruction or relocation of the facilities of any public, private or cooperatively owned utility or railroad in the course of such building, repairing or improving, the cost of which readjustment, reconstruction, or relocation, is the responsibility of the public authority whose street, place, road, highway, easement, right of way, mass public transportation terminal or parking facility, bridge, tunnel, or trestle is being built, repaired or improved; (3) extracting for hire or processing for hire, except persons taxable as processors for hire under another section of this chapter; (4) operating a cold storage warehouse or storage warehouse, but not including the rental of cold storage lockers; (5) representing and performing services for fire or casualty insurance companies as an independent resident managing general agent licensed under the provisions of RCW 48.05.310; (6) radio and television broadcasting, excluding network, national and regional advertising computed as a standard deduction based on the national average thereof as annually reported by the Federal Communications Commission, or in lieu thereof by itemization by the individual broadcasting station, and excluding that portion of revenue represented by the out-of-state audience computed as a ratio to the station's total audience as measured by the 100 micro-volt signal strength and delivery by wire, if any; (7) engaging in activities which bring a person within the definition of consumer contained in RCW 82.04.190(6); as to such persons, the amount of tax on such business shall be equal to the gross income of the business multiplied by the rate of 0.484 percent.

As used in this section, "cold storage warehouse" means a storage warehouse used to store fresh and/or frozen perishable fruits or vegetables, meat, seafood, dairy products, or fowl, or any combination thereof, at a desired temperature to maintain the quality of the product for orderly marketing.

As used in this section, "storage warehouse" means a building or structure, or any part thereof, in which goods, wares, or merchandise are received for storage for compensation, except field warehouses, fruit warehouses, fruit packing plants, warehouses licensed under chapter 22.09 RCW, public garages storing automobiles, railroad freight sheds, docks and wharves, and "self-storage" or "mini storage" facilities whereby customers have direct access to individual storage areas by separate entrance. "Storage warehouse" does not include a building or structure, or that part of such building or structure, in which an activity taxable under RCW 82.04.272 is conducted.

As used in this section, "periodical or magazine" means a printed publication, other than a newspaper, issued regularly at stated intervals at least once every three months, including any supplement or special edition of the publication.

Sec. 7. RCW 82.04.440 and 2003 2nd sp.s. c 1 s 6 are each amended to read as follows:

(1) Every person engaged in activities which are within the purview of the provisions of two or more of sections RCW 82.04.230 to 82.04.290, inclusive, shall be taxable under each paragraph applicable to the activities engaged in.

(2) Persons taxable under section 3(2) of this act, RCW 82.04.250, 82.04.270, or 82.04.260 (4) or (13) with respect to selling products in this state shall be allowed a credit against those taxes for any (a) manufacturing taxes paid

with respect to the manufacturing of products so sold in this state, and/or (b) extracting taxes paid with respect to the extracting of products so sold in this state or ingredients of products so sold in this state. Extracting taxes taken as credit under subsection (3) of this section may also be taken under this subsection, if otherwise allowable under this subsection. The amount of the credit shall not exceed the tax liability arising under this chapter with respect to the sale of those products.

(3) Persons taxable under RCW 82.04.240 or 82.04.260(1)(b) shall be allowed a credit against those taxes for any extracting taxes paid with respect to extracting the ingredients of the products so manufactured in this state. The amount of the credit shall not exceed the tax liability arising under this chapter with respect to the manufacturing of those products.

(4) Persons taxable under RCW 82.04.230, 82.04.240, section 3(1) of this act, or 82.04.260 (1), (2), (4), (6), or (13) with respect to extracting or manufacturing products in this state shall be allowed a credit against those taxes for any (i) gross receipts taxes paid to another state with respect to the sales of the products so extracted or manufactured in this state, (ii) manufacturing taxes paid with respect to the manufacturing of products using ingredients so extracted in this state, or (iii) manufacturing taxes paid with respect to manufacturing activities completed in another state for products so manufactured in this state. The amount of the credit shall not exceed the tax liability arising under this chapter with respect to the extraction or manufacturing of those products.

(5) For the purpose of this section:

(a) "Gross receipts tax" means a tax:

(i) Which is imposed on or measured by the gross volume of business, in terms of gross receipts or in other terms, and in the determination of which the deductions allowed would not constitute the tax an income tax or value added tax; and

(ii) Which is also not, pursuant to law or custom, separately stated from the sales price.

(b) "State" means (i) the state of Washington, (ii) a state of the United States other than Washington, or any political subdivision of such other state, (iii) the District of Columbia, and (iv) any foreign country or political subdivision thereof.

(c) "Manufacturing tax" means a gross receipts tax imposed on the act or privilege of engaging in business as a manufacturer, and includes (i) the taxes imposed in RCW 82.04.240, section 3(1) of this act, and 82.04.260 (1), (2), (4), and (13), and (ii) similar gross receipts taxes paid to other states.

(d) "Extracting tax" means a gross receipts tax imposed on the act or privilege of engaging in business as an extractor, and includes the tax imposed in RCW 82.04.230 and similar gross receipts taxes paid to other states.

(e) "Business", "manufacturer", "extractor", and other terms used in this section have the meanings given in RCW 82.04.020 through 82.04.212, notwithstanding the use of those terms in the context of describing taxes imposed by other states.

NEW SECTION. Sec. 8. A new section is added to chapter 82.04 RCW to read as follows:

(1) In computing the tax imposed under this chapter, a credit is allowed for all property taxes paid during the calendar year on property owned by a direct

service industrial customer and reasonably necessary for the purposes of an aluminum smelter.

(2) A person taking the credit under this section is subject to all the requirements of chapter 82.32 RCW. A credit earned during one calendar year may be carried over to be credited against taxes incurred in the subsequent calendar year, but may not be carried over a second year. Credits carried over must be applied to tax liability before new credits. No refunds may be granted for credits under this section.

(3) Credits may not be claimed under this section for property taxes levied for collection in 2007 and thereafter.

NEW SECTION. Sec. 9. A new section is added to chapter 82.04 RCW to read as follows:

(1) A person who is subject to tax under this chapter on gross income from sales of electricity, natural gas, or manufactured gas made to an aluminum smelter is eligible for an exemption from the tax in the form of a credit, if the contract for sale of electricity or gas to the aluminum smelter specifies that the price charged for the electricity or gas will be reduced by an amount equal to the credit.

(2) The credit is equal to the gross income from the sale of the electricity or gas to an aluminum smelter multiplied by the corresponding rate in effect at the time of the sale under this chapter.

(3) The exemption provided for in this section does not apply to amounts received from the remarketing or resale of electricity originally obtained by contract for the smelting process.

NEW SECTION. Sec. 10. A new section is added to chapter 82.08 RCW to read as follows:

(1) A person who has paid tax under RCW 82.08.020 for tangible personal property used at an aluminum smelter, tangible personal property that will be incorporated as an ingredient or component of buildings or other structures at an aluminum smelter, or for labor and services rendered with respect to such buildings, structures, or tangible personal property, is eligible for an exemption from the state share of the tax in the form of a credit, as provided in this section. A person claiming an exemption must pay the tax and may then take a credit equal to the state share of retail sales tax paid under RCW 82.08.020. The person shall submit information, in a form and manner prescribed by the department, specifying the amount of qualifying purchases or acquisitions for which the exemption is claimed and the amount of exempted tax.

(2) For the purposes of this section, "aluminum smelter" has the same meaning as provided in section 2 of this act.

(3) Credits may not be claimed under this section for taxable events occurring on or after January 1, 2007.

NEW SECTION. Sec. 11. A new section is added to chapter 82.12 RCW to read as follows:

(1) A person who is subject to tax under RCW 82.12.020 for tangible personal property used at an aluminum smelter, or for tangible personal property that will be incorporated as an ingredient or component of buildings or other structures at an aluminum smelter, or for labor and services rendered with respect to such buildings, structures, or tangible personal property, is eligible for

an exemption from the state share of the tax in the form of a credit, as provided in this section. The amount of the credit shall be equal to the state share of use tax computed to be due under RCW 82.12.020. The person shall submit information, in a form and manner prescribed by the department, specifying the amount of qualifying purchases or acquisitions for which the exemption is claimed and the amount of exempted tax.

(2) For the purposes of this section, "aluminum smelter" has the same meaning as provided in section 2 of this act.

(3) Credits may not be claimed under this section for taxable events occurring on or after January 1, 2007.

Sec. 12. RCW 82.12.022 and 1994 c 124 s 9 are each amended to read as follows:

(1) There is hereby levied and there shall be collected from every person in this state a use tax for the privilege of using natural gas or manufactured gas within this state as a consumer.

(2) The tax shall be levied and collected in an amount equal to the value of the article used by the taxpayer multiplied by the rate in effect for the public utility tax on gas distribution businesses under RCW 82.16.020. The "value of the article used" does not include any amounts that are paid for the hire or use of a gas distribution business as defined in RCW 82.16.010(7) in transporting the gas subject to tax under this subsection if those amounts are subject to tax under that chapter.

(3) The tax levied in this section shall not apply to the use of natural or manufactured gas delivered to the consumer by other means than through a pipeline.

(4) The tax levied in this section shall not apply to the use of natural or manufactured gas if the person who sold the gas to the consumer has paid a tax under RCW 82.16.020 with respect to the gas for which exemption is sought under this subsection.

(5) The tax levied in this section shall not apply to the use of natural or manufactured gas by an aluminum smelter as that term is defined in section 2 of this act before January 1, 2007.

(6) There shall be a credit against the tax levied under this section in an amount equal to any tax paid by:

(a) The person who sold the gas to the consumer when that tax is a gross receipts tax similar to that imposed pursuant to RCW 82.16.020 by another state with respect to the gas for which a credit is sought under this subsection; or

(b) The person consuming the gas upon which a use tax similar to the tax imposed by this section was paid to another state with respect to the gas for which a credit is sought under this subsection.

~~((6))~~ (7) The use tax hereby imposed shall be paid by the consumer to the department.

~~((7))~~ (8) There is imposed a reporting requirement on the person who delivered the gas to the consumer to make a quarterly report to the department. Such report shall contain the volume of gas delivered, name of the consumer to whom delivered, and such other information as the department shall require by rule.

~~((8))~~ (9) The department may adopt rules under chapter 34.05 RCW for the administration and enforcement of sections 1 through 6, chapter 384, Laws of 1989.

NEW SECTION. Sec. 13. A new section is added to chapter 82.16 RCW to read as follows:

(1) A person who is subject to tax under this chapter on gross income from sales of electricity, natural gas, or manufactured gas made to an aluminum smelter is eligible for an exemption from the tax in the form of a credit, if the contract for sale of electricity or gas to the aluminum smelter specifies that the price charged for the electricity or gas will be reduced by an amount equal to the credit.

(2) The credit is equal to the gross income from the sale of the electricity or gas to an aluminum smelter multiplied by the corresponding rate in effect at the time of the sale for the public utility tax under RCW 82.16.020.

(3) The exemption provided for in this section does not apply to amounts received from the remarketing or resale of electricity originally obtained by contract for the smelting process.

(4) For the purposes of this section, "aluminum smelter" has the same meaning as provided in section 2 of this act.

NEW SECTION. Sec. 14. A new section is added to chapter 82.32 RCW to read as follows:

(1) For the purposes of this section, "smelter tax incentive" means the preferential tax rate under section 3 of this act, or an exemption or credit under section 8, 10, or 11 of this act or RCW 82.12.022(5).

(2) The legislature finds that accountability and effectiveness are important aspects of setting tax policy. In order to make policy choices regarding the best use of limited state resources the legislature needs information to evaluate whether the stated goals of legislation were achieved.

(3) The goals of the smelter tax incentives are to retain family wage jobs in rural areas by:

(a) Enabling the aluminum industry to maintain production of aluminum at a level that will preserve at least 75 percent of the jobs that were on the payroll effective January 1, 2004, as adjusted for employment reductions publicly announced before November 30, 2003; and

(b) Allowing the aluminum industry to continue producing aluminum in this state through 2006 so that the industry will be positioned to preserve and create new jobs when the anticipated reduction of energy costs occurs.

(4)(a) An aluminum smelter receiving the benefit of a smelter tax incentive shall make an annual report to the department detailing employment, wages, and employer-provided health and retirement benefits per job at the manufacturing site. The report is due by March 31st following any year in which a tax incentive is claimed or used. The report shall not include names of employees. The report shall detail employment by the total number of full-time, part-time, and temporary positions. The report shall indicate the quantity of aluminum smelted at the plant during the time period covered by the report. The first report filed under this subsection shall include employment, wage, and benefit information for the twelve-month period immediately before first use of a tax incentive. Employment reports shall include data for actual levels of employment and

identification of the number of jobs affected by any employment reductions that have been publicly announced at the time of the report. Information in a report under this section is not subject to the confidentiality provisions of RCW 82.32.330 and may be disclosed to the public upon request.

(b) If a person fails to submit an annual report under (a) of this subsection by the due date of the report, the department shall declare the amount of taxes exempted or credited, or reduced in the case of the preferential business and occupation tax rate, for that year to be immediately due and payable. Excise taxes payable under this subsection are subject to interest but not penalties, as provided under this chapter. This information is not subject to the confidentiality provisions of RCW 82.32.330 and may be disclosed to the public upon request.

(5) By December 1, 2005, and by December 1, 2006, the fiscal committees of the house of representatives and the senate, in consultation with the department, shall report to the legislature on the effectiveness of the smelter tax incentives and, by December 1, 2010, on the effectiveness of the incentives under sections 9 and 13 of this act. The reports shall measure the effect of the tax incentives on job retention for Washington residents and any other factors the committees may select.

NEW SECTION. Sec. 15. This act takes effect July 1, 2004.

Passed by the Senate March 8, 2004.

Passed by the House March 5, 2004.

Approved by the Governor March 19, 2004.

Filed in Office of Secretary of State March 19, 2004.

CHAPTER 25

[Substitute Senate Bill 6240]

RURAL TAX INCENTIVES

AN ACT Relating to tax incentives in rural counties; amending RCW 82.60.020, 82.60.040, 82.60.049, 82.60.050, and 82.60.070; adding new sections to chapter 82.04 RCW; providing an effective date; providing expiration dates; and declaring an emergency.

Be it enacted by the Legislature of the State of Washington:

NEW SECTION. Sec. 1. A new section is added to chapter 82.04 RCW to read as follows:

(1) Subject to the limits and provisions of this section, a credit is authorized against the tax otherwise due under this chapter for persons engaged in a rural county in the business of manufacturing computer software or programming, as those terms are defined in this section.

(2) A person who partially or totally relocates a business from one rural county to another rural county is eligible for any new qualifying employment positions created as a result of the relocation but is not eligible to receive credit for the jobs moved from one county to the other.

(3)(a) To qualify for the credit, the qualifying activity of the person must be conducted in a rural county and the new qualified employment position must be located in the rural county.

(b) If an activity is conducted both from a rural county and outside of a rural county, the credit is available if at least ninety percent of the qualifying activity

is conducted within a rural county. If the qualifying activity is a service taxable activity, the place where the work is performed is the place at which the activity is conducted.

(4)(a) The credit under this section shall equal one thousand dollars for each new qualified employment position created after January 1, 2004, in an eligible area. A credit is earned for the calendar year the person is hired to fill the position. Additionally a credit is earned for each year the position is maintained over the subsequent consecutive years, up to four years. The county must meet the definition of a rural county at the time the position is filled. If the county does not have a rural county status the following year or years, the position is still eligible for the remaining years if all other conditions are met.

(b) Participants who claimed credit under RCW 82.04.4456 for qualified employment positions created before December 31, 2003, are eligible to earn credit for each year the position is maintained over the subsequent consecutive years, for up to four years, which four years include any years claimed under RCW 82.04.4456. Those persons who did not receive a credit under RCW 82.04.4456 before December 31, 2003, are not eligible to earn credit for qualified employment positions created before December 31, 2003.

(c) Credit is authorized for new employees hired for new qualified employment positions created on or after January 1, 2004. New qualified employment positions filled by existing employees are eligible for the credit under this section only if the position vacated by the existing employee is filled by a new hire. A business that is a sole proprietorship without any employees is equivalent to one employee position and this type of business is eligible to receive credit for one position.

(d) If a position is filled before July 1st, the position is eligible for the full yearly credit for that calendar year. If it is filled after June 30th, the position is eligible for half of the credit for that calendar year.

(5) No application is necessary for the tax credit. The person must keep records necessary for the department to verify eligibility under this section. This information includes information relating to description of qualifying activity conducted in the rural county and outside the rural county by the person as well as detailed records on positions and employees.

(6) If at any time the department finds that a person is not eligible for tax credit under this section, the amount of taxes for which a credit has been claimed shall be immediately due. The department shall assess interest, but not penalties, on the taxes for which the person is not eligible. The interest shall be assessed at the rate provided for delinquent excise taxes under chapter 82.32 RCW, shall be assessed retroactively to the date the tax credit was taken, and shall accrue until the taxes for which a credit has been used are repaid.

(7) The credit under this section may be used against any tax due under this chapter, but in no case may a credit earned during one calendar year be carried over to be credited against taxes incurred in a subsequent calendar year. A person is not eligible to receive a credit under this section if the person is receiving credit for the same position under chapter 82.62 RCW or RCW 82.04.44525 or is taking a credit under this chapter for information technology help desk services conducted from a rural county. No refunds may be granted for credits under this section.

(8) Transfer of ownership does not affect credit eligibility. However, the successive credits are available to the successor for remaining periods in the five years only if the eligibility conditions of this section are met.

(9) A person taking tax credits under this section shall make an annual report to the department. The report shall be in a letter form and shall include the following information: Number of positions for which credit is being claimed, type of position for which credit is being claimed, type of activity in which the person is engaged in the county, how long the person has been located in the county, and taxpayer name and registration number. The report must be filed by January 30th of each year for which credit was claimed during the previous year. Failure to file a report will not result in the loss of eligibility under this section. However, the department, through its research division, shall contact taxpayers who have not filed the report and obtain the data from the taxpayer or assist the taxpayer in the filing of the report, so that the data and information necessary to measure the program's effectiveness is maintained.

(10) As used in this section:

(a) "Computer software" has the meaning as defined in RCW 82.04.215 after June 30, 2004, and includes "software" as defined in RCW 82.04.215 before July 1, 2004.

(b) "Manufacturing" means the same as "to manufacture" under RCW 82.04.120. Manufacturing includes the activities of both manufacturers and processors for hire.

(c) "Programming" means the activities that involve the creation or modification of computer software, as that term is defined in this chapter, and that are taxable as a service under RCW 82.04.290(2) or as a retail sale under RCW 82.04.050.

(d) "Qualifying activity" means manufacturing of computer software or programming.

(e) "Qualified employment position" means a permanent full-time position doing programming of computer software or manufacturing of computer software. This excludes administrative, professional, service, executive, and other similar positions. If an employee is either voluntarily or involuntarily separated from employment, the employment position is considered filled on a full-time basis if the employer is either training or actively recruiting a replacement employee. Full-time means a position for at least thirty-five hours a week.

(f) "Rural county" means the same as in RCW 82.14.370.

(11) No credit may be taken or accrued under this section on or after January 1, 2011.

(12) This section expires January 1, 2011.

NEW SECTION. Sec. 2. A new section is added to chapter 82.04 RCW to read as follows:

(1) Subject to the limits and provisions of this section, a credit is authorized against the tax otherwise due under this chapter for persons engaged in a rural county in the business of providing information technology help desk services to third parties.

(2) To qualify for the credit, the help desk services must be conducted from a rural county.

(3) The amount of the tax credit for persons engaged in the activity of providing information technology help desk services in rural counties shall be equal to one hundred percent of the amount of tax due under this chapter that is attributable to providing the services from the rural county. In order to qualify for the credit under this subsection, the county must meet the definition of rural county at the time the person begins to conduct qualifying business in the county.

(4) No application is necessary for the tax credit. The person must keep records necessary for the department to verify eligibility under this section. These records include information relating to description of activity engaged in a rural county by the person.

(5) If at any time the department finds that a person is not eligible for tax credit under this section, the amount of taxes for which a credit has been used is immediately due. The department shall assess interest, but not penalties, on the credited taxes for which the person is not eligible. The interest shall be assessed at the rate provided for delinquent excise taxes under chapter 82.32 RCW, shall be assessed retroactively to the date the tax credit was taken, and shall accrue until the taxes for which a credit has been used are repaid.

(6) The credit under this section may be used against any tax due under this chapter, but in no case may a credit earned during one calendar year be carried over to be credited against taxes incurred in a subsequent calendar year. No refunds may be granted for credits under this section.

(7) Transfer of ownership does not affect credit eligibility. However, the credit is available to the successor only if the eligibility conditions of this section are met.

(8) A person taking tax credits under this section shall make an annual report to the department. The report shall be in a letter form and shall include the following information: Type of activity in which the person is engaged in the county, number of employees in the rural county, how long the person has been located in the county, and taxpayer name and registration number. The report must be filed by January 30th of each year for which credit was claimed during the previous year. Failure to file a report will not result in the loss of eligibility under this section. However, the department, through its research division, shall contact taxpayers who have not filed the report and obtain the data from the taxpayer or assist the taxpayer in the filing of the report, so that the data and information necessary to measure the program's effectiveness is maintained.

(9) As used in this section:

(a) "Information technology help desk services" means the following services performed using electronic and telephonic communication:

- (i) Software and hardware maintenance;
- (ii) Software and hardware diagnostics and troubleshooting;
- (iii) Software and hardware installation;
- (iv) Software and hardware repair;
- (v) Software and hardware information and training; and
- (vi) Software and hardware upgrade.

(b) "Rural county" means the same as in RCW 82.14.370.

(10) This section expires January 1, 2011.

Sec. 3. RCW 82.60.020 and 1999 sp.s. c 9 s 2 are each amended to read as follows:

Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Applicant" means a person applying for a tax deferral under this chapter.

(2) "Department" means the department of revenue.

(3) "Eligible area" means a ~~((county with fewer than one hundred persons per square mile as determined annually by the office of financial management and published by the department of revenue effective for the period July 1st through June 30th))~~ rural county as defined in RCW 82.14.370.

(4)(a) "Eligible investment project" means an investment project in an eligible area as defined in subsection (3) of this section.

(b) The ~~((lessor/owner))~~ lessor or owner of a qualified building is not eligible for a deferral unless:

(i) The underlying ownership of the buildings, machinery, and equipment vests exclusively in the same person(=); or ((unless))

(ii)(A) The lessor by written contract agrees to pass the economic benefit of the deferral to the lessee ((in the form of reduced rent payments));

(B) The lessee that receives the economic benefit of the deferral agrees in writing with the department to complete the annual survey required under RCW 82.60.070; and

(C) The economic benefit of the deferral passed to the lessee is no less than the amount of tax deferred by the lessor and is evidenced by written documentation of any type of payment, credit, or other financial arrangement between the lessor or owner of the qualified building and the lessee.

(c) "Eligible investment project" does not include any portion of an investment project undertaken by a light and power business as defined in RCW 82.16.010(5), other than that portion of a cogeneration project that is used to generate power for consumption within the manufacturing site of which the cogeneration project is an integral part, or investment projects which have already received deferrals under this chapter.

(5) "Investment project" means an investment in qualified buildings or qualified machinery and equipment, including labor and services rendered in the planning, installation, and construction of the project.

(6) "Manufacturing" means the same as defined in RCW 82.04.120. "Manufacturing" also includes computer programming, the production of computer software, and other computer-related services, and the activities performed by research and development laboratories and commercial testing laboratories.

(7) "Person" has the meaning given in RCW 82.04.030.

(8) "Qualified buildings" means construction of new structures, and expansion or renovation of existing structures for the purpose of increasing floor space or production capacity used for manufacturing and research and development activities, including plant offices and warehouses or other facilities for the storage of raw material or finished goods if such facilities are an essential or an integral part of a factory, mill, plant, or laboratory used for manufacturing or research and development. If a building is used partly for manufacturing or research and development and partly for other purposes, the applicable tax deferral shall be determined by apportionment of the costs of construction under rules adopted by the department.

(9) "Qualified employment position" means a permanent full-time employee employed in the eligible investment project during the entire tax year. The term "entire tax year" means a full-time position that is filled for a period of twelve consecutive months. The term "full-time" means at least thirty-five hours a week, four hundred fifty-five hours a quarter, or one thousand eight hundred twenty hours a year.

(10) "Qualified machinery and equipment" means all new industrial and research fixtures, equipment, and support facilities that are an integral and necessary part of a manufacturing or research and development operation. "Qualified machinery and equipment" includes: Computers; software; data processing equipment; laboratory equipment; manufacturing components such as belts, pulleys, shafts, and moving parts; molds, tools, and dies; operating structures; and all equipment used to control or operate the machinery.

~~((4))~~ (11) "Recipient" means a person receiving a tax deferral under this chapter.

~~((4))~~ (12) "Research and development" means the development, refinement, testing, marketing, and commercialization of a product, service, or process before commercial sales have begun. As used in this subsection, "commercial sales" excludes sales of prototypes or sales for market testing if the total gross receipts from such sales of the product, service, or process do not exceed one million dollars.

Sec. 4. RCW 82.60.040 and 1999 c 164 s 302 are each amended to read as follows:

(1) The department shall issue a sales and use tax deferral certificate for state and local sales and use taxes due under chapters 82.08, 82.12, and 82.14 RCW on each eligible investment project that is located in an eligible area as defined in RCW 82.60.020.

(2) The department shall keep a running total of all deferrals granted under this chapter during each fiscal biennium.

(3) This section expires July 1, ~~((2004))~~ 2010.

Sec. 5. RCW 82.60.049 and 2000 c 106 s 8 are each amended to read as follows:

(1) For the purposes of this section:

(a) "Eligible area" also means a designated community empowerment zone approved under RCW ~~((43-63A-700))~~ 43.31C.020 or a county containing a community empowerment zone.

(b) "Eligible investment project" also means an investment project in an eligible area as defined in this section.

~~((c)) "Qualified employment position" means a permanent full-time employee employed in the eligible investment project during the entire year.)~~

(2) In addition to the provisions of RCW 82.60.040, the department shall issue a sales and use tax deferral certificate for state and local sales and use taxes due under chapters 82.08, 82.12, and 82.14 RCW, on each eligible investment project that is located in an eligible area, if the applicant establishes that at the time the project is operationally complete:

(a) The applicant will hire at least one qualified employment position for each seven hundred fifty thousand dollars of investment ~~((on))~~ for which a deferral is requested; and

(b) The positions will be filled by persons who at the time of hire are residents of the community empowerment zone. As used in this subsection, "resident" means the person makes his or her home in the community empowerment zone. A mailing address alone is insufficient to establish that a person is a resident for the purposes of this section. The persons must be hired after the date the application is filed with the department.

(3) All other provisions and eligibility requirements of this chapter apply to applicants eligible under this section.

(4) The qualified employment position must be filled by the end of the calendar year following the year in which the project is certified as operationally complete. If a person does not meet the requirements for qualified employment positions by the end of the second calendar year following the year in which the project is certified as operationally complete, all deferred taxes are immediately due.

Sec. 6. RCW 82.60.050 and 1994 sp.s. c 1 s 7 are each amended to read as follows:

RCW 82.60.030 and 82.60.040 shall expire July 1, ~~((2004))~~ 2010.

Sec. 7. RCW 82.60.070 and 1999 c 164 s 303 are each amended to read as follows:

(1)(a) The legislature finds that accountability and effectiveness are important aspects of setting tax policy. In order to make policy choices regarding the best use of limited state resources the legislature needs information on how a tax incentive is used.

(b) Each recipient of a deferral granted under this chapter after June 30, 1994, shall ~~((submit a report to the department on December 31st of the year in which the investment project is certified by the department as having been operationally completed, and on December 31st of each of the seven succeeding calendar years. The report shall contain information, as required by the department, from which the department may determine whether the recipient is meeting the requirements of this chapter. If the recipient fails to submit a report or submits an inadequate report, the department may declare the amount of deferred taxes outstanding to be immediately assessed and payable))~~ complete an annual survey. If the economic benefits of the deferral are passed to a lessee as provided in RCW 82.60.020(4), the lessee shall agree to complete the annual survey and the applicant is not required to complete the annual survey. The survey is due by March 31st of the year following the calendar year in which the investment project is certified by the department as having been operationally complete and the seven succeeding calendar years. The survey shall include the amount of tax deferred, the number of new products or research projects by general classification, and the number of trademarks, patents, and copyrights associated with activities at the investment project. The survey shall also include the following information for employment positions in Washington:

(i) The number of total employment positions;

(ii) Full-time, part-time, and temporary employment positions as a percent of total employment;

(iii) The number of employment positions according to the following wage bands: Less than thirty thousand dollars; thirty thousand dollars or greater, but less than sixty thousand dollars; and sixty thousand dollars or greater. A wage

band containing fewer than three individuals may be combined with another wage band; and

(iv) The number of employment positions that have employer-provided medical, dental, and retirement benefits, by each of the wage bands.

(c) The department may request additional information necessary to measure the results of the deferral program, to be submitted at the same time as the survey.

(d) All information collected under this subsection, except the amount of the tax deferral taken, is deemed taxpayer information under RCW 82.32.330 and is not disclosable. Information on the amount of tax deferral taken is not subject to the confidentiality provisions of RCW 82.32.330 and may be disclosed to the public upon request.

(e) The department shall use the information from this section to prepare summary descriptive statistics by category. No fewer than three taxpayers shall be included in any category. The department shall report these statistics to the legislature each year by September 1st.

(f) The department shall also use the information to study the tax deferral program authorized under this chapter. The department shall report to the legislature by December 1, 2009. The report shall measure the effect of the program on job creation, the number of jobs created for residents of eligible areas, company growth, the introduction of new products, the diversification of the state's economy, growth in research and development investment, the movement of firms or the consolidation of firms' operations into the state, and such other factors as the department selects.

(2)(a) If, on the basis of a ((report)) survey under this section or other information, the department finds that an investment project is not eligible for tax deferral under this chapter, the amount of deferred taxes outstanding for the project shall be immediately due.

(b) If a recipient of the deferral fails to complete the annual survey required under subsection (1) of this section by the date due, twelve and one-half percent of the deferred tax shall be immediately due. If the economic benefits of the deferral are passed to a lessee as provided in RCW 82.60.020(4), the lessee shall be responsible for payment to the extent the lessee has received the economic benefit.

(3) Notwithstanding any other subsection of this section, deferred taxes need not be repaid on machinery and equipment for lumber and wood products industries, and sales of or charges made for labor and services, of the type which qualifies for exemption under RCW 82.08.02565 or 82.12.02565 to the extent the taxes have not been repaid before July 1, 1995.

(4) Notwithstanding any other subsection of this section, deferred taxes on the following need not be repaid:

(a) Machinery and equipment, and sales of or charges made for labor and services, which at the time of purchase would have qualified for exemption under RCW 82.08.02565; and

(b) Machinery and equipment which at the time of first use would have qualified for exemption under RCW 82.12.02565.

NEW SECTION. Sec. 8. This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect April 1, 2004.

Passed by the Senate March 10, 2004.

Passed by the House March 9, 2004.

Approved by the Governor March 19, 2004.

Filed in Office of Secretary of State March 19, 2004.

CHAPTER 26

[Substitute House Bill 2366]

FROM THE HEART OF WASHINGTON PROGRAM

AN ACT Relating to the from the heart of Washington program; adding a new chapter to Title 15 RCW; and declaring an emergency.

Be it enacted by the Legislature of the State of Washington:

NEW SECTION. Sec. 1. The legislature finds that the support of Washington's agriculture industry and its family farms by the citizens of the state of Washington is beneficial to the economy of the state. The legislature also finds that Washington farmers produce a variety of wholesome, quality products and are good stewards of the land.

The legislature also finds that the from the heart of Washington program, developed by the Washington state department of agriculture with one-time federal grant moneys, is a valuable tool to convey important messages about Washington agriculture and to encourage Washington citizens to buy Washington-grown and Washington-processed food and agricultural products. With the exhaustion of the one-time federal grant funding, the legislature finds that the program would benefit from a new governance structure that will allow the necessary operational flexibility to enable the program to expand and to encourage private investment in the program, and that the continuance of the program as a private, nonprofit corporation is the best method to achieve these goals.

The legislature further finds that the continuation of the from the heart of Washington program will provide both direct and indirect economic benefits to the people of the state of Washington.

NEW SECTION. Sec. 2. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "From the heart of Washington" or "program" means that program created by the department to encourage Washington citizens to purchase Washington food and agricultural products and to promote the value of agriculture and family farms to Washington state.

(2) "Successor organization" means a private, nonprofit corporation created specifically to assume responsibility for carrying out the from the heart of Washington program that is now part of the department. The private, nonprofit corporation must qualify as a tax-exempt, nonprofit corporation under section 501(c) of the federal internal revenue code; the majority of members on its board of directors must be from Washington commodity commissions, nonprofit associations organized for the promotion of Washington agricultural products, and other agricultural industry groups; and the corporation must carry forward with the work of the current program.

(3) "Department" means the Washington state department of agriculture.

(4) "Director" means the director of the Washington state department of agriculture.

(5) "Fiscal agent" means the Washington state fruit commission, as a contractor of the department.

NEW SECTION. Sec. 3. (1) The department may cooperate with other agencies, boards, commissions, and associations in the state of Washington to establish a private, nonprofit corporation for the purpose of carrying out the program. The nonprofit corporation must be organized under chapter 24.03 RCW and has the powers granted under that chapter. However, this chapter does not prohibit the department or other agencies, boards, commissions, and associations from separately continuing to promote Washington products under their existing authorities.

(2) The department may contract with the successor organization to carry out the program. The contract must require the successor organization to aggressively seek to fund its continued operation from nonstate funding sources.

(3) The successor organization must report to the department each January 1st on the amounts it has secured from both nonstate and state funding sources, its operations, and its programs.

(4) Debts and other liabilities of the successor organization are successor organization debts and liabilities only and may be satisfied only from the resources of the successor organization. The state of Washington is not liable for the debts or liabilities of the successor organization.

NEW SECTION. Sec. 4. In order to accomplish the establishment of a successor organization, the department and its fiscal agent may take all necessary and proper steps, including:

(1) Transferring any equipment, software, data base, other assets except the logo of the program, or contracts for services to the successor organization under appropriate terms and conditions, including reasonable compensation deemed appropriate by the department. The department shall retain the right to repossess any property transferred to the successor organization in the event that the successor organization dissolves, becomes bankrupt, insolvent, or is otherwise unable to carry out the program, or if the successor organization fails to comply with any contract with the department. In the event that the department exercises its right to repossess under this section, any property returned to the department becomes the property of the state and is administered by the department;

(2) Unless otherwise provided by agreement, assigning any contracts and other duties and responsibilities to the successor organization related to the program; and

(3) Providing necessary support services to the successor organization under contract for up to a two-year period after the effective date of a contract between a successor organization and the department for the delivery of program services. The successor organization shall provide full reimbursement for all costs of services contracted for under this subsection.

NEW SECTION. Sec. 5. (1) The department shall designate one or more persons to serve in the capacity of a member of the board of directors of the successor organization. The state is not liable under any circumstances for the

acts of the successor organization, any member of its board of directors, or its employees.

(2) The department may pay an annual membership fee to the successor organization not to exceed the value of services received.

NEW SECTION. Sec. 6. The logo of the program is the property of the department. The department may license the use of the logo to the successor organization and others, as it deems appropriate. The department retains the right to cancel any license to use the logo.

NEW SECTION. Sec. 7. The department may receive gifts, grants, or endowments from private or public sources that are made from time to time, in trust or otherwise, for the use and benefit of the purposes of the program. The department may spend or contract with the successor organization to spend the gifts, grants, or endowments or income from the private or public sources according to their terms.

NEW SECTION. Sec. 8. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected.

NEW SECTION. Sec. 9. Sections 1 through 8 of this act constitute a new chapter in Title 15 RCW.

NEW SECTION. Sec. 10. This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately.

Passed by the House February 11, 2004.

Passed by the Senate March 11, 2004.

Approved by the Governor March 19, 2004.

Filed in Office of Secretary of State March 19, 2004.

CHAPTER 27

[House Bill 2859]

PUBLIC WORKS PROJECTS—AUTHORIZATION

AN ACT Relating to authorization for projects recommended by the public works board; creating a new section; and declaring an emergency.

Be it enacted by the Legislature of the State of Washington:

NEW SECTION. Sec. 1. Pursuant to chapter 43.155 RCW, the following project loans recommended by the public works board are authorized to be made with funds previously appropriated from the public works assistance account:

(1) City of Auburn-sanitary sewer project-install approximately 1,300 lineal feet of side sewers in the public right-of-way, abandon a sewage pump station, and install approximately 7,500 lineal feet of sewer main line. Make other improvements as necessary to complete the project. \$2,212,791

(2) City of Bainbridge Island-sanitary sewer project-construct on-site sewer facilities and related service connections, install piping, pump stations, and connection to the Kitsap County Sewer District No. 7's sewage treatment plant. Pay appropriate share of the previously built sewage pump station, 12,170 lineal feet of sewer force main, 256 linear feet of sanitary sewer, and the connection to the Kitsap County Sewer District No. 7 \$5,600,000

(3) Benton County-road project-acquire right-of-way and construct a two-lane roadway and install drainage structures for surface water runoff. In the rural area, the roadway will have two 12-foot lanes with eight-foot shoulders; in the urban area, the roadway will have 12-foot lanes with five-foot shoulders; curb and gutter with center turn lanes at road intersections \$3,250,000

(4) Birch Bay Water/Sewer District-sanitary sewer project-upgrade pump station No. 3. Add controls and appurtenances, upgrade telemetry systems, and construct a building to house standby power, other electrical equipment, and appurtenances \$626,450

(5) Birch Bay Water/Sewer District-domestic water project-upgrade transmission mains, upgrade the Kickerville Reservoir, and upgrade the Birch Point Reservoir. Connect mains, replace water services, and add or replace fire hydrants. Restore wetlands or vegetated areas. The Kickerville and Birch Point reservoirs will be repainted, disinfected \$2,110,900

(6) City of Black Diamond-domestic water project-construct a water system intertie between the City of Black Diamond and Tacoma Public Utilities' second supply pipeline. Construct or install all the necessary appurtenances, design and construct a reservoir, and construct a pumping facility to deliver water from the Tacoma pipeline \$5,447,820

(7) City of Bonney Lake-sanitary sewer project-upgrade and expand the wastewater treatment plant. Construct or install other improvements and replace deteriorated equipment. Construct new facilities required to meet permit conditions \$2,109,000

(8) City of Bonney Lake-domestic water project-construct a pumping facility including filtration treatment capable of removing iron and manganese for flow rates up to 2,000 gallons per minute. Install approximately 6,600 linear feet of water main from the back-up well to the existing water system \$3,375,000

(9) City of Bonney Lake-domestic water project-replace approximately 71,000 lineal feet of water main \$4,516,000

(10) City of Bremerton-sanitary sewer project-construct approximately 2,000 feet of trunk sewer and approximately 5,000 feet of collection sewers to allow separation of storm water from the sanitary sewer system . . . \$5,500,000

(11) City of Burien-road project-reconstruct the roadway from SW 148th Street to SW 162nd Place. The construction will provide additional turn lanes, eliminate split-phase signal timing, and provide urban design and safety features. Other improvements, including storm drainage system upgrades, will occur to meet current water quality and runoff standards. \$2,000,000

(12) City of Carnation-sanitary sewer project-construct a sanitary sewer collection system, which will consist of approximately 18,200 feet of interceptor/trunk lines, approximately 27,900 feet of collector pipe, approximately 5,100 feet of force main, and one combined vacuum/pump station. Also included are approximately 11 grinder pump stations \$5,625,300

(13) Cedar River Water/Sewer District-domestic water project-construct approximately 12,000 feet of transmission main, replace existing pipeline, install approximately 1,950 linear feet of new pipe, and install valves, hydrants, and appurtenances. Completely restore the project area. \$1,572,500

(14) City of Centralia-sanitary sewer project-replace approximately 2,300 feet of sewer pipe. Remove a portion of the existing sewer force main and reroute the sewage through the new gravity sewer. \$1,192,500

(15) City of Chehalis-sanitary sewer project-construct a new wastewater treatment plant and a water reuse site. Install approximately 7,900 feet of force main, 370,000 feet of above ground irrigation line, 12,100 self-regulating irrigation nozzles, and three irrigation distribution manifolds. Upgrade pump stations and install approximately 4,000 linear feet of force main and new standby generators. Raise both pump stations three feet above flood level, and convert to submersible pumps. Install approximately 2,450 feet of force main to complete the project \$10,000,000

(16) Chelan County Public Utility District 1-domestic water project-upgrade the Lester Road booster pump station. Construct a reservoir of approximately 750,000 gallons, install about 18,700 feet of water transmission mains, develop an access road, and install pressure-reducing valve stations. Decommission and abandon two reservoirs \$3,427,000

(17) Clark County-road project-improve a 1.42-mile section of St. Johns Road from NE 50th Avenue to NE 72nd Avenue. Specific improvements include but are not limited to: Pavement width of 70 feet with a 100-foot right-of-way; a 14-foot center left-turn lane or landscaped median; five-foot bike lanes on each side of the roadway; drainage improvements; intersection and transit improvements; and noise walls where necessary \$2,600,000

(18) Clark County-road project-create a link between NW 119th Street and NE 117th Avenue. Construction includes but is not limited to: One 12-foot travel lane in each direction; realignment of Hazel Dell and Bassel Road; 5-foot bike lanes in each direction; 6-foot sidewalks on both sides; storm drainage improvement; replacement of the Sudds Creek culvert; sound walls or berms as required by the environmental assessment and sound study; and landscaping including street trees and shrubs. \$2,600,000

(19) Clark County-road project-realign NE Ward Road into NE 172nd Avenue and extending NE 99th Street east to NE Ward Road, eliminating the existing portion between Ward Road and 172nd Avenue. A traffic signal will be installed at the new four-leg intersection of 172nd Avenue and 99th Street. Other associated road improvements will include one 12-foot travel lane in each direction, 4-foot shoulders, side slopes, and guardrails where appropriate \$1,200,000

(20) Clark Public Utilities-domestic water project-acquire approximately 18.4 acres of private property to construct a well field complex. Design and construct four potable water supply wells, pumping facilities, wellhead enclosures, three test wells, a water transmission line, and a water treatment plant. Other site work including, but not limited to, grading, access road construction, and landscaping. \$6,257,320

(21) Clark Public Utilities-domestic water project-make system-wide improvements on the water system, including construction of a new well, replacing Griffels Reservoir with a new 500,000-gallon steel facility and attendant station, construction of a new reservoir and attendant station at Alpine Heights Reservoir, construction of a water distribution line at High Valley water storage, installation of a 500 gallon-per-minute booster station at Upper Valley View Water, and replacement of approximately 62,860 feet of waterline

..... \$3,686,000
 (22) Clinton Water District-domestic water project-construct a reservoir of approximately a 150,000-gallon capacity. Construction will include the demolition and removal of the old reservoir, placement of temporary storage facilities, and the construction of the new reservoir. The district will install water mains, equipment, telemetry, and controls compatible with the existing system. Site improvements such as lighting, grading, and fencing will be made
\$281,180

(23) City of Colfax-domestic water project-replace the well pump controls, pump house, and interior piping, and install a new chlorination system. The new well house will include proper ventilation, heating, and security to protect the instrumentation and piping components. The chlorination system will be brought into conformance with safety standards and the cross connection with the sewer system will be eliminated\$104,000

(24) City of Covington-road project-widen 164th Avenue SE from two lanes to three lanes, from SE 263rd Street to SE 256th Street. The project also includes the installation of traffic signals, storm drainage trunk line, and burying overhead utilities. Additional improvements to 164th Avenue SE will include two 5-foot wide bike lanes, curbs, gutters, a planting strip, and sidewalks on both sides of the street. \$3,785,500

(25) Cross Valley Water District-domestic water project-extend service to the Mountain View Water Association and replace approximately 3,450 linear feet of water main. In addition, the project will also take over the existing private water system. Extend and replace approximately 12,800 linear feet of water main to the Seattle Hill area \$2,125,000

(26) City of Des Moines-road project-expand the roadway cross section from approximately 62 feet to 114 feet to accommodate two 14-foot HOV lanes and a 15-foot illuminated, erosion control median. Purchase right-of-way on both sides of the highway, and overlay the entire roadway. Construct four new bus pullouts with shelters, upgrade signals at intersections, and install two new signal systems, and interconnect all traffic signals. Both sides will have curb and gutter, a 6-foot erosion control area, and sidewalks. A pedestrian activated signal will be installed. Double left-turn lanes and exclusive right lanes will be installed at some intersections, and driveways will be consolidated where possible \$5,000,000

(27) East Wenatchee Water District-domestic water project-design and install approximately 5,000 feet of water main, valves, services, and miscellaneous appurtenances\$429,000

(28) East Wenatchee Water District-domestic water project-design and construct a booster pump station.\$489,600

(29) City of Edmonds-domestic water project-prepare a predesign report, design and construct the following: Motor controls, electrical components, and telemetry equipment. Replace pumps and appurtenances, replace valves and meters, install security measures, and upgrade the generator to accommodate new station equipment\$408,000

(30) City of Edmonds-storm sewer project-replace the Willow Creek and Dayton Street storm water outfalls. Install approximately 800 feet of storm pipe; construct headwalls, install riprap, and restore the site and system connections. A water quality treatment system will be installed at the Dayton Street outfall. .

- \$605,625
- (31) City of Edmonds-road project-construct improvements to 220th Street SW, including two standard 11-foot through lanes, standard 11-foot left-turn lane pockets at 9th Avenue, 96th Avenue, 95th Place, and 84th Avenue, two standard 5-foot bike lanes, curb, gutter, and 5-foot sidewalks on both sides of the street, installation of an underground storm water conveyance system, installation of a storm water quality and detention vault system, relocate overhead utilities, restore the existing ACP pavement surface, flatten vertical curves to improve sight distance, construct four concrete bus shelter pads and four bus stops, construct ten improved crosswalks, improve school zone signage, construct an in-ground crosswalk light system near the school, and construct a signal with left turn pockets at 84th Avenue W and 220th Street SW..... \$400,000
- (32) Fall City Water District-domestic water project-install an oxidation and filtration treatment system. Implement a supervisory control and data acquisition (SCADA) system. Install security monitoring and alarms. Install source meters. Replace approximately 200 feet of water main, install approximately 1,200 feet of new water main, and complete the connection between the Heathercrest system and the Riverview Park system..... \$570,108
- (33) Hazel Dell Sewer District-sanitary sewer project-design, engineer, construct, and expand the capacity of the shared use facilities. The project work will include the design of approximately five miles of parallel inceptor, one transmission pump station, an influent pressure main, treatment plant improvements, and an effluent transmission line and diffuser into the Columbia River..... \$10,000,000
- (34) Highline Water District-domestic water project-replace approximately 7,630 feet of water main. Install hydrants, valves, and appurtenances. Restore project area..... \$808,350
- (35) Karcher Creek Sewer District-sanitary sewer project-replace approximately 6,400 lineal feet of sewer main and over 4,500 lineal feet of residential side sewers..... \$1,360,000
- (36) City of Kent-road project-construct a new 5-lane street between 54th Avenue South and Military Road, including a new bridge over the Green River. Upgrade Military Road with new traffic signals at various locations, wetland restoration, and new storm water detention/treatment..... \$10,000,000
- (37) King County-storm sewer project-replace approximately 12,000 feet of pipe in the Boeing Creek Trunk Sewer. Construct an underground storage pipe to temporarily store sewage during large storm events. Construct a new Hidden Lake Pump Station..... \$10,000,000
- (38) City of Kirkland-sanitary sewer project-replace approximately 4,300 feet of sewer pipe. Connect to existing sewer mains, replace side sewers within the right-of-way, and restore pavement, curbs, and sidewalks, and make other surface enhancements..... \$1,086,300
- (39) Lakehaven Utility District-domestic water project-install in-line water pressure filters to remove manganese and iron from the drinking water wells located at sites 17, 19, 21, and 23. Install emergency generators at two of the four well sites..... \$1,700,000
- (40) Lakehaven Utility District-sanitary sewer project-improve the wastewater treatment plant to include installation of a biosolid dryer, natural gas lines to the dryer, and an odor scrubber..... \$2,000,000

(41) Liberty Lake Sewer/Water District-sanitary sewer project-improve the treatment plant to remove nutrients, BOD, TSS, nitrogen/ammonia, and phosphorus from two million gallons of sewage per day \$7,000,000

(42) City of Lynden-road project-reconstruct approximately 1.5 miles of Main Street. Grind approximately 3 miles of existing pavement and curb interface, remove areas of base failures and reconstruct travel lanes to all-weather status, place paving fabric and structural asphalt overlay on the existing street, replace approximately 2,500 feet of broken and disjointed curb and sidewalk. At the intersection of Third and Main, the city will provide full signalization, channelization, and provide pedestrian actuated crosswalks. Approximately 30 ADA compliant ramps will be constructed and approximately 3 miles of striped and signed bicycle route will be provided. Upgrade approximately 2,500 feet of water distribution main, and upgrade approximately 2,500 feet of sewer trunk main \$2,876,560

(43) City of Maple Valley-road project-reconstruct the south half of the intersection of SR 516 and 228th Avenue SE. The improvements will include but are not limited to, travel lanes, left turn pockets, right turn only lanes, bicycle lanes, landscaping planters, sidewalks, street lighting, signing, and striping. And construction of storm drain piping and a water quality vault \$1,917,000

(44) City of Maple Valley-road project-install signals at the SR 169 and SE 64th Street intersection, and reconstruct the SR 169 and SR 516 intersection. This will include, but is not limited to, travel lanes, left turn pockets, right turn only lanes, bicycle lanes, sidewalks, curbs, gutters, street lighting, signing, and striping. Construction of a modified storm drainage conveyance system, storm water quality vault, and retention/detention facility \$2,793,000

(45) City of Marysville-sanitary sewer project-provide a new effluent conveyance system to the City of Everett. This will allow Marysville effluent to bypass the Snohomish River system most of the year and link up with Everett conveyance/discharge for ocean disposal of the treated effluent . . . \$10,000,000

(46) City of Milton-road project-provide the following improvements from approximately 200 feet west of the intersection of Milton Way and 28th Avenue to approximately 400 feet east of the intersection: Install traffic signals, left turn lanes, sidewalk, storm drainage system, landscaping, irrigation, bike lanes, street illumination, a signalized intersection to include ADA amenities, and a controlled pedestrian crossing. \$442,800

(47) City of Milton-road project-provide the following improvements from approximately 300 feet west of the intersection of Milton Way and 27th Avenue to approximately 500 feet east of the intersection: Install traffic signals, left turn lanes, sidewalk, storm drainage system, bike lanes, street illumination, a signalized intersection to include ADA amenities, and a controlled pedestrian crossing \$552,600

(48) City of Morton-domestic water project-construct a new 500,000-gallon reservoir, together with a concrete foundation, water main piping, electrical supply, telemetry, fencing, access road, site improvements, and appurtenances. Also, the city will install approximately 1,400 feet of water main pipe, fire hydrants, valves, fittings, services, surface restoration, and appurtenances \$600,000

(49) City of Napavine-sanitary sewer project-construct an additional 3,515 feet of force main and approximately 7,550 feet of gravity main to augment the existing force main \$1,563,890

(50) Northshore Utility District-sanitary sewer project-provide sanitary sewer service to an area of Bothell experiencing failed septic systems. The project consists of installing approximately 925 feet of sewer main, side sewer connections, three manholes, and connection to the district's existing sanitary sewer system, related restoration, and appurtenances \$234,124

(51) Northshore Utility District-sanitary sewer project-provide sanitary sewer service to an area located in the 40th Place NE area, located in the City of Lake Forest Park. The project consists of installing approximately 1,250 feet of gravity sewer main, side sewer connections, five manholes, and connection to the district's existing sanitary sewer system, related restoration, and appurtenances \$316,566

(52) Northshore Utility District-sanitary sewer project-provide sanitary sewer service to the area located in NE 202nd Street, between 68th Avenue NE and 62nd Avenue NE due to failed septic systems. The project consists of installing approximately 4,350 feet of gravity sewer main, side sewer connections, 16 manholes, and connection to the district's existing sanitary sewer system, related restoration, and appurtenances \$1,101,210

(53) Olympic View Water/Sewer District-sanitary sewer project-upgrade the Forest Glen lift station: Replace two pumps, station power and control equipment, station onsite standby power equipment, check valves, plug valves, sump pump, discharge piping and valves, dry well blower, ducts, heater, dehumidifier, and station electrical equipment. Install a buried valve to pump house for the standby power equipment. Complete spot repair on the force main associated with this station and include temporary sedimentation and erosion control measures and surface restoration as required \$475,000

(54) Pierce County-road project-construct a new ferry vessel to serve Anderson and Ketron Islands. The new vessel's general specifications include, but are not limited to: 213 feet in length, 66 feet wide, capacity for 54 vehicles, and twin diesel power \$7,058,000

(55) City of Port Angeles-domestic water project-replace approximately 3,800 feet of water mains, install fire hydrants and other appurtenances, replace sanitary and storm sewer, underground light utilities, sidewalks, alley, and street restoration \$2,200,000

(56) City of Port Orchard-sanitary sewer project-expand the capacity of the wastewater treatment facility, including the construction of physical, chemical, and biological process systems as well as upgrade and expand the necessary appurtenance conveyance, equipment, and treatment systems. \$6,800,000

(57) City of Renton-domestic water project-construct drinking water treatment improvements to include new water mains, fittings, valves, flow meters, and a new building. Restore all affected areas. Provide storm water detention, infiltration, and treatment. \$5,150,000

(58) City of Seattle-storm sewer project-install a complete natural drainage system and one sidewalk per block on 16 residential streets. Install approximately 8,000 feet of bio-swales; planting strips, underlying soil reservoirs, gravel beds, and approximately 50 trees and plants/shrubs per block \$3,754,174

(59) Seaview Sewer District-sanitary sewer project-install new pumps and controls, telemetry systems with remote alarm capabilities, and an emergency power generation system. \$456,997

(60) City of Shelton-sanitary sewer project-replace approximately 12,000 feet of existing sanitary sewer mains, replace approximately 60 manholes, restore surface asphalt, gravel, and approximately 20,000 square yards of streets and alleys \$3,325,000

(61) Skyway Water/Sewer District-sanitary sewer project-replace approximately 11,200 feet of sewer main, 13,000 feet of sewer inceptor, all manholes, cleanouts, and associated appurtenances. Pipelines in the project area will be relocated from a residential plat to a street right-of-way \$4,114,000

(62) City of Snohomish-sanitary sewer project-the city's project will be accomplished in four segments: (a) Segment one will extend an 18-inch sanitary sewer system to an existing pump station located on 72nd Street SE. This extension will allow for the removal of this pump station; (b) segment two will extend an existing collector sewer to serve the Bickford commercial and multifamily annexation, and abandon the pump station on 72nd Street; (c) segment three will continue from the finishing point of segment one with a 15 and 10-inch sewer with jacking under Bickford Avenue to reach an existing pump station adjacent to Blackman's Lake. Extend the above sewer from 72nd Street SE to an existing pump station on 14th Street. This segment will allow for the abandonment of these two pump stations; and (d) segment four will replace an existing sewer with a 10-inch pipe to provide additional capacity and for future service of Blackman's Lake \$6,934,300

(63) City of Spokane-bridge project-rehabilitate the Monroe Street Bridge; rehabilitate the superstructure including all spandrel columns and arches; reconstruct the four pavilions; clean all existing concrete surfaces and apply sealer; repair cracks and spalls; apply a concrete overlay to the south approach; reconstruct the two entrance pylons; install a deck drainage and storm water treatment system; install roadway illumination, traffic barrier, sidewalk railings, and interpretive kiosk. Reconstruct the street at each end of the bridge; reinstall existing utilities; and assess "building in" provisions for future deck widening and possible implementation. \$1,000,000

(64) City of Sultan-road project-reconstruct approximately .65 miles of a two-lane section of U.S. Highway 2. Construct intersection signalization, right and left-turn channelization, and bicycle/pedestrian facilities. Improve access to the community transit park, ride-lot, and bus interface; connect a .65-mile gap in the two-way left-turn lane, and storm detention and treatment facilities. The city may replace a narrow hridge built in the 1940s that does not meet current design standards \$700,000

(65) City of Sultan-road project-install new traffic signal and complete the railroad preemption. Widen roadway. Install drainage facilities and pedestrian improvements including signals, crosswalks, sidewalk at intersection corners, and handicap access ramps \$500,000

(66) City of Sultan-sanitary sewer project-install approximately 2,600 feet of sewer main, approximately 2,100 feet of storm drain, and related appurtenances. Patch and overlay the street. \$1,315,000

(67) City of Sumner-sanitary sewer project-upgrade the wastewater treatment plant to include new primary clarifiers, aeration basin, blowers, UV

disinfection system, influent pump station, headworks, additional secondary clarifiers, anaerobic digester, centrifuge for sludge dewatering, sludge dryer, and improved flood controls \$2,109,000

(68) City of Tacoma-road project-upgrade streets, sidewalks, bike lanes, street lighting, traffic signals, and street landscaping \$10,000,000

(69) City of Tukwila-storm sewer project-construct drainage and roadway improvements consisting of a new storm sewer system and under-drains along approximately 7,000 feet of public roadways, storm sewer stub-outs to each private parcel. Repair approximately 11,000 square yards of failing pavement, resurface approximately 21,000 square yards of roadway, provide water quality treatment, return base flows to Southgate Creek, and replace approximately 15,000 linear feet of curb, gutter, and sidewalks \$4,197,600

(70) City of Tukwila-sanitary sewer project-design and construct wastewater pumping facilities, force mains, and approximately 14,100 feet of gravity sewer mains. The project will eliminate existing health issues associated with the failing septic tanks and drain fields, increase fire flow, and alleviate surface water pooling and stagnant contaminated ditch water \$5,700,000

(71) City of Union Gap-domestic water project-install approximately 12,500 feet of water mains, complete construction of pump and pump house for well No. 6, install a new chlorination system, install new transmission line from well No. 6 to the transmission main on Ahtanum Road, complete construction of a water main along south 10th Avenue to Pioneer Street, install water main in conjunction with the current roadway extension construction, restore approximately 3,200 feet of pavement, install approximately 31 fire hydrants, valves, appurtenances, and 1,500 feet of water line for fire flow . . . \$2,376,050

(72) City of Uniontown-domestic water project-drill a new municipal well to produce 100-300 gallons per minute. Test the aquifer to determine production rates, drawdowns, and other aquifer characteristics that are required to design a well pump. A well pump and well house will be constructed. The existing wells will be abandoned. Existing well houses will also be removed. \$233,658

(73) Val Vue Sewer District-sanitary sewer project-extend sanitary sewer service to the district's unsewered basin areas. Install approximately 11,200 feet of sewer pipe; install side sewers, manholes, and cleanout structures. Rehabilitate or replace four segments of pipe totaling approximately 2,830 feet and rehabilitate existing manholes to eliminate infiltration of groundwater \$1,609,050

(74) Valley Water District-domestic water project-construct a 500,000-gallon reservoir and booster pump station. Install all necessary waterlines, valves, and appurtenances to connect the new facility to the existing water system. Included with the booster station will be all controls, instrumentation, and telemetry necessary to integrate the new facility with existing operation \$1,264,800

(75) Valley Water District-domestic water project-install a water treatment system and a hypochlorite system. Construct a treatment building. Install an effluent disposal system, piping, valves and appurtenances, security fencing and electrical modifications. Construct a 380,000-gallon reservoir, including all necessary waterlines, valves, and appurtenances to connect the new facility. Upsize the distribution system with approximately 2,600 feet of water main, gate

valves, fire hydrants, and service connections. Included will be the replacement of water mains and restoration of asphalt as required. \$1,220,600

(76) City of Washtucna-domestic water project-construct a new reservoir with a capacity of approximately 290,000 gallons; install approximately 8,000 feet of distribution and transmission lines; install a reservoir and well pump telemetry and control system \$297,500

(77) City of West Richland-road project-construct approximately 3 miles of two-lane roadway with associated curb, gutter, and sidewalk, left-turn lanes at intersections, a separated asphalt pathway, bicycle lanes, transit turn-outs with shelters, street lighting, storm drainage structures, and site restoration \$1,500,000

(78) City of West Richland-domestic water project-drill two new wells or purchase two existing wells, install associated well equipment and structures including well motors, pumps, buildings, chlorination system, controls, telemetry system, site security, construct approximately 1.5 million-gallon reservoir, install 24,500 feet of water transmission lines, repair or replace miscellaneous asphalt roadway, and complete site restoration. If additional funds are available after the construction identified in this subsection (78), the city will build an additional 250,000-gallon reservoir at a separate site \$4,495,000

(79) City of Zillab-domestic water project-construct a 1.2 million-gallon reservoir, a new transmission line and pressure-reducing valve station, and acquire a new 550 gallon per minute well either by purchasing an existing well or drilling a new well. If the well is acquired through purchase, a booster pump station will be constructed \$2,075,900

NEW SECTION. Sec. 2. This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately.

- Passed by the House February 11, 2004.
- Passed by the Senate March 3, 2004.
- Approved by the Governor March 22, 2004.
- Filed in Office of Secretary of State March 22, 2004.

CHAPTER 28

[Engrossed Substitute Senate Bill 6401]

MILITARY INSTALLATIONS—LAND USE

AN ACT Relating to encroachment of incompatible land uses around military installations; adding a new section to chapter 36.70A RCW; and creating a new section.

Be it enacted by the Legislature of the State of Washington:

NEW SECTION. Sec. 1. The United States military is a vital component of the Washington state economy. The protection of military installations from incompatible development of land is essential to the health of Washington's economy and quality of life. Incompatible development of land close to a military installation reduces the ability of the military to complete its mission or to undertake new missions, and increases its cost of operating. The department of defense evaluates continued utilization of military installations based upon

their operating costs, their ability to carry out missions, and their ability to undertake new missions.

NEW SECTION. Sec. 2. A new section is added to chapter 36.70A RCW to read as follows:

(1) Military installations are of particular importance to the economic health of the state of Washington and it is a priority of the state to protect the land surrounding our military installations from incompatible development.

(2) Comprehensive plans, amendments to comprehensive plans, development regulations, or amendments to development regulations adopted under this section shall be adopted or amended concurrent with the scheduled update provided in RCW 36.70A.130, except that counties and cities identified in RCW 36.70A.130(4)(a) shall comply with this section on or before December 1, 2005, and shall thereafter comply with this section on a schedule consistent with RCW 36.70A.130(4).

(3) A comprehensive plan, amendment to a plan, a development regulation or amendment to a development regulation, should not allow development in the vicinity of a military installation that is incompatible with the installation's ability to carry out its mission requirements. A city or county may find that an existing comprehensive plan or development regulations are compatible with the installation's ability to carry out its mission requirements.

(4) As part of the requirements of RCW 36.70A.070(1) each county and city planning under RCW 36.70A.040 that has a federal military installation, other than a reserve center, that employs one hundred or more personnel and is operated by the United States department of defense within or adjacent to its border, shall notify the commander of the military installation of the county's or city's intent to amend its comprehensive plan or development regulations to address lands adjacent to military installations to ensure those lands are protected from incompatible development.

(5)(a) The notice provided under subsection (4) of this section shall request from the commander of the military installation a written recommendation and supporting facts relating to the use of land being considered in the adoption of a comprehensive plan or an amendment to a plan. The notice shall provide sixty days for a response from the commander. If the commander does not submit a response to such request within sixty days, the local government may presume that implementation of the proposed plan or amendment will not have any adverse effect on the operation of the installation.

(b) When a county or city intends to amend its development regulations to be consistent with the comprehensive plan elements addressed in (a) of this subsection, notice shall be provided to the commander of the military installation consistent with subsection (4) of this section. The notice shall request from the commander of the military installation a written recommendation and supporting facts relating to the use of land being considered in the amendment to the development regulations. The notice shall provide sixty days for a response from the commander to the requesting government. If the commander does not submit a response to such request within sixty days, the local government may presume that implementation of the proposed development regulation or amendment will not have any adverse effect on the operation of the installation.

Passed by the Senate March 9, 2004.

Passed by the House March 3, 2004.

Approved by the Governor March 22, 2004.

Filed in Office of Secretary of State March 22, 2004.

CHAPTER 29

[Engrossed Second Substitute Senate Bill 5533]

SCHOOL EMPLOYEES—MISCONDUCT REPORTING

AN ACT Relating to providing increased access to information on disciplinary actions taken against school employees; adding a new section to chapter 28A.400 RCW; adding a new section to chapter 28A.320 RCW; adding a new section to chapter 28A.410 RCW; creating a new section; and prescribing penalties.

Be it enacted by the Legislature of the State of Washington:

NEW SECTION. Sec. 1. The legislature recognizes that state law requires criminal background checks of applicants for school district employment. However, the legislature finds that, because they generally are limited to criminal conviction histories, results of background checks are more complete when supplemented by an applicant's history of past sexual misconduct. Therefore, the legislature finds that additional safeguards are necessary in the hiring of school district employees to ensure the safety of Washington's school children. In order to provide the safest educational environment for children, school districts must provide known information regarding employees' sexual misconduct when those employees attempt to transfer to different school districts.

NEW SECTION. Sec. 2. A new section is added to chapter 28A.400 RCW to read as follows:

(1) The definitions in this subsection apply throughout this section unless the context clearly requires otherwise.

(a) "Applicant" means an applicant for employment in a certificated or classified position who is currently or was previously employed by a school district.

(b) "Employer" means a school district employer.

(2) Before hiring an applicant, a school district shall request the applicant to sign a statement:

(a) Authorizing the applicant's current and past employers to disclose to the hiring school district sexual misconduct, if any, by the applicant and making available to the hiring school district copies of all documents in the previous employer's personnel, investigative, or other files relating to sexual misconduct by the applicant; and

(b) Releasing the applicant's current and past employers, and employees acting on behalf of that employer, from any liability for providing information described in (a) of this subsection, as provided in subsection (4) of this section.

(3) Before hiring an applicant, a school district shall request in writing, electronic or otherwise, the applicant's current and past employers to provide the information described in subsection (2)(a) of this section, if any. The request shall include a copy of the statement signed by the applicant under subsection (2) of this section.

(4) Not later than twenty business days after receiving a request under subsection (3) of this section, a school district shall provide the information

requested and make available to the requesting school district copies of all documents in the applicant's personnel record relating to the sexual misconduct. The school district, or an employee acting on behalf of the school district, who in good faith discloses information under this section is immune from civil liability for the disclosure.

(5) A hiring district shall request from the office of the superintendent of public instruction verification of certification status, including information relating to sexual misconduct as established by the provisions of subsection (11) of this section, if any, for applicants for certificated employment.

(6) A school district shall not hire an applicant who does not sign the statement described in subsection (2) of this section.

(7) School districts may employ applicants on a conditional basis pending the district's review of information obtained under this section.

(8) Information received under this section shall be used by a school district only for the purpose of evaluating an applicant's qualifications for employment in the position for which he or she has applied. Except as otherwise provided by law, a board member or employee of a school district shall not disclose the information to any person, other than the applicant, who is not directly involved in the process of evaluating the applicant's qualifications for employment. A person who violates this subsection is guilty of a misdemeanor.

(9) Beginning September 1, 2004, the board or an official of a school district shall not enter into a collective bargaining agreement, individual employment contract, resignation agreement, severance agreement, or any other contract or agreement that has the effect of suppressing information about verbal or physical abuse or sexual misconduct by a present or former employee or of expunging information about that abuse or sexual misconduct from any documents in the previous employer's personnel, investigative, or other files relating to verbal or physical abuse or sexual misconduct by the applicant. Any provision of a contract or agreement that is contrary to this subsection is void and unenforceable, and may not be withheld from disclosure by the entry of any administrative or court order. This subsection does not restrict the expungement from a personnel file of information about alleged verbal or physical abuse or sexual misconduct that has not been substantiated.

(10) This section does not prevent a school district from requesting or requiring an applicant to provide information other than that described in this section.

(11) By September 1, 2004, the state board of education has the authority to and shall adopt rules defining "verbal abuse," "physical abuse," and "sexual misconduct" as used in this section for application to all classified and certificated employees. The definitions of verbal and physical abuse and sexual misconduct adopted by the state board of education must include the requirement that the school district has made a determination that there is sufficient information to conclude that the abuse or misconduct occurred and that the abuse or misconduct resulted in the employee's leaving his or her position at the school district.

(12) Except as limited by chapter 49.12 RCW, at the conclusion of a school district's investigation, a school employee has the right to review his or her entire personnel file, investigative file, or other file maintained by the school district relating to sexual misconduct as addressed in this section and to attach rebuttals

to any documents as the employee deems necessary. Rebuttal documents shall be disclosed in the same manner as the documents to which they are attached. The provisions of this subsection do not supercede the protections provided individuals under the state whistleblower laws in chapter 42.41 RCW.

NEW SECTION. Sec. 3. A new section is added to chapter 28A.320 RCW to read as follows:

School districts must, at the first opportunity but in all cases within forty-eight hours of receiving a report alleging sexual misconduct by a school employee, notify the parents of a student alleged to be the victim, target, or recipient of the misconduct. School districts shall provide parents with information regarding their rights under the Washington public disclosure act, chapter 42.17 RCW, to request the public records regarding school employee discipline. This information shall be provided to all parents on an annual basis.

NEW SECTION. Sec. 4. A new section is added to chapter 28A.410 RCW to read as follows:

For the purposes of reporting disciplinary actions taken against certificated staff to other states via a national data base used by the office of the superintendent of public instruction, the following actions shall be reported: Suspension, surrender, revocation, denial, stayed suspension, reinstatement, and any written reprimand related to abuse and sexual misconduct. These actions will only be reported to the extent that they are accepted by the national clearinghouse, but if there are categories not included, the office of the superintendent of public instruction shall seek modification to the national clearinghouse format.

Passed by the Senate March 8, 2004.

Passed by the House March 4, 2004.

Approved by the Governor March 22, 2004.

Filed in Office of Secretary of State March 22, 2004.

CHAPTER 30

[House Bill 2598]

ADMINISTRATIVE RULE REVIEW—VENUE

AN ACT Relating to providing venue for administrative rule challenges in Spokane, Yakima, and Bellingham for residents of those appellate districts; and amending RCW 34.05.570.

Be it enacted by the Legislature of the State of Washington:

Sec. 1. RCW 34.05.570 and 1995 c 403 s 802 are each amended to read as follows:

(1) Generally. Except to the extent that this chapter or another statute provides otherwise:

(a) The burden of demonstrating the invalidity of agency action is on the party asserting invalidity;

(b) The validity of agency action shall be determined in accordance with the standards of review provided in this section, as applied to the agency action at the time it was taken;

(c) The court shall make a separate and distinct ruling on each material issue on which the court's decision is based; and

(d) The court shall grant relief only if it determines that a person seeking judicial relief has been substantially prejudiced by the action complained of.

(2) Review of rules. (a) A rule may be reviewed by petition for declaratory judgment filed pursuant to this subsection or in the context of any other review proceeding under this section. In an action challenging the validity of a rule, the agency shall be made a party to the proceeding.

(b)(i) The validity of any rule may be determined upon petition for a declaratory judgment addressed to the superior court of Thurston county, when it appears that the rule, or its threatened application, interferes with or impairs or immediately threatens to interfere with or impair the legal rights or privileges of the petitioner. The declaratory judgment order may be entered whether or not the petitioner has first requested the agency to pass upon the validity of the rule in question.

(ii) From the effective date of this section until July 1, 2008:

(A) If the petitioner's residence or principal place of business is within the geographical boundaries of the third division of the court of appeals as defined by RCW 2.06.020(3), the petition may be filed in the superior court of Spokane, Yakima, or Thurston county; and

(B) If the petitioner's residence or principal place of business is within the geographical boundaries of district three of the first division of the court of appeals as defined by RCW 2.06.020(1), the petition may be filed in the superior court of Whatcom or Thurston county.

(c) In a proceeding involving review of a rule, the court shall declare the rule invalid only if it finds that: The rule violates constitutional provisions; the rule exceeds the statutory authority of the agency; the rule was adopted without compliance with statutory rule-making procedures; or the rule is arbitrary and capricious.

(3) Review of agency orders in adjudicative proceedings. The court shall grant relief from an agency order in an adjudicative proceeding only if it determines that:

(a) The order, or the statute or rule on which the order is based, is in violation of constitutional provisions on its face or as applied;

(b) The order is outside the statutory authority or jurisdiction of the agency conferred by any provision of law;

(c) The agency has engaged in unlawful procedure or decision-making process, or has failed to follow a prescribed procedure;

(d) The agency has erroneously interpreted or applied the law;

(e) The order is not supported by evidence that is substantial when viewed in light of the whole record before the court, which includes the agency record for judicial review, supplemented by any additional evidence received by the court under this chapter;

(f) The agency has not decided all issues requiring resolution by the agency;

(g) A motion for disqualification under RCW 34.05.425 or 34.12.050 was made and was improperly denied or, if no motion was made, facts are shown to support the grant of such a motion that were not known and were not reasonably discoverable by the challenging party at the appropriate time for making such a motion;

(h) The order is inconsistent with a rule of the agency unless the agency explains the inconsistency by stating facts and reasons to demonstrate a rational basis for inconsistency; or

(i) The order is arbitrary or capricious.

(4) Review of other agency action.

(a) All agency action not reviewable under subsection (2) or (3) of this section shall be reviewed under this subsection.

(b) A person whose rights are violated by an agency's failure to perform a duty that is required by law to be performed may file a petition for review pursuant to RCW 34.05.514, seeking an order pursuant to this subsection requiring performance. Within twenty days after service of the petition for review, the agency shall file and serve an answer to the petition, made in the same manner as an answer to a complaint in a civil action. The court may hear evidence, pursuant to RCW 34.05.562, on material issues of fact raised by the petition and answer.

(c) Relief for persons aggrieved by the performance of an agency action, including the exercise of discretion, or an action under (b) of this subsection can be granted only if the court determines that the action is:

(i) Unconstitutional;

(ii) Outside the statutory authority of the agency or the authority conferred by a provision of law;

(iii) Arbitrary or capricious; or

(iv) Taken by persons who were not properly constituted as agency officials lawfully entitled to take such action.

Passed by the House February 11, 2004.

Passed by the Senate March 5, 2004.

Approved by the Governor March 22, 2004.

Filed in Office of Secretary of State March 22, 2004.

CHAPTER 31

[House Bill 2683]

ADMINISTRATIVE RULE MAKING—NOTICE

AN ACT Relating to providing notice of potential administrative rule actions; and amending RCW 34.05.310, 34.05.320, 34.05.230, and 34.05.353.

Be it enacted by the Legislature of the State of Washington:

Sec. 1. RCW 34.05.310 and 1995 c 403 s 301 are each amended to read as follows:

(1) To meet the intent of providing greater public access to administrative rule making and to promote consensus among interested parties, agencies shall solicit comments from the public on a subject of possible rule making before filing with the code reviser a notice of proposed rule making under RCW 34.05.320. The agency shall prepare a statement of inquiry that:

(a) Identifies the specific statute or statutes authorizing the agency to adopt rules on this subject;

(b) Discusses why rules on this subject may be needed and what they might accomplish;

(c) Identifies other federal and state agencies that regulate this subject, and describes the process whereby the agency would coordinate the contemplated rule with these agencies;

(d) Discusses the process by which the rule might be developed, including, but not limited to, negotiated rule making, pilot rule making, or agency study;

(e) Specifies the process by which interested parties can effectively participate in the decision to adopt a new rule and formulation of a proposed rule before its publication.

The statement of inquiry shall be filed with the code reviser for publication in the state register at least thirty days before the date the agency files notice of proposed rule making under RCW 34.05.320 and the statement, or a summary of the information contained in that statement, shall be sent to any party that has requested receipt of the agency's statements of inquiry.

(2) Agencies are encouraged to develop and use new procedures for reaching agreement among interested parties before publication of notice and the adoption hearing on a proposed rule. Examples of new procedures include, but are not limited to:

(a) Negotiated rule making by which representatives of an agency and of the interests that are affected by a subject of rule making, including, where appropriate, county and city representatives, seek to reach consensus on the terms of the proposed rule and on the process by which it is negotiated; and

(b) Pilot rule making which includes testing the feasibility of complying with or administering draft new rules or draft amendments to existing rules through the use of volunteer pilot groups in various areas and circumstances, as provided in RCW 34.05.313 or as otherwise provided by the agency.

(3)(a) An agency must make a determination whether negotiated rule making, pilot rule making, or another process for generating participation from interested parties prior to development of the rule is appropriate.

(b) An agency must include a written justification in the rule-making file if an opportunity for interested parties to participate in the rule-making process prior to publication of the proposed rule has not been provided.

(4) This section does not apply to:

(a) Emergency rules adopted under RCW 34.05.350;

(b) Rules relating only to internal governmental operations that are not subject to violation by a nongovernment party;

(c) Rules adopting or incorporating by reference without material change federal statutes or regulations, Washington state statutes, rules of other Washington state agencies, shoreline master programs other than those programs governing shorelines of statewide significance, or, as referenced by Washington state law, national consensus codes that generally establish industry standards, if the material adopted or incorporated regulates the same subject matter and conduct as the adopting or incorporating rule;

(d) Rules that only correct typographical errors, make address or name changes, or clarify language of a rule without changing its effect;

(e) Rules the content of which is explicitly and specifically dictated by statute;

(f) Rules that set or adjust fees or rates pursuant to legislative standards; or

(g) Rules that adopt, amend, or repeal:

(i) A procedure, practice, or requirement relating to agency hearings; or

(ii) A filing or related process requirement for applying to an agency for a license or permit.

Sec. 2. RCW 34.05.320 and 2003 c 165 s 1 are each amended to read as follows:

(1) At least twenty days before the rule-making hearing at which the agency receives public comment regarding adoption of a rule, the agency shall cause notice of the hearing to be published in the state register. The publication constitutes the proposal of a rule. The notice shall include all of the following:

(a) A title, a description of the rule's purpose, and any other information which may be of assistance in identifying the rule or its purpose;

(b) Citations of the statutory authority for adopting the rule and the specific statute the rule is intended to implement;

(c) A ~~((summary))~~ short explanation of the rule, its purpose, and anticipated effects, including in the case of a proposal that would modify existing rules, a short description of the changes the proposal would make, and a statement of the reasons supporting the proposed action;

(d) The agency personnel, with their office location and telephone number, who are responsible for the drafting, implementation, and enforcement of the rule;

(e) The name of the person or organization, whether private, public, or governmental, proposing the rule;

(f) Agency comments or recommendations, if any, regarding statutory language, implementation, enforcement, and fiscal matters pertaining to the rule;

(g) Whether the rule is necessary as the result of federal law or federal or state court action, and if so, a ~~((copy of))~~ citation to such law or court decision ~~((shall be attached to the purpose statement))~~;

(h) When, where, and how persons may present their views on the proposed rule;

(i) The date on which the agency intends to adopt the rule;

~~((A short explanation of the rule, its purpose, and anticipated effects, including in the case of a proposal that would modify existing rules, a short description of the changes the proposal would make;~~

~~((k))~~ A copy of the small business economic impact statement prepared under chapter 19.85 RCW, or an explanation for why the agency did not prepare the statement;

~~((H))~~ (k) A statement indicating whether RCW 34.05.328 applies to the rule adoption; and

~~((m))~~ (l) If RCW 34.05.328 does apply, a statement indicating that a copy of the preliminary cost-benefit analysis described in RCW 34.05.328(1)(c) is available.

(2)(a) Upon filing notice of the proposed rule with the code reviser, the adopting agency shall have copies of the notice on file and available for public inspection ~~((and))~~. Except as provided in (b) of this subsection, the agency shall forward three copies of the notice to the rules review committee.

(b) A pilot of at least ten agencies, including the departments of labor and industries, fish and wildlife, revenue, ecology, retirement systems, and health, shall file the copies required under this subsection, as well as under RCW 34.05.350 and 34.05.353, with the rules review committee electronically for a period of four years from the effective date of this section. The office of

regulatory assistance shall negotiate the details of the pilot among the agencies, the legislature, and the code reviser.

(3) No later than three days after its publication in the state register, the agency shall cause either a copy of the notice of proposed rule adoption, or a summary of the information contained on the notice, to be mailed to each person, city, and county that has made a request to the agency for a mailed copy of such notices. An agency may charge for the actual cost of providing a requesting party mailed copies of these notices.

(4) In addition to the notice required by subsections (1) and (2) of this section, an institution of higher education shall cause the notice to be published in the campus or standard newspaper of the institution at least seven days before the rule-making hearing.

Sec. 3. RCW 34.05.230 and 2001 c 25 s 1 are each amended to read as follows:

(1) An agency is encouraged to advise the public of its current opinions, approaches, and likely courses of action by means of interpretive or policy statements. Current interpretive and policy statements are advisory only. To better inform and involve the public, an agency is encouraged to convert long-standing interpretive and policy statements into rules.

(2) A person may petition an agency requesting the conversion of interpretive and policy statements into rules. Upon submission, the agency shall notify the joint administrative rules review committee of the petition. Within sixty days after submission of a petition, the agency shall either deny the petition in writing, stating its reasons for the denial, or initiate rule-making proceedings in accordance with this chapter.

(3) Each agency shall maintain a roster of interested persons, consisting of persons who have requested in writing to be notified of all interpretive and policy statements issued by that agency. Each agency shall update the roster (~~once each year~~) periodically and eliminate persons who do not indicate a desire to continue on the roster. Whenever an agency issues an interpretive or policy statement, it shall send a copy of the statement to each person listed on the roster. The agency may charge a nominal fee to the interested person for this service.

(4) Whenever an agency issues an interpretive or policy statement, it shall submit to the code reviser for publication in the Washington State Register a statement describing the subject matter of the interpretive or policy statement, and listing the person at the agency from whom a copy of the interpretive or policy statement may be obtained.

Sec. 4. RCW 34.05.353 and 2001 c 25 s 2 are each amended to read as follows:

(1) An agency may file notice for the expedited adoption of rules in accordance with the procedures set forth in this section for rules meeting any one of the following criteria:

(a) The proposed rules relate only to internal governmental operations that are not subject to violation by a person;

(b) The proposed rules adopt or incorporate by reference without material change federal statutes or regulations, Washington state statutes, rules of other Washington state agencies, shoreline master programs other than those programs

governing shorelines of statewide significance, or, as referenced by Washington state law, national consensus codes that generally establish industry standards, if the material adopted or incorporated regulates the same subject matter and conduct as the adopting or incorporating rule;

(c) The proposed rules only correct typographical errors, make address or name changes, or clarify language of a rule without changing its effect;

(d) The content of the proposed rules is explicitly and specifically dictated by statute;

(e) The proposed rules have been the subject of negotiated rule making, pilot rule making, or some other process that involved substantial participation by interested parties before the development of the proposed rule; or

(f) The proposed rule is being amended after a review under RCW 34.05.328.

(2) An agency may file notice for the expedited repeal of rules under the procedures set forth in this section for rules meeting any one of the following criteria:

(a) The statute on which the rule is based has been repealed and has not been replaced by another statute providing statutory authority for the rule;

(b) The statute on which the rule is based has been declared unconstitutional by a court with jurisdiction, there is a final judgment, and no statute has been enacted to replace the unconstitutional statute;

(c) The rule is no longer necessary because of changed circumstances; or

(d) Other rules of the agency or of another agency govern the same activity as the rule, making the rule redundant.

(3) The expedited rule-making process must follow the requirements for rule making set forth in RCW 34.05.320, except that the agency is not required to prepare a small business economic impact statement under RCW 19.85.025, a statement indicating whether the rule constitutes a significant legislative rule under RCW 34.05.328(5)(c)(iii), or a significant legislative rule analysis under RCW 34.05.328. An agency is not required to prepare statements of inquiry under RCW 34.05.310 or conduct a hearing for the expedited rule making. The notice for the expedited rule making must contain a statement in at least ten-point type, that is substantially in the following form:

NOTICE

THIS RULE IS BEING PROPOSED UNDER AN EXPEDITED RULE-MAKING PROCESS THAT WILL ELIMINATE THE NEED FOR THE AGENCY TO HOLD PUBLIC HEARINGS, PREPARE A SMALL BUSINESS ECONOMIC IMPACT STATEMENT, OR PROVIDE RESPONSES TO THE CRITERIA FOR A SIGNIFICANT LEGISLATIVE RULE. IF YOU OBJECT TO THIS USE OF THE EXPEDITED RULE-MAKING PROCESS, YOU MUST EXPRESS YOUR OBJECTIONS IN WRITING AND THEY MUST BE SENT TO (INSERT NAME AND ADDRESS) AND RECEIVED BY (INSERT DATE).

(4) The agency shall send either a copy of the notice of the proposed expedited rule making, or a summary of the information on the notice, to any

person who has requested notification of proposals for expedited rule making or of regular agency rule making, as well as the joint administrative rules review committee, within three days after its publication in the Washington State Register. An agency may charge for the actual cost of providing a requesting party mailed copies of these notices. The notice of the proposed expedited rule making must be preceded by a statement substantially in the form provided in subsection (3) of this section. The notice must also include an explanation of the reasons the agency believes the expedited rule-making process is appropriate.

(5) The code reviser shall publish the text of all rules proposed for expedited adoption, and the citation and caption of all rules proposed for expedited repeal, along with the notice required in this section in a separate section of the Washington State Register. Once the notice of expedited rule making has been published in the Washington State Register, the only changes that an agency may make in the noticed materials before their final adoption or repeal are to correct typographical errors.

(6) Any person may file a written objection to the expedited rule making. The objection must be filed with the agency rules coordinator within forty-five days after the notice of the proposed expedited rule making has been published in the Washington State Register. A person who has filed a written objection to the expedited rule making may withdraw the objection.

(7) If no written objections to the expedited rule making are filed with the agency within forty-five days after the notice of proposed expedited rule making is published, or if all objections that have been filed are withdrawn by the persons filing the objections, the agency may enter an order adopting or repealing the rule without further notice or a public hearing. The order must be published in the manner required by this chapter for any other agency order adopting, amending, or repealing a rule.

(8) If a written notice of objection to the expedited rule making is timely filed with the agency and is not withdrawn, the notice of proposed expedited rule making published under this section is considered a statement of inquiry for the purposes of RCW 34.05.310, and the agency may initiate further rule-making proceedings in accordance with this chapter.

(9) As used in this section, "expedited rule making" includes both the expedited adoption of rules and the expedited repeal of rules.

Passed by the House February 11, 2004.

Passed by the Senate March 3, 2004.

Approved by the Governor March 22, 2004.

Filed in Office of Secretary of State March 22, 2004.

CHAPTER 32

[Substitute Senate Bill 6265]

PERMIT TIMELINES

AN ACT Relating to permit timelines; amending RCW 77.55.100; and adding a new section to chapter 43.42 RCW.

Be it enacted by the Legislature of the State of Washington:

NEW SECTION. **Sec. 1.** A new section is added to chapter 43.42 RCW to read as follows:

(1) The legislature finds that there are numerous efforts ongoing to streamline and improve permitting processes. These include the work of the transportation permit efficiency and accountability committee, chapter 47.06C RCW, and the efforts of the office of regulatory assistance to develop an integrated permit system, chapter 245, Laws of 2003. While these efforts are ongoing and likely to yield procedural improvements in permit processing by 2006, there is an immediate need to coordinate permitting timelines for large, multiagency permit streamlining efforts.

(2) With the agreement of all participating permitting agencies and the permit applicant, state permitting agencies may establish timelines to make permit decisions, including the time periods required to determine that the permit applications are complete, to review the applications, and to process the permits. Established timelines shall not be shorter than those otherwise required for each permit under other applicable provisions of law, but may extend and coordinate such timelines. The goal of the established timelines is to achieve the maximum efficiencies possible through concurrent studies and consolidation of applications, permit review, hearings, and comment periods. A timeline established under this subsection with the agreement of each permitting agency shall commit each permitting agency to act within the established timeline.

Sec. 2. RCW 77.55.100 and 2003 c 391 s 2 are each amended to read as follows:

(1) In the event that any person or government agency desires to construct any form of hydraulic project or perform other work that will use, divert, obstruct, or change the natural flow or bed of any of the salt or fresh waters of the state, such person or government agency shall, before commencing construction or work thereon and to ensure the proper protection of fish life, secure the approval of the department as to the adequacy of the means proposed for the protection of fish life. This approval shall not be unreasonably withheld or unreasonably conditioned.

(2)(a) The department shall grant or deny approval of a standard permit within forty-five calendar days of the receipt of a complete application and notice of compliance with any applicable requirements of the state environmental policy act, made in the manner prescribed in this section. The period of forty-five calendar days may be extended, if the permit is part of a multiagency permit streamlining effort and all participating permitting agencies and the permit applicant agree to an extended timeline longer than forty-five calendar days. The permit must contain provisions allowing for minor modifications to the plans and specifications without requiring reissuance of the permit.

(b) The applicant may document receipt of application by filing in person or by registered mail. A complete application for approval shall contain general plans for the overall project, complete plans and specifications of the proposed construction or work within the mean higher high water line in salt water or within the ordinary high water line in fresh water, and complete plans and specifications for the proper protection of fish life.

(c) The forty-five day requirement shall be suspended if:

(i) After ten working days of receipt of the application, the applicant remains unavailable or unable to arrange for a timely field evaluation of the proposed project;

(ii) The site is physically inaccessible for inspection; or

(iii) The applicant requests delay. Immediately upon determination that the forty-five day period is suspended, the department shall notify the applicant in writing of the reasons for the delay.

(d) For purposes of this section, "standard permit" means a written permit issued by the department when the conditions under subsections (3) and (5)(b) of this section are not met.

(3)(a) The department may issue an expedited written permit in those instances where normal permit processing would result in significant hardship for the applicant or unacceptable damage to the environment. In cases of imminent danger, the department shall issue an expedited written permit, upon request, for work to repair existing structures, move obstructions, restore banks, protect property, or protect fish resources. Expedited permit requests require a complete written application as provided in subsection (2)(b) of this section and shall be issued within fifteen calendar days of the receipt of a complete written application. Approval of an expedited permit is valid for up to sixty days from the date of issuance.

(b) For the purposes of this subsection, "imminent danger" means a threat by weather, water flow, or other natural conditions that is likely to occur within sixty days of a request for a permit application.

(c) The department may not require the provisions of the state environmental policy act, chapter 43.21C RCW, to be met as a condition of issuing a permit under this subsection.

(d) The department or the county legislative authority may determine if an imminent danger exists. The county legislative authority shall notify the department, in writing, if it determines that an imminent danger exists.

(4) Approval of a standard permit is valid for a period of up to five years from date of issuance. The permittee must demonstrate substantial progress on construction of that portion of the project relating to the approval within two years of the date of issuance. If the department denies approval, the department shall provide the applicant, in writing, a statement of the specific reasons why and how the proposed project would adversely affect fish life. Protection of fish life shall be the only ground upon which approval may be denied or conditioned. Chapter 34.05 RCW applies to any denial of project approval, conditional approval, or requirements for project modification upon which approval may be contingent.

(5)(a) In case of an emergency arising from weather or stream flow conditions or other natural conditions, the department, through its authorized representatives, shall issue immediately, upon request, oral approval for removing any obstructions, repairing existing structures, restoring stream banks, or to protect property threatened by the stream or a change in the stream flow without the necessity of obtaining a written approval prior to commencing work. Conditions of an oral approval to protect fish life shall be established by the department and reduced to writing within thirty days and complied with as provided for in this section. Oral approval shall be granted immediately, upon request, for a stream crossing during an emergency situation.

(b) For purposes of this section and RCW 77.55.110, "emergency" means an immediate threat to life, the public, property, or of environmental degradation.

(c) The department or the county legislative authority may declare and continue an emergency when one or more of the criteria under (b) of this subsection are met. The county legislative authority shall immediately notify the department if it declares an emergency under this subsection.

(6) The department shall, at the request of a county, develop five-year maintenance approval agreements, consistent with comprehensive flood control management plans adopted under the authority of RCW 86.12.200, or other watershed plan approved by a county legislative authority, to allow for work on public and private property for bank stabilization, bridge repair, removal of sand bars and debris, channel maintenance, and other flood damage repair and reduction activity under agreed-upon conditions and times without obtaining permits for specific projects.

(7) This section shall not apply to the construction of any form of hydraulic project or other work which diverts water for agricultural irrigation or stock watering purposes authorized under or recognized as being valid by the state's water codes, or when such hydraulic project or other work is associated with streambank stabilization to protect farm and agricultural land as defined in RCW 84.34.020. These irrigation or stock watering diversion and streambank stabilization projects shall be governed by RCW 77.55.110.

A landscape management plan approved by the department and the department of natural resources under RCW 76.09.350(2), shall serve as a hydraulic project approval for the life of the plan if fish are selected as one of the public resources for coverage under such a plan.

(8) For the purposes of this section and RCW 77.55.110, "bed" means the land below the ordinary high water lines of state waters. This definition does not include irrigation ditches, canals, storm water run-off devices, or other artificial watercourses except where they exist in a natural watercourse that has been altered by man.

(9) The phrase "to construct any form of hydraulic project or perform other work" does not include the act of driving across an established ford. Driving across streams or on wetted stream beds at areas other than established fords requires approval. Work within the ordinary high water line of state waters to construct or repair a ford or crossing requires approval.

(10) The department shall not require a fishway on a tide gate, flood gate, or other associated man-made agricultural drainage facilities as a condition of a hydraulic project approval if such fishway was not originally installed as part of an agricultural drainage system existing on or before May 20, 2003.

(11) Any condition requiring a self-regulating tide gate to achieve fish passage in an existing hydraulic project approval under this section may not be enforced.

Passed by the Senate February 16, 2004.

Passed by the House March 2, 2004.

Approved by the Governor March 22, 2004.

Filed in Office of Secretary of State March 22, 2004.

CHAPTER 33

[House Bill 2387]

CEMETERIES—MENTAL HEALTH HOSPITALS

AN ACT Relating to the release of patient records for the purpose of restoring state mental health hospital cemeteries; reenacting and amending RCW 71.05.390; and creating a new section.

Be it enacted by the Legislature of the State of Washington:

NEW SECTION. Sec. I. The legislature finds that social stigmas surrounding mental illness have prevented patients buried in the state hospital cemeteries from being properly memorialized. From 1887 to 1953, the state buried many of the patients who died while in residence at the three state hospitals on hospital grounds. In order to honor these patients, the legislature intends that the state be allowed to release records necessary to appropriately mark their resting place.

Sec. 2. RCW 71.05.390 and 2000 c 94 s 9, 2000 c 75 s 6, and 2000 c 74 s 7 are each reenacted and amended to read as follows:

Except as provided in this section, the fact of admission and all information and records compiled, obtained, or maintained in the course of providing services to either voluntary or involuntary recipients of services at public or private agencies shall be confidential.

Information and records may be disclosed only:

(1) In communications between qualified professional persons to meet the requirements of this chapter, in the provision of services or appropriate referrals, or in the course of guardianship proceedings. The consent of the patient, or his or her guardian, shall be obtained before information or records may be disclosed by a professional person employed by a facility unless provided to a professional person: (a) Employed by the facility; (b) who has medical responsibility for the patient's care; (c) who is a county designated mental health professional; (d) who is providing services under chapter 71.24 RCW; (e) who is employed by a state or local correctional facility where the person is confined; or (f) who is providing evaluation, treatment, or follow-up services under chapter 10.77 RCW.

(2) When the communications regard the special needs of a patient and the necessary circumstances giving rise to such needs and the disclosure is made by a facility providing outpatient services to the operator of a care facility in which the patient resides.

(3) When the person receiving services, or his or her guardian, designates persons to whom information or records may be released, or if the person is a minor, when his or her parents make such designation.

(4) To the extent necessary for a recipient to make a claim, or for a claim to be made on behalf of a recipient for aid, insurance, or medical assistance to which he or she may be entitled.

(5) For either program evaluation or research, or both: **PROVIDED**, That the secretary adopts rules for the conduct of the evaluation or research, or both. Such rules shall include, but need not be limited to, the requirement that all evaluators and researchers must sign an oath of confidentiality substantially as follows:

"As a condition of conducting evaluation or research concerning persons who have received services from (fill in the facility, agency, or person) I,

....., agree not to divulge, publish, or otherwise make known to unauthorized persons or the public any information obtained in the course of such evaluation or research regarding persons who have received services such that the person who received such services is identifiable.

I recognize that unauthorized release of confidential information may subject me to civil liability under the provisions of state law.

/s/"

(6) To the courts as necessary to the administration of this chapter or to a court ordering an evaluation or treatment under chapter 10.77 RCW solely for the purpose of preventing the entry of any evaluation or treatment order that is inconsistent with any order entered under this chapter.

(7) To law enforcement officers, public health officers, or personnel of the department of corrections or the indeterminate sentence review board for persons who are the subject of the records and who are committed to the custody of the department of corrections or indeterminate sentence review board which information or records are necessary to carry out the responsibilities of their office. Except for dissemination of information released pursuant to RCW 71.05.425 and 4.24.550, regarding persons committed under this chapter under RCW 71.05.280(3) and 71.05.320(2)(c) after dismissal of a sex offense as defined in RCW 9.94A.030, the extent of information that may be released is limited as follows:

(a) Only the fact, place, and date of involuntary commitment, the fact and date of discharge or release, and the last known address shall be disclosed upon request; and

(b) The law enforcement and public health officers or personnel of the department of corrections or indeterminate sentence review board shall be obligated to keep such information confidential in accordance with this chapter; and

(c) Additional information shall be disclosed only after giving notice to said person and his or her counsel and upon a showing of clear, cogent, and convincing evidence that such information is necessary and that appropriate safeguards for strict confidentiality are and will be maintained. However, in the event the said person has escaped from custody, said notice prior to disclosure is not necessary and that the facility from which the person escaped shall include an evaluation as to whether the person is of danger to persons or property and has a propensity toward violence.

(8) To the attorney of the detained person.

(9) To the prosecuting attorney as necessary to carry out the responsibilities of the office under RCW 71.05.330(2) and 71.05.340(1)(b) and 71.05.335. The prosecutor shall be provided access to records regarding the committed person's treatment and prognosis, medication, behavior problems, and other records relevant to the issue of whether treatment less restrictive than inpatient treatment is in the best interest of the committed person or others. Information shall be disclosed only after giving notice to the committed person and the person's counsel.

(10) To appropriate law enforcement agencies and to a person, when the identity of the person is known to the public or private agency, whose health and safety has been threatened, or who is known to have been repeatedly harassed,

by the patient. The person may designate a representative to receive the disclosure. The disclosure shall be made by the professional person in charge of the public or private agency or his or her designee and shall include the dates of commitment, admission, discharge, or release, authorized or unauthorized absence from the agency's facility, and only such other information that is pertinent to the threat or harassment. The decision to disclose or not shall not result in civil liability for the agency or its employees so long as the decision was reached in good faith and without gross negligence.

(11) To appropriate law enforcement agencies, upon request, all necessary and relevant information in the event of a crisis or emergent situation that poses a significant and imminent risk to the public. The decision to disclose or not shall not result in civil liability for the mental health service provider or its employees so long as the decision was reached in good faith and without gross negligence.

(12) To the persons designated in RCW 71.05.425 for the purposes described in that section.

(13) Civil liability and immunity for the release of information about a particular person who is committed to the department under RCW 71.05.280(3) and 71.05.320(2)(c) after dismissal of a sex offense as defined in RCW 9.94A.030, is governed by RCW 4.24.550.

(14) To a patient's next of kin, guardian, or conservator, if any, in the event of death, as provided in RCW 71.05.400.

(15) To the department of health for the purposes of determining compliance with state or federal licensure, certification, or registration rules or laws. However, the information and records obtained under this subsection are exempt from public inspection and copying pursuant to chapter 42.17 RCW.

(16) To mark headstones or otherwise memorialize patients interred at state hospital cemeteries. The department of social and health services shall make available the name, date of birth, and date of death of patients buried in state hospital cemeteries fifty years after the death of a patient.

The fact of admission, as well as all records, files, evidence, findings, or orders made, prepared, collected, or maintained pursuant to this chapter shall not be admissible as evidence in any legal proceeding outside this chapter without the written consent of the person who was the subject of the proceeding except in a subsequent criminal prosecution of a person committed pursuant to RCW 71.05.280(3) or 71.05.320(2)(c) on charges that were dismissed pursuant to chapter 10.77 RCW due to incompetency to stand trial or in a civil commitment proceeding pursuant to chapter 71.09 RCW. The records and files maintained in any court proceeding pursuant to this chapter shall be confidential and available subsequent to such proceedings only to the person who was the subject of the proceeding or his or her attorney. In addition, the court may order the subsequent release or use of such records or files only upon good cause shown if the court finds that appropriate safeguards for strict confidentiality are and will be maintained.

Passed by the House March 9, 2004.

Passed by the Senate March 3, 2004.

Approved by the Governor March 22, 2004.

Filed in Office of Secretary of State March 22, 2004.

CHAPTER 34

[Substitute Senate Bill 6466]

NURSING FACILITIES—ADMISSIONS

AN ACT Relating to the admission of residents to nursing facilities; amending RCW 74.42.055; and declaring an emergency.

Be it enacted by the Legislature of the State of Washington:

Sec. 1. RCW 74.42.055 and 1987 c 476 s 30 are each amended to read as follows:

(1) The purpose of this section is to prohibit discrimination against medicaid recipients by nursing homes which have contracted with the department to provide skilled or intermediate nursing care services to medicaid recipients.

(2) A nursing facility shall readmit a resident, who has been hospitalized or on therapeutic leave, immediately to the first available bed in a semiprivate room if the resident:

(a) Requires the services provided by the facility; and

(b) Is eligible for medicaid nursing facility services.

(3) It shall be unlawful for any nursing home which has a medicaid contract with the department:

(a) To require, as a condition of admission, assurance from the patient or any other person that the patient is not eligible for or will not apply for medicaid;

(b) To deny or delay admission or readmission of a person to a nursing home because of his or her status as a medicaid recipient;

(c) To transfer a patient, except from a private room to another room within the nursing home, because of his or her status as a medicaid recipient;

(d) To transfer a patient to another nursing home because of his or her status as a medicaid recipient;

(e) To discharge a patient from a nursing home because of his or her status as a medicaid recipient; or

(f) To charge any amounts in excess of the medicaid rate from the date of eligibility, except for any supplementation permitted by the department pursuant to RCW 18.51.070.

~~((3))~~ (4) Any nursing home which has a medicaid contract with the department shall maintain one list of names of persons seeking admission to the facility, which is ordered by the date of request for admission. This information shall be retained for one year from the month admission was requested. However, except as provided in subsection (2) of this section, a nursing facility is permitted to give preferential admission to individuals who seek admission from a boarding home, licensed under chapter 18.20 RCW, or from independent retirement housing, provided the nursing facility is owned by the same entity that owns the boarding home or independent housing which are located within the same proximate geographic area; and provided further, the purpose of such preferential admission is to allow continued provision of: (a) Culturally or faith-based services, or (b) services provided by a continuing care retirement community as defined in RCW 70.38.025.

~~((4))~~ (5) The department may assess monetary penalties of a civil nature, not to exceed three thousand dollars for each violation of this section.

~~((5))~~ (6) Because it is a matter of great public importance to protect senior citizens who need medicaid services from discriminatory treatment in obtaining

long-term health care, any violation of this section shall be construed for purposes of the application of the consumer protection act, chapter 19.86 RCW, to constitute an unfair or deceptive act or practice or unfair method of competition in the conduct of trade or commerce.

~~((6))~~ (7) It is not an act of discrimination under this chapter to refuse to admit a patient if admitting that patient would prevent the needs of the other patients residing in that facility from being met at that facility, or if the facility's refusal is consistent with subsection (4) of this section.

NEW SECTION. Sec. 2. This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately.

Passed by the Senate March 4, 2004.

Passed by the House March 2, 2004.

Approved by the Governor March 22, 2004.

Filed in Office of Secretary of State March 22, 2004.

CHAPTER 35

[Substitute House Bill 2910]

LICENSE PLATES—FIRE FIGHTERS

AN ACT Relating to special license plates for professional fire fighters and paramedics; amending RCW 46.16.313 and 46.16.316; adding new sections to chapter 46.16 RCW; and adding a new section to chapter 46.04 RCW.

Be it enacted by the Legislature of the State of Washington:

NEW SECTION. Sec. 1. A new section is added to chapter 46.16 RCW to read as follows:

The department shall issue a special license plate displaying a symbol, approved by the special license plate review board, for professional fire fighters and paramedics who are members of the Washington State Council of Fire Fighters. Upon initial application and subsequent renewals, applicants must show proof of eligibility by providing a certificate of current membership from the Washington State Council of Fire Fighters. The special license plate may be used in lieu of regular or personalized license plates for vehicles required to display one or two vehicle license plates, excluding vehicles registered under chapter 46.87 RCW, upon the terms and conditions established by the department.

NEW SECTION. Sec. 2. A new section is added to chapter 46.04 RCW to read as follows:

"Professional fire fighters and paramedics license plates" means license plates issued under section 1 of this act that display a symbol denoting professional fire fighters and paramedics.

Sec. 3. RCW 46.16.313 and 1997 c 291 s 8 are each amended to read as follows:

(1) The department may establish a fee for each type of special license plates issued under RCW 46.16.301(1) (a), (b), or (c), as existing before amendment by section 5, chapter 291, Laws of 1997, in an amount calculated to offset the cost of production of the special license plates and the administration of this program. ~~((Until December 31, 1997, the fee shall not exceed thirty five~~

dollars, but effective with vehicle registrations due or to become due on January 1, 1998,) The department may adjust the fee to no more than forty dollars. This fee is in addition to all other fees required to register and license the vehicle for which the plates have been requested. All such additional special license plate fees collected by the department shall be deposited in the state treasury and credited to the motor vehicle fund.

~~(2) ((Until December 31, 1997, in addition to all fees and taxes required to be paid upon application, registration, and renewal registration of a motor vehicle, the holder of a collegiate license plate shall pay a fee of thirty dollars. The department shall deduct an amount not to exceed two dollars of each fee collected under this subsection for administration and collection expenses incurred by it. The remaining proceeds, minus the cost of plate production, shall be remitted to the custody of the state treasurer with a proper identifying detailed report. The state treasurer shall credit the funds to the appropriate collegiate license plate fund as provided in RCW 28B.10.890.~~

~~(3) Effective with vehicle registrations due or to become due on January 1, 1998,))~~ In addition to all fees and taxes required to be paid upon application and registration of a motor vehicle, the holder of a collegiate license plate shall pay an initial fee of forty dollars. The department shall deduct an amount not to exceed twelve dollars of each fee collected under this subsection for administration and collection expenses incurred by it. The remaining proceeds shall be remitted to the custody of the state treasurer with a proper identifying detailed report. The state treasurer shall credit the funds to the appropriate collegiate license plate fund as provided in RCW 28B.10.890.

~~((4) Effective with annual renewals due or to become due on January 1, 1999,))~~ (3) In addition to all fees and taxes required to be paid upon renewal of a motor vehicle registration, the holder of a collegiate license plate shall pay a fee of thirty dollars. The department shall deduct an amount not to exceed two dollars of each fee collected under this subsection for administration and collection expenses incurred by it. The remaining proceeds shall be remitted to the custody of the state treasurer with a proper identifying detailed report. The state treasurer shall credit the funds to the appropriate collegiate license plate fund as provided in RCW 28B.10.890.

~~((5))~~ (4) In addition to all fees and taxes required to be paid upon application and registration of a motor vehicle, the holder of a special baseball stadium license plate shall pay an initial fee of forty dollars. The department shall deduct an amount not to exceed twelve dollars of each fee collected under this subsection for administration and collection expenses incurred by it. The remaining proceeds, minus the cost of plate production, shall be distributed to a county for the purpose of paying the principal and interest payments on bonds issued by the county to construct a baseball stadium, as defined in RCW 82.14.0485, including reasonably necessary preconstruction costs, while the taxes are being collected under RCW 82.14.360. After this date, the state treasurer shall credit the funds to the state general fund.

~~((6) Effective with annual renewals due or to become due on January 1, 1999,))~~ (5) In addition to all fees and taxes required to be paid upon renewal of a motor vehicle registration, the holder of a special baseball stadium license plate shall pay a fee of thirty dollars. The department shall deduct an amount not to exceed two dollars of each fee collected under this subsection for administration

and collection expenses incurred by it. The remaining proceeds shall be distributed to a county for the purpose of paying the principal and interest payments on bonds issued by the county to construct a baseball stadium, as defined in RCW 82.14.0485, including reasonably necessary preconstruction costs, while the taxes are being collected under RCW 82.14.360. After this date, the state treasurer shall credit the funds to the state general fund.

(6) Effective with vehicle registrations due or to become due on January 1, 2005, in addition to all fees and taxes required to be paid upon application and registration of a vehicle, the holder of a professional fire fighters and paramedics license plate shall pay an initial fee of forty dollars. The department shall deduct an amount not to exceed twelve dollars of each fee collected under this subsection for administration and collection expenses incurred by it. The remaining proceeds must be remitted to the custody of the state treasurer with a proper identifying detailed report. Under RCW 46.16.755, the state treasurer shall credit the proceeds to the motor vehicle account until the department determines that the state has been reimbursed for the cost of implementing the professional fire fighters and paramedics license plates. Upon the determination by the department that the state has been reimbursed, the treasurer shall credit the proceeds to the Washington State Council of Fire Fighters benevolent fund established under section 4 of this act.

(7) Effective with annual renewals due or to become due on January 1, 2006, in addition to all fees and taxes required to be paid upon renewal of a vehicle registration, the holder of a professional fire fighters and paramedics license plate shall, upon application, pay a fee of thirty dollars. The department shall deduct an amount not to exceed two dollars of each fee collected under this subsection for administration and collection expenses incurred by it. The remaining proceeds must be remitted to the custody of the state treasurer with a proper identifying detailed report. Under RCW 46.16.755, the state treasurer shall credit the proceeds to the motor vehicle account until the department determines that the state has been reimbursed for the cost of implementing the professional fire fighters and paramedics special license plate. Upon the determination by the department that the state has been reimbursed, the treasurer shall credit the proceeds to the Washington State Council of Fire Fighters benevolent fund established under section 4 of this act.

NEW SECTION. Sec. 4. A new section is added to chapter 46.16 RCW to read as follows:

(1) The Washington State Council of Fire Fighters benevolent fund is created in the custody of the state treasurer. Upon the department's determination the state has been reimbursed for the cost of implementing the professional fire fighters and paramedics special license plate, all receipts, except as provided in RCW 46.16.313 (6) and (7), from professional fire fighters and paramedics license plates must be deposited into the account. Only the director of the department of licensing or the director's designee may authorize expenditures from the account. The account is subject to allotment procedures under chapter 43.88 RCW, but an appropriation is not required for expenditures.

(2) Funds in the account must be disbursed subject to the following conditions and limitations:

(a) Under the requirements of RCW 46.16.765, the department must contract with a qualified nonprofit organization to receive and disseminate funds

for charitable purposes on behalf of members of the Washington State Council of Fire Fighters, their families, and others deemed in need.

(b) For the purposes of this section, a "qualified nonprofit organization" means a not-for-profit corporation incorporated and operating exclusively in Washington that has received a determination of tax exempt status under section 501(c)(3) of the federal internal revenue code. The organization must have been established for the express purposes of receiving and disseminating funds for charitable purposes on behalf of members of the Washington State Council of Fire Fighters, their families, and others deemed in need.

(c) The qualified nonprofit organization must meet all requirements set out in RCW 46.16.765.

Sec. 5. RCW 46.16.316 and 1997 c 291 s 10 are each amended to read as follows:

Except as provided in RCW 46.16.305:

(1) When a person who has been issued a special license plate or plates under section 1 of this act or RCW 46.16.301 as it existed before amendment by section 5, chapter 291, Laws of 1997, sells, trades, or otherwise transfers or releases ownership of the vehicle upon which the special license plate or plates have been displayed, he or she shall immediately report the transfer of such plate or plates to an acquired vehicle or vehicle eligible for such plates pursuant to departmental rule, or he or she shall surrender such plates to the department immediately if such surrender is required by departmental rule. If a person applies for a transfer of the plate or plates to another eligible vehicle, a transfer fee of five dollars shall be charged in addition to all other applicable fees. Such transfer fees shall be deposited in the motor vehicle fund. Failure to surrender the plates when required is a traffic infraction.

(2) If the special license plate or plates issued by the department become lost, defaced, damaged, or destroyed, application for a replacement special license plate or plates shall be made and fees paid as provided by law for the replacement of regular license plates.

Passed by the House February 16, 2004.

Passed by the Senate March 5, 2004.

Approved by the Governor March 22, 2004.

Filed in Office of Secretary of State March 22, 2004.

CHAPTER 36

[Substitute House Bill 2984]

CHILD FATALITY REVIEWS

AN ACT Relating to child fatality reviews for children involved in the child welfare system; and adding a new section to chapter 74.13 RCW.

Be it enacted by the Legislature of the State of Washington:

NEW SECTION. Sec. 1. A new section is added to chapter 74.13 RCW to read as follows:

(1) The department of social and health services shall conduct a child fatality review in the event of an unexpected death of a minor in the state who is in the care of or receiving services described in chapter 74.13 RCW from the department or who has been in the care of or received services described in

chapter 74.13 RCW from the department within one year preceding the minor's death.

(2) Upon conclusion of a child fatality review required pursuant to subsection (1) of this section, the department shall issue a report on the results of the review to the appropriate committees of the legislature and shall make copies of the report available to the public upon request.

(3) The department shall develop and implement procedures to carry out the requirements of subsections (1) and (2) of this section.

Passed by the House February 11, 2004.

Passed by the Senate March 2, 2004.

Approved by the Governor March 22, 2004.

Filed in Office of Secretary of State March 22, 2004.

CHAPTER 37

[Substitute House Bill 3083]

CHILD ABUSE INVESTIGATIONS—IMMUNITY

AN ACT Relating to immunity for any person who cooperates with an investigation of child abuse or neglect; and amending RCW 26.44.060.

Be it enacted by the Legislature of the State of Washington:

Sec. 1. RCW 26.44.060 and 1997 c 386 s 29 are each amended to read as follows:

(1)(a) Except as provided in (b) of this subsection, any person participating in good faith in the making of a report pursuant to this chapter or testifying as to alleged child abuse or neglect in a judicial proceeding shall in so doing be immune from any liability arising out of such reporting or testifying under any law of this state or its political subdivisions.

(b) A person convicted of a violation of subsection (4) of this section shall not be immune from liability under (a) of this subsection.

(2) An administrator of a hospital or similar institution or any physician licensed pursuant to chapters 18.71 or 18.57 RCW taking a child into custody pursuant to RCW 26.44.056 shall not be subject to criminal or civil liability for such taking into custody.

(3) Conduct conforming with the reporting requirements of this chapter shall not be deemed a violation of the confidential communication privilege of RCW 5.60.060 (3) and (4), 18.53.200 and 18.83.110. Nothing in this chapter shall be construed as to supersede or abridge remedies provided in chapter 4.92 RCW.

(4) A person who, intentionally and in bad faith or maliciously, knowingly makes a false report of alleged abuse or neglect shall be guilty of a misdemeanor punishable in accordance with RCW 9A.20.021.

(5) A person who, in good faith and without gross negligence, cooperates in an investigation arising as a result of a report made pursuant to this chapter, shall not be subject to civil liability arising out of his or her cooperation. This subsection does not apply to a person who caused or allowed the child abuse or neglect to occur.

Passed by the House March 9, 2004.

Passed by the Senate March 5, 2004.

Approved by the Governor March 22, 2004.
Filed in Office of Secretary of State March 22, 2004.

CHAPTER 38

[Substitute House Bill 2849]

SEX OFFENDER TREATMENT PROVIDERS

AN ACT Relating to eliminating credentialing barriers for sex offender treatment providers; amending RCW 4.24.556, 18.155.020, 18.155.030, 18.155.040, 18.155.080, 18.155.090, 9.94A.670, 9.94A.820, 26.09.191, 26.10.160, and 71.09.350; reenacting and amending RCW 18.130.040 and 13.40.160; adding a new section to chapter 18.155 RCW; and providing an effective date.

Be it enacted by the Legislature of the State of Washington:

Sec. 1. RCW 4.24.556 and 2001 2nd sp.s. c 12 s 403 are each amended to read as follows:

(1) A certified sex offender treatment provider, or a certified affiliate sex offender treatment provider who has completed at least fifty percent of the required hours under the supervision of a certified sex offender treatment provider, acting in the course of his or her duties, providing treatment to a person who has been released to a less restrictive alternative under chapter 71.09 RCW or to a level III sex offender on community custody as a court or department ordered condition of sentence is not negligent because he or she treats a high risk offender; sex offenders are known to have a risk of reoffense. The treatment provider is not liable for civil damages resulting from the reoffense of a client unless the treatment provider's acts or omissions constituted gross negligence or willful or wanton misconduct. This limited liability provision does not eliminate the treatment provider's duty to warn of and protect from a client's threatened violent behavior if the client communicates a serious threat of physical violence against a reasonably ascertainable victim or victims. In addition to any other requirements to report violations, the sex offender treatment provider is obligated to report an offender's expressions of intent to harm or other predatory behavior, whether or not there is an ascertainable victim, in progress reports and other established processes that enable courts and supervising entities to assess and address the progress and appropriateness of treatment. This limited liability provision applies only to the conduct of certified sex offender treatment providers, and certified affiliate sex offender treatment providers who have completed at least fifty percent of the required hours under the supervision of a certified sex offender treatment provider, and not the conduct of the state.

(2) Sex offender treatment providers who provide services to the department of corrections by identifying risk factors and notifying the department of risks for the subset of high risk offenders who are not amenable to treatment and who are under court order for treatment or supervision are practicing within the scope of their profession.

Sec. 2. RCW 18.130.040 and 2003 c 275 s 2 and 2003 c 258 s 7 are each reenacted and amended to read as follows:

(1) This chapter applies only to the secretary and the boards and commissions having jurisdiction in relation to the professions licensed under the chapters specified in this section. This chapter does not apply to any business or profession not licensed under the chapters specified in this section.

(2)(a) The secretary has authority under this chapter in relation to the following professions:

(i) Dispensing opticians licensed and designated apprentices under chapter 18.34 RCW;

(ii) Naturopaths licensed under chapter 18.36A RCW;

(iii) Midwives licensed under chapter 18.50 RCW;

(iv) Ocularists licensed under chapter 18.55 RCW;

(v) Massage operators and businesses licensed under chapter 18.108 RCW;

(vi) Dental hygienists licensed under chapter 18.29 RCW;

(vii) Acupuncturists licensed under chapter 18.06 RCW;

(viii) Radiologic technologists certified and X-ray technicians registered under chapter 18.84 RCW;

(ix) Respiratory care practitioners licensed under chapter 18.89 RCW;

(x) Persons registered under chapter 18.19 RCW;

(xi) Persons licensed as mental health counselors, marriage and family therapists, and social workers under chapter 18.225 RCW;

(xii) Persons registered as nursing pool operators under chapter 18.52C RCW;

(xiii) Nursing assistants registered or certified under chapter 18.88A RCW;

(xiv) Health care assistants certified under chapter 18.135 RCW;

(xv) Dietitians and nutritionists certified under chapter 18.138 RCW;

(xvi) Chemical dependency professionals certified under chapter 18.205 RCW;

(xvii) Sex offender treatment providers and certified affiliate sex offender treatment providers certified under chapter 18.155 RCW;

(xviii) Persons licensed and certified under chapter 18.73 RCW or RCW 18.71.205;

(xix) Denturists licensed under chapter 18.30 RCW;

(xx) Orthotists and prosthetists licensed under chapter 18.200 RCW;

(xxi) Surgical technologists registered under chapter 18.215 RCW; and

(xxii) Recreational therapists.

(b) The boards and commissions having authority under this chapter are as follows:

(i) The podiatric medical board as established in chapter 18.22 RCW;

(ii) The chiropractic quality assurance commission as established in chapter 18.25 RCW;

(iii) The dental quality assurance commission as established in chapter 18.32 RCW;

(iv) The board of hearing and speech as established in chapter 18.35 RCW;

(v) The board of examiners for nursing home administrators as established in chapter 18.52 RCW;

(vi) The optometry board as established in chapter 18.54 RCW governing licenses issued under chapter 18.53 RCW;

(vii) The board of osteopathic medicine and surgery as established in chapter 18.57 RCW governing licenses issued under chapters 18.57 and 18.57A RCW;

(viii) The board of pharmacy as established in chapter 18.64 RCW governing licenses issued under chapters 18.64 and 18.64A RCW;

(ix) The medical quality assurance commission as established in chapter 18.71 RCW governing licenses and registrations issued under chapters 18.71 and 18.71A RCW;

(x) The board of physical therapy as established in chapter 18.74 RCW;

(xi) The board of occupational therapy practice as established in chapter 18.59 RCW;

(xii) The nursing care quality assurance commission as established in chapter 18.79 RCW governing licenses and registrations issued under that chapter;

(xiii) The examining board of psychology and its disciplinary committee as established in chapter 18.83 RCW; and

(xiv) The veterinary board of governors as established in chapter 18.92 RCW.

(3) In addition to the authority to discipline license holders, the disciplining authority has the authority to grant or deny licenses based on the conditions and criteria established in this chapter and the chapters specified in subsection (2) of this section. This chapter also governs any investigation, hearing, or proceeding relating to denial of licensure or issuance of a license conditioned on the applicant's compliance with an order entered pursuant to RCW 18.130.160 by the disciplining authority.

(4) All disciplining authorities shall adopt procedures to ensure substantially consistent application of this chapter, the Uniform Disciplinary Act, among the disciplining authorities listed in subsection (2) of this section.

Sec. 3. RCW 18.155.020 and 2001 2nd sp.s. c 12 s 401 are each amended to read as follows:

Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter:

(1) "Certified sex offender treatment provider" means a licensed, certified, or registered health professional who is certified to examine and treat sex offenders pursuant to chapters 9.94A and 13.40 RCW and sexually violent predators under chapter 71.09 RCW.

(2) "Certified affiliate sex offender treatment provider" means a licensed, certified, or registered health professional who is certified as an affiliate to examine and treat sex offenders pursuant to chapters 9.94A and 13.40 RCW and sexually violent predators under chapter 71.09 RCW under the supervision of a certified sex offender treatment provider.

(3) "Department" means the department of health.

~~((3))~~ (4) "Secretary" means the secretary of health.

~~((4))~~ (5) "Sex offender treatment provider" or "affiliate sex offender treatment provider" means a person who counsels or treats sex offenders accused of or convicted of a sex offense as defined by RCW 9.94A.030.

Sec. 4. RCW 18.155.030 and 2001 2nd sp.s. c 12 s 402 are each amended to read as follows:

(1) No person shall represent himself or herself as a certified sex offender treatment provider or certified affiliate sex offender treatment provider without first applying for and receiving a certificate pursuant to this chapter.

(2) Only a certified sex offender treatment provider, or certified affiliate sex offender treatment provider who has completed at least fifty percent of the

required hours under the supervision of a certified sex offender treatment provider, may perform or provide the following services:

(a) Evaluations conducted for the purposes of and pursuant to RCW 9.94A.670 and 13.40.160;

(b) Treatment of convicted level III sex offenders who are sentenced and ordered into treatment pursuant to chapter 9.94A RCW and adjudicated level III juvenile sex offenders who are ordered into treatment pursuant to chapter 13.40 RCW;

(c) Except as provided under subsection (3) of this section, treatment of sexually violent predators who are conditionally released to a less restrictive alternative pursuant to chapter 71.09 RCW.

(3) A certified sex offender treatment provider, or certified affiliate sex offender treatment provider who has completed at least fifty percent of the required hours under the supervision of a certified sex offender treatment provider, may not perform or provide treatment of sexually violent predators under subsection (2)(c) of this section if the (~~certified sex offender~~) treatment provider has been:

(a) Convicted of a sex offense, as defined in RCW 9.94A.030;

(b) Convicted in any other jurisdiction of an offense that under the laws of this state would be classified as a sex offense as defined in RCW 9.94A.030; or

(c) Suspended or otherwise restricted from practicing any health care profession by competent authority in any state, federal, or foreign jurisdiction.

(4) Certified sex offender treatment providers and certified affiliate sex offender treatment providers may perform or provide the following service: Treatment of convicted level I and level II sex offenders who are sentenced and ordered into treatment pursuant to chapter 9.94A RCW and adjudicated juvenile level I and level II sex offenders who are sentenced and ordered into treatment pursuant to chapter 13.40 RCW.

Sec. 5. RCW 18.155.040 and 1996 c 191 s 86 are each amended to read as follows:

In addition to any other authority provided by law, the secretary shall have the following authority:

(1) To set administrative procedures, administrative requirements, and fees in accordance with RCW 43.70.250 and 43.70.280;

(2) To establish forms necessary to administer this chapter;

(3) To issue a certificate or an affiliate certificate to any applicant who has met the education, training, and examination requirements for certification or an affiliate certification and deny a certificate to applicants who do not meet the minimum qualifications for certification or affiliate certification. Proceedings concerning the denial of certificates based on unprofessional conduct or impaired practice shall be governed by the uniform disciplinary act, chapter 18.130 RCW;

(4) To hire clerical, administrative, and investigative staff as needed to implement and administer this chapter and to hire individuals including those certified under this chapter to serve as examiners or consultants as necessary to implement and administer this chapter;

(5) To maintain the official department record of all applicants and certifications;

(6) To conduct a hearing on an appeal of a denial of a certificate on the applicant's failure to meet the minimum qualifications for certification. The hearing shall be conducted pursuant to chapter 34.05 RCW;

(7) To issue subpoenas, statements of charges, statements of intent to deny certificates, and orders and to delegate in writing to a designee the authority to issue subpoenas, statements of charges, and statements of intent to deny certificates;

(8) To determine the minimum education, work experience, and training requirements for certification or affiliate certification, including but not limited to approval of educational programs;

(9) To prepare and administer or approve the preparation and administration of examinations for certification;

(10) To establish by rule the procedure for appeal of an examination failure;

(11) To adopt rules implementing a continuing competency program;

(12) To adopt rules in accordance with chapter 34.05 RCW as necessary to implement this chapter.

NEW SECTION. Sec. 6. A new section is added to chapter 18.155 RCW to read as follows:

The department shall issue an affiliate certificate to any applicant who meets the following requirements:

(1) Successful completion of an educational program approved by the secretary or successful completion of alternate training which meets the criteria of the secretary;

(2) Successful completion of an examination administered or approved by the secretary;

(3) Proof of supervision by a certified sex offender treatment provider;

(4) Not having engaged in unprofessional conduct or being unable to practice with reasonable skill and safety as a result of a physical or mental impairment; and

(5) Other requirements as may be established by the secretary that impact the competence of the sex offender treatment provider.

Sec. 7. RCW 18.155.080 and 1996 c 191 s 87 are each amended to read as follows:

The secretary shall establish standards and procedures for approval of the following:

(1) Educational programs and alternate training;

(2) Examination procedures;

(3) Certifying applicants who have a comparable certification in another jurisdiction;

(4) Application method and forms;

(5) Requirements for renewals of certificates;

(6) Requirements of certified sex offender treatment providers and certified affiliate sex offender treatment providers who seek inactive status;

(7) Other rules, policies, administrative procedures, and administrative requirements as appropriate to carry out the purposes of this chapter.

Sec. 8. RCW 18.155.090 and 1990 c 3 s 809 are each amended to read as follows:

The uniform disciplinary act, chapter 18.130 RCW, governs unauthorized practice, the issuance and denial of certificates, and the discipline of certified sex offender treatment providers and certified affiliate sex offender treatment providers under this chapter.

Sec. 9. RCW 9.94A.670 and 2002 c 175 s 11 are each amended to read as follows:

(1) Unless the context clearly requires otherwise, the definitions in this subsection apply to this section only.

(a) "Sex offender treatment provider" or "treatment provider" means a certified sex offender treatment provider or a certified affiliate sex offender treatment provider as defined in RCW 18.155.020.

(b) "Victim" means any person who has sustained emotional, psychological, physical, or financial injury to person or property as a result of the crime charged. "Victim" also means a parent or guardian of a victim who is a minor child unless the parent or guardian is the perpetrator of the offense.

(2) An offender is eligible for the special sex offender sentencing alternative if:

(a) The offender has been convicted of a sex offense other than a violation of RCW 9A.44.050 or a sex offense that is also a serious violent offense;

(b) The offender has no prior convictions for a sex offense as defined in RCW 9.94A.030 or any other felony sex offenses in this or any other state; and

(c) The offender's standard sentence range for the offense includes the possibility of confinement for less than eleven years.

(3) If the court finds the offender is eligible for this alternative, the court, on its own motion or the motion of the state or the offender, may order an examination to determine whether the offender is amenable to treatment.

(a) The report of the examination shall include at a minimum the following:

(i) The offender's version of the facts and the official version of the facts;

(ii) The offender's offense history;

(iii) An assessment of problems in addition to alleged deviant behaviors;

(iv) The offender's social and employment situation; and

(v) Other evaluation measures used.

The report shall set forth the sources of the examiner's information.

(b) The examiner shall assess and report regarding the offender's amenability to treatment and relative risk to the community. A proposed treatment plan shall be provided and shall include, at a minimum:

(i) Frequency and type of contact between offender and therapist;

(ii) Specific issues to be addressed in the treatment and description of planned treatment modalities;

(iii) Monitoring plans, including any requirements regarding living conditions, lifestyle requirements, and monitoring by family members and others;

(iv) Anticipated length of treatment; and

(v) Recommended crime-related prohibitions.

(c) The court on its own motion may order, or on a motion by the state shall order, a second examination regarding the offender's amenability to treatment. The examiner shall be selected by the party making the motion. The offender shall pay the cost of any second examination ordered unless the court finds the defendant to be indigent in which case the state shall pay the cost.

(4) After receipt of the reports, the court shall consider whether the offender and the community will benefit from use of this alternative and consider the victim's opinion whether the offender should receive a treatment disposition under this section. If the court determines that this alternative is appropriate, the court shall then impose a sentence or, pursuant to RCW 9.94A.712, a minimum term of sentence, within the standard sentence range. If the sentence imposed is less than eleven years of confinement, the court may suspend the execution of the sentence and impose the following conditions of suspension:

(a) The court shall place the offender on community custody for the length of the suspended sentence, the length of the maximum term imposed pursuant to RCW 9.94A.712, or three years, whichever is greater, and require the offender to comply with any conditions imposed by the department under RCW 9.94A.720.

(b) The court shall order treatment for any period up to three years in duration. The court, in its discretion, shall order outpatient sex offender treatment or inpatient sex offender treatment, if available. A community mental health center may not be used for such treatment unless it has an appropriate program designed for sex offender treatment. The offender shall not change sex offender treatment providers or treatment conditions without first notifying the prosecutor, the community corrections officer, and the court. If any party or the court objects to a proposed change, the offender shall not change providers or conditions without court approval after a hearing.

(5) As conditions of the suspended sentence, the court may impose one or more of the following:

(a) Up to six months of confinement, not to exceed the sentence range of confinement for that offense;

(b) Crime-related prohibitions;

(c) Require the offender to devote time to a specific employment or occupation;

(d) Remain within prescribed geographical boundaries and notify the court or the community corrections officer prior to any change in the offender's address or employment;

(e) Report as directed to the court and a community corrections officer;

(f) Pay all court-ordered legal financial obligations as provided in RCW 9.94A.030;

(g) Perform community restitution work; or

(h) Reimburse the victim for the cost of any counseling required as a result of the offender's crime.

(6) At the time of sentencing, the court shall set a treatment termination hearing for three months prior to the anticipated date for completion of treatment.

(7) The sex offender treatment provider shall submit quarterly reports on the offender's progress in treatment to the court and the parties. The report shall reference the treatment plan and include at a minimum the following: Dates of attendance, offender's compliance with requirements, treatment activities, the offender's relative progress in treatment, and any other material specified by the court at sentencing.

(8) Prior to the treatment termination hearing, the treatment provider and community corrections officer shall submit written reports to the court and parties regarding the offender's compliance with treatment and monitoring

requirements, and recommendations regarding termination from treatment, including proposed community custody conditions. Either party may request, and the court may order, another evaluation regarding the advisability of termination from treatment. The offender shall pay the cost of any additional evaluation ordered unless the court finds the offender to be indigent in which case the state shall pay the cost. At the treatment termination hearing the court may: (a) Modify conditions of community custody, and either (b) terminate treatment, or (c) extend treatment for up to the remaining period of community custody.

(9) If a violation of conditions occurs during community custody, the department shall either impose sanctions as provided for in RCW 9.94A.737(2)(a) or refer the violation to the court and recommend revocation of the suspended sentence as provided for in subsections (6) and (8) of this section.

(10) The court may revoke the suspended sentence at any time during the period of community custody and order execution of the sentence if: (a) The offender violates the conditions of the suspended sentence, or (b) the court finds that the offender is failing to make satisfactory progress in treatment. All confinement time served during the period of community custody shall be credited to the offender if the suspended sentence is revoked.

(11) Examinations and treatment ordered pursuant to this subsection shall only be conducted by certified sex offender treatment providers or certified (~~by the department of health pursuant to~~) affiliate sex offender treatment providers under chapter 18.155 RCW unless the court finds that:

(a) The offender has already moved to another state or plans to move to another state for reasons other than circumventing the certification requirements; or

(b)(i) No certified sex offender treatment providers or certified affiliate sex offender treatment providers are available for treatment within a reasonable geographical distance of the offender's home; and

(ii) The evaluation and treatment plan comply with this section and the rules adopted by the department of health.

(12) If the offender is less than eighteen years of age when the charge is filed, the state shall pay for the cost of initial evaluation and treatment.

Sec. 10. RCW 9.94A.820 and 2000 c 28 s 36 are each amended to read as follows:

(1) Sex offender examinations and treatment ordered as a special condition of community placement or community custody under this chapter shall be conducted only by certified sex offender treatment providers (~~certified by the department of health~~) or certified affiliate sex offender treatment providers under chapter 18.155 RCW unless the court or the department finds that: (a) The offender has already moved to another state or plans to move to another state for reasons other than circumventing the certification requirements; (b) the treatment provider is employed by the department; or (c)(i) no certified sex offender treatment providers or certified affiliate sex offender treatment providers are available to provide treatment within a reasonable geographic distance of the offender's home, as determined in rules adopted by the secretary; and (ii) the evaluation and treatment plan comply with the rules adopted by the department of health. A treatment provider selected by an offender under (c) of this subsection, who is not certified by the department of health shall consult

with a certified sex offender treatment provider during the offender's period of treatment to ensure compliance with the rules adopted by the department of health. The frequency and content of the consultation shall be based on the recommendation of the certified sex offender treatment provider.

(2) A sex offender's failure to participate in treatment required as a condition of community placement or community custody is a violation that will not be excused on the basis that no treatment provider was located within a reasonable geographic distance of the offender's home.

Sec. II. RCW 13.40.160 and 2003 c 378 s 3 and 2003 c 53 s 99 are each reenacted and amended to read as follows:

(1) The standard range disposition for a juvenile adjudicated of an offense is determined according to RCW 13.40.0357.

(a) When the court sentences an offender to a local sanction as provided in RCW 13.40.0357 option A, the court shall impose a determinate disposition within the standard ranges, except as provided in subsection (2), (3), (4), (5), or (6) of this section. The disposition may be comprised of one or more local sanctions.

(b) When the court sentences an offender to a standard range as provided in RCW 13.40.0357 option A that includes a term of confinement exceeding thirty days, commitment shall be to the department for the standard range of confinement, except as provided in subsection (2), (3), (4), (5), or (6) of this section.

(2) If the court concludes, and enters reasons for its conclusion, that disposition within the standard range would effectuate a manifest injustice the court shall impose a disposition outside the standard range, as indicated in option D of RCW 13.40.0357. The court's finding of manifest injustice shall be supported by clear and convincing evidence.

A disposition outside the standard range shall be determinate and shall be comprised of confinement or community supervision, or a combination thereof. When a judge finds a manifest injustice and imposes a sentence of confinement exceeding thirty days, the court shall sentence the juvenile to a maximum term, and the provisions of RCW 13.40.030(2) shall be used to determine the range. A disposition outside the standard range is appealable under RCW 13.40.230 by the state or the respondent. A disposition within the standard range is not appealable under RCW 13.40.230.

(3) When a juvenile offender is found to have committed a sex offense, other than a sex offense that is also a serious violent offense as defined by RCW 9.94A.030, and has no history of a prior sex offense, the court, on its own motion or the motion of the state or the respondent, may order an examination to determine whether the respondent is amenable to treatment.

The report of the examination shall include at a minimum the following: The respondent's version of the facts and the official version of the facts, the respondent's offense history, an assessment of problems in addition to alleged deviant behaviors, the respondent's social, educational, and employment situation, and other evaluation measures used. The report shall set forth the sources of the evaluator's information.

The examiner shall assess and report regarding the respondent's amenability to treatment and relative risk to the community. A proposed treatment plan shall be provided and shall include, at a minimum:

- (a)(i) Frequency and type of contact between the offender and therapist;
- (ii) Specific issues to be addressed in the treatment and description of planned treatment modalities;
- (iii) Monitoring plans, including any requirements regarding living conditions, lifestyle requirements, and monitoring by family members, legal guardians, or others;
- (iv) Anticipated length of treatment; and
- (v) Recommended crime-related prohibitions.

The court on its own motion may order, or on a motion by the state shall order, a second examination regarding the offender's amenability to treatment. The evaluator shall be selected by the party making the motion. The defendant shall pay the cost of any second examination ordered unless the court finds the defendant to be indigent in which case the state shall pay the cost.

After receipt of reports of the examination, the court shall then consider whether the offender and the community will benefit from use of this special sex offender disposition alternative and consider the victim's opinion whether the offender should receive a treatment disposition under this section. If the court determines that this special sex offender disposition alternative is appropriate, then the court shall impose a determinate disposition within the standard range for the offense, or if the court concludes, and enters reasons for its conclusions, that such disposition would cause a manifest injustice, the court shall impose a disposition under option D, and the court may suspend the execution of the disposition and place the offender on community supervision for at least two years. As a condition of the suspended disposition, the court may impose the conditions of community supervision and other conditions, including up to thirty days of confinement and requirements that the offender do any one or more of the following:

- (b)(i) Devote time to a specific education, employment, or occupation;
- (ii) Undergo available outpatient sex offender treatment for up to two years, or inpatient sex offender treatment not to exceed the standard range of confinement for that offense. A community mental health center may not be used for such treatment unless it has an appropriate program designed for sex offender treatment. The respondent shall not change sex offender treatment providers or treatment conditions without first notifying the prosecutor, the probation counselor, and the court, and shall not change providers without court approval after a hearing if the prosecutor or probation counselor object to the change;
- (iii) Remain within prescribed geographical boundaries and notify the court or the probation counselor prior to any change in the offender's address, educational program, or employment;
- (iv) Report to the prosecutor and the probation counselor prior to any change in a sex offender treatment provider. This change shall have prior approval by the court;
- (v) Report as directed to the court and a probation counselor;
- (vi) Pay all court-ordered legal financial obligations, perform community restitution, or any combination thereof;
- (vii) Make restitution to the victim for the cost of any counseling reasonably related to the offense;
- (viii) Comply with the conditions of any court-ordered probation bond; or

(ix) The court shall order that the offender may not attend the public or approved private elementary, middle, or high school attended by the victim or the victim's siblings. The parents or legal guardians of the offender are responsible for transportation or other costs associated with the offender's change of school that would otherwise be paid by the school district. The court shall send notice of the disposition and restriction on attending the same school as the victim or victim's siblings to the public or approved private school the juvenile will attend, if known, or if unknown, to the approved private schools and the public school district board of directors of the district in which the juvenile resides or intends to reside. This notice must be sent at the earliest possible date but not later than ten calendar days after entry of the disposition.

The sex offender treatment provider shall submit quarterly reports on the respondent's progress in treatment to the court and the parties. The reports shall reference the treatment plan and include at a minimum the following: Dates of attendance, respondent's compliance with requirements, treatment activities, the respondent's relative progress in treatment, and any other material specified by the court at the time of the disposition.

At the time of the disposition, the court may set treatment review hearings as the court considers appropriate.

Except as provided in this subsection (3), after July 1, 1991, examinations and treatment ordered pursuant to this subsection shall only be conducted by certified sex offender treatment providers or certified ~~((by the department of health pursuant to))~~ affiliate sex offender treatment providers under chapter 18.155 RCW. A sex offender therapist who examines or treats a juvenile sex offender pursuant to this subsection does not have to be certified by the department of health pursuant to chapter 18.155 RCW if the court finds that: (A) The offender has already moved to another state or plans to move to another state for reasons other than circumventing the certification requirements; (B) no certified sex offender treatment providers or certified affiliate sex offender treatment providers are available for treatment within a reasonable geographical distance of the offender's home; and (C) the evaluation and treatment plan comply with this subsection (3) and the rules adopted by the department of health.

If the offender violates any condition of the disposition or the court finds that the respondent is failing to make satisfactory progress in treatment, the court may revoke the suspension and order execution of the disposition or the court may impose a penalty of up to thirty days' confinement for violating conditions of the disposition. The court may order both execution of the disposition and up to thirty days' confinement for the violation of the conditions of the disposition. The court shall give credit for any confinement time previously served if that confinement was for the offense for which the suspension is being revoked.

For purposes of this section, "victim" means any person who has sustained emotional, psychological, physical, or financial injury to person or property as a direct result of the crime charged. "Victim" may also include a known parent or guardian of a victim who is a minor child unless the parent or guardian is the perpetrator of the offense.

A disposition entered under this subsection (3) is not appealable under RCW 13.40.230.

(4) If the juvenile offender is subject to a standard range disposition of local sanctions or 15 to 36 weeks of confinement and has not committed an A- or B+ offense, the court may impose the disposition alternative under RCW 13.40.165.

(5) If a juvenile is subject to a commitment of 15 to 65 weeks of confinement, the court may impose the disposition alternative under RCW 13.40.167.

(6) When the offender is subject to a standard range commitment of 15 to 36 weeks and is ineligible for a suspended disposition alternative, a manifest injustice disposition below the standard range, special sex offender disposition alternative, chemical dependency disposition alternative, or mental health disposition alternative, the court in a county with a pilot program under RCW 13.40.169 may impose the disposition alternative under RCW 13.40.169.

(7) RCW 13.40.193 shall govern the disposition of any juvenile adjudicated of possessing a firearm in violation of RCW 9A.10.040(2)(a)(iii) or any crime in which a special finding is entered that the juvenile was armed with a firearm.

(8) Whenever a juvenile offender is entitled to credit for time spent in detention prior to a dispositional order, the dispositional order shall specifically state the number of days of credit for time served.

(9) Except as provided under subsection (3), (4), (5), or (6) of this section, or option B of RCW 13.40.0357, or RCW 13.40.127, the court shall not suspend or defer the imposition or the execution of the disposition.

(10) In no case shall the term of confinement imposed by the court at disposition exceed that to which an adult could be subjected for the same offense.

Sec. 12. RCW 26.09.191 and 1996 c 303 s 1 are each amended to read as follows:

(1) The permanent parenting plan shall not require mutual decision-making or designation of a dispute resolution process other than court action if it is found that a parent has engaged in any of the following conduct: (a) Willful abandonment that continues for an extended period of time or substantial refusal to perform parenting functions; (b) physical, sexual, or a pattern of emotional abuse of a child; or (c) a history of acts of domestic violence as defined in RCW 26.50.010(1) or an assault or sexual assault which causes grievous bodily harm or the fear of such harm.

(2)(a) The parent's residential time with the child shall be limited if it is found that the parent has engaged in any of the following conduct: (i) Willful abandonment that continues for an extended period of time or substantial refusal to perform parenting functions; (ii) physical, sexual, or a pattern of emotional abuse of a child; (iii) a history of acts of domestic violence as defined in RCW 26.50.010(1) or an assault or sexual assault which causes grievous bodily harm or the fear of such harm; or (iv) the parent has been convicted as an adult of a sex offense under:

(A) RCW 9A.44.076 if, because of the difference in age between the offender and the victim, no rebuttable presumption exists under (d) of this subsection;

(B) RCW 9A.44.079 if, because of the difference in age between the offender and the victim, no rebuttable presumption exists under (d) of this subsection;

(C) RCW 9A.44.086 if, because of the difference in age between the offender and the victim, no rebuttable presumption exists under (d) of this subsection;

(D) RCW 9A.44.089;

(E) RCW 9A.44.093;

(F) RCW 9A.44.096;

(G) RCW 9A.64.020 (1) or (2) if, because of the difference in age between the offender and the victim, no rebuttable presumption exists under (d) of this subsection;

(H) Chapter 9.68A RCW;

(I) Any predecessor or antecedent statute for the offenses listed in (a)(iv)(A) through (H) of this subsection;

(J) Any statute from any other jurisdiction that describes an offense analogous to the offenses listed in (a)(iv)(A) through (H) of this subsection.

This subsection (2)(a) shall not apply when (c) or (d) of this subsection applies.

(b) The parent's residential time with the child shall be limited if it is found that the parent resides with a person who has engaged in any of the following conduct: (i) Physical, sexual, or a pattern of emotional abuse of a child; (ii) a history of acts of domestic violence as defined in RCW 26.50.010(1) or an assault or sexual assault that causes grievous bodily harm or the fear of such harm; or (iii) the person has been convicted as an adult or as a juvenile has been adjudicated of a sex offense under:

(A) RCW 9A.44.076 if, because of the difference in age between the offender and the victim, no rebuttable presumption exists under (e) of this subsection;

(B) RCW 9A.44.079 if, because of the difference in age between the offender and the victim, no rebuttable presumption exists under (e) of this subsection;

(C) RCW 9A.44.086 if, because of the difference in age between the offender and the victim, no rebuttable presumption exists under (e) of this subsection;

(D) RCW 9A.44.089;

(E) RCW 9A.44.093;

(F) RCW 9A.44.096;

(G) RCW 9A.64.020 (1) or (2) if, because of the difference in age between the offender and the victim, no rebuttable presumption exists under (e) of this subsection;

(H) Chapter 9.68A RCW;

(I) Any predecessor or antecedent statute for the offenses listed in (b)(iii)(A) through (H) of this subsection;

(J) Any statute from any other jurisdiction that describes an offense analogous to the offenses listed in (b)(iii)(A) through (H) of this subsection.

This subsection (2)(b) shall not apply when (c) or (e) of this subsection applies.

(c) If a parent has been found to be a sexual predator under chapter 71.09 RCW or under an analogous statute of any other jurisdiction, the court shall restrain the parent from contact with a child that would otherwise be allowed under this chapter. If a parent resides with an adult or a juvenile who has been

found to be a sexual predator under chapter 71.09 RCW or under an analogous statute of any other jurisdiction, the court shall restrain the parent from contact with the parent's child except contact that occurs outside that person's presence.

(d) There is a rebuttable presumption that a parent who has been convicted as an adult of a sex offense listed in (d)(i) through (ix) of this subsection poses a present danger to a child. Unless the parent rebuts this presumption, the court shall restrain the parent from contact with a child that would otherwise be allowed under this chapter:

(i) RCW 9A.64.020 (1) or (2), provided that the person convicted was at least five years older than the other person;

(ii) RCW 9A.44.073;

(iii) RCW 9A.44.076, provided that the person convicted was at least eight years older than the victim;

(iv) RCW 9A.44.079, provided that the person convicted was at least eight years older than the victim;

(v) RCW 9A.44.083;

(vi) RCW 9A.44.086, provided that the person convicted was at least eight years older than the victim;

(vii) RCW 9A.44.100;

(viii) Any predecessor or antecedent statute for the offenses listed in (d)(i) through (vii) of this subsection;

(ix) Any statute from any other jurisdiction that describes an offense analogous to the offenses listed in (d)(i) through (vii) of this subsection.

(e) There is a rebuttable presumption that a parent who resides with a person who, as an adult, has been convicted, or as a juvenile has been adjudicated, of the sex offenses listed in (e)(i) through (ix) of this subsection places a child at risk of abuse or harm when that parent exercises residential time in the presence of the convicted or adjudicated person. Unless the parent rebuts the presumption, the court shall restrain the parent from contact with the parent's child except for contact that occurs outside of the convicted or adjudicated person's presence:

(i) RCW 9A.64.020 (1) or (2), provided that the person convicted was at least five years older than the other person;

(ii) RCW 9A.44.073;

(iii) RCW 9A.44.076, provided that the person convicted was at least eight years older than the victim;

(iv) RCW 9A.44.079, provided that the person convicted was at least eight years older than the victim;

(v) RCW 9A.44.083;

(vi) RCW 9A.44.086, provided that the person convicted was at least eight years older than the victim;

(vii) RCW 9A.44.100;

(viii) Any predecessor or antecedent statute for the offenses listed in (e)(i) through (vii) of this subsection;

(ix) Any statute from any other jurisdiction that describes an offense analogous to the offenses listed in (e)(i) through (vii) of this subsection.

(f) The presumption established in (d) of this subsection may be rebutted only after a written finding that:

(i) If the child was not the victim of the sex offense committed by the parent requesting residential time, (A) contact between the child and the offending parent is appropriate and poses minimal risk to the child, and (B) the offending parent has successfully engaged in treatment for sex offenders or is engaged in and making progress in such treatment, if any was ordered by a court, and the treatment provider believes such contact is appropriate and poses minimal risk to the child; or

(ii) If the child was the victim of the sex offense committed by the parent requesting residential time, (A) contact between the child and the offending parent is appropriate and poses minimal risk to the child, (B) if the child is in or has been in therapy for victims of sexual abuse, the child's counselor believes such contact between the child and the offending parent is in the child's best interest, and (C) the offending parent has successfully engaged in treatment for sex offenders or is engaged in and making progress in such treatment, if any was ordered by a court, and the treatment provider believes such contact is appropriate and poses minimal risk to the child.

(g) The presumption established in (e) of this subsection may be rebutted only after a written finding that:

(i) If the child was not the victim of the sex offense committed by the person who is residing with the parent requesting residential time, (A) contact between the child and the parent residing with the convicted or adjudicated person is appropriate and that parent is able to protect the child in the presence of the convicted or adjudicated person, and (B) the convicted or adjudicated person has successfully engaged in treatment for sex offenders or is engaged in and making progress in such treatment, if any was ordered by a court, and the treatment provider believes such contact is appropriate and poses minimal risk to the child; or

(ii) If the child was the victim of the sex offense committed by the person who is residing with the parent requesting residential time, (A) contact between the child and the parent in the presence of the convicted or adjudicated person is appropriate and poses minimal risk to the child, (B) if the child is in or has been in therapy for victims of sexual abuse, the child's counselor believes such contact between the child and the parent residing with the convicted or adjudicated person in the presence of the convicted or adjudicated person is in the child's best interest, and (C) the convicted or adjudicated person has successfully engaged in treatment for sex offenders or is engaged in and making progress in such treatment, if any was ordered by a court, and the treatment provider believes contact between the parent and child in the presence of the convicted or adjudicated person is appropriate and poses minimal risk to the child.

(h) If the court finds that the parent has met the burden of rebutting the presumption under (f) of this subsection, the court may allow a parent who has been convicted as an adult of a sex offense listed in (d)(i) through (ix) of this subsection to have residential time with the child supervised by a neutral and independent adult and pursuant to an adequate plan for supervision of such residential time. The court shall not approve of a supervisor for contact between the child and the parent unless the court finds, based on the evidence, that the supervisor is willing and capable of protecting the child from harm. The court shall revoke court approval of the supervisor upon finding, based on the

evidence, that the supervisor has failed to protect the child or is no longer willing or capable of protecting the child.

(i) If the court finds that the parent has met the burden of rebutting the presumption under (g) of this subsection, the court may allow a parent residing with a person who has been adjudicated as a juvenile of a sex offense listed in (e)(i) through (ix) of this subsection to have residential time with the child in the presence of the person adjudicated as a juvenile, supervised by a neutral and independent adult and pursuant to an adequate plan for supervision of such residential time. The court shall not approve of a supervisor for contact between the child and the parent unless the court finds, based on the evidence, that the supervisor is willing and capable of protecting the child from harm. The court shall revoke court approval of the supervisor upon finding, based on the evidence, that the supervisor has failed to protect the child or is no longer willing or capable of protecting the child.

(j) If the court finds that the parent has met the burden of rebutting the presumption under (g) of this subsection, the court may allow a parent residing with a person who, as an adult, has been convicted of a sex offense listed in (e)(i) through (ix) of this subsection to have residential time with the child in the presence of the convicted person supervised by a neutral and independent adult and pursuant to an adequate plan for supervision of such residential time. The court shall not approve of a supervisor for contact between the child and the parent unless the court finds, based on the evidence, that the supervisor is willing and capable of protecting the child from harm. The court shall revoke court approval of the supervisor upon finding, based on the evidence, that the supervisor has failed to protect the child or is no longer willing or capable of protecting the child.

(k) A court shall not order unsupervised contact between the offending parent and a child of the offending parent who was sexually abused by that parent. A court may order unsupervised contact between the offending parent and a child who was not sexually abused by the parent after the presumption under (d) of this subsection has been rebutted and supervised residential time has occurred for at least two years with no further arrests or convictions of sex offenses involving children under chapter 9A.44 RCW, RCW 9A.64.020, or chapter 9.68A RCW and (i) the sex offense of the offending parent was not committed against a child of the offending parent, and (ii) the court finds that unsupervised contact between the child and the offending parent is appropriate and poses minimal risk to the child, after consideration of the testimony of a state-certified therapist, mental health counselor, or social worker with expertise in treating child sexual abuse victims who has supervised at least one period of residential time between the parent and the child, and after consideration of evidence of the offending parent's compliance with community supervision requirements, if any. If the offending parent was not ordered by a court to participate in treatment for sex offenders, then the parent shall obtain a psychosexual evaluation conducted by a ~~((state-certified))~~ certified sex offender treatment provider or a certified affiliate sex offender treatment provider indicating that the offender has the lowest likelihood of risk to reoffend before the court grants unsupervised contact between the parent and a child.

(l) A court may order unsupervised contact between the parent and a child which may occur in the presence of a juvenile adjudicated of a sex offense listed

in (e)(i) through (ix) of this subsection who resides with the parent after the presumption under (e) of this subsection has been rebutted and supervised residential time has occurred for at least two years during which time the adjudicated juvenile has had no further arrests, adjudications, or convictions of sex offenses involving children under chapter 9A.44 RCW, RCW 9A.64.020, or chapter 9.68A RCW, and (i) the court finds that unsupervised contact between the child and the parent that may occur in the presence of the adjudicated juvenile is appropriate and poses minimal risk to the child, after consideration of the testimony of a state-certified therapist, mental health counselor, or social worker with expertise in treatment of child sexual abuse victims who has supervised at least one period of residential time between the parent and the child in the presence of the adjudicated juvenile, and after consideration of evidence of the adjudicated juvenile's compliance with community supervision or parole requirements, if any. If the adjudicated juvenile was not ordered by a court to participate in treatment for sex offenders, then the adjudicated juvenile shall obtain a psychosexual evaluation conducted by a ~~((state-certified))~~ certified sex offender treatment provider or a certified affiliate sex offender treatment provider indicating that the adjudicated juvenile has the lowest likelihood of risk to reoffend before the court grants unsupervised contact between the parent and a child which may occur in the presence of the adjudicated juvenile who is residing with the parent.

(m)(i) The limitations imposed by the court under (a) or (b) of this subsection shall be reasonably calculated to protect the child from the physical, sexual, or emotional abuse or harm that could result if the child has contact with the parent requesting residential time. If the court expressly finds based on the evidence that limitations on the residential time with the child will not adequately protect the child from the harm or abuse that could result if the child has contact with the parent requesting residential time, the court shall restrain the parent requesting residential time from all contact with the child.

(ii) The court shall not enter an order under (a) of this subsection allowing a parent to have contact with a child if the parent has been found by clear and convincing evidence in a civil action or by a preponderance of the evidence in a dependency action to have sexually abused the child, except upon recommendation by an evaluator or therapist for the child that the child is ready for contact with the parent and will not be harmed by the contact. The court shall not enter an order allowing a parent to have contact with the child in the offender's presence if the parent resides with a person who has been found by clear and convincing evidence in a civil action or by a preponderance of the evidence in a dependency action to have sexually abused a child, unless the court finds that the parent accepts that the person engaged in the harmful conduct and the parent is willing to and capable of protecting the child from harm from the person.

(iii) If the court limits residential time under (a) or (b) of this subsection to require supervised contact between the child and the parent, the court shall not approve of a supervisor for contact between a child and a parent who has engaged in physical, sexual, or a pattern of emotional abuse of the child unless the court finds based upon the evidence that the supervisor accepts that the harmful conduct occurred and is willing to and capable of protecting the child from harm. The court shall revoke court approval of the supervisor upon

finding, based on the evidence, that the supervisor has failed to protect the child or is no longer willing to or capable of protecting the child.

(n) If the court expressly finds based on the evidence that contact between the parent and the child will not cause physical, sexual, or emotional abuse or harm to the child and that the probability that the parent's or other person's harmful or abusive conduct will recur is so remote that it would not be in the child's best interests to apply the limitations of (a), (b), and (m)(i) and (iii) of this subsection, or if the court expressly finds that the parent's conduct did not have an impact on the child, then the court need not apply the limitations of (a), (b), and (m)(i) and (iii) of this subsection. The weight given to the existence of a protection order issued under chapter 26.50 RCW as to domestic violence is within the discretion of the court. This subsection shall not apply when (c), (d), (e), (f), (g), (h), (i), (j), (k), (l), and (m)(ii) of this subsection apply.

(3) A parent's involvement or conduct may have an adverse effect on the child's best interests, and the court may preclude or limit any provisions of the parenting plan, if any of the following factors exist:

(a) A parent's neglect or substantial nonperformance of parenting functions;

(b) A long-term emotional or physical impairment which interferes with the parent's performance of parenting functions as defined in RCW 26.09.004;

(c) A long-term impairment resulting from drug, alcohol, or other substance abuse that interferes with the performance of parenting functions;

(d) The absence or substantial impairment of emotional ties between the parent and the child;

(e) The abusive use of conflict by the parent which creates the danger of serious damage to the child's psychological development;

(f) A parent has withheld from the other parent access to the child for a protracted period without good cause; or

(g) Such other factors or conduct as the court expressly finds adverse to the best interests of the child.

(4) In entering a permanent parenting plan, the court shall not draw any presumptions from the provisions of the temporary parenting plan.

(5) In determining whether any of the conduct described in this section has occurred, the court shall apply the civil rules of evidence, proof, and procedure.

(6) For the purposes of this section, a parent's child means that parent's natural child, adopted child, or stepchild.

Sec. 13. RCW 26.10.160 and 1996 c 303 s 2 are each amended to read as follows:

(1) A parent not granted custody of the child is entitled to reasonable visitation rights except as provided in subsection (2) of this section.

(2)(a) Visitation with the child shall be limited if it is found that the parent seeking visitation has engaged in any of the following conduct: (i) Willful abandonment that continues for an extended period of time or substantial refusal to perform parenting functions; (ii) physical, sexual, or a pattern of emotional abuse of a child; (iii) a history of acts of domestic violence as defined in RCW 26.50.010(1) or an assault or sexual assault which causes grievous bodily harm or the fear of such harm; or (iv) the parent has been convicted as an adult of a sex offense under:

(A) RCW 9A.44.076 if, because of the difference in age between the offender and the victim, no rebuttable presumption exists under (d) of this subsection;

(B) RCW 9A.44.079 if, because of the difference in age between the offender and the victim, no rebuttable presumption exists under (d) of this subsection;

(C) RCW 9A.44.086 if, because of the difference in age between the offender and the victim, no rebuttable presumption exists under (d) of this subsection;

(D) RCW 9A.44.089;

(E) RCW 9A.44.093;

(F) RCW 9A.44.096;

(G) RCW 9A.64.020 (1) or (2) if, because of the difference in age between the offender and the victim, no rebuttable presumption exists under (d) of this subsection;

(H) Chapter 9.68A RCW;

(I) Any predecessor or antecedent statute for the offenses listed in (a)(iv)(A) through (H) of this subsection;

(J) Any statute from any other jurisdiction that describes an offense analogous to the offenses listed in (a)(iv)(A) through (H) of this subsection.

This subsection (2)(a) shall not apply when (c) or (d) of this subsection applies.

(b) The parent's visitation with the child shall be limited if it is found that the parent resides with a person who has engaged in any of the following conduct: (i) Physical, sexual, or a pattern of emotional abuse of a child; (ii) a history of acts of domestic violence as defined in RCW 26.50.010(1) or an assault or sexual assault that causes grievous bodily harm or the fear of such harm; or (iii) the person has been convicted as an adult or as a juvenile has been adjudicated of a sex offense under:

(A) RCW 9A.44.076 if, because of the difference in age between the offender and the victim, no rebuttable presumption exists under (e) of this subsection;

(B) RCW 9A.44.079 if, because of the difference in age between the offender and the victim, no rebuttable presumption exists under (e) of this subsection;

(C) RCW 9A.44.086 if, because of the difference in age between the offender and the victim, no rebuttable presumption exists under (e) of this subsection;

(D) RCW 9A.44.089;

(E) RCW 9A.44.093;

(F) RCW 9A.44.096;

(G) RCW 9A.64.020 (1) or (2) if, because of the difference in age between the offender and the victim, no rebuttable presumption exists under (e) of this subsection;

(H) Chapter 9.68A RCW;

(I) Any predecessor or antecedent statute for the offenses listed in (b)(iii)(A) through (H) of this subsection;

(J) Any statute from any other jurisdiction that describes an offense analogous to the offenses listed in (b)(iii)(A) through (H) of this subsection.

This subsection (2)(b) shall not apply when (c) or (e) of this subsection applies.

(c) If a parent has been found to be a sexual predator under chapter 71.09 RCW or under an analogous statute of any other jurisdiction, the court shall restrain the parent from contact with a child that would otherwise be allowed under this chapter. If a parent resides with an adult or a juvenile who has been found to be a sexual predator under chapter 71.09 RCW or under an analogous statute of any other jurisdiction, the court shall restrain the parent from contact with the parent's child except contact that occurs outside that person's presence.

(d) There is a rebuttable presumption that a parent who has been convicted as an adult of a sex offense listed in (d)(i) through (ix) of this subsection poses a present danger to a child. Unless the parent rebuts this presumption, the court shall restrain the parent from contact with a child that would otherwise be allowed under this chapter:

(i) RCW 9A.64.020 (1) or (2), provided that the person convicted was at least five years older than the other person;

(ii) RCW 9A.44.073;

(iii) RCW 9A.44.076, provided that the person convicted was at least eight years older than the victim;

(iv) RCW 9A.44.079, provided that the person convicted was at least eight years older than the victim;

(v) RCW 9A.44.083;

(vi) RCW 9A.44.086, provided that the person convicted was at least eight years older than the victim;

(vii) RCW 9A.44.100;

(viii) Any predecessor or antecedent statute for the offenses listed in (d)(i) through (vii) of this subsection;

(ix) Any statute from any other jurisdiction that describes an offense analogous to the offenses listed in (d)(i) through (vii) of this subsection.

(e) There is a rebuttable presumption that a parent who resides with a person who, as an adult, has been convicted, or as a juvenile has been adjudicated, of the sex offenses listed in (e)(i) through (ix) of this subsection places a child at risk of abuse or harm when that parent exercises visitation in the presence of the convicted or adjudicated person. Unless the parent rebuts the presumption, the court shall restrain the parent from contact with the parent's child except for contact that occurs outside of the convicted or adjudicated person's presence:

(i) RCW 9A.64.020 (1) or (2), provided that the person convicted was at least five years older than the other person;

(ii) RCW 9A.44.073;

(iii) RCW 9A.44.076, provided that the person convicted was at least eight years older than the victim;

(iv) RCW 9A.44.079, provided that the person convicted was at least eight years older than the victim;

(v) RCW 9A.44.083;

(vi) RCW 9A.44.086, provided that the person convicted was at least eight years older than the victim;

(vii) RCW 9A.44.100;

(viii) Any predecessor or antecedent statute for the offenses listed in (e)(i) through (vii) of this subsection;

(ix) Any statute from any other jurisdiction that describes an offense analogous to the offenses listed in (e)(i) through (vii) of this subsection.

(f) The presumption established in (d) of this subsection may be rebutted only after a written finding that:

(i) If the child was not the victim of the sex offense committed by the parent requesting visitation, (A) contact between the child and the offending parent is appropriate and poses minimal risk to the child, and (B) the offending parent has successfully engaged in treatment for sex offenders or is engaged in and making progress in such treatment, if any was ordered by a court, and the treatment provider believes such contact is appropriate and poses minimal risk to the child; or

(ii) If the child was the victim of the sex offense committed by the parent requesting visitation, (A) contact between the child and the offending parent is appropriate and poses minimal risk to the child, (B) if the child is in or has been in therapy for victims of sexual abuse, the child's counselor believes such contact between the child and the offending parent is in the child's best interest, and (C) the offending parent has successfully engaged in treatment for sex offenders or is engaged in and making progress in such treatment, if any was ordered by a court, and the treatment provider believes such contact is appropriate and poses minimal risk to the child.

(g) The presumption established in (e) of this subsection may be rebutted only after a written finding that:

(i) If the child was not the victim of the sex offense committed by the person who is residing with the parent requesting visitation, (A) contact between the child and the parent residing with the convicted or adjudicated person is appropriate and that parent is able to protect the child in the presence of the convicted or adjudicated person, and (B) the convicted or adjudicated person has successfully engaged in treatment for sex offenders or is engaged in and making progress in such treatment, if any was ordered by a court, and the treatment provider believes such contact is appropriate and poses minimal risk to the child; or

(ii) If the child was the victim of the sex offense committed by the person who is residing with the parent requesting visitation, (A) contact between the child and the parent in the presence of the convicted or adjudicated person is appropriate and poses minimal risk to the child, (B) if the child is in or has been in therapy for victims of sexual abuse, the child's counselor believes such contact between the child and the parent residing with the convicted or adjudicated person in the presence of the convicted or adjudicated person is in the child's best interest, and (C) the convicted or adjudicated person has successfully engaged in treatment for sex offenders or is engaged in and making progress in such treatment, if any was ordered by a court, and the treatment provider believes contact between the parent and child in the presence of the convicted or adjudicated person is appropriate and poses minimal risk to the child.

(h) If the court finds that the parent has met the burden of rebutting the presumption under (f) of this subsection, the court may allow a parent who has been convicted as an adult of a sex offense listed in (d)(i) through (ix) of this subsection to have visitation with the child supervised by a neutral and independent adult and pursuant to an adequate plan for supervision of such visitation. The court shall not approve of a supervisor for contact between the

child and the parent unless the court finds, based on the evidence, that the supervisor is willing and capable of protecting the child from harm. The court shall revoke court approval of the supervisor upon finding, based on the evidence, that the supervisor has failed to protect the child or is no longer willing or capable of protecting the child.

(i) If the court finds that the parent has met the burden of rebutting the presumption under (g) of this subsection, the court may allow a parent residing with a person who has been adjudicated as a juvenile of a sex offense listed in (e)(i) through (ix) of this subsection to have visitation with the child in the presence of the person adjudicated as a juvenile, supervised by a neutral and independent adult and pursuant to an adequate plan for supervision of such visitation. The court shall not approve of a supervisor for contact between the child and the parent unless the court finds, based on the evidence, that the supervisor is willing and capable of protecting the child from harm. The court shall revoke court approval of the supervisor upon finding, based on the evidence, that the supervisor has failed to protect the child or is no longer willing or capable of protecting the child.

(j) If the court finds that the parent has met the burden of rebutting the presumption under (g) of this subsection, the court may allow a parent residing with a person who, as an adult, has been convicted of a sex offense listed in (e)(i) through (ix) of this subsection to have visitation with the child in the presence of the convicted person supervised by a neutral and independent adult and pursuant to an adequate plan for supervision of such visitation. The court shall not approve of a supervisor for contact between the child and the parent unless the court finds, based on the evidence, that the supervisor is willing and capable of protecting the child from harm. The court shall revoke court approval of the supervisor upon finding, based on the evidence, that the supervisor has failed to protect the child or is no longer willing or capable of protecting the child.

(k) A court shall not order unsupervised contact between the offending parent and a child of the offending parent who was sexually abused by that parent. A court may order unsupervised contact between the offending parent and a child who was not sexually abused by the parent after the presumption under (d) of this subsection has been rebutted and supervised visitation has occurred for at least two years with no further arrests or convictions of sex offenses involving children under chapter 9A.44 RCW, RCW 9A.64.020, or chapter 9.68A RCW and (i) the sex offense of the offending parent was not committed against a child of the offending parent, and (ii) the court finds that unsupervised contact between the child and the offending parent is appropriate and poses minimal risk to the child, after consideration of the testimony of a state-certified therapist, mental health counselor, or social worker with expertise in treating child sexual abuse victims who has supervised at least one period of visitation between the parent and the child, and after consideration of evidence of the offending parent's compliance with community supervision requirements, if any. If the offending parent was not ordered by a court to participate in treatment for sex offenders, then the parent shall obtain a psychosexual evaluation conducted by a ~~((state-certified))~~ certified sex offender treatment provider or a certified affiliate sex offender treatment provider indicating that the offender has the lowest likelihood of risk to reoffend before the court grants unsupervised contact between the parent and a child.

(l) A court may order unsupervised contact between the parent and a child which may occur in the presence of a juvenile adjudicated of a sex offense listed in (e)(i) through (ix) of this subsection who resides with the parent after the presumption under (e) of this subsection has been rebutted and supervised visitation has occurred for at least two years during which time the adjudicated juvenile has had no further arrests, adjudications, or convictions of sex offenses involving children under chapter 9A.44 RCW, RCW 9A.64.020, or chapter 9.68A RCW, and (i) the court finds that unsupervised contact between the child and the parent that may occur in the presence of the adjudicated juvenile is appropriate and poses minimal risk to the child, after consideration of the testimony of a state-certified therapist, mental health counselor, or social worker with expertise in treatment of child sexual abuse victims who has supervised at least one period of visitation between the parent and the child in the presence of the adjudicated juvenile, and after consideration of evidence of the adjudicated juvenile's compliance with community supervision or parole requirements, if any. If the adjudicated juvenile was not ordered by a court to participate in treatment for sex offenders, then the adjudicated juvenile shall obtain a psychosexual evaluation conducted by a ~~((state-certified))~~ certified sex offender treatment provider or a certified affiliate sex offender treatment provider indicating that the adjudicated juvenile has the lowest likelihood of risk to reoffend before the court grants unsupervised contact between the parent and a child which may occur in the presence of the adjudicated juvenile who is residing with the parent.

(m)(i) The limitations imposed by the court under (a) or (b) of this subsection shall be reasonably calculated to protect the child from the physical, sexual, or emotional abuse or harm that could result if the child has contact with the parent requesting visitation. If the court expressly finds based on the evidence that limitations on visitation with the child will not adequately protect the child from the harm or abuse that could result if the child has contact with the parent requesting visitation, the court shall restrain the person seeking visitation from all contact with the child.

(ii) The court shall not enter an order under (a) of this subsection allowing a parent to have contact with a child if the parent has been found by clear and convincing evidence in a civil action or by a preponderance of the evidence in a dependency action to have sexually abused the child, except upon recommendation by an evaluator or therapist for the child that the child is ready for contact with the parent and will not be harmed by the contact. The court shall not enter an order allowing a parent to have contact with the child in the offender's presence if the parent resides with a person who has been found by clear and convincing evidence in a civil action or by a preponderance of the evidence in a dependency action to have sexually abused a child, unless the court finds that the parent accepts that the person engaged in the harmful conduct and the parent is willing to and capable of protecting the child from harm from the person.

(iii) If the court limits visitation under (a) or (b) of this subsection to require supervised contact between the child and the parent, the court shall not approve of a supervisor for contact between a child and a parent who has engaged in physical, sexual, or a pattern of emotional abuse of the child unless the court finds based upon the evidence that the supervisor accepts that the harmful

conduct occurred and is willing to and capable of protecting the child from harm. The court shall revoke court approval of the supervisor upon finding, based on the evidence, that the supervisor has failed to protect the child or is no longer willing to or capable of protecting the child.

(n) If the court expressly finds based on the evidence that contact between the parent and the child will not cause physical, sexual, or emotional abuse or harm to the child and that the probability that the parent's or other person's harmful or abusive conduct will recur is so remote that it would not be in the child's best interests to apply the limitations of (a), (b), and (m)(i) and (iii) of this subsection, or if the court expressly finds that the parent's conduct did not have an impact on the child, then the court need not apply the limitations of (a), (b), and (m)(i) and (iii) of this subsection. The weight given to the existence of a protection order issued under chapter 26.50 RCW as to domestic violence is within the discretion of the court. This subsection shall not apply when (c), (d), (e), (f), (g), (h), (i), (j), (k), (l), and (m)(ii) of this subsection apply.

(3) Any person may petition the court for visitation rights at any time including, but not limited to, custody proceedings. The court may order visitation rights for any person when visitation may serve the best interest of the child whether or not there has been any change of circumstances.

(4) The court may modify an order granting or denying visitation rights whenever modification would serve the best interests of the child. Modification of a parent's visitation rights shall be subject to the requirements of subsection (2) of this section.

(5) For the purposes of this section, a parent's child means that parent's natural child, adopted child, or stepchild.

Sec. 14. RCW 71.09.350 and 2001 2nd sp.s. c 12 s 404 are each amended to read as follows:

(1) Examinations and treatment of sexually violent predators who are conditionally released to a less restrictive alternative under this chapter shall be conducted only by certified sex offender treatment providers or certified ~~((by the department of health))~~ affiliate sex offender treatment providers under chapter 18.155 RCW unless the court or the department of social and health services finds that: (a) The court-ordered less restrictive alternative placement is located in another state; (b) the treatment provider is employed by the department; or (c)(i) all certified sex offender treatment providers or certified affiliate sex offender treatment providers become unavailable to provide treatment within a reasonable geographic distance of the person's home, as determined in rules adopted by the department of social and health services; and (ii) the evaluation and treatment plan comply with the rules adopted by the department of social and health services.

A treatment provider approved by the department of social and health services under (c) of this subsection, who is not certified by the department of health, shall consult with a certified sex offender treatment provider during the person's period of treatment to ensure compliance with the rules adopted by the department of health. The frequency and content of the consultation shall be based on the recommendation of the certified sex offender treatment provider.

(2) A treatment provider, whether or not he or she is employed or approved by the department of social and health services under subsection (1) of this

section or otherwise certified, may not perform or provide treatment of sexually violent predators under this section if the treatment provider has been:

- (a) Convicted of a sex offense, as defined in RCW 9.94A.030;
 - (b) Convicted in any other jurisdiction of an offense that under the laws of this state would be classified as a sex offense as defined in RCW 9.94A.030; or
 - (c) Suspended or otherwise restricted from practicing any health care profession by competent authority in any state, federal, or foreign jurisdiction.
- (3) Nothing in this section prohibits a qualified expert from examining or evaluating a sexually violent predator who has been conditionally released for purposes of presenting an opinion in court proceedings.

NEW SECTION. Sec. 15. This act takes effect July 1, 2004.

Passed by the House February 14, 2004.

Passed by the Senate March 4, 2004.

Approved by the Governor March 22, 2004.

Filed in Office of Secretary of State March 22, 2004.

CHAPTER 39

[Senate Bill 6213]

MENTAL HEALTH ADVANCE DIRECTIVES—CIVIL COMMITMENTS

AN ACT Relating to making technical, clarifying, and nonsubstantive changes to mental health advance directive provisions; amending RCW 71.32.140; and creating a new section.

Be it enacted by the Legislature of the State of Washington:

NEW SECTION. Sec. 1. Questions have been raised about the intent of the legislature in cross referencing RCW 71.05.050 without further clarification in RCW 71.32.140. The legislature finds that because RCW 71.05.050 pertains to a variety of rights as well as the procedures for detaining a voluntary patient for evaluation for civil commitment, and the legislature intended only to address the right of release upon request, there is ambiguity as to whether an incapacitated person admitted pursuant to his or her mental health advance directive and seeking release can be held for evaluation for civil commitment under chapter 71.05 RCW. The legislature therefore intends to clarify the ambiguity without making any change to its intended policy as laid out in chapter 71.32 RCW.

Sec. 2. RCW 71.32.140 and 2003 c 283 s 14 are each amended to read as follows:

(1) A principal who:

(a) Chose not to be able to revoke his or her directive during any period of incapacity;

(b) Consented to voluntary admission to inpatient mental health treatment, or authorized an agent to consent on the principal's behalf; and

(c) At the time of admission to inpatient treatment, refuses to be admitted, may only be admitted into inpatient mental health treatment under subsection (2) of this section.

(2) A principal may only be admitted to inpatient mental health treatment under his or her directive if, prior to admission, a physician member of the treating facility's professional staff:

(a) Evaluates the principal's mental condition, including a review of reasonably available psychiatric and psychological history, diagnosis, and

treatment needs, and determines, in conjunction with another health care provider or mental health professional, that the principal is incapacitated;

(b) Obtains the informed consent of the agent, if any, designated in the directive;

(c) Makes a written determination that the principal needs an inpatient evaluation or is in need of inpatient treatment and that the evaluation or treatment cannot be accomplished in a less restrictive setting; and

(d) Documents in the principal's medical record a summary of the physician's findings and recommendations for treatment or evaluation.

(3) In the event the admitting physician is not a psychiatrist, the principal shall receive a complete psychological assessment by a mental health professional within twenty-four hours of admission to determine the continued need for inpatient evaluation or treatment.

(4)(a) If it is determined that the principal has capacity, then the principal may only be admitted to, or remain in, inpatient treatment if he or she consents at the time or is detained under the involuntary treatment provisions of chapter 70.96A, 71.05, or 71.34 RCW.

(b) If a principal who is determined by two health care providers or one mental health professional and one health care provider to be incapacitated continues to refuse inpatient treatment, the principal may immediately seek injunctive relief for release from the facility.

(5) If, at the end of the period of time that the principal or the principal's agent, if any, has consented to voluntary inpatient treatment, but no more than fourteen days after admission, the principal has not regained capacity or has regained capacity but refuses to consent to remain for additional treatment, the principal must be released during reasonable daylight hours, unless detained under chapter 70.96A, 71.05, or 71.34 RCW.

(6)(a) Except as provided in (b) of this subsection, any principal who is voluntarily admitted to inpatient mental health treatment under this chapter shall have all the rights provided to individuals who are voluntarily admitted to inpatient treatment under chapter 71.05, 71.34, or 72.23 RCW.

(b) Notwithstanding RCW 71.05.050 regarding consent to inpatient treatment for a specified length of time, the choices an incapacitated principal expressed in his or her directive shall control, provided, however, that a principal who takes action demonstrating a desire to be discharged, in addition to making statements requesting to be discharged, shall be discharged, and no principal shall be restrained in any way in order to prevent his or her discharge. Nothing in this subsection shall be construed to prevent detention and evaluation for civil commitment under chapter 71.05 RCW.

(7) Consent to inpatient admission in a directive is effective only while the professional person, health care provider, and health care facility are in substantial compliance with the material provisions of the directive related to inpatient treatment.

Passed by the Senate February 11, 2004.

Passed by the House March 3, 2004.

Approved by the Governor March 22, 2004.

Filed in Office of Secretary of State March 22, 2004.

CHAPTER 40

[Substitute House Bill 3081]

FOSTER CARE—BLOOD-BORNE PATHOGEN TESTING

AN ACT Relating to medical and dental care and testing for children in the care of the department of social and health services; and adding new sections to chapter 74.13 RCW.

Be it enacted by the Legislature of the State of Washington:

NEW SECTION. Sec. 1. A new section is added to chapter 74.13 RCW to read as follows:

The legislature intends to establish a policy with the goal of ensuring that the health and well-being of both infants in foster care and the families providing for their care are protected.

NEW SECTION. Sec. 2. A new section is added to chapter 74.13 RCW to read as follows:

(1) The department of health shall develop recommendations concerning evidence-based practices for testing for blood-borne pathogens of children under one year of age who have been placed in out-of-home care and shall identify the specific pathogens for which testing is recommended.

(2) The department shall report to the appropriate committees of the legislature on the recommendations developed in accordance with subsection (1) of this section by January 1, 2005.

NEW SECTION. Sec. 3. A new section is added to chapter 74.13 RCW to read as follows:

(1) Upon any placement, the department of social and health services shall inform each out-of-home care provider if the child to be placed in that provider's care is infected with a blood-borne pathogen, and shall identify the specific blood-borne pathogen for which the child was tested if known by the department.

(2) All out-of-home care providers licensed by the department shall receive training related to blood-borne pathogens, including prevention, transmission, infection control, treatment, testing, and confidentiality.

(3) Any disclosure of information related to HIV must be in accordance with RCW 70.24.105.

(4) The department of health shall identify by rule the term "blood-borne pathogen" as used in this section.

Passed by the House March 9, 2004.

Passed by the Senate March 4, 2004.

Approved by the Governor March 22, 2004.

Filed in Office of Secretary of State March 22, 2004.

CHAPTER 41

[Engrossed Substitute House Bill 2556]

CRIMINAL BACKGROUND CHECKS—TASK FORCE

AN ACT Relating to studying criminal background check processes; creating new sections; and providing an expiration date.

Be it enacted by the Legislature of the State of Washington:

****NEW SECTION. Sec. 1. The legislature finds that criminal history record information background checks for employment purposes are rapidly increasing in Washington state. While the demand for criminal history record information background checks is growing, the existing criminal history record information background check data transmission infrastructure and processes are not adequate to keep pace with the growing demand. Furthermore, employers are concerned with the current system's ability to quickly secure results. Without adequate data transmission infrastructure and processes to encourage efficient criminal history record information background checks and to receive results quickly, a public safety risk is created. This is especially true when new or prospective employees will be working with children.***

The legislature has learned that some states have recently developed comprehensive criminal history record information background check programs. These programs focus on making criminal history record information background checks easily accessible to employers and prospective employees and have eliminated long response times.

****Sec. 1 was vetoed. See message at end of chapter.***

NEW SECTION. Sec. 2. (1) A joint task force on criminal background check processes is established. The joint task force shall consist of the following members:

- (a) One member from each of the two largest caucuses of the senate, appointed by the president of the senate;
- (b) One member from each of the two largest caucuses of the house of representatives, appointed by the speaker of the house of representatives;
- (c) The chief of the Washington state patrol, or the chief's designee;
- (d) The secretary of the department of social and health services, or the secretary's designee;
- (e) The state superintendent of public instruction, or the superintendent's designee;
- (f) An elected sheriff or police chief, selected by the Washington association of sheriffs and police chiefs; and
- (g) The following seven members, jointly appointed by the speaker of the house of representatives and the president of the senate:
 - (i) A representative from a nonprofit service organization that serves primarily children under sixteen years of age;
 - (ii) A health care provider as defined in RCW 7.70.020;
 - (iii) A representative from a business or organization that primarily serves persons with a developmental disability or vulnerable adults;
 - (iv) A representative from a local youth athletic association;
 - (v) A representative from the insurance industry; and
 - (vi) Two representatives from a local parks and recreation program; one member shall be selected by the association of Washington cities and one member shall be selected by the Washington association of counties.

(2) The task force shall choose two cochairs from among its membership.

(3) The task force shall review and make recommendations to the legislature and the governor regarding criminal background check policy in Washington state. In preparing the recommendations, the committee shall, at a minimum, review the following issues:

(a) What state and federal statutes require regarding criminal background checks, and determine whether any changes should be made;

(b) What criminal offenses are currently reportable through the criminal background check program, and determine whether any changes should be made;

(c) What information is available through the Washington state patrol and the federal bureau of investigation criminal background check systems, and determine whether any changes should be made;

(d) What are the best practices among organizations for obtaining criminal background checks on their employees and volunteers;

(e) What is the feasibility and costs for businesses and organizations to do periodic background checks;

(f) What is the feasibility of requiring all businesses and organizations, including nonprofit entities, to conduct criminal background checks for all employees, contractors, agents, and volunteers who have regularly scheduled supervised or unsupervised access to children, persons with a developmental disability, or vulnerable adults; and

(g) A review of the benefits and obstacles of implementing a criminal history record information background check program created by the national child protection act of 1993. The national child protection act of 1993 increases the availability of criminal history record information background checks for employers who have employees or volunteers who work with children, elderly persons, or persons with disabilities.

(4) The task force, where feasible, may consult with individuals from the public and private sector.

(5) The task force shall use legislative facilities and staff from senate committee services and the house office of program research.

(6) The task force shall report its findings and recommendations to the legislature by December 31, 2004.

NEW SECTION. Sec. 3. (1) In consultation with the Washington state patrol, the Washington association of sheriffs and police chiefs shall conduct a study on criminal history record information background check technology and systems. The study shall focus on how, through the use of modern technology, Washington state can reduce delays in the criminal history record information background check processing time and how Washington state can make criminal history record information background checks more accessible and efficient.

(2) The study shall include, but is not limited to:

(a) A review and analysis of the criminal history record information background check technology systems in states that have recently implemented or are soon to implement comprehensive criminal history record information background check programs;

(b) Recommendations on how a comprehensive criminal history record information background check program should be designed in Washington state, and how much a comprehensive program would cost to implement in Washington state;

(c) A review of how a comprehensive criminal history record information background check program could be paid for in Washington state, which includes a determination on whether the program could be funded solely by user fees.

(3) The findings and recommendations from the Washington association of sheriffs and police chiefs shall be presented to the joint task force on criminal background check processes no later than November 30, 2004.

(4) The requirement to perform the study under this section and to make findings and recommendations is subject to availability of funds appropriated for this specific purpose.

NEW SECTION. Sec. 4. This act expires January 31, 2005.

Passed by the House March 8, 2004.

Passed by the Senate March 3, 2004.

Approved by the Governor March 22, 2004, with the exception of certain items that were vetoed.

Filed in Office of Secretary of State March 22, 2004.

Note: Governor's explanation of partial veto is as follows:

"I am returning herewith, without my approval as to section 1, Engrossed Substitute House Bill No. 2556 entitled:

"AN ACT Relating to studying criminal background check processes;"

This bill creates a joint task force to study criminal background check policies and procedures and make recommendations to improve those systems and increase public safety.

Section 1 was an introductory section that was not necessary to support the creation or work of the joint task force. It would have given an inaccurate view of the current criminal history record information background check data transmission infrastructure and process. Taken out of context, this language could have been misunderstood and used to indicate an admission of liability when none exists. To avoid the inadvertent misuse of this language, I have vetoed section 1.

For these reasons, I have vetoed section 1 of Engrossed Substitute House Bill No. 2556.

With the exception of section 1, Engrossed Substitute House Bill No. 2556 is approved."

CHAPTER 42

[Engrossed Substitute House Bill 3078]

JUVENILE RECORDS

AN ACT Relating to sealing juvenile records; and reenacting and amending RCW 13.50.050.

Be it enacted by the Legislature of the State of Washington:

Sec. 1. RCW 13.50.050 and 2001 c 175 s 1, 2001 c 174 s 1, and 2001 c 49 s 2 are each reenacted and amended to read as follows:

(1) This section governs records relating to the commission of juvenile offenses, including records relating to diversions.

(2) The official juvenile court file of any alleged or proven juvenile offender shall be open to public inspection, unless sealed pursuant to subsection (12) of this section.

(3) All records other than the official juvenile court file are confidential and may be released only as provided in this section, RCW 13.50.010, 13.40.215, and 4.24.550.

(4) Except as otherwise provided in this section and RCW 13.50.010, records retained or produced by any juvenile justice or care agency may be released to other participants in the juvenile justice or care system only when an investigation or case involving the juvenile in question is being pursued by the

other participant or when that other participant is assigned the responsibility for supervising the juvenile.

(5) Except as provided in RCW 4.24.550, information not in an official juvenile court file concerning a juvenile or a juvenile's family may be released to the public only when that information could not reasonably be expected to identify the juvenile or the juvenile's family.

(6) Notwithstanding any other provision of this chapter, the release, to the juvenile or his or her attorney, of law enforcement and prosecuting attorneys' records pertaining to investigation, diversion, and prosecution of juvenile offenses shall be governed by the rules of discovery and other rules of law applicable in adult criminal investigations and prosecutions.

(7) Upon the decision to arrest or the arrest, law enforcement and prosecuting attorneys may cooperate with schools in releasing information to a school pertaining to the investigation, diversion, and prosecution of a juvenile attending the school. Upon the decision to arrest or the arrest, incident reports may be released unless releasing the records would jeopardize the investigation or prosecution or endanger witnesses. If release of incident reports would jeopardize the investigation or prosecution or endanger witnesses, law enforcement and prosecuting attorneys may release information to the maximum extent possible to assist schools in protecting other students, staff, and school property.

(8) The juvenile court and the prosecutor may set up and maintain a central record-keeping system which may receive information on all alleged juvenile offenders against whom a complaint has been filed pursuant to RCW 13.40.070 whether or not their cases are currently pending before the court. The central record-keeping system may be computerized. If a complaint has been referred to a diversion unit, the diversion unit shall promptly report to the juvenile court or the prosecuting attorney when the juvenile has agreed to diversion. An offense shall not be reported as criminal history in any central record-keeping system without notification by the diversion unit of the date on which the offender agreed to diversion.

(9) Upon request of the victim of a crime or the victim's immediate family, the identity of an alleged or proven juvenile offender alleged or found to have committed a crime against the victim and the identity of the alleged or proven juvenile offender's parent, guardian, or custodian and the circumstance of the alleged or proven crime shall be released to the victim of the crime or the victim's immediate family.

(10) Subject to the rules of discovery applicable in adult criminal prosecutions, the juvenile offense records of an adult criminal defendant or witness in an adult criminal proceeding shall be released upon request to prosecution and defense counsel after a charge has actually been filed. The juvenile offense records of any adult convicted of a crime and placed under the supervision of the adult corrections system shall be released upon request to the adult corrections system.

(11) In any case in which an information has been filed pursuant to RCW 13.40.100 or a complaint has been filed with the prosecutor and referred for diversion pursuant to RCW 13.40.070, the person the subject of the information or complaint may file a motion with the court to have the court vacate its order and findings, if any, and, subject to subsection (23) of this section, order the

sealing of the official juvenile court file, the social file, and records of the court and of any other agency in the case.

(12) The court shall not grant any motion to seal records made pursuant to subsection (11) of this section that is filed on or after July 1, 1997, unless it finds that:

(a) For class B offenses other than sex offenses, since the last date of release from confinement, including full-time residential treatment, if any, or entry of disposition, the person has spent ~~((ten))~~ five consecutive years in the community without committing any offense or crime that subsequently results in conviction. For class C offenses other than sex offenses, since the last date of release from confinement, including full-time residential treatment, if any, or entry of disposition, the person has spent ~~((five))~~ two consecutive years in the community without committing any offense or crime that subsequently results in conviction. For gross misdemeanors and misdemeanors, since the last date of release from confinement, including full-time residential treatment, if any, or entry of disposition, the person has spent two consecutive years in the community without committing any offense or crime that subsequently results in conviction ~~((and the person is at least eighteen years old. For gross misdemeanors, since the last date of release from confinement, including full-time residential treatment, if any, or entry of disposition, the person has spent three consecutive years in the community without committing any offense or crime that subsequently results in conviction and the person is at least eighteen years old))~~. For diversions, since completion of the diversion agreement, the person has spent two consecutive years in the community without committing any offense or crime that subsequently results in conviction or diversion ~~((and the person is at least eighteen years old))~~;

(b) No proceeding is pending against the moving party seeking the conviction of a juvenile offense or a criminal offense;

(c) No proceeding is pending seeking the formation of a diversion agreement with that person;

(d) The person has not been convicted of a class A or sex offense; and

(e) Full restitution has been paid.

(13) The person making a motion pursuant to subsection (11) of this section shall give reasonable notice of the motion to the prosecution and to any person or agency whose files are sought to be sealed.

(14) If the court grants the motion to seal made pursuant to subsection (11) of this section, it shall, subject to subsection (23) of this section, order sealed the official juvenile court file, the social file, and other records relating to the case as are named in the order. Thereafter, the proceedings in the case shall be treated as if they never occurred, and the subject of the records may reply accordingly to any inquiry about the events, records of which are sealed. Any agency shall reply to any inquiry concerning confidential or sealed records that records are confidential, and no information can be given about the existence or nonexistence of records concerning an individual.

(15) Inspection of the files and records included in the order to seal may thereafter be permitted only by order of the court upon motion made by the person who is the subject of the information or complaint, except as otherwise provided in RCW 13.50.010(8) and subsection (23) of this section.

(16) Any adjudication of a juvenile offense or a crime subsequent to sealing has the effect of nullifying the sealing order. Any charging of an adult felony subsequent to the sealing has the effect of nullifying the sealing order for the purposes of chapter 9.94A RCW. The administrative office of the courts shall ensure that the superior court judicial information system provides prosecutors access to information on the existence of sealed juvenile records.

(17)(a) A person eighteen years of age or older whose criminal history consists of only one referral for diversion may request that the court order the records in that case destroyed. The request shall be granted, subject to subsection (23) of this section, if the court finds that two years have elapsed since completion of the diversion agreement.

(b) A person twenty-three years of age or older whose criminal history consists of only referrals for diversion may request that the court order the records in those cases destroyed. The request shall be granted, subject to subsection (23) of this section, if the court finds that all diversion agreements have been successfully completed and no proceeding is pending against the person seeking the conviction of a criminal offense.

(18) If the court grants the motion to destroy records made pursuant to subsection (17) of this section, it shall, subject to subsection (23) of this section, order the official juvenile court file, the social file, and any other records named in the order to be destroyed.

(19) The person making the motion pursuant to subsection (17) of this section shall give reasonable notice of the motion to the prosecuting attorney and to any agency whose records are sought to be destroyed.

(20) Any juvenile to whom the provisions of this section may apply shall be given written notice of his or her rights under this section at the time of his or her disposition hearing or during the diversion process.

(21) Nothing in this section may be construed to prevent a crime victim or a member of the victim's family from divulging the identity of the alleged or proven juvenile offender or his or her family when necessary in a civil proceeding.

(22) Any juvenile justice or care agency may, subject to the limitations in subsection (23) of this section and (a) and (b) of this subsection, develop procedures for the routine destruction of records relating to juvenile offenses and diversions.

(a) Records may be routinely destroyed only when the person the subject of the information or complaint has attained twenty-three years of age or older, or is eighteen years of age or older and his or her criminal history consists entirely of one diversion agreement and two years have passed since completion of the agreement.

(b) The court may not routinely destroy the official juvenile court file or recordings or transcripts of any proceedings.

(23) No identifying information held by the Washington state patrol in accordance with chapter 43.43 RCW is subject to destruction or sealing under this section. For the purposes of this subsection, identifying information includes photographs, fingerprints, palmprints, soleprints, toeprints and any other data that identifies a person by physical characteristics, name, birthdate or address, but does not include information regarding criminal activity, arrest,

charging, diversion, conviction or other information about a person's treatment by the criminal justice system or about the person's behavior.

(24) Information identifying child victims under age eighteen who are victims of sexual assaults by juvenile offenders is confidential and not subject to release to the press or public without the permission of the child victim or the child's legal guardian. Identifying information includes the child victim's name, addresses, location, photographs, and in cases in which the child victim is a relative of the alleged perpetrator, identification of the relationship between the child and the alleged perpetrator. Information identifying a child victim of sexual assault may be released to law enforcement, prosecutors, judges, defense attorneys, or private or governmental agencies that provide services to the child victim of sexual assault.

Passed by the House March 8, 2004.

Passed by the Senate March 3, 2004.

Approved by the Governor March 22, 2004.

Filed in Office of Secretary of State March 22, 2004.

CHAPTER 43

[House Bill 2583]

INFRACTIONS—ELECTRONIC ISSUANCE

AN ACT Relating to issuance of infractions and citations; amending RCW 7.80.150, 7.84.030, 20.01.482, 46.64.010, and 46.64.015; and providing an effective date.

Be it enacted by the Legislature of the State of Washington:

Sec. 1. RCW 7.80.150 and 1987 c 456 s 23 are each amended to read as follows:

(1) Every law enforcement agency in this state or other agency authorized to issue notices of civil infractions shall provide in appropriate form notices of civil infractions which shall be issued in books with notices in quadruplicate and meeting the requirements of this section, or issued by an electronic device capable of producing a printed copy and electronic copies of the citations.

The chief administrative officer of every such agency shall be responsible for the issuance of such books or electronic devices and shall maintain a record of every such book or electronic device and each notice contained therein issued to individual members or employees of the agency and shall require and retain a receipt for every book or electronic device so issued.

(2) Every law enforcement officer or other person upon issuing a notice of civil infraction to an alleged perpetrator of a civil infraction under the laws of this state or of any ordinance of any city or town shall deposit the original or a printed or electronic copy of such notice of civil infraction with a court having competent jurisdiction over the civil infraction, as provided in RCW 7.80.050.

Upon the deposit of the original or a printed or electronic copy of such notice of civil infraction with a court having competent jurisdiction over the civil infraction, the original or copy may be disposed of only as provided in this chapter.

(3) It is unlawful and is official misconduct for any law enforcement officer or other officer or public employee to dispose of a notice of civil infraction or

copies thereof or of the record of the issuance of the same in a manner other than as required in this section.

(4) The chief administrative officer of every law enforcement agency or other agency authorized to issue notices of civil infractions shall require the return to him or her of a copy of every notice issued by a person under his or her supervision to an alleged perpetrator of a civil infraction under any law or ordinance and of all copies of every notice which has been spoiled or upon which any entry has been made and not issued to an alleged perpetrator.

Such chief administrative officer shall also maintain or cause to be maintained in connection with every notice issued by a person under his or her supervision a record of the disposition of the charge by the court in which the original or copy of the notice was deposited.

(5) Any person who cancels or solicits the cancellation of any notice of civil infraction, in any manner other than as provided in this section, is guilty of a misdemeanor.

(6) Every record of notices required in this section shall be audited monthly by the appropriate fiscal officer of the government agency to which the law enforcement agency or other agency authorized to issue notices of civil infractions is responsible.

Sec. 2. RCW 7.84.030 and 1987 c 380 s 3 are each amended to read as follows:

(1) An infraction proceeding is initiated by the issuance~~((;))~~ and service((;)) of a printed notice of infraction and filing of a printed or electronic copy of the notice of infraction.

(2) A notice of infraction may be issued by a person authorized to enforce the provisions of the title or chapter in which the infraction is established when the infraction occurs in that person's presence.

(3) A court may issue a notice of infraction if a person authorized to enforce the provisions of the title or chapter in which the infraction is established files with the court a written statement that the infraction was committed in that person's presence or that the officer has reason to believe an infraction was committed.

(4) Service of a notice of infraction issued under subsection (2) or (3) of this section shall be as provided by court rule.

(5) A notice of infraction shall be filed with a court having jurisdiction within five days of issuance, excluding Saturdays, Sundays, and holidays.

(6) Failure to sign an infraction notice shall constitute a misdemeanor under chapter 9A.20 RCW.

Sec. 3. RCW 20.01.482 and 2003 c 53 s 161 are each amended to read as follows:

(1) The director shall have the authority to issue a notice of civil infraction if an infraction is committed in his or her presence or, if after investigation, the director has reasonable cause to believe an infraction has been committed.

(2) It is a misdemeanor for any person to refuse to properly identify himself or herself for the purpose of issuance of a notice of infraction or to refuse to sign the written or electronic promise to appear or respond to a notice of infraction.

(3) Any person willfully violating a written or electronic and signed promise to respond to a notice of infraction is guilty of a misdemeanor regardless of the disposition of the notice of infraction.

Sec. 4. RCW 46.64.010 and 2003 c 53 s 247 are each amended to read as follows:

(1) Every traffic enforcement agency in this state shall provide in appropriate form traffic citations containing notices to appear which shall be issued in books with citations in quadruplicate and meeting the requirements of this section, or issued by an electronic device capable of producing a printed copy and electronic copies of the citations. The chief administrative officer of every such traffic enforcement agency shall be responsible for the issuance of such books or electronic devices and shall maintain a record of every such book and each citation contained therein and every such electronic device issued to individual members of the traffic enforcement agency and shall require and retain a receipt for every book and electronic device so issued.

(2) Every traffic enforcement officer upon issuing a traffic citation to an alleged violator of any provision of the motor vehicle laws of this state or of any traffic ordinance of any city or town shall deposit the original or a printed or electronic copy of such traffic citation with a court having competent jurisdiction over the alleged offense or with its traffic violations bureau. Upon the deposit of the original or a copy of such traffic citation with a court having competent jurisdiction over the alleged offense or with its traffic violations bureau as aforesaid, the original or copy of such traffic citation may be disposed of only by trial in the court or other official action by a judge of the court, including forfeiture of the bail or by the deposit of sufficient bail with or payment of a fine to the traffic violations bureau by the person to whom such traffic citation has been issued by the traffic enforcement officer.

(3) It shall be unlawful and official misconduct for any traffic enforcement officer or other officer or public employee to dispose of a traffic citation or copies thereof or of the record of the issuance of the same in a manner other than as required in this section.

(4) The chief administrative officer of every traffic enforcement agency shall require the return to him or her of a printed or electronic copy of every traffic citation issued by an officer under his or her supervision to an alleged violator of any traffic law or ordinance and of all copies of every traffic citation which has been spoiled or upon which any entry has been made and not issued to an alleged violator. Such chief administrative officer shall also maintain or cause to be maintained in connection with every traffic citation issued by an officer under his or her supervision a record of the disposition of the charge by the court or its traffic violations bureau in which the original or copy of the traffic citation was deposited.

(5) Any person who cancels or solicits the cancellation of any traffic citation, in any manner other than as provided in this section, is guilty of a misdemeanor.

(6) Every record of traffic citations required in this section shall be audited monthly by the appropriate fiscal officer of the government agency to which the traffic enforcement agency is responsible.

Sec. 5. RCW 46.64.015 and 1987 c 345 s 2 are each amended to read as follows:

Whenever any person is arrested for any violation of the traffic laws or regulations which is punishable as a misdemeanor or by imposition of a fine, the arresting officer may serve upon him or her a traffic citation and notice to appear in court. Such citation and notice shall conform to the requirements of RCW 46.64.010, and in addition, shall include spaces for the name and address of the person arrested, the license number of the vehicle involved, the driver's license number of such person, if any, the offense or violation charged, the time and place where such person shall appear in court, and a place where the person arrested may sign. Such spaces shall be filled with the appropriate information by the arresting officer. The arrested person, in order to secure release, and when permitted by the arresting officer, must give his or her written promise to appear in court as required by the citation and notice by signing in the appropriate place the written or electronic citation and notice served by the arresting officer, and if the arrested person is a nonresident of the state, shall also post a bond, cash security, or bail as required under RCW 46.64.035. An officer may not serve or issue any traffic citation or notice for any offense or violation except either when the offense or violation is committed in his or her presence or when a person may be arrested pursuant to RCW 10.31.100, as now or hereafter amended. The detention arising from an arrest under this section may not be for a period of time longer than is reasonably necessary to issue and serve a citation and notice, except that the time limitation does not apply under any of the following circumstances:

- (1) Where the arrested person refuses to sign a written promise to appear in court as required by the citation and notice provisions of this section;
- (2) Where the arresting officer has probable cause to believe that the arrested person has committed any of the offenses enumerated in RCW 10.31.100(3), as now or hereafter amended;
- (3) When the arrested person is a nonresident and is being detained for a hearing under RCW 46.64.035.

NEW SECTION. **Sec. 6.** This act takes effect July 1, 2004.

Passed by the House February 11, 2004.

Passed by the Senate March 4, 2004.

Approved by the Governor March 22, 2004.

Filed in Office of Secretary of State March 22, 2004.

CHAPTER 44

[House Bill 2601]

RESERVE OFFICERS—EMPLOYMENT

AN ACT Relating to unlawful discharge or discipline of reserve officers; and amending RCW 49.12.460.

Be it enacted by the Legislature of the State of Washington:

Sec. I. RCW 49.12.460 and 2003 c 401 s 5 are each amended to read as follows:

(1) An employer may not discharge from employment or discipline a volunteer fire fighter or reserve officer because of leave taken related to an alarm of fire or an emergency call.

(2)(a) A volunteer fire fighter or reserve officer who believes he or she was discharged or disciplined in violation of this section may file a complaint alleging the violation with the director. The volunteer fire fighter or reserve officer may allege a violation only by filing such a complaint within ninety days of the alleged violation.

(b) Upon receipt of the complaint, the director must cause an investigation to be made as the director deems appropriate and must determine whether this section has been violated. Notice of the director's determination must be sent to the complainant and the employer within ninety days of receipt of the complaint.

(c) If the director determines that this section was violated and the employer fails to reinstate the employee or withdraw the disciplinary action taken against the employee, whichever is applicable, within thirty days of receipt of notice of the director's determination, the volunteer fire fighter or reserve officer may bring an action against the employer alleging a violation of this section and seeking reinstatement or withdrawal of the disciplinary action.

(d) In any action brought under this section, the superior court shall have jurisdiction, for cause shown, to restrain violations under this section and to order reinstatement of the employee or withdrawal of the disciplinary action.

(3) For the purposes of this section:

(a) "Alarm of fire or emergency call" means responding to, working at, or returning from a fire alarm or an emergency call, but not participating in training or other nonemergency activities.

(b) "Employer" means an employer who had twenty or more full-time equivalent employees in the previous year.

(c) "Reinstatement" means reinstatement with back pay, without loss of seniority or benefits, and with removal of any related adverse material from the employee's personnel file, if a file is maintained by the employer.

(d) "Withdrawal of disciplinary action" means withdrawal of disciplinary action with back pay, without loss of seniority or benefits, and with removal of any related adverse material from the employee's personnel file, if a file is maintained by the employer.

(e) "Volunteer fire fighter" means a fire fighter who:

(i) Is not paid;

(ii) Is not already at his or her place of employment when called to serve as a volunteer, unless the employer agrees to provide such an accommodation; and

(iii) Has been ordered to remain at his or her position by the commanding authority at the scene of the fire.

(f) "Reserve officer" has the meaning provided in RCW 41.24.010.

(4) The legislature declares that the public policies articulated in this section depend on the procedures established in this section and no civil or criminal action may be maintained relying on the public policies articulated in this section without complying with the procedures set forth in this section, and to that end all civil actions and civil causes of action for such injuries and all jurisdiction of the courts of this state over such causes are hereby abolished, except as provided in this section.

Passed by the House February 11, 2004.

Passed by the Senate March 4, 2004.
Approved by the Governor March 22, 2004.
Filed in Office of Secretary of State March 22, 2004.

CHAPTER 45

[Substitute House Bill 1995]

SCHOOL DISTRICT PROPERTY

AN ACT Relating to school districts' property; and amending RCW 28A.335.060.

Be it enacted by the Legislature of the State of Washington:

Sec. 1. RCW 28A.335.060 and 1989 c 86 s 2 are each amended to read as follows:

Each school district's board of directors shall deposit moneys derived from the lease, rental, or occasional use of surplus school property as follows:

(1) Moneys derived from real property shall be deposited into the district's debt service fund and/or capital projects fund, except for:

(a) Moneys required to be expended for general maintenance, utility, insurance costs, and any other costs associated with the lease or rental of such property, which moneys shall be deposited in the district's general fund; or

(b) At the option of the board of directors, after evaluating the sufficiency of the school district's capital projects fund for purposes of meeting demands for new construction and improvements, moneys derived from the lease or rental of real property may be deposited into the district's general fund to be used exclusively for nonrecurring costs related to operating school facilities, including but not limited to expenses for maintenance;

(2) Moneys derived from pupil transportation vehicles shall be deposited in the district's transportation vehicle fund;

(3) Moneys derived from other personal property shall be deposited in the district's general fund.

Passed by the House March 8, 2004.
Passed by the Senate March 3, 2004.
Approved by the Governor March 22, 2004.
Filed in Office of Secretary of State March 22, 2004.

CHAPTER 46

[Substitute Senate Bill 6501]

DISABLED STUDENTS—INSTRUCTIONAL MATERIALS

AN ACT Relating to instructional materials for students with disabilities; adding a new section to chapter 28B.10 RCW; and prescribing penalties.

Be it enacted by the Legislature of the State of Washington:

NEW SECTION. **Sec. 1.** A new section is added to chapter 28B.10 RCW to read as follows:

(1) An individual, firm, partnership or corporation that publishes or manufactures instructional materials for students attending any public or private institution of higher education in the state of Washington shall provide to the public or private institution of higher education, for use by students attending the institution, any instructional material in an electronic format mutually agreed

upon by the publisher or manufacturer and the public or private institution of higher education. Computer files or electronic versions of printed instructional materials shall be provided; video materials must be captioned or accompanied by transcriptions of spoken text; and audio materials must be accompanied by transcriptions. These supplemental materials shall be provided to the public or private institution of higher education at no additional cost and in a timely manner, upon receipt of a written request as provided in subsection (2) of this section.

(2) A written request for supplemental materials must:

(a) Certify that a student with a print access disability attending or registered to attend a public or participating private institution of higher education has purchased the instructional material or the public or private institution of higher education has purchased the instructional material for use by a student with a print access disability;

(b) Certify that the student has a print access disability that substantially prevents him or her from using standard instructional materials;

(c) Certify that the instructional material is for use by the student in connection with a course in which he or she is registered or enrolled at the public or private institution of higher education; and

(d) Be signed by the coordinator of services for students with disabilities at the public or private institution of higher education or by the college or campus official responsible for monitoring compliance with the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 et seq.) at the public or private institution of higher education.

(3) An individual, firm, partnership or corporation specified in subsection (1) of this section may also require that, in addition to the requirements in subsection (2) of this section, the request include a statement signed by the student agreeing to both of the following:

(a) He or she will use the instructional material provided in specialized format solely for his or her own educational purposes; and

(b) He or she will not copy or duplicate the instructional material provided in specialized format for use by others.

(4) If a public or private institution of higher education provides a student with the specialized format version of an instructional material, the media must be copy-protected or the public or private institution of higher education shall take other reasonable precautions to ensure that students do not copy or distribute specialized format versions of instructional materials in violation of the Copyright Revisions Act of 1976, as amended (17 U.S.C. Sec. 101 et seq.).

(5) For purposes of this section:

(a) "Instructional material or materials" means textbooks and other materials that are required or essential to a student's success in a postsecondary course of study in which a student with a disability is enrolled. The determination of which materials are "required or essential to student success" shall be made by the instructor of the course in consultation with the official making the request in accordance with guidelines issued pursuant to subsection (9) of this section. The term specifically includes both textual and nontextual information.

(b) "Print access disability" means a condition in which a person's independent reading of, reading comprehension of, or visual access to materials is limited or reduced due to a sensory, neurological, cognitive, physical,

psychiatric, or other disability recognized by state or federal law. The term is applicable, but not limited to, persons who are blind, have low vision, or have reading disorders or physical disabilities.

(c) "Structural integrity" means all instructional material, including but not limited to the text of the material, sidebars, the table of contents, chapter headings and subheadings, footnotes, indexes, glossaries, graphs, charts, illustrations, pictures, equations, formulas, and bibliographies. Structural order of material shall be maintained. Structural elements, such as headings, lists, and tables must be identified using current markup and tools. If good faith efforts fail to produce an agreement between the publisher or manufacturer and the public or private institution of higher education, as to an electronic format that will preserve the structural integrity of instructional materials, the publisher or manufacturer shall provide the instructional material in a verified and valid HTML format and shall preserve as much of the structural integrity of the instructional materials as possible.

(d) "Specialized format" means Braille, audio, or digital text that is exclusively for use by blind or other persons with print access disabilities.

(6) Nothing in this section is to be construed to prohibit a public or private institution of higher education from assisting a student with a print access disability through the use of an electronic version of instructional material gained through this section or by transcribing or translating or arranging for the transcription or translation of the instructional material into specialized formats that provide persons with print access disabilities the ability to have increased independent access to instructional materials. If such specialized format is made, the public or private institution of higher education may share the specialized format version of the instructional material with other students with print access disabilities for whom the public or private institution of higher education is authorized to request electronic versions of instructional material. The addition of captioning to video material by a Washington public or private institution of higher education does not constitute an infringement of copyright.

(7) A specialized format version of instructional materials developed at one public or private institution of higher education in Washington state may be shared for use by a student at another public or private institution of higher education in Washington state for whom the latter public or private institution of higher education is authorized to request electronic versions of instructional material.

(8) Nothing in this section shall be deemed to authorize any use of instructional materials that would constitute an infringement of copyright under the Copyright Revision Act of 1976, as amended (17 U.S.C. Sec. 101 et seq.).

(9) The governing boards of public and participating private institutions of higher education in Washington state shall each adopt guidelines consistent with this section for its implementation and administration. At a minimum, the guidelines shall address all of the following:

(a) The designation of materials deemed "required or essential to student success";

(b) The determination of the availability of technology for the conversion of materials pursuant to subsection (4) of this section and the conversion of mathematics and science materials pursuant to subsection (5)(c) of this section;

(c) The procedures and standards relating to distribution of files and materials pursuant to this section;

(d) The guidelines shall include procedures for granting exceptions when it is determined that an individual, firm, partnership or corporation that publishes or manufactures instructional materials is not technically able to comply with the requirements of this section; and

(e) Other matters as are deemed necessary or appropriate to carry out the purposes of this section.

(10) A violation of this chapter constitutes an unfair practice under chapter 49.60 RCW, the law against discrimination. All rights and remedies under chapter 49.60 RCW, including the right to file a complaint with the human rights commission and to bring a civil action, apply.

Passed by the Senate February 12, 2004.

Passed by the House March 4, 2004.

Approved by the Governor March 22, 2004.

Filed in Office of Secretary of State March 22, 2004.

CHAPTER 47

[House Bill 2765]

DEAF CHILDREN—EARLY INTERVENTION

AN ACT Relating to information and services for children who are deaf or hard of hearing; and adding a new chapter to Title 70 RCW.

Be it enacted by the Legislature of the State of Washington:

NEW SECTION. Sec. 1. (1) The legislature finds that children who are deaf or hard of hearing and their families have unique needs specific to the hearing loss. These unique needs reflect the challenges children with bearing loss and their families encounter related to their lack of full access to auditory communication.

(2) The legislature further finds that early detection of hearing loss in a child and early intervention and treatment have been demonstrated to be highly effective in facilitating a child's healthy development in a manner consistent with the child's age and cognitive ability.

(3) These combined factors support the need for early intervention services providers with specialized training and expertise, spanning the spectrum of available approaches and educational options, who can address the unique characteristics and needs of each child who is deaf or hard of hearing and that child's family.

NEW SECTION. Sec. 2. (1) There is established an advisory council in the department of social and health services for the purpose of advancing the development of a comprehensive and effective statewide system to provide prompt and effective early interventions for children in the state who are deaf or hard of hearing and their families.

(2) Members of the advisory council shall have training, experience, or interest in hearing loss in children. Membership shall include, but not be limited to, the following: Pediatricians; audiologists; teachers of the deaf and hard of hearing; parents of children who are deaf or hard of hearing; a representative from the Washington state school for the deaf; and representatives of the infant

toddler early intervention program in the department of social and health services, the department of health, and the office of the superintendent of public instruction.

NEW SECTION. Sec. 3. (1) The advisory council shall develop statewide standards for early intervention services and early intervention services providers specifically related to children who are deaf or hard of hearing.

(2) The advisory council shall develop these standards by January 1, 2005.

NEW SECTION. Sec. 4. (1) The advisory council shall create a pamphlet to be provided to the parents of a child in the state who is diagnosed with hearing loss by their child's pediatrician or audiologist, as appropriate, upon diagnosis of hearing loss. The pamphlet shall contain, at minimum, information on the following: The variety of interventions and treatments available for children who are deaf or hard of hearing; and resources for parent support, counseling, financing, and education related to hearing loss in children.

(2) The pamphlet shall be available for distribution by July 1, 2005.

NEW SECTION. Sec. 5. Sections 1 through 4 of this act constitute a new chapter in Title 70 RCW.

Passed by the House March 9, 2004.

Passed by the Senate March 4, 2004.

Approved by the Governor March 22, 2004.

Filed in Office of Secretary of State March 22, 2004.

CHAPTER 48

[Substitute Senate Bill 6688]

LICENSE PLATES—HELPING KIDS SPEAK

AN ACT Relating to a special "Helping Kids Speak" license plate; amending RCW 46.16.313 and 46.16.316; adding new sections to chapter 46.16 RCW; and adding a new section to chapter 46.04 RCW.

Be it enacted by the Legislature of the State of Washington:

NEW SECTION. Sec. 1. A new section is added to chapter 46.16 RCW to read as follows:

(1) The legislature recognizes the Helping Kids Speak license plate has been reviewed by the special license plate review board under RCW 46.16.725, and found to fully comply with all provisions of RCW 46.16.715 through 46.16.775.

(2) The department shall issue a special license plate displaying a symbol, approved by the special license plate review board, recognizing an organization that supports programs that provide no-cost speech pathology programs to children. The special license plate may be used in lieu of regular or personalized license plates for vehicles required to display one or two vehicle license plates, excluding vehicles registered under chapter 46.87 RCW, upon terms and conditions established by the department. The special plates will commemorate an organization that supports programs that provide free diagnostic and therapeutic services to children who have a severe delay in language or speech development.

NEW SECTION. Sec. 2. A new section is added to chapter 46.04 RCW to read as follows:

"Helping Kids Speak license plates" means license plates that display a symbol of an organization that supports programs that provide free diagnostic and therapeutic services to children who have a severe delay in language or speech development.

Sec. 3. RCW 46.16.313 and 1997 c 291 s 8 are each amended to read as follows:

(1) The department may establish a fee of no more than forty dollars for each type of special license plates issued under RCW 46.16.301(1) (a), (b), or (c), as existing before amendment by section 5, chapter 291, Laws of 1997, in an amount calculated to offset the cost of production of the special license plates and the administration of this program. ~~((Until December 31, 1997, the fee shall not exceed thirty five dollars, but effective with vehicle registrations due or to become due on January 1, 1998, the department may adjust the fee to no more than forty dollars.))~~ This fee is in addition to all other fees required to register and license the vehicle for which the plates have been requested. All such additional special license plate fees collected by the department shall be deposited in the state treasury and credited to the motor vehicle fund.

~~(2) ((Until December 31, 1997, in addition to all fees and taxes required to be paid upon application, registration, and renewal registration of a motor vehicle, the holder of a collegiate license plate shall pay a fee of thirty dollars. The department shall deduct an amount not to exceed two dollars of each fee collected under this subsection for administration and collection expenses incurred by it. The remaining proceeds, minus the cost of plate production, shall be remitted to the custody of the state treasurer with a proper identifying detailed report. The state treasurer shall credit the funds to the appropriate collegiate license plate fund as provided in RCW 28B.10.890.~~

~~(3) Effective with vehicle registrations due or to become due on January 1, 1998,))~~ In addition to all fees and taxes required to be paid upon application and registration of a motor vehicle, the holder of a collegiate license plate shall pay an initial fee of forty dollars. The department shall deduct an amount not to exceed twelve dollars of each fee collected under this subsection for administration and collection expenses incurred by it. The remaining proceeds shall be remitted to the custody of the state treasurer with a proper identifying detailed report. The state treasurer shall credit the funds to the appropriate collegiate license plate fund as provided in RCW 28B.10.890.

~~((4) Effective with annual renewals due or to become due on January 1, 1999,))~~ ~~(3)~~ In addition to all fees and taxes required to be paid upon renewal of a motor vehicle registration, the holder of a collegiate license plate shall pay a fee of thirty dollars. The department shall deduct an amount not to exceed two dollars of each fee collected under this subsection for administration and collection expenses incurred by it. The remaining proceeds shall be remitted to the custody of the state treasurer with a proper identifying detailed report. The state treasurer shall credit the funds to the appropriate collegiate license plate fund as provided in RCW 28B.10.890.

~~((5))~~ ~~(4)~~ In addition to all fees and taxes required to be paid upon application and registration of a motor vehicle, the holder of a special baseball stadium license plate shall pay an initial fee of forty dollars. The department shall deduct an amount not to exceed twelve dollars of each fee collected under this subsection for administration and collection expenses incurred by it. The

remaining proceeds, minus the cost of plate production, shall be distributed to a county for the purpose of paying the principal and interest payments on bonds issued by the county to construct a baseball stadium, as defined in RCW 82.14.0485, including reasonably necessary preconstruction costs, while the taxes are being collected under RCW 82.14.360. After this date, the state treasurer shall credit the funds to the state general fund.

~~(((6) Effective with annual renewals due or to become due on January 1, 1999,)) (5)~~ In addition to all fees and taxes required to be paid upon renewal of a motor vehicle registration, the holder of a special baseball stadium license plate shall pay a fee of thirty dollars. The department shall deduct an amount not to exceed two dollars of each fee collected under this subsection for administration and collection expenses incurred by it. The remaining proceeds shall be distributed to a county for the purpose of paying the principal and interest payments on bonds issued by the county to construct a baseball stadium, as defined in RCW 82.14.0485, including reasonably necessary preconstruction costs, while the taxes are being collected under RCW 82.14.360. After this date, the state treasurer shall credit the funds to the state general fund.

(6) Effective with vehicle registrations due or to become due on November 1, 2004, in addition to all fees and taxes required to be paid upon application and registration of a vehicle, the holder of a "Helping Kids Speak" license plate shall pay an initial fee of forty dollars. The department shall deduct an amount not to exceed twelve dollars of each fee collected under this subsection for administration and collection expenses incurred by it. The remaining proceeds must be remitted to the custody of the state treasurer with a proper identifying detailed report. Pursuant to RCW 46.16.755, the state treasurer shall credit the proceeds to the motor vehicle account until the department determines that the state has been reimbursed for the cost of implementing the "Helping Kids Speak" special license plate. Upon the determination by the department that the state has been reimbursed, the treasurer shall credit the proceeds to the "Helping Kids Speak" account established under section 4 of this act.

(7) Effective with annual renewals due or to become due on November 1, 2005, in addition to all fees and taxes required to be paid upon renewal of a vehicle registration, the holder of a "Helping Kids Speak" license plate shall, upon application, pay a fee of thirty dollars. The department shall deduct an amount not to exceed two dollars of each fee collected under this subsection for administration and collection expenses incurred by it. The remaining proceeds must be remitted to the custody of the state treasurer with a proper identifying detailed report. Pursuant to RCW 46.16.755, the state treasurer shall credit the proceeds to the motor vehicle account until the department determines that the state has been reimbursed for the cost of implementing the "Helping Kids Speak" special license plate. Upon the determination by the department that the state has been reimbursed, the treasurer shall credit the proceeds to the "Helping Kids Speak" account established under section 4 of this act.

NEW SECTION. Sec. 4. A new section is added to chapter 46.16 RCW to read as follows:

(1) The "Helping Kids Speak" account is created in the custody of the state treasurer. Upon the department's determination that the state has been reimbursed for the cost of implementing the "Helping Kids Speak" license plate, all receipts, except as provided in RCW 46.16.313 (6) and (7), from the "Helping

"Kids Speak" license plate must be deposited into the account. Only the director or the director's designee may authorize expenditures from this account. The account is subject to the allotment procedures under chapter 43.88 RCW, but an appropriation is not required for expenditures.

(2) Funds in the account must be disbursed subject to the following conditions and limitations:

(a) Under the requirements of RCW 46.16.765 the department must contract with a qualified nonprofit organization for the purpose of the organization providing free diagnostic and therapeutic services to families of children who suffer from a delay in language or speech development.

(b) For the purposes of this section, a "qualified nonprofit organization" means a not-for-profit corporation operating in Washington that has received a determination of tax exempt status under section 501(c)(3) of the federal internal revenue code. The organization must offer free language disorder diagnostic and therapeutic services to families of children who suffer from a delay in language or speech development.

(c) The qualified nonprofit organization must meet all requirements of RCW 46.16.765.

Sec. 5. RCW 46.16.316 and 1997 c 291 s 10 are each amended to read as follows:

Except as provided in RCW 46.16.305:

(1) When a person who has been issued a special license plate or plates under section 1 of this act or RCW 46.16.301 as it existed before amendment by section 5, chapter 291, Laws of 1997, sells, trades, or otherwise transfers or releases ownership of the vehicle upon which the special license plate or plates have been displayed, he or she shall immediately report the transfer of such plate or plates to an acquired vehicle or vehicle eligible for such plates pursuant to departmental rule, or he or she shall surrender such plates to the department immediately if such surrender is required by departmental rule. If a person applies for a transfer of the plate or plates to another eligible vehicle, a transfer fee of five dollars shall be charged in addition to all other applicable fees. Such transfer fees shall be deposited in the motor vehicle fund. Failure to surrender the plates when required is a traffic infraction.

(2) If the special license plate or plates issued by the department become lost, defaced, damaged, or destroyed, application for a replacement special license plate or plates shall be made and fees paid as provided by law for the replacement of regular license plates.

Passed by the Senate February 11, 2004.

Passed by the House March 4, 2004.

Approved by the Governor March 22, 2004.

Filed in Office of Secretary of State March 22, 2004.

CHAPTER 49

[Substitute House Bill 2830]

DRIVING RECORDS—INSURER REVIEW

AN ACT Relating to authorizing a fee for the limited purpose of reviewing driving records of existing policyholders for changes; and amending RCW 46.52.130.

Be it enacted by the Legislature of the State of Washington:

Sec. 1. RCW 46.52.130 and 2003 c 367 s 1 are each amended to read as follows:

(1) A certified abstract of the driving record shall be furnished only to:

(a) The individual named in the abstract;

(b) An employer or prospective employer or an agent acting on behalf of an employer or prospective employer, or a volunteer organization for which the named individual has submitted an application for a position that could require the transportation of children under eighteen years of age, adults over sixty-five years of age, or physically or mentally disabled persons;

(c) An employee or agent of a transit authority checking prospective volunteer vanpool drivers for insurance and risk management needs;

(d) The insurance carrier that has insurance in effect covering the employer or a prospective employer;

(e) The insurance carrier that has motor vehicle or life insurance in effect covering the named individual;

(f) The insurance carrier to which the named individual has applied;

(g) An alcohol/drug assessment or treatment agency approved by the department of social and health services, to which the named individual has applied or been assigned for evaluation or treatment; or

(h) City and county prosecuting attorneys.

(2) City attorneys and county prosecuting attorneys may provide the driving record to alcohol/drug assessment or treatment agencies approved by the department of social and health services to which the named individual has applied or been assigned for evaluation or treatment.

(3)(a) The director, upon proper request, shall furnish a certified abstract covering the period of not more than the last three years to insurance companies.

(b) The director may enter into a contractual agreement with an insurance company or its agent for the limited purpose of reviewing the driving records of existing policyholders for changes to the record during specified periods of time. The department shall establish a fee for this service, which must be deposited in the highway safety fund. The fee for this service must be set at a level that will not result in a net revenue loss to the state. Any information provided under this subsection, must be treated in the same manner and subject to the same restrictions as certified abstracts.

(4) Upon proper request, the director shall furnish a certified abstract covering a period of not more than the last five years to state approved alcohol/drug assessment or treatment agencies, except that the certified abstract shall also include records of alcohol-related offenses as defined in RCW 46.01.260(2) covering a period of not more than the last ten years.

(5) Upon proper request, a certified abstract of the full driving record maintained by the department shall be furnished to a city or county prosecuting attorney, to the individual named in the abstract, to an employer or prospective employer or an agent acting on behalf of an employer or prospective employer of the named individual, or to a volunteer organization for which the named individual has submitted an application for a position that could require the transportation of children under eighteen years of age, adults over sixty-five years of age, or physically or mentally disabled persons, or to an employee or

agent of a transit authority checking prospective volunteer vanpool drivers for insurance and risk management needs.

(6) The abstract, whenever possible, shall include:

(a) An enumeration of motor vehicle accidents in which the person was driving;

(b) The total number of vehicles involved;

(c) Whether the vehicles were legally parked or moving;

(d) Whether the vehicles were occupied at the time of the accident;

(e) Whether the accident resulted in any fatality;

(f) Any reported convictions, forfeitures of bail, or findings that an infraction was committed based upon a violation of any motor vehicle law;

(g) The status of the person's driving privilege in this state; and

(h) Any reports of failure to appear in response to a traffic citation or failure to respond to a notice of infraction served upon the named individual by an arresting officer.

(7) Certified abstracts furnished to prosecutors and alcohol/drug assessment or treatment agencies shall also indicate whether a recorded violation is an alcohol-related offense as defined in RCW 46.01.260(2) that was originally charged as one of the alcohol-related offenses designated in RCW 46.01.260(2)(b)(i).

(8) The abstract provided to the insurance company shall exclude any information, except that related to the commission of misdemeanors or felonies by the individual, pertaining to law enforcement officers or fire fighters as defined in RCW 41.26.030, or any officer of the Washington state patrol, while driving official vehicles in the performance of occupational duty. The abstract provided to the insurance company shall include convictions for RCW 46.61.5249 and 46.61.525 except that the abstract shall report them only as negligent driving without reference to whether they are for first or second degree negligent driving. The abstract provided to the insurance company shall exclude any deferred prosecution under RCW 10.05.060, except that if a person is removed from a deferred prosecution under RCW 10.05.090, the abstract shall show the deferred prosecution as well as the removal.

(9) The director shall collect for each abstract the sum of five dollars, which shall be deposited in the highway safety fund.

(10) Any insurance company or its agent receiving the certified abstract shall use it exclusively for its own underwriting purposes and shall not divulge any of the information contained in it to a third party. No policy of insurance may be canceled, nonrenewed, denied, or have the rate increased on the basis of such information unless the policyholder was determined to be at fault. No insurance company or its agent for underwriting purposes relating to the operation of commercial motor vehicles may use any information contained in the abstract relative to any person's operation of motor vehicles while not engaged in such employment, nor may any insurance company or its agent for underwriting purposes relating to the operation of noncommercial motor vehicles use any information contained in the abstract relative to any person's operation of commercial motor vehicles.

(11) Any employer or prospective employer or an agent acting on behalf of an employer or prospective employer, or a volunteer organization for which the named individual has submitted an application for a position that could require

the transportation of children under eighteen years of age, adults over sixty-five years of age, or physically or mentally disabled persons, receiving the certified abstract shall use it exclusively for his or her own purpose to determine whether the licensee should be permitted to operate a commercial vehicle or school bus, or operate a vehicle for a volunteer organization for purposes of transporting children under eighteen years of age, adults over sixty-five years of age, or physically or mentally disabled persons, upon the public highways of this state and shall not divulge any information contained in it to a third party.

(12) Any employee or agent of a transit authority receiving a certified abstract for its vanpool program shall use it exclusively for determining whether the volunteer licensee meets those insurance and risk management requirements necessary to drive a vanpool vehicle. The transit authority may not divulge any information contained in the abstract to a third party.

(13) Any alcohol/drug assessment or treatment agency approved by the department of social and health services receiving the certified abstract shall use it exclusively for the purpose of assisting its employees in making a determination as to what level of treatment, if any, is appropriate. The agency, or any of its employees, shall not divulge any information contained in the abstract to a third party.

(14) Release of a certified abstract of the driving record of an employee, prospective employee, or prospective volunteer requires a statement signed by: (a) The employee, prospective employee, or prospective volunteer that authorizes the release of the record, and (b) the employer or volunteer organization attesting that the information is necessary to determine whether the licensee should be employed to operate a commercial vehicle or school bus, or operate a vehicle for a volunteer organization for purposes of transporting children under eighteen years of age, adults over sixty-five years of age, or physically or mentally disabled persons, upon the public highways of this state. If the employer or prospective employer authorizes an agent to obtain this information on their behalf, this must be noted in the statement.

(15) Any negligent violation of this section is a gross misdemeanor.

(16) Any intentional violation of this section is a class C felony.

Passed by the House February 16, 2004.

Passed by the Senate March 5, 2004.

Approved by the Governor March 22, 2004.

Filed in Office of Secretary of State March 22, 2004.

CHAPTER 50

[Substitute House Bill 2657]

SECURITY GUARDS

AN ACT Relating to security guards; amending RCW 18.170.010 and 18.170.100; and adding a new section to chapter 18.170 RCW.

Be it enacted by the Legislature of the State of Washington:

Sec. 1. RCW 18.170.010 and 1991 c 334 s 1 are each amended to read as follows:

~~((Unless the context clearly requires otherwise,))~~ The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Armed private security guard" means a private security guard who has a current firearms certificate issued by the commission and is licensed as an armed private security guard under this chapter.

(2) "Armored vehicle guard" means a person who transports in an armored vehicle under armed guard, from one place to another place, valuables, jewelry, currency, documents, or any other item that requires secure delivery.

(3) "Burglar alarm response runner" means a person employed by a private security company to respond to burglar alarm system signals.

(4) "Burglar alarm system" means a device or an assembly of equipment and devices used to detect or signal unauthorized intrusion, movement, or exit at a protected premises, other than in a vehicle, to which police or private security guards are expected to respond.

(5) "Chief law enforcement officer" means the elected or appointed police administrator of a municipal, county, or state police or sheriff's department that has full law enforcement powers in its jurisdiction.

(6) "Classroom instruction" means instruction that takes place in a setting where individuals receiving training are assembled together and learn through lectures, study papers, class discussion, textbook study, or other means of organized formal education techniques, such as video, closed circuit, or other forms of electronic means, and as distinguished from on-the-job education or training.

~~(7)~~ (7) "Commission" means the criminal justice training commission established in chapter 43.101 RCW.

~~((7))~~ (8) "Department" means the department of licensing.

~~((8))~~ (9) "Director" means the director of the department of licensing.

~~((9))~~ (10) "Employer" includes any individual, firm, corporation, partnership, association, company, society, manager, contractor, subcontractor, bureau, agency, service, office, or an agent of any of the foregoing that employs or seeks to enter into an arrangement to employ any person as a private security guard.

~~((10))~~ (11) "Firearms certificate" means the certificate issued by the commission.

~~((11))~~ (12) "Licensee" means a person granted a license required by this chapter.

~~((12))~~ (13) "Person" includes any individual, firm, corporation, partnership, association, company, society, manager, contractor, subcontractor, bureau, agency, service, office, or an agent or employee of any of the foregoing.

~~((13))~~ (14) "Postassignment or on-the-job training" means training that occurs in either an assisted field environment or in a classroom instruction setting, or both.

(15) "Preassignment training" means the classroom training completed prior to being assigned to work independently.

(16) "Principal corporate officer" means the president, vice-president, treasurer, secretary, comptroller, or any other person who performs the same functions for the corporation as performed by these officers.

~~((14))~~ (17) "Private security company" means a person or entity licensed under this chapter and engaged in the business of providing the services of private security guards on a contractual basis.

~~((15))~~ (18) "Private security guard" means an individual who is licensed under this chapter and principally employed as or typically referred to as one of the following:

- (a) Security officer or guard;
- (b) Patrol or merchant patrol service officer or guard;
- (c) Armed escort or bodyguard;
- (d) Armored vehicle guard;
- (e) Burglar alarm response runner; or
- (f) Crowd control officer or guard.

~~((16))~~ (19) "Qualifying agent" means an officer or manager of a corporation who meets the requirements set forth in this chapter for obtaining a license to own or operate a private security company.

~~((17))~~ (20) "Sworn peace officer" means a person who is an employee of the federal government, the state, a political subdivision, agency, or department branch of a municipality, or other unit of local government, and has law enforcement powers.

Sec. 2. RCW 18.170.100 and 1995 c 277 s 7 are each amended to read as follows:

(1)(a) The director shall adopt rules establishing preassignment and postassignment or on-the-job training and testing requirements~~((, which shall))~~.

(b)(i) Except as provided under (b)(ii) of this subsection, beginning July 1, 2005, all security guards licensed on or after July 1, 2005, must complete at least eight hours of preassignment training. Preassignment training must include a minimum of four hours of ((classes)) classroom instruction, and a minimum of four additional hours that may be of classroom training, on-the-job training, or any combination of the two. A department certified trainer must report the preassignment training to the department.

(ii) Any person who was most recently employed full-time as a sworn peace officer not more than five years prior to applying to become licensed as a private security guard may be deemed to satisfy the training required under (b)(i) of this subsection upon passage of the examination typically administered to applicants at the conclusion of the preassignment training required under (b)(i) of this subsection.

(iii) The director may establish, by rule, ((continuing education)) training requirements for private security guards.

(2) Beginning July 1, 2005, all security guards must complete at least eight hours of postassignment or on-the-job training.

(a) For security guards initially licensed on or after July 1, 2005, four hours of postassignment training must be completed within six months of the date an initial private security guard license is issued by the director and the remaining four hours completed within twelve months of the date an initial private security guard license is issued by the department.

(b) For security guards licensed prior to July 1, 2005, at least four hours of postassignment training must be completed by December 31, 2005, and the remaining four hours by July 1, 2006.

(c) Postassignment or on-the-job training must be in the topic areas established by the director and may occur in a classroom setting, in the field, or a combination of the two. A department certified trainer need not report postassignment or on-the-job training. However, a department-certified trainer must attest in writing that the training occurred.

(d) The number of required postassignment training hours must be increased by one hour on January 1st of every year until January 1, 2012. The number of postassignment training hours required of a security guard is the number required on the date the security guard was initially licensed by the department. These additional hours of training must be completed within eighteen months after the date a security guard initial license is issued by the department.

(e) The director shall require companies to maintain records regarding the postassignment training hours completed by each employee. All such records are subject to inspection by the department. The training requirements and test results must be recorded and attested to as appropriate by a certified trainer.

(3) The director shall consult with the private security industry and law enforcement before adopting or amending the ((preassignment)) training ((or continuing education)) requirements of this section.

NEW SECTION. Sec. 3. A new section is added to chapter 18.170 RCW to read as follows:

The director has the authority to negotiate reciprocity agreements with other states allowing licensed security officers from Washington to work in those other states.

Passed by the House March 8, 2004.

Passed by the Senate March 3, 2004.

Approved by the Governor March 22, 2004.

Filed in Office of Secretary of State March 22, 2004.

CHAPTER 51

[Substitute Senate Bill 6341]

COSMETOLOGY

AN ACT Relating to cosmetology, barbering, manicuring, and esthetics; amending RCW 18.16.110, 18.16.260, and 18.16.160; reenacting and amending RCW 18.16.060, 18.16.200, and 18.16.030; adding a new section to chapter 18.16 RCW; creating new sections; repealing RCW 18.16.165; and declaring an emergency.

Be it enacted by the Legislature of the State of Washington:

Sec. 1. RCW 18.16.060 and 2002 c 111 s 5 and 2002 c 86 s 214 are each reenacted and amended to read as follows:

(1) It is unlawful for any person to engage in a practice listed in subsection (2) of this section unless the person has a license in good standing as required by this chapter. A license issued under this chapter shall be considered to be "in good standing" except when: (a) The license has expired or has been canceled and has not been renewed in accordance with RCW 18.16.110; (b) the license has been denied, revoked, or suspended under RCW 18.16.210, 18.16.230, or 18.16.240, and has not been reinstated; (c) the license is held by a person who has not fully complied with an order of the director issued under RCW 18.16.210 requiring the licensee to pay restitution or a fine, or to acquire

additional training; or (d) the license has been placed on inactive status at the request of the licensee, and has not been reinstated in accordance with RCW 18.16.110(3).

(2) The director may take action under RCW 18.235.150 and 18.235.160 against any person who does any of the following without first obtaining, and maintaining in good standing, the license required by this chapter:

(a) Except as provided in subsection ~~((2))~~ (3) of this section, engages in the commercial practice of cosmetology, barbering, esthetics, or manicuring~~((or instructing))~~;

(b) Instructs in a school;

(c) Operates a school; or

(d) Operates a salon/shop, personal services, or mobile unit.

~~((2))~~ (3) A person who receives a license as an instructor may engage in the commercial practice for which he or she held a license when applying for the instructor license without also renewing the previously held license. However, a person licensed as an instructor whose license to engage in a commercial practice is not or at any time was not renewed ~~((cannot))~~ may not engage in the commercial practice previously permitted under that license unless that person renews the previously held license.

NEW SECTION. Sec. 2. A new section is added to chapter 18.16 RCW to read as follows:

(1) If the holder of an individual license in good standing submits a written and notarized request that the licensee's cosmetology, barber, manicurist, esthetician, or instructor license be placed on inactive status, together with a fee equivalent to that established by rule for a duplicate license, the department shall place the license on inactive status until the expiration date of the license. If the date of the request is no more than six months before the expiration date of the license, a request for a two-year extension of the inactive status, as provided under subsection (2) of this section, may be submitted at the same time as the request under this subsection.

(2) If the holder of a license placed on inactive status under this section submits, by the expiration date of the license, a written and notarized request to extend that status for an additional two years, the department shall, without additional fee, extend the expiration date of: (a) The licensee's individual license; and (b) the inactive status for two years from the expiration date of the license.

(3) A license placed on inactive status under this section may not be extended more frequently than once in any twenty-four month period or for more than six consecutive years.

(4) If, by the expiration date of a license placed on inactive status under this section, a licensee is unable, or fails, to request that the status be extended and the license is not renewed, the license shall be canceled.

Sec. 3. RCW 18.16.110 and 2002 c 111 s 8 are each amended to read as follows:

(1) The director shall issue the appropriate license to any applicant who meets the requirements as outlined in this chapter.

(2) Except as provided in RCW 18.16.260:

(a) Failure to renew a license (~~(before)~~) by its expiration date subjects the holder to a penalty fee and payment of each year's renewal fee, at the current rate~~(-); and~~

(b) A person whose license has not been renewed within one year after its expiration date shall have the license canceled and shall be required to submit an application, pay the license fee, meet current licensing requirements, and pass any applicable examination or examinations, in addition to the other requirements of this chapter, before the license may be reinstated.

(3) In lieu of the requirements of subsection (2)(a) of this section, a license placed on inactive status under section 2 of this act may be reinstated to good standing upon receipt by the department of: (a) Payment of a renewal fee, without penalty, for a two-year license commencing on the date the license is reinstated; and (b) if the license was on inactive status during any time that the board finds that a health or other requirement applicable to the license has changed, evidence showing that the holder of the license has successfully completed, from a school licensed under RCW 18.16.140, at least the number of curriculum clock hours of instruction that the board deems necessary for a licensee to be brought current with respect to such changes, but in no case may the number of hours required under this subsection exceed four hours per year that the license was on inactive status.

(4) Nothing in this section authorizes a person whose license has expired or is on inactive status to engage in a practice prohibited under RCW 18.16.060 until the license is renewed or reinstated.

(5) Upon request and payment of an additional fee to be established by rule by the director, the director shall issue a duplicate license to an applicant.

Sec. 4. RCW 18.16.200 and 2002 c 111 s 12 and 2002 c 86 s 217 are each reenacted and amended to read as follows:

In addition to the unprofessional conduct described in RCW 18.235.130, the director may take disciplinary action against any applicant or licensee under this chapter (~~(may be subject to disciplinary action by the director)~~) if the licensee or applicant:

(1) Has been found to have violated any provisions of chapter 19.86 RCW;

(2) Has engaged in (~~(the commercial)~~) a practice (~~(of cosmetology, barbering, manicuring, esthetics, or instructed in or operated a school)~~) prohibited under RCW 18.16.060 without first obtaining, and maintaining in good standing, the license required by this chapter;

~~((2))~~ (3) Has engaged in the commercial practice of cosmetology, barbering, manicuring, or esthetics in a school;

~~((3))~~ (4) Has not provided a safe, sanitary, and good moral environment for students (~~(and)~~) in a school or the public;

(5) Has failed to display licenses required in this chapter; or

~~((4))~~ (6) Has violated any provision of this chapter or any rule adopted under it.

Sec. 5. RCW 18.16.260 and 2002 c 111 s 16 are each amended to read as follows:

(1)(a) Prior to July 1, (~~(2003)~~) 2005, (i) a cosmetology licensee(s) who held a license in good standing between June 30, 1999, and June 30, 2003, may request a renewal of the license or an additional license in barbering,

manicuring, and/or esthetics; and (ii) a licensee who held a barber, manicurist, or esthetics license between June 30, 1999, and June 30, 2003, may request a renewal of such licenses held during that period.

(b) A license renewal fee, including, if applicable, a renewal fee, at the current rate, for each year the licensee did not hold a license in good standing between July 1, 2001, and the date of the renewal request, must be paid prior to issuance of each type of license requested. After June 30, ((2003)) 2005, any cosmetology licensee wishing to renew an expired license or obtain additional licenses must meet the applicable renewal, training, and examination requirements of this chapter.

(2) ~~((Prior to July 1, 2003, students enrolled in a licensed school in an approved cosmetology curriculum may apply for the examination in cosmetology, manicuring, and esthetics. An examination fee must be paid for each examination selected. After June 30, 2003, students enrolled in a licensed school in an approved cosmetology curriculum may not apply for examination in manicuring and esthetics without meeting the training requirements of this chapter.))~~ The director may, as provided in RCW 43.24.140, modify the duration of any additional license granted under this section to make all licenses issued to a person expire on the same date.

NEW SECTION. Sec. 6. The department of licensing shall:

(1) Within ninety days after the effective date of this section, notify each person who held a cosmetology, barber, manicurist, or esthetician license between June 30, 1999, and June 30, 2003, of the provisions of this act by mailing a notice as specified in this section to the licensee's last known mailing address;

(2) Include in the notice required by this section:

(a) A summary of this act, including a summary of the requirements for (i) renewing and obtaining additional licenses; and (ii) requesting placement on inactive status;

(b) A telephone number within the department for obtaining further information;

(c) The department's internet address; and

(d) On the outside of the notice, a facsimile of the state seal, the department's return address, and the words "Notice of Legislative Changes — Cosmetology, Barbering, Manicuring, and Esthetics Licensing Information Enclosed" in conspicuous bold face type.

Sec. 7. RCW 18.16.030 and 2002 c 111 s 3 and 2002 c 86 s 213 are each reenacted and amended to read as follows:

In addition to any other duties imposed by law, including RCW 18.235.030 and 18.235.040, the director shall have the following powers and duties:

(1) To set all license, examination, and renewal fees in accordance with RCW 43.24.086;

(2) To adopt rules necessary to implement this chapter;

(3) To prepare and administer or approve the preparation and administration of licensing examinations;

(4) To establish minimum safety and sanitation standards for schools, instructors, cosmetologists, barbers, manicurists, estheticians, salons/shops, personal services, and mobile units;

- (5) To establish curricula for the training of students under this chapter;
- (6) To maintain the official department record of applicants and licensees;
- (7) To establish by rule the procedures for an appeal of an examination failure;
- (8) To set license expiration dates and renewal periods for all licenses consistent with this chapter; (~~and~~)
- (9) To ensure that all informational notices produced and mailed by the department regarding statutory and regulatory changes affecting any particular class of licensees are mailed to each licensee in good standing or on inactive status in the affected class whose mailing address on record with the department has not resulted in mail being returned as undeliverable for any reason; and
- (10) To make information available to the department of revenue to assist in collecting taxes from persons required to be licensed under this chapter.

Sec. 8. RCW 18.16.160 and 1991 c 324 s 13 are each amended to read as follows:

In addition to any other legal remedy, any student or instructor-trainee having a claim against a school may bring suit upon the approved security required in RCW 18.16.140(1)(~~(e)~~) (d) in the superior or district court of Thurston county or the county in which the educational services were offered by the school. Action upon the approved security shall be commenced by filing the complaint with the clerk of the appropriate superior or district court within one year from the date of the cancellation of the approved security: PROVIDED, That no action shall be maintained upon the approved security for any claim which has been barred by any nonclaim statute or statute of limitations of this state. Service of process in an action upon the approved security shall be exclusively by service upon the director. Two copies of the complaint shall be served by registered or certified mail upon the director at the time the suit is started. Such service shall constitute service on the approved security and the school. The director shall transmit the complaint or a copy thereof to the school at the address listed in the director's records and to the surety within forty-eight hours after it has been received. The approved security shall not be liable in an aggregate amount in excess of the amount named in the approved security. In any action on an approved security, the prevailing party is entitled to reasonable attorney's fees and costs.

The director shall maintain a record, available for public inspection, of all suits commenced under this chapter upon approved security.

NEW SECTION. Sec. 9. RCW 18.16.165 (Licenses issued, students enrolled before January 1, 1992—Curricula updates) and 1991 c 324 s 8 are each repealed.

NEW SECTION. Sec. 10. If specific funding for the purposes of this act, referencing this act by bill or chapter number, is not provided by June 30, 2004, in the omnibus appropriations act, this act is null and void.

NEW SECTION. Sec. 11. This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately.

Passed by the Senate March 9, 2004.

Passed by the House March 3, 2004.

Approved by the Governor March 22, 2004.
Filed in Office of Secretary of State March 22, 2004.

CHAPTER 52

[Engrossed Substitute Senate Bill 6478]

EPHEDRINE—SALES

AN ACT Relating to further regulation of the sale of ephedrine, pseudoephedrine, and phenylpropanolamine; amending RCW 18.64.046, 18.64.047, 69.43.110, 69.43.035, and 69.43.130; reenacting and amending RCW 18.64.044; creating a new section; prescribing penalties; and providing an effective date.

Be it enacted by the Legislature of the State of Washington:

NEW SECTION. Sec. 1. The legislature finds that quantities of ephedrine, pseudoephedrine, and phenylpropanolamine continue to be sold at the wholesale and retail levels far in excess of legitimate consumer needs. The excess quantities being sold are most likely used in the criminal manufacture of methamphetamine. It is therefore necessary for the legislature to further regulate the sales of these drugs, including sales from out-of-state sources, in order to reduce the threat that methamphetamine presents to the people of the state.

Sec. 2. RCW 18.64.044 and 1989 1st ex.s. c 9 s 401 and 1989 c 352 s 1 are each reenacted and amended to read as follows:

(1) A shopkeeper registered as provided in this section may sell nonprescription drugs, if such drugs are sold in the original package of the manufacturer.

(2) Every shopkeeper not a licensed pharmacist, desiring to secure the benefits and privileges of this section, is hereby required to register as a shopkeeper through the master license system, and he or she shall pay the fee determined by the secretary for registration, and on a date to be determined by the secretary thereafter the fee determined by the secretary for renewal of the registration; and shall at all times keep said registration or the current renewal thereof conspicuously exposed in the ((shop)) location to which it applies. In event such shopkeeper's registration is not renewed by the master license expiration date, no renewal or new registration shall be issued except upon payment of the registration renewal fee and the master license delinquency fee under chapter 19.02 RCW. This registration fee shall not authorize the sale of legend drugs or controlled substances.

(3) The registration fees determined by the secretary under subsection (2) of this section shall not exceed the cost of registering the shopkeeper.

(4) Any shopkeeper who shall vend or sell, or offer to sell to the public any such nonprescription drug or preparation without having registered to do so as provided in this section, shall be guilty of a misdemeanor and each sale or offer to sell shall constitute a separate offense.

(5) A shopkeeper who is not a licensed pharmacy may purchase ephedrine, pseudoephedrine, or phenylpropanolamine, or their salts, isomers, or salts of isomers, only from a wholesaler licensed by the department under RCW 18.64.046 or from a manufacturer licensed by the department under RCW 18.64.045. The board shall issue a warning to a shopkeeper who violates this subsection, and may suspend or revoke the registration of the shopkeeper for a subsequent violation.

(6) A shopkeeper who has purchased ephedrine, pseudoephedrine, or phenylpropanolamine, or their salts, isomers, or salts of isomers, in a suspicious transaction as defined in RCW 69.43.035, is subject to the following requirements:

(a) The shopkeeper may not sell any quantity of ephedrine, pseudoephedrine, or phenylpropanolamine, or their salts, isomers, or salts of isomers, if the total monthly sales of these products exceed ten percent of the shopkeeper's total prior monthly sales of nonprescription drugs in March through October. In November through February, the shopkeeper may not sell any quantity of ephedrine, pseudoephedrine, or phenylpropanolamine, or their salts, isomers, or salts of isomers, if the total monthly sales of these products exceed twenty percent of the shopkeeper's total prior monthly sales of nonprescription drugs. For purposes of this section, "monthly sales" means total dollars paid by buyers. The board may suspend or revoke the registration of a shopkeeper who violates this subsection.

(b) The shopkeeper shall maintain inventory records of the receipt and disposition of nonprescription drugs, utilizing existing inventory controls if an auditor or investigator can determine compliance with (a) of this subsection, and otherwise in the form and manner required by the board. The records must be available for inspection by the board or any law enforcement agency and must be maintained for two years. The board may suspend or revoke the registration of a shopkeeper who violates this subsection. For purposes of this subsection, "disposition" means the return of product to the wholesaler or distributor.

Sec. 3. RCW 18.64.046 and 2003 c 53 s 133 are each amended to read as follows:

(1) The owner of each place of business which sells legend drugs and nonprescription drugs, or nonprescription drugs at wholesale shall pay a license fee to be determined by the secretary, and thereafter, on or before a date to be determined by the secretary as provided in RCW 43.70.250 and 43.70.280, a like fee to be determined by the secretary, for which the owner shall receive a license of location from the department, which shall entitle such owner to either sell legend drugs and nonprescription drugs or nonprescription drugs at wholesale at the location specified for the period ending on a date to be determined by the secretary, and each such owner shall at the time of payment of such fee file with the department, on a blank therefor provided, a declaration of ownership and location, which declaration of ownership and location so filed as aforesaid shall be deemed presumptive evidence of the ownership of such place of business mentioned therein. It shall be the duty of the owner to notify immediately the department of any change of location and ownership and to keep the license of location or the renewal thereof properly exhibited in such place of business.

(2) Failure to conform with this section is a misdemeanor, and each day that the failure continues is a separate offense.

(3) In event the license fee remains unpaid on the date due, no renewal or new license shall be issued except upon compliance with administrative procedures, administrative requirements, and fees determined as provided in RCW 43.70.250 and 43.70.280.

(4) No wholesaler may sell any quantity of drug products containing ephedrine, pseudoephedrine, phenylpropanolamine, or their salts, isomers, or salts of isomers, if the total monthly sales of these products to persons within the

state of Washington exceed five percent of the wholesaler's total prior monthly sales of nonprescription drugs to persons within the state in March through October. In November through February, no wholesaler may sell any quantity of drug products containing ephedrine, pseudoephedrine, or phenylpropanolamine, or their salts, isomers, or salts of isomers if the total monthly sales of these products to persons within the state of Washington exceed ten percent of the wholesaler's total prior monthly sales of nonprescription drugs to persons within the state. For purposes of this section, monthly sales means total dollars paid by buyers. The board may suspend or revoke the license of any wholesaler that violates this section.

(5) The board may exempt a wholesaler from the limitations of subsection (4) of this section if it finds that the wholesaler distributes nonprescription drugs only through transactions between divisions, subsidiaries, or related companies when the wholesaler and the retailer are related by common ownership, and that neither the wholesaler nor the retailer has a history of suspicious transactions in precursor drugs as defined in RCW 69.43.035.

(6) The requirements for a license apply to all persons, in Washington and outside of Washington, who sell both legend drugs and nonprescription drugs and to those who sell only nonprescription drugs, at wholesale to pharmacies, practitioners, and shopkeepers in Washington.

(7) No wholesaler may sell any quantity of ephedrine, pseudoephedrine, phenylpropanolamine, or their salts, isomers, or salts of isomers, to any person in Washington other than a pharmacy licensed under this chapter, a shopkeeper or itinerant vendor registered under this chapter, or a practitioner as defined in RCW 18.64.011. A violation of this subsection is punishable as a class C felony according to chapter 9A.20 RCW, and each sale in violation of this subsection constitutes a separate offense.

Sec. 4. RCW 18.64.047 and 2003 c 53 s 134 are each amended to read as follows:

(1) Any itinerant vendor or any peddler of any nonprescription drug or preparation for the treatment of disease or injury, shall pay a registration fee determined by the secretary on a date to be determined by the secretary as provided in RCW 43.70.250 and 43.70.280. The department may issue a registration to such vendor on an approved application made to the department.

(2) Any itinerant vendor or peddler who shall vend or sell, or offer to sell to the public any such nonprescription drug or preparation without having registered to do so as provided in this section, is guilty of a misdemeanor and each sale or offer to sell shall constitute a separate offense.

(3) In event the registration fee remains unpaid on the date due, no renewal or new registration shall be issued except upon compliance with administrative procedures, administrative requirements, and fees determined as provided in RCW 43.70.250 and 43.70.280. This registration shall not authorize the sale of legend drugs or controlled substances.

(4) An itinerant vendor may purchase ephedrine, pseudoephedrine, or phenylpropanolamine, or their salts, isomers, or salts of isomers only from a wholesaler licensed by the department under RCW 18.64.046 or from a manufacturer licensed by the department under RCW 18.64.045. The board shall issue a warning to any itinerant vendor who violates this subsection and may suspend or revoke the registration of the vendor for a subsequent violation.

(5) An itinerant vendor who has purchased ephedrine, pseudoephedrine, or phenylpropanolamine, or their salts, isomers, or salts of isomers, in a suspicious transaction as defined in RCW 69.43.035, is subject to the following requirements:

(a) The itinerant vendor may not sell any quantity of ephedrine, pseudoephedrine, or phenylpropanolamine, or their salts, isomers, or salts of isomers, if the total monthly sales of these products exceed ten percent of the vendor's total prior monthly sales of nonprescription drugs in March through October. In November through February, the vendor may not sell any quantity of ephedrine, pseudoephedrine, or phenylpropanolamine, or their salts, isomers, or salts of isomers, if the total monthly sales of these products exceed twenty percent of the vendor's total prior monthly sales of nonprescription drugs. For purposes of this section, "monthly sales" means total dollars paid by buyers. The board may suspend or revoke the registration of an itinerant vendor who violates this subsection.

(b) The itinerant vendor shall maintain inventory records of the receipt and disposition of nonprescription drugs, utilizing existing inventory controls if an auditor or investigator can determine compliance with (a) of this subsection, and otherwise in the form and manner required by the board. The records must be available for inspection by the board or any law enforcement agency and must be maintained for two years. The board may suspend or revoke the registration of an itinerant vendor who violates this subsection. For purposes of this subsection, "disposition" means the return of product to the wholesaler or distributor.

Sec. 5. RCW 69.43.110 and 2001 c 96 s 9 are each amended to read as follows:

(1) It is unlawful for a pharmacy licensed by, or shopkeeper or itinerant vendor registered with, the department of health under chapter 18.64 RCW, or an employee thereof, or a practitioner as defined in RCW 18.64.011, knowingly to sell, transfer, or to otherwise furnish, in a single transaction:

(a) More than three packages of one or more products that he or she knows to contain ephedrine, pseudoephedrine, or phenylpropanolamine, their salts, isomers, or salts of isomers; or

(b) A single package of any product that he or she knows to contain more than three grams of ephedrine, pseudoephedrine, or phenylpropanolamine, their salts, isomers, or salts of isomers, or a combination of any of these substances.

(2) It is unlawful for a person who is not a manufacturer, wholesaler, pharmacy, practitioner, shopkeeper, or itinerant vendor licensed by or registered with the department of health under chapter 18.64 RCW to purchase or acquire, in any twenty-four hour period, more than the quantities of the substances specified in subsection (1) of this section.

(3) It is unlawful for any person to sell or distribute any of the substances specified in subsection (1) of this section unless the person is licensed by or registered with the department of health under chapter 18.64 RCW, or is a practitioner as defined in RCW 18.64.011.

(4) A violation of this section is a gross misdemeanor.

Sec. 6. RCW 69.43.035 and 2001 c 96 s 4 are each amended to read as follows:

(1) Any manufacturer or wholesaler who sells, transfers, or otherwise furnishes any substance specified in RCW 69.43.010(1) to any person in a suspicious transaction shall report the transaction in writing to the state board of pharmacy.

(2) Any person specified in subsection (1) of this section who does not submit a report as required by subsection (1) of this section is guilty of a gross misdemeanor.

(3) For the purposes of this section, "suspicious transaction" means a sale or transfer to which any of the following applies:

(a) The circumstances of the sale or transfer would lead a reasonable person to believe that the substance is likely to be used for the purpose of unlawfully manufacturing a controlled substance under chapter 69.50 RCW, based on such factors as the amount involved, the method of payment, the method of delivery, and any past dealings with any participant in the transaction. The state board of pharmacy shall adopt by rule criteria for determining whether a transaction is suspicious, taking into consideration the recommendations in appendix A of the report to the United States attorney general by the suspicious orders task force under the federal comprehensive methamphetamine control act of 1996.

(b) The transaction involves payment for any substance specified in RCW 69.43.010(1) in cash or money orders in a total amount of more than two hundred dollars.

(4) The board of pharmacy shall transmit to the department of revenue a copy of each report of a suspicious transaction that it receives under this section.

Sec. 7. RCW 69.43.130 and 2001 c 96 s 11 are each amended to read as follows:

RCW 69.43.110 and 69.43.120 do not apply to:

(1) Pediatric products primarily intended for administration to children under twelve years of age, according to label instructions, either: (a) In solid dosage form whose individual dosage units do not exceed fifteen milligrams of ephedrine, pseudoephedrine, or phenylpropanolamine; or (b) in liquid form whose recommended dosage, according to label instructions, does not exceed fifteen milligrams of ephedrine, pseudoephedrine, or phenylpropanolamine per five milliliters of liquid product;

(2) Pediatric liquid products primarily intended for administration to children under two years of age for which the recommended dosage does not exceed two milliliters and the total package content does not exceed one fluid ounce; ((or))

(3) Products that the state board of pharmacy, upon application of a manufacturer, exempts by rule from RCW 69.43.110 and 69.43.120 because the product has been formulated in such a way as to effectively prevent the conversion of the active ingredient into methamphetamine, or its salts or precursors; or

(4) Products, as packaged, that the board of pharmacy, upon application of a manufacturer, exempts from RCW 69.43.110(1)(b) and 69.43.120 because:

(a) The product meets the federal definition of an ordinary over-the-counter pseudoephedrine product as defined in 21 U.S.C. 802;

(b) The product is a salt, isomer, or salts of isomers of pseudoephedrine and, as packaged, has a total weight of more than three grams but the net weight of the pseudoephedrine base is equal to or less than three grams; and

(c) The board of pharmacy determines that the value to the people of the state of having the product, as packaged, available for sale to consumers outweighs the danger, and the product, as packaged, has not been used in the illegal manufacture of methamphetamine.

NEW SECTION. Sec. 8. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected.

NEW SECTION. Sec. 9. This act takes effect July 1, 2004.

Passed by the Senate February 13, 2004.

Passed by the House March 2, 2004.

Approved by the Governor March 22, 2004.

Filed in Office of Secretary of State March 22, 2004.

CHAPTER 53

[Senate Bill 6337]

BIRTH CERTIFICATES—FEE

AN ACT Relating to the fee for birth certificates suitable for display; and amending RCW 70.58.085.

Be it enacted by the Legislature of the State of Washington:

Sec. 1. RCW 70.58.085 and 1987 c 351 s 6 are each amended to read as follows:

(1) In addition to the original birth certificate, the state registrar shall issue upon request and upon payment of ~~((a fee of twenty-five dollars))~~ the fee established pursuant to subsection (3) of this section a birth certificate representing that the birth of the person named thereon is recorded in the office of the registrar. The certificate issued under this section shall be in a form consistent with the need to protect the integrity of vital records but shall be suitable for display. It may bear the seal of the state printed thereon and may be signed by the governor. It shall have the same status as evidence as the original birth certificate.

(2) Of the funds received under subsection (1) of this section, the amount needed to reimburse the registrar for expenses incurred in administering this section shall be credited to the state registrar account. The remainder shall be credited to the children's trust fund established under RCW 43.121.100.

(3) The fee shall be set by the council established pursuant to RCW 43.121.020, at a level likely to maximize revenues for the children's trust fund.

Passed by the Senate February 16, 2004.

Passed by the House March 5, 2004.

Approved by the Governor March 22, 2004.

Filed in Office of Secretary of State March 22, 2004.

CHAPTER 54

[Engrossed Senate Bill 6411]

FOOD ASSISTANCE

AN ACT Relating to reducing hunger; amending RCW 74.08A.010 and 74.08.025; adding a new section to chapter 28A.235 RCW; adding a new section to chapter 74.04 RCW; and creating new sections.

Be it enacted by the Legislature of the State of Washington:

NEW SECTION. Sec. 1. The legislature recognizes that hunger and food insecurity are serious problems in the state. Since the United States department of agriculture began to collect data on hunger and food insecurity in 1995, Washington has been ranked each year within the top five states with the highest levels of hunger. A significant number of these households classified as hungry are families with children.

The legislature recognizes the correlation between adequate nutrition and a child's development and school performance. This problem can be greatly diminished through improved access to federal nutrition programs.

The legislature also recognizes that improved access to federal nutrition and assistance programs, such as the federal food stamp program, can be a critical factor in enabling recipients to gain the ability to support themselves and their families. This is an important step towards self-sufficiency and decreased long-term reliance on governmental assistance and will serve to strengthen families in this state.

NEW SECTION. Sec. 2. A new section is added to chapter 28A.235 RCW to read as follows:

(1) For the purposes of this section:

(a) "Free or reduced-price lunch" means a lunch served by a school district participating in the national school lunch program to a student qualifying for national school lunch program benefits based on family size-income criteria.

(b) "School lunch program" means a meal program meeting the requirements defined by the superintendent of public instruction under subsection (4) of this section.

(c) "Summer food service program" means a meal or snack program meeting the requirements defined by the superintendent of public instruction under subsection (5) of this section.

(2) School districts shall implement a school lunch program in each public school in the district in which educational services are provided to children in any of the grades kindergarten through four and in which twenty-five percent or more of the enrolled students qualify for a free or reduced-price lunch. In developing and implementing its school lunch program, each school district may consult with an advisory committee including school staff, community members, and others appointed by the board of directors of the district.

(3) Applications to determine free or reduced-price lunch eligibility shall be distributed and collected for all households of children in schools containing any of the grades kindergarten through four and in which there are no United States department of agriculture child nutrition programs. The applications that are collected must be reviewed to determine eligibility for free or reduced-price lunches. Nothing in this section shall be construed to require completion or submission of the application by a parent or guardian.

(4) Using the most current available school data on free and reduced-price lunch eligibility, the superintendent of public instruction shall adopt a schedule for implementation of school lunch programs at each school required to offer such a program under subsection (2) of this section as follows:

(a) Schools not offering a school lunch program and in which twenty-five percent or more of the enrolled students are eligible for free or reduced-price lunch shall implement a school lunch program not later than the second day of school in the 2005-06 school year and in each school year thereafter.

(b) The superintendent shall establish minimum standards defining the lunch meals to be served, and such standards must be sufficient to qualify the meals for any available federal reimbursement.

(c) Nothing in this section shall be interpreted to prevent a school from implementing a school lunch program earlier than the school is required to do so.

(5) Each school district shall implement a summer food service program in each public school in the district in which a summer program of academic, enrichment, or remedial services is provided and in which fifty percent or more of the children enrolled in the school qualify for free or reduced-price lunch. However, the superintendent of public instruction shall develop rules establishing criteria to permit an exemption for a school that can demonstrate availability of an adequate alternative summer feeding program. Sites providing meals should be open to all children in the area, unless a compelling case can be made to limit access to the program. The superintendent of public instruction shall adopt a definition of compelling case and a schedule for implementation as follows:

(a) Beginning the summer of 2005 if the school currently offers a school breakfast or lunch program; or

(b) Beginning the summer following the school year during which a school implements a school lunch program under subsection (4) of this section.

(6) Schools not offering a breakfast or lunch program may meet the meal service requirements of subsections (4) and (5) of this section through any of the following:

(a) Preparing the meals on-site;

(b) Receiving the meals from another school that participates in a United States department of agriculture child nutrition program; or

(c) Contracting with a nonschool entity that is a licensed food service establishment under RCW 69.07.010.

(7) Requirements that school districts have a school lunch program under this section shall not create or imply any state funding obligation for these costs. The legislature does not intend to include these programs within the state's obligation for basic education funding under Article IX of the state Constitution.

(8) The requirements in this section shall lapse if the federal reimbursement for any school breakfasts, lunches, or summer food service programs is eliminated.

(9) School districts may be exempted from the requirements of this section by showing good cause why they cannot comply with the office of the superintendent of public instruction to the extent that such exemption is not in conflict with federal or state law.

NEW SECTION. Sec. 3. A new section is added to chapter 74.04 RCW to read as follows:

(1) To the maximum extent allowable by federal law, the department shall implement simplified reporting for the food stamp program by October 31, 2004.

(2) For the purposes of this section, "simplified reporting" means the only change in circumstance that a recipient of a benefit program must report between eligibility reviews is an increase of income that would result in ineligibility for the benefit program or a change of address. Every six months the assistance unit must either complete a semiannual report or participate in an eligibility review.

Sec. 4. RCW 74.08A.010 and 1997 c 58 s 103 are each amended to read as follows:

(1) A family that includes an adult who has received temporary assistance for needy families for sixty months after July 27, 1997, shall be ineligible for further temporary assistance for needy families assistance.

(2) For the purposes of applying the rules of this section, the department shall count any month in which an adult family member received a temporary assistance for needy families cash assistance grant unless the assistance was provided when the family member was a minor child and not the head of the household or married to the head of the household.

(3) The department shall refer recipients who require specialized assistance to appropriate department programs, crime victims' programs through the department of community, trade, and economic development, or the crime victims' compensation program of the department of labor and industries.

(4) The department may exempt a recipient and the recipient's family from the application of subsection (1) of this section by reason of hardship or if the recipient meets the family violence options of section 402(A)(7) of Title IVA of the federal social security act as amended by P.L. 104-193. The number of recipients and their families exempted from subsection (1) of this section for a fiscal year shall not exceed twenty percent of the average monthly number of recipients and their families to which assistance is provided under the temporary assistance for needy families program.

(5) The department shall not exempt a recipient and his or her family from the application of subsection (1) of this section until after the recipient has received fifty-two months of assistance under this chapter.

(6) Beginning on October 31, 2005, the department shall provide transitional food stamp assistance for a period of five months to a household that ceases to receive temporary assistance for needy families assistance and is not in sanction status. If necessary, the department shall extend the household's food stamp certification until the end of the transition period.

Sec. 5. RCW 74.08.025 and 1997 c 58 s 101 are each amended to read as follows:

(1) Public assistance may be awarded to any applicant:

(a) Who is in need and otherwise meets the eligibility requirements of department assistance programs; and

(h) Who has not made a voluntary assignment of property or cash for the purpose of qualifying for an assistance grant; and

(c) Who is not an inmate of a public institution except as a patient in a medical institution or except as an inmate in a public institution who could qualify for federal aid assistance: PROVIDED, That the assistance paid by the

department to recipients in nursing homes, or receiving nursing home care, may cover the cost of clothing and incidentals and general maintenance exclusive of medical care and health services. The department may pay a grant to cover the cost of clothing and personal incidentals in public or private medical institutions and institutions for tuberculosis. The department shall allow recipients in nursing homes to retain, in addition to the grant to cover the cost of clothing and incidentals, wages received for work as a part of a training or rehabilitative program designed to prepare the recipient for less restrictive placement to the extent permitted under Title XIX of the federal social security act.

(2) Any person otherwise qualified for temporary assistance for needy families under this title who has resided in the state of Washington for fewer than twelve consecutive months immediately preceding application for assistance is limited to the benefit level in the state in which the person resided immediately before Washington, using the eligibility rules and other definitions established under this chapter, that was obtainable on the date of application in Washington state, if the benefit level of the prior state is lower than the level provided to similarly situated applicants in Washington state. The benefit level under this subsection shall be in effect for the first twelve months a recipient is on temporary assistance for needy families in Washington state.

(3) Any person otherwise qualified for temporary assistance for needy families who is assessed through the state alcohol and substance abuse program as drug or alcohol-dependent and requiring treatment to become employable shall be required by the department to participate in a drug or alcohol treatment program as a condition of benefit receipt.

(4) In order to be eligible for temporary assistance for needy families (~~and food stamp program~~) benefits, any applicant with a felony conviction after August 21, 1996, involving drug use or possession, must: (a) Have been assessed as chemically dependent by a chemical dependency program approved under chapter 70.96A RCW and be participating in or have completed a coordinated rehabilitation plan consisting of chemical dependency treatment and vocational services; and (b) have not been convicted of a felony involving drug use or possession in the three years prior to the most current conviction.

(5) Pursuant to 21 U.S.C. 862a(d)(1), the department shall exempt individuals from the eligibility restrictions of 21 U.S.C. 862a(a)(2) to ensure eligibility for federal food assistance.

NEW SECTION. Sec. 6. If any part of this act is found to be in conflict with federal requirements that are a prescribed condition to the allocation of federal funds to the state, the conflicting part of this act is inoperative solely to the extent of the conflict and with respect to the agencies directly affected, and this finding does not affect the operation of the remainder of this act in its application to the agencies concerned. Rules adopted under this act must meet federal requirements that are a necessary condition to the receipt of federal funds by the state.

NEW SECTION. Sec. 7. If specific funding for the purposes of section 2 of this act, referencing this act by bill or chapter number, is not provided by June 30, 2004, in the omnibus appropriations act, section 2 of this act is null and void.

Passed by the Senate March 4, 2004.

Passed by the House March 9, 2004.

Approved by the Governor March 22, 2004.
Filed in Office of Secretary of State March 22, 2004.

CHAPTER 55

[Substitute House Bill 2382]

HIGHER EDUCATION—TRANSFER STUDENTS

AN ACT Relating to improving articulation and transfer between institutions of higher education; amending RCW 28B.80.290; adding new sections to chapter 28B.80 RCW; and creating new sections.

Be it enacted by the Legislature of the State of Washington:

NEW SECTION. Sec. 1. (1) The legislature finds that community and technical colleges play a vital role for students obtaining baccalaureate degrees. In 2002, more than forty percent of students graduating with a baccalaureate degree had transferred from a community or technical college.

(2) The legislature also finds that demand continues to grow for baccalaureate degrees. Increased demand comes from larger numbers of students seeking access to higher education and greater expectations from employers for the knowledge and skills needed to expand the state's economy. Community and technical colleges are an essential partner in meeting this demand.

(3) However, the legislature also finds that current policies and procedures do not provide for efficient transfer of courses, credits, or prerequisites for academic majors. Furthermore, the state's public higher education system must expand its capacity to enroll transfer students in baccalaureate education. The higher education coordinating board must take a leadership role in working with the community and technical colleges and four-year institutions to ensure efficient and seamless transfer across the state.

(4) Therefore, it is the legislature's intent to build clearer pathways to baccalaureate degrees, improve statewide coordination of transfer and articulation, and ensure long-term capacity in the state's higher education system for transfer students.

NEW SECTION. Sec. 2. (1) The higher education coordinating board must convene work groups to develop transfer associate degrees that will satisfy lower division requirements at public four-year institutions of higher education for specific academic majors. Work groups must include representatives from the state board for community and technical colleges and the council of presidents, as well as faculty from two and four-year institutions. Work groups may include representatives from independent four-year institutions.

(2) Each transfer associate degree developed under this section must enable a student to complete the lower-division courses or competencies for general education requirements and preparation for the major that a direct-entry student would typically complete in the freshman and sophomore years for that academic major.

(3) Completion of a transfer associate degree does not guarantee a student admission into an institution of higher education or admission into a major, minor, or professional program at an institution of higher education that has competitive admission standards for the program based on grade point average or other performance criteria.

(4) During the 2004-05 academic year, the work groups must develop transfer degrees for elementary education, engineering, and nursing. Each year thereafter, the higher education coordinating board must convene additional groups to identify and develop additional transfer degrees. The board must give priority to majors in high demand by transfer students and majors that the general direct transfer agreement associate degree does not adequately prepare students to enter automatically upon transfer.

(5) The higher education coordinating board, in collaboration with the intercollege relations commission, must collect and maintain lists of courses offered by each community and technical college and public four-year institution of higher education that fall within each transfer associate degree.

(6) The higher education coordinating board must monitor implementation of transfer associate degrees by public four-year institutions to ensure compliance with subsection (2) of this section.

(7) Beginning January 10, 2005, the higher education coordinating board must submit a progress report on the development of transfer associate degrees to the higher education committees of the house of representatives and the senate. The first progress report must include measurable benchmark indicators to monitor the effectiveness of the initiatives in improving transfer and baseline data for those indicators before the implementation of the initiatives. Subsequent reports must be submitted by January 10 of each odd-numbered year and must monitor progress on the indicators, describe development of additional transfer associate degrees, and provide other data on improvements in transfer efficiency.

NEW SECTION. Sec. 3. (1) The higher education coordinating board must create a statewide system of course equivalency for public institutions of higher education, so that courses from one institution can be transferred and applied toward academic majors and degrees in the same manner as equivalent courses at the receiving institution.

(2) The board must convene a work group including representatives from the state board for community and technical colleges and the council of presidents, as well as faculty from two and four-year institutions, to:

(a) Identify equivalent courses between community and technical colleges and public four-year institutions and among public four-year institutions, including identifying how courses meet requirements for academic majors and degrees; and

(b) Develop strategies for communicating course equivalency to students, faculty, and advisors.

(3) The work group may include representatives from independent four-year institutions. The work group must take into account the unique nature of the curriculum of The Evergreen State College in developing the course equivalency system.

(4) The higher education coordinating board must make a progress report on the development of the course equivalency system to the higher education committees of the senate and house of representatives by January 10, 2005. The report must include options and cost estimates for ongoing maintenance of the system.

NEW SECTION. Sec. 4. (1) The higher education coordinating board must conduct a gap analysis of upper division capacity in the public higher education system to accommodate transfer students. The analysis must address the total number of enrollment slots, specific academic majors, and geographic location of demand and supply of upper division capacity.

(2) The board must examine the full range of options, including costs, to close the gap between demand and supply of upper division capacity. Options include expansion of main campuses, branch campuses, off-campus education centers, distance learning, and other strategies.

(3) The board must make a progress report by January 10, 2005, and a final report by December 10, 2006, with recommendations to the higher education committees of the senate and house of representatives for how the state should expand upper division capacity in various locations across the state.

Sec. 5. RCW 28B.80.290 and 1983 c 304 s 2 are each amended to read as follows:

The statewide transfer of credit policy and agreement (~~(shall)~~) must be designed to facilitate the transfer of students and the evaluation of transcripts, to better serve persons seeking information about courses and programs, to aid in academic planning, and to improve the review and evaluation of academic programs in the state institutions of higher education. The statewide transfer of credit policy and agreement (~~(shall)~~) must not require (~~(nor)~~) or encourage the standardization of course content (~~(and shall not)~~) or prescribe course content or the credit value assigned by any institution to the course. Policies adopted by public four-year institutions concerning the transfer of lower division credit must treat students transferring from public community colleges the same as students transferring from public four-year institutions.

NEW SECTION. Sec. 6. Sections 2 and 3 of this act are each added to chapter 28B.80 RCW.

Passed by the House March 8, 2004.

Passed by the Senate March 3, 2004.

Approved by the Governor March 22, 2004.

Filed in Office of Secretary of State March 22, 2004.

CHAPTER 56

[Engrossed Substitute House Bill 2383]

HIGHER EDUCATION—PART-TIME FACULTY

AN ACT Relating to payment of part-time faculty at institutions of higher education; and amending RCW 42.16.010.

Be it enacted by the Legislature of the State of Washington:

Sec. 1. RCW 42.16.010 and 1993 c 281 s 42 are each amended to read as follows:

(1) Except as provided otherwise in subsection (2) of this section, all state officers and employees shall be paid for services rendered from the first day of the month through the fifteenth day of the month and for services rendered from the sixteenth day of the month through the last calendar day of the month. Paydates for these two pay periods shall be established by the director of financial management through the administrative hearing process and the

official paydates shall be established six months prior to the beginning of each subsequent calendar year. Under no circumstance shall the payday be established more than ten days after the pay period in which the wages are earned except when the designated payday falls on Sunday, in which case the payday shall not be later than the following Monday. Payment shall be deemed to have been made by the established paydates if: (a) The salary warrant is available at the geographic work location at which the warrant is normally available to the employee; or (b) the salary has been electronically transferred into the employee's account at the employee's designated financial institution; or (c) the salary warrants are mailed at least two days before the established payday for those employees engaged in work in remote or varying locations from the geographic location at which the payroll is prepared, provided that the employee has requested payment by mail.

The office of financial management shall develop the necessary policies and operating procedures to assure that all remuneration for services rendered including basic salary, shift differential, standby pay, overtime, penalty pay, salary due based on contractual agreements, and special pay provisions, as provided for by law, Washington personnel resources board rules, agency policy or rule, or contract, shall be available to the employee on the designated payday. Overtime, penalty pay, and special pay provisions may be paid by the next following payday if the postponement of payment is attributable to: The employee's not making a timely or accurate report of the facts which are the basis for the payment, or the employer's lack of reasonable opportunity to verify the claim.

Compensable benefits payable because of separation from state service shall be paid with the earnings for the final period worked unless the employee separating has not provided the agency with the proper notification of intent to terminate.

One-half of the employee's basic monthly salary shall be paid in each pay period. Employees paid on an hourly basis or employees who work less than a full pay period shall be paid for actual salary earned.

(2) Subsection (1) of this section shall not apply in instances where it would conflict with contractual rights or, with the approval of the office of financial management, to short-term, intermittent, noncareer state employees, to student employees of institutions of higher education, and to liquor control agency managers who are paid a percentage of monthly liquor sales.

(3) Notwithstanding subsections (1) and (2) of this section, a bargained contract at an institution of higher education may include a provision for paying part-time academic employees on a pay schedule that coincides with all the paydays used for full-time academic employees.

Passed by the House February 14, 2004.

Passed by the Senate March 4, 2004.

Approved by the Governor March 22, 2004.

Filed in Office of Secretary of State March 22, 2004.

CHAPTER 57

[Substitute House Bill 2707]

HIGHER EDUCATION—BRANCH CAMPUSES

AN ACT Relating to higher education branch campuses; amending RCW 28B.45.050 and 28B.80.510; adding new sections to chapter 28B.45 RCW; adding a new section to chapter 28B.30 RCW; creating a new section; recodifying RCW 28B.80.510 and 28B.45.050; and repealing RCW 28B.45.070, 28B.80.500, and 28B.80.520.

Be it enacted by the Legislature of the State of Washington:

NEW SECTION. Sec. 1. A new section is added to chapter 28B.45 RCW to read as follows:

(1) In 1989, the legislature created five branch campuses to be operated by the state's two public research universities. Located in growing urban areas, the branch campuses were charged with two missions:

(a) Increasing access to higher education by focusing on upper division and graduate programs, targeting placebound students, and operating as models of a two plus two educational system in cooperation with the community colleges; and

(b) Promoting regional economic development by responding to demand for degrees from local businesses and supporting regional economies through research activities.

(2) Fifteen years later, the legislature finds that branch campuses are responding to their original mission:

(a) Branch campuses accounted for half of statewide upper division and graduate public enrollment growth since 1990;

(b) Branch campuses have grown steadily and enroll increasing numbers of transfer students each year;

(c) Branch campuses enroll proportionately more older and part-time students than their main campuses and attract increasing proportions of students from nearby counties;

(d) Although the extent of their impact has not been measured, branch campuses positively affect local economies and offer degree programs that roughly correspond with regional occupational projections; and

(e) The capital investments made by the state to support branch campuses represent a significant benefit to regional economic development.

(3) However, the legislature also finds the policy landscape in higher education has changed since the original creation of the branch campuses. Demand for access to baccalaureate and graduate education is increasing rapidly. Economic development efforts increasingly recognize the importance of focusing on local and regional economic clusters and improving collaboration among communities, businesses, and colleges and universities. Each branch campus has evolved into a unique institution, and it is appropriate to assess the nature of this evolution to ensure the role and mission of each campus is aligned with the state's higher education goals and the needs of the region where the campus is located.

(4) Therefore, it is the legislature's intent to recognize the unique nature of Washington's higher education branch campuses, reaffirm the role and mission of each, and set the course for their continued future development.

(5) It is the further intent of the legislature that the campuses be identified by the following names: University of Washington Bothell, University of

Washington Tacoma, Washington State University Tri-Cities, and Washington State University Vancouver.

NEW SECTION. Sec. 2. A new section is added to chapter 28B.45 RCW to read as follows:

(1) The primary mission of the higher education branch campuses created under this chapter remains to expand access to baccalaureate and master's level graduate education in under-served urban areas of the state in collaboration with community and technical colleges.

(2) Branch campuses shall collaborate with the community and technical colleges in their region to develop articulation agreements, dual admissions policies, and other partnerships to ensure that branch campuses serve as innovative models of a two plus two educational system. Other possibilities for collaboration include but are not limited to joint development of curricula and degree programs, colocation of instruction, and arrangements to share faculty.

(3) In communities where a private postsecondary institution is located, representatives of the private institution may be invited to participate in the conversation about meeting the baccalaureate and master's level graduate needs in underserved urban areas of the state.

(4) However, the legislature recognizes there are alternative models for achieving this primary mission. Some campuses may have additional missions in response to regional needs and demands. At selected branch campuses, an innovative combination of instruction and research targeted to support regional economic development may be appropriate to meet the region's needs for both access and economic viability. Other campuses should focus on becoming models of a two plus two educational system through continuous improvement of partnerships and agreements with community and technical colleges. Still other campuses may be best suited to transition to a four-year comprehensive university or be removed from designation as a branch campus entirely.

(5) It is the legislature's intent that each branch campus be funded commensurate with its unique mission, the degree programs offered, and the institutional combination of instruction and research, but at a level less than a research university.

(6) In consultation with the higher education coordinating board, a branch campus may propose legislation to authorize practice-oriented or professional doctoral programs if: (a) Unique research facilities and equipment are located near the campus; or (b) the campus can clearly demonstrate student and employer demand in the region that is linked to regional economic development.

(7) It is not the legislature's intent to have each campus chart its own future path without legislative guidance. Instead, the legislature intends to consider carefully the mission and model of education that best suits each campus and best meets the needs of students, the community, and the region.

Sec. 3. RCW 28B.45.050 and 1991 c 205 s 11 are each amended to read as follows:

~~Washington State University and Eastern Washington University ((are responsible for providing upper division and graduate level)) shall collaborate with one another and with local community colleges in providing educational pathways and programs to the citizens of the Spokane area((, under rules or guidelines adopted by the joint center for higher education. However, before~~

~~any degree is authorized under this section it shall be subject to the review and approval of the higher education coordinating board. Washington State University shall meet its responsibility through the operation of a branch campus in the Spokane area. Eastern Washington University shall meet its responsibility through the operation of programs and facilities in Spokane).~~

NEW SECTION. Sec. 4. (1) Each branch campus shall examine its instructional programs, costs, research initiatives, student enrollment characteristics, programs offered in partnership with community and technical colleges, and regional context and make a recommendation by November 15, 2004, to the higher education coordinating board regarding the future evolution of the campus. The board will analyze the recommendations of each campus in the context of statewide goals for higher education and provide policy options along with the original campus recommendations to the higher education and fiscal committees of the legislature by January 15, 2005. The recommendations and options must address:

(a) The model of education that best suits the campus, including the possibility of continuing as a two plus two model and areas for possible improvement in working with community and technical colleges, making a transition to a four-year university or some other alternative;

(b) The mission that best suits the campus, including the possibility of focusing on upper division baccalaureate education, combining instruction and research targeted to support regional economic development, or some other alternative;

(c) Data and analysis that illustrate how the model will increase baccalaureate and master's degree production; and

(d) An estimate of the costs to implement the recommendation.

(2) In developing its recommendation, each branch campus shall solicit input from students, local community and technical colleges, the main campus and other four-year institutions, and community stakeholders such as economic development councils and business and labor leaders.

(3) The higher education coordinating board, in cooperation with the branch campuses, shall develop parameters and a standard format for the evaluation and recommendations to permit comparison by the legislative committees.

Sec. 5. RCW 28B.80.510 and 1989 1st ex.s. c 7 s 8 are each amended to read as follows:

~~((In rules and guidelines adopted for purposes of chapter 7, Laws of 1989 1st ex. sess.))~~ The higher education coordinating board shall adopt performance measures to ensure a collaborative partnership between the community and technical colleges and the ((four-year institutions)) branch campuses. The partnership shall be one in which the community and technical colleges prepare students for transfer to the upper-division programs of the branch campuses and the branch campuses work with community and technical colleges to enable students to transfer and obtain degrees efficiently.

NEW SECTION. Sec. 6. (1) RCW 28B.80.510 as amended by this act is recodified as a new section in chapter 28B.45 RCW.

(2) RCW 28B.45.050 as amended by this act is recodified as a new section in chapter 28B.30 RCW.

NEW SECTION. Sec. 7. The following acts or parts of acts are each repealed:

- (1) RCW 28B.45.070 (Authorization subject to legislative appropriation) and 1989 1st ex.s. c 7 s 14;
- (2) RCW 28B.80.500 (Branch campuses—Adjustment of enrollment lids) and 1989 1st ex.s. c 7 s 2; and
- (3) RCW 28B.80.520 (Branch campuses—Facilities acquisition) and 1989 1st ex.s. c 7 s 9.

Passed by the House March 8, 2004.

Passed by the Senate March 2, 2004.

Approved by the Governor March 22, 2004.

Filed in Office of Secretary of State March 22, 2004.

CHAPTER 58

[Substitute House Bill 2708]

FUTURE TEACHERS—LOAN REPAYMENT

AN ACT Relating to conditional scholarships and loan repayments for prospective teachers; amending RCW 28B.102.010, 28B.102.020, 28B.102.030, 28B.102.040, 28B.102.045, 28B.102.050, and 28B.102.060; reenacting and amending RCW 43.79A.040; adding new sections to chapter 28B.102 RCW; and repealing RCW 28B.102.070 and 28B.102.905.

Be it enacted by the Legislature of the State of Washington:

Sec. 1. RCW 28B.102.010 and 1987 c 437 s 1 are each amended to read as follows:

The legislature finds that encouraging outstanding students to enter the teaching profession is of paramount importance to the state of Washington. By creating the future teachers conditional scholarship and loan repayment program, the legislature intends to assist in the effort to recruit as future teachers ~~((students))~~ individuals who have distinguished themselves through outstanding academic achievement or demonstrated their commitment to teaching through work as a paraprofessional in the public school system, and ~~((students))~~ who can act as role models for children ~~((including those from targeted ethnic minorities))~~. The legislature urges business, industry, and philanthropic community organizations to join with state government in making this program successful.

Sec. 2. RCW 28B.102.020 and 1996 c 53 s 1 are each amended to read as follows:

Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Conditional scholarship" means a loan that is forgiven in whole or in part if the recipient renders service as a teacher in an approved education program in this state.

(2) "Institution of higher education" or "institution" means a college or university in the state of Washington ~~((which))~~ that is accredited by an accrediting association recognized as such by rule of the higher education coordinating board.

(3) "Board" means the higher education coordinating board.

(4) "Eligible student" means a student who is registered for at least ~~((ten))~~ six credit hours or the equivalent, demonstrates high academic achievement ~~((of at least a 3.30 grade point average for students entering an institution of higher education directly from high school or maintains at least a 3.00 grade point average or the equivalent for each academic year in an institution of higher education))~~, is a resident student as defined by RCW 28B.15.012 and 28B.15.013, and has a declared intention to complete an approved preparation program leading to initial teacher certification or required for earning an additional endorsement, ~~((or a college or university graduate who meets the same credit hour requirements and is seeking an additional teaching endorsement or initial teacher certification. Resident students defined in RCW 28B.15.012(2)(c) are not eligible students under this chapter))~~ and commits to teaching service in the state of Washington.

(5) "Public school" means an elementary school, a middle school, junior high school, or high school within the public school system referred to in Article IX of the state Constitution.

(6) "Forgiven" or "to forgive" or "forgiveness" means to render service as a teacher in an approved education program in the state of Washington in lieu of monetary repayment.

(7) "Satisfied" means paid-in-full.

(8) "Participant" means an eligible student who has received a conditional scholarship or loan repayment under this chapter.

(9) ~~(("Targeted ethnic minority" means a group of Americans with a common ethnic or racial heritage selected by the board for program consideration due to societal concerns such as high dropout rates or low rates of college participation by members of the group.))~~ "Loan repayment" means a federal student loan that is repaid in whole or in part if the recipient renders service as a teacher in an approved education program in Washington state.

(10) "Approved education program" means an education program in the state of Washington for knowledge and skills generally learned in preschool through twelfth grade. Approved education programs may include but are not limited to:

(a) K-12 schools under Title 28A RCW; or

(b) ~~((Early childhood education and assistance programs under RCW 28A.215.100 through 28A.215.200 or the federal head start program;~~

(c) An approved school under chapter 28A.195 RCW;

(d) Education centers under chapter 28A.205 RCW;

(e) English as a second language programs and programs leading to high school graduation or the equivalency operated by community or technical colleges; and

(f) Tribal schools in Washington approved by the federal bureau of Indian affairs.)) Other K-12 educational sites in the state of Washington as designated by the board.

(11) "Equalization fee" means the additional amount added to the principal of a loan under this chapter to equate the debt to that which the student would have incurred if the loan had been received through the federal subsidized Stafford student loan program.

(12) "Teacher shortage area" means a shortage of elementary or secondary school teachers in a specific subject area, discipline, classification, or geographic area as defined by the office of the superintendent of public instruction.

Sec. 3. RCW 28B.102.030 and 1987 c 437 s 3 are each amended to read as follows:

The future teachers conditional scholarship and loan repayment program is established. The program shall be administered by the higher education coordinating board. In administering the program, the board shall have the following powers and duties:

- (1) ~~Select students to receive conditional scholarships~~~~((with the assistance of a screening committee composed of teachers and leaders in government, business, and education))~~ or loan repayments;
- (2) Adopt necessary rules and guidelines;
- (3) Publicize the program;
- (4) Collect and manage repayments from students who do not meet their teaching obligations under this chapter; and
- (5) Solicit and accept grants and donations from public and private sources for the program.

Sec. 4. RCW 28B.102.040 and 1987 c 437 s 4 are each amended to read as follows:

(1) ~~The~~ ~~((higher education coordinating))~~ board may select participants based on an application process conducted by the board or the board may utilize selection processes for similar students in cooperation with the professional educator standards board or the office of the superintendent of public instruction.

(2) If the board selects participants for the program, it shall establish a ~~((planning))~~ selection committee ~~((to develop criteria))~~ for ~~((the))~~ screening and ~~((selection of))~~ selecting recipients of the conditional scholarships. ~~((These))~~ The criteria shall emphasize factors demonstrating excellence including but not limited to superior scholastic achievement, leadership ability, community contributions, bilingual ability, willingness to commit to providing teaching service in shortage areas, and an ability to act as a role model for ~~((targeted ethnic minority))~~ students. ~~((These criteria also may include, for approximately half of the recipients, requirements that those recipients meet the definition of "needy student" under RCW 28B.10.802.))~~ Priority will be given to individuals seeking certification or an additional endorsement in math, science, technology, or special education.

Sec. 5. RCW 28B.102.045 and 1988 c 125 s 7 are each amended to read as follows:

~~((The board may waive grade point requirements for an otherwise eligible individual student under special circumstances.))~~ To receive additional disbursements under the program under this chapter, a participant must be considered by his or her institution of higher education to be in a satisfactory progress condition.

Sec. 6. RCW 28B.102.050 and 1987 c 437 s 5 are each amended to read as follows:

The board may award conditional scholarships or provide loan repayments to eligible ~~((students))~~ participants from the funds appropriated to the board for this purpose, or from any private donations, or any other funds given to the

board for this program. The amount of the conditional scholarship or loan repayment awarded an individual shall not exceed ~~((three thousand dollars))~~ the amount of tuition and fees at the institution of higher education attended by the participant or resident undergraduate tuition and fees at the University of Washington per academic year for a full-time student, whichever is lower. ~~((Students))~~ Participants are eligible to receive conditional scholarships or loan repayments for a maximum of five years.

Sec. 7. RCW 28B.102.060 and 1996 c 53 s 2 are each amended to read as follows:

(1) Participants in the conditional scholarship program incur an obligation to repay the conditional scholarship, with interest and an equalization fee, unless they teach for two years in an approved education program for each year of scholarship received, under rules adopted by the board. Participants who teach in a designated teacher shortage area shall have one year of loan canceled for each year they teach in the shortage area.

(2) The interest rate shall be ~~((eight percent for the first four years of repayment and ten percent beginning with the fifth year of repayment))~~ determined annually by the board. Participants who fail to complete the teaching service shall incur an equalization fee based on the remaining unforgiven balance of the loan. The equalization fee shall be added to the remaining balance and repaid by the participant.

(3) The minimum payment shall be set by the board. The maximum period for repayment shall be ten years, with payments of principal and interest accruing quarterly commencing ~~((nine))~~ six months from the date the participant completes or discontinues the course of study. Provisions for deferral of payment shall be determined by the board.

(4) The entire principal and interest of each payment shall be forgiven for each payment period in which the participant teaches in an approved education program until the entire repayment obligation is satisfied. Should the participant cease to teach in an approved education program in this state before the participant's repayment obligation is completed, payments on the unsatisfied portion of the principal and interest shall begin the next payment period and continue until the remainder of the participant's repayment obligation is satisfied.

(5) The board is responsible for collection of repayments made under this section and shall exercise due diligence in such collection, maintaining all necessary records to insure that maximum repayments are made. Collection and servicing of repayments under this section shall be pursued using the full extent of the law, including wage garnishment if necessary. The board is responsible to forgive all or parts of such repayments under the criteria established in this section and shall maintain all necessary records of forgiven payments.

(6) Receipts from the payment of principal or interest or any other subsidies to which the board as administrator is entitled, which are paid by or on behalf of participants under this section, shall be deposited ~~((with the higher education coordinating board))~~ in the future teachers conditional scholarship account and shall be used to cover the costs of granting the conditional scholarships, maintaining necessary records, and making collections under subsection (5) of this section. The board shall maintain accurate records of these costs, and all

receipts beyond those necessary to pay such costs shall be used to grant conditional scholarships to eligible students.

~~(7) The board shall ((temporarily or, in special circumstances, permanently defer the requirements of this section for eligible students as defined in RCW 28B.10.017.~~

~~(8) The board may cancel a recipient's repayment obligation due to the recipient's total and permanent disability or death, subject to documentation as required by the board.~~

~~(9) This section applies to recipients of conditional scholarships awarded before or after July 1, 1996)) adopt rules to define the terms of repayment, including applicable interest rates, fees, and deferrals.~~

NEW SECTION. Sec. 8. A new section is added to chapter 28B.102 RCW to read as follows:

(1) Upon documentation of federal student loan indebtedness, the board may enter into agreements with participants to repay all or part of a federal student loan in exchange for teaching service in an approved educational program. The ratio of loan repayment to years of teaching service for the loan repayment program shall be the same as established for the conditional scholarship program.

(2) The agreement shall specify the period of time it is in effect and detail the obligations of the board and the participant, including the amount to be paid to the participant. The agreement may also specify the geographic location and subject matter area of teaching service for which loan repayment will be provided.

(3) At the end of each school year, a participant under this section shall provide evidence to the board that the requisite teaching service has been provided. Upon receipt of the evidence, the board shall pay the participant the agreed-upon amount for one year of full-time teaching service or a prorated amount for less than full-time teaching service. To qualify for additional loan repayments, the participant must be engaged in continuous teaching service as defined by the board.

(4) The board may, at its discretion, arrange to make the loan repayment directly to the holder of the participant's federal student loan.

(5) The board's obligations to a participant under this section shall cease when:

(a) The terms of the agreement have been fulfilled;

(b) The participant fails to maintain continuous teaching service as determined by the board; or

(c) All of the participant's federal student loans have been repaid.

(6) The board shall adopt rules governing loan repayments, including approved leaves of absence from continuous teaching service and other deferrals as may be necessary.

NEW SECTION. Sec. 9. A new section is added to chapter 28B.102 RCW to read as follows:

(1) The future teachers conditional scholarship account is created in the custody of the state treasurer. An appropriation is not required for expenditures of funds from the account. The account is not subject to allotment procedures under chapter 43.88 RCW except for moneys used for program administration.

(2) The board shall deposit in the account all moneys received for the program. The account shall be self-sustaining and consist of funds appropriated by the legislature for the future teachers conditional scholarship and loan repayment program, private contributions to the program, and receipts from participant repayments. Beginning July 1, 2004, the board shall also deposit into the account: (a) All funds from the institution of higher education loan account that are traceable to any conditional scholarship program for teachers or prospective teachers established by the legislature before the effective date of this act; and (b) all amounts repaid by individuals under any such program.

(3) Expenditures from the account may be used solely for conditional loans and loan repayments to participants in the program established by this chapter and costs associated with program administration by the board.

(4) Disbursements from the account may be made only on the authorization of the board.

Sec. 10. RCW 43.79A.040 and 2003 c 403 s 9, 2003 c 313 s 10, 2003 c 191 s 7, 2003 c 148 s 15, 2003 c 92 s 8, and 2003 c 19 s 12 are each reenacted and amended to read as follows:

(1) Money in the treasurer's trust fund may be deposited, invested, and reinvested by the state treasurer in accordance with RCW 43.84.080 in the same manner and to the same extent as if the money were in the state treasury.

(2) All income received from investment of the treasurer's trust fund shall be set aside in an account in the treasury trust fund to be known as the investment income account.

(3) The investment income account may be utilized for the payment of purchased banking services on behalf of treasurer's trust funds including, but not limited to, depository, safekeeping, and disbursement functions for the state treasurer or affected state agencies. The investment income account is subject in all respects to chapter 43.88 RCW, but no appropriation is required for payments to financial institutions. Payments shall occur prior to distribution of earnings set forth in subsection (4) of this section.

(4)(a) Monthly, the state treasurer shall distribute the earnings credited to the investment income account to the state general fund except under (b) and (c) of this subsection.

(b) The following accounts and funds shall receive their proportionate share of earnings based upon each account's or fund's average daily balance for the period: The Washington promise scholarship account, the college savings program account, the Washington advanced college tuition payment program account, the agricultural local fund, the American Indian scholarship endowment fund, the students with dependents grant account, the basic health plan self-insurance reserve account, the contract harvesting revolving account, the Washington state combined fund drive account, the Washington international exchange scholarship endowment fund, the developmental disabilities endowment trust fund, the energy account, the fair fund, the fruit and vegetable inspection account, the future teachers conditional scholarship account, the game farm alternative account, the grain inspection revolving fund, the juvenile accountability incentive account, the law enforcement officers' and fire fighters' plan 2 expense fund, the local tourism promotion account, the produce railcar pool account, the rural rehabilitation account, the stadium and exhibition center account, the youth athletic facility account, the self-insurance revolving fund,

the sulfur dioxide abatement account, and the children's trust fund(~~(, and the investing in innovation account)~~). However, the earnings to be distributed shall first be reduced by the allocation to the state treasurer's service fund pursuant to RCW 43.08.190.

(c) The following accounts and funds shall receive eighty percent of their proportionate share of earnings based upon each account's or fund's average daily balance for the period: The advanced right of way revolving fund, the advanced environmental mitigation revolving account, the city and county advance right-of-way revolving fund, the federal narcotics asset forfeitures account, the high occupancy vehicle account, the local rail service assistance account, and the miscellaneous transportation programs account.

(5) In conformance with Article II, section 37 of the state Constitution, no trust accounts or funds shall be allocated earnings without the specific affirmative directive of this section.

NEW SECTION. **Sec. 11.** The following acts or parts of acts are each repealed:

(1) RCW 28B.102.070 (Transfer of administration of program) and 1987 c 437 s 7; and

(2) RCW 28B.102.905 (Severability—1987 c 437) and 1987 c 437 s 10.

Passed by the House March 8, 2004.

Passed by the Senate March 3, 2004.

Approved by the Governor March 22, 2004.

Filed in Office of Secretary of State March 22, 2004.

CHAPTER 59

[Substitute Senate Bill 5139]

EDUCATION—REMEDIATION STUDY

AN ACT Relating to remedial postsecondary education; and creating new sections.

Be it enacted by the Legislature of the State of Washington:

NEW SECTION. **Sec. 1.** The legislature recognizes that state education and higher education agencies are working on initiatives to communicate with parents and students about how high school graduates should gain and maintain the reading, writing, and mathematics skills they need to start immediately in college-level work. However, the legislature finds that insufficient progress has been made in reducing the proportion of recent high school graduates who must enroll in remedial or precollege classes at Washington's public colleges and universities. More than seventeen million dollars in state and tuition resources is being spent each year to provide these students with skills they should have gained before graduating from high school. It is the intent of the legislature that state education and higher education agencies place a higher priority on their work to address the issue of remediation and take concrete steps to make measurable improvements.

NEW SECTION. **Sec. 2.** (1) Within current budgets, the higher education coordinating board, the office of the superintendent of public instruction, and the state board for community and technical colleges shall convene a work group that includes representatives of the two and four-year institutions of higher

education and school districts to address remediation issues. The work group shall:

(a) Discuss standards and expectations for the knowledge and skills high school graduates need for college-level work and strategies for communicating those standards to all Washington high schools;

(b) Identify the causes of current gaps in knowledge and skills of recent high school graduates;

(c) Identify innovative strategies currently used by school districts and other initiatives or programs designed to provide graduates with the knowledge and skills for college-level work; and

(d) Develop and initiate actions to address the gaps in knowledge and skills so that the need for remediation of recent high school graduates in public higher education institutions is significantly reduced.

(2) The state education and higher education agencies shall jointly submit a report to the education and higher education committees of the legislature by December 15, 2004. The report shall summarize the findings of the work group and describe actions taken by the agencies, higher education institutions, and school districts to enhance the knowledge and skills of high school graduates. The report shall also recommend additional strategies, timelines, and measurable benchmarks for reducing remediation of recent high school graduates over the next three years.

Passed by the Senate March 8, 2004.

Passed by the House March 4, 2004.

Approved by the Governor March 22, 2004.

Filed in Office of Secretary of State March 22, 2004.

CHAPTER 60

[Senate Bill 6407]

SUPERINTENDENT TRAINING

AN ACT Relating to school district superintendent credential preparation programs; and amending RCW 28B.10.140.

Be it enacted by the Legislature of the State of Washington:

Sec. 1. RCW 28B.10.140 and 1977 ex.s. c 169 s 10 are each amended to read as follows:

The University of Washington, Washington State University, Central Washington University, Eastern Washington University, Western Washington University, and The Evergreen State College are each authorized to train teachers and other personnel for whom teaching certificates or special credentials prescribed by the state board of education are required, for any grade, level, department, or position of the public schools of the state (~~(, except that the training for superintendents, over and above that required for teaching certificates and principals' credentials, shall be given by the University of Washington and Washington State University only)~~).

Passed by the Senate February 10, 2004.

Passed by the House March 2, 2004.

Approved by the Governor March 22, 2004.

Filed in Office of Secretary of State March 22, 2004.

CHAPTER 61

[Substitute House Bill 2685]

LIQUOR SALES—IDENTIFICATION

AN ACT Relating to acceptable forms of identification for liquor sales; and amending RCW 66.16.040.

Be it enacted by the Legislature of the State of Washington:

Sec. 1. RCW 66.16.040 and 1996 c 291 s 1 are each amended to read as follows:

Except as otherwise provided by law, an employee in a state liquor store or agency may sell liquor to any person of legal age to purchase alcoholic beverages and may also sell to holders of permits such liquor as may be purchased under such permits.

Where there may be a question of a person's right to purchase liquor by reason of age, such person shall be required to present any one of the following officially issued cards of identification which shows his/her correct age and bears his/her signature and photograph:

(1) Liquor control authority card of identification of any state or province of Canada.

(2) Driver's license, instruction permit or identification card of any state or province of Canada, or "identocard" issued by the Washington state department of licensing pursuant to RCW 46.20.117.

(3) United States armed forces identification card issued to active duty, reserve, and retired personnel and the personnel's dependents, which may include an imbedded, digital signature in lieu of a visible signature.

(4) Passport.

(5) Merchant Marine identification card issued by the United States Coast Guard.

The board may adopt such regulations as it deems proper covering the ~~((acceptance of such))~~ cards of identification listed in this section.

No liquor sold under this section shall be delivered until the purchaser has paid for the liquor in cash, except as allowed under RCW 66.16.041. The use of a personal credit card does not rely upon the credit of the state as prohibited by Article VIII, section 5 of the state Constitution.

Passed by the House February 11, 2004.

Passed by the Senate March 4, 2004.

Approved by the Governor March 22, 2004.

Filed in Office of Secretary of State March 22, 2004.

CHAPTER 62

[Substitute Senate Bill 6584]

LIQUOR LICENSEES—CATERER'S ENDORSEMENT

AN ACT Relating to liquor licensees holding a caterer's endorsement; amending RCW 66.28.010 and 66.24.420; and reenacting and amending RCW 66.24.320.

Be it enacted by the Legislature of the State of Washington:

Sec. 1. RCW 66.28.010 and 2002 c 109 s 1 are each amended to read as follows:

(1)(a) No manufacturer, importer, or distributor, or person financially interested, directly or indirectly, in such business; whether resident or nonresident, shall have any financial interest, direct or indirect, in any licensed retail business, unless the retail business is owned by a corporation in which a manufacturer or importer has no direct stock ownership and there are no interlocking officers and directors, the retail license is held by a corporation that is not owned directly or indirectly by a manufacturer or importer, the sales of liquor are incidental to the primary activity of operating the property as a hotel, alcoholic beverages produced by the manufacturer or importer or their subsidiaries are not sold at the licensed premises, and the board reviews the ownership and proposed method of operation of all involved entities and determines that there will not be an unacceptable level of control or undue influence over the operation or the retail licensee; nor shall any manufacturer, importer, or distributor own any of the property upon which such licensed persons conduct their business; nor shall any such licensed person, under any arrangement whatsoever, conduct his or her business upon property in which any manufacturer, importer, or distributor has any interest unless title to that property is owned by a corporation in which a manufacturer has no direct stock ownership and there are no interlocking officers or directors, the retail license is held by a corporation that is not owned directly or indirectly by the manufacturer, the sales of liquor are incidental to the primary activity of operating the property either as a hotel or as an amphitheater offering live musical and similar live entertainment activities to the public, alcoholic beverages produced by the manufacturer or any of its subsidiaries are not sold at the licensed premises, and the board reviews the ownership and proposed method of operation of all involved entities and determines that there will not be an unacceptable level of control or undue influence over the operation of the retail licensee. Except as provided in subsection (3) of this section, no manufacturer, importer, or distributor shall advance moneys or moneys' worth to a licensed person under an arrangement, nor shall such licensed person receive, under an arrangement, an advance of moneys or moneys' worth. "Person" as used in this section only shall not include those state or federally chartered banks, state or federally chartered savings and loan associations, state or federally chartered mutual savings banks, or institutional investors which are not controlled directly or indirectly by a manufacturer, importer, or distributor as long as the bank, savings and loan association, or institutional investor does not influence or attempt to influence the purchasing practices of the retailer with respect to alcoholic beverages. Except as otherwise provided in this section, no manufacturer, importer, or distributor shall be eligible to receive or hold a retail license under this title, nor shall such manufacturer, importer, or distributor sell at retail any liquor as herein defined. A corporation granted an exemption under this subsection may use debt instruments issued in connection with financing construction or operations of its facilities.

(b) Nothing in this section shall prohibit a licensed domestic brewery or microbrewery from being licensed as a retailer pursuant to chapter 66.24 RCW for the purpose of selling beer or wine at retail on the brewery premises and nothing in this section shall prohibit a domestic winery from being licensed as a retailer pursuant to chapter 66.24 RCW for the purpose of selling beer or wine at retail on the winery premises. Such beer and wine so sold at retail shall be

subject to the taxes imposed by RCW 66.24.290 and 66.24.210 and to reporting and bonding requirements as prescribed by regulations adopted by the board pursuant to chapter 34.05 RCW, and beer and wine that is not produced by the brewery or winery shall be purchased from a licensed beer or wine distributor.

(c) Nothing in this section shall prohibit a licensed distiller, domestic brewery, microbrewery, domestic winery, or a lessee of a licensed domestic brewer, microbrewery, or domestic winery, from being licensed as a spirits, beer, and wine restaurant pursuant to chapter 66.24 RCW for the purpose of selling liquor at a spirits, beer, and wine restaurant premises on the property on which the primary manufacturing facility of the licensed distiller, domestic brewer, microbrewery, or domestic winery is located or on contiguous property owned or leased by the licensed distiller, domestic brewer, microbrewery, or domestic winery as prescribed by rules adopted by the board pursuant to chapter 34.05 RCW.

(d) Nothing in this section prohibits retail licensees with a caterer's endorsement issued under RCW 66.24.320 or 66.24.420 from operating on a domestic winery premises.

(2) Financial interest, direct or indirect, as used in this section, shall include any interest, whether by stock ownership, mortgage, lien, or through interlocking directors, or otherwise. Pursuant to rules promulgated by the board in accordance with chapter 34.05 RCW manufacturers, distributors, and importers may perform, and retailers may accept the service of building, rotating and restocking case displays and stock room inventories; rotating and rearranging can and bottle displays of their own products; provide point of sale material and brand signs; price case goods of their own brands; and perform such similar normal business services as the board may by regulation prescribe.

(3)(a) This section does not prohibit a manufacturer, importer, or distributor from providing services to a special occasion licensee for: (i) Installation of draft beer dispensing equipment or advertising, (ii) advertising, pouring, or dispensing of beer or wine at a beer or wine tasting exhibition or judging event, or (iii) a special occasion licensee from receiving any such services as may be provided by a manufacturer, importer, or distributor. Nothing in this section shall prohibit a retail licensee, or any person financially interested, directly or indirectly, in such a retail licensee from having a financial interest, direct or indirect, in a business which provides, for a compensation commensurate in value to the services provided, bottling, canning or other services to a manufacturer, so long as the retail licensee or person interested therein has no direct financial interest in or control of said manufacturer.

(b) A person holding contractual rights to payment from selling a liquor distributor's business and transferring the license shall not be deemed to have a financial interest under this section if the person (i) lacks any ownership in or control of the distributor, (ii) is not employed by the distributor, and (iii) does not influence or attempt to influence liquor purchases by retail liquor licensees from the distributor.

(c) The board shall adopt such rules as are deemed necessary to carry out the purposes and provisions of subsection (3)(a) of this section in accordance with the administrative procedure act, chapter 34.05 RCW.

(4) A license issued under RCW 66.24.395 does not constitute a retail license for the purposes of this section.

(5) A public house license issued under RCW 66.24.580 does not violate the provisions of this section as to a retailer having an interest directly or indirectly in a liquor-licensed manufacturer.

Sec. 2. RCW 66.24.320 and 2003 c 345 s 1 and 2003 c 167 s 6 are each reenacted and amended to read as follows:

There shall be a beer and/or wine restaurant license to sell beer, including strong beer, or wine, or both, at retail, for consumption on the premises. A patron of the licensee may remove from the premises, recorked or recapped in its original container, any portion of wine that was purchased for consumption with a meal.

(1) The annual fee shall be two hundred dollars for the beer license, two hundred dollars for the wine license, or four hundred dollars for a combination beer and wine license.

(2)(a) The board may issue a caterer's endorsement to this license to allow the licensee to remove from the liquor stocks at the licensed premises, only those types of liquor that are authorized under the on-premises license privileges for sale and service at event locations at a specified date and, except as provided in subsection (3) of this section, place not currently licensed by the board. If the event is open to the public, it must be sponsored by a society or organization as defined by RCW 66.24.375. If attendance at the event is limited to members or invited guests of the sponsoring individual, society, or organization, the requirement that the sponsor must be a society or organization as defined by RCW 66.24.375 is waived. Cost of the endorsement is three hundred fifty dollars.

(b) The holder of this license with catering endorsement shall, if requested by the board, notify the board or its designee of the date, time, place, and location of any catered event. Upon request, the licensee shall provide to the board all necessary or requested information concerning the society or organization that will be holding the function at which the endorsed license will be utilized.

(3) Licensees under this section that hold a caterer's endorsement are allowed to use this endorsement on a domestic winery premises under the following conditions:

(a) Agreements between the domestic winery and the retail licensee shall be in writing, contain no exclusivity clauses regarding the alcohol beverages to be served, and be filed with the board; and

(b) The domestic winery and the retail licensee shall be separately contracted and compensated by the persons sponsoring the event for their respective services.

Sec. 3. RCW 66.24.420 and 2003 c 345 s 2 are each amended to read as follows:

(1) The spirits, beer, and wine restaurant license shall be issued in accordance with the following schedule of annual fees:

(a) The annual fee for a spirits, beer, and wine restaurant license shall be graduated according to the dedicated dining area and type of service provided as follows:

| | |
|-------------------------------------|---------|
| Less than 50% dedicated dining area | \$2,000 |
| 50% or more dedicated dining area | \$1,600 |
| Service bar only | \$1,000 |

(b) The annual fee for the license when issued to any other spirits, beer, and wine restaurant licensee outside of incorporated cities and towns shall be prorated according to the calendar quarters, or portion thereof, during which the licensee is open for business, except in case of suspension or revocation of the license.

(c) Where the license shall be issued to any corporation, association or person operating a bona fide restaurant in an airport terminal facility providing service to transient passengers with more than one place where liquor is to be dispensed and sold, such license shall be issued upon the payment of the annual fee, which shall be a master license and shall permit such sale within and from one such place. Such license may be extended to additional places on the premises at the discretion of the board and a duplicate license may be issued for each such additional place: PROVIDED, That the holder of a master license for a restaurant in an airport terminal facility shall be required to maintain in a substantial manner at least one place on the premises for preparing, cooking, and serving of complete meals, and such food service shall be available on request in other licensed places on the premises: PROVIDED, FURTHER, That an additional license fee of twenty-five percent of the annual master license fee shall be required for such duplicate licenses.

(d) Where the license shall be issued to any corporation, association, or person operating dining places at a publicly or privately owned civic or convention center with facilities for sports, entertainment, or conventions, or a combination thereof, with more than one place where liquor is to be dispensed and sold, such license shall be issued upon the payment of the annual fee, which shall be a master license and shall permit such sale within and from one such place. Such license may be extended to additional places on the premises at the discretion of the board and a duplicate license may be issued for each such additional place: PROVIDED, That the holder of a master license for a dining place at such a publicly or privately owned civic or convention center shall be required to maintain in a substantial manner at least one place on the premises for preparing, cooking, and serving of complete meals, and food service shall be available on request in other licensed places on the premises: PROVIDED FURTHER, That an additional license fee of ten dollars shall be required for such duplicate licenses.

(e) Where the license shall be issued to any corporation, association or person operating more than one building containing dining places at privately owned facilities which are open to the public and where there is a continuity of ownership of all adjacent property, such license shall be issued upon the payment of an annual fee which shall be a master license and shall permit such sale within and from one such place. Such license may be extended to the additional dining places on the property or, in the case of a spirits, beer, and wine restaurant licensed hotel, property owned or controlled by leasehold interest by that hotel for use as a conference or convention center or banquet facility open to the general public for special events in the same metropolitan area, at the discretion of the board and a duplicate license may be issued for each additional place: PROVIDED, That the holder of the master license for the dining place shall not offer alcoholic beverages for sale, service, and consumption at the additional place unless food service is available at both the location of the master

license and the duplicate license: PROVIDED FURTHER, That an additional license fee of twenty dollars shall be required for such duplicate licenses.

(2) The board, so far as in its judgment is reasonably possible, shall confine spirits, beer, and wine restaurant licenses to the business districts of cities and towns and other communities, and not grant such licenses in residential districts, nor within the immediate vicinity of schools, without being limited in the administration of this subsection to any specific distance requirements.

(3) The board shall have discretion to issue spirits, beer, and wine restaurant licenses outside of cities and towns in the state of Washington. The purpose of this subsection is to enable the board, in its discretion, to license in areas outside of cities and towns and other communities, establishments which are operated and maintained primarily for the benefit of tourists, vacationers and travelers, and also golf and country clubs, and common carriers operating dining, club and buffet cars, or boats.

(4) The total number of spirits, beer, and wine restaurant licenses issued in the state of Washington by the board, not including spirits, beer, and wine private club licenses, shall not in the aggregate at any time exceed one license for each fifteen hundred of population in the state, determined according to the yearly population determination developed by the office of financial management pursuant to RCW 43.62.030.

(5) Notwithstanding the provisions of subsection (4) of this section, the board shall refuse a spirits, beer, and wine restaurant license to any applicant if in the opinion of the board the spirits, beer, and wine restaurant licenses already granted for the particular locality are adequate for the reasonable needs of the community.

(6)(a) The board may issue a caterer's endorsement to this license to allow the licensee to remove the liquor stocks at the licensed premises, for use as liquor for sale and service at event locations at a specified date and, except as provided in subsection (7) of this section, place not currently licensed by the board. If the event is open to the public, it must be sponsored by a society or organization as defined by RCW 66.24.375. If attendance at the event is limited to members or invited guests of the sponsoring individual, society, or organization, the requirement that the sponsor must be a society or organization as defined by RCW 66.24.375 is waived. Cost of the endorsement is three hundred fifty dollars.

(b) The holder of this license with catering endorsement shall, if requested by the board, notify the board or its designee of the date, time, place, and location of any catered event. Upon request, the licensee shall provide to the board all necessary or requested information concerning the society or organization that will be holding the function at which the endorsed license will be utilized.

(7) Licensees under this section that hold a caterer's endorsement are allowed to use this endorsement on a domestic winery premises under the following conditions:

(a) Agreements between the domestic winery and the retail licensee shall be in writing, contain no exclusivity clauses regarding the alcohol beverages to be served, and be filed with the board; and

(b) The domestic winery and the retail licensee shall be separately contracted and compensated by the persons sponsoring the event for their respective services.

Passed by the Senate February 17, 2004.

Passed by the House March 2, 2004.

Approved by the Governor March 22, 2004.

Filed in Office of Secretary of State March 22, 2004.

CHAPTER 63

[House Bill 2794]

LIQUOR LICENSEES—PAYMENT METHOD

AN ACT Relating to allowing licensees to pay for liquor using debit and credit cards; and amending RCW 66.08.026 and 66.16.041.

Be it enacted by the Legislature of the State of Washington:

Sec. 1. RCW 66.08.026 and 2001 c 313 s 1 are each amended to read as follows:

All administrative expenses of the board incurred on and after April 1, 1963, shall be appropriated and paid from the liquor revolving fund. These administrative expenses shall include, but not be limited to: The salaries and expenses of the board and its employees, the cost of establishing, leasing, maintaining, and operating state liquor stores and warehouses, legal services, pilot projects, annual or other audits, and other general costs of conducting the business of the board, and the costs of supplying, installing, and maintaining equipment used in state liquor stores and agency liquor vendor stores for the purchase of liquor (~~by nonlicensees~~) using debit or credit cards. The administrative expenses shall not, however, be deemed to include costs of liquor and lottery tickets purchased, the cost of transportation and delivery to the point of distribution, other costs pertaining to the acquisition and receipt of liquor and lottery tickets, packaging and repackaging of liquor, agency commissions for agency liquor vendor stores, transaction fees associated with credit or debit card purchases for liquor in state liquor stores and in the stores of agency liquor vendors pursuant to RCW 66.16.040 and 66.16.041, sales tax, and those amounts distributed pursuant to RCW 66.08.180, 66.08.190, 66.08.200, 66.08.210 and 66.08.220. Agency commissions for agency liquor vendor stores shall be established by the liquor control board after consultation with and approval by the director of the office of financial management. All expenditures and payment of obligations authorized by this section are subject to the allotment requirements of chapter 43.88 RCW.

Sec. 2. RCW 66.16.041 and 1998 c 265 s 3 are each amended to read as follows:

(1) The state liquor control board shall accept bank credit card and debit cards (~~from nonlicensees~~) for purchases in state liquor stores, under such rules as the board may adopt. The board shall authorize liquor vendors appointed under RCW 66.08.050 to accept bank credit cards and debit cards for liquor purchases under this title, under such rules as the board may adopt.

(2) If a liquor vendor operating an agency store chooses to use credit or debit cards for liquor purchases (~~by nonlicensees~~), the board shall provide

equipment and installation and maintenance of the equipment necessary to implement the use of credit and debit cards. Any equipment provided by the board to an agency liquor vendor store for this purpose may be used only for the purchase of liquor.

(3) If the revenues and expenditures associated with implementing the use of credit and debit cards for the purchase of alcohol (~~(by nonlicensees)~~) from state liquor stores and agency stores operated by liquor vendors results in a reduction of the liquor revolving fund balance for fiscal year 1999 and the 1999-01 biennium, the board shall consider increasing the price of alcohol products to offset the reduction.

~~((4) The board shall provide a report evaluating the implementation of this section, including revenue and expenditures, to the appropriate committees of the legislature by December 1, 1998.))~~

Passed by the House February 14, 2004.

Passed by the Senate March 4, 2004.

Approved by the Governor March 22, 2004.

Filed in Office of Secretary of State March 22, 2004.

CHAPTER 64

[Substitute House Bill 3051]

INDIAN CHILD WELFARE ACT—NOTICE

AN ACT Relating to notice provisions for proceedings involving the Indian child welfare act; and amending RCW 26.10.034, 26.33.040, 13.34.040, 13.34.070, and 13.32A.152.

Be it enacted by the Legislature of the State of Washington:

Sec. 1. RCW 26.10.034 and 2003 c 105 s 7 are each amended to read as follows:

(1)(a) Every petition filed in proceedings under this chapter shall contain a statement alleging whether the child is or may be an Indian child as defined in 25 U.S.C. Sec. 1903. If the child is an Indian child as defined under the Indian child welfare act, the provisions of the act shall apply.

(b) Whenever the court or the petitioning party in a proceeding under this chapter knows or has reason to know that an Indian child is involved, the petitioning party shall promptly provide notice to the child's parent or Indian custodian and to the agent designated by the child's Indian tribe to receive such notices. Notice shall be by certified mail with return receipt requested. If the identity or location of the parent or Indian custodian and the tribe cannot be determined notice shall be given to the secretary of the interior in the manner described in 25 C.F.R. 23.11. If the child may be a member of more than one tribe, the petitioning party shall send notice to all tribes the petitioner has reason to know may be affiliated with the child.

(c) The notice shall: (i) Contain a statement notifying the parent or custodian and the tribe of the pending proceeding; and (ii) notify the tribe of the tribe's right to intervene and/or request that the case be transferred to tribal court.

(2) Every order or decree entered in any proceeding under this chapter shall contain a finding that the Indian child welfare act does or does not apply. Where there is a finding that the Indian child welfare act does apply, the decree or order

must also contain a finding that all notice requirements and evidentiary requirements under the Indian child welfare act have been satisfied.

Sec. 2. RCW 26.33.040 and 1991 c 136 s 1 are each amended to read as follows:

(1)(a) Every petition filed in proceedings under this chapter shall contain a statement alleging whether the ~~((Indian Child Welfare Act, 25 U.S.C. Sec. 1901 et seq., applies to the proceeding. Every order or decree entered in any proceeding under this chapter shall contain a finding that the Indian Child Welfare Act does or does not apply. In proceedings under this chapter, the adoption facilitator shall file a sworn statement documenting efforts to determine whether the Indian Child Welfare Act, 25 U.S.C. Sec. 1901 et seq., applies))~~ child is or may be an Indian child as defined in 25 U.S.C. Sec. 1903. If the child is an Indian child as defined under the Indian child welfare act, the provisions of the act shall apply.

(b) Every order or decree entered in any proceeding under this chapter shall contain a finding that the Indian child welfare act does or does not apply. Where there is a finding that the Indian child welfare act does apply, the decree or order must also contain a finding that all notice requirements and evidentiary requirements under the Indian child welfare act have been satisfied.

(c) In proceedings under this chapter, the adoption facilitator shall file a sworn statement documenting efforts to determine whether an Indian child as defined under the Indian child welfare act, 25 U.S.C. Sec. 1903, is involved.

(d) Whenever the court or the petitioning party knows or has reason to know that an Indian child is involved in any termination, relinquishment, or placement proceeding under this chapter, the petitioning party shall promptly provide notice to the child's parent or Indian custodian and to the agent designated by the child's Indian tribe to receive such notices. Notice shall be by certified mail with return receipt requested. If the identity or location of the parent or Indian custodian and the tribe cannot be determined, notice shall be given to the secretary of the interior in the manner described in 25 C.F.R. 23.11. If the child may be a member of more than one tribe, the petitioning party shall send notice to all tribes the petitioner has reason to know may be affiliated with the child.

(e) The notice shall: (i) Contain a statement notifying the parent or custodian and the tribe of the pending proceeding; and (ii) notify the tribe of the tribe's right to intervene and/or request that the case be transferred to tribal court.

(f) No termination, relinquishment, or placement proceeding shall be held until at least ten days after receipt of notice by the tribe. If the tribe requests, the court shall grant the tribe up to twenty additional days to prepare for such proceeding.

(2) Every petition filed in proceedings under this chapter shall contain a statement alleging whether the Soldiers and Sailors Civil Relief Act of 1940, 50 U.S.C. Sec. 501 et seq. applies to the proceeding. Every order or decree entered in any proceeding under this chapter shall contain a finding that the Soldiers and Sailors Civil Relief Act of 1940 does or does not apply.

Sec. 3. RCW 13.34.040 and 2000 c 122 s 2 are each amended to read as follows:

(1) Any person may file with the clerk of the superior court a petition showing that there is within the county, or residing within the county, a

dependent child and requesting that the superior court deal with such child as provided in this chapter. There shall be no fee for filing such petitions.

(2) In counties having paid probation officers, these officers shall, to the extent possible, first determine if a petition is reasonably justifiable. Each petition shall be verified and contain a statement of facts constituting a dependency, and the names and residence, if known to the petitioner, of the parents, guardian, or custodian of the alleged dependent child.

(3) Every petition filed in proceedings under this chapter shall contain a statement alleging whether the child is or may be an Indian child as defined in 25 U.S.C. Sec. 1903. If the child is an Indian child as defined under the Indian child welfare act, the provisions of the act shall apply.

(4) Every order or decree entered under this chapter shall contain a finding that the Indian child welfare act does or does not apply. Where there is a finding that the Indian child welfare act does apply, the decree or order must also contain a finding that all notice requirements and evidentiary requirements under the Indian child welfare act have been satisfied.

Sec. 4. RCW 13.34.070 and 2000 c 122 s 8 are each amended to read as follows:

(1) Upon the filing of the petition, the clerk of the court shall issue a summons, one directed to the child, if the child is twelve or more years of age, and another to the parents, guardian, or custodian, and such other persons as appear to the court to be proper or necessary parties to the proceedings, requiring them to appear personally before the court at the time fixed to hear the petition. If the child is developmentally disabled and not living at home, the notice shall be given to the child's custodian as well as to the child's parent. The developmentally disabled child shall not be required to appear unless requested by the court. When the custodian is summoned, the parent or guardian or both shall also be served with a summons. The fact-finding hearing on the petition shall be held no later than seventy-five days after the filing of the petition, unless exceptional reasons for a continuance are found. The party requesting the continuance shall have the burden of proving by a preponderance of the evidence that exceptional circumstances exist. To ensure that the hearing on the petition occurs within the seventy-five day time limit, the court shall schedule and hear the matter on an expedited basis.

(2) A copy of the petition shall be attached to each summons.

(3) The summons shall advise the parties of the right to counsel. The summons shall also inform the child's parent, guardian, or legal custodian of his or her right to appointed counsel, if indigent, and of the procedure to use to secure appointed counsel.

(4) The summons shall advise the parents that they may be held responsible for the support of the child if the child is placed in out-of-home care.

(5) The judge may endorse upon the summons an order directing any parent, guardian, or custodian having the custody or control of the child to bring the child to the hearing.

(6) If it appears from affidavit or sworn statement presented to the judge that there is probable cause for the issuance of a warrant of arrest or that the child needs to be taken into custody pursuant to RCW 13.34.050, the judge may endorse upon the summons an order that an officer serving the summons shall at

once take the child into custody and take him or her to the place of shelter designated by the court.

(7) If the person summoned as provided in this section is subject to an order of the court pursuant to subsection (5) or (6) of this section, and if the person fails to abide by the order, he or she may be proceeded against as for contempt of court. The order endorsed upon the summons shall conspicuously display the following legend:

NOTICE: VIOLATION OF THIS ORDER IS SUBJECT TO PROCEEDING FOR CONTEMPT OF COURT PURSUANT TO RCW 13.34.070.

(8) If a party to be served with a summons can be found within the state, the summons shall be served upon the party personally as soon as possible following the filing of the petition, but in no case later than fifteen court days before the fact-finding hearing, or such time as set by the court. If the party is within the state and cannot be personally served, but the party's address is known or can with reasonable diligence be ascertained, the summons may be served upon the party by mailing a copy by certified mail as soon as possible following the filing of the petition, but in no case later than fifteen court days before the hearing, or such time as set by the court. If a party other than the child is without the state but can be found or the address is known, or can with reasonable diligence be ascertained, service of the summons may be made either by delivering a copy to the party personally or by mailing a copy thereof to the party by certified mail at least ten court days before the fact-finding hearing, or such time as set by the court.

(9) Service of summons may be made under the direction of the court by any person eighteen years of age or older who is not a party to the proceedings or by any law enforcement officer, probation counselor, or department employee.

(10) ~~((In any proceeding brought under this chapter where the court knows or has reason to know that the child involved is a member or is eligible to be a member of an Indian tribe, notice of the pendency of the proceeding shall also be sent by registered mail, return receipt requested, to the child's tribe. If the identity or location of the tribe cannot be determined, such notice shall be transmitted to the secretary of the interior of the United States.))~~ (a) Whenever the court or the petitioning party in a proceeding under this chapter knows or has reason to know that an Indian child is involved, the petitioning party shall promptly provide notice to the child's parent or Indian custodian and to the agent designated by the child's Indian tribe to receive such notices. Notice shall be by certified mail with return receipt requested. If the identity or location of the parent or Indian custodian and the tribe cannot be determined, notice shall be given to the secretary of the interior in the manner described in 25 C.F.R. 23.11. If the child may be a member of more than one tribe, the petitioning party shall send notice to all tribes the petitioner has reason to know may be affiliated with the child.

(b) The notice shall: (i) Contain a statement notifying the parent or custodian and the tribe of the pending proceeding; and (ii) notify the tribe of the tribe's right to intervene and/or request that the case be transferred to tribal court.

Sec. 5. RCW 13.32A.152 and 2000 c 123 s 18 are each amended to read as follows:

(1) Whenever a child in need of services petition is filed by: (a) A youth pursuant to RCW 13.32A.150; (b) the child or the child's parent pursuant to RCW 13.32A.120; or (c) the department pursuant to RCW 13.32A.140, the filing party shall have a copy of the petition served on the parents of the youth. Service shall first be attempted in person and if unsuccessful, then by certified mail with return receipt.

(2) Whenever a child in need of services petition is filed by a youth or parent pursuant to RCW 13.32A.150, the court shall immediately notify the department that a petition has been filed.

(3)(a) Whenever the court or the petitioning party knows or has reason to know that an Indian child is involved, the petitioning party shall promptly provide notice to the child's parent or Indian custodian and to the agent designated by the child's Indian tribe to receive such notices. Notice shall be by certified mail with return receipt requested. If the identity or location of the parent or Indian custodian and the tribe cannot be determined, notice shall be given to the secretary of the interior in the manner described in 25 C.F.R. 23.11. If the child may be a member of more than one tribe, the petitioning party shall send notice to all tribes the petitioner has reason to know may be affiliated with the child.

(b) The notice shall: (i) Contain a statement notifying the parent or custodian and the tribe of the pending proceeding; and (ii) notify the tribe of the tribe's right to intervene and/or request that the case be transferred to tribal court.

Passed by the House February 13, 2004.

Passed by the Senate March 4, 2004.

Approved by the Governor March 22, 2004.

Filed in Office of Secretary of State March 22, 2004.

CHAPTER 65

[Substitute House Bill 1691]

NURSES—INDUSTRIAL INSURANCE

AN ACT Relating to authorizing advanced registered nurse practitioners to examine, diagnose, and treat injured workers covered by industrial insurance; amending RCW 51.04.030, 51.04.050, 51.28.010, 51.28.020, 51.28.025, 51.28.030, 51.28.055, 51.32.055, 51.32.095, 51.36.010, 51.36.060, 51.36.110, 51.48.060, and 51.52.010; reenacting and amending RCW 51.32.090; adding a new section to chapter 51.36 RCW; creating a new section; providing an effective date; and providing an expiration date.

Be it enacted by the Legislature of the State of Washington:

Sec. 1. RCW 51.04.030 and 1998 c 230 s 1 are each amended to read as follows:

(1) The director shall supervise the providing of prompt and efficient care and treatment, including care provided by physician assistants governed by the provisions of chapters 18.57A and 18.71A RCW, acting under a supervising physician, ~~((and))~~ including chiropractic care, and including care provided by licensed advanced registered nurse practitioners, to workers injured during the course of their employment at the least cost consistent with promptness and efficiency, without discrimination or favoritism, and with as great uniformity as the various and diverse surrounding circumstances and locations of industries will permit and to that end shall, from time to time, establish and adopt and

supervise the administration of printed forms, rules, regulations, and practices for the furnishing of such care and treatment: PROVIDED, That the medical coverage decisions of the department do not constitute a "rule" as used in RCW 34.05.010(16), nor are such decisions subject to the rule-making provisions of chapter 34.05 RCW except that criteria for establishing medical coverage decisions shall be adopted by rule after consultation with the workers' compensation advisory committee established in RCW 51.04.110: PROVIDED FURTHER, That the department may recommend to an injured worker particular health care services and providers where specialized treatment is indicated or where cost effective payment levels or rates are obtained by the department: AND PROVIDED FURTHER, That the department may enter into contracts for goods and services including, but not limited to, durable medical equipment so long as statewide access to quality service is maintained for injured workers.

(2) The director shall, in consultation with interested persons, establish and, in his or her discretion, periodically change as may be necessary, and make available a fee schedule of the maximum charges to be made by any physician, surgeon, chiropractor, hospital, druggist, licensed advanced registered nurse practitioner, physicians' assistants as defined in chapters 18.57A and 18.71A RCW, acting under a supervising physician or other agency or person rendering services to injured workers. The department shall coordinate with other state purchasers of health care services to establish as much consistency and uniformity in billing and coding practices as possible, taking into account the unique requirements and differences between programs. No service covered under this title, including services provided to injured workers, whether aliens or other injured workers, who are not residing in the United States at the time of receiving the services, shall be charged or paid at a rate or rates exceeding those specified in such fee schedule, and no contract providing for greater fees shall be valid as to the excess. The establishment of such a schedule, exclusive of conversion factors, does not constitute "agency action" as used in RCW 34.05.010(3), nor does such a fee schedule constitute a "rule" as used in RCW 34.05.010(16).

(3) The director or self-insurer, as the case may be, shall make a record of the commencement of every disability and the termination thereof and, when bills are rendered for the care and treatment of injured workers, shall approve and pay those which conform to the adopted rules, regulations, established fee schedules, and practices of the director and may reject any bill or item thereof incurred in violation of the principles laid down in this section or the rules, regulations, or the established fee schedules and rules and regulations adopted under it.

Sec. 2. RCW 51.04.050 and 1961 c 23 s 51.04.050 are each amended to read as follows:

In all hearings, actions or proceedings before the department or the board of industrial insurance appeals, or before any court on appeal from the board, any physician or licensed advanced registered nurse practitioner having theretofore examined or treated the claimant may be required to testify fully regarding such examination or treatment, and shall not be exempt from so testifying by reason of the relation of the physician or licensed advanced registered nurse practitioner to patient.

Sec. 3. RCW 51.28.010 and 2001 c 231 s 1 are each amended to read as follows:

(1) Whenever any accident occurs to any worker it shall be the duty of such worker or someone in his or her behalf to forthwith report such accident to his or her employer, superintendent, or supervisor in charge of the work, and of the employer to at once report such accident and the injury resulting therefrom to the department pursuant to RCW 51.28.025 where the worker has received treatment from a physician or a licensed advanced registered nurse practitioner, has been hospitalized, disabled from work, or has died as the apparent result of such accident and injury.

(2) Upon receipt of such notice of accident, the department shall immediately forward to the worker or his or her beneficiaries or dependents notification, in nontechnical language, of their rights under this title. The notice must specify the worker's right to receive health services from a physician or a licensed advanced registered nurse practitioner of the worker's choice under RCW 51.36.010, including chiropractic services under RCW 51.36.015, and must list the types of providers authorized to provide these services.

Sec. 4. RCW 51.28.020 and 2001 c 231 s 2 are each amended to read as follows:

(1)(a) Where a worker is entitled to compensation under this title he or she shall file with the department or his or her self-insured employer, as the case may be, his or her application for such, together with the certificate of the physician or licensed advanced registered nurse practitioner who attended him or her. An application form developed by the department shall include a notice specifying the worker's right to receive health services from a physician or licensed advanced registered nurse practitioner of the worker's choice under RCW 51.36.010, including chiropractic services under RCW 51.36.015, and listing the types of providers authorized to provide these services.

(b) The physician or licensed advanced registered nurse practitioner who attended the injured worker shall inform the injured worker of his or her rights under this title and lend all necessary assistance in making this application for compensation and such proof of other matters as required by the rules of the department without charge to the worker. The department shall provide physicians with a manual which outlines the procedures to be followed in applications for compensation involving occupational diseases, and which describes claimants' rights and responsibilities related to occupational disease claims.

(2) If application for compensation is made to a self-insured employer, he or she shall forthwith send a copy of the application to the department.

Sec. 5. RCW 51.28.025 and 1987 c 185 s 32 are each amended to read as follows:

(1) Whenever an employer has notice or knowledge of an injury or occupational disease sustained by any worker in his or her employment who has received treatment from a physician or a licensed advanced registered nurse practitioner, has been hospitalized, disabled from work or has died as the apparent result of such injury or occupational disease, the employer shall immediately report the same to the department on forms prescribed by it. The report shall include:

- (a) The name, address, and business of the employer;
- (b) The name, address, and occupation of the worker;
- (c) The date, time, cause, and nature of the injury or occupational disease;
- (d) Whether the injury or occupational disease arose in the course of the injured worker's employment;
- (e) All available information pertaining to the nature of the injury or occupational disease including but not limited to any visible signs, any complaints of the worker, any time lost from work, and the observable effect on the worker's bodily functions, so far as is known; and
- (f) Such other pertinent information as the department may prescribe by regulation.

(2) Failure or refusal to file the report required by subsection (1) shall subject the offending employer to a penalty determined by the director but not to exceed two hundred fifty dollars for each offense, to be collected in a civil action in the name of the department and paid into the supplemental pension fund.

Sec. 6. RCW 51.28.030 and 1972 ex.s. c 43 s 17 are each amended to read as follows:

Where death results from injury the parties entitled to compensation under this title, or someone in their behalf, shall make application for the same to the department or self-insurer as the case may be, which application must be accompanied with proof of death and proof of relationship showing the parties to be entitled to compensation under this title, certificates of attending physician or licensed advanced registered nurse practitioner, if any, and such proof as required by the rules of the department.

Upon receipt of notice of accident under RCW 51.28.010, the director shall immediately forward to the party or parties required to make application for compensation under this section, notification, in nontechnical language, of their rights under this title.

Sec. 7. RCW 51.28.055 and 2003 2nd sp.s. c 2 s 1 are each amended to read as follows:

(1) Except as provided in subsection (2) of this section for claims filed for occupational hearing loss, claims for occupational disease or infection to be valid and compensable must be filed within two years following the date the worker had written notice from a physician or a licensed advanced registered nurse practitioner: (a) Of the existence of his or her occupational disease, and (b) that a claim for disability benefits may be filed. The notice shall also contain a statement that the worker has two years from the date of the notice to file a claim. The physician or licensed advanced registered nurse practitioner shall file the notice with the department. The department shall send a copy to the worker and to the self-insurer if the worker's employer is self-insured. However, a claim is valid if it is filed within two years from the date of death of the worker suffering from an occupational disease.

(2)(a) Except as provided in (b) of this subsection, to be valid and compensable, claims for hearing loss due to occupational noise exposure must be filed within two years of the date of the worker's last injurious exposure to occupational noise in employment covered under this title or within one year of September 10, 2003, whichever is later.

(b) A claim for hearing loss due to occupational noise exposure that is not timely filed under (a) of this subsection can only be allowed for medical aid benefits under chapter 51.36 RCW.

(3) The department may adopt rules to implement this section.

Sec. 8. RCW 51.32.055 and 1997 c 416 s 1 are each amended to read as follows:

(1) One purpose of this title is to restore the injured worker as nearly as possible to the condition of self-support as an able-bodied worker. Benefits for permanent disability shall be determined under the director's supervision, except as otherwise authorized in subsection (9) of this section, only after the injured worker's condition becomes fixed.

(2) All determinations of permanent disabilities shall be made by the department, except as otherwise authorized in subsection (9) of this section. Either the worker, employer, or self-insurer may make a request or the inquiry may be initiated by the director or, as authorized in subsection (9) of this section, by the self-insurer on the director or the self-insurer's own motion. Determinations shall be required in every instance where permanent disability is likely to be present. All medical reports and other pertinent information in the possession of or under the control of the employer or, if the self-insurer has made a request to the department, in the possession of or under the control of the self-insurer shall be forwarded to the director with the request.

(3) A request for determination of permanent disability shall be examined by the department or, if authorized in subsection (9) of this section, the self-insurer, and the department shall issue an order in accordance with RCW 51.52.050 or, in the case of a self-insured employer, the self-insurer may: (a) Enter a written order, communicated to the worker and the department self-insurance section in accordance with subsection (9) of this section, or (b) request the department to issue an order in accordance with RCW 51.52.050.

(4) The department or, in cases authorized in subsection (9) of this section, the self-insurer may require that the worker present himself or herself for a special medical examination by a physician or physicians selected by the department, and the department or, in cases authorized in subsection (9) of this section, the self-insurer may require that the worker present himself or herself for a personal interview. The costs of the examination or interview, including payment of any reasonable travel expenses, shall be paid by the department or self-insurer, as the case may be.

(5) The director may establish a medical bureau within the department to perform medical examinations under this section. Physicians hired or retained for this purpose shall be grounded in industrial medicine and in the assessment of industrial physical impairment. Self-insurers shall bear a proportionate share of the cost of the medical bureau in a manner to be determined by the department.

(6) Where a dispute arises from the handling of any claim before the condition of the injured worker becomes fixed, the worker, employer, or self-insurer may request the department to resolve the dispute or the director may initiate an inquiry on his or her own motion. In these cases, the department shall proceed as provided in this section and an order shall issue in accordance with RCW 51.52.050.

(7)(a) If a claim (i) is accepted by a self-insurer after June 30, 1986, and before August 1, 1997, (ii) involves only medical treatment and the payment of temporary disability compensation under RCW 51.32.090 or only the payment of temporary disability compensation under RCW 51.32.090, (iii) at the time medical treatment is concluded does not involve permanent disability, (iv) is one with respect to which the department has not intervened under subsection (6) of this section, and (v) the injured worker has returned to work with the self-insured employer of record, whether at the worker's previous job or at a job that has comparable wages and benefits, the claim may be closed by the self-insurer, subject to reporting of claims to the department in a manner prescribed by department rules adopted under chapter 34.05 RCW.

(b) All determinations of permanent disability for claims accepted under this subsection (7) by self-insurers shall be made by the self-insured section of the department under subsections (1) through (4) of this section.

(c) Upon closure of a claim under (a) of this subsection, the self-insurer shall enter a written order, communicated to the worker and the department self-insurance section, which contains the following statement clearly set forth in bold face type: "This order constitutes notification that your claim is being closed with medical benefits and temporary disability compensation only as provided, and with the condition you have returned to work with the self-insured employer. If for any reason you disagree with the conditions or duration of your return to work or the medical benefits or the temporary disability compensation that has been provided, you must protest in writing to the department of labor and industries, self-insurance section, within sixty days of the date you received this order."

(8)(a) If a claim (i) is accepted by a self-insurer after June 30, 1990, and before August 1, 1997, (ii) involves only medical treatment, (iii) does not involve payment of temporary disability compensation under RCW 51.32.090, and (iv) at the time medical treatment is concluded does not involve permanent disability, the claim may be closed by the self-insurer, subject to reporting of claims to the department in a manner prescribed by department rules adopted under chapter 34.05 RCW. Upon closure of a claim, the self-insurer shall enter a written order, communicated to the worker, which contains the following statement clearly set forth in bold-face type: "This order constitutes notification that your claim is being closed with medical benefits only, as provided. If for any reason you disagree with this closure, you must protest in writing to the Department of Labor and Industries, Olympia, within 60 days of the date you received this order. The department will then review your claim and enter a further determinative order."

(b) All determinations of permanent disability for claims accepted under this subsection (8) by self-insurers shall be made by the self-insured section of the department under subsections (1) through (4) of this section.

(9)(a) If a claim: (i) Is accepted by a self-insurer after July 31, 1997; (ii)(A) involves only medical treatment, or medical treatment and the payment of temporary disability compensation under RCW 51.32.090, and a determination of permanent partial disability, if applicable, has been made by the self-insurer as authorized in this subsection; or (B) involves only the payment of temporary disability compensation under RCW 51.32.090 and a determination of permanent partial disability, if applicable, has been made by the self-insurer as

authorized in this subsection; (iii) is one with respect to which the department has not intervened under subsection (6) of this section; and (iv) concerns an injured worker who has returned to work with the self-insured employer of record, whether at the worker's previous job or at a job that has comparable wages and benefits, the claim may be closed by the self-insurer, subject to reporting of claims to the department in a manner prescribed by department rules adopted under chapter 34.05 RCW.

(b) If a physician or licensed advanced registered nurse practitioner submits a report to the self-insurer that concludes that the worker's condition is fixed and stable and supports payment of a permanent partial disability award, and if within fourteen days from the date the self-insurer mailed the report to the attending or treating physician or licensed advanced registered nurse practitioner, the worker's attending or treating physician or licensed advanced registered nurse practitioner disagrees in writing that the worker's condition is fixed and stable, the self-insurer must get a supplemental medical opinion from a provider on the department's approved examiner's list before closing the claim. In the alternative, the self-insurer may forward the claim to the department, which must review the claim and enter a final order as provided for in RCW 51.52.050.

(c) Upon closure of a claim under this subsection (9), the self-insurer shall enter a written order, communicated to the worker and the department self-insurance section, which contains the following statement clearly set forth in bold-face type: "This order constitutes notification that your claim is being closed with such medical benefits and temporary disability compensation as provided to date and with such award for permanent partial disability, if any, as set forth below, and with the condition that you have returned to work with the self-insured employer. If for any reason you disagree with the conditions or duration of your return to work or the medical benefits, temporary disability compensation provided, or permanent partial disability that has been awarded, you must protest in writing to the Department of Labor and Industries, Self-Insurance Section, within sixty days of the date you received this order. If you do not protest this order to the department, this order will become final."

(d) All determinations of permanent partial disability for claims accepted by self-insurers under this subsection (9) may be made by the self-insurer or the self-insurer may request a determination by the self-insured section of the department. All determinations shall be made under subsections (1) through (4) of this section.

(10) If the department receives a protest of an order issued by a self-insurer under subsections (7) through (9) of this section, the self-insurer's closure order must be held in abeyance. The department shall review the claim closure action and enter a further determinative order as provided for in RCW 51.52.050. If no protest is timely filed, the closing order issued by the self-insurer shall become final and shall have the same force and effect as a department order that has become final under RCW 51.52.050.

(11) If within two years of claim closure under subsections (7) through (9) of this section, the department determines that the self-insurer has made payment of benefits because of clerical error, mistake of identity, or innocent misrepresentation or the department discovers a violation of the conditions of claim closure, the department may require the self-insurer to correct the benefits

paid or payable. This subsection (11) does not limit in any way the application of RCW 51.32.240.

(12) For the purposes of this section, "comparable wages and benefits" means wages and benefits that are at least ninety-five percent of the wages and benefits received by the worker at the time of injury.

Sec. 9. RCW 51.32.090 and 1993 c 521 s 3, 1993 c 299 s 1, and 1993 c 271 s 1 are each reenacted and amended to read as follows:

(1) When the total disability is only temporary, the schedule of payments contained in RCW 51.32.060 (1) and (2) shall apply, so long as the total disability continues.

(2) Any compensation payable under this section for children not in the custody of the injured worker as of the date of injury shall be payable only to such person as actually is providing the support for such child or children pursuant to the order of a court of record providing for support of such child or children.

(3)(a) As soon as recovery is so complete that the present earning power of the worker, at any kind of work, is restored to that existing at the time of the occurrence of the injury, the payments shall cease. If and so long as the present earning power is only partially restored, the payments shall:

(i) For claims for injuries that occurred before May 7, 1993, continue in the proportion which the new earning power shall bear to the old; or

(ii) For claims for injuries occurring on or after May 7, 1993, equal eighty percent of the actual difference between the worker's present wages and earning power at the time of injury, but: (A) The total of these payments and the worker's present wages may not exceed one hundred fifty percent of the average monthly wage in the state as computed under RCW 51.08.018; (B) the payments may not exceed one hundred percent of the entitlement as computed under subsection (1) of this section; and (C) the payments may not be less than the worker would have received if (a)(i) of this subsection had been applicable to the worker's claim.

(b) No compensation shall be payable under this subsection (3) unless the loss of earning power shall exceed five percent.

(4)(a) Whenever the employer of injury requests that a worker who is entitled to temporary total disability under this chapter be certified by a physician or licensed advanced registered nurse practitioner as able to perform available work other than his or her usual work, the employer shall furnish to the physician or licensed advanced registered nurse practitioner, with a copy to the worker, a statement describing the work available with the employer of injury in terms that will enable the physician or licensed advanced registered nurse practitioner to relate the physical activities of the job to the worker's disability. The physician or licensed advanced registered nurse practitioner shall then determine whether the worker is physically able to perform the work described. The worker's temporary total disability payments shall continue until the worker is released by his or her physician or licensed advanced registered nurse practitioner for the work, and begins the work with the employer of injury. If the work thereafter comes to an end before the worker's recovery is sufficient in the judgment of his or her physician or licensed advanced registered nurse practitioner to permit him or her to return to his or her usual job, or to perform other available work offered by the employer of injury, the worker's temporary

total disability payments shall be resumed. Should the available work described, once undertaken by the worker, impede his or her recovery to the extent that in the judgment of his or her physician or licensed advanced registered nurse practitioner he or she should not continue to work, the worker's temporary total disability payments shall be resumed when the worker ceases such work.

(b) Once the worker returns to work under the terms of this subsection (4), he or she shall not be assigned by the employer to work other than the available work described without the worker's written consent, or without prior review and approval by the worker's physician or licensed advanced registered nurse practitioner.

(c) If the worker returns to work under this subsection (4), any employee health and welfare benefits that the worker was receiving at the time of injury shall continue or be resumed at the level provided at the time of injury. Such benefits shall not be continued or resumed if to do so is inconsistent with the terms of the benefit program, or with the terms of the collective bargaining agreement currently in force.

(d) In the event of any dispute as to the worker's ability to perform the available work offered by the employer, the department shall make the final determination.

(5) No worker shall receive compensation for or during the day on which injury was received or the three days following the same, unless his or her disability shall continue for a period of fourteen consecutive calendar days from date of injury: PROVIDED, That attempts to return to work in the first fourteen days following the injury shall not serve to break the continuity of the period of disability if the disability continues fourteen days after the injury occurs.

(6) Should a worker suffer a temporary total disability and should his or her employer at the time of the injury continue to pay him or her the wages which he or she was earning at the time of such injury, such injured worker shall not receive any payment provided in subsection (1) of this section during the period his or her employer shall so pay such wages.

(7) In no event shall the monthly payments provided in this section exceed the applicable percentage of the average monthly wage in the state as computed under the provisions of RCW 51.08.018 as follows:

| AFTER | PERCENTAGE |
|---------------|------------|
| June 30, 1993 | 105% |
| June 30, 1994 | 110% |
| June 30, 1995 | 115% |
| June 30, 1996 | 120% |

(8) If the supervisor of industrial insurance determines that the worker is voluntarily retired and is no longer attached to the work force, benefits shall not be paid under this section.

Sec. 10. RCW 51.32.095 and 1999 c 110 s 1 are each amended to read as follows:

(1) One of the primary purposes of this title is to enable the injured worker to become employable at gainful employment. To this end, the department or self-insurers shall utilize the services of individuals and organizations, public or

private, whose experience, training, and interests in vocational rehabilitation and retraining qualify them to lend expert assistance to the supervisor of industrial insurance in such programs of vocational rehabilitation as may be reasonable to make the worker employable consistent with his or her physical and mental status. Where, after evaluation and recommendation by such individuals or organizations and prior to final evaluation of the worker's permanent disability and in the sole opinion of the supervisor or supervisor's designee, whether or not medical treatment has been concluded, vocational rehabilitation is both necessary and likely to enable the injured worker to become employable at gainful employment, the supervisor or supervisor's designee may, in his or her sole discretion, pay or, if the employer is a self-insurer, direct the self-insurer to pay the cost as provided in subsection (3) of this section.

(2) When in the sole discretion of the supervisor or the supervisor's designee vocational rehabilitation is both necessary and likely to make the worker employable at gainful employment, then the following order of priorities shall be used:

- (a) Return to the previous job with the same employer;
- (b) Modification of the previous job with the same employer including transitional return to work;
- (c) A new job with the same employer in keeping with any limitations or restrictions;
- (d) Modification of a new job with the same employer including transitional return to work;
- (e) Modification of the previous job with a new employer;
- (f) A new job with a new employer or self-employment based upon transferable skills;
- (g) Modification of a new job with a new employer;
- (h) A new job with a new employer or self-employment involving on-the-job training;
- (i) Short-term retraining and job placement.

(3)(a) Except as provided in (b) of this subsection, costs for vocational rehabilitation benefits allowed by the supervisor or supervisor's designee under subsection (1) of this section may include the cost of books, tuition, fees, supplies, equipment, transportation, child or dependent care, and other necessary expenses for any such worker in an amount not to exceed three thousand dollars in any fifty-two week period except as authorized by RCW 51.60.060, and the cost of continuing the temporary total disability compensation under RCW 51.32.090 while the worker is actively and successfully undergoing a formal program of vocational rehabilitation.

(b) Beginning with vocational rehabilitation plans approved on or after July 1, 1999, costs for vocational rehabilitation benefits allowed by the supervisor or supervisor's designee under subsection (1) of this section may include the cost of books, tuition, fees, supplies, equipment, child or dependent care, and other necessary expenses for any such worker in an amount not to exceed four thousand dollars in any fifty-two week period except as authorized by RCW 51.60.060, and the cost of transportation and continuing the temporary total disability compensation under RCW 51.32.090 while the worker is actively and successfully undergoing a formal program of vocational rehabilitation.

(c) The expenses allowed under (a) or (b) of this subsection may include training fees for on-the-job training and the cost of furnishing tools and other equipment necessary for self-employment or reemployment. However, compensation or payment of retraining with job placement expenses under (a) or (b) of this subsection may not be authorized for a period of more than fifty-two weeks, except that such period may, in the sole discretion of the supervisor after his or her review, be extended for an additional fifty-two weeks or portion thereof by written order of the supervisor.

(d) In cases where the worker is required to reside away from his or her customary residence, the reasonable cost of board and lodging shall also be paid.

(e) Costs paid under this subsection shall be chargeable to the employer's cost experience or shall be paid by the self-insurer as the case may be.

(4) In addition to the vocational rehabilitation expenditures provided for under subsection (3) of this section, an additional five thousand dollars may, upon authorization of the supervisor or the supervisor's designee, be expended for: (a) Accommodations for an injured worker that are medically necessary for the worker to participate in an approved retraining plan; and (b) accommodations necessary to perform the essential functions of an occupation in which an injured worker is seeking employment, consistent with the retraining plan or the recommendations of a vocational evaluation. The injured worker's attending physician or licensed advanced registered nurse practitioner must verify the necessity of the modifications or accommodations. The total expenditures authorized in this subsection and the expenditures authorized under RCW 51.32.250 shall not exceed five thousand dollars.

(5) The department shall establish criteria to monitor the quality and effectiveness of rehabilitation services provided by the individuals and organizations used under subsection (1) of this section. The state fund shall make referrals for vocational rehabilitation services based on these performance criteria.

(6) The department shall engage in, where feasible and cost-effective, a cooperative program with the state employment security department to provide job placement services under this section.

(7) The benefits in this section shall be provided for the injured workers of self-insured employers. Self-insurers shall report both benefits provided and benefits denied under this section in the manner prescribed by the department by rule adopted under chapter 34.05 RCW. The director may, in his or her sole discretion and upon his or her own initiative or at any time that a dispute arises under this section, promptly make such inquiries as circumstances require and take such other action as he or she considers will properly determine the matter and protect the rights of the parties.

(8) Except as otherwise provided in this section, the benefits provided for in this section are available to any otherwise eligible worker regardless of the date of industrial injury. However, claims shall not be reopened solely for vocational rehabilitation purposes.

Sec. 11. RCW 51.36.010 and 1986 c 58 s 6 are each amended to read as follows:

Upon the occurrence of any injury to a worker entitled to compensation under the provisions of this title, he or she shall receive proper and necessary medical and surgical services at the hands of a physician or licensed advanced

registered nurse practitioner of his or her own choice, if conveniently located, and proper and necessary hospital care and services during the period of his or her disability from such injury, but the same shall be limited in point of duration as follows:

In the case of permanent partial disability, not to extend beyond the date when compensation shall be awarded him or her, except when the worker returned to work before permanent partial disability award is made, in such case not to extend beyond the time when monthly allowances to him or her shall cease; in case of temporary disability not to extend beyond the time when monthly allowances to him or her shall cease: PROVIDED, That after any injured worker has returned to his or her work his or her medical and surgical treatment may be continued if, and so long as, such continuation is deemed necessary by the supervisor of industrial insurance to be necessary to his or her more complete recovery; in case of a permanent total disability not to extend beyond the date on which a lump sum settlement is made with him or her or he or she is placed upon the permanent pension roll: PROVIDED, HOWEVER, That the supervisor of industrial insurance, solely in his or her discretion, may authorize continued medical and surgical treatment for conditions previously accepted by the department when such medical and surgical treatment is deemed necessary by the supervisor of industrial insurance to protect such worker's life or provide for the administration of medical and therapeutic measures including payment of prescription medications, but not including those controlled substances currently scheduled by the state board of pharmacy as Schedule I, II, III, or IV substances under chapter 69.50 RCW, which are necessary to alleviate continuing pain which results from the industrial injury. In order to authorize such continued treatment the written order of the supervisor of industrial insurance issued in advance of the continuation shall be necessary.

The supervisor of industrial insurance, the supervisor's designee, or a self-insurer, in his or her sole discretion, may authorize inoculation or other immunological treatment in cases in which a work-related activity has resulted in probable exposure of the worker to a potential infectious occupational disease. Authorization of such treatment does not bind the department or self-insurer in any adjudication of a claim by the same worker or the worker's beneficiary for an occupational disease.

Sec. 12. RCW 51.36.060 and 1991 c 89 s 3 are each amended to read as follows:

Physicians or licensed advanced registered nurse practitioners examining or attending injured workers under this title shall comply with rules and regulations adopted by the director, and shall make such reports as may be requested by the department or self-insurer upon the condition or treatment of any such worker, or upon any other matters concerning such workers in their care. Except under RCW 49.17.210 and 49.17.250, all medical information in the possession or control of any person and relevant to the particular injury in the opinion of the department pertaining to any worker whose injury or occupational disease is the basis of a claim under this title shall be made available at any stage of the proceedings to the employer, the claimant's representative, and the department upon request, and no person shall incur any legal liability by reason of releasing such information.

Sec. 13. RCW 51.36.110 and 1994 c 154 s 312 are each amended to read as follows:

The director of the department of labor and industries or the director's authorized representative shall have the authority to:

(1) Conduct audits and investigations of providers of medical, chiropractic, dental, vocational, and other health services furnished to industrially injured workers pursuant to Title 51 RCW. In the conduct of such audits or investigations, the director or the director's authorized representatives may examine all records, or portions thereof, including patient records, for which services were rendered by a health services provider and reimbursed by the department, notwithstanding the provisions of any other statute which may make or purport to make such records privileged or confidential: PROVIDED, That no original patient records shall be removed from the premises of the health services provider, and that the disclosure of any records or information obtained under authority of this section by the department of labor and industries is prohibited and constitutes a violation of RCW 42.52.050, unless such disclosure is directly connected to the official duties of the department: AND PROVIDED FURTHER, That the disclosure of patient information as required under this section shall not subject any physician, licensed advanced registered nurse practitioner, or other health services provider to any liability for breach of any confidential relationships between the provider and the patient: AND PROVIDED FURTHER, That the director or the director's authorized representative shall destroy all copies of patient medical records in their possession upon completion of the audit, investigation, or proceedings;

(2) Approve or deny applications to participate as a provider of services furnished to industrially injured workers pursuant to Title 51 RCW; and

(3) Terminate or suspend eligibility to participate as a provider of services furnished to industrially injured workers pursuant to Title 51 RCW.

Sec. 14. RCW 51.48.060 and 1985 c 347 s 6 are each amended to read as follows:

Any physician or licensed advanced registered nurse practitioner who fails, neglects or refuses to file a report with the director, as required by this title, within five days of the date of treatment, showing the condition of the injured worker at the time of treatment, a description of the treatment given, and an estimate of the probable duration of the injury, or who fails or refuses to render all necessary assistance to the injured worker, as required by this title, shall be subject to a civil penalty determined by the director but not to exceed two hundred fifty dollars.

Sec. 15. RCW 51.52.010 and 2003 c 224 s 1 are each amended to read as follows:

There shall be a "board of industrial insurance appeals," hereinafter called the "board," consisting of three members appointed by the governor, with the advice and consent of the senate, as hereinafter provided. One shall be a representative of the public and a lawyer, appointed from a mutually agreed to list of not less than three active or judicial members of the Washington state bar association, submitted to the governor by the two organizations defined below, and such member shall be the chairperson of said board. The second member shall be a representative of the majority of workers engaged in employment

under this title and selected from a list of not less than three names submitted to the governor by an organization, statewide in scope, which through its affiliates embraces a cross section and a majority of the organized labor of the state. The third member shall be a representative of employers under this title, and appointed from a list of at least three names submitted to the governor by a recognized statewide organization of employers, representing a majority of employers. The initial terms of office of the members of the board shall be for six, four, and two years respectively. Thereafter all terms shall be for a period of six years. Each member of the board shall be eligible for reappointment and shall hold office until his or her successor is appointed and qualified. In the event of a vacancy the governor is authorized to appoint a successor to fill the unexpired term of his or her predecessor. All appointments to the board shall be made in conformity with the foregoing plan. In the event a board member becomes incapacitated in excess of thirty days either due to his or her illness or that of an immediate family member as determined by a request for family leave or as certified by the affected member's treating physician or licensed advanced registered nurse practitioner, the governor shall appoint an acting member to serve pro tem. Such an appointment shall be made in conformity with the foregoing plan, except that the list of candidates shall be submitted to the governor not more than fifteen days after the affected organizations are notified of the incapacity and the governor shall make the appointment within fifteen days after the list is submitted. The temporary member shall serve until such time as the affected member is able to reassume his or her duties by returning from requested family leave or as determined by the treating physician or licensed advanced registered nurse practitioner or until the affected member's term expires, whichever occurs first. Whenever the workload of the board and its orderly and expeditious disposition shall necessitate, the governor may appoint two additional pro-tem members in addition to the regular members. Such appointments shall be for a definite period of time, and shall be made from lists submitted respectively by labor and industry as in the case of regular members. One pro-tem member shall be a representative of labor and one shall be a representative of industry. Members shall devote their entire time to the duties of the board and shall receive for their services a salary as fixed by the governor in accordance with the provisions of RCW 43.03.040 which shall be in addition to travel expenses in accordance with RCW 43.03.050 and 43.03.060 as now existing or hereafter amended. Headquarters for the board shall be located in Olympia. The board shall adopt a seal which shall be judicially recognized.

NEW SECTION. Sec. 16. A new section is added to chapter 51.36 RCW to read as follows:

· Licensed advanced registered nurse practitioners are recognized as independent practitioners and, subject to the provisions of this title, the health services available to an injured worker under RCW 51.36.010 include health services provided by licensed advanced registered nurse practitioners within their scope of practice.

NEW SECTION. Sec. 17. By December 1, 2006, the department of labor and industries shall report to the senate committee on commerce and trade and the house committee on commerce and labor, or successor committees, on the

implementation of this act, including but not limited to the effects of this act on injured worker outcomes, claim costs, and disputed claims.

NEW SECTION. Sec. 18. This act takes effect July 1, 2004.

NEW SECTION. Sec. 19. This act expires June 30, 2007.

NEW SECTION. Sec. 20. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected.

Passed by the House February 12, 2004.

Passed by the Senate March 4, 2004.

Approved by the Governor March 22, 2004.

Filed in Office of Secretary of State March 22, 2004.

CHAPTER 66

[Senate Bill 6650]

ELEVATOR SAFETY—PRIVATE RESIDENCE CONVEYANCE WORK

AN ACT Relating to providing the department of labor and industries with the rule-making authority to address recommendations of the elevator safety advisory committee relating to the licensing of private residence conveyance work; amending RCW 70.87.240; adding a new section to chapter 70.87 RCW; and creating a new section.

Be it enacted by the Legislature of the State of Washington:

NEW SECTION. Sec. 1. The legislature finds that individuals performing conveyance work on private residence conveyances must be licensed by the department of labor and industries. However, the licensing requirements for this type of work need not be to the same level as those established for conveyance work in circumstances where the general public has access to the conveyances. The legislature further finds that the department of labor and industries should be given the authority to develop the licensing requirements for this type of work using the normal rule-making process established under chapter 34.05 RCW. Lastly, the legislature finds that private residence conveyance maintenance work that is performed by an owner or at the direction of the owner is exempt from licensing if the owner resides in the residence at which the conveyance is located and the conveyance is not accessible to the general public.

Sec. 2. RCW 70.87.240 and 2003 c 143 s 2 are each amended to read as follows:

(1) Any person, firm, public agency, or company wishing to engage in the business of performing conveyance work within the state must apply for an elevator contractor license with the department on a form provided by the department and be a registered general or specialty contractor under chapter 18.27 RCW.

(2) Except as provided by RCW 70.87.270, any person wishing to perform conveyance work within the state must apply for an elevator mechanic license with the department on a form provided by the department.

(3) An elevator contractor license may not be granted to any person or firm who does not possess the following qualifications:

(a) Five years' experience performing conveyance work, as verified by current and previous elevator contractors licensed to do business; or

(b) Satisfactory completion of a written examination administered by the department on this chapter and the rules adopted under this chapter.

(4) Except as provided in subsection (5) of this section, section 3 of this act, and RCW 70.87.245, an elevator mechanic license may not be granted to any person who does not possess the following qualifications:

(a) An acceptable combination of documented experience and education credits: Not less than three years' experience performing conveyance work, as verified by current and previous employers licensed to do business in this state or public agency employers; and

(b) Satisfactory completion of a written examination administered by the department on this chapter and the rules adopted under this chapter.

(5) Any person who furnishes the department with acceptable proof that he or she has performed conveyance work in the category for which a license is sought shall upon making application for a license and paying the license fee receive a license without an examination. The person must have:

(a) Worked without direct and immediate supervision for a general or specialty contractor registered under chapter 18.27 RCW and engaged in the business of performing conveyance work in this state. This employment may not be less than each and all of the three years immediately before March 1, 2004. The person must apply within ninety days after the effective date of rules adopted under this chapter establishing licensing requirements;

(b) Worked without direct and immediate supervision for an owner exempt from licensing requirements under RCW 70.87.270 or a public agency as an individual responsible for maintenance of conveyances owned by the owner exempt from licensing requirements under RCW 70.87.270 or the public agency. This employment may not be less than each and all of the three years immediately before March 1, 2004. The person must apply within ninety days after the effective date of rules adopted under this chapter establishing licensing requirements;

(c) Obtained a certificate of completion and successfully passed the mechanic examination of a nationally recognized training program for the elevator industry such as the national elevator industry educational program or its equivalent; or

(d) Obtained a certificate of completion of an apprenticeship program for an elevator mechanic, having standards substantially equal to those of this chapter, and registered with the Washington state apprenticeship and training council.

(6) A license must be issued to an individual holding a valid license from a state having entered into a reciprocal agreement with the department and having standards substantially equal to those of this chapter, upon application and without examination.

NEW SECTION. Sec. 3. A new section is added to chapter 70.87 RCW to read as follows:

(1) The department shall, by rule, establish licensing requirements for conveyance work performed on private residence conveyances. These rules shall include an exemption from licensing for maintenance work on private residence conveyances performed by an owner or at the direction of the owner, provided the owner resides in the residence at which the conveyance is located and the conveyance is not accessible to the general public. However, maintenance work performed on private residence conveyances located in or at

adult family homes licensed under chapter 70.128 RCW, boarding homes licensed under chapter 18.20 RCW, or similarly licensed caregiving facilities must comply with the licensing requirements of this chapter.

(2) The rules adopted under this section take effect July 1, 2004.

Passed by the Senate February 12, 2004.

Passed by the House March 2, 2004.

Approved by the Governor March 22, 2004.

Filed in Office of Secretary of State March 22, 2004.

CHAPTER 67

[Senate Bill 6586]

BOILERS—ELECTRICAL WORK

AN ACT Relating to requirements for electrical work on boilers; and amending 2003 c 399 s 701 (uncodified).

Be it enacted by the Legislature of the State of Washington:

Sec. 1. 2003 c 399 s 701 (uncodified) is amended to read as follows:

(1) Until July 1, ((2004)) 2005, the department of labor and industries shall cease to administer and enforce licensing requirements under RCW 19.28.091, certification requirements under RCW 19.28.161, and inspection and permitting requirements under RCW 19.28.101, as applied only to maintenance work on the electrical controls of a boiler performed by an employee of a service company.

(2) The electrical board and the board of boiler rules shall jointly evaluate whether electrical licensing, certification, inspection, and permitting requirements should apply to maintenance work on the electrical controls of a boiler performed by an employee of a service company. The electrical board shall report their joint findings and recommendations for legislation or rule making, if any, to the commerce and labor committee of the house of representatives and the commerce and trade committee of the senate by December 1, ((2003)) 2004.

(3) This section expires July 1, ((2004)) 2005.

Passed by the Senate February 12, 2004.

Passed by the House March 2, 2004.

Approved by the Governor March 22, 2004.

Filed in Office of Secretary of State March 22, 2004.

CHAPTER 68

[Substitute House Bill 3055]

DUI TEST ADMISSIBILITY

AN ACT Relating to admissibility of DUI tests; amending RCW 46.61.506; reenacting and amending RCW 46.20.308 and 46.20.3101; and creating a new section.

Be it enacted by the Legislature of the State of Washington:

NEW SECTION. Sec. I. The legislature finds that previous attempts to curtail the incidence of driving while intoxicated have been inadequate. The legislature further finds that property loss, injury, and death caused by drinking drivers continue at unacceptable levels. This act is intended to convey the seriousness with which the legislature views this problem. To that end the

legislature seeks to ensure swift and certain consequences for those who drink and drive.

To accomplish this goal, the legislature adopts standards governing the admissibility of tests of a person's blood or breath. These standards will provide a degree of uniformity that is currently lacking, and will reduce the delays caused by challenges to various breath test instrument components and maintenance procedures. Such challenges, while allowed, will no longer go to admissibility of test results. Instead, such challenges are to be considered by the finder of fact in deciding what weight to place upon an admitted blood or breath test result.

The legislature's authority to adopt standards governing the admissibility of evidence involving alcohol is well established by the Washington Supreme Court. See generally *State v. Long*, 113 Wn.2d 266, 778 P.2d 1027 (1989); *State v. Sears*, 4 Wn.2d 200, 215, 103 P.2d 337 (1940) (the legislature has the power to enact laws which create rules of evidence); *State v. Pavelich*, 153 Wash. 379, 279 P. 1102 (1929) ("rules of evidence are substantive law").

Sec. 2. RCW 46.20.308 and 1999 c 331 s 2 and 1999 c 274 s 2 are each reenacted and amended to read as follows:

(1) Any person who operates a motor vehicle within this state is deemed to have given consent, subject to the provisions of RCW 46.61.506, to a test or tests of his or her breath or blood for the purpose of determining the alcohol concentration or presence of any drug in his or her breath or blood if arrested for any offense where, at the time of the arrest, the arresting officer has reasonable grounds to believe the person had been driving or was in actual physical control of a motor vehicle while under the influence of intoxicating liquor or any drug or was in violation of RCW 46.61.503. Neither consent nor this section precludes a police officer from obtaining a search warrant for a person's breath or blood.

(2) The test or tests of breath shall be administered at the direction of a law enforcement officer having reasonable grounds to believe the person to have been driving or in actual physical control of a motor vehicle within this state while under the influence of intoxicating liquor or any drug or the person to have been driving or in actual physical control of a motor vehicle while having alcohol in a concentration in violation of RCW 46.61.503 in his or her system and being under the age of twenty-one. However, in those instances where the person is incapable due to physical injury, physical incapacity, or other physical limitation, of providing a breath sample or where the person is being treated in a hospital, clinic, doctor's office, emergency medical vehicle, ambulance, or other similar facility ((in which a breath testing instrument is not present)) or where the officer has reasonable grounds to believe that the person is under the influence of a drug, a blood test shall be administered by a qualified person as provided in RCW 46.61.506(((4))) (5). The officer shall inform the person of his or her right to refuse the breath or blood test, and of his or her right to have additional tests administered by any qualified person of his or her choosing as provided in RCW 46.61.506. ((The officer shall warn the driver that:

(a) His or her license, permit, or privilege to drive will be revoked or denied if he or she refuses to submit to the test;

(b) His or her license, permit, or privilege to drive will be suspended, revoked, or denied if the test is administered and the test indicates the alcohol concentration of the person's breath or blood is 0.08 or more, in the case of a

~~person age twenty-one or over, or in violation of RCW 46.61.502, 46.61.503, or 46.61.504 in the case of a person under age twenty-one; and~~

~~(e) His or her refusal to take the test may be used in a criminal trial.)~~ The officer shall warn the driver, in substantially the following language, that:

(a) If the driver refuses to take the test, the driver's license, permit, or privilege to drive will be revoked or denied for at least one year; and

(b) If the driver refuses to take the test, the driver will not be eligible for an occupational permit; and

(c) If the driver refuses to take the test, the driver's refusal to take the test may be used in a criminal trial; and

(d) If the driver submits to the test and the test is administered the driver's license, permit, or privilege to drive will be suspended, revoked, or denied for at least ninety days if the driver is age twenty-one or over and the test indicates the alcohol concentration of the driver's breath or blood is 0.08 or more, or if the driver is under age twenty-one and the test indicates the alcohol concentration of the driver's breath or blood is 0.02 or more, or if the driver is under age twenty-one and the driver is in violation of RCW 46.61.502 or 46.61.504.

(3) Except as provided in this section, the test administered shall be of the breath only. If an individual is unconscious or is under arrest for the crime of vehicular homicide as provided in RCW 46.61.520 or vehicular assault as provided in RCW 46.61.522, or if an individual is under arrest for the crime of driving while under the influence of intoxicating liquor or drugs as provided in RCW 46.61.502, which arrest results from an accident in which there has been serious bodily injury to another person, a breath or blood test may be administered without the consent of the individual so arrested.

(4) Any person who is dead, unconscious, or who is otherwise in a condition rendering him or her incapable of refusal, shall be deemed not to have withdrawn the consent provided by subsection (1) of this section and the test or tests may be administered, subject to the provisions of RCW 46.61.506, and the person shall be deemed to have received the warnings required under subsection (2) of this section.

(5) If, following his or her arrest and receipt of warnings under subsection (2) of this section, the person arrested refuses upon the request of a law enforcement officer to submit to a test or tests of his or her breath or blood, no test shall be given except as authorized under subsection (3) or (4) of this section.

(6) If, after arrest and after the other applicable conditions and requirements of this section have been satisfied, a test or tests of the person's blood or breath is administered and the test results indicate that the alcohol concentration of the person's breath or blood is 0.08 or more if the person is age twenty-one or over, or ~~((is in violation of RCW 46.61.502, 46.61.503, or 46.61.504))~~ 0.02 or more if the person is under the age of twenty-one, or the person refuses to submit to a test, the arresting officer or other law enforcement officer at whose direction any test has been given, or the department, where applicable, if the arrest results in a test of the person's blood, shall:

(a) Serve notice in writing on the person on behalf of the department of its intention to suspend, revoke, or deny the person's license, permit, or privilege to drive as required by subsection (7) of this section;

(b) Serve notice in writing on the person on behalf of the department of his or her right to a hearing, specifying the steps he or she must take to obtain a hearing as provided by subsection (8) of this section;

(c) Mark the person's Washington state driver's license or permit to drive, if any, in a manner authorized by the department;

(d) Serve notice in writing that the marked license or permit, if any, is a temporary license that is valid for sixty days from the date of arrest or from the date notice has been given in the event notice is given by the department following a blood test, or until the suspension, revocation, or denial of the person's license, permit, or privilege to drive is sustained at a hearing pursuant to subsection (8) of this section, whichever occurs first. No temporary license is valid to any greater degree than the license or permit that it replaces; and

(e) Immediately notify the department of the arrest and transmit to the department within seventy-two hours, except as delayed as the result of a blood test, a sworn report or report under a declaration authorized by RCW 9A.72.085 that states:

(i) That the officer had reasonable grounds to believe the arrested person had been driving or was in actual physical control of a motor vehicle within this state while under the influence of intoxicating liquor or drugs, or both, or was under the age of twenty-one years and had been driving or was in actual physical control of a motor vehicle while having an alcohol concentration in violation of RCW 46.61.503;

(ii) That after receipt of the warnings required by subsection (2) of this section the person refused to submit to a test of his or her blood or breath, or a test was administered and the results indicated that the alcohol concentration of the person's breath or blood was 0.08 or more if the person is age twenty-one or over, or was (~~in violation of RCW 46.61.502, 46.61.503, or 46.61.504~~) 0.02 or more if the person is under the age of twenty-one; and

(iii) Any other information that the director may require by rule.

(7) The department of licensing, upon the receipt of a sworn report or report under a declaration authorized by RCW 9A.72.085 under subsection (6)(e) of this section, shall suspend, revoke, or deny the person's license, permit, or privilege to drive or any nonresident operating privilege, as provided in RCW 46.20.3101, such suspension, revocation, or denial to be effective beginning sixty days from the date of arrest or from the date notice has been given in the event notice is given by the department following a blood test, or when sustained at a hearing pursuant to subsection (8) of this section, whichever occurs first.

(8) A person receiving notification under subsection (6)(b) of this section may, within thirty days after the notice has been given, request in writing a formal hearing before the department. The person shall pay a fee of one hundred dollars as part of the request. If the request is mailed, it must be postmarked within thirty days after receipt of the notification. Upon timely receipt of such a request for a formal hearing, including receipt of the required one hundred dollar fee, the department shall afford the person an opportunity for a hearing. The department may waive the required one hundred dollar fee if the person is an indigent as defined in RCW 10.101.010. Except as otherwise provided in this section, the hearing is subject to and shall be scheduled and conducted in accordance with RCW 46.20.329 and 46.20.332. The hearing shall be conducted in the county of the arrest, except that all or part of the hearing may, at

the discretion of the department, be conducted by telephone or other electronic means. The hearing shall be held within sixty days following the arrest or following the date notice has been given in the event notice is given by the department following a blood test, unless otherwise agreed to by the department and the person, in which case the action by the department shall be stayed, and any valid temporary license marked under subsection (6)(c) of this section extended, if the person is otherwise eligible for licensing. For the purposes of this section, the scope of the hearing shall cover the issues of whether a law enforcement officer had reasonable grounds to believe the person had been driving or was in actual physical control of a motor vehicle within this state while under the influence of intoxicating liquor or any drug or had been driving or was in actual physical control of a motor vehicle within this state while having alcohol in his or her system in a concentration ~~((in violation of RCW 46.61.503 and))~~ of 0.02 or more if the person was under the age of twenty-one, whether the person was placed under arrest, and (a) whether the person refused to submit to the test or tests upon request of the officer after having been informed that such refusal would result in the revocation of the person's license, permit, or privilege to drive, or (b) if a test or tests were administered, whether the applicable requirements of this section were satisfied before the administration of the test or tests, whether the person submitted to the test or tests, or whether a test was administered without express consent as permitted under this section, and whether the test or tests indicated that the alcohol concentration of the person's breath or blood was 0.08 or more if the person was age twenty-one or over at the time of the arrest, or ~~((was in violation of RCW 46.61.502, 46.61.503, or 46.61.504))~~ 0.02 or more if the person was under the age of twenty-one at the time of the arrest. The sworn report or report under a declaration authorized by RCW 9A.72.085 submitted by a law enforcement officer is prima facie evidence that the officer had reasonable grounds to believe the person had been driving or was in actual physical control of a motor vehicle within this state while under the influence of intoxicating liquor or drugs, or both, or the person had been driving or was in actual physical control of a motor vehicle within this state while having alcohol in his or her system in a concentration ~~((in violation of RCW 46.61.503))~~ of 0.02 or more and was under the age of twenty-one and that the officer complied with the requirements of this section.

A bearing officer shall conduct the hearing, may issue subpoenas for the attendance of witnesses and the production of documents, and shall administer oaths to witnesses. The hearing officer shall not issue a subpoena for the attendance of a witness at the request of the person unless the request is accompanied by the fee required by RCW 5.56.010 for a witness in district court. The sworn report or report under a declaration authorized by RCW 9A.72.085 of the law enforcement officer and any other evidence accompanying the report shall be admissible without further evidentiary foundation and the certifications authorized by the criminal rules for courts of limited jurisdiction shall be admissible without further evidentiary foundation. The person may be represented by counsel, may question witnesses, may present evidence, and may testify. The department shall order that the suspension, revocation, or denial either be rescinded or sustained.

(9) If the suspension, revocation, or denial is sustained after such a hearing, the person whose license, privilege, or permit is suspended, revoked, or denied has the right to file a petition in the superior court of the county of arrest to review the final order of revocation by the department in the same manner as an appeal from a decision of a court of limited jurisdiction. Notice of appeal must be filed within thirty days after the date the final order is served or the right to appeal is waived. Notwithstanding RCW 46.20.334, RALJ 1.1, or other statutes or rules referencing de novo review, the appeal shall be limited to a review of the record of the administrative hearing. The appellant must pay the costs associated with obtaining the record of the hearing before the hearing officer. The filing of the appeal does not stay the effective date of the suspension, revocation, or denial. A petition filed under this subsection must include the petitioner's grounds for requesting review. Upon granting petitioner's request for review, the court shall review the department's final order of suspension, revocation, or denial as expeditiously as possible. The review must be limited to a determination of whether the department has committed any errors of law. The superior court shall accept those factual determinations supported by substantial evidence in the record: (a) That were expressly made by the department; or (b) that may reasonably be inferred from the final order of the department. The superior court may reverse, affirm, or modify the decision of the department or remand the case back to the department for further proceedings. The decision of the superior court must be in writing and filed in the clerk's office with the other papers in the case. The court shall state the reasons for the decision. If judicial relief is sought for a stay or other temporary remedy from the department's action, the court shall not grant such relief unless the court finds that the appellant is likely to prevail in the appeal and that without a stay the appellant will suffer irreparable injury. If the court stays the suspension, revocation, or denial it may impose conditions on such stay.

(10) If a person whose driver's license, permit, or privilege to drive has been or will be suspended, revoked, or denied under subsection (7) of this section, other than as a result of a breath or blood test refusal, and who has not committed an offense for which he or she was granted a deferred prosecution under chapter 10.05 RCW, petitions a court for a deferred prosecution on criminal charges arising out of the arrest for which action has been or will be taken under subsection (7) of this section, the court may direct the department to stay any actual or proposed suspension, revocation, or denial for at least forty-five days but not more than ninety days. If the court stays the suspension, revocation, or denial, it may impose conditions on such stay. If the person is otherwise eligible for licensing, the department shall issue a temporary license, or extend any valid temporary license marked under subsection (6) of this section, for the period of the stay. If a deferred prosecution treatment plan is not recommended in the report made under RCW 10.05.050, or if treatment is rejected by the court, or if the person declines to accept an offered treatment plan, or if the person violates any condition imposed by the court, then the court shall immediately direct the department to cancel the stay and any temporary marked license or extension of a temporary license issued under this subsection.

A suspension, revocation, or denial imposed under this section, other than as a result of a breath or blood test refusal, shall be stayed if the person is accepted for deferred prosecution as provided in chapter 10.05 RCW for the incident upon

which the suspension, revocation, or denial is based. If the deferred prosecution is terminated, the stay shall be lifted and the suspension, revocation, or denial reinstated. If the deferred prosecution is completed, the stay shall be lifted and the suspension, revocation, or denial canceled.

(11) When it has been finally determined under the procedures of this section that a nonresident's privilege to operate a motor vehicle in this state has been suspended, revoked, or denied, the department shall give information in writing of the action taken to the motor vehicle administrator of the state of the person's residence and of any state in which he or she has a license.

Sec. 3. RCW 46.20.3101 and 1998 c 213 s 2, 1998 c 209 s 2, and 1998 c 207 s 8 are each reenacted and amended to read as follows:

Pursuant to RCW 46.20.308, the department shall suspend, revoke, or deny the arrested person's license, permit, or privilege to drive as follows:

(1) In the case of a person who has refused a test or tests:

(a) For a first refusal within seven years, where there has not been a previous incident within seven years that resulted in administrative action under this section, revocation or denial for one year;

(b) For a second or subsequent refusal within seven years, or for a first refusal where there has been one or more previous incidents within seven years that have resulted in administrative action under this section, revocation or denial for two years or until the person reaches age twenty-one, whichever is longer. A revocation imposed under this subsection (1)(b) shall run consecutively to the period of any suspension, revocation, or denial imposed pursuant to a criminal conviction arising out of the same incident.

(2) In the case of an incident where a person has submitted to or been administered a test or tests indicating that the alcohol concentration of the person's breath or blood was 0.08 or more:

(a) For a first incident within seven years, where there has not been a previous incident within seven years that resulted in administrative action under this section, suspension for ninety days;

(b) For a second or subsequent incident within seven years, revocation or denial for two years.

(3) In the case of an incident where a person under age twenty-one has submitted to or been administered a test or tests indicating that the alcohol concentration of the person's breath or blood was ~~((in violation of RCW 46.61.502, 46.61.503, or 46.61.504))~~ 0.02 or more:

(a) For a first incident within seven years, suspension or denial for ninety days;

(b) For a second or subsequent incident within seven years, revocation or denial for one year or until the person reaches age twenty-one, whichever is longer.

Sec. 4. RCW 46.61.506 and 1998 c 213 s 6 are each amended to read as follows:

(1) Upon the trial of any civil or criminal action or proceeding arising out of acts alleged to have been committed by any person while driving or in actual physical control of a vehicle while under the influence of intoxicating liquor or any drug, if the person's alcohol concentration is less than 0.08, it is evidence

that may be considered with other competent evidence in determining whether the person was under the influence of intoxicating liquor or any drug.

(2) The breath analysis shall be based upon grams of alcohol per two hundred ten liters of breath. The foregoing provisions of this section shall not be construed as limiting the introduction of any other competent evidence bearing upon the question whether the person was under the influence of intoxicating liquor or any drug.

(3) Analysis of the person's blood or breath to be considered valid under the provisions of this section or RCW 46.61.502 or 46.61.504 shall have been performed according to methods approved by the state toxicologist and by an individual possessing a valid permit issued by the state toxicologist for this purpose. The state toxicologist is directed to approve satisfactory techniques or methods, to supervise the examination of individuals to ascertain their qualifications and competence to conduct such analyses, and to issue permits which shall be subject to termination or revocation at the discretion of the state toxicologist.

(4)(a) A breath test performed by any instrument approved by the state toxicologist shall be admissible at trial or in an administrative proceeding if the prosecution or department produces prima facie evidence of the following:

(i) The person who performed the test was authorized to perform such test by the state toxicologist;

(ii) The person being tested did not vomit or have anything to eat, drink, or smoke for at least fifteen minutes prior to administration of the test;

(iii) The person being tested did not have any foreign substances, not to include dental work, fixed or removable, in his or her mouth at the beginning of the fifteen-minute observation period;

(iv) Prior to the start of the test, the temperature of the simulator solution as measured by a thermometer approved of by the state toxicologist was thirty-four degrees centigrade plus or minus 0.3 degrees centigrade;

(v) The internal standard test resulted in the message "verified";

(vi) The two breath samples agree to within plus or minus ten percent of their mean to be determined by the method approved by the state toxicologist;

(vii) The simulator external standard result did lie between .072 to .088 inclusive; and

(viii) All blank tests gave results of .000.

(b) For purposes of this section, "prima facie evidence" is evidence of sufficient circumstances that would support a logical and reasonable inference of the facts sought to be proved. In assessing whether there is sufficient evidence of the foundational facts, the court or administrative tribunal is to assume the truth of the prosecution's or department's evidence and all reasonable inferences from it in a light most favorable to the prosecution or department.

(c) Nothing in this section shall be deemed to prevent the subject of the test from challenging the reliability or accuracy of the test, the reliability or functioning of the instrument, or any maintenance procedures. Such challenges, however, shall not preclude the admissibility of the test once the prosecution or department has made a prima facie showing of the requirements contained in (a) of this subsection. Instead, such challenges may be considered by the trier of fact in determining what weight to give to the test result.

(5) When a blood test is administered under the provisions of RCW 46.20.308, the withdrawal of blood for the purpose of determining its alcoholic or drug content may be performed only by a physician, a registered nurse, ~~(or a qualified technician)~~ a licensed practical nurse, a nursing assistant as defined in chapter 18.88A RCW, a physician assistant as defined in chapter 18.71A RCW, a first responder as defined in chapter 18.73 RCW, an emergency medical technician as defined in chapter 18.73 RCW, a health care assistant as defined in chapter 18.135 RCW, or any technician trained in withdrawing blood. This limitation shall not apply to the taking of breath specimens.

~~((5))~~ (6) The person tested may have a physician, or a qualified technician, chemist, registered nurse, or other qualified person of his or her own choosing administer one or more tests in addition to any administered at the direction of a law enforcement officer. The test will be admissible if the person establishes the general acceptability of the testing technique or method. The failure or inability to obtain an additional test by a person shall not preclude the admission of evidence relating to the test or tests taken at the direction of a law enforcement officer.

~~((6))~~ (7) Upon the request of the person who shall submit to a test or tests at the request of a law enforcement officer, full information concerning the test or tests shall be made available to him or her or his or her attorney.

Passed by the House February 12, 2004.

Passed by the Senate March 2, 2004.

Approved by the Governor March 22, 2004.

Filed in Office of Secretary of State March 22, 2004.

CHAPTER 69

[Senate Bill 6357]

TRESPASS—LICENSE TO ENTER IMPROVED LAND

AN ACT Relating to enhancements to criminal trespass law; and amending RCW 9A.52.010.

Be it enacted by the Legislature of the State of Washington:

Sec. 1. RCW 9A.52.010 and 1985 c 289 s 1 are each amended to read as follows:

The following definitions apply in this chapter:

(1) "Premises" includes any building, dwelling, structure used for commercial aquaculture, or any real property;

(2) "Enter". The word "enter" when constituting an element or part of a crime, shall include the entrance of the person, or the insertion of any part of his body, or any instrument or weapon held in his hand and used or intended to be used to threaten or intimidate a person or to detach or remove property;

(3) "Enters or remains unlawfully". A person "enters or remains unlawfully" in or upon premises when he is not then licensed, invited, or otherwise privileged to so enter or remain.

A license or privilege to enter or remain in a building which is only partly open to the public is not a license or privilege to enter or remain in that part of a building which is not open to the public. A person who enters or remains upon unimproved and apparently unused land, which is neither fenced nor otherwise enclosed in a manner designed to exclude intruders, does so with license and

privilege unless notice against trespass is personally communicated to him by the owner of the land or some other authorized person, or unless notice is given by posting in a conspicuous manner. Land that is used for commercial aquaculture or for growing an agricultural crop or crops, other than timber, is not unimproved and apparently unused land if a crop or any other sign of cultivation is clearly visible or if notice is given by posting in a conspicuous manner. Similarly, a field fenced in any manner is not unimproved and apparently unused land. A license or privilege to enter or remain on improved and apparently used land that is open to the public at particular times, which is neither fenced nor otherwise enclosed in a manner to exclude intruders, is not a license or privilege to enter or remain on the land at other times if notice of prohibited times of entry is posted in a conspicuous manner;

(4) "Data" means a representation of information, knowledge, facts, concepts, or instructions that are being prepared or have been prepared in a formalized manner and are intended for use in a computer;

(5) "Computer program" means an ordered set of data representing coded instructions or statements that when executed by a computer cause the computer to process data;

(6) "Access" means to approach, instruct, communicate with, store data in, retrieve data from, or otherwise make use of any resources of a computer, directly or by electronic means.

Passed by the Senate February 17, 2004.

Passed by the House March 4, 2004.

Approved by the Governor March 22, 2004.

Filed in Office of Secretary of State March 22, 2004.

CHAPTER 70

[House Bill 1572]

SMALL CLAIMS JUDGMENTS—DELINQUENT PAYMENTS

AN ACT Relating to failure to pay small claims judgments; and amending RCW 12.40.105.

Be it enacted by the Legislature of the State of Washington:

Sec. I. RCW 12.40.105 and 1998 c 52 s 5 are each amended to read as follows:

If the losing party fails to pay the judgment within thirty days or within the period otherwise ordered by the court, the judgment shall be increased by: (1) An amount sufficient to cover costs of certification of the judgment under RCW 12.40.110; ~~((and))~~ (2) the amount specified in RCW 36.18.012(2); and (3) any other costs incurred by the prevailing party to enforce the judgment, including but not limited to reasonable attorneys' fees, without regard to the jurisdictional limits on the small claims department.

Passed by the House February 6, 2004.

Passed by the Senate March 4, 2004.

Approved by the Governor March 22, 2004.

Filed in Office of Secretary of State March 22, 2004.

CHAPTER 71

[House Bill 1580]

PERSONALITY RIGHTS

AN ACT Relating to personality rights; and amending RCW 63.60.020, 63.60.040, and 63.60.070.

Be it enacted by the Legislature of the State of Washington:

Sec. 1. RCW 63.60.020 and 1998 c 274 s 2 are each amended to read as follows:

Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Deceased personality" means any individual whose name, voice, signature, photograph, or likeness had commercial value at the time of his or her death, whether or not during the lifetime of that individual he or she used his or her name, voice, signature, photograph, or likeness on or in products, merchandise or goods, or for purposes of advertising or selling, or soliciting the purchase or sale of, products, merchandise, goods, or services. A "deceased personality" includes, without limitation, any such individual who has died within fifty years before January 1, 1998.

(2) (~~"Definable group" means an assemblage of individuals existing or brought together with or without interrelation, orderly form, or arrangement, including but not limited to: A crowd at any sporting event; a crowd in any street or public building; the audience at any theatrical, musical, or stage production; or a performing group or sports team.~~

(3)) "Fund raising" means an organized activity to solicit donations of money or other goods or services from persons or entities by an organization, company, or public entity. A fund-raising activity does not include a live, public performance by an individual or group of individuals for which money is received in solicited or unsolicited gratuities.

((4)) (3) "Individual" means a natural person, living or dead.

((5)) (4) "Likeness" means an image, painting, sketching, model, diagram, or other clear representation, other than a photograph, of an individual's face, body, or parts thereof, or the distinctive appearance, gestures, or mannerisms of an individual.

((6)) (5) "Name" means the actual or assumed name, or nickname, of a living or deceased individual that is intended to identify that individual.

((7)) (6) "Person" means any natural person, firm, association, partnership, corporation, joint stock company, syndicate, receiver, common law trust, conservator, statutory trust, or any other concern by whatever name known or however organized, formed, or created, and includes not-for-profit corporations, associations, educational and religious institutions, political parties, and community, civic, or other organizations.

((8)) (7) "Personality" means any individual whose name, voice, signature, photograph, or likeness has commercial value, whether or not that individual uses his or her name, voice, signature, photograph, or likeness on or in products, merchandise, or goods, or for purposes of advertising or selling, or solicitation of purchase of, products, merchandise, goods, or services.

~~((9))~~ (8) "Photograph" means any photograph or photographic reproduction, still or moving, or any videotape, online or live television transmission, of any individual, so that the individual is readily identifiable.

~~((10))~~ (9) "Signature" means the one handwritten or otherwise legally binding form of an individual's name, written or authorized by that individual, that distinguishes the individual from all others.

Sec. 2. RCW 63.60.040 and 1998 c 274 s 4 are each amended to read as follows:

(1) For individuals, except to the extent that the individual may have assigned or licensed such rights, the rights protected in this chapter are exclusive to the individual, subject to the assignment or licensing of such rights, during such individual's lifetime and are exclusive to the persons entitled to such rights under RCW 63.60.030 for a period of ten years after the death of the individual except to the extent that the persons entitled to such rights under RCW 63.60.030 may have assigned or licensed such rights to others.

(2) For personalities, except to the extent that the personality may have assigned or licensed such rights, the rights protected in this chapter are exclusive to the personality, subject to the assignment or licensing of such rights, during such personality's lifetime and to the persons entitled to such rights under RCW 63.60.030 for a period of seventy-five years after the death of the personality except to the extent that the persons entitled to such rights under RCW 63.60.030 may have assigned or licensed such rights to others.

(3) The rights granted in this chapter may be exercised by a personal representative, attorney in fact, parent of a minor child, or guardian, or as authorized by a court of competent jurisdiction. The terms "personal representative," "attorney in fact," and "guardian" shall have the same meanings in this chapter as they have in Title 11 RCW.

Sec. 3. RCW 63.60.070 and 1998 c 274 s 7 are each amended to read as follows:

(1) For purposes of RCW 63.60.050, the use of a name, voice, signature, photograph, or likeness in connection with matters of cultural, historical, political, religious, educational, newsworthy, or public interest, including, without limitation, comment, criticism, satire, and parody relating thereto, shall not constitute a use for which consent is required under this chapter. A matter exempt from consent under this subsection does not lose such exempt status because it appears in the form of a paid advertisement if it is clear that the principal purpose of the advertisement is to comment on such matter.

(2) This chapter does not apply to the use or authorization of use of an individual's or personality's name, voice, signature, photograph, or likeness, in any of the following:

(a) Single and original works of fine art, including but not limited to photographic, graphic, and sculptural works of art that are not published in more than five copies;

(b) A literary work, theatrical work, musical composition, film, radio, online or television program, magazine article, news story, public affairs report, or sports broadcast or account, or with any political campaign when the use does not inaccurately claim or state an endorsement by the individual or personality;

(c) An advertisement or commercial announcement for a use permitted by subsections (1) and (7) of this section and (a) or (b) of this subsection;

(d) An advertisement, commercial announcement, or packaging for the authorized sale, distribution, performance, broadcast, or display of a literary, musical, cinematographic, or other artistic work using the name, voice, signature, photograph, or likeness of the writer, author, composer, director, actor, or artist who created the work, where such individual or personality consented to the use of his or her name, voice, signature, photograph, or likeness on or in connection with the initial sale, distribution, performance, or display thereof; and

(e) The advertisement or sale of a rare or fine product, including but not limited to books, which incorporates the signature of the author.

(3) It is no defense to an infringement action under this chapter that the use of an individual's or personality's name, voice, signature, photograph, or likeness includes more than one individual or personality so identifiable. However, the individuals or personalities complaining of the use shall not bring their cause of action as a class action.

(4) RCW 63.60.050 does not apply to the owners or employees of any medium used for advertising, including but not limited to, newspapers, magazines, radio and television stations, on-line service providers, billboards, and transit ads, who have published or disseminated any advertisement or solicitation in violation of this chapter, unless the advertisement or solicitation was intended to promote the medium itself.

(5) This chapter does not apply to a use or authorization of use of an individual's or personality's name that is merely descriptive and used fairly and in good faith only to identify or describe something other than the individual or personality, such as, without limitation, to describe or identify a place, a legacy, a style, a theory, an ownership interest, or a party to a transaction or to accurately describe the goods or services of a party.

(6) This chapter does not apply to the use of an individual's or personality's name, voice, signature, photograph, or likeness when the use of the individual's or personality's name, voice, signature, photograph, or likeness is an insignificant, de minimis, or incidental use.

(7) This chapter does not apply to the distribution, promotion, transfer, or license of a photograph or other material containing an individual's or personality's name, voice, signature, photograph, or likeness to a third party for use in a manner which is lawful under this chapter, or to a third party for further distribution, promotion, transfer, or license for use in a manner which is lawful under this chapter.

Passed by the House February 11, 2004.

Passed by the Senate March 5, 2004.

Approved by the Governor March 22, 2004.

Filed in Office of Secretary of State March 22, 2004.

CHAPTER 72

[Senate Bill 6121]

WILLS—FILING UNDER SEAL

AN ACT Relating to filing a will under seal before the testator's death; and adding a new section to chapter 11.12 RCW.

Be it enacted by the Legislature of the State of Washington:

NEW SECTION. Sec. 1. A new section is added to chapter 11.12 RCW to read as follows:

Any person who has custody or control of any original will and who has not received knowledge of the death of the testator may deliver the will for filing under seal to any court having jurisdiction. The testator may withdraw the original will so filed upon proper identification. Any other person, including an attorney in fact or guardian of the testator, may withdraw the original will so filed only upon court order after showing of good cause. Upon request and presentation of a certified copy of the testator's death certificate, the clerk shall unseal the file. This section does not preclude filing a will not under seal and does not alter any duty of a person having knowledge of the testator's death to file the will.

Passed by the Senate February 11, 2004.

Passed by the House March 3, 2004.

Approved by the Governor March 22, 2004.

Filed in Office of Secretary of State March 22, 2004.

CHAPTER 73

[Engrossed Substitute Senate Bill 6270]

ATTORNEYS' LIENS

AN ACT Relating to attorneys' liens; amending RCW 60.40.010; and creating a new section.

Be it enacted by the Legislature of the State of Washington:

NEW SECTION. Sec. 1. The purpose of this act is to end double taxation of attorneys' fees obtained through judgments and settlements, whether paid by the client from the recovery or by the defendant pursuant to a statute or a contract. Through this legislation, Washington law clearly recognizes that attorneys have a property interest in their clients' cases so that the attorney's fee portion of an award or settlement may be taxed only once and against the attorney who actually receives the fee. This statute should be liberally construed to effectuate its purpose. This act is curative and remedial, and intended to ensure that Washington residents do not incur double taxation on attorneys' fees received in litigation and owed to their attorneys. Thus, except for RCW 60.40.010(4), the statute is intended to apply retroactively.

Sec. 2. RCW 60.40.010 and Code 1881 s 3286 are each amended to read as follows:

(1) An attorney has a lien for his or her compensation, whether specially agreed upon or implied, as hereinafter provided:

((+)) (a) Upon the papers of ((his)) the client, which have come into ((his)) the attorney's possession in the course of his or her professional employment;

~~((2))~~ (b) Upon money in ~~((his))~~ the attorney's hands belonging to ~~((his))~~ the client;

~~((3))~~ (c) Upon money in the hands of the adverse party in an action or proceeding, in which the attorney was employed, from the time of giving notice of the lien to that party;

~~((4))~~ (d) Upon an action, including one pursued by arbitration or mediation, and its proceeds after the commencement thereof to the extent of the value of any services performed by the attorney in the action, or if the services were rendered under a special agreement, for the sum due under such agreement; and

~~((him))~~ (e) Upon a judgment to the extent of the value of any services performed by ~~((him))~~ the attorney in the action, or if the services were rendered under a special agreement, for the sum due under such agreement, from the time of filing notice of such lien or claim with the clerk of the court in which such judgment is entered, which notice must be filed with the papers in the action in which such judgment was rendered, and an entry made in the execution docket, showing name of claimant, amount claimed and date of filing notice.

(2) Attorneys have the same right and power over actions to enforce their liens under subsection (1)(d) of this section and over judgments to enforce their liens under subsection (1)(e) of this section as their clients have for the amount due thereon to them.

(3) The lien created by subsection (1)(d) of this section upon an action and proceeds and the lien created by subsection (1)(e) of this section upon a judgment for money is superior to all other liens.

(4) The lien created by subsection (1)(d) of this section is not affected by settlement between the parties to the action until the lien of the attorney for fees based thereon is satisfied in full.

(5) For the purposes of this section, "proceeds" means any monetary sum received in the action. Once proceeds come into the possession of a client, such as through payment by an opposing party or another person or by distribution from the attorney's trust account or registry of the court, the term "proceeds" is limited to identifiable cash proceeds determined in accordance with RCW 62A.9A-315(b)(2). The attorney's lien continues in such identifiable cash proceeds, subject to the rights of a secured party under RCW 62A.9A-327 or a transferee under RCW 62A.9A-332.

(6) Child support liens are exempt from this section.

Passed by the Senate February 13, 2004.

Passed by the House March 3, 2004.

Approved by the Governor March 22, 2004.

Filed in Office of Secretary of State March 22, 2004.

CHAPTER 74

[Substitute House Bill 1867]

REPLEVIN

AN ACT Relating to replevin; amending RCW 7.64.020, 7.64.035, and 7.64.045; and prescribing penalties.

Be it enacted by the Legislature of the State of Washington:

Sec. 1. RCW 7.64.020 and 1990 c 227 s 2 are each amended to read as follows:

(1) At the time of filing the complaint or any time thereafter, the plaintiff may apply to the judge or court commissioner to issue an order directing the defendant to appear and show cause why an order putting the plaintiff in immediate possession of the personal property should not be issued.

(2) In support of the application, the plaintiff, or someone on the plaintiff's behalf, shall make an affidavit, or a declaration as permitted under RCW 9A.72.085, showing:

(a) That the plaintiff is the owner of the property or is lawfully entitled to the possession of the property by virtue of a special property interest, including a security interest, specifically describing the property and interest;

(b) That the property is wrongfully detained by defendant;

(c) That the property has not been taken for a tax, assessment, or fine pursuant to a statute and has not been seized under an execution or attachment against the property of the plaintiff, or if so seized, that it is by law exempt from such seizure; and

(d) The approximate value of the property.

(3) The order to show cause shall state the date, time, and place of the hearing (~~(, which shall be set no earlier than ten and no later than twenty five days after the date of the order)~~) and contain a notice to the defendant that failure to promptly turn over possession of the property to the plaintiff or the sheriff, if an order awarding possession is issued under RCW 7.64.035(1), may subject the defendant to being held in contempt of court.

(4) A certified copy of the order to show cause, with a copy of the plaintiff's affidavit or declaration attached, shall be served upon the defendant no later than five days before the hearing date.

Sec. 2. RCW 7.64.035 and 1990 c 227 s 3 are each amended to read as follows:

(1) At the hearing on the order to show cause, the judge or court commissioner may issue an order awarding possession of the property to the plaintiff and directing the sheriff to put the plaintiff in possession of the property:

(a)(i) If the plaintiff establishes the right to obtain possession of the property pending final disposition, or (ii) if the defendant, after being served with the order to show cause, fails to appear at the hearing; and

(b) If the plaintiff executes to the defendant and files in the court a bond in such sum as the court may order, with sufficient surety to be approved by the clerk, conditioned that the plaintiff will prosecute the action without delay and that if the order is wrongfully sued out, the plaintiff will pay all costs that may be adjudged to the defendant and all damages, court costs, reasonable attorneys' fees, and costs of recovery that the defendant may incur by reason of the order having been issued. However, the court may waive the bond if the plaintiff has properly served the defendant in accordance with RCW 7.64.020(4) and the defendant either fails to attend the hearing on the order to show cause or appears at the hearing on the order to show cause but does not object to entry of the order awarding possession. If the court waives the bond, the court shall establish the amount of bond that would have been required and that amount shall be

considered the amount filed by the plaintiff for the purpose of determining the value of the redelivery bond under RCW 7.64.050(3).

(2) An order awarding possession shall: (a) State that a show cause hearing was held; (b) describe the property and its location; (c) direct the sheriff to take possession of the property and put the plaintiff in possession as provided in this chapter; (d) contain a notice to the defendant that failure to turn over possession of the property to the sheriff may subject the defendant to being held in contempt of court upon application to the court by the plaintiff without further notice; (e) if deemed necessary, direct the sheriff to break and enter a building or enclosure to obtain possession of the property if it is concealed in the building or enclosure; and ((e)) (f) be signed by the judge or commissioner.

(3) If at the time of the hearing more than twenty days have elapsed since service of the summons and complaint and the defendant does not raise an issue of fact prior to or at the hearing that requires a trial on the issue of possession or damages, the judge or court commissioner may also, in addition to entering an order awarding possession, enter a final judgment awarding plaintiff possession of the property or its value if possession cannot be obtained, damages, court costs, reasonable attorneys' fees, and costs of recovery.

(4) When any of the property is located in a county other than the county in which the action was commenced, the sheriff directed to take possession of the property by the order awarding possession, or the sheriff of the county where the property is found, may execute the order awarding possession and take possession of the property in any county of the state where the property is found. For the purpose of following the property, duplicate orders awarding possession may be issued, if necessary, and served as the original.

Sec. 3. RCW 7.64.045 and 1990 c 227 s 4 are each amended to read as follows:

After issuance of the order awarding possession, the plaintiff shall deliver a copy of the bond, unless waived by the court under RCW 7.64.035(1)(b), and a certified copy of the order awarding possession to the sheriff of the county where the property is located and shall provide the sheriff with all available information as to the location and identity of the defendant and the property claimed. If the property is returned to the plaintiff by the defendant or if the plaintiff otherwise obtains possession of the property, the plaintiff shall notify the sheriff of this fact as soon as possible.

Passed by the House February 14, 2004.

Passed by the Senate March 4, 2004.

Approved by the Governor March 22, 2004.

Filed in Office of Secretary of State March 22, 2004.

CHAPTER 75

[Senate Bill 6518]

GENERAL ELECTION BALLOT—JUDICIAL RACES

AN ACT Relating to the general election ballot for the office of judge of the district court; amending RCW 29A.36.170; and providing an effective date.

Be it enacted by the Legislature of the State of Washington:

Sec. 1. RCW 29A.36.170 and 2003 c 111 s 917 are each amended to read as follows:

(1) Except as provided in RCW 29A.36.180 and in subsection (2) of this section, on the ballot at the general election for a nonpartisan office for which a primary was held, only the names of the candidate who received the greatest number of votes and the candidate who received the next greatest number of votes for that office shall appear under the title of that office, and the names shall appear in that order. If a primary was conducted, no candidate's name may be printed on the subsequent general election ballot unless he or she receives at least one percent of the total votes cast for that office at the preceding primary. On the ballot at the general election for any other nonpartisan office for which no primary was held, the names of the candidates shall be listed in the order determined under RCW 29A.36.130.

(2) On the ballot at the general election for the office of justice of the supreme court, judge of the court of appeals, judge of the superior court, judge of the district court, or state superintendent of public instruction, if a candidate in a contested primary receives a majority of all the votes cast for that office or position, only the name of that candidate may be printed under the title of the office for that position.

NEW SECTION. Sec. 2. This act takes effect July 1, 2004.

Passed by the Senate February 16, 2004.

Passed by the House March 2, 2004.

Approved by the Governor March 22, 2004.

Filed in Office of Secretary of State March 22, 2004.

CHAPTER 76

[Substitute House Bill 2055]

TAXATION—TELECOMMUNICATIONS SERVICES

AN ACT Relating to bundled telecommunications services; and adding a new section to chapter 82.32 RCW.

Be it enacted by the Legislature of the State of Washington:

NEW SECTION. Sec. 1. A new section is added to chapter 82.32 RCW to read as follows:

If a taxing jurisdiction does not subject some charges for telephone services to taxation, but these charges are aggregated with and not separately stated from charges that are subject to taxation, then the charges for nontaxable telephone services may be subject to taxation unless the telephone service or provider can reasonably identify charges not subject to the tax, charge, or fee from its books and records that are kept in the regular course of business and for purposes other than merely allocating the sales price of an aggregated charge to the individually aggregated items.

Passed by the House February 16, 2004.

Passed by the Senate March 5, 2004.

Approved by the Governor March 22, 2004.

Filed in Office of Secretary of State March 22, 2004.

CHAPTER 77

[House Bill 2612]

HANFORD AREA ECONOMIC INVESTMENT FUND

AN ACT Relating to the Hanford area economic investment fund; and amending RCW 43.31.422 and 43.31.428.

Be it enacted by the Legislature of the State of Washington:

Sec. 1. RCW 43.31.422 and 1998 c 76 s 1 are each amended to read as follows:

The Hanford area economic investment fund is established in the custody of the state treasurer. Moneys in the fund shall only be used for reasonable assistant attorney general costs in support of the committee or pursuant to the ~~((recommendations))~~ decisions of the committee created in RCW 43.31.425 ~~((and the approval of the director of community, trade, and economic development))~~ for Hanford area revolving loan funds, Hanford area infrastructure projects, or other Hanford area economic development and diversification projects, but may not be used for government or nonprofit organization operating expenses. Up to five percent of moneys in the fund may be used for program administration. For the purpose of this chapter "Hanford area" means Benton and Franklin counties. ~~((Disbursements from the fund shall be on the authorization of))~~ The director of community, trade, and economic development or the director's designee shall authorize disbursements from the fund after an affirmative vote of at least six members of the committee created in RCW 43.31.425 on any ~~((recommendations))~~ decisions reached by the committee created in RCW 43.31.425. The fund is subject to the allotment procedures under chapter 43.88 RCW, but no appropriation is required for disbursements. The legislature intends to establish similar economic investment funds for areas that develop low-level radioactive waste disposal facilities.

Sec. 2. RCW 43.31.428 and 1998 c 76 s 3 are each amended to read as follows:

The Hanford area economic investment fund committee created under RCW 43.31.425 may:

(1) Adopt bylaws for the regulation of its affairs and the conduct of its business;

(2) Utilize the services of other governmental agencies;

(3) Accept from any federal or state agency loans or grants for the purposes of funding Hanford area revolving loan funds, Hanford area infrastructure projects, or Hanford area economic development projects;

(4) ~~((Recommend to the director))~~ Adopt rules for the administration of the program, including the terms and rates pertaining to its loans, and criteria for awarding grants, loans, and financial guarantees;

(5) ~~((Recommend to the director))~~ Adopt a spending strategy for the moneys in the fund created in RCW 43.31.422. The strategy shall include five and ten year goals for economic development and diversification for use of the moneys in the Hanford area;

(6) Recommend to the director no more than two allocations eligible for funding per calendar year, with a first priority on Hanford area revolving loan allocations, and Hanford area infrastructure allocations followed by other Hanford area economic development and diversification projects if the

committee finds that there are no suitable allocations in the priority allocations described in this section;

(7) Establish and administer a revolving fund consistent with this section and RCW 43.31.422 and 43.31.425; and

(8) Make grants from the Hanford area economic investment fund consistent with this section and RCW 43.31.422 and 43.31.425.

Passed by the House February 13, 2004.

Passed by the Senate March 3, 2004.

Approved by the Governor March 22, 2004.

Filed in Office of Secretary of State March 22, 2004.

CHAPTER 78

[Substitute House Bill 2635]

PORT DISTRICTS—CONSULTING SERVICES

AN ACT Relating to port districts; adding a new section to chapter 53.08 RCW; and providing an expiration date.

Be it enacted by the Legislature of the State of Washington:

NEW SECTION. Sec. 1. A new section is added to chapter 53.08 RCW to read as follows:

A port district may provide advisory consulting services for compensation on matters within the scope of this title or Title 14 RCW. A port district may provide these services only to other public agencies and governments, including foreign governments and government-sponsored organizations. A port district providing consulting services must create and maintain an open roster of Washington firms interested in bidding on opportunities generated as a result.

By enacting this legislation, the legislature intends to enhance the ability of Washington port districts to facilitate economic opportunities for the benefit of Washington businesses. Nothing in this section is intended to authorize direct competition by port districts with private business.

NEW SECTION. Sec. 2. This act expires July 1, 2008.

Passed by the House March 8, 2004.

Passed by the Senate March 4, 2004.

Approved by the Governor March 22, 2004.

Filed in Office of Secretary of State March 22, 2004.

CHAPTER 79

[Substitute House Bill 2878]

COUNTY TREASURERS

AN ACT Relating to making changes to county treasurer statutes; and amending RCW 36.24.130, 36.24.140, 36.29.024, 46.44.170, 84.40.130, 84.56.120, 84.64.080, 67.28.181, and 67.28.200.

Be it enacted by the Legislature of the State of Washington:

Sec. 1. RCW 36.24.130 and 1963 c 4 s 36.24.130 are each amended to read as follows:

The coroner or medical examiner must, within thirty days after the ~~((inquest upon a dead body))~~ investigation of the death, deliver to the county treasurer any

money (~~(or other property)~~) which may be found upon the body, unless claimed in the meantime by the legal representatives of the deceased. If there is personal property, other than money, found upon the body, unless claimed in the meantime by a legal representative of the deceased, the coroner or medical examiner shall, within one hundred eighty days of the investigation, be authorized to dispose of any property of no resale value and forward any other property to the applicable county agency to be sold at the next county surplus sale. Any proceeds from the sale shall be forwarded to the county treasurer. If ~~((he))~~ the coroner or medical examiner fails to do so, the treasurer may proceed against the coroner or medical examiner to recover the same by a civil action in the name of the county.

Sec. 2. RCW 36.24.140 and 1963 c 4 s 36.24.140 are each amended to read as follows:

Upon the delivery of money to the treasurer, ~~((he))~~ the treasurer shall place it to the credit of the county. ~~((If it is property other than money, he shall, within thirty days, sell it at public auction, upon reasonable public notice, and place the proceeds to the credit of the county.))~~

Sec. 3. RCW 36.29.024 and 1988 c 281 s 5 are each amended to read as follows:

The county treasurer may deduct the amounts necessary to reimburse the treasurer's office for the actual expenses the office incurs and to repay any county funds appropriated and expended for the initial administrative costs of establishing a county investment pool provided in RCW 36.29.022. These funds shall be used by the county treasurer as a revolving fund to defray the cost of administering the pool without regard to budget limitations. Any credits or payments to political subdivisions shall be calculated and made in a manner which equitably reflects the differing amounts of the political subdivision's respective deposits in the county investment pool and the differing periods of time for which the amounts were placed in the county investment pool.

Sec. 4. RCW 46.44.170 and 2003 c 61 s 1 are each amended to read as follows:

(1) Any person moving a mobile home as defined in RCW 46.04.302 or a park model trailer as defined in RCW 46.04.622 upon public highways of the state must obtain a special permit from the department of transportation and local authorities pursuant to RCW 46.44.090 and 46.44.093 and shall pay the proper fee as prescribed by RCW 46.44.0941 and 46.44.096.

(2) A special permit issued as provided in subsection (1) of this section for the movement of any mobile home or a park model trailer that is assessed for purposes of property taxes shall not be valid until the county treasurer of the county in which the mobile home or park model trailer is located shall endorse or attach his or her certificate that all property taxes which are a lien or which are delinquent, or both, upon the mobile home or park model trailer being moved have been satisfied. Further, any mobile home or park model trailer required to have a special movement permit under this section shall display an easily recognizable decal. However, endorsement or certification by the county treasurer and the display of the decal is not required:

(a) When a mobile home or park model trailer is to enter the state or is being moved from a manufacturer or distributor to a retail sales outlet or directly to the purchaser's designated location or between retail and sales outlets; ((e))

(b) When a signed affidavit of destruction is filed with the county assessor and the mobile home or park model trailer is being moved to a disposal site by a landlord as defined in RCW 59.20.030 after (i) the mobile home or park model trailer has been abandoned as defined in RCW 59.20.030; or (ii) a final judgment for restitution of the premises under RCW 59.18.410 has been executed in favor of the landlord with regard to the mobile home or park model trailer. The mobile home or park model trailer will be removed from the tax rolls and, upon notification by the assessor, any outstanding taxes on the destroyed mobile home or park model trailer will be removed by the county treasurer, or

(c) When a signed affidavit of destruction is filed with the county assessor by any mobile home or park model trailer owner or any property owner with an abandoned mobile home or park model trailer, the same shall be removed from the tax rolls and upon notification by the assessor, any outstanding taxes on the destroyed mobile home or park model trailer shall be removed by the county treasurer.

(3) If the landlord of a mobile home park takes ownership of a mobile home or park model trailer with the intent to resell or rent the same under RCW 59.20.030 after (a) the mobile home or park model trailer has been abandoned as defined in RCW 59.20.030; or (b) a final judgment for restitution of the premises under RCW 59.18.410 has been executed in favor of the landlord with regard to the mobile home or park model trailer, the outstanding taxes become the responsibility of the landlord.

(4) It is the responsibility of the owner of the mobile home or park model trailer subject to property taxes or the agent to obtain the endorsement and decal from the county treasurer before a mobile home or park model trailer is moved.

(5) This section does not prohibit the issuance of vehicle license plates for a mobile home or park model trailer subject to property taxes, but plates shall not be issued unless the mobile home or park model trailer subject to property taxes for which plates are sought has been listed for property tax purposes in the county in which it is principally located and the appropriate fee for the license has been paid.

(6) The department of transportation and local authorities are authorized to adopt reasonable rules for implementing the provisions of this section. The department of transportation shall adopt rules specifying the design, reflective characteristics, annual coloration, and for the uniform implementation of the decal required by this section.

Sec. 5. RCW 84.40.130 and 1988 c 222 s 17 are each amended to read as follows:

(1) If any person or corporation shall fail or refuse to deliver to the assessor, on or before the date specified in RCW 84.40.040, a list of the taxable personal property which is required to be listed under this chapter, unless it is shown that such failure is due to reasonable cause and not due to wilful neglect, there shall be added to the amount of tax assessed against the taxpayer on account of such personal property five percent of the amount of such tax, not to exceed fifty dollars per calendar day, if the failure is for not more than one month, with an additional five percent for each additional month or fraction thereof during

which such failure continues not exceeding twenty-five percent in the aggregate. Such penalty shall be collected in the same manner as the tax to which it is added and distributed in the same manner as other property tax interest and penalties.

(2) If any person or corporation shall wilfully give a false or fraudulent list, schedule or statement required by this chapter, or shall, with intent to defraud, fail or refuse to deliver any list, schedule or statement required by this chapter, such person or corporation shall be liable for the additional tax properly due or, in the case of wilful failure or refusal to deliver such list, schedule or statement, the total tax properly due; and in addition such person or corporation shall be liable for a penalty of one hundred percent of such additional tax or total tax as the case may be. Such penalty shall be in lieu of the penalty provided for in subsection (1) of this section. A person or corporation giving a false list, schedule or statement shall not be subject to this penalty if it is shown that the misrepresentations contained therein are entirely attributable to reasonable cause. The taxes and penalties provided for in this subsection shall be recovered in an action in the name of the state of Washington on the complaint of the county assessor or the county legislative authority and shall, when collected, be paid into the county treasury to the credit of the current expense fund. The provisions of this subsection shall be additional and supplementary to any other provisions of law relating to recovery of property taxes.

Sec. 6. RCW 84.56.120 and 2003 c 23 s 2 are each amended to read as follows:

After personal property has been assessed, it shall be unlawful for any person to remove the personal property subject to ((priority)) tax liens created pursuant to RCW 84.60.010 and 84.60.020 from the county in which the property was assessed and from the state until taxes and interest are paid, or until notice has been given to the county treasurer describing the property to be removed and in case of public or private sales of personal property, a list of the property desired to be sold shall be sent to the treasurer, the tax will be computed upon the consolidated tax levy for the previous year. Any taxes owed shall become an automatic lien upon the proceeds of any auction and shall be remitted to the county treasurer before final distribution to any person, as defined in this section. If proceeds are distributed in violation of this section, the seller or agent of the seller shall assume all liability for taxes, interest, and penalties owed to the county treasurer. Any person violating the provisions of this section shall be guilty of a misdemeanor. For the purposes of this section, "person" includes a property owner, mortgagor, creditor, or agent.

Sec. 7. RCW 84.64.080 and 2003 c 23 s 5 are each amended to read as follows:

The court shall examine each application for judgment foreclosing tax lien, and if defense (specifying in writing the particular cause of objection) be offered by any person interested in any of the lands or lots to the entry of judgment against the same, the court shall hear and determine the matter in a summary manner, without other pleadings, and shall pronounce judgment as the right of the case may be; or the court may, in its discretion, continue such individual cases, wherein defense is offered, to such time as may be necessary, in order to secure substantial justice to the contestants therein; but in all other cases the court shall proceed to determine the matter in a summary manner as above

specified. In all judicial proceedings of any kind for the collection of taxes, and interest and costs thereon, all amendments which by law can be made in any personal action pending in such court shall be allowed, and no assessments of property or charge for any of the taxes shall be considered illegal on account of any irregularity in the tax list or assessment rolls or on account of the assessment rolls or tax list not having been made, completed or returned within the time required by law, or on account of the property having been charged or listed in the assessment or tax lists without name, or in any other name than that of the owner, and no error or informality in the proceedings of any of the officers connected with the assessment, levying or collection of the taxes, shall vitiate or in any manner affect the tax or the assessment thereof, and any irregularities or informality in the assessment rolls or tax lists or in any of the proceedings connected with the assessment or levy of such taxes or any omission or defective act of any officer or officers connected with the assessment or levying of such taxes, may be, in the discretion of the court, corrected, supplied and made to conform to the law by the court. The court shall give judgment for such taxes, interest and costs as shall appear to be due upon the several lots or tracts described in the notice of application for judgment or complaint, and such judgment shall be a several judgment against each tract or lot or part of a tract or lot for each kind of tax included therein, including all interest and costs, and the court shall order and direct the clerk to make and enter an order for the sale of such real property against which judgment is made, or vacate and set aside the certificate of delinquency or make such other order or judgment as in the law or equity may be just. The order shall be signed by the judge of the superior court, shall be delivered to the county treasurer, and shall be full and sufficient authority for him or her to proceed to sell the property for the sum as set forth in the order and to take such further steps in the matter as are provided by law. The county treasurer shall immediately after receiving the order and judgment of the court proceed to sell the property as provided in this chapter to the highest and best bidder for cash. The acceptable minimum bid shall be the total amount of taxes, interest, and costs. All sales shall be made at a location in the county on a date and time (except Saturdays, Sundays, or legal holidays) as the county treasurer may direct, and shall continue from day to day (Saturdays, Sundays, and legal holidays excepted) during the same hours until all lots or tracts are sold, after first giving notice of the time, and place where such sale is to take place for ten days successively by posting notice thereof in three public places in the county, one of which shall be in the office of the treasurer. The notice shall be substantially in the following form:

TAX JUDGMENT SALE

Public notice is hereby given that pursuant to real property tax judgment of the superior court of the county of in the state of Washington, and an order of sale duly issued by the court, entered the day of,, in proceedings for foreclosure of tax liens upon real property, as per provisions of law, I shall on the day of,, at o'clock a.m., at in the city of, and county of, state of Washington, sell the real property to the highest and best bidder for cash, to satisfy the full amount of taxes, interest and costs adjudged to be due.

In witness whereof, I have hereunto affixed my hand and seal this day of ,

.....
Treasurer of county.

No county officer or employee shall directly or indirectly be a purchaser of such property at such sale.

If any buildings or improvements are upon an area encompassing more than one tract or lot, the same must be advertised and sold as a single unit.

If the highest amount bid for any such separate unit tract or lot is in excess of the minimum bid due upon the whole property included in the certificate of delinquency, the excess shall be refunded following payment of all recorded water-sewer district liens, on application therefor, to the record owner of the property. The record owner of the property is the person who held title on the date of issuance of the certificate of delinquency. Assignments of interests, deeds, or other documents executed or recorded after filing the certificate of delinquency shall not affect the payment of excess funds to the record owner. In the event no claim for the excess is received by the county treasurer within three years after the date of the sale he or she shall at expiration of the three year period deposit such excess in the current expense fund of the county which shall extinguish all claims by any owner to the excess funds. The county treasurer shall execute to the purchaser of any piece or parcel of land a tax deed. The deed so made by the county treasurer, under the official seal of his or her office, shall be recorded in the same manner as other conveyances of real property, and shall vest in the grantee, his or her heirs and assigns the title to the property therein described, without further acknowledgment or evidence of such conveyance, and shall be substantially in the following form:

State of Washington }
County of } ss.

This indenture, made this day of , , between , as treasurer of county, state of Washington, party of the first part, and , party of the second part:

Witnesseth, that, whereas, at a public sale of real property held on the day of , , pursuant to a real property tax judgment entered in the superior court in the county of on the day of , , in proceedings to foreclose tax liens upon real property and an order of sale duly issued by the court, duly purchased in compliance with the laws of the state of Washington, the following described real property, to wit: (Here place description of real property conveyed) and that the has complied with the laws of the state of Washington necessary to entitle (him, or her or them) to a deed for the real property.

Now, therefore, know ye, that, I , county treasurer of the county of , state of Washington, in consideration of the premises and by virtue of the statutes of the state of Washington, in such cases provided, do hereby grant and convey unto , his or her heirs and assigns, forever, the real property hereinbefore described.

Given under my hand and seal of office this day of , A.D.
.....
County Treasurer.

Sec. 8. RCW 67.28.181 and 1998 c 35 s 1 are each amended to read as follows:

(1) The legislative body of any municipality may impose an excise tax on the sale of or charge made for the furnishing of lodging that is subject to tax under chapter 82.08 RCW. The rate of tax shall not exceed the lesser of two percent or a rate that, when combined with all other taxes imposed upon sales of lodging within the municipality under this chapter and chapters 36.100, 67.40, 82.08, and 82.14 RCW, equals twelve percent. A tax under this chapter shall not be imposed in increments smaller than tenths of a percent.

(2) Notwithstanding subsection (1) of this section:

(a) If a municipality was authorized to impose taxes under this chapter or RCW 67.40.100 or both with a total rate exceeding four percent before July 27, 1997, such total authorization shall continue through January ((+) 31, 1999, and thereafter the municipality may impose a tax under this section at a rate not exceeding the rate actually imposed by the municipality on January ((+) 31, 1999.

(b) If a city or town, other than a municipality imposing a tax under (a) of this subsection, is located in a county that imposed taxes under this chapter with a total rate of four percent or more on January 1, 1997, the city or town may not impose a tax under this section.

(c) If a city has a population of four hundred thousand or more and is located in a county with a population of one million or more, the rate of tax imposed under this chapter by the city shall not exceed the lesser of four percent or a rate that, when combined with all other taxes imposed upon sales of lodging in the municipality under this chapter and chapters 36.100, 67.40, 82.08, and 82.14 RCW, equals fifteen and two-tenths percent.

(d) If a municipality was authorized to impose taxes under this chapter or RCW 67.40.100, or both, at a rate equal to six percent before January 1, 1998, the municipality may impose a tax under this section at a rate not exceeding the rate actually imposed by the municipality on January 1, 1998.

(3) Any county ordinance or resolution adopted under this section shall contain a provision allowing a credit against the county tax for the full amount of any city or town tax imposed under this section upon the same taxable event.

Sec. 9. RCW 67.28.200 and 1997 c 452 s 14 are each amended to read as follows:

The legislative body of any municipality may establish reasonable exemptions for taxes authorized under this chapter. The department of revenue shall perform the collection of such taxes on behalf of such municipality at no cost to such municipality. Except as expressly provided in this chapter, all of the provisions contained in RCW 82.08.050 and 82.08.060 and chapter 82.32 RCW shall have full force and application with respect to taxes imposed under the provisions of this chapter.

Passed by the House March 8, 2004.

Passed by the Senate March 4, 2004.

Approved by the Governor March 22, 2004.

Filed in Office of Secretary of State March 22, 2004.

CHAPTER 80

[House Bill 2519]

PROPERTY TAX LEVIES—CRIMINAL JUSTICE

AN ACT Relating to county property tax levies for criminal justice purposes; amending RCW 29A.36.210, 84.52.010, and 84.52.043; adding a new section to chapter 84.52 RCW; and providing an effective date.

Be it enacted by the Legislature of the State of Washington:

NEW SECTION. Sec. 1. A new section is added to chapter 84.52 RCW to read as follows:

(1) A county with a population of ninety thousand or less may impose additional regular property tax levies in an amount equal to fifty cents or less per thousand dollars of the assessed value of property in the county in accordance with the terms of this section.

(2) The tax proposition may be submitted at a general or special election.

(3) The tax may be imposed each year for six consecutive years when specifically authorized by the registered voters voting on the proposition, subject to the following:

(a) If the number of registered voters voting on the proposition does not exceed forty percent of the total number of voters voting in the taxing district at the last general election, the number of persons voting "yes" on the proposition shall constitute at least three-fifths of a number equal to forty percent of the total number of voters voting in the taxing district at the last general election.

(b) If the number of registered voters voting on the proposition exceeds forty percent of the total number of voters voting in the taxing district at the last preceding general election, the number of persons voting "yes" on the proposition shall be at least three-fifths of the registered voters voting on the proposition.

(4) Ballot propositions shall conform with RCW 29A.36.210.

(5) Any tax imposed under this section shall be used exclusively for criminal justice purposes.

(6) The limitations in RCW 84.52.043 do not apply to the tax authorized in this section.

(7) The limitation in RCW 84.55.010 does not apply to the first tax levy imposed pursuant to this section following the approval of the levy by the voters pursuant to subsection (3) of this section.

Sec. 2. RCW 29A.36.210 and 2003 c 111 s 921 are each amended to read as follows:

(1) The ballot proposition authorizing a taxing district to impose the regular property tax levies authorized in RCW 36.69.145, 67.38.130, ~~((or))~~ 84.52.069, or section 1 of this act shall contain in substance the following:

"Shall the (insert the name of the taxing district) be authorized to impose regular property tax levies of (insert the maximum rate) or less per thousand dollars of assessed valuation for each of (insert the maximum number of years allowable) consecutive years?"

Yes
No

Each voter shall indicate either "Yes" or "No" on his or her ballot in accordance with the procedures established under this title.

(2) The ballot proposition authorizing a taxing district to impose a permanent regular tax levy under RCW 84.52.069 shall contain the following:

"Shall the (insert the name of the taxing district) be authorized to impose a PERMANENT regular property levy of (insert the maximum rate) or less per thousand dollars of assessed valuation?

Yes

No

Sec. 3. RCW 84.52.010 and 2003 c 83 s 310 are each amended to read as follows:

Except as is permitted under RCW 84.55.050, all taxes shall be levied or voted in specific amounts.

The rate percent of all taxes for state and county purposes, and purposes of taxing districts coextensive with the county, shall be determined, calculated and fixed by the county assessors of the respective counties, within the limitations provided by law, upon the assessed valuation of the property of the county, as shown by the completed tax rolls of the county, and the rate percent of all taxes levied for purposes of taxing districts within any county shall be determined, calculated and fixed by the county assessors of the respective counties, within the limitations provided by law, upon the assessed valuation of the property of the taxing districts respectively.

When a county assessor finds that the aggregate rate of tax levy on any property, that is subject to the limitations set forth in RCW 84.52.043 or 84.52.050, exceeds the limitations provided in either of these sections, the assessor shall recompute and establish a consolidated levy in the following manner:

(1) The full certified rates of tax levy for state, county, county road district, and city or town purposes shall be extended on the tax rolls in amounts not exceeding the limitations established by law; however any state levy shall take precedence over all other levies and shall not be reduced for any purpose other than that required by RCW 84.55.010. If, as a result of the levies imposed under section 1 of this act, RCW 36.54.130, 84.52.069, 84.34.230, the portion of the levy by a metropolitan park district that was protected under RCW 84.52.120, and 84.52.105, the combined rate of regular property tax levies that are subject to the one percent limitation exceeds one percent of the true and fair value of any property, then these levies shall be reduced as follows:

(a) The levy imposed by a county under section 1 of this act must be reduced until the combined rate no longer exceeds one percent of the true and fair value of any property or must be eliminated;

(b) If the combined rate of regular property tax levies that are subject to the one percent limitation still exceeds one percent of the true and fair value of any property, the levy imposed by a ferry district under RCW 36.54.130 must be reduced until the combined rate no longer exceeds one percent of the true and fair value of any property or must be eliminated;

~~((b))~~ (c) If the combined rate of regular property tax levies that are subject to the one percent limitation still exceeds one percent of the true and fair value of any property, the portion of the levy by a metropolitan park district that is protected under RCW 84.52.120 shall be reduced until the combined rate no

longer exceeds one percent of the true and fair value of any property or shall be eliminated;

~~((e))~~ (d) If the combined rate of regular property tax levies that are subject to the one percent limitation still exceeds one percent of the true and fair value of any property, then the levies imposed under RCW 84.34.230, 84.52.105, and any portion of the levy imposed under RCW 84.52.069 that is in excess of thirty cents per thousand dollars of assessed value, shall be reduced on a pro rata basis until the combined rate no longer exceeds one percent of the true and fair value of any property or shall be eliminated; and

~~((d))~~ (e) If the combined rate of regular property tax levies that are subject to the one percent limitation still exceeds one percent of the true and fair value of any property, then the thirty cents per thousand dollars of assessed value of tax levy imposed under RCW 84.52.069 shall be reduced until the combined rate no longer exceeds one percent of the true and fair value of any property or eliminated.

(2) The certified rates of tax levy subject to these limitations by all junior taxing districts imposing taxes on such property shall be reduced or eliminated as follows to bring the consolidated levy of taxes on such property within the provisions of these limitations:

(a) First, the certified property tax levy rates of those junior taxing districts authorized under RCW 36.68.525, 36.69.145, 35.95A.100, and 67.38.130 shall be reduced on a pro rata basis or eliminated;

(b) Second, if the consolidated tax levy rate still exceeds these limitations, the certified property tax levy rates of flood control zone districts shall be reduced on a pro rata basis or eliminated;

(c) Third, if the consolidated tax levy rate still exceeds these limitations, the certified property tax levy rates of all other junior taxing districts, other than fire protection districts, library districts, the first fifty cent per thousand dollars of assessed valuation levies for metropolitan park districts, and the first fifty cent per thousand dollars of assessed valuation levies for public hospital districts, shall be reduced on a pro rata basis or eliminated;

(d) Fourth, if the consolidated tax levy rate still exceeds these limitations, the first fifty cent per thousand dollars of assessed valuation levies for metropolitan park districts created on or after January 1, 2002, shall be reduced on a pro rata basis or eliminated;

(e) Fifth, if the consolidated tax levy rate still exceeds these limitations, the certified property tax levy rates authorized to fire protection districts under RCW 52.16.140 and 52.16.160 shall be reduced on a pro rata basis or eliminated; and

(f) Sixth, if the consolidated tax levy rate still exceeds these limitations, the certified property tax levy rates authorized for fire protection districts under RCW 52.16.130, library districts, metropolitan park districts created before January 1, 2002, under their first fifty cent per thousand dollars of assessed valuation levy, and public hospital districts under their first fifty cent per thousand dollars of assessed valuation levy, shall be reduced on a pro rata basis or eliminated.

~~(In determining whether the aggregate rate of tax levy on any property, that is subject to the limitations set forth in RCW 84.52.050, exceeds the limitations provided in that section, the assessor shall use the hypothetical state levy, as~~

~~apportioned to the county under RCW 84.48.080, that was computed under RCW 84.48.080 without regard to the reduction under RCW 84.55.012.)~~

Sec. 4. RCW 84.52.043 and 2003 c 83 s 311 are each amended to read as follows:

Within and subject to the limitations imposed by RCW 84.52.050 as amended, the regular ad valorem tax levies upon real and personal property by the taxing districts hereafter named shall be as follows:

(1) Levies of the senior taxing districts shall be as follows: (a) The levy by the state shall not exceed three dollars and sixty cents per thousand dollars of assessed value adjusted to the state equalized value in accordance with the indicated ratio fixed by the state department of revenue to be used exclusively for the support of the common schools; (b) the levy by any county shall not exceed one dollar and eighty cents per thousand dollars of assessed value; (c) the levy by any road district shall not exceed two dollars and twenty-five cents per thousand dollars of assessed value; and (d) the levy by any city or town shall not exceed three dollars and thirty-seven and one-half cents per thousand dollars of assessed value. However any county is hereby authorized to increase its levy from one dollar and eighty cents to a rate not to exceed two dollars and forty-seven and one-half cents per thousand dollars of assessed value for general county purposes if the total levies for both the county and any road district within the county do not exceed four dollars and five cents per thousand dollars of assessed value, and no other taxing district has its levy reduced as a result of the increased county levy.

(2) The aggregate levies of junior taxing districts and senior taxing districts, other than the state, shall not exceed five dollars and ninety cents per thousand dollars of assessed valuation. The term "junior taxing districts" includes all taxing districts other than the state, counties, road districts, cities, towns, port districts, and public utility districts. The limitations provided in this subsection shall not apply to: (a) Levies at the rates provided by existing law by or for any port or public utility district; (b) excess property tax levies authorized in Article VII, section 2 of the state Constitution; (c) levies for acquiring conservation futures as authorized under RCW 84.34.230; (d) levies for emergency medical care or emergency medical services imposed under RCW 84.52.069; (e) levies to finance affordable housing for very low-income housing imposed under RCW 84.52.105; (f) the portions of levies by metropolitan park districts that are protected under RCW 84.52.120; ~~((and))~~ (g) levies imposed by ferry districts under RCW 36.54.130; and (h) levies for criminal justice purposes under section 1 of this act.

NEW SECTION. Sec. 5. This act takes effect July 1, 2004.

Passed by the House March 9, 2004.

Passed by the Senate March 4, 2004.

Approved by the Governor March 22, 2004.

Filed in Office of Secretary of State March 22, 2004.

CHAPTER 81

[House Bill 2453]

BUSINESS AND OCCUPATION TAX—MOTOR VEHICLES

AN ACT Relating to business and occupation tax for wholesale sales of new motor vehicles; amending RCW 82.04.422; and declaring an emergency.

Be it enacted by the Legislature of the State of Washington:

Sec. 1. RCW 82.04.422 and 2001 c 258 s 1 are each amended to read as follows:

(1) This chapter does not apply to amounts received by a motor vehicle dealer licensed under chapter 46.70 RCW, or a dealer licensed by any other state, for the wholesale sale of used motor vehicles at auctions to licensed dealers.

(2) This chapter does not apply to amounts derived by a new car dealer from wholesale sales of new motor vehicles ~~((of the same make))~~ to other new car dealers ~~((where the sales enable the dealers to adjust their inventory levels as long as the amount paid by the purchasing dealer does not exceed the amount paid by the selling dealer in the acquisition of the vehicle, however, the selling dealer may add reasonable expenses for the preparation of the vehicle for sale or transfer))~~ making sales of new motor vehicles of the same make. This exemption does not apply to amounts derived by a manufacturer, distributor, or factory branch as defined in chapter 46.70 RCW.

NEW SECTION. **Sec. 2.** This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately.

Passed by the House February 11, 2004.

Passed by the Senate March 3, 2004.

Approved by the Governor March 22, 2004.

Filed in Office of Secretary of State March 22, 2004.

CHAPTER 82

[Engrossed Substitute House Bill 3116]

TAX EXEMPTIONS—BLOOD BANKS

AN ACT Relating to modifying tax exemptions for blood banks, bone or tissue banks, and comprehensive cancer centers; and amending RCW 82.04.324, 82.08.02805, 82.12.02747, and 84.36.035.

Be it enacted by the Legislature of the State of Washington:

Sec. 1. RCW 82.04.324 and 1995 2nd sp.s. c 9 s 3 are each amended to read as follows:

(1) ~~((As used in this section:~~

~~(a) "Blood" includes human whole blood, plasma, blood derivatives, and related products.~~

~~(b) "Bone" includes human bone, bone marrow, and related products.~~

~~(c) "Tissue" includes human musculoskeletal tissue, musculoskeletal tissue derivatives, and related products.~~

~~(d) "Blood, bone, or tissue bank" means an organization exempt from federal income tax under section 501(c)(3) of the federal internal revenue code, organized solely for the purpose of performing research on, procuring, testing, processing, storing, packaging, distributing, or using blood, bone, or tissue.~~

~~(e) "Medical supplies" means any item of tangible personal property, including any repair and replacement parts for such tangible personal property, used by a blood, tissue, or bone bank for the purpose of performing research on, procuring, testing, processing, storing, packaging, distributing, or using blood, bone, or tissue. The term includes tangible personal property used to:~~

~~(i) Provide preparatory treatment of blood, bone, or tissue;~~

~~(ii) Control, guide, measure, tune, verify, align, regulate, test, or physically support blood, bone, or tissue; and~~

~~(iii) Protect the health and safety of employees or others present during research on, procuring, testing, processing, storing, packaging, distributing, or using blood, bone, or tissue.~~

~~(f) "Chemical" means any catalyst, solvent, water, acid, oil, or other additive that physically or chemically interacts with blood, bone, or tissue.~~

~~(g) "Materials" means any item of tangible personal property, including, but not limited to, bags, packs, collecting sets, filtering materials, testing reagents, antisera, and refrigerants used or consumed in performing research on, procuring, testing, processing, storing, packaging, distributing, or using blood, bone, or tissue.~~

~~(h) "Research" means basic and applied research that has as its objective the design, development, refinement, testing, marketing, or commercialization of a product, service, or process.~~

~~(2)) This chapter does not apply to amounts received by a qualifying blood ((, bone, or)) bank, a qualifying tissue ((banks)) bank, or a qualifying blood and tissue bank to the extent the amounts are exempt from federal income tax.~~

~~(2) For the purposes of this section:~~

~~(a) "Qualifying blood bank" means a blood bank that qualifies as an exempt organization under 26 U.S.C. 501(c)(3) as existing on the effective date of this section, is registered pursuant to 21 C.F.R., part 607 as existing on the effective date of this section, and whose primary business purpose is the collection, preparation, and processing of blood. "Qualifying blood bank" does not include a comprehensive cancer center that is recognized as such by the national cancer institute.~~

~~(b) "Qualifying tissue bank" means a tissue bank that qualifies as an exempt organization under 26 U.S.C. 501(c)(3) as existing on the effective date of this section, is registered pursuant to 21 C.F.R., part 1271 as existing on the effective date of this section, and whose primary business purpose is the recovery, processing, storage, labeling, packaging, or distribution of human bone tissue, ligament tissue and similar musculoskeletal tissues, skin tissue, heart valve tissue, or human eye tissue. "Qualifying tissue bank" does not include a comprehensive cancer center that is recognized as such by the national cancer institute.~~

~~(c) "Qualifying blood and tissue bank" is a bank that qualifies as an exempt organization under 26 U.S.C. 501(c)(3) as existing on the effective date of this section, is registered pursuant to 21 C.F.R., part 607 and part 1271 as existing on the effective date of this section, and whose primary business purpose is the collection, preparation, and processing of blood, and the recovery, processing, storage, labeling, packaging, or distribution of human bone tissue, ligament tissue and similar musculoskeletal tissues, skin tissue, and heart valve tissue.~~

"Qualifying blood and tissue bank" does not include a comprehensive cancer center that is recognized as such by the national cancer institute.

Sec. 2. RCW 82.08.02805 and 1995 2nd sp.s. c 9 s 4 are each amended to read as follows:

(1) The tax levied by RCW 82.08.020 does not apply to the sale of medical supplies, chemicals, or materials to a qualifying blood~~((, bone, or))~~ bank, a qualifying tissue bank, or a qualifying blood and tissue bank. ~~((The definitions in RCW 82.04.324 apply to this section.))~~ The exemption in this section does not apply to the sale of construction materials, office equipment, building equipment, administrative supplies, or vehicles.

(2) For the purposes of this section, the following definitions apply:

(a) "Medical supplies" means any item of tangible personal property, including any repair and replacement parts for such tangible personal property, used by a qualifying blood bank, a qualifying tissue bank, or a qualifying blood and tissue bank for the purpose of performing research on, procuring, testing, processing, storing, packaging, distributing, or using blood, bone, or tissue. The term includes tangible personal property used to:

(i) Provide preparatory treatment of blood, bone, or tissue;

(ii) Control, guide, measure, tune, verify, align, regulate, test, or physically support blood, bone, or tissue; and

(iii) Protect the health and safety of employees or others present during research on, procuring, testing, processing, storing, packaging, distributing, or using blood, bone, or tissue.

(b) "Chemical" means any catalyst, solvent, water, acid, oil, or other additive that physically or chemically interacts with blood, bone, or tissue.

(c) "Materials" means any item of tangible personal property, including, but not limited to, bags, packs, collecting sets, filtering materials, testing reagents, antisera, and refrigerants used or consumed in performing research on, procuring, testing, processing, storing, packaging, distributing, or using blood, bone, or tissue.

(d) "Research" means basic and applied research that has as its objective the design, development, refinement, testing, marketing, or commercialization of a product, service, or process.

(e) The definitions in RCW 82.04.324 apply to this section.

Sec. 3. RCW 82.12.02747 and 1995 2nd sp.s. c 9 s 5 are each amended to read as follows:

(1) The provisions of this chapter do not apply in respect to the use of medical supplies, chemicals, or materials by a qualifying blood~~((, bone, or))~~ bank, a qualifying tissue bank, or a qualifying blood and tissue bank. ~~((The definitions in RCW 82.04.324 apply to this section.))~~ The exemption in this section does not apply to the use of construction materials, office equipment, building equipment, administrative supplies, or vehicles.

(2) The definitions in RCW 82.04.324 and 82.08.02805 apply to this section.

Sec. 4. RCW 84.36.035 and 1995 2nd sp.s. c 9 s 1 are each amended to read as follows:

(1) The following property shall be exempt from taxation:

All property, whether real or personal, belonging to or leased by any nonprofit corporation or association and used exclusively in the business of a qualifying blood (~~(, bone, or)~~) bank, a qualifying tissue bank (~~(as defined in RCW 82.04.324)~~), or a qualifying blood and tissue bank, or in the administration of (~~(such business))~~ these businesses. If the real or personal property is leased, the benefit of the exemption shall inure to the nonprofit corporation or association.

(2) The definitions in RCW 82.04.324 apply to this section.

Passed by the House March 9, 2004.

Passed by the Senate March 4, 2004.

Approved by the Governor March 22, 2004.

Filed in Office of Secretary of State March 22, 2004.

CHAPTER 83

[Engrossed Substitute House Bill 2354]

MEDICARE SUPPLEMENT INSURANCE POLICIES

AN ACT Relating to rates for a medicare supplement insurance policy; amending RCW 48.66.045; and declaring an emergency.

Be it enacted by the Legislature of the State of Washington:

Sec. 1. RCW 48.66.045 and 1999 c 334 s 1 are each amended to read as follows:

Every issuer of a medicare supplement insurance policy or certificate providing coverage to a resident of this state issued on or after January 1, 1996, shall:

(1) Issue coverage under its standardized benefit plans B, C, D, E, F, and G without evidence of insurability to any resident of this state who is eligible for both medicare hospital and physician services by reason of age or by reason of disability or end-stage renal disease, if the medicare supplement policy replaces another medicare supplement standardized benefit plan policy or certificate B, C, D, E, F, or G, or other more comprehensive coverage than the replacing policy;

(2) Issue coverage under its standardized plans A, H, I, and J without evidence of insurability to any resident of this state who is eligible for both medicare hospital and physician services by reason of age or by reason of disability or end-stage renal disease, if the medicare supplement policy replaces another medicare supplement policy or certificate which is the same standardized plan as the replaced policy; and

(3) Set rates only on a community-rated basis. Premiums shall be equal for all policyholders and certificate holders under a standardized medicare supplement benefit plan form, except that an issuer may vary premiums based on spousal discounts, frequency of payment, and method of payment including automatic deposit of premiums and may develop no more than two rating pools that distinguish between an insured's eligibility for medicare by reason of:

(a) Age; or

(b) Disability or end-stage renal disease.

NEW SECTION. **Sec. 2.** If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected.

NEW SECTION. **Sec. 3.** This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately.

Passed by the House March 8, 2004.

Passed by the Senate March 4, 2004.

Approved by the Governor March 22, 2004.

Filed in Office of Secretary of State March 22, 2004.

CHAPTER 84

[Engrossed House Bill 2364]

HOMEOWNER'S INSURANCE—FOSTER PARENTS

AN ACT Relating to homeowner's insurance; and adding a new section to chapter 48.18 RCW.

Be it enacted by the Legislature of the State of Washington:

NEW SECTION. **Sec. 1.** A new section is added to chapter 48.18 RCW to read as follows:

An insurer licensed to write homeowner's insurance in this state shall not deny an application for a homeowner's insurance policy, or cancel, refuse to renew, or modify an existing homeowner's insurance policy for the principal reason that the applicant or insured is a foster parent licensed under chapter 74.15 RCW.

Passed by the House February 13, 2004.

Passed by the Senate March 4, 2004.

Approved by the Governor March 22, 2004.

Filed in Office of Secretary of State March 22, 2004.

CHAPTER 85

[Substitute House Bill 2538]

PERS—TERS—MINIMUM BENEFIT

AN ACT Relating to establishing a one thousand dollar minimum monthly benefit for public employees' retirement system plan I members and teachers' retirement system plan I members who have at least twenty-five years of service and who have been retired at least twenty years; and amending RCW 41.32.4851 and 41.40.1984.

Be it enacted by the Legislature of the State of Washington:

Sec. 1. RCW 41.32.4851 and 1995 c 345 s 3 are each amended to read as follows:

(1) No one who becomes a beneficiary after June 30, 1995, shall receive a monthly retirement allowance of less than twenty-four dollars and twenty-two cents times the number of years of service creditable to the person whose service is the basis of such retirement allowance.

(2) If the retirement allowance payable was adjusted at the time benefit payments to the beneficiary commenced, the minimum allowance provided in this section shall be adjusted in a manner consistent with that adjustment.

(3) Beginning July 1, 1996, the minimum benefit set forth in subsection (1) of this section shall be adjusted annually by the annual increase.

(4) Those receiving a temporary disability benefit under RCW 41.32.540 shall not be eligible for the benefit provided by this section.

(5) Beginning July 1, 2004, the minimum benefit set forth in subsection (1) of this section, prior to adjustments set forth in subsection (2) of this section, for a beneficiary with at least twenty-five years of service and who has been retired at least twenty years shall be one thousand dollars per month. The minimum benefit in this subsection shall not be adjusted by the annual increase provided in subsection (3) of this section.

Sec. 2. RCW 41.40.1984 and 1995 c 345 s 7 are each amended to read as follows:

(1) Except as provided in subsections (4) and (5) of this section, no one who becomes a beneficiary after June 30, 1995, shall receive a monthly retirement allowance of less than twenty-four dollars and twenty-two cents times the number of years of service creditable to the person whose service is the basis of such retirement allowance.

(2) Where the retirement allowance payable was adjusted at the time benefit payments to the beneficiary commenced, the minimum allowance provided in this section shall be adjusted in a manner consistent with that adjustment.

(3) Beginning July 1, 1996, the minimum benefit set forth in subsection (1) of this section shall be adjusted annually by the annual increase.

(4) Those receiving a benefit under RCW 41.40.220(1) or under RCW 41.44.170 (3) and (5) shall not be eligible for the benefit provided by this section.

(5) For persons who served as elected officials and whose accumulated employee contributions and credited interest was less than seven hundred fifty dollars at the time of retirement, the minimum benefit under subsection (1) of this section shall be ten dollars per month per each year of creditable service.

(6) Beginning July 1, 2004, the minimum benefit set forth in subsection (1) of this section, prior to adjustments set forth in subsection (2) of this section, for a beneficiary with at least twenty-five years of service and who has been retired at least twenty years shall be one thousand dollars per month. The minimum benefit in this subsection shall not be adjusted by the annual increase provided in subsection (3) of this section.

Passed by the House February 11, 2004.

Passed by the Senate March 3, 2004.

Approved by the Governor March 22, 2004.

Filed in Office of Secretary of State March 22, 2004.

CHAPTER 86

[House Bill 2727]

INSURERS—CREDIT BASED RATING PLANS

AN ACT Relating to requiring all insurers to file credit based rating plans; and amending RCW 48.19.035.

Be it enacted by the Legislature of the State of Washington:

Sec. I. RCW 48.19.035 and 2002 c 360 s 2 are each amended to read as follows:

(1) For the purposes of this section:

(a) "Affiliate" has the same meaning as defined in RCW 48.31B.005(1).

(b) "Consumer" means an individual policyholder or applicant for insurance.

~~((b))~~ (c) "Credit history" means any written, oral, or other communication of any information by a consumer reporting agency bearing on a consumer's creditworthiness, credit standing, or credit capacity that is used or expected to be used, or collected in whole or in part, for the purpose of serving as a factor in determining personal insurance premiums or eligibility for coverage.

~~((e))~~ (d) "Insurance score" means a number or rating that is derived from an algorithm, computer application, model, or other process that is based in whole or in part on credit history.

~~((d))~~ (e) "Personal insurance" means:

(i) Private passenger automobile coverage;

(ii) Homeowner's coverage, including mobile homeowners, manufactured homeowners, condominium owners, and renter's coverage;

(iii) Dwelling property coverage;

(iv) Earthquake coverage for a residence or personal property;

(v) Personal liability and theft coverage;

(vi) Personal inland marine coverage; and

(vii) Mechanical breakdown coverage for personal auto or home appliances.

(2)(a) Credit history shall not be used to determine personal insurance rates, premiums, or eligibility for coverage unless the insurance scoring models are filed with the commissioner. Insurance scoring models include all attributes and factors used in the calculation of an insurance score. RCW 48.19.040(5) does not apply to any information filed under this subsection, and the information shall be withheld from public inspection and kept confidential by the commissioner. All information filed under this subsection shall be considered trade secrets under RCW 48.02.120(3). Information filed under this subsection may be made public by the commissioner for the sole purpose of enforcement actions taken by the commissioner.

(b) Each insurer that uses credit history or an insurance score to determine personal insurance rates, premiums, or eligibility for coverage must file all rates and rating plans for that line of coverage with the commissioner. This requirement applies equally to a single insurer and two or more affiliated insurers. RCW 48.19.040(5) applies to information filed under this subsection except that any eligibility rules or guidelines shall be withheld from public inspection under RCW 48.02.120(3) from the date that the information is filed and after it becomes effective.

(3) Insurers shall not use the following types of credit history to calculate a personal insurance score or determine personal insurance premiums or rates:

(a) The absence of credit history or the inability to determine the consumer's credit history, unless the insurer has filed actuarial data segmented by demographic factors in a manner prescribed by the commissioner that demonstrates compliance with RCW 48.19.020;

(b) The number of credit inquiries;

(c) Credit history or an insurance score based on collection accounts identified with a medical industry code;

(d) The initial purchase or finance of a vehicle or house that adds a new loan to the consumer's existing credit history, if evident from the consumer report; however, an insurer may consider the bill payment history of any loan, the total number of loans, or both;

(e) The consumer's use of a particular type of credit card, charge card, or debit card; or

(f) The consumer's total available line of credit; however, an insurer may consider the total amount of outstanding debt in relation to the total available line of credit.

(4) If a consumer is charged higher premiums due to disputed credit history, the insurer shall rerate the policy retroactive to the effective date of the current policy term. As rerated, the consumer shall be charged the same premiums they would have been charged if accurate credit history was used to calculate an insurance score. This subsection applies only if the consumer resolves the dispute under the process set forth in the fair credit reporting act and notifies the insurer in writing that the dispute has been resolved.

(5) The commissioner may adopt rules to implement this section.

(6) This section applies to all personal insurance policies issued or renewed on or after June 30, 2003.

Passed by the House March 9, 2004.

Passed by the Senate March 4, 2004.

Approved by the Governor March 22, 2004.

Filed in Office of Secretary of State March 22, 2004.

CHAPTER 87

[Engrossed Substitute House Bill 2787]

HEALTH CARE PROVIDERS—VOLUNTEER LIABILITY

AN ACT Relating to immunity from liability for licensed health care providers volunteering at community health care settings; and amending RCW 4.24.300.

Be it enacted by the Legislature of the State of Washington:

Sec. 1. RCW 4.24.300 and 2003 c 256 s 1 are each amended to read as follows:

(1) Any person, including but not limited to a volunteer provider of emergency or medical services, who without compensation or the expectation of compensation renders emergency care at the scene of an emergency or who participates in transporting, not for compensation, therefrom an injured person or persons for emergency medical treatment shall not be liable for civil damages resulting from any act or omission in the rendering of such emergency care or in transporting such persons, other than acts or omissions constituting gross negligence or willful or wanton misconduct. Any person rendering emergency care during the course of regular employment and receiving compensation or expecting to receive compensation for rendering such care is excluded from the protection of this subsection.

(2) Any ~~((physician licensed under chapter 18.57 or 18.71 RCW))~~ licensed health care provider regulated by a disciplining authority under RCW

18.130.040 in the state of Washington who, without compensation or the expectation of compensation, provides health care services at a community (~~clinic that is a public or private tax exempt corporation~~) health care setting is not liable for civil damages resulting from any act or omission in the rendering of such care, other than acts or omissions constituting gross negligence or willful or wanton misconduct.

(3) For purposes of subsection (2) of this section, "community health care setting" means an entity that provides health care services and:

(a) Is a clinic operated by a public entity or private tax exempt corporation, except a clinic that is owned, operated, or controlled by a hospital licensed under chapter 70.41 RCW unless the hospital-based clinic either:

(i) Maintains and holds itself out to the public as having established hours on a regular basis for providing free health care services to members of the public to the extent that care is provided without compensation or expectation of compensation during those established hours; or

(ii) Is participating, through a written agreement, in a community-based program to provide access to health care services for uninsured persons, to the extent that:

(A) Care is provided without compensation or expectation of compensation to individuals who have been referred for care through that community-based program; and

(B) The health care provider's participation in the community-based program is conditioned upon his or her agreement to provide health services without expectation of compensation;

(b) Is a for-profit corporation that maintains and holds itself out to the public as having established hours on a regular basis for providing free health care services to members of the public to the extent that care is provided without compensation or expectation of compensation during those established hours; or

(c) Is a for-profit corporation that is participating, through a written agreement, in a community-based program to provide access to health care services for uninsured persons, to the extent that:

(i) Care is provided without compensation or expectation of compensation to individuals who have been referred for care through that community-based program; and

(ii) The health care provider's participation in the community-based program is conditioned upon his or her agreement to provide health services without expectation of compensation.

Passed by the House March 11, 2004.

Passed by the Senate March 11, 2004.

Approved by the Governor March 22, 2004.

Filed in Office of Secretary of State March 22, 2004.

CHAPTER 88

[House Bill 2817]

INSURANCE INVESTMENTS—REAL PROPERTY

AN ACT Relating to insurance investments in limited liability companies formed to develop real property; and amending RCW 48.13.240.

Be it enacted by the Legislature of the State of Washington:

Sec. 1. RCW 48.13.240 and 1982 c 218 s 4 are each amended to read as follows:

(1) An insurer may loan or invest its funds in an aggregate amount not exceeding the lesser of the following sums: Ten percent of its assets, or fifty percent of its surplus over its capital and other liabilities, or if a mutual or reciprocal insurer fifty percent of its surplus over minimum required surplus, in loans or investments not otherwise eligible for investment and not specifically prohibited by RCW 48.13.270.

(2) No such loan or investment shall be any item described in RCW 48.12.020.

(3) No such investment in or loan upon the security of any one person or entity shall exceed the amount specified in subsection (1) of this section or one percent of the insurer's assets, whichever is the lesser, except that an investment in a limited liability company formed under chapter 25.15 RCW to develop real property owned by the insurer as permitted by RCW 48.13.160 shall not exceed the lesser of the amount specified in subsection (1) of this section or four percent of the insurer's assets. This subsection (3) shall not apply to an investment in the stock of a subsidiary company.

(4) The insurer shall keep a separate record of all investments acquired under this section.

Passed by the House February 14, 2004.

Passed by the Senate March 4, 2004.

Approved by the Governor March 22, 2004.

Filed in Office of Secretary of State March 22, 2004.

CHAPTER 89

[House Bill 2838]

INSURERS—CAPITAL CALLS

AN ACT Relating to capital calls by domestic mutual insurers; adding new sections to chapter 48.09 RCW; providing an effective date; providing an expiration date; and declaring an emergency.

Be it enacted by the Legislature of the State of Washington:

NEW SECTION. Sec. 1. A new section is added to chapter 48.09 RCW to read as follows:

(1) In addition to authority granted by RCW 48.09.220 and 48.09.230, a domestic mutual insurer meeting all the requirements of this section may increase its surplus by issuing a capital call. A capital call requires policyholders or applicants for insurance to pay a sum, in addition to premium, to be eligible to renew a policy or be issued a new policy. A policyholder that does not pay the amount of a call cannot be cancelled or denied the benefits of an existing policy.

(2) Prior to issuing a capital call, the insurer must have:

(a) Adopted articles of incorporation or other organizational documents authorizing capital calls; and

(b) Provided information concerning the insurer's authority to issue a capital call to every policyholder. This information must be provided at least ninety days prior to a capital call.

(3) The insurer must notify the commissioner of its intent to issue a capital call at least ninety days prior to the capital call. The notice to the commissioner must include:

- (a) A statement of each of the following:
 - (i) The specific purpose or purposes of the capital call;
 - (ii) The total amount intended to be raised by issuance of the capital call;
 - (iii) The amount intended to be raised for each stated purpose;
 - (iv) The grounds relied upon by the insurer in deciding that the capital call is the best option available to the insurer for raising capital; and
 - (v) Each of the alternative methods of raising capital the insurer considered and the reasons the insurer rejected each alternative in favor of the capital call;
- (b) For the ten years immediately preceding the filing of the notice, a year by year accounting of:
 - (i) All rate filings and actions;
 - (ii) The total of all underwriting losses; and
 - (iii) The total amount of dividends paid to policyholders; and
- (c) A complete application for a solicitation permit as required in RCW 48.06.030.

(4) Before an insurer may issue a capital call, the insurer must:

- (a) Notify the commissioner and provide information as required in subsection (3) of this section;
- (b) Provide any and all additional information that the commissioner may determine is useful or necessary in evaluating the merits of the proposed capital call;
- (c) Receive approval of the policy or insuring instrument from the commissioner; and
- (d) Receive approval of the commissioner for the capital call and the solicitation permit.

The commissioner may disapprove a capital call if he or she does not believe it is in the best interest of the insurer, the policyholders, or the citizens of the state of Washington. In making this determination, the commissioner may consider the financial health of the insurer, the impact on the marketplace, the possible use of other means to raise capital, the frequency of previous capital calls by the insurer, the effect of raising premiums instead of a capital call, the impact on state revenue, or any other factor the commissioner deems proper.

(5) The funds raised by an approved capital call are not premiums for the purposes of RCW 48.14.020.

(6) The commissioner may adopt rules to implement this section.

NEW SECTION. Sec. 2. A new section is added to chapter 48.09 RCW to read as follows:

(1) In addition to authority granted by RCW 48.09.220 and 48.09.230, a domestic mutual insurer meeting all the requirements of this section may increase its surplus by issuing a capital call. A capital call requires policyholders or applicants for insurance to pay a sum, in addition to premium, to be eligible to renew a policy or be issued a new policy. A policyholder that does not pay the amount of a call cannot be cancelled or denied the benefits of an existing policy.

(2) Prior to issuing a capital call, the insurer must have:

- (a) Adopted articles of incorporation or other organizational documents authorizing capital calls; and

(b) For any capital call issued on or after January 1, 2006, included information concerning the insurer's authority to issue a capital call in the policy of every policyholder. This information must be provided at least one full policy renewal cycle prior to a capital call.

(3) The insurer must notify the commissioner of its intent to issue a capital call at least ninety days prior to the capital call. The notice to the commissioner must include:

(a) A statement of each of the following:

(i) The specific purpose or purposes of the capital call;

(ii) The total amount intended to be raised by issuance of the capital call;

(iii) The amount intended to be raised for each stated purpose;

(iv) The grounds relied upon by the insurer in deciding that the capital call is the best option available to the insurer for raising capital; and

(v) Each of the alternative methods of raising capital the insurer considered and the reasons the insurer rejected each alternative in favor of the capital call;

(b) For the ten years immediately preceding the filing of the notice, a year by year accounting of:

(i) All rate filings and actions;

(ii) The total of all underwriting losses; and

(iii) The total amount of dividends paid to policyholders; and

(c) A complete application for a solicitation permit as required in RCW 48.06.030.

(4) Before an insurer may issue a capital call, the insurer must:

(a) Notify the commissioner and provide information as required in subsection (3) of this section;

(b) Provide any and all additional information that the commissioner may determine is useful or necessary in evaluating the merits of the proposed capital call;

(c) Receive approval of the policy or insuring instrument from the commissioner; and

(d) Receive approval of the commissioner for the capital call and the solicitation permit.

The commissioner may disapprove a capital call if he or she does not believe it is in the best interest of the insurer, the policyholders, or the citizens of the state of Washington. In making this determination, the commissioner may consider the financial health of the insurer, the impact on the marketplace, the possible use of other means to raise capital, the frequency of previous capital calls by the insurer, the effect of raising premiums instead of a capital call, the impact on state revenue, or any other factor the commissioner deems proper.

(5) The funds raised by an approved capital call are not premiums for the purposes of RCW 48.14.020.

(6) The commissioner may adopt rules to implement this section.

NEW SECTION. Sec. 3. Section 1 of this act expires January 1, 2006.

NEW SECTION. Sec. 4. Section 2 of this act takes effect January 1, 2006.

NEW SECTION. Sec. 5. This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately.

Passed by the House February 16, 2004.

Passed by the Senate March 5, 2004.

Approved by the Governor March 22, 2004.

Filed in Office of Secretary of State March 22, 2004.

CHAPTER 90

[Engrossed House Bill 2987]

UNDERINSURED MOTORISTS

AN ACT Relating to underinsured motorist coverage; and amending RCW 48.22.030.

Be it enacted by the Legislature of the State of Washington:

Sec. 1. RCW 48.22.030 and 1985 c 328 s 1 are each amended to read as follows:

(1) "Underinsured motor vehicle" means a motor vehicle with respect to the ownership, maintenance, or use of which either no bodily injury or property damage liability bond or insurance policy applies at the time of an accident, or with respect to which the sum of the limits of liability under all bodily injury or property damage liability bonds and insurance policies applicable to a covered person after an accident is less than the applicable damages which the covered person is legally entitled to recover.

(2) No new policy or renewal of an existing policy insuring against loss resulting from liability imposed by law for bodily injury, death, or property damage, suffered by any person arising out of the ownership, maintenance, or use of a motor vehicle shall be issued with respect to any motor vehicle registered or principally garaged in this state unless coverage is provided therein or supplemental thereto for the protection of persons insured thereunder who are legally entitled to recover damages from owners or operators of underinsured motor vehicles, hit-and-run motor vehicles, and phantom vehicles because of bodily injury, death, or property damage, resulting therefrom, except while operating or occupying a motorcycle or motor-driven cycle, and except while operating or occupying a motor vehicle owned or available for the regular use by the named insured or any family member, and which is not insured under the liability coverage of the policy. The coverage required to be offered under this chapter is not applicable to general liability policies, commonly known as umbrella policies, or other policies which apply only as excess to the insurance directly applicable to the vehicle insured.

(3) Except as to property damage, coverage required under subsection (2) of this section shall be in the same amount as the insured's third party liability coverage unless the insured rejects all or part of the coverage as provided in subsection (4) of this section. Coverage for property damage need only be issued in conjunction with coverage for bodily injury or death. Property damage coverage required under subsection (2) of this section shall mean physical damage to the insured motor vehicle unless the policy specifically provides coverage for the contents thereof or other forms of property damage.

(4) A named insured or spouse may reject, in writing, underinsured coverage for bodily injury or death, or property damage, and the requirements of subsections (2) and (3) of this section shall not apply. If a named insured or spouse has rejected underinsured coverage, such coverage shall not be included in any supplemental or renewal policy unless a named insured or spouse

subsequently requests such coverage in writing. The requirement of a written rejection under this subsection shall apply only to the original issuance of policies issued after July 24, 1983, and not to any renewal or replacement policy.

(5) The limit of liability under the policy coverage may be defined as the maximum limits of liability for all damages resulting from any one accident regardless of the number of covered persons, claims made, or vehicles or premiums shown on the policy, or premiums paid, or vehicles involved in an accident.

(6) The policy may provide that if an injured person has other similar insurance available to him under other policies, the total limits of liability of all coverages shall not exceed the higher of the applicable limits of the respective coverages.

(7) (a) The policy may provide for a deductible of not more than three hundred dollars for payment for property damage when the damage is caused by a hit-and-run driver or a phantom vehicle.

(b) In all other cases of underinsured property damage coverage, the policy may provide for a deductible of not more than one hundred dollars.

(8) For the purposes of this chapter, a "phantom vehicle" shall mean a motor vehicle which causes bodily injury, death, or property damage to an insured and has no physical contact with the insured or the vehicle which the insured is occupying at the time of the accident if:

(a) The facts of the accident can be corroborated by competent evidence other than the testimony of the insured or any person having an underinsured motorist claim resulting from the accident; and

(b) The accident has been reported to the appropriate law enforcement agency within seventy-two hours of the accident.

(9) An insurer who elects to write motorcycle or motor-driven cycle insurance in this state must provide information to prospective insureds about the coverage.

Passed by the House February 17, 2004.

Passed by the Senate March 3, 2004.

Approved by the Governor March 22, 2004.

Filed in Office of Secretary of State March 22, 2004.

CHAPTER 91

[Second Substitute Senate Bill 5793]

LIFE INSURANCE—NONFORFEITURE AMOUNTS

AN ACT Relating to minimum nonforfeiture amounts applicable to certain contracts of life insurance and annuities; amending RCW 48.23.430 and 48.23.440; and providing an effective date.

Be it enacted by the Legislature of the State of Washington:

Sec. 1. RCW 48.23.430 and 1982 1st ex.s. c 9 s 23 are each amended to read as follows:

In the case of contracts issued on or after the operative date of this section as defined in RCW 48.23.520, no contract of annuity, except as stated in RCW 48.23.420, may be delivered or issued for delivery in this state unless it contains in substance the following provisions, or corresponding provisions which in the

opinion of the commissioner are at least as favorable to the contract holder, upon cessation of payment of considerations under the contract:

(1) That upon cessation of payment of considerations under a contract, or upon the written request of the contract owner, the company ((will)) shall grant a paid-up annuity benefit on a plan stipulated in the contract of such value as is specified in RCW 48.23.450, 48.23.460, 48.23.470, 48.23.480, and 48.23.500;

(2) If a contract provides for a lump sum settlement at maturity, or at any other time, that upon surrender of the contract at or before the commencement of any annuity payments, the company ((will)) shall pay in lieu of any paid-up annuity benefit a cash surrender benefit of such amount as is specified in RCW 48.23.450, 48.23.460, 48.23.480, and 48.23.500. The company ((shall)) may reserve the right to defer the payment of such cash surrender benefit for a period ((of)) not to exceed six months after demand therefor with surrender of the contract after making written request and receiving written approval of the commissioner. The request shall address the necessity and equitability to all policyholders of the deferral;

(3) A statement of the mortality table, if any, and interest rates used in calculating any minimum paid-up annuity, cash surrender, or death benefits that are guaranteed under the contract, together with sufficient information to determine the amounts of such benefits; and

(4) A statement that any paid-up annuity, cash surrender, or death benefits that may be available under the contract are not less than the minimum benefits required by any statute of the state in which the contract is delivered and an explanation of the manner in which such benefits are altered by the existence of any additional amounts credited by the company to the contract, any indebtedness to the company on the contract, or any prior withdrawals from or partial surrenders of the contract.

Notwithstanding the requirements of this section, any deferred annuity contract may provide that if no considerations have been received under a contract for a period of two full years and the portion of the paid-up annuity benefit at maturity on the plan stipulated in the contract arising from considerations paid before such period would be less than twenty dollars monthly, the company may at its option terminate the contract by payment in cash of the then present value of the portion of the paid-up annuity benefit, calculated on the basis of the mortality table, if any, and interest rate specified in the contract for determining the paid-up annuity benefit, and by such payment is relieved of any further obligation under such contract.

Sec. 2. RCW 48.23.440 and 1982 1st ex.s. c 9 s 24 are each amended to read as follows:

The minimum values as specified in RCW 48.23.450, 48.23.460, 48.23.470, 48.23.480, and 48.23.500 of any paid-up annuity, cash surrender, or death benefits available under an annuity contract shall be based upon minimum nonforfeiture amounts as defined in this section.

(1) ~~((With respect to contracts providing for flexible considerations,))~~ The minimum nonforfeiture amount at any time at or prior to the commencement of any annuity payments is equal to an accumulation up to such time at ((a)) rates of interest ((of three percent per annum of percentages)) as indicated in subsection (2) of this section of the net considerations, as defined in this subsection, paid prior to such time, decreased by the sum of the following:

(a) Any prior withdrawals from or partial surrenders of the contract accumulated at ~~((a))~~ rates of interest ~~((of three percent per annum))~~ as indicated in subsection (2) of this section; ((and))

(b) An annual contract charge of fifty dollars, accumulated at rates of interest as indicated in subsection (2) of this section;

(c) Any premium tax paid by the insurer for the contract, accumulated at rates of interest as indicated in subsection (2) of this section; and

(d) The amount of any indebtedness to the company on the contract, including interest due and accrued((, and increased by any existing additional amounts credited by the company to the contract)).

The net considerations for a given contract year used to define the minimum nonforfeiture amount shall be an amount ~~((not less than zero and shall be))~~ equal to ~~((the corresponding))~~ eighty-seven and one-half percent of the gross considerations credited to the contract during that contract year ~~((less an annual contract charge of thirty dollars and less a collection charge of one dollar and twenty-five cents per consideration credited to the contract during that contract year. The percentages of net considerations shall be sixty-five percent of the net consideration for the first contract year and eighty-seven and one-half percent of the net considerations for the second and later contract years. Notwithstanding the provisions of the preceding sentence, the percentage shall be sixty-five percent of the portion of the total net consideration for any renewal contract year which exceeds by not more than two times the sum of those portions of the net considerations in all prior contract years for which the percentage was sixty-five percent.~~

~~(2) With respect to contracts providing for fixed scheduled considerations, minimum nonforfeiture amounts shall be calculated on the assumption that considerations are paid annually in advance and shall be defined as for contracts with flexible considerations which are paid annually with two exceptions:~~

~~(a) The portion of the net consideration for the first contract year to be accumulated shall be the sum of sixty-five percent of the net consideration for the first contract year plus twenty-two and one-half percent of the excess of the net consideration for the first contract year over the lesser of the net considerations for the second and third contract years; and~~

~~(b) The annual contract charge shall be the lesser of (i) thirty dollars or (ii) ten percent of the gross annual consideration.~~

~~(3) With respect to contracts providing for a single consideration, minimum nonforfeiture amounts shall be defined as for contracts with flexible considerations except that the percentage of net consideration used to determine the minimum nonforfeiture amount shall be equal to ninety percent and the net consideration shall be the gross consideration less a contract charge of seventy-five dollars).~~

(2) The interest rate used in determining minimum nonforfeiture amounts shall be an annual rate of interest determined as the lesser of three percent per annum and the following, which shall be specified in the contract if the interest rate will be reset:

(a) The five-year constant maturity treasury rate reported by the federal reserve as of a date certain, or averaged over a period, rounded to the nearest one-twentieth of one percent, specified in the contract no longer than fifteen

months prior to the contract issue date or redetermination date under (d) of this subsection:

(b) Reduced by one hundred twenty-five basis points;

(c) Where the resulting interest rate is not less than one percent; and

(d) The interest rate shall apply to an initial period and may be redetermined for additional periods. The redetermination date, basis, and period, if any, shall be stated in the contract. The basis is the date or average over a specified period that produces the value of the five-year constant maturity treasury rate to be used at each redetermination date.

(3) During the period or term that a contract provides substantive participation in an equity indexed benefit, it may increase the reduction described in subsection (2)(b) of this section by up to an additional one hundred basis points to reflect the value of the equity index benefit. The present value at the contract issue date, and at each redetermination date thereafter, of the additional reduction may not exceed the market value of the benefit. The commissioner may require a demonstration that the present value of the additional reduction does not exceed the market value of the benefit. If a demonstration is not acceptable to the commissioner, the commissioner may disallow or limit the additional reduction.

(4) The commissioner may adopt rules to implement subsection (3) of this section and to provide for further adjustments to the calculation of minimum nonforfeiture amounts for contracts that provide substantive participation in an equity index benefit and for other policies that the commissioner determines justify an adjustment.

(5) Before January 1, 2006, an insurer may issue an annuity policy under this section as in effect on December 31, 2003; or issue an annuity policy under this section as in effect on July 1, 2004. On or after January 1, 2006, an insurer must issue an annuity policy under this section as in effect on or after July 1, 2004.

NEW SECTION. Sec. 3. This act takes effect July 1, 2004.

Passed by the Senate February 13, 2004.

Passed by the House March 3, 2004.

Approved by the Governor March 22, 2004.

Filed in Office of Secretary of State March 22, 2004.

CHAPTER 92

[Substitute House Bill 3057]

INDUSTRIAL INSURANCE—SOCIAL SECURITY OFFSET

AN ACT Relating to conforming the social security offset provisions of Title 51 RCW to the modified federal social security retirement age; and amending RCW 51.32.220.

Be it enacted by the Legislature of the State of Washington:

Sec. 1. RCW 51.32.220 and 1982 c 63 s 19 are each amended to read as follows:

(1) For persons (~~under the age of sixty-five~~) receiving compensation for temporary or permanent total disability pursuant to the provisions of this chapter (~~(51.32 RCW)~~), such compensation shall be reduced by an amount equal to the benefits payable under the federal old-age, survivors, and disability insurance act

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as now or hereafter amended not to exceed the amount of the reduction established pursuant to 42 U.S.C. Sec. 424a. However, such reduction shall not apply when the combined compensation provided pursuant to this chapter ((51.32 RCW)) and the federal old-age, survivors, and disability insurance act is less than the total benefits to which the federal reduction would apply, pursuant to 42 USC 424a. Where any person described in this section refuses to authorize the release of information concerning the amount of benefits payable under said federal act the department's estimate of said amount shall be deemed to be correct unless and until the actual amount is established and no adjustment shall be made for any period of time covered by any such refusal.

(2) Any reduction under subsection (1) of this section shall be effective the month following the month in which the department or self-insurer is notified by the federal social security administration that the person is receiving disability benefits under the federal old-age, survivors, and disability insurance act: PROVIDED, That in the event of an overpayment of benefits the department or self-insurer may not recover more than the overpayments for the six months immediately preceding the date the department or self-insurer notifies the worker that an overpayment has occurred: PROVIDED FURTHER, That upon determining that there has been an overpayment, the department or self-insurer shall immediately notify the person who received the overpayment that he or she shall be required to make repayment pursuant to this section and RCW 51.32.230.

(3) Recovery of any overpayment must be taken from future temporary or permanent total disability benefits or permanent partial disability benefits provided by this title. In the case of temporary or permanent total disability benefits, the recovery shall not exceed twenty-five percent of the monthly amount due from the department or self-insurer or one-sixth of the total overpayment, whichever is the lesser.

(4) No reduction may be made unless the worker receives notice of the reduction prior to the month in which the reduction is made.

(5) In no event shall the reduction reduce total benefits to less than the greater amount the worker may be entitled to under this title or the federal old-age, survivors, and disability insurance act.

(6) The director, pursuant to rules adopted in accordance with the procedures provided in the administrative procedure act, chapter 34.05 RCW, may exercise his or her discretion to waive, in whole or in part, the amount of any overpayment where the recovery would be against equity and good conscience.

(7) ~~((The amendment in)) Subsection (I) of this section ((by chapter 63, Laws of 1982 raising the age limit during which the reduction shall be made from age sixty-two to age sixty-five shall apply with respect))~~ applies to:

(a) Workers under the age of sixty-two whose effective entitlement to total disability compensation begins before January 2, 1983;

(b) Workers under the age of sixty-five whose effective entitlement to total disability compensation begins after January 1, 1983; and

(c) Workers who will become sixty-five years of age on or after the effective date of this section.

Passed by the House February 16, 2004.

Passed by the Senate March 2, 2004.

Approved by the Governor March 22, 2004.
Filed in Office of Secretary of State March 22, 2004.

CHAPTER 93

[Senate Bill 6249]

RETIREMENT SYSTEMS—ACTUARIAL STUDIES

AN ACT Relating to establishing an asset smoothing corridor for actuarial valuations used in the funding of the state retirement systems; and amending RCW 41.45.020 and 41.45.035.

Be it enacted by the Legislature of the State of Washington:

Sec. 1. RCW 41.45.020 and 2003 c 295 s 8 are each amended to read as follows:

As used in this chapter, the following terms have the meanings indicated unless the context clearly requires otherwise.

(1) "Council" means the pension funding council created in RCW 41.45.100.

(2) "Department" means the department of retirement systems.

(3) "Law enforcement officers' and fire fighters' retirement system plan 1" and "law enforcement officers' and fire fighters' retirement system plan 2" means the benefits and funding provisions under chapter 41.26 RCW.

(4) "Public employees' retirement system plan 1," "public employees' retirement system plan 2," and "public employees' retirement system plan 3" mean the benefits and funding provisions under chapter 41.40 RCW.

(5) "Teachers' retirement system plan 1," "teachers' retirement system plan 2," and "teachers' retirement system plan 3" mean the benefits and funding provisions under chapter 41.32 RCW.

(6) "School employees' retirement system plan 2" and "school employees' retirement system plan 3" mean the benefits and funding provisions under chapter 41.35 RCW.

(7) "Washington state patrol retirement system" means the retirement benefits provided under chapter 43.43 RCW.

(8) "Unfunded liability" means the unfunded actuarial accrued liability of a retirement system.

(9) "Actuary" or "state actuary" means the state actuary employed under chapter 44.44 RCW.

(10) "State retirement systems" means the retirement systems listed in RCW 41.50.030.

(11) "Classified employee" means a member of the Washington school employees' retirement system plan 2 or plan 3 as defined in RCW 41.35.010.

(12) "Teacher" means a member of the teachers' retirement system as defined in RCW 41.32.010(15).

(13) "Select committee" means the select committee on pension policy created in RCW 41.04.276.

(14) "Actuarial value of assets" means the value of pension plan investments and other property used by the actuary for the purpose of an actuarial valuation.

Sec. 2. RCW 41.45.035 and 2003 1st sp.s. c 11 s 1 are each amended to read as follows:

(1) Beginning July 1, 2001, the following long-term economic assumptions shall be used by the state actuary for the purposes of RCW 41.45.030:

- (a) The growth in inflation assumption shall be 3.5 percent;
- (b) The growth in salaries assumption, exclusive of merit or longevity increases, shall be 4.5 percent;
- (c) The investment rate of return assumption shall be 8 percent; and
- (d) The growth in system membership assumption shall be 1.25 percent for the public employees' retirement system, the school employees' retirement system, and the law enforcement officers' and fire fighters' retirement system. The assumption shall be .90 percent for the teachers' retirement system.

(2)(a) Beginning with actuarial studies done after July 1, 2003, changes to plan asset values that vary from the long-term investment rate of return assumption shall be recognized in the actuarial value of assets over a period that varies up to eight years depending on the magnitude of the deviation of each year's investment rate of return relative to the long-term rate of return assumption. Beginning with actuarial studies performed after July 1, 2004, the actuarial value of assets shall not be greater than one hundred thirty percent of the market value of assets as of the valuation date or less than seventy percent of the market value of assets as of the valuation date. Beginning April 1, 2004, the council, by affirmative vote of four councilmembers, may adopt changes to this asset value smoothing technique. Any changes adopted by the council shall be subject to revision by the legislature.

(b) The state actuary shall periodically review the appropriateness of the asset smoothing method in this section and recommend changes to the legislature as necessary.

Passed by the Senate February 17, 2004.

Passed by the House March 3, 2004.

Approved by the Governor March 22, 2004.

Filed in Office of Secretary of State March 22, 2004.

CHAPTER 94

[Engrossed Substitute House Bill 2771]

CYBERSTALKING

AN ACT Relating to the prevention of cyberstalking; amending RCW 9A.46.060 and 9A.46.100; reenacting and amending RCW 9.94A.515 and 9.94A.515; adding a new section to chapter 9.61 RCW; prescribing penalties; providing an effective date; providing an expiration date; and declaring an emergency.

Be it enacted by the Legislature of the State of Washington:

NEW SECTION. Sec. 1. A new section is added to chapter 9.61 RCW to read as follows:

(1) A person is guilty of cyberstalking if he or she, with intent to harass, intimidate, torment, or embarrass any other person, and under circumstances not constituting telephone harassment, makes an electronic communication to such other person or a third party:

- (a) Using any lewd, lascivious, indecent, or obscene words, images, or language, or suggesting the commission of any lewd or lascivious act;
- (b) Anonymously or repeatedly whether or not conversation occurs; or

(c) Threatening to inflict injury on the person or property of the person called or any member of his or her family or household.

(2) Cyberstalking is a gross misdemeanor, except as provided in subsection (3) of this section.

(3) Cyberstalking is a class C felony if either of the following applies:

(a) The perpetrator has previously been convicted of the crime of harassment, as defined in RCW 9A.46.060, with the same victim or a member of the victim's family or household or any person specifically named in a no-contact order or no-harassment order in this or any other state; or

(b) The perpetrator engages in the behavior prohibited under subsection (1)(c) of this section by threatening to kill the person threatened or any other person.

(4) Any offense committed under this section may be deemed to have been committed either at the place from which the communication was made or at the place where the communication was received.

(5) For purposes of this section, "electronic communication" means the transmission of information by wire, radio, optical cable, electromagnetic, or other similar means. "Electronic communication" includes, but is not limited to, electronic mail, internet based communications, pager service, and electronic text messaging.

Sec. 2. RCW 9.94A.515 and 2003 c 335 s 4, 2003 c 283 s 32, 2003 c 267 s 2, 2003 c 250 s 13, 2003 c 119 s 7, and 2003 c 52 s 3 are each reenacted and amended to read as follows:

TABLE 2
CRIMES INCLUDED WITHIN EACH
SERIOUSNESS LEVEL

- XVI Aggravated Murder 1 (RCW 10.95.020)
- XV Homicide by abuse (RCW 9A.32.055)
 - Malicious explosion 1 (RCW 70.74.280(1))
 - Murder 1 (RCW 9A.32.030)
- XIV Murder 2 (RCW 9A.32.050)
 - Trafficking 1 (RCW 9A.40.100(1))
- XIII Malicious explosion 2 (RCW 70.74.280(2))
 - Malicious placement of an explosive 1 (RCW 70.74.270(1))
- XII Assault 1 (RCW 9A.36.011)
 - Assault of a Child 1 (RCW 9A.36.120)
 - Malicious placement of an imitation device 1 (RCW 70.74.272(1)(a))
 - Rape 1 (RCW 9A.44.040)
 - Rape of a Child 1 (RCW 9A.44.073)

- Trafficking 2 (RCW 9A.40.100(2))
- XI Manslaughter 1 (RCW 9A.32.060)
 - Rape 2 (RCW 9A.44.050)
 - Rape of a Child 2 (RCW 9A.44.076)
- X Child Molestation 1 (RCW 9A.44.083)
 - Indecent Liberties (with forcible compulsion) (RCW 9A.44.100(1)(a))
 - Kidnapping 1 (RCW 9A.40.020)
 - Leading Organized Crime (RCW 9A.82.060(1)(a))
 - Malicious explosion 3 (RCW 70.74.280(3))
 - Manufacture of methamphetamine (RCW 69.50.401(a)(1)(ii))
 - Over 18 and deliver heroin, methamphetamine, a narcotic from Schedule I or II, or flunitrazepam from Schedule IV to someone under 18 (RCW 69.50.406)
 - Sexually Violent Predator Escape (RCW 9A.76.115)
- IX Assault of a Child 2 (RCW 9A.36.130)
 - Controlled Substance Homicide (RCW 69.50.415)
 - Explosive devices prohibited (RCW 70.74.180)
 - Hit and Run—Death (RCW 46.52.020(4)(a))
 - Homicide by Watercraft, by being under the influence of intoxicating liquor or any drug (RCW 79A.60.050)
 - Inciting Criminal Profiteering (RCW 9A.82.060(1)(b))
 - Malicious placement of an explosive 2 (RCW 70.74.270(2))

- Over 18 and deliver narcotic from Schedule III, IV, or V or a nonnarcotic, except flunitrazepam or methamphetamine, from Schedule I-V to someone under 18 and 3 years junior (RCW 69.50.406)
- Robbery I (RCW 9A.56.200)
- Sexual Exploitation (RCW 9.68A.040)
- Vehicular Homicide, by being under the influence of intoxicating liquor or any drug (RCW 46.61.520)
- VIII Arson I (RCW 9A.48.020)
 - Deliver or possess with intent to deliver methamphetamine (RCW 69.50.401(a)(I)(ii))
 - Homicide by Watercraft, by the operation of any vessel in a reckless manner (RCW 79A.60.050)
 - Manslaughter 2 (RCW 9A.32.070)
 - Manufacture, deliver, or possess with intent to deliver amphetamine (RCW 69.50.401(a)(1)(ii))
 - Manufacture, deliver, or possess with intent to deliver heroin or cocaine (RCW 69.50.401(a)(1)(i))
 - Possession of Ephedrine or any of its Salts or Isomers or Salts of Isomers, Pseudoephedrine or any of its Salts or Isomers or Salts of Isomers, Pressurized Ammonia Gas, or Pressurized Ammonia Gas Solution with intent to manufacture methamphetamine (RCW 69.50.440)
 - Promoting Prostitution 1 (RCW 9A.88.070)
 - Selling for profit (controlled or counterfeit) any controlled substance (RCW 69.50.410)
 - Theft of Ammonia (RCW 69.55.010)

- Vehicular Homicide, by the operation of any vehicle in a reckless manner (RCW 46.61.520)
- VII Burglary 1 (RCW 9A.52.020)
- Child Molestation 2 (RCW 9A.44.086)
- Civil Disorder Training (RCW 9A.48.120)
- Dealing in depictions of minor engaged in sexually explicit conduct (RCW 9.68A.050)
- Drive-by Shooting (RCW 9A.36.045)
- Homicide by Watercraft, by disregard for the safety of others (RCW 79A.60.050)
- Indecent Liberties (without forcible compulsion) (RCW 9A.44.100(1)(b) and (c))
- Introducing Contraband 1 (RCW 9A.76.140)
- Involving a minor in drug dealing (RCW 69.50.401(f))
- Malicious placement of an explosive 3 (RCW 70.74.270(3))
- Sending, bringing into state depictions of minor engaged in sexually explicit conduct (RCW 9.68A.060)
- Unlawful Possession of a Firearm in the first degree (RCW 9.41.040(1)(a))
- Use of a Machine Gun in Commission of a Felony (RCW 9.41.225)
- Vehicular Homicide, by disregard for the safety of others (RCW 46.61.520)
- VI Bail Jumping with Murder 1 (RCW 9A.76.170(3)(a))
- Bribery (RCW 9A.68.010)
- Incest 1 (RCW 9A.64.020(1))
- Intimidating a Judge (RCW 9A.72.160)
- Intimidating a Juror/Witness (RCW 9A.72.110, 9A.72.130)

- Malicious placement of an imitation device 2 (RCW 70.74.272(1)(b))
- Manufacture, deliver, or possess with intent to deliver narcotics from Schedule I or II (except heroin or cocaine) or flunitrazepam from Schedule IV (RCW 69.50.401(a)(1)(i))
- Rape of a Child 3 (RCW 9A.44.079)
- Theft of a Firearm (RCW 9A.56.300)
- Unlawful Storage of Ammonia (RCW 69.55.020)
- V Abandonment of dependent person 1 (RCW 9A.42.060)
 - Advancing money or property for extortionate extension of credit (RCW 9A.82.030)
 - Bail Jumping with class A Felony (RCW 9A.76.170(3)(b))
 - Child Molestation 3 (RCW 9A.44.089)
 - Criminal Mistreatment 1 (RCW 9A.42.020)
 - Custodial Sexual Misconduct 1 (RCW 9A.44.160)
 - Delivery of imitation controlled substance by person eighteen or over to person under eighteen (RCW 69.52.030(2))
 - Domestic Violence Court Order Violation (RCW 10.99.040, 10.99.050, 26.09.300, 26.10.220, 26.26.138, 26.50.110, 26.52.070, or 74.34.145)
 - Extortion 1 (RCW 9A.56.120)
 - Extortionate Extension of Credit (RCW 9A.82.020)
 - Extortionate Means to Collect Extensions of Credit (RCW 9A.82.040)
 - Incest 2 (RCW 9A.64.020(2))
 - Kidnapping 2 (RCW 9A.40.030)

- Perjury 1 (RCW 9A.72.020)
- Persistent prison misbehavior (RCW 9.94.070)
- Possession of a Stolen Firearm (RCW 9A.56.310)
- Rape 3 (RCW 9A.44.060)
- Rendering Criminal Assistance 1 (RCW 9A.76.070)
- Sexual Misconduct with a Minor 1 (RCW 9A.44.093)
- Sexually Violating Human Remains (RCW 9A.44.105)
- Stalking (RCW 9A.46.110)
- Taking Motor Vehicle Without Permission 1 (RCW 9A.56.070(1))
- IV Arson 2 (RCW 9A.48.030)
- Assault 2 (RCW 9A.36.021)
- Assault by Watercraft (RCW 79A.60.060)
- Bribing a Witness/Bribe Received by Witness (RCW 9A.72.090, 9A.72.100)
- Cheating 1 (RCW 9.46.1961)
- Commercial Bribery (RCW 9A.68.060)
- Counterfeiting (RCW 9.16.035(4))
- Endangerment with a Controlled Substance (RCW 9A.42.100)
- Escape 1 (RCW 9A.76.110)
- Hit and Run—Injury (RCW 46.52.020(4)(b))
- Hit and Run with Vessel—Injury Accident (RCW 79A.60.200(3))
- Identity Theft 1 (RCW 9.35.020(2)(a))
- Indecent Exposure to Person Under Age Fourteen (subsequent sex offense) (RCW 9A.88.010)
- Influencing Outcome of Sporting Event (RCW 9A.82.070)
- Knowingly Trafficking in Stolen Property (RCW 9A.82.050(2))

- Malicious Harassment (RCW 9A.36.080)
- Manufacture, deliver, or possess with intent to deliver narcotics from Schedule III, IV, or V or nonnarcotics from Schedule I-V (except marijuana, amphetamine, methamphetamines, or flunitrazepam) (RCW 69.50.401(a)(1) (iii) through (v))
- Residential Burglary (RCW 9A.52.025)
- Robbery 2 (RCW 9A.56.210)
- Theft of Livestock 1 (RCW 9A.56.080)
- Threats to Bomb (RCW 9.61.160)
- Unlawful factoring of a credit card or payment card transaction (RCW 9A.56.290(4)(b))
- Unlawful transaction of health coverage as a health care service contractor (RCW 48.44.016(3))
- Unlawful transaction of health coverage as a health maintenance organization (RCW 48.46.033(3))
- Unlawful transaction of insurance business (RCW 48.15.023(3))
- Unlicensed practice as an insurance professional (RCW 48.17.063(3))
- Use of Proceeds of Criminal Profiteering (RCW 9A.82.080 (1) and (2))
- Vehicular Assault, by being under the influence of intoxicating liquor or any drug, or by the operation or driving of a vehicle in a reckless manner (RCW 46.61.522)
- Willful Failure to Return from Furlough (RCW 72.66.060)
- III Abandonment of dependent person 2 (RCW 9A.42.070)
- Assault 3 (RCW 9A.36.031)
- Assault of a Child 3 (RCW 9A.36.140)

Bail Jumping with class B or C Felony
(RCW 9A.76.170(3)(c))

Burglary 2 (RCW 9A.52.030)

Communication with a Minor for
Immoral Purposes (RCW
9.68A.090)

Criminal Gang Intimidation (RCW
9A.46.120)

Criminal Mistreatment 2 (RCW
9A.42.030)

Custodial Assault (RCW 9A.36.100)

Cyberstalking (subsequent conviction or
threat of death) (section 1(3) of this act)

Delivery of a material in lieu of a
controlled substance (RCW
69.50.401(c))

Escape 2 (RCW 9A.76.120)

Extortion 2 (RCW 9A.56.130)

Harassment (RCW 9A.46.020)

Intimidating a Public Servant (RCW
9A.76.180)

Introducing Contraband 2 (RCW
9A.76.150)

Maintaining a Dwelling or Place for
Controlled Substances (RCW
69.50.402(a)(6))

Malicious Injury to Railroad Property
(RCW 81.60.070)

Manufacture, deliver, or possess with
intent to deliver marijuana (RCW
69.50.401(a)(1)(iii))

Manufacture, distribute, or possess with
intent to distribute an imitation
controlled substance (RCW
69.52.030(I))

Patronizing a Juvenile Prostitute (RCW
9.68A.100)

Perjury 2 (RCW 9A.72.030)

Possession of Incendiary Device (RCW
9.40.120)

- Possession of Machine Gun or Short-Barreled Shotgun or Rifle (RCW 9.41.190)
- Promoting Prostitution 2 (RCW 9A.88.080)
- Recklessly Trafficking in Stolen Property (RCW 9A.82.050(1))
- Securities Act violation (RCW 21.20.400)
- Tampering with a Witness (RCW 9A.72.120)
- Telephone Harassment (subsequent conviction or threat of death) (RCW 9.61.230)
- Theft of Livestock 2 (RCW 9A.56.080)
- Unlawful Imprisonment (RCW 9A.40.040)
- Unlawful possession of firearm in the second degree (RCW 9.41.040(1)(b))
- Unlawful Use of Building for Drug Purposes (RCW 69.53.010)
- Vehicular Assault, by the operation or driving of a vehicle with disregard for the safety of others (RCW 46.61.522)
- Willful Failure to Return from Work Release (RCW 72.65.070)
- II Computer Trespass 1 (RCW 9A.52.110)
- Counterfeiting (RCW 9.16.035(3))
- Create, deliver, or possess a counterfeit controlled substance (RCW 69.50.401(b))
- Escape from Community Custody (RCW 72.09.310)
- Health Care False Claims (RCW 48.80.030)
- Identity Theft 2 (RCW 9.35.020(2)(b))
- Improperly Obtaining Financial Information (RCW 9.35.010)

- Malicious Mischief 1 (RCW 9A.48.070)
- Possession of controlled substance that is either heroin or narcotics from Schedule I or II or flunitrazepam from Schedule IV (RCW 69.50.401(d))
- Possession of phencyclidine (PCP) (RCW 69.50.401(d))
- Possession of Stolen Property 1 (RCW 9A.56.150)
- Theft 1 (RCW 9A.56.030)
- Theft of Rental, Leased, or Lease-purchased Property (valued at one thousand five hundred dollars or more) (RCW 9A.56.096(4))
- Trafficking in Insurance Claims (RCW 48.30A.015)
- Unlawful factoring of a credit card or payment card transaction (RCW 9A.56.290(4)(a))
- Unlawful Practice of Law (RCW 2.48.180)
- Unlicensed Practice of a Profession or Business (RCW 18.130.190(7))
- I Attempting to Elude a Pursuing Police Vehicle (RCW 46.61.024)
- False Verification for Welfare (RCW 74.08.055)
- Forged Prescription (RCW 69.41.020)
- Forged Prescription for a Controlled Substance (RCW 69.50.403)
- Forgery (RCW 9A.60.020)
- Fraudulent Creation or Revocation of a Mental Health Advance Directive (RCW 9A.60.060)
- Malicious Mischief 2 (RCW 9A.48.080)
- Mineral Trespass (RCW 78.44.330)

- Possess Controlled Substance that is a Narcotic from Schedule III, IV, or V or Non-narcotic from Schedule I-V (except phencyclidine or flunitrazepam) (RCW 69.50.401(d))
- Possession of Stolen Property 2 (RCW 9A.56.160)
- Reckless Burning 1 (RCW 9A.48.040)
- Taking Motor Vehicle Without Permission 2 (RCW 9A.56.070(2))
- Theft 2 (RCW 9A.56.040)
- Theft of Rental, Leased, or Lease-purchased Property (valued at two hundred fifty dollars or more but less than one thousand five hundred dollars) (RCW 9A.56.096(4))
- Transaction of insurance business beyond the scope of licensure (RCW 48.17.063(4))
- Unlawful Issuance of Checks or Drafts (RCW 9A.56.060)
- Unlawful Possession of Fictitious Identification (RCW 9A.56.320)
- Unlawful Possession of Instruments of Financial Fraud (RCW 9A.56.320)
- Unlawful Possession of Payment Instruments (RCW 9A.56.320)
- Unlawful Possession of a Personal Identification Device (RCW 9A.56.320)
- Unlawful Production of Payment Instruments (RCW 9A.56.320)
- Unlawful Use of Food Stamps (RCW 9.91.140 (2) and (3))
- Vehicle Prowl 1 (RCW 9A.52.095)

Sec. 3. RCW 9.94A.515 and 2003 c 335 s 5, 2003 c 283 s 33, 2003 c 267 s 3, 2003 c 250 s 14, 2003 c 119 s 8, 2003 c 53 s 56, and 2003 c 52 s 4 are each reenacted and amended to read as follows:

TABLE 2

CRIMES INCLUDED WITHIN EACH
SERIOUSNESS LEVEL

- XVI Aggravated Murder 1 (RCW 10.95.020)
- XV Homicide by abuse (RCW 9A.32.055)
 - Malicious explosion 1 (RCW 70.74.280(1))
 - Murder 1 (RCW 9A.32.030)
- XIV Murder 2 (RCW 9A.32.050)
 - Trafficking 1 (RCW 9A.40.100(1))
- XIII Malicious explosion 2 (RCW 70.74.280(2))
 - Malicious placement of an explosive 1 (RCW 70.74.270(1))
- XII Assault 1 (RCW 9A.36.011)
 - Assault of a Child 1 (RCW 9A.36.120)
 - Malicious placement of an imitation device 1 (RCW 70.74.272(1)(a))
 - Rape 1 (RCW 9A.44.040)
 - Rape of a Child 1 (RCW 9A.44.073)
 - Trafficking 2 (RCW 9A.40.100(2))
- XI Manslaughter 1 (RCW 9A.32.060)
 - Rape 2 (RCW 9A.44.050)
 - Rape of a Child 2 (RCW 9A.44.076)
- X Child Molestation 1 (RCW 9A.44.083)
 - Indecent Liberties (with forcible compulsion) (RCW 9A.44.100(1)(a))
 - Kidnapping 1 (RCW 9A.40.020)
 - Leading Organized Crime (RCW 9A.82.060(1)(a))
 - Malicious explosion 3 (RCW 70.74.280(3))
 - Sexually Violent Predator Escape (RCW 9A.76.115)
- IX Assault of a Child 2 (RCW 9A.36.130)
 - Explosive devices prohibited (RCW 70.74.180)
 - Hit and Run—Death (RCW 46.52.020(4)(a))

- Homicide by Watercraft, by being under the influence of intoxicating liquor or any drug (RCW 79A.60.050)
- Inciting Criminal Profiteering (RCW 9A.82.060(1)(b))
- Malicious placement of an explosive 2 (RCW 70.74.270(2))
- Robbery 1 (RCW 9A.56.200)
- Sexual Exploitation (RCW 9.68A.040)
- Vehicular Homicide, by being under the influence of intoxicating liquor or any drug (RCW 46.61.520)
- VIII Arson 1 (RCW 9A.48.020)
 - Homicide by Watercraft, by the operation of any vessel in a reckless manner (RCW 79A.60.050)
 - Manslaughter 2 (RCW 9A.32.070)
 - Promoting Prostitution 1 (RCW 9A.88.070)
 - Theft of Ammonia (RCW 69.55.010)
 - Vehicular Homicide, by the operation of any vehicle in a reckless manner (RCW 46.61.520)
- VII Burglary 1 (RCW 9A.52.020)
 - Child Molestation 2 (RCW 9A.44.086)
 - Civil Disorder Training (RCW 9A.48.120)
 - Dealing in depictions of minor engaged in sexually explicit conduct (RCW 9.68A.050)
 - Drive-by Shooting (RCW 9A.36.045)
 - Homicide by Watercraft, by disregard for the safety of others (RCW 79A.60.050)
 - Indecent Liberties (without forcible compulsion) (RCW 9A.44.100(1)(b) and (c))
 - Introducing Contraband I (RCW 9A.76.140)

- Malicious placement of an explosive 3
(RCW 70.74.270(3))
- Sending, bringing into state depictions
of minor engaged in sexually
explicit conduct (RCW 9.68A.060)
- Unlawful Possession of a Firearm in the
first degree (RCW 9.41.040(1))
- Use of a Machine Gun in Commission of
a Felony (RCW 9.41.225)
- Vehicular Homicide, by disregard for
the safety of others (RCW
46.61.520)
- VI Bail Jumping with Murder 1 (RCW
9A.76.170(3)(a))
 - Bribery (RCW 9A.68.010)
 - Incest 1 (RCW 9A.64.020(1))
 - Intimidating a Judge (RCW 9A.72.160)
 - Intimidating a Juror/Witness (RCW
9A.72.110, 9A.72.130)
 - Malicious placement of an imitation
device 2 (RCW 70.74.272(1)(b))
 - Rape of a Child 3 (RCW 9A.44.079)
 - Theft of a Firearm (RCW 9A.56.300)
 - Unlawful Storage of Ammonia (RCW
69.55.020)
- V Abandonment of dependent person 1
(RCW 9A.42.060)
 - Advancing money or property for
extortionate extension of credit
(RCW 9A.82.030)
 - Bail Jumping with class A Felony
(RCW 9A.76.170(3)(b))
 - Child Molestation 3 (RCW 9A.44.089)
 - Criminal Mistreatment 1 (RCW
9A.42.020)
 - Custodial Sexual Misconduct 1 (RCW
9A.44.160)

- Domestic Violence Court Order
Violation (RCW 10.99.040,
10.99.050, 26.09.300, 26.10.220,
26.26.138, 26.50.110, 26.52.070, or
74.34.145)
- Extortion 1 (RCW 9A.56.120)
- Extortionate Extension of Credit (RCW
9A.82.020)
- Extortionate Means to Collect
Extensions of Credit (RCW
9A.82.040)
- Incest 2 (RCW 9A.64.020(2))
- Kidnapping 2 (RCW 9A.40.030)
- Perjury 1 (RCW 9A.72.020)
- Persistent prison misbehavior (RCW
9.94.070)
- Possession of a Stolen Firearm (RCW
9A.56.310)
- Rape 3 (RCW 9A.44.060)
- Rendering Criminal Assistance 1 (RCW
9A.76.070)
- Sexual Misconduct with a Minor 1
(RCW 9A.44.093)
- Sexually Violating Human Remains
(RCW 9A.44.105)
- Stalking (RCW 9A.46.110)
- Taking Motor Vehicle Without
Permission 1 (RCW 9A.56.070)
- IV Arson 2 (RCW 9A.48.030)
- Assault 2 (RCW 9A.36.021)
- Assault by Watercraft (RCW
79A.60.060)
- Bribing a Witness/Bribe Received by
Witness (RCW 9A.72.090,
9A.72.100)
- Cheating 1 (RCW 9.46.1961)
- Commercial Bribery (RCW 9A.68.060)
- Counterfeiting (RCW 9.16.035(4))
- Endangerment with a Controlled
Substance (RCW 9A.42.100)

Escape 1 (RCW 9A.76.110)
Hit and Run—Injury (RCW
46.52.020(4)(b))
Hit and Run with Vessel—Injury
Accident (RCW 79A.60.200(3))
Identity Theft 1 (RCW 9.35.020(2))
Indecent Exposure to Person Under Age
Fourteen (subsequent sex offense)
(RCW 9A.88.010)
Influencing Outcome of Sporting Event
(RCW 9A.82.070)
Malicious Harassment (RCW
9A.36.080)
Residential Burglary (RCW 9A.52.025)
Robbery 2 (RCW 9A.56.210)
Theft of Livestock 1 (RCW 9A.56.080)
Threats to Bomb (RCW 9.61.160)
Trafficking in Stolen Property 1 (RCW
9A.82.050)
Unlawful factoring of a credit card or
payment card transaction (RCW
9A.56.290(4)(b))
Unlawful transaction of health coverage
as a health care service contractor
(RCW 48.44.016(3))
Unlawful transaction of health coverage
as a health maintenance
organization (RCW 48.46.033(3))
Unlawful transaction of insurance
business (RCW 48.15.023(3))
Unlicensed practice as an insurance
professional (RCW 48.17.063(3))
Use of Proceeds of Criminal
Profiteering (RCW 9A.82.080 (1)
and (2))
Vehicular Assault, by being under the
influence of intoxicating liquor or
any drug, or by the operation or
driving of a vehicle in a reckless
manner (RCW 46.61.522)

- Willful Failure to Return from Furlough
(RCW 72.66.060)
- III Abandonment of dependent person 2
(RCW 9A.42.070)
- Assault 3 (RCW 9A.36.031)
- Assault of a Child 3 (RCW 9A.36.140)
- Bail Jumping with class B or C Felony
(RCW 9A.76.170(3)(c))
- Burglary 2 (RCW 9A.52.030)
- Communication with a Minor for
Immoral Purposes (RCW
9.68A.090)
- Criminal Gang Intimidation (RCW
9A.46.120)
- Criminal Mistreatment 2 (RCW
9A.42.030)
- Custodial Assault (RCW 9A.36.100)
- Cyberstalking (subsequent conviction or
threat of death) (section 1(3) of this act)
- Escape 2 (RCW 9A.76.120)
- Extortion 2 (RCW 9A.56.130)
- Harassment (RCW 9A.46.020)
- Intimidating a Public Servant (RCW
9A.76.180)
- Introducing Contraband 2 (RCW
9A.76.150)
- Malicious Injury to Railroad Property
(RCW 81.60.070)
- Patronizing a Juvenile Prostitute (RCW
9.68A.100)
- Perjury 2 (RCW 9A.72.030)
- Possession of Incendiary Device (RCW
9.40.120)
- Possession of Machine Gun or Short-
Barreled Shotgun or Rifle (RCW
9.41.190)
- Promoting Prostitution 2 (RCW
9A.88.080)
- Securities Act violation (RCW
21.20.400)

- Tampering with a Witness (RCW 9A.72.120)
- Telephone Harassment (subsequent conviction or threat of death) (RCW 9.61.230(2))
- Theft of Livestock 2 (RCW 9A.56.083)
- Trafficking in Stolen Property 2 (RCW 9A.82.055)
- Unlawful Imprisonment (RCW 9A.40.040)
- Unlawful possession of firearm in the second degree (RCW 9.41.040(2))
- Vehicular Assault, by the operation or driving of a vehicle with disregard for the safety of others (RCW 46.61.522)
- Willful Failure to Return from Work Release (RCW 72.65.070)
- II Computer Trespass 1 (RCW 9A.52.110)
- Counterfeiting (RCW 9.16.035(3))
- Escape from Community Custody (RCW 72.09.310)
- Health Care False Claims (RCW 48.80.030)
- Identity Theft 2 (RCW 9.35.020(3))
- Improperly Obtaining Financial Information (RCW 9.35.010)
- Malicious Mischief 1 (RCW 9A.48.070)
- Possession of Stolen Property 1 (RCW 9A.56.150)
- Theft 1 (RCW 9A.56.030)
- Theft of Rental, Leased, or Lease-purchased Property (valued at one thousand five hundred dollars or more) (RCW 9A.56.096(5)(a))
- Trafficking in Insurance Claims (RCW 48.30A.015)
- Unlawful factoring of a credit card or payment card transaction (RCW 9A.56.290(4)(a))

- Unlawful Practice of Law (RCW 2.48.180)
- Unlicensed Practice of a Profession or Business (RCW 18.130.190(7))
- I Attempting to Elude a Pursuing Police Vehicle (RCW 46.61.024)
- False Verification for Welfare (RCW 74.08.055)
- Forgery (RCW 9A.60.020)
- Fraudulent Creation or Revocation of a Mental Health Advance Directive (RCW 9A.60.060)
- Malicious Mischief 2 (RCW 9A.48.080)
- Mineral Trespass (RCW 78.44.330)
- Possession of Stolen Property 2 (RCW 9A.56.160)
- Reckless Burning 1 (RCW 9A.48.040)
- Taking Motor Vehicle Without Permission 2 (RCW 9A.56.075)
- Theft 2 (RCW 9A.56.040)
- Theft of Rental, Leased, or Lease-purchased Property (valued at two hundred fifty dollars or more but less than one thousand five hundred dollars) (RCW 9A.56.096(5)(b))
- Transaction of insurance business beyond the scope of licensure (RCW 48.17.063(4))
- Unlawful Issuance of Checks or Drafts (RCW 9A.56.060)
- Unlawful Possession of Fictitious Identification (RCW 9A.56.320)
- Unlawful Possession of Instruments of Financial Fraud (RCW 9A.56.320)
- Unlawful Possession of Payment Instruments (RCW 9A.56.320)
- Unlawful Possession of a Personal Identification Device (RCW 9A.56.320)

Unlawful Production of Payment
Instruments (RCW 9A.56.320)
Unlawful Trafficking in Food Stamps
(RCW 9.91.142)
Unlawful Use of Food Stamps (RCW
9.91.144)
Vehicle Prowl 1 (RCW 9A.52.095)

Sec. 4. RCW 9A.46.060 and 1999 c 180 s 7 are each amended to read as follows:

As used in this chapter, "harassment" may include but is not limited to any of the following crimes:

- (1) Harassment (RCW 9A.46.020);
- (2) Malicious harassment (RCW 9A.36.080);
- (3) Telephone harassment (RCW 9.61.230);
- (4) Assault in the first degree (RCW 9A.36.011);
- (5) Assault of a child in the first degree (RCW 9A.36.120);
- (6) Assault in the second degree (RCW 9A.36.021);
- (7) Assault of a child in the second degree (RCW 9A.36.130);
- (8) Assault in the fourth degree (RCW 9A.36.041);
- (9) Reckless endangerment (RCW 9A.36.050);
- (10) Extortion in the first degree (RCW 9A.56.120);
- (11) Extortion in the second degree (RCW 9A.56.130);
- (12) Coercion (RCW 9A.36.070);
- (13) Burglary in the first degree (RCW 9A.52.020);
- (14) Burglary in the second degree (RCW 9A.52.030);
- (15) Criminal trespass in the first degree (RCW 9A.52.070);
- (16) Criminal trespass in the second degree (RCW 9A.52.080);
- (17) Malicious mischief in the first degree (RCW 9A.48.070);
- (18) Malicious mischief in the second degree (RCW 9A.48.080);
- (19) Malicious mischief in the third degree (RCW 9A.48.090);
- (20) Kidnapping in the first degree (RCW 9A.40.020);
- (21) Kidnapping in the second degree (RCW 9A.40.030);
- (22) Unlawful imprisonment (RCW 9A.40.040);
- (23) Rape in the first degree (RCW 9A.44.040);
- (24) Rape in the second degree (RCW 9A.44.050);
- (25) Rape in the third degree (RCW 9A.44.060);
- (26) Indecent liberties (RCW 9A.44.100);
- (27) Rape of a child in the first degree (RCW 9A.44.073);
- (28) Rape of a child in the second degree (RCW 9A.44.076);
- (29) Rape of a child in the third degree (RCW 9A.44.079);
- (30) Child molestation in the first degree (RCW 9A.44.083);
- (31) Child molestation in the second degree (RCW 9A.44.086);
- (32) Child molestation in the third degree (RCW 9A.44.089);
- (33) Stalking (RCW 9A.46.110);
- (34) Cyberstalking (section 1 of this act);
- (35) Residential burglary (RCW 9A.52.025);

~~((35))~~ (36) Violation of a temporary or permanent protective order issued pursuant to chapter 9A.46, 10.14, 10.99, 26.09, or 26.50 RCW;

~~((36))~~ (37) Unlawful discharge of a laser in the first degree (RCW 9A.49.020); and

~~((37))~~ (38) Unlawful discharge of a laser in the second degree (RCW 9A.49.030).

Sec. 5. RCW 9A.46.100 and 1992 c 186 s 5 are each amended to read as follows:

As used in RCW 9.61.230, section 1 of this act, 9A.46.020, or 9A.46.110, a person has been "convicted" at such time as a plea of guilty has been accepted or a verdict of guilty has been filed, notwithstanding the pendency of any future proceedings including but not limited to sentencing, posttrial motions, and appeals.

NEW SECTION. **Sec. 6.** If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected.

NEW SECTION. **Sec. 7.** This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately, except for section 3 of this act, which takes effect July 1, 2004.

NEW SECTION. **Sec. 8.** Section 2 of this act expires July 1, 2004.

Passed by the House February 13, 2004.

Passed by the Senate March 2, 2004.

Approved by the Governor March 24, 2004.

Filed in Office of Secretary of State March 24, 2004.

CHAPTER 95

[Substitute House Bill 2660]

ALCOHOL-RELATED OFFENSES

AN ACT Relating to alcohol-related offenses; amending RCW 10.05.140, 46.20.308, 46.20.311, 46.20.342, 46.20.380, 46.20.394, 46.20.400, 46.20.410, 46.20.720, 46.20.740, 46.61.5055, 46.63.020, 46.68.041, and 46.68.260; reenacting and amending RCW 46.20.3101 and 46.20.391; and providing a contingent effective date.

Be it enacted by the Legislature of the State of Washington:

Sec. 1. RCW 10.05.140 and 2003 c 220 s 2 are each amended to read as follows:

As a condition of granting a deferred prosecution petition, the court shall order that the petitioner shall not operate a motor vehicle upon the public highways without a valid operator's license and proof of liability insurance. The amount of liability insurance shall be established by the court at not less than that established by RCW 46.29.490. As a condition of granting a deferred prosecution petition on any alcohol-dependency based case, the court shall also order the installation of an ignition interlock ~~((or other device))~~ under RCW 46.20.720 ~~((for a petitioner who has previously been convicted of a violation of RCW 46.61.502 or 46.61.504 or an equivalent local ordinance or a petitioner who has been charged with such an offense and had an alcohol concentration of at least .15, or by reason of the person's refusal to take a test offered pursuant to~~

~~RCW 46.20.308~~ there is no test result indicating the person's alcohol concentration. For any other petitioner, the court may order the installation of an interlock device under RCW 46.20.720(1) as a condition of granting a deferred prosecution petition)). The required periods of use of the interlock shall be not less than the periods provided for in RCW 46.20.720(2) (a), (b), and (c). As a condition of granting a deferred prosecution petition, the court may order the petitioner to make restitution and to pay costs as defined in RCW 10.01.160. To help ensure continued sobriety and reduce the likelihood of reoffense, the court may order reasonable conditions during the period of the deferred prosecution including, but not limited to, attendance at self-help recovery support groups for alcoholism or drugs, complete abstinence from alcohol and all nonprescribed mind-altering drugs, periodic urinalysis or breath analysis, and maintaining law-abiding behavior. The court may terminate the deferred prosecution program upon violation of the deferred prosecution order.

Sec. 2. RCW 46.20.308 and 2004 c ... (Substitute House Bill No. 3055) s 2 are each amended to read as follows:

(1) Any person who operates a motor vehicle within this state is deemed to have given consent, subject to the provisions of RCW 46.61.506, to a test or tests of his or her breath or blood for the purpose of determining the alcohol concentration or presence of any drug in his or her breath or blood if arrested for any offense where, at the time of the arrest, the arresting officer has reasonable grounds to believe the person had been driving or was in actual physical control of a motor vehicle while under the influence of intoxicating liquor or any drug or was in violation of RCW 46.61.503. Neither consent nor this section precludes a police officer from obtaining a search warrant for a person's breath or blood.

(2) The test or tests of breath shall be administered at the direction of a law enforcement officer having reasonable grounds to believe the person to have been driving or in actual physical control of a motor vehicle within this state while under the influence of intoxicating liquor or any drug or the person to have been driving or in actual physical control of a motor vehicle while having alcohol in a concentration in violation of RCW 46.61.503 in his or her system and being under the age of twenty-one. However, in those instances where the person is incapable due to physical injury, physical incapacity, or other physical limitation, of providing a breath sample or where the person is being treated in a hospital, clinic, doctor's office, emergency medical vehicle, ambulance, or other similar facility or where the officer has reasonable grounds to believe that the person is under the influence of a drug, a blood test shall be administered by a qualified person as provided in RCW 46.61.506(5). The officer shall inform the person of his or her right to refuse the breath or blood test, and of his or her right to have additional tests administered by any qualified person of his or her choosing as provided in RCW 46.61.506. The officer shall warn the driver, in substantially the following language, that:

(a) If the driver refuses to take the test, the driver's license, permit, or privilege to drive will be revoked or denied for at least one year; and

~~(b) ((If the driver refuses to take the test, the driver will not be eligible for an occupational permit; and~~

~~(e)))~~ If the driver refuses to take the test, the driver's refusal to take the test may be used in a criminal trial; and

((d)) (c) If the driver submits to the test and the test is administered, the driver's license, permit, or privilege to drive will be suspended, revoked, or denied for at least ninety days if the driver is age twenty-one or over and the test indicates the alcohol concentration of the driver's breath or blood is 0.08 or more, or if the driver is under age twenty-one and the test indicates the alcohol concentration of the driver's breath or blood is 0.02 or more, or if the driver is under age twenty-one and the driver is in violation of RCW 46.61.502 or 46.61.504.

(3) Except as provided in this section, the test administered shall be of the breath only. If an individual is unconscious or is under arrest for the crime of vehicular homicide as provided in RCW 46.61.520 or vehicular assault as provided in RCW 46.61.522, or if an individual is under arrest for the crime of driving while under the influence of intoxicating liquor or drugs as provided in RCW 46.61.502, which arrest results from an accident in which there has been serious bodily injury to another person, a breath or blood test may be administered without the consent of the individual so arrested.

(4) Any person who is dead, unconscious, or who is otherwise in a condition rendering him or her incapable of refusal, shall be deemed not to have withdrawn the consent provided by subsection (1) of this section and the test or tests may be administered, subject to the provisions of RCW 46.61.506, and the person shall be deemed to have received the warnings required under subsection (2) of this section.

(5) If, following his or her arrest and receipt of warnings under subsection (2) of this section, the person arrested refuses upon the request of a law enforcement officer to submit to a test or tests of his or her breath or blood, no test shall be given except as authorized under subsection (3) or (4) of this section.

(6) If, after arrest and after the other applicable conditions and requirements of this section have been satisfied, a test or tests of the person's blood or breath is administered and the test results indicate that the alcohol concentration of the person's breath or blood is 0.08 or more if the person is age twenty-one or over, or 0.02 or more if the person is under the age of twenty-one, or the person refuses to submit to a test, the arresting officer or other law enforcement officer at whose direction any test has been given, or the department, where applicable, if the arrest results in a test of the person's blood, shall:

(a) Serve notice in writing on the person on behalf of the department of its intention to suspend, revoke, or deny the person's license, permit, or privilege to drive as required by subsection (7) of this section;

(b) Serve notice in writing on the person on behalf of the department of his or her right to a hearing, specifying the steps he or she must take to obtain a hearing as provided by subsection (8) of this section;

(c) Mark the person's Washington state driver's license or permit to drive, if any, in a manner authorized by the department;

(d) Serve notice in writing that the marked license or permit, if any, is a temporary license that is valid for sixty days from the date of arrest or from the date notice has been given in the event notice is given by the department following a blood test, or until the suspension, revocation, or denial of the person's license, permit, or privilege to drive is sustained at a hearing pursuant to

subsection (8) of this section, whichever occurs first. No temporary license is valid to any greater degree than the license or permit that it replaces; and

(e) Immediately notify the department of the arrest and transmit to the department within seventy-two hours, except as delayed as the result of a blood test, a sworn report or report under a declaration authorized by RCW 9A.72.085 that states:

(i) That the officer had reasonable grounds to believe the arrested person had been driving or was in actual physical control of a motor vehicle within this state while under the influence of intoxicating liquor or drugs, or both, or was under the age of twenty-one years and had been driving or was in actual physical control of a motor vehicle while having an alcohol concentration in violation of RCW 46.61.503;

(ii) That after receipt of the warnings required by subsection (2) of this section the person refused to submit to a test of his or her blood or breath, or a test was administered and the results indicated that the alcohol concentration of the person's breath or blood was 0.08 or more if the person is age twenty-one or over, or was 0.02 or more if the person is under the age of twenty-one; and

(iii) Any other information that the director may require by rule.

(7) The department of licensing, upon the receipt of a sworn report or report under a declaration authorized by RCW 9A.72.085 under subsection (6)(e) of this section, shall suspend, revoke, or deny the person's license, permit, or privilege to drive or any nonresident operating privilege, as provided in RCW 46.20.3101, such suspension, revocation, or denial to be effective beginning sixty days from the date of arrest or from the date notice has been given in the event notice is given by the department following a blood test, or when sustained at a hearing pursuant to subsection (8) of this section, whichever occurs first.

(8) A person receiving notification under subsection (6)(b) of this section may, within thirty days after the notice has been given, request in writing a formal hearing before the department. The person shall pay a fee of one hundred dollars as part of the request. If the request is mailed, it must be postmarked within thirty days after receipt of the notification. Upon timely receipt of such a request for a formal hearing, including receipt of the required one hundred dollar fee, the department shall afford the person an opportunity for a hearing. The department may waive the required one hundred dollar fee if the person is an indigent as defined in RCW 10.101.010. Except as otherwise provided in this section, the hearing is subject to and shall be scheduled and conducted in accordance with RCW 46.20.329 and 46.20.332. The hearing shall be conducted in the county of the arrest, except that all or part of the hearing may, at the discretion of the department, be conducted by telephone or other electronic means. The hearing shall be held within sixty days following the arrest or following the date notice has been given in the event notice is given by the department following a blood test, unless otherwise agreed to by the department and the person, in which case the action by the department shall be stayed, and any valid temporary license marked under subsection (6)(c) of this section extended, if the person is otherwise eligible for licensing. For the purposes of this section, the scope of the hearing shall cover the issues of whether a law enforcement officer had reasonable grounds to believe the person had been driving or was in actual physical control of a motor vehicle within this state while under the influence of intoxicating liquor or any drug or had been driving

or was in actual physical control of a motor vehicle within this state while having alcohol in his or her system in a concentration of 0.02 or more if the person was under the age of twenty-one, whether the person was placed under arrest, and (a) whether the person refused to submit to the test or tests upon request of the officer after having been informed that such refusal would result in the revocation of the person's license, permit, or privilege to drive, or (b) if a test or tests were administered, whether the applicable requirements of this section were satisfied before the administration of the test or tests, whether the person submitted to the test or tests, or whether a test was administered without express consent as permitted under this section, and whether the test or tests indicated that the alcohol concentration of the person's breath or blood was 0.08 or more if the person was age twenty-one or over at the time of the arrest, or 0.02 or more if the person was under the age of twenty-one at the time of the arrest. The sworn report or report under a declaration authorized by RCW 9A.72.085 submitted by a law enforcement officer is prima facie evidence that the officer had reasonable grounds to believe the person had been driving or was in actual physical control of a motor vehicle within this state while under the influence of intoxicating liquor or drugs, or both, or the person had been driving or was in actual physical control of a motor vehicle within this state while having alcohol in his or her system in a concentration of 0.02 or more and was under the age of twenty-one and that the officer complied with the requirements of this section.

A hearing officer shall conduct the hearing, may issue subpoenas for the attendance of witnesses and the production of documents, and shall administer oaths to witnesses. The hearing officer shall not issue a subpoena for the attendance of a witness at the request of the person unless the request is accompanied by the fee required by RCW 5.56.010 for a witness in district court. The sworn report or report under a declaration authorized by RCW 9A.72.085 of the law enforcement officer and any other evidence accompanying the report shall be admissible without further evidentiary foundation and the certifications authorized by the criminal rules for courts of limited jurisdiction shall be admissible without further evidentiary foundation. The person may be represented by counsel, may question witnesses, may present evidence, and may testify. The department shall order that the suspension, revocation, or denial either be rescinded or sustained.

(9) If the suspension, revocation, or denial is sustained after such a hearing, the person whose license, privilege, or permit is suspended, revoked, or denied has the right to file a petition in the superior court of the county of arrest to review the final order of revocation by the department in the same manner as an appeal from a decision of a court of limited jurisdiction. Notice of appeal must be filed within thirty days after the date the final order is served or the right to appeal is waived. Notwithstanding RCW 46.20.334, RALJ 1.1, or other statutes or rules referencing de novo review, the appeal shall be limited to a review of the record of the administrative hearing. The appellant must pay the costs associated with obtaining the record of the hearing before the hearing officer. The filing of the appeal does not stay the effective date of the suspension, revocation, or denial. A petition filed under this subsection must include the petitioner's grounds for requesting review. Upon granting petitioner's request for review, the court shall review the department's final order of suspension, revocation, or denial as expeditiously as possible. The review must be limited to

a determination of whether the department has committed any errors of law. The superior court shall accept those factual determinations supported by substantial evidence in the record: (a) That were expressly made by the department; or (b) that may reasonably be inferred from the final order of the department. The superior court may reverse, affirm, or modify the decision of the department or remand the case back to the department for further proceedings. The decision of the superior court must be in writing and filed in the clerk's office with the other papers in the case. The court shall state the reasons for the decision. If judicial relief is sought for a stay or other temporary remedy from the department's action, the court shall not grant such relief unless the court finds that the appellant is likely to prevail in the appeal and that without a stay the appellant will suffer irreparable injury. If the court stays the suspension, revocation, or denial it may impose conditions on such stay.

(10) If a person whose driver's license, permit, or privilege to drive has been or will be suspended, revoked, or denied under subsection (7) of this section, other than as a result of a breath or blood test refusal, and who has not committed an offense for which he or she was granted a deferred prosecution under chapter 10.05 RCW, petitions a court for a deferred prosecution on criminal charges arising out of the arrest for which action has been or will be taken under subsection (7) of this section, the court may direct the department to stay any actual or proposed suspension, revocation, or denial for at least forty-five days but not more than ninety days. If the court stays the suspension, revocation, or denial, it may impose conditions on such stay. If the person is otherwise eligible for licensing, the department shall issue a temporary license, or extend any valid temporary license marked under subsection (6) of this section, for the period of the stay. If a deferred prosecution treatment plan is not recommended in the report made under RCW 10.05.050, or if treatment is rejected by the court, or if the person declines to accept an offered treatment plan, or if the person violates any condition imposed by the court, then the court shall immediately direct the department to cancel the stay and any temporary marked license or extension of a temporary license issued under this subsection.

A suspension, revocation, or denial imposed under this section, other than as a result of a breath or blood test refusal, shall be stayed if the person is accepted for deferred prosecution as provided in chapter 10.05 RCW for the incident upon which the suspension, revocation, or denial is based. If the deferred prosecution is terminated, the stay shall be lifted and the suspension, revocation, or denial reinstated. If the deferred prosecution is completed, the stay shall be lifted and the suspension, revocation, or denial canceled.

(11) When it has been finally determined under the procedures of this section that a nonresident's privilege to operate a motor vehicle in this state has been suspended, revoked, or denied, the department shall give information in writing of the action taken to the motor vehicle administrator of the state of the person's residence and of any state in which he or she has a license.

Sec. 3. RCW 46.20.311 and 2003 c 366 s 2 are each amended to read as follows:

(1)(a) The department shall not suspend a driver's license or privilege to drive a motor vehicle on the public highways for a fixed period of more than one year, except as specifically permitted under RCW 46.20.267, 46.20.342, or other provision of law.

(b) Except for a suspension under RCW 46.20.267, 46.20.289, 46.20.291(5), 46.61.740, or 74.20A.320, whenever the license or driving privilege of any person is suspended by reason of a conviction, a finding that a traffic infraction has been committed, pursuant to chapter 46.29 RCW, or pursuant to RCW 46.20.291 or 46.20.308, the suspension shall remain in effect until the person gives and thereafter maintains proof of financial responsibility for the future as provided in chapter 46.29 RCW.

(c) If the suspension is the result of a violation of RCW 46.61.502 or 46.61.504, the department shall determine the person's eligibility for licensing based upon the reports provided by the alcoholism agency or probation department designated under RCW 46.61.5056 and shall deny reinstatement until enrollment and participation in an approved program has been established and the person is otherwise qualified. If the suspension is the result of a violation of RCW 46.61.502 or 46.61.504, and the person is required pursuant to RCW 46.20.720 to drive only a motor vehicle equipped with a functioning ignition interlock ~~((or other biological or technical device))~~, the department shall determine the person's eligibility for licensing based upon written verification by a company doing business in the state that it has installed the required device on a vehicle owned ~~((and/or))~~ or operated by the person seeking reinstatement. If, based upon notification from the interlock provider or otherwise, the department determines that an interlock required under RCW 46.20.720 is no longer installed or functioning as required, the department shall suspend the person's license or privilege to drive. Whenever the license or driving privilege of any person is suspended or revoked as a result of noncompliance with an ignition interlock requirement, the suspension shall remain in effect until the person provides notice issued by a company doing business in the state that a vehicle owned or operated by the person is equipped with a functioning ignition interlock device.

(d) Whenever the license or driving privilege of any person is suspended as a result of certification of noncompliance with a child support order under chapter 74.20A RCW or a residential or visitation order, the suspension shall remain in effect until the person provides a release issued by the department of social and health services stating that the person is in compliance with the order.

~~((b))~~ (e)(i) The department shall not issue to the person a new, duplicate, or renewal license until the person pays a reissue fee of twenty dollars.

(ii) If the suspension is the result of a violation of RCW 46.61.502 or 46.61.504, or is the result of administrative action under RCW 46.20.308, the reissue fee shall be one hundred fifty dollars.

(2)(a) Any person whose license or privilege to drive a motor vehicle on the public highways has been revoked, unless the revocation was for a cause which has been removed, is not entitled to have the license or privilege renewed or restored until: (i) After the expiration of one year from the date the license or privilege to drive was revoked; (ii) after the expiration of the applicable revocation period provided by RCW 46.20.3101 or 46.61.5055; (iii) after the expiration of two years for persons convicted of vehicular homicide; or (iv) after the expiration of the applicable revocation period provided by RCW 46.20.265.

(b)(i) After the expiration of the appropriate period, the person may make application for a new license as provided by law together with a reissue fee in the amount of twenty dollars.

(ii) If the revocation is the result of a violation of RCW 46.20.308, 46.61.502, or 46.61.504, the reissue fee shall be one hundred fifty dollars. If the revocation is the result of a violation of RCW 46.61.502 or 46.61.504, the department shall determine the person's eligibility for licensing based upon the reports provided by the alcoholism agency or probation department designated under RCW 46.61.5056 and shall deny reissuance of a license, permit, or privilege to drive until enrollment and participation in an approved program has been established and the person is otherwise qualified. If the revocation is the result of a violation of RCW 46.61.502 or 46.61.504, and the person is required pursuant to RCW 46.20.720 to drive only a motor vehicle equipped with a functioning ignition interlock or other biological or technical device, the department shall determine the person's eligibility for licensing based upon written verification by a company doing business in the state that it has installed the required device on a vehicle owned ~~((and/or))~~ or operated by the person applying for a new license. If, following issuance of a new license, the department determines, based upon notification from the interlock provider or otherwise, that an interlock required under RCW 46.20.720 is no longer functioning, the department shall suspend the person's license or privilege to drive until the department has received written verification from an interlock provider that a functioning interlock is installed.

(c) Except for a revocation under RCW 46.20.265, the department shall not then issue a new license unless it is satisfied after investigation of the driving ability of the person that it will be safe to grant the privilege of driving a motor vehicle on the public highways, and until the person gives and thereafter maintains proof of financial responsibility for the future as provided in chapter 46.29 RCW. For a revocation under RCW 46.20.265, the department shall not issue a new license unless it is satisfied after investigation of the driving ability of the person that it will be safe to grant that person the privilege of driving a motor vehicle on the public highways.

(3)(a) Whenever the driver's license of any person is suspended pursuant to Article IV of the nonresident violators compact or RCW 46.23.020 or 46.20.289 or 46.20.291(5), the department shall not issue to the person any new or renewal license until the person pays a reissue fee of twenty dollars.

(b) If the suspension is the result of a violation of the laws of this or any other state, province, or other jurisdiction involving (i) the operation or physical control of a motor vehicle upon the public highways while under the influence of intoxicating liquor or drugs, or (ii) the refusal to submit to a chemical test of the driver's blood alcohol content, the reissue fee shall be one hundred fifty dollars.

Sec. 4. RCW 46.20.3101 and 1998 c 213 s 2, 1998 c 209 s 2, and 1998 c 207 s 8 are each reenacted and amended to read as follows:

Pursuant to RCW 46.20.308, the department shall suspend, revoke, or deny the arrested person's license, permit, or privilege to drive as follows:

(1) In the case of a person who has refused a test or tests:

(a) For a first refusal within seven years, where there has not been a previous incident within seven years that resulted in administrative action under this section, revocation or denial for one year;

(b) For a second or subsequent refusal within seven years, or for a first refusal where there has been one or more previous incidents within seven years that have resulted in administrative action under this section, revocation or

denial for two years or until the person reaches age twenty-one, whichever is longer. (~~(A revocation imposed under this subsection (1)(b) shall run consecutively to the period of any suspension, revocation, or denial imposed pursuant to a criminal conviction arising out of the same incident.)~~)

(2) In the case of an incident where a person has submitted to or been administered a test or tests indicating that the alcohol concentration of the person's breath or blood was 0.08 or more:

(a) For a first incident within seven years, where there has not been a previous incident within seven years that resulted in administrative action under this section, suspension for ninety days;

(b) For a second or subsequent incident within seven years, revocation or denial for two years.

(3) In the case of an incident where a person under age twenty-one has submitted to or been administered a test or tests indicating that the alcohol concentration of the person's breath or blood was in violation of RCW 46.61.502, 46.61.503, or 46.61.504:

(a) For a first incident within seven years, suspension or denial for ninety days;

(b) For a second or subsequent incident within seven years, revocation or denial for one year or until the person reaches age twenty-one, whichever is longer.

(4) The department shall grant credit on a day-for-day basis for any portion of a suspension, revocation, or denial already served under this section for a suspension, revocation, or denial imposed under RCW 46.61.5055 arising out of the same incident.

Sec. 5. RCW 46.20.342 and 2001 c 325 s 3 are each amended to read as follows:

(1) It is unlawful for any person to drive a motor vehicle in this state while that person is in a suspended or revoked status or when his or her privilege to drive is suspended or revoked in this or any other state. Any person who has a valid Washington driver's license is not guilty of a violation of this section.

(a) A person found to be an habitual offender under chapter 46.65 RCW, who violates this section while an order of revocation issued under chapter 46.65 RCW prohibiting such operation is in effect, is guilty of driving while license suspended or revoked in the first degree, a gross misdemeanor. Upon the first such conviction, the person shall be punished by imprisonment for not less than ten days. Upon the second conviction, the person shall be punished by imprisonment for not less than ninety days. Upon the third or subsequent conviction, the person shall be punished by imprisonment for not less than one hundred eighty days. If the person is also convicted of the offense defined in RCW 46.61.502 or 46.61.504, when both convictions arise from the same event, the minimum sentence of confinement shall be not less than ninety days. The minimum sentence of confinement required shall not be suspended or deferred. A conviction under this subsection does not prevent a person from petitioning for reinstatement as provided by RCW 46.65.080.

(b) A person who violates this section while an order of suspension or revocation prohibiting such operation is in effect and while the person is not eligible to reinstate his or her driver's license or driving privilege, other than for a suspension for the reasons described in (c) of this subsection, is guilty of

driving while license suspended or revoked in the second degree, a gross misdemeanor. This subsection applies when a person's driver's license or driving privilege has been suspended or revoked by reason of:

(i) A conviction of a felony in the commission of which a motor vehicle was used;

(ii) A previous conviction under this section;

(iii) A notice received by the department from a court or diversion unit as provided by RCW 46.20.265, relating to a minor who has committed, or who has entered a diversion unit concerning an offense relating to alcohol, legend drugs, controlled substances, or imitation controlled substances;

(iv) A conviction of RCW 46.20.410, relating to the violation of restrictions of an occupational or a temporary restricted driver's license;

(v) A conviction of RCW 46.20.345, relating to the operation of a motor vehicle with a suspended or revoked license;

(vi) A conviction of RCW 46.52.020, relating to duty in case of injury to or death of a person or damage to an attended vehicle;

(vii) A conviction of RCW 46.61.024, relating to attempting to elude pursuing police vehicles;

(viii) A conviction of RCW 46.61.500, relating to reckless driving;

(ix) A conviction of RCW 46.61.502 or 46.61.504, relating to a person under the influence of intoxicating liquor or drugs;

(x) A conviction of RCW 46.61.520, relating to vehicular homicide;

(xi) A conviction of RCW 46.61.522, relating to vehicular assault;

(xii) A conviction of RCW 46.61.527(4), relating to reckless endangerment of roadway workers;

(xiii) A conviction of RCW 46.61.530, relating to racing of vehicles on highways;

(xiv) A conviction of RCW 46.61.685, relating to leaving children in an unattended vehicle with motor running;

(xv) A conviction of RCW 46.61.740, relating to theft of motor vehicle fuel;

(xvi) A conviction of RCW 46.64.048, relating to attempting, aiding, abetting, coercing, and committing crimes;

(xvii) An administrative action taken by the department under chapter 46.20 RCW; or

(xviii) A conviction of a local law, ordinance, regulation, or resolution of a political subdivision of this state, the federal government, or any other state, of an offense substantially similar to a violation included in this subsection.

(c) A person who violates this section when his or her driver's license or driving privilege is, at the time of the violation, suspended or revoked solely because (i) the person must furnish proof of satisfactory progress in a required alcoholism or drug treatment program, (ii) the person must furnish proof of financial responsibility for the future as provided by chapter 46.29 RCW, (iii) the person has failed to comply with the provisions of chapter 46.29 RCW relating to uninsured accidents, (iv) the person has failed to respond to a notice of traffic infraction, failed to appear at a requested hearing, violated a written promise to appear in court, or has failed to comply with the terms of a notice of traffic infraction or citation, as provided in RCW 46.20.289, (v) the person has committed an offense in another state that, if committed in this state, would not be grounds for the suspension or revocation of the person's driver's license, (vi)

the person has been suspended or revoked by reason of one or more of the items listed in (b) of this subsection, but was eligible to reinstate his or her driver's license or driving privilege at the time of the violation, or (vii) the person has received traffic citations or notices of traffic infraction that have resulted in a suspension under RCW 46.20.267 relating to intermediate drivers' licenses, or any combination of (i) through (vii), is guilty of driving while license suspended or revoked in the third degree, a misdemeanor.

(2) Upon receiving a record of conviction of any person or upon receiving an order by any juvenile court or any duly authorized court officer of the conviction of any juvenile under this section, the department shall:

(a) For a conviction of driving while suspended or revoked in the first degree, as provided by subsection (1)(a) of this section, extend the period of administrative revocation imposed under chapter 46.65 RCW for an additional period of one year from and after the date the person would otherwise have been entitled to apply for a new license or have his or her driving privilege restored; or

(b) For a conviction of driving while suspended or revoked in the second degree, as provided by subsection (1)(b) of this section, not issue a new license or restore the driving privilege for an additional period of one year from and after the date the person would otherwise have been entitled to apply for a new license or have his or her driving privilege restored; or

(c) Not extend the period of suspension or revocation if the conviction was under subsection (1)(c) of this section. If the conviction was under subsection (1)(a) or (b) of this section and the court recommends against the extension and the convicted person has obtained a valid driver's license, the period of suspension or revocation shall not be extended.

Sec. 6. RCW 46.20.380 and 1985 ex.s. c 1 s 6 are each amended to read as follows:

No person may file an application for an occupational or a temporary restricted driver's license as provided in RCW 46.20.391 unless he or she first pays to the director or other person authorized to accept applications and fees for driver's licenses a fee of ~~((twenty-five))~~ one hundred dollars. The applicant shall receive upon payment an official receipt for the payment of such fee. All such fees shall be forwarded to the director who shall transmit such fees to the state treasurer in the same manner as other driver's license fees.

Sec. 7. RCW 46.20.391 and 1999 c 274 s 4 and 1999 c 272 s 1 are each reenacted and amended to read as follows:

(1)~~(a)~~ Any person licensed under this chapter who is convicted of an offense relating to motor vehicles for which suspension or revocation of the driver's license is mandatory, other than vehicular homicide or vehicular assault, or who has had his or her license suspended, revoked, or denied under RCW 46.20.3101 ~~((2)(a) or (3)(a))~~, may submit to the department an application for ~~((an occupational))~~ a temporary restricted driver's license. The department, upon receipt of the prescribed fee and upon determining that the petitioner is ~~((engaged in an occupation or trade that makes it essential that the petitioner operate a motor vehicle))~~ eligible to receive the license, may issue ~~((an occupational))~~ a temporary restricted driver's license and may set definite restrictions as provided in RCW 46.20.394. No person may petition for, and the

department shall not issue, ~~((an occupational))~~ a temporary restricted driver's license that is effective during the first thirty days of any suspension or revocation imposed ~~((either))~~ for a violation of RCW 46.61.502 or 46.61.504 or ~~((under RCW 46.20.3101 (2)(a) or (3)(a), or for both a violation of RCW 46.61.502 or 46.61.504 and under RCW 46.20.3101 (2)(a) or (3)(a) where the action arises from the same incident. A person aggrieved by the decision of the department on the application for an occupational driver's license may request a hearing as provided by rule of the department))~~, for a suspension, revocation, or denial imposed under RCW 46.20.3101, during the required minimum portion of the periods of suspension, revocation, or denial established under (c) of this subsection.

(b) An applicant under this subsection whose driver's license is suspended or revoked for an alcohol-related offense shall provide proof to the satisfaction of the department that a functioning ignition interlock device has been installed on a vehicle owned or operated by the person.

(i) The department shall require the person to maintain such a device on a vehicle owned or operated by the person and shall restrict the person to operating only vehicles equipped with such a device, for the remainder of the period of suspension, revocation, or denial.

(ii) Subject to any periodic renewal requirements established by the department pursuant to this section and subject to any applicable compliance requirements under this chapter or other law, a temporary restricted driver's license granted after a suspension or revocation under RCW 46.61.5055 or 46.20.3101 extends through the remaining portion of any concurrent or consecutive suspension or revocation that may be imposed as the result of administrative action and criminal conviction arising out of the same incident.

(iii) The time period during which the person is licensed under this section shall apply on a day-for-day basis toward satisfying the period of time the ignition interlock device restriction is required under RCW 46.20.720 (1) and (2) (a), (b), and (c).

(c) The department shall provide by rule the minimum portions of the periods of suspension, revocation, or denial set forth in RCW 46.20.3101 after which a person may apply for a temporary restricted driver's license under this section. In establishing the minimum portions of the periods of suspension, revocation, or denial, the department shall consider the requirements of federal law regarding state eligibility for grants or other funding, and shall establish such periods so as to ensure that the state will maintain its eligibility, or establish eligibility, to obtain incentive grants or any other federal funding.

(2)(a) A person licensed under this chapter whose driver's license is suspended administratively due to failure to appear or pay a traffic ticket under RCW 46.20.289; a violation of the financial responsibility laws under chapter 46.29 RCW; or for multiple violations within a specified period of time under RCW 46.20.291, may apply to the department for an occupational driver's license ~~((if the applicant demonstrates to the satisfaction of the department that one of the following additional conditions are met:~~

~~(i) The applicant is in an apprenticeship program or an on-the-job training program for which a driver's license is required;~~

~~(ii) The applicant presents evidence that he or she has applied for a position in an apprenticeship or on-the-job training program and the program has~~

~~certified that a driver's license is required to begin the program, provided that a license granted under this provision shall be in effect no longer than fourteen days;~~

~~(iii) The applicant is in a program that assists persons who are enrolled in a WorkFirst program pursuant to chapter 74.08A RCW to become gainfully employed and the program requires a driver's license; or~~

~~(iv) The applicant is undergoing substance abuse treatment or is participating in meetings of a twelve-step group such as alcoholics anonymous).~~

(b) If the suspension is for failure to respond, pay, or comply with a notice of traffic infraction or conviction, the applicant must enter into a payment plan with the court.

(c) An occupational driver's license issued to an applicant described in (a) of this subsection shall be valid for the period of the suspension or revocation (~~but not more than two years~~).

~~((d) Upon receipt of evidence that a holder of an occupational driver's license granted under this subsection is no longer enrolled in an apprenticeship or on the job training program, the director shall give written notice by first class mail to the driver that the occupational driver's license shall be canceled. The effective date of cancellation shall be fifteen days from the date of mailing the notice. If at any time before the cancellation goes into effect the driver submits evidence of continued enrollment in the program, the cancellation shall be stayed. If the cancellation becomes effective, the driver may obtain, at no additional charge, a new occupational driver's license upon submittal of evidence of enrollment in another program that meets the criteria set forth in this subsection.~~

~~(e) The department shall not issue an occupational driver's license under (a)(iv) of this subsection if the applicant is able to receive transit services sufficient to allow for the applicant's participation in the programs referenced under (a)(iv) of this subsection.)~~

(3) An applicant for an occupational or temporary restricted driver's license who qualifies under subsection (1) or (2) of this section is eligible to receive such license only if:

(a) ~~((Within one year immediately preceding the date of the offense that gave rise to the present conviction, the applicant has not committed any offense relating to motor vehicles for which suspension or revocation of a driver's license is mandatory; and~~

~~(b))) Within seven years immediately preceding the date of the offense that gave rise to the present conviction or incident, the applicant has not committed ((any of the following offenses: (i) Driving or being in actual physical control of a motor vehicle while under the influence of intoxicating liquor; (ii))) vehicular homicide under RCW 46.61.520(;) or ((iii))) vehicular assault under RCW 46.61.522; and~~

~~((e))) (b) The applicant demonstrates that it is necessary for him or her to operate a motor vehicle because he or she:~~

~~(i) Is engaged in an occupation or trade that makes it essential that he or she operate a motor vehicle((, except as allowed under subsection (2)(a) of this section));~~

~~(ii) Is undergoing continuing health care or providing continuing care to another who is dependent upon the applicant;~~

(iii) Is enrolled in an educational institution and pursuing a course of study leading to a diploma, degree, or other certification of successful educational completion;

(iv) Is undergoing substance abuse treatment or is participating in meetings of a twelve-step group such as Alcoholics Anonymous that requires the petitioner to drive to or from the treatment or meetings;

(v) Is fulfilling court-ordered community service responsibilities;

(vi) Is in a program that assists persons who are enrolled in a WorkFirst program pursuant to chapter 74.08A RCW to become gainfully employed and the program requires a driver's license;

(vii) Is in an apprenticeship, on-the-job training, or welfare-to-work program; or

(viii) Presents evidence that he or she has applied for a position in an apprenticeship or on-the-job training program for which a driver's license is required to begin the program, provided that a license granted under this provision shall be in effect for no longer than fourteen days; and

~~((d))~~ (c) The applicant files satisfactory proof of financial responsibility under chapter 46.29 RCW; and

(d) Upon receipt of evidence that a holder of an occupational driver's license granted under this subsection is no longer enrolled in an apprenticeship or on-the-job training program, the director shall give written notice by first class mail to the driver that the occupational driver's license shall be canceled. The effective date of cancellation shall be fifteen days from the date of mailing the notice. If at any time before the cancellation goes into effect the driver submits evidence of continued enrollment in the program the cancellation shall be stayed. If the cancellation becomes effective the driver may obtain at no additional charge, a new occupational driver's license upon submittal of evidence of enrollment in another program that meets the criteria set forth in this subsection; and

(e) The department shall not issue an occupational driver's license under (b)(iv) of this subsection if the applicant is able to receive transit services sufficient to allow for the applicant's participation in the programs referenced under (b)(iv) of this subsection.

(4) A person aggrieved by the decision of the department on the application for an occupational or temporary restricted driver's license may request a hearing as provided by rule of the department.

(5) The director shall cancel an occupational or temporary restricted driver's license upon receipt of notice that the holder thereof has been convicted of operating a motor vehicle in violation of its restrictions, or of a separate offense that under chapter 46.20 RCW would warrant suspension or revocation of a regular driver's license. The cancellation is effective as of the date of the conviction, and continues with the same force and effect as any suspension or revocation under this title.

Sec. 8. RCW 46.20.394 and 1999 c 272 s 2 are each amended to read as follows:

In issuing an occupational or a temporary restricted driver's license under RCW 46.20.391, the department shall describe the type of ~~((occupation permitted))~~ qualifying circumstances for the license and shall set forth in detail the specific hours of the day during which the person may drive to and from his

~~((place of work))~~ or her residence, which may not exceed twelve hours in any one day; the days of the week during which the license may be used; and the general routes over which the person may travel. In issuing an occupational or temporary restricted driver's license that meets the qualifying circumstance under RCW 46.20.391 ~~((2)(a)(iv))~~ (3)(b)(iv), the department shall set forth in detail the specific hours during which the person may drive to and from substance abuse treatment or meetings of a twelve-step group such as alcoholics anonymous, the days of the week during which the license may be used, and the general routes over which the person may travel. These restrictions shall be prepared in written form by the department, which document shall be carried in the vehicle at all times and presented to a law enforcement officer under the same terms as the occupational or temporary restricted driver's license. Any violation of the restrictions constitutes a violation of RCW 46.20.342 and subjects the person to all procedures and penalties therefor.

Sec. 9. RCW 46.20.400 and 1967 c 32 s 33 are each amended to read as follows:

If an occupational or a temporary restricted driver's license is issued and is not revoked during the period for which issued the licensee may obtain a new driver's license at the end of such period, but no new driver's ~~((permit shall))~~ license may be issued to such person until he or she surrenders his or her occupational or temporary restricted driver's license and his or her copy of the order, and the director is satisfied that ~~((he))~~ the person complies with all other provisions of law relative to the issuance of a driver's license.

Sec. 10. RCW 46.20.410 and 1967 c 32 s 34 are each amended to read as follows:

Any person convicted for violation of any restriction of an occupational or a temporary restricted driver's license shall in addition to the immediate revocation of such license and any other penalties provided by law be fined not less than fifty nor more than two hundred dollars or imprisoned for not more than six months or both such fine and imprisonment.

Sec. 11. RCW 46.20.720 and 2003 c 366 s 1 are each amended to read as follows:

(1) The court may order that after a period of suspension, revocation, or denial of driving privileges, and for up to as long as the court has jurisdiction, any person convicted of any offense involving the use, consumption, or possession of alcohol while operating a motor vehicle may drive only a motor vehicle equipped with a functioning ignition interlock ~~((or other biological or technical device))~~. The court shall establish a specific calibration setting at which the interlock will prevent the vehicle from being started. The court shall also establish the period of time for which interlock use will be required.

(2)~~((a))~~ The department shall require that, after any applicable period of suspension, revocation, or denial of driving privileges, a person may drive only a motor vehicle equipped with a functioning ignition interlock ~~((or other biological or technical))~~ device if the person is convicted of ~~((a))~~ an alcohol-related violation of RCW 46.61.502 or 46.61.504 or an equivalent local ordinance ~~((and it is:~~

~~(i) The person's first conviction or a deferred prosecution under chapter 10.05 RCW and his or her alcohol concentration was at least 0.15, or by reason~~

~~of the person's refusal to take a test offered pursuant to RCW 46.20.308 there is no test result indicating the person's alcohol concentration;~~

~~(ii) The person's second or subsequent conviction; or~~

~~(iii) The person's first conviction and the person has a previous deferred prosecution under chapter 10.05 RCW or it is a deferred prosecution under chapter 10.05 RCW and the person has a previous conviction)).~~

~~((b)) The department may waive the requirement for the use of such a device if it concludes that such devices are not reasonably available in the local area. ((Nothing in this section may be interpreted as entitling a person to more than one deferred prosecution.~~

~~(3) In the case of a person under subsection (1) of this section, the court shall establish a specific calibration setting at which the ignition interlock or other biological or technical device will prevent the motor vehicle from being started and the period of time that the person shall be subject to the restriction. In the case of a person under subsection (2) of this section,)) The device is not necessary on vehicles owned by a person's employer and driven as a requirement of employment during working hours.~~

~~The ignition interlock ((or other biological or technical)) device shall be calibrated to prevent the motor vehicle from being started when the breath sample provided has an alcohol concentration of 0.025 or more((, and)). The period of time of the restriction will be as follows:~~

~~(a) For a person (((i) who is subject to RCW 46.61.5055 (1)(b), (2), or (3), or who is subject to a deferred prosecution program under chapter 10.05 RCW; and (ii))) who has not previously been restricted under this section, a period of one year;~~

~~(b) For a person who has previously been restricted under (a) of this subsection, a period of five years;~~

~~(c) For a person who has previously been restricted under (b) of this subsection, a period of ten years.~~

~~((For purposes of this section, "convicted" means being found guilty of an offense or being placed on a deferred prosecution program under chapter 10.05 RCW.))~~

Sec. 12. RCW 46.20.740 and 2001 c 55 s 1 are each amended to read as follows:

(1) The department shall attach or imprint a notation on the driving record of any person restricted under RCW 46.20.720 stating that the person may operate only a motor vehicle equipped with ~~((a))~~ a functioning ignition interlock ~~((or other biological or technical))~~ device. The department shall determine the person's eligibility for licensing based upon written verification by a company doing business in the state that it has installed the required device on a vehicle owned or operated by the person seeking reinstatement. If, based upon notification from the interlock provider or otherwise, the department determines that an ignition interlock required under this section is no longer installed or functioning as required, the department shall suspend the person's license or privilege to drive. Whenever the license or driving privilege of any person is suspended or revoked as a result of noncompliance with an ignition interlock requirement, the suspension shall remain in effect until the person provides notice issued by a company doing business in the state that a vehicle owned or operated by the person is equipped with a functioning ignition interlock device.

(2) It is a misdemeanor for a person with such a notation on his or her driving record to operate a motor vehicle that is not so equipped.

Sec. 13. RCW 46.61.5055 and 2003 c 103 s 1 are each amended to read as follows:

(1) A person who is convicted of a violation of RCW 46.61.502 or 46.61.504 and who has no prior offense within seven years shall be punished as follows:

(a) In the case of a person whose alcohol concentration was less than 0.15, or for whom for reasons other than the person's refusal to take a test offered pursuant to RCW 46.20.308 there is no test result indicating the person's alcohol concentration:

(i) By imprisonment for not less than one day nor more than one year. Twenty-four consecutive hours of the imprisonment may not be suspended or deferred unless the court finds that the imposition of this mandatory minimum sentence would impose a substantial risk to the offender's physical or mental well-being. Whenever the mandatory minimum sentence is suspended or deferred, the court shall state in writing the reason for granting the suspension or deferral and the facts upon which the suspension or deferral is based. In lieu of the mandatory minimum term of imprisonment required under this subsection (1)(a)(i), the court may order not less than fifteen days of electronic home monitoring. The offender shall pay the cost of electronic home monitoring. The county or municipality in which the penalty is being imposed shall determine the cost. The court may also require the offender's electronic home monitoring device to include an alcohol detection breathalyzer, and the court may restrict the amount of alcohol the offender may consume during the time the offender is on electronic home monitoring; and

(ii) By a fine of not less than three hundred fifty dollars nor more than five thousand dollars. Three hundred fifty dollars of the fine may not be suspended or deferred unless the court finds the offender to be indigent; or

(b) In the case of a person whose alcohol concentration was at least 0.15, or for whom by reason of the person's refusal to take a test offered pursuant to RCW 46.20.308 there is no test result indicating the person's alcohol concentration:

(i) By imprisonment for not less than two days nor more than one year. Two consecutive days of the imprisonment may not be suspended or deferred unless the court finds that the imposition of this mandatory minimum sentence would impose a substantial risk to the offender's physical or mental well-being. Whenever the mandatory minimum sentence is suspended or deferred, the court shall state in writing the reason for granting the suspension or deferral and the facts upon which the suspension or deferral is based. In lieu of the mandatory minimum term of imprisonment required under this subsection (1)(b)(i), the court may order not less than thirty days of electronic home monitoring. The offender shall pay the cost of electronic home monitoring. The county or municipality in which the penalty is being imposed shall determine the cost. The court may also require the offender's electronic home monitoring device to include an alcohol detection breathalyzer, and the court may restrict the amount of alcohol the offender may consume during the time the offender is on electronic home monitoring; and

(ii) By a fine of not less than five hundred dollars nor more than five thousand dollars. Five hundred dollars of the fine may not be suspended or deferred unless the court finds the offender to be indigent(~~and~~

~~(iii) By a court ordered restriction under RCW 46.20.720)).~~

(2) A person who is convicted of a violation of RCW 46.61.502 or 46.61.504 and who has one prior offense within seven years shall be punished as follows:

(a) In the case of a person whose alcohol concentration was less than 0.15, or for whom for reasons other than the person's refusal to take a test offered pursuant to RCW 46.20.308 there is no test result indicating the person's alcohol concentration:

(i) By imprisonment for not less than thirty days nor more than one year and sixty days of electronic home monitoring. The offender shall pay for the cost of the electronic monitoring. The county or municipality where the penalty is being imposed shall determine the cost. The court may also require the offender's electronic home monitoring device include an alcohol detection breathalyzer, and may restrict the amount of alcohol the offender may consume during the time the offender is on electronic home monitoring. Thirty days of imprisonment and sixty days of electronic home monitoring may not be suspended or deferred unless the court finds that the imposition of this mandatory minimum sentence would impose a substantial risk to the offender's physical or mental well-being. Whenever the mandatory minimum sentence is suspended or deferred, the court shall state in writing the reason for granting the suspension or deferral and the facts upon which the suspension or deferral is based; and

(ii) By a fine of not less than five hundred dollars nor more than five thousand dollars. Five hundred dollars of the fine may not be suspended or deferred unless the court finds the offender to be indigent; (~~and~~

~~(iii) By a court ordered restriction under RCW 46.20.720;))~~ or

(b) In the case of a person whose alcohol concentration was at least 0.15, or for whom by reason of the person's refusal to take a test offered pursuant to RCW 46.20.308 there is no test result indicating the person's alcohol concentration:

(i) By imprisonment for not less than forty-five days nor more than one year and ninety days of electronic home monitoring. The offender shall pay for the cost of the electronic monitoring. The county or municipality where the penalty is being imposed shall determine the cost. The court may also require the offender's electronic home monitoring device include an alcohol detection breathalyzer, and may restrict the amount of alcohol the offender may consume during the time the offender is on electronic home monitoring. Forty-five days of imprisonment and ninety days of electronic home monitoring may not be suspended or deferred unless the court finds that the imposition of this mandatory minimum sentence would impose a substantial risk to the offender's physical or mental well-being. Whenever the mandatory minimum sentence is suspended or deferred, the court shall state in writing the reason for granting the suspension or deferral and the facts upon which the suspension or deferral is based; and

(ii) By a fine of not less than seven hundred fifty dollars nor more than five thousand dollars. Seven hundred fifty dollars of the fine may not be suspended or deferred unless the court finds the offender to be indigent(~~(; and~~

~~(iii) By a court ordered restriction under RCW 46.20.720)).~~

(3) A person who is convicted of a violation of RCW 46.61.502 or 46.61.504 and who has two or more prior offenses within seven years shall be punished as follows:

(a) In the case of a person whose alcohol concentration was less than 0.15, or for whom for reasons other than the person's refusal to take a test offered pursuant to RCW 46.20.308 there is no test result indicating the person's alcohol concentration:

(i) By imprisonment for not less than ninety days nor more than one year and one hundred twenty days of electronic home monitoring. The offender shall pay for the cost of the electronic monitoring. The county or municipality where the penalty is being imposed shall determine the cost. The court may also require the offender's electronic home monitoring device include an alcohol detection breathalyzer, and may restrict the amount of alcohol the offender may consume during the time the offender is on electronic home monitoring. Ninety days of imprisonment and one hundred twenty days of electronic home monitoring may not be suspended or deferred unless the court finds that the imposition of this mandatory minimum sentence would impose a substantial risk to the offender's physical or mental well-being. Whenever the mandatory minimum sentence is suspended or deferred, the court shall state in writing the reason for granting the suspension or deferral and the facts upon which the suspension or deferral is based; and

(ii) By a fine of not less than one thousand dollars nor more than five thousand dollars. One thousand dollars of the fine may not be suspended or deferred unless the court finds the offender to be indigent(~~(; and~~

~~(iii) By a court ordered restriction under RCW 46.20.720)); or~~

(b) In the case of a person whose alcohol concentration was at least 0.15, or for whom by reason of the person's refusal to take a test offered pursuant to RCW 46.20.308 there is no test result indicating the person's alcohol concentration:

(i) By imprisonment for not less than one hundred twenty days nor more than one year and one hundred fifty days of electronic home monitoring. The offender shall pay for the cost of the electronic monitoring. The county or municipality where the penalty is being imposed shall determine the cost. The court may also require the offender's electronic home monitoring device include an alcohol detection breathalyzer, and may restrict the amount of alcohol the offender may consume during the time the offender is on electronic home monitoring. One hundred twenty days of imprisonment and one hundred fifty days of electronic home monitoring may not be suspended or deferred unless the court finds that the imposition of this mandatory minimum sentence would impose a substantial risk to the offender's physical or mental well-being. Whenever the mandatory minimum sentence is suspended or deferred, the court shall state in writing the reason for granting the suspension or deferral and the facts upon which the suspension or deferral is based; and

(ii) By a fine of not less than one thousand five hundred dollars nor more than five thousand dollars. One thousand five hundred dollars of the fine may

not be suspended or deferred unless the court finds the offender to be indigent(~~;~~
and

~~(iii) By a court-ordered restriction under RCW 46.20.720)).~~

(4) If a person who is convicted of a violation of RCW 46.61.502 or 46.61.504 committed the offense while a passenger under the age of sixteen was in the vehicle, the court shall:

(a) In any case in which the installation and use of an interlock or other device is not mandatory under RCW 46.20.720 or other law, order the use of such a device for not less than sixty days following the restoration of the person's license, permit, or nonresident driving privileges; and

(b) In any case in which the installation and use of such a device is otherwise mandatory, order the use of such a device for an additional sixty days.

(5) In exercising its discretion in setting penalties within the limits allowed by this section, the court shall particularly consider the following:

(a) Whether the person's driving at the time of the offense was responsible for injury or damage to another or another's property; and

(b) Whether at the time of the offense the person was driving or in physical control of a vehicle with one or more passengers.

(6) An offender punishable under this section is subject to the alcohol assessment and treatment provisions of RCW 46.61.5056.

(7) The license, permit, or nonresident privilege of a person convicted of driving or being in physical control of a motor vehicle while under the influence of intoxicating liquor or drugs must:

(a) If the person's alcohol concentration was less than 0.15, or if for reasons other than the person's refusal to take a test offered under RCW 46.20.308 there is no test result indicating the person's alcohol concentration:

(i) Where there has been no prior offense within seven years, be suspended or denied by the department for ninety days;

(ii) Where there has been one prior offense within seven years, be revoked or denied by the department for two years; or

(iii) Where there have been two or more prior offenses within seven years, be revoked or denied by the department for three years;

(b) If the person's alcohol concentration was at least 0.15(~~or if by reason of the person's refusal to take a test offered under RCW 46.20.308 there is no test result indicating the person's alcohol concentration~~):

(i) Where there has been no prior offense within seven years, be revoked or denied by the department for one year;

(ii) Where there has been one prior offense within seven years, be revoked or denied by the department for nine hundred days; or

(iii) Where there have been two or more prior offenses within seven years, be revoked or denied by the department for four years; or

(c) If by reason of the person's refusal to take a test offered under RCW 46.20.308, there is no test result indicating the person's alcohol concentration:

(i) Where there have been no prior offenses within seven years, be revoked or denied by the department for two years;

(ii) Where there has been one prior offense within seven years, be revoked or denied by the department for three years; or

(iii) Where there have been two or more previous offenses within seven years, be revoked or denied by the department for four years.

The department shall grant credit on a day-for-day basis for any portion of a suspension, revocation, or denial already served under this subsection for a suspension, revocation, or denial imposed under RCW 46.20.3101 arising out of the same incident.

For purposes of this subsection (7), the department shall refer to the driver's record maintained under RCW 46.52.120 when determining the existence of prior offenses.

(8) After expiration of any period of suspension, revocation, or denial of the offender's license, permit, or privilege to drive required by this section, the department shall place the offender's driving privilege in probationary status pursuant to RCW 46.20.355.

(9)(a) In addition to any nonsuspendable and nondeferrable jail sentence required by this section, whenever the court imposes less than one year in jail, the court shall also suspend but shall not defer a period of confinement for a period not exceeding five years. The court shall impose conditions of probation that include: (i) Not driving a motor vehicle within this state without a valid license to drive and proof of financial responsibility for the future; (ii) not driving a motor vehicle within this state while having an alcohol concentration of 0.08 or more within two hours after driving; and (iii) not refusing to submit to a test of his or her breath or blood to determine alcohol concentration upon request of a law enforcement officer who has reasonable grounds to believe the person was driving or was in actual physical control of a motor vehicle within this state while under the influence of intoxicating liquor. The court may impose conditions of probation that include nonrepetition, installation of an ignition interlock (~~or other biological or technical~~) device on the probationer's motor vehicle, alcohol or drug treatment, supervised probation, or other conditions that may be appropriate. The sentence may be imposed in whole or in part upon violation of a condition of probation during the suspension period.

(b) For each violation of mandatory conditions of probation under (a)(i) ~~((and)),~~ (ii), or ~~((a)(i) and)~~ (iii) of this subsection, the court shall order the convicted person to be confined for thirty days, which shall not be suspended or deferred.

(c) For each incident involving a violation of a mandatory condition of probation imposed under this subsection, the license, permit, or privilege to drive of the person shall be suspended by the court for thirty days or, if such license, permit, or privilege to drive already is suspended, revoked, or denied at the time the finding of probation violation is made, the suspension, revocation, or denial then in effect shall be extended by thirty days. The court shall notify the department of any suspension, revocation, or denial or any extension of a suspension, revocation, or denial imposed under this subsection.

(10) A court may waive the electronic home monitoring requirements of this chapter when:

(a) The offender does not have a dwelling, telephone service, or any other necessity to operate an electronic home monitoring system;

(b) The offender does not reside in the state of Washington; or

(c) The court determines that there is reason to believe that the offender would violate the conditions of the electronic home monitoring penalty.

Whenever the mandatory minimum term of electronic home monitoring is waived, the court shall state in writing the reason for granting the waiver and the

facts upon which the waiver is based, and shall impose an alternative sentence with similar punitive consequences. The alternative sentence may include, but is not limited to, additional jail time, work crew, or work camp.

Whenever the combination of jail time and electronic home monitoring or alternative sentence would exceed three hundred sixty-five days, the offender shall serve the jail portion of the sentence first, and the electronic home monitoring or alternative portion of the sentence shall be reduced so that the combination does not exceed three hundred sixty-five days.

(11) An offender serving a sentence under this section, whether or not a mandatory minimum term has expired, may be granted an extraordinary medical placement by the jail administrator subject to the standards and limitations set forth in RCW 9.94A.728(4).

(12) For purposes of this section:

(a) A "prior offense" means any of the following:

(i) A conviction for a violation of RCW 46.61.502 or an equivalent local ordinance;

(ii) A conviction for a violation of RCW 46.61.504 or an equivalent local ordinance;

(iii) A conviction for a violation of RCW 46.61.520 committed while under the influence of intoxicating liquor or any drug;

(iv) A conviction for a violation of RCW 46.61.522 committed while under the influence of intoxicating liquor or any drug;

(v) A conviction for a violation of RCW 46.61.5249, 46.61.500, or 9A.36.050 or an equivalent local ordinance, if the conviction is the result of a charge that was originally filed as a violation of RCW 46.61.502 or 46.61.504, or an equivalent local ordinance, or of RCW 46.61.520 or 46.61.522;

(vi) An out-of-state conviction for a violation that would have been a violation of (a)(i), (ii), (iii), (iv), or (v) of this subsection if committed in this state;

(vii) A deferred prosecution under chapter 10.05 RCW granted in a prosecution for a violation of RCW 46.61.502, 46.61.504, or an equivalent local ordinance; or

(viii) A deferred prosecution under chapter 10.05 RCW granted in a prosecution for a violation of RCW 46.61.5249, or an equivalent local ordinance, if the charge under which the deferred prosecution was granted was originally filed as a violation of RCW 46.61.502 or 46.61.504, or an equivalent local ordinance, or of RCW 46.61.520 or 46.61.522; and

(b) "Within seven years" means that the arrest for a prior offense occurred within seven years of the arrest for the current offense.

Sec. 14. RCW 46.63.020 and 2003 c 33 s 4 are each amended to read as follows:

Failure to perform any act required or the performance of any act prohibited by this title or an equivalent administrative regulation or local law, ordinance, regulation, or resolution relating to traffic including parking, standing, stopping, and pedestrian offenses, is designated as a traffic infraction and may not be classified as a criminal offense, except for an offense contained in the following provisions of this title or a violation of an equivalent administrative regulation or local law, ordinance, regulation, or resolution:

- (1) RCW 46.09.120(2) relating to the operation of a nonhighway vehicle while under the influence of intoxicating liquor or a controlled substance;
- (2) RCW 46.09.130 relating to operation of nonhighway vehicles;
- (3) RCW 46.10.090(2) relating to the operation of a snowmobile while under the influence of intoxicating liquor or narcotics or habit-forming drugs or in a manner endangering the person of another;
- (4) RCW 46.10.130 relating to the operation of snowmobiles;
- (5) Chapter 46.12 RCW relating to certificates of ownership and registration and markings indicating that a vehicle has been destroyed or declared a total loss;
- (6) RCW 46.16.010 relating to initial registration of motor vehicles;
- (7) RCW 46.16.011 relating to permitting unauthorized persons to drive;
- (8) RCW 46.16.160 relating to vehicle trip permits;
- (9) RCW 46.16.381(2) relating to knowingly providing false information in conjunction with an application for a special placard or license plate for disabled persons' parking;
- (10) RCW 46.20.005 relating to driving without a valid driver's license;
- (11) RCW 46.20.091 relating to false statements regarding a driver's license or instruction permit;
- (12) RCW 46.20.0921 relating to the unlawful possession and use of a driver's license;
- (13) RCW 46.20.342 relating to driving with a suspended or revoked license or status;
- (14) RCW 46.20.345 relating to the operation of a motor vehicle with a suspended or revoked license;
- (15) RCW 46.20.410 relating to the violation of restrictions of an occupational or temporary restricted driver's license;
- (16) RCW 46.20.740 relating to operation of a motor vehicle without an ignition interlock device in violation of a license notation that the device is required;
- (17) RCW 46.20.750 relating to assisting another person to start a vehicle equipped with an ignition interlock device;
- (18) RCW 46.25.170 relating to commercial driver's licenses;
- (19) Chapter 46.29 RCW relating to financial responsibility;
- (20) RCW 46.30.040 relating to providing false evidence of financial responsibility;
- (21) RCW 46.37.435 relating to wrongful installation of sunscreening material;
- (22) RCW 46.37.650 relating to the sale, resale, distribution, or installation of a previously deployed air bag;
- (23) RCW 46.44.180 relating to operation of mobile home pilot vehicles;
- (24) RCW 46.48.175 relating to the transportation of dangerous articles;
- (25) RCW 46.52.010 relating to duty on striking an unattended car or other property;
- (26) RCW 46.52.020 relating to duty in case of injury to or death of a person or damage to an attended vehicle;
- (27) RCW 46.52.090 relating to reports by repairmen, storagemen, and appraisers;

- (28) RCW 46.52.130 relating to confidentiality of the driving record to be furnished to an insurance company, an employer, and an alcohol/drug assessment or treatment agency;
- (29) RCW 46.55.020 relating to engaging in the activities of a registered tow truck operator without a registration certificate;
- (30) RCW 46.55.035 relating to prohibited practices by tow truck operators;
- (31) RCW 46.61.015 relating to obedience to police officers, flaggers, or fire fighters;
- (32) RCW 46.61.020 relating to refusal to give information to or cooperate with an officer;
- (33) RCW 46.61.022 relating to failure to stop and give identification to an officer;
- (34) RCW 46.61.024 relating to attempting to elude pursuing police vehicles;
- (35) RCW 46.61.500 relating to reckless driving;
- (36) RCW 46.61.502 and 46.61.504 relating to persons under the influence of intoxicating liquor or drugs;
- (37) RCW 46.61.503 relating to a person under age twenty-one driving a motor vehicle after consuming alcohol;
- (38) RCW 46.61.520 relating to vehicular homicide by motor vehicle;
- (39) RCW 46.61.522 relating to vehicular assault;
- (40) RCW 46.61.5249 relating to first degree negligent driving;
- (41) RCW 46.61.527(4) relating to reckless endangerment of roadway workers;
- (42) RCW 46.61.530 relating to racing of vehicles on highways;
- (43) RCW 46.61.685 relating to leaving children in an unattended vehicle with the motor running;
- (44) RCW 46.61.740 relating to theft of motor vehicle fuel;
- (45) RCW 46.64.010 relating to unlawful cancellation of or attempt to cancel a traffic citation;
- (46) RCW 46.64.048 relating to attempting, aiding, abetting, coercing, and committing crimes;
- (47) Chapter 46.65 RCW relating to habitual traffic offenders;
- (48) RCW 46.68.010 relating to false statements made to obtain a refund;
- (49) Chapter 46.70 RCW relating to unfair motor vehicle business practices, except where that chapter provides for the assessment of monetary penalties of a civil nature;
- (50) Chapter 46.72 RCW relating to the transportation of passengers in for hire vehicles;
- (51) RCW 46.72A.060 relating to limousine carrier insurance;
- (52) RCW 46.72A.070 relating to operation of a limousine without a vehicle certificate;
- (53) RCW 46.72A.080 relating to false advertising by a limousine carrier;
- (54) Chapter 46.80 RCW relating to motor vehicle wreckers;
- (55) Chapter 46.82 RCW relating to driver's training schools;
- (56) RCW 46.87.260 relating to alteration or forgery of a cab card, letter of authority, or other temporary authority issued under chapter 46.87 RCW;
- (57) RCW 46.87.290 relating to operation of an unregistered or unlicensed vehicle under chapter 46.87 RCW.

Sec. 15. RCW 46.68.041 and 1998 c 212 s 3 are each amended to read as follows:

(1) Except as provided in subsection (2) of this section, the department shall forward all funds accruing under the provisions of chapter 46.20 RCW together with a proper identifying, detailed report to the state treasurer who shall deposit such moneys to the credit of the highway safety fund.

(2) Sixty-three percent of each fee collected by the department under RCW 46.20.311 (1)(~~(b)~~) (e)(ii), (2)(b)(ii), and (3)(b) shall be deposited in the impaired driving safety account.

Sec. 16. RCW 46.68.260 and 1998 c 212 s 2 are each amended to read as follows:

The impaired driving safety account is created in the custody of the state treasurer. All receipts from fees collected under RCW 46.20.311 (1)(~~(b)~~) (e)(ii), (2)(b)(ii), and (3)(b) shall be deposited according to RCW 46.68.041. Expenditures from this account may be used only to fund projects to reduce impaired driving and to provide funding to local governments for costs associated with enforcing laws relating to driving and boating while under the influence of intoxicating liquor or any drug. The account is subject to allotment procedures under chapter 43.88 RCW. Moneys in the account may be spent only after appropriation.

NEW SECTION. Sec. 17. Section 2 of this act takes effect if section 2 of Substitute House Bill No. 3055 is enacted into law.

Passed by the House March 10, 2004.

Passed by the Senate March 10, 2004.

Approved by the Governor March 24, 2004.

Filed in Office of Secretary of State March 24, 2004.

CHAPTER 96

[Engrossed Substitute House Bill 2381]

HIGHER EDUCATION—DEGREE-GRANTING INSTITUTIONS

AN ACT Relating to degree-granting institutions of higher education; and amending RCW 28B.85.020 and 28B.85.040.

Be it enacted by the Legislature of the State of Washington:

Sec. 1. RCW 28B.85.020 and 1996 c 305 s 1 are each amended to read as follows:

(1) The board:

(a) Shall adopt by rule minimum standards for degree-granting institutions concerning granting of degrees, quality of education, unfair business practices, financial stability, and other necessary measures to protect citizens of this state against substandard, fraudulent, or deceptive practices. The rules may require that an institution be accredited or be making progress toward accreditation by an accrediting agency recognized by the United States department of education. The board shall adopt the rules in accordance with chapter 34.05 RCW;

(b) May investigate any entity the board reasonably believes to be subject to the jurisdiction of this chapter. In connection with the investigation, the board may administer oaths and affirmations, issue subpoenas and compel attendance, take evidence, and require the production of any books, papers, correspondence,

memorandums, or other records which the board deems relevant or material to the investigation. The board, including its staff and any other authorized persons, may conduct site inspections, the cost of which shall be borne by the institution, and examine records of all institutions subject to this chapter;

(c) Shall develop an interagency agreement with the work force training and education coordinating board to regulate degree-granting private vocational schools with respect to degree and nondegree programs; and

(d) Shall develop and disseminate information to the public about entities that sell or award degrees without requiring appropriate academic achievement at the postsecondary level, including but not limited to, a description of the substandard and potentially fraudulent practices of these entities, and advice about how the public can recognize and avoid the entities. To the extent feasible, the information shall include links to additional resources that may assist the public in identifying specific institutions offering substandard or fraudulent degree programs.

(2) Financial disclosures provided to the board by degree-granting private vocational schools are not subject to public disclosure under chapter 42.17 RCW.

Sec. 2. RCW 28B.85.040 and 1996 c 97 s 1 are each amended to read as follows:

(1) An institution or person shall not advertise, offer, sell, or award a degree or any other type of educational credential unless the student has enrolled in and successfully completed a prescribed program of study, as outlined in the institution's publications. This prohibition shall not apply to honorary credentials clearly designated as such on the front side of the diploma or certificate and awarded by institutions offering other educational credentials in compliance with state law.

(2) No exemption granted under this chapter is permanent. The board shall periodically review exempted degree-granting institutions, and continue exemptions only if an institution meets the statutory requirements for exemption in effect on the date of the review.

(3) Except as provided in subsection (1) of this section, this chapter shall not apply to:

(a) Any public college, university, community college, technical college, or institute operating as part of the public higher educational system of this state;

(b) Institutions that have been accredited by an accrediting association recognized by the agency for the purposes of this chapter: PROVIDED, That those institutions meet minimum exemption standards adopted by the agency; and PROVIDED FURTHER, That an institution, branch, extension, or facility operating within the state of Washington which is affiliated with an institution operating in another state must be a separately accredited member institution of any such accrediting association to qualify for this exemption;

(c) Institutions of a religious character, but only as to those education programs devoted exclusively to religious or theological objectives if the programs are represented in an accurate manner in institutional catalogs and other official publications; ((or))

(d) Honorary credentials clearly designated as such on the front side of the diploma or certificate awarded by institutions offering other educational credentials in compliance with state law; or

(e) Institutions not otherwise exempt which offer only workshops or seminars (~~lasting no longer than three calendar days and for which academic credit is not awarded~~) and institutions offering only credit-bearing workshops or seminars lasting no longer than three calendar days.

Passed by the House February 12, 2004.
Passed by the Senate March 11, 2004.
Approved by the Governor March 24, 2004.
Filed in Office of Secretary of State March 24, 2004.

CHAPTER 97

[Substitute House Bill 2510]

TAX DELINQUENCY ASSESSMENTS—SUCCESSOR EMPLOYEES

AN ACT Relating to tax delinquency assessments for successor employers; and amending RCW 50.12.220.

Be it enacted by the Legislature of the State of Washington:

Sec. 1. RCW 50.12.220 and 2003 2nd sp.s. c 4 s 22 are each amended to read as follows:

(1)(a) If an employer fails to file in a timely and complete manner a report required by RCW 50.12.070, or the rules adopted pursuant thereto, the employer shall be subject to a penalty to be determined by the commissioner, but not to exceed two hundred fifty dollars or ten percent of the quarterly contributions for each such offense, whichever is less.

(b) If an employer knowingly misrepresents to the employment security department the amount of his or her payroll upon which contributions under this title are based, the employer shall be liable to the state for up to ten times the amount of the difference in contributions paid, if any, and the amount the employer should have paid and for the reasonable expenses of auditing his or her books and collecting such sums. Such liability may be enforced in the name of the department.

(c) If any part of a delinquency for which an assessment is made under this title is due to an intent to evade the successorship provisions of RCW 50.29.062, then for the calendar year in which the commissioner makes the determination under this subsection, the commissioner shall assign to the employer, and to any business found to be promoting the evasion of such provisions, the ~~((tax))~~ contribution rate determined for that calendar year under RCW 50.29.025, including the solvency surcharge, if any, for rate class 20 or rate class 40, as applicable, ~~((for five consecutive calendar quarters, beginning with the calendar quarter in which the intent to evade such provision is found))~~ plus two percent.

(2) If contributions are not paid on the date on which they are due and payable as prescribed by the commissioner, there shall be assessed a penalty of five percent of the amount of the contributions for the first month or part thereof of delinquency; there shall be assessed a total penalty of ten percent of the amount of the contributions for the second month or part thereof of delinquency; and there shall be assessed a total penalty of twenty percent of the amount of the contributions for the third month or part thereof of delinquency. No penalty so added shall be less than ten dollars. These penalties are in addition to the interest charges assessed under RCW 50.24.040.

(3) Penalties shall not accrue on contributions from an estate in the hands of a receiver, executor, administrator, trustee in bankruptcy, common law assignee, or other liquidating officer subsequent to the date when such receiver, executor, administrator, trustee in bankruptcy, common law assignee, or other liquidating officer qualifies as such, but contributions accruing with respect to employment of persons by a receiver, executor, administrator, trustee in bankruptcy, common law assignee, or other liquidating officer shall become due and shall be subject to penalties in the same manner as contributions due from other employers.

(4) Where adequate information has been furnished to the department and the department has failed to act or has advised the employer of no liability or inability to decide the issue, penalties shall be waived by the commissioner. Penalties may also be waived for good cause if the commissioner determines that the failure to timely file reports or pay contributions was not due to the employer's fault.

(5) Any decision to assess a penalty as provided by this section shall be made by the chief administrative officer of the tax branch or his or her designee.

(6) Nothing in this section shall be construed to deny an employer the right to appeal the assessment of any penalty. Such appeal shall be made in the manner provided in RCW 50.32.030.

Passed by the House February 12, 2004.

Passed by the Senate March 11, 2004.

Approved by the Governor March 24, 2004.

Filed in Office of Secretary of State March 24, 2004.

CHAPTER 98

[House Bill 2577]

NONPROFIT CORPORATIONS

AN ACT Relating to nonprofit corporations; and amending RCW 24.03.065, 24.03.075, and 24.03.465.

Be it enacted by the Legislature of the State of Washington:

Sec. 1. RCW 24.03.065 and 1986 c 240 s 12 are each amended to read as follows:

(1) A corporation may have one or more classes of members or may have no members. If the corporation has one or more classes of members, the designation of ~~((such))~~ the class or classes, the manner of election or appointment and the qualifications and rights of the members of each class ~~((shall))~~ must be set forth in the articles of incorporation or the bylaws. Unless otherwise specified in the articles of incorporation or the bylaws, an individual, domestic or foreign profit or nonprofit corporation, a general or limited partnership, an association or other entity may be a member of a corporation. If the corporation has no members, that fact ~~((shall))~~ must be set forth in the articles of incorporation or the bylaws. A corporation may issue certificates evidencing membership therein.

(2) A corporation may have one or more member committees. The creation, makeup, authority, and operating procedures of any member committee or committees must be addressed in the corporation's articles of incorporation or bylaws.

Sec. 2. RCW 24.03.075 and 1986 c 240 s 14 are each amended to read as follows:

Meetings of members and committees of members may be held at such place, either within or without this state, as ~~((may be))~~ stated in or fixed in accordance with the bylaws. In the absence of any such provision, all meetings ~~((shall))~~ must be held at the registered office of the corporation in this state.

An annual meeting of the members ~~((shall))~~ must be held at ~~((such))~~ the time ~~((as may be))~~ stated in or fixed in accordance with the bylaws. Failure to hold the annual meeting at the designated time ~~((shall))~~ does not work a forfeiture or dissolution of the corporation.

Special meetings of the members may be called by the president or by the board of directors. Special meetings of the members may also be called by ~~((such))~~ other officers or persons or number or proportion of members as ~~((may be))~~ provided in the articles of incorporation or the bylaws. In the absence of a provision fixing the number or proportion of members entitled to call a meeting, a special meeting of members may be called by members having one-twentieth of the votes entitled to be cast at ~~((such))~~ the meeting.

Except as ~~((may be))~~ otherwise restricted by the articles of incorporation or the bylaws, members and any committee of members of the corporation may participate in a meeting ~~((of members))~~ by ~~((means of a))~~ conference telephone or similar communications equipment ~~((by means of which))~~ so that all persons participating in the meeting can hear each other at the same time ~~((and))~~. Participation by ~~((such means shall))~~ that method constitutes presence in person at a meeting.

*Sec. 3. RCW 24.03.465 and 1967 c 235 s 94 are each amended to read as follows:

(1) Any action required by this chapter to be taken at a meeting of the members or ~~((directors of a corporation))~~ a committee of members, or any action ~~((which))~~ that may be taken at a meeting of the members or ~~((directors))~~ a committee of the members under a corporation's articles of incorporation or bylaws, may be taken without a meeting, except as otherwise restricted by the articles of incorporation or bylaws, if a consent in ~~((writing))~~ the form of a record, setting forth the action ~~((so))~~ taken, ~~((shall be signed by all))~~ is executed by a majority of the members or committee of members entitled to vote with respect to the subject matter ~~((thereof, or all of the directors, as the case may be))~~.

~~((Such))~~ The consent ~~((shall have))~~ has the same ~~((force and))~~ effect as a ~~((unanimous))~~ majority vote, and may be so stated ~~((as such))~~ in any articles or document filed with the secretary of state under this chapter.

(2) Any action required by this chapter to be taken at a meeting of the directors of a corporation, or any action that may be taken at a meeting of the directors, may be taken without a meeting if a consent in the form of a record, setting forth the action taken, is executed by all of the directors entitled to vote with respect to the subject matter. The consent has the same effect as a unanimous vote and may be so statcd in any articles or document filed with the secretary of state under this chapter.

*Sec. 3 was vetoed. See message at end of chapter.

Passed by the House February 14, 2004.

Passed by the Senate March 3, 2004.

Approved by the Governor March 24, 2004, with the exception of certain items that were vetoed.

Filed in Office of Secretary of State March 24, 2004.

Note: Governor's explanation of partial veto is as follows:

"I am returning herewith, without my approval as to section 3, House Bill No. 2577 entitled:

"AN ACT Relating to nonprofit corporations;"

This bill would allow a nonprofit corporation to provide in its articles of incorporation or its bylaws that one or more committees of members may handle duties assigned in the articles or bylaws. It further provides that committees of members may meet by teleconference or other electronic means.

Section 3 of House Bill No. 2577 would have amended RCW 24.03.465 to provide that unless restricted by articles or bylaws, members or committees of members could take action on a matter without a meeting if a majority of members, or committee members, consent. This authority is inconsistent with that provided to nonprofit corporations in section 39 of Engrossed Senate Bill No. 6188, which the Legislature also passed this session and which also amends RCW 24.03.465. Section 39 provides that an action "may be taken without a meeting if a consent in the form of a record, setting forth the action so taken, shall be executed by *all of the members* entitled to vote with respect to the subject matter thereof, or all of the directors, as the case may be." Substantively, these two sections differ on the important point of whether a "consent to action" by members of a nonprofit corporation requires affirmative action by a majority of members or by all members entitled to vote.

Section 3 would have also been inconsistent with section 11 of Engrossed Senate Bill No. 6188, which allows matters submitted to a vote of the members to be acted upon by a majority vote, and that such a vote may be conducted "by mail, by electronic transmission, or by proxy in the form of a record executed by the member." Section 11 would provide this authority only where specifically approved in the bylaws or articles of incorporation, while section 3 would have provided this authority unless it is specifically restricted in the bylaws or articles of incorporation.

In any event, section 11 of Engrossed Senate Bill No. 6188 provides an alternative mechanism by which matters submitted to members may be acted upon by a majority vote. This section establishes specific requirements and time limits for such voting, and therefore provides an effective and more comprehensive mechanism for action by members, and committees of members, than that provided under section 3 of House Bill No. 2577.

For these reasons, I have vetoed section 3 of House Bill No. 2577.

With the exception of section 3, House Bill No. 2577 is approved."

CHAPTER 99

[House Bill 2301]

COMMODITY COMMISSIONS

AN ACT Relating to severability clauses in commodity commission statutes; adding a new section to chapter 15.28 RCW; adding a new section to chapter 15.44 RCW; adding a new section to chapter 15.66 RCW; and declaring an emergency.

Be it enacted by the Legislature of the State of Washington:

NEW SECTION. Sec. 1. A new section is added to chapter 15.28 RCW to read as follows:

If any section, subsection, sentence, clause, or part of this chapter is for any reason held to be invalid or unconstitutional, the judicial decision does not affect the remainder of the chapter and its application to other persons or circumstances. The legislature declares that each section, subsection, sentence, clause, and part of this chapter was enacted with the intent that if any portion of

this chapter is severed, the remainder of the chapter is capable of accomplishing its legislative purpose.

NEW SECTION. Sec. 2. A new section is added to chapter 15.44 RCW to read as follows:

If any section, subsection, sentence, clause, or part of this chapter is for any reason held to be invalid or unconstitutional, the judicial decision does not affect the remainder of the chapter and its application to other persons or circumstances. The legislature declares that each section, subsection, sentence, clause, and part of this chapter was enacted with the intent that if any portion of this chapter is severed, the remainder of the chapter is capable of accomplishing its legislative purpose.

NEW SECTION. Sec. 3. A new section is added to chapter 15.66 RCW to read as follows:

If any section, subsection, sentence, clause, or part of this chapter is for any reason held to be invalid or unconstitutional, the judicial decision does not affect the remainder of the chapter and its application to other persons or circumstances. The legislature declares that each section, subsection, sentence, clause, and part of this chapter was enacted with the intent that if any portion of this chapter is severed, the remainder of the chapter is capable of accomplishing its legislative purpose.

NEW SECTION. Sec. 4. This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately.

Passed by the House February 11, 2004.

Passed by the Senate March 5, 2004.

Approved by the Governor March 24, 2004.

Filed in Office of Secretary of State March 24, 2004.

CHAPTER 100

[Substitute House Bill 2300]

PESTICIDES

AN ACT Relating to applying pesticides; amending RCW 17.21.020, 17.21.126, 17.21.128, 17.21.132, 17.21.140, and 15.58.030; and providing an effective date.

Be it enacted by the Legislature of the State of Washington:

Sec. 1. RCW 17.21.020 and 2002 c 122 s 2 are each amended to read as follows:

Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Agricultural commodity" means any plant or part of a plant, or animal, or animal product, produced by a person (including farmers, ranchers, vineyardists, plant propagators, Christmas tree growers, aquaculturists, floriculturists, orchardists, foresters, or other comparable persons) primarily for sale, consumption, propagation, or other use by people or animals.

(2) "Agricultural land" means land on which an agricultural commodity is produced or land that is in a government-recognized conservation reserve

program. This definition does not apply to private gardens where agricultural commodities are produced for personal consumption.

(3) "Antimicrobial pesticide" means a pesticide that is used for the control of microbial pests, including but not limited to viruses, bacteria, algae, and protozoa, and is intended for use as a disinfectant or sanitizer.

(4) "Apparatus" means any type of ground, water, or aerial equipment, device, or contrivance using motorized, mechanical, or pressurized power and used to apply any pesticide on land and anything that may be growing, habitating, or stored on or in such land, but shall not include any pressurized handsized household device used to apply any pesticide, or any equipment, device, or contrivance of which the person who is applying the pesticide is the source of power or energy in making such pesticide application, or any other small equipment, device, or contrivance that is transported in a piece of equipment licensed under this chapter as an apparatus.

(5) "Arthropod" means any invertebrate animal that belongs to the phylum arthropoda, which in addition to insects, includes allied classes whose members are wingless and usually have more than six legs; for example, spiders, mites, ticks, centipedes, and isopod crustaceans.

(6) "Certified applicator" means any individual who is licensed as a commercial pesticide applicator, commercial pesticide operator, public operator, private-commercial applicator, demonstration and research applicator, (~~or certified~~) private applicator, limited private applicator, rancher private applicator, or any other individual who is certified by the director to use or supervise the use of any pesticide which is classified by the EPA or the director as a restricted use pesticide.

(7) "Commercial pesticide applicator" means any person who engages in the business of applying pesticides to the land of another.

(8) "Commercial pesticide operator" means any employee of a commercial pesticide applicator who uses or supervises the use of any pesticide and who is required to be licensed under provisions of this chapter.

(9) "Defoliant" means any substance or mixture of substances intended to cause the leaves or foliage to drop from a plant with or without causing abscission.

(10) "Department" means the Washington state department of agriculture.

(11) "Desiccant" means any substance or mixture of substances intended to artificially accelerate the drying of plant tissues.

(12) "Device" means any instrument or contrivance intended to trap, destroy, control, repel, or mitigate pests, but not including equipment used for the application of pesticides when sold separately from the pesticides.

(13) "Direct supervision" by certified private applicators shall mean that the designated restricted use pesticide shall be applied for purposes of producing any agricultural commodity on land owned or rented by the applicator or the applicator's employer, by a competent person acting under the instructions and control of a certified private applicator who is available if and when needed, even though such certified private applicator is not physically present at the time and place the pesticide is applied. The certified private applicator shall have direct management responsibility and familiarity of the pesticide, manner of application, pest, and land to which the pesticide is being applied. Direct supervision by all other certified applicators means direct on-the-job supervision

and shall require that the certified applicator be physically present at the application site and that the person making the application be in voice and visual contact with the certified applicator at all times during the application. However, direct supervision for forest application does not require constant voice and visual contact when general use pesticides are applied using nonapparatus type equipment, the certified applicator is physically present and readily available in the immediate application area, and the certified applicator directly observes pesticide mixing and batching. Direct supervision of an aerial apparatus means the pilot of the aircraft must be appropriately certified.

(14) "Director" means the director of the department or a duly authorized representative.

(15) "Engage in business" means any application of pesticides by any person upon lands or crops of another.

(16) "EPA" means the United States environmental protection agency.

(17) "EPA restricted use pesticide" means any pesticide classified for restricted use by the administrator, EPA.

(18) "FIFRA" means the federal insecticide, fungicide and rodenticide act as amended (61 Stat. 163, 7 U.S.C. Sec. 136 et seq.).

(19) "Forest application" means the application of pesticides to agricultural land used to grow trees for the commercial production of wood or wood fiber for products such as dimensional lumber, shakes, plywood, poles, posts, pilings, particle board, hardboard, oriented strand board, pulp, paper, cardboard, or other similar products.

(20) "Fumigant" means any pesticide product or combination of products that is a vapor or gas or forms a vapor or gas on application and whose method of pesticidal action is through the gaseous state.

(21) "Fungi" means all nonchlorophyll-bearing thallophytes (all nonchlorophyll-bearing plants of lower order than mosses and liverworts); for example, rusts, smuts, mildews, molds, and yeasts, except those on or in a living person or other animals.

(22) "Fungicide" means any substance or mixture of substances intended to prevent, destroy, repel, or mitigate any fungi.

(23) "Herbicide" means any substance or mixture of substances intended to prevent, destroy, repel, or mitigate any weed or other higher plant.

(24) "Immediate service call" means a landscape application to satisfy an emergency customer request for service, or a treatment to control a pest to landscape plants.

(25) "Insect" means any small invertebrate animal, in any life stage, whose adult form is segmented and which generally belongs to the class insecta, comprised of six-legged, usually winged forms, as, for example, beetles, bugs, bees, and flies. The term insect shall also apply to other allied classes of arthropods whose members are wingless and usually have more than six legs, for example, spiders, mites, ticks, centipedes, and isopod crustaceans.

(26) "Insecticide" means any substance or mixture of substances intended to prevent, destroy, repel, or mitigate any insect.

(27) "Land" means all land and water areas, including airspace and all plants, animals, structures, buildings, devices, and contrivances, appurtenant to or situated on, fixed or mobile, including any used for transportation.

(28) "Landscape application" means an application of any EPA registered pesticide to any exterior landscape area around residential property, commercial properties such as apartments or shopping centers, parks, golf courses, schools including nursery schools and licensed day cares, or cemeteries or similar areas. This definition shall not apply to: (a) Applications made by ~~((certified))~~ private applicators, limited private applicators, or rancher private applicators; (b) mosquito abatement, gypsy moth eradication, or similar wide-area pest control programs sponsored by governmental entities; and (c) commercial pesticide applicators making structural applications.

(29) "Limited private applicator" means a certified applicator who uses or is in direct supervision, as defined for private applicators in this section, of the use of any herbicide classified by the EPA or the director as a restricted use pesticide, for the sole purpose of controlling weeds on nonproduction agricultural land owned or rented by the applicator or the applicator's employer. Limited private applicators may also use restricted use pesticides on timber areas, excluding aquatic sites, to control weeds designated for mandatory control under chapters 17.04, 17.06, and 17.10 RCW and state and local regulations adopted under chapters 17.04, 17.06, and 17.10 RCW. A limited private applicator may apply restricted use herbicides to the types of land described in this subsection of another person if applied without compensation other than trading of personal services between the applicator and the other person. This license is only valid when making applications in counties of Washington located east of the crest of the Cascade mountains.

(30) "Limited production agricultural land" means land used to grow hay and grain crops that are consumed by the livestock on the farm where produced. No more than ten percent of the hay and grain crops grown on limited production agricultural land may be sold each crop year. Limited production agricultural land does not include aquatic sites.

(31) "Nematocide" means any substance or mixture of substances intended to prevent, destroy, repel, or mitigate nematodes.

~~((30))~~ (32) "Nematode" means any invertebrate animal of the phylum nemathelminthes and class nematoda, that is, unsegmented round worms with elongated, fusiform, or saclike bodies covered with cuticle, and inhabiting soil, water, plants or plant parts. Nematodes may also be called nemas or eelworms.

~~((31))~~ (33) "Nonproduction agricultural land" means pastures, rangeland, fencerows, and areas around farm buildings but not aquatic sites.

(34) "Person" means any individual, partnership, association, corporation, or organized group of persons whether or not incorporated.

~~((32))~~ (35) "Pest" means, but is not limited to, any insect, rodent, nematode, snail, slug, weed, and any form of plant or animal life or virus, except virus, bacteria, or other microorganisms on or in a living person or other animal or in or on processed food or beverages or pharmaceuticals, which is normally considered to be a pest, or which the director may declare to be a pest.

~~((33))~~ (36) "Pesticide" means, but is not limited to:

(a) Any substance or mixture of substances intended to prevent, destroy, control, repel, or mitigate any pest;

(b) Any substance or mixture of substances intended to be used as a plant regulator, defoliant or desiccant; and

(c) Any spray adjuvant(~~(, such as a wetting agent, spreading agent, deposit builder, adhesive, emulsifying agent, deflocculating agent, water modifier, or similar agent with or without toxic properties of its own intended to be used with any pesticide as an aid to the application or effect thereof, and sold in a package or container separate from that of the pesticide with which it is to be used))~~ as defined in RCW 15.58.030.

~~((34))~~ (37) "Pesticide advisory board" means the pesticide advisory board as provided for in this chapter.

~~((35))~~ (38) "Plant regulator" means any substance or mixture of substances intended through physiological action, to accelerate or retard the rate of growth or maturation, or to otherwise alter the behavior of ornamental or crop plants or their produce, but shall not include substances insofar as they are intended to be used as plant nutrients, trace elements, nutritional chemicals, plant inoculants, or soil amendments.

~~((36))~~ (39) "Private applicator" means a certified applicator who uses or is in direct supervision of the use of any pesticide classified by the EPA or the director as a restricted use pesticide, for the purposes of producing any agricultural commodity and for any associated noncrop application on land owned or rented by the applicator or the applicator's employer or if applied without compensation other than trading of personal services between producers of agricultural commodities on the land of another person.

~~((37))~~ (40) "Private-commercial applicator" means a certified applicator who uses or supervises the use of any pesticide classified by the EPA or the director as a restricted use pesticide for purposes other than the production of any agricultural commodity on lands owned or rented by the applicator or the applicator's employer.

~~((38))~~ (41) "Rancher private applicator" means a certified applicator who uses or is in direct supervision, as defined for private applicators in this section, of the use of any herbicide or any rodenticide classified by the EPA or the director as a restricted use pesticide for the purpose of controlling weeds and pest animals on nonproduction agricultural land and limited production agricultural land owned or rented by the applicator or the applicator's employer. Rancher private applicators may also use restricted use pesticides on timber areas, excluding aquatic sites, to control weeds designated for mandatory control under chapters 17.04, 17.06, and 17.10 RCW and state and local regulations adopted under chapters 17.04, 17.06, and 17.10 RCW. A rancher private applicator may apply restricted use herbicides and rodenticides to the types of land described in this subsection of another person if applied without compensation other than trading of personal services between the applicator and the other person. This license is only valid when making applications in counties of Washington located east of the crest of the Cascade mountains.

(42) "Residential property" includes property less than one acre in size zoned as residential by a city, town, or county, but does not include property zoned as agricultural or agricultural homesites.

~~((39))~~ (43) "Restricted use pesticide" means any pesticide or device which, when used as directed or in accordance with a widespread and commonly recognized practice, the director determines, subsequent to a hearing, requires additional restrictions for that use to prevent unreasonable adverse effects on the

environment including people, lands, beneficial insects, animals, crops, and wildlife, other than pests.

~~((40))~~ (44) "Rodenticide" means any substance or mixture of substances intended to prevent, destroy, repel, or mitigate rodents, or any other vertebrate animal which the director may declare by rule to be a pest.

~~((41))~~ (45) "School facility" means any facility used for licensed day care center purposes or for the purposes of a public kindergarten or public elementary or secondary school. School facility includes the buildings or structures, playgrounds, landscape areas, athletic fields, school vehicles, or any other area of school property.

~~((42))~~ (46) "Snails or slugs" include all harmful mollusks.

~~((42))~~ (47) "Unreasonable adverse effects on the environment" means any unreasonable risk to people or the environment taking into account the economic, social, and environmental costs and benefits of the use of any pesticide, or as otherwise determined by the director.

~~((44))~~ (48) "Weed" means any plant which grows where it is not wanted.

Sec. 2. RCW 17.21.126 and 1997 c 242 s 14 are each amended to read as follows:

It ~~(shall be)~~ is unlawful for any person to act as a private ~~((pesticide))~~ applicator, limited private applicator, or rancher private applicator without first complying with requirements determined by the director as necessary to prevent unreasonable adverse effects on the environment, including injury to the pesticide applicator or other persons, for each specific pesticide use.

(1) Certification standards to determine the individual's competency with respect to the use and handling of the pesticide or class of pesticides for which the private ~~((pesticide))~~ applicator, limited private applicator, or rancher private applicator is certified shall be relative to hazards of the particular type of application, class of pesticides, or handling procedure. In determining these standards the director shall take into consideration standards of the EPA and is authorized to adopt these standards by rule.

(2) ~~((Application for a private pesticide applicator license shall be accompanied by a fee of twenty-five dollars))~~ Application for a private applicator or a limited private applicator license, or the renewal of such licenses under RCW 17.21.132(4), shall be accompanied by a fee of twenty-five dollars. Application for a rancher private applicator license, or renewal of such license under RCW 17.21.132(4), shall be accompanied by a fee of seventy-five dollars. Individuals with a valid certified applicator license, pest control consultant license, or dealer manager license who qualify in the appropriate statewide or agricultural license categories are exempt from the private applicator, limited private applicator, or rancher private applicator fee requirements. However, licensed public pesticide operators, otherwise exempted from the public pesticide operator license fee requirement, are not also exempted from the ~~((private pesticide applicator))~~ fee requirements under this subsection.

Sec. 3. RCW 17.21.128 and 1994 c 283 s 13 are each amended to read as follows:

(1) The director may renew any certification or license issued under authority of this chapter subject to the recertification standards identified in

subsection (2) of this section or an examination requiring new knowledge that may be required to apply pesticides.

(2) Except as provided in subsection (3) of this section, all individuals licensed under this chapter shall meet the recertification standards identified in (a) or (b) of this subsection, every five years, in order to qualify for continuing licensure.

(a) Licensed pesticide applicators may qualify for continued licensure through accumulation of recertification credits.

(i) Private (~~pesticide~~) applicators shall accumulate a minimum of twenty department-approved credits every five years with no more than eight credits allowed per year;

(ii) Limited private applicators shall accumulate a minimum of eight department-approved credits every five years. All credits must be applicable to the control of weeds with at least one-half of the credits directly related to weed control and the remaining credits in topic areas indirectly related to weed control, such as the safe and legal use of pesticides;

(iii) Rancher private applicators shall accumulate a minimum of twelve department-approved credits every five years;

(iv) All other license types established under this chapter shall accumulate a minimum of forty department-approved credits every five years with no more than fifteen credits allowed per year.

(b) Certified pesticide applicators may qualify for continued licensure through meeting the examination requirements necessary to become licensed in those areas in which the licensee operates.

(3) At the termination of a licensee's five-year recertification period, the director may waive the requirements identified in subsection (2) of this section if the licensee can demonstrate that he or she is meeting comparable recertification standards through another state or jurisdiction or through a federal environmental protection agency approved government agency plan.

Sec. 4. RCW 17.21.132 and 1997 c 242 s 16 are each amended to read as follows:

Any person applying for a license or certification authorized under the provisions of this chapter shall file an application on a form prescribed by the director.

(1) The application shall state the license or certification and the classification(s) for which the applicant is applying and the method in which the pesticides are to be applied.

(2) For all classes of licenses except private applicator, limited private applicator, and rancher private applicator, all applicants shall be at least eighteen years of age on the date that the application is made. Applicants for a private (~~pesticide~~) applicator, limited private applicator, or rancher private applicator license shall be at least sixteen years of age on the date that the application is made.

(3) Application for a license to apply pesticides shall be accompanied by the required fee. No license may be issued until the required fee has been received by the department.

(4) Each classification of license issued under this chapter (~~shall~~) except the limited private applicator and the rancher private applicator expires annually on a date set by rule by the director. Limited and rancher private applicator

licenses expire on the fifth December 31st after issuance. Renewal applications shall be filed on or before the applicable expiration date.

Sec. 5. RCW 17.21.140 and 1991 c 109 s 36 are each amended to read as follows:

(1) If the application for renewal of any license provided for in this chapter is not filed on or prior to the expiration date of the license under this chapter or as set by rule by the director, a penalty of twenty-five dollars for the commercial pesticide applicator's license and the rancher private applicator license, and a penalty equivalent to the license fee for any other license, shall be assessed and added to the original fee and shall be paid by the applicant before the renewal license (~~(shall be)~~ is issued(~~(: PROVIDED, That such)~~). However, the penalty (~~(shall)~~ does not apply if the applicant furnishes an affidavit certifying that he or she has not acted as a licensee subsequent to the expiration of the license.

(2) Any license for which a timely renewal application has been made, all other requirements have been met, and the proper fee paid, continues in full force and effect until the director notifies the applicant that the license has been renewed or the application has been denied.

Sec. 6. RCW 15.58.030 and 2003 c 212 s 1 are each amended to read as follows:

As used in this chapter the words and phrases defined in this section shall have the meanings indicated unless the context clearly requires otherwise.

(1) "Active ingredient" means any ingredient which will prevent, destroy, repel, control, or mitigate pests, or which will act as a plant regulator, defoliant, desiccant, or spray adjuvant.

(2) "Antidote" means the most practical immediate treatment in case of poisoning and includes first aid treatment.

(3) "Arthropod" means any invertebrate animal that belongs to the phylum arthropoda, which in addition to insects, includes allied classes whose members are wingless and usually have more than six legs; for example, spiders, mites, ticks, centipedes, and isopod crustaceans.

(4) "Complete wood destroying organism inspection" means inspection for the purpose of determining evidence of infestation, damage, or conducive conditions as part of the transfer, exchange, or refinancing of any structure in Washington state. Complete wood destroying organism inspections include any wood destroying organism inspection that is conducted as the result of telephone solicitation by an inspection, pest control, or other business, even if the inspection would fall within the definition of a specific wood destroying organism inspection.

(5) "Defoliant" means any substance or mixture of substances intended to cause the leaves or foliage to drop from a plant with or without causing abscission.

(6) "Department" means the Washington state department of agriculture.

(7) "Desiccant" means any substance or mixture of substances intended to artificially accelerate the drying of plant tissues.

(8) "Device" means any instrument or contrivance intended to trap, destroy, control, repel, or mitigate pests, or to destroy, control, repel or mitigate fungi, nematodes, or such other pests, as may be designated by the director, but not

including equipment used for the application of pesticides when sold separately from the pesticides.

(9) "Director" means the director of the department or a duly authorized representative.

(10) "Distribute" means to offer for sale, hold for sale, sell, barter, or supply pesticides in this state.

(11) "EPA" means the United States environmental protection agency.

(12) "EPA restricted use pesticide" means any pesticide with restricted uses as classified for restricted use by the administrator, EPA.

(13) "FIFRA" means the federal insecticide, fungicide, and rodenticide act as amended (61 Stat. 163, 7 U.S.C. Sec. 136 et seq.).

(14) "Fungi" means all nonchlorophyll-bearing thallophytes (all nonchlorophyll-bearing plants of a lower order than mosses and liverworts); for example, rusts, smuts, mildews, molds, yeasts, and bacteria, except those on or in living persons or other animals.

(15) "Fungicide" means any substance or mixture of substances intended to prevent, destroy, repel, or mitigate any fungi.

(16) "Herbicide" means any substance or mixture of substances intended to prevent, destroy, repel, or mitigate any weed.

(17) "Inert ingredient" means an ingredient which is not an active ingredient.

(18) "Ingredient statement" means a statement of the name and percentage of each active ingredient together with the total percentage of the inert ingredients in the pesticide, and when the pesticide contains arsenic in any form, the ingredient statement shall also include percentages of total and water soluble arsenic, each calculated as elemental arsenic. ~~((In the case of a spray adjuvant))~~ The ingredient statement ((need contain only the names of the principal functioning agents and the total percentage of the constituents ineffective as spray adjuvants. If more than three functioning agents are present, only the three principal ones need be named)) for a spray adjuvant must be consistent with the labeling requirements adopted by rule.

(19) "Insect" means any of the numerous small invertebrate animals whose bodies are more or less obviously segmented, and which for the most part belong to the class insecta, comprising six-legged, usually winged forms, for example, beetles, bugs, bees, flies, and to other allied classes of arthropods whose members are wingless and usually have more than six legs, for example, spiders, mites, ticks, centipedes, and isopod crustaceans.

(20) "Insecticide" means any substance or mixture of substances intended to prevent, destroy, repel, or mitigate any insects which may be present in any environment whatsoever.

(21) "Inspection control number" means a number obtained from the department that is recorded on wood destroying organism inspection reports issued by a structural pest inspector in conjunction with the transfer, exchange, or refinancing of any structure.

(22) "Label" means the written, printed, or graphic matter on, or attached to, the pesticide, device, or immediate container, and the outside container or wrapper of the retail package.

(23) "Labeling" means all labels and other written, printed, or graphic matter:

(a) Upon the pesticide, device, or any of its containers or wrappers;
(b) Accompanying the pesticide, or referring to it in any other media used to disseminate information to the public; and

(c) To which reference is made on the label or in literature accompanying or referring to the pesticide or device except when accurate nonmisleading reference is made to current official publications of the department, United States departments of agriculture; interior; education; health and human services; state agricultural colleges; and other similar federal or state institutions or agencies authorized by law to conduct research in the field of pesticides.

(24) "Land" means all land and water areas, including airspace and all plants, animals, structures, buildings, devices and contrivances, appurtenant thereto or situated thereon, fixed or mobile, including any used for transportation.

(25) "Master license system" means the mechanism established by chapter 19.02 RCW by which master licenses, endorsed for individual state-issued licenses, are issued and renewed using a master application and a master license expiration date common to each renewable license endorsement.

(26) "Nematocide" means any substance or mixture of substances intended to prevent, destroy, repel, or mitigate nematodes.

(27) "Nematode" means any invertebrate animal of the phylum nemathelminthes and class nematoda, that is, unsegmented round worms with elongated, fusiform, or saclike bodies covered with cuticle, and inhabiting soil, water, plants or plant parts, may also be called nemas or eelworms.

(28) "Person" means any individual, partnership, association, corporation, or organized group of persons whether or not incorporated.

(29) "Pest" means, but is not limited to, any insect, rodent, nematode, snail, slug, weed and any form of plant or animal life or virus, except virus on or in a living person or other animal, which is normally considered to be a pest or which the director may declare to be a pest.

(30) "Pest control consultant" means any individual who sells or offers for sale at other than a licensed pesticide dealer outlet or location where they are employed, or who offers or supplies technical advice or makes recommendations to the user of:

(a) Highly toxic pesticides, as determined under RCW 15.58.040;

(b) EPA restricted use pesticides or restricted use pesticides which are restricted by rule to distribution by licensed pesticide dealers only; or

(c) Any other pesticide except those pesticides which are labeled and intended for home and garden use only.

(31) "Pesticide" means, but is not limited to:

(a) Any substance or mixture of substances intended to prevent, destroy, control, repel, or mitigate any insect, rodent, snail, slug, fungus, weed, and any other form of plant or animal life or virus, except virus on or in a living person or other animal which is normally considered to be a pest or which the director may declare to be a pest;

(b) Any substance or mixture of substances intended to be used as a plant regulator, defoliant or desiccant; and

(c) Any spray adjuvant.

(32) "Pesticide advisory board" means the pesticide advisory board as provided for in the Washington pesticide application act.

(33) "Pesticide dealer" means any person who distributes any of the following pesticides:

(a) Highly toxic pesticides, as determined under RCW 15.58.040;

(b) EPA restricted use pesticides or restricted use pesticides which are restricted by rule to distribution by licensed pesticide dealers only; or

(c) Any other pesticide except those pesticides which are labeled and intended for home and garden use only.

(34) "Pesticide dealer manager" means the owner or other individual supervising pesticide distribution at one outlet holding a pesticide dealer license.

(35) "Plant regulator" means any substance or mixture of substances intended through physiological action, to accelerate or retard the rate of growth or maturation, or to otherwise alter the behavior of ornamental or crop plants or their produce, but shall not include substances insofar as they are intended to be used as plant nutrients, trace elements, nutritional chemicals, plant inoculants, or soil amendments.

(36) "Registrant" means the person registering any pesticide under the provisions of this chapter.

(37) "Restricted use pesticide" means any pesticide or device which, when used as directed or in accordance with a widespread and commonly recognized practice, the director determines, subsequent to a hearing, requires additional restrictions for that use to prevent unreasonable adverse effects on the environment including people, lands, beneficial insects, animals, crops, and wildlife, other than pests.

(38) "Rodenticide" means any substance or mixture of substances intended to prevent, destroy, repel, or mitigate rodents, or any other vertebrate animal which the director may declare by rule to be a pest.

(39) "Specific wood destroying organism inspection" means an inspection of a structure for purposes of identifying or verifying evidence of an infestation of wood destroying organisms prior to pest management activities.

(40) "Spray adjuvant" means any (~~wetting agent, spreading agent, deposit builder, adhesive, emulsifying agent, deflocculating agent, water modifier, or similar agent with or without toxic properties of its own,~~) product intended to be used with (~~any other~~) a pesticide as an aid to the application or to the effect of the pesticide, and which is in a package or container separate from (~~that of~~) the pesticide (~~with which it is to be used~~). Spray adjuvant includes, but is not limited to, acidifiers, compatibility agents, crop oil concentrates, defoaming agents, drift control agents, modified vegetable oil concentrates, nonionic surfactants, organosilicone surfactants, stickers, and water conditioning agents. Spray adjuvant does not include products that are only intended to mark the location where a pesticide is applied.

(41) "Special local needs registration" means a registration issued by the director pursuant to provisions of section 24(c) of FIFRA.

(42) "Structural pest inspector" means any individual who performs the service of conducting a complete wood destroying organism inspection or a specific wood destroying organism inspection.

(43) "Unreasonable adverse effects on the environment" means any unreasonable risk to people or the environment taking into account the economic, social, and environmental costs and benefits of the use of any pesticide, or as otherwise determined by the director.

(44) "Weed" means any plant which grows where not wanted.

(45) "Wood destroying organism" means insects or fungi that consume, excavate, develop in, or otherwise modify the integrity of wood or wood products. Wood destroying organism includes, but is not limited to, carpenter ants, moisture ants, subterranean termites, dampwood termites, beetles in the family Anobiidae, and wood decay fungi (wood rot).

(46) "Wood destroying organism inspection report" means any written document that reports or comments on the presence or absence of wood destroying organisms, their damage, and/or conducive conditions leading to the establishment of such organisms.

NEW SECTION. **Sec. 7.** This act takes effect January 1, 2005.

Passed by the House March 9, 2004.

Passed by the Senate March 5, 2004.

Approved by the Governor March 24, 2004.

Filed in Office of Secretary of State March 24, 2004.

CHAPTER 101

[Substitute House Bill 2308]

INERT WASTE LANDFILLS

AN ACT Relating to requiring the department of ecology to develop specific criteria for the types of solid wastes that are allowed to be received by inert waste landfills; amending RCW 70.95.030; and adding a new section to chapter 70.95 RCW.

Be it enacted by the Legislature of the State of Washington:

Sec. 1. RCW 70.95.030 and 2002 c 299 s 4 are each amended to read as follows:

As used in this chapter, unless the context indicates otherwise:

- (1) "City" means every incorporated city and town.
- (2) "Commission" means the utilities and transportation commission.
- (3) "Committee" means the state solid waste advisory committee.
- (4) "Composted material" means organic solid waste that has been subjected to controlled aerobic degradation at a solid waste facility in compliance with the requirements of this chapter. Natural decay of organic solid waste under uncontrolled conditions does not result in composted material.
- (5) "Department" means the department of ecology.
- (6) "Director" means the director of the department of ecology.
- (7) "Disposal site" means the location where any final treatment, utilization, processing, or deposit of solid waste occurs.
- (8) "Energy recovery" means a process operating under federal and state environmental laws and regulations for converting solid waste into usable energy and for reducing the volume of solid waste.
- (9) "Functional standards" means criteria for solid waste handling expressed in terms of expected performance or solid waste handling functions.
- (10) "Incineration" means a process of reducing the volume of solid waste operating under federal and state environmental laws and regulations by use of an enclosed device using controlled flame combustion.

(11) "Inert waste landfill" means a landfill that receives only inert waste, as determined under section 2 of this act, and includes facilities that use inert wastes as a component of fill.

(12) "Jurisdictional health department" means city, county, city-county, or district public health department.

~~((12))~~ (13) "Landfill" means a disposal facility or part of a facility at which solid waste is placed in or on land and which is not a land treatment facility.

~~((13))~~ (14) "Local government" means a city, town, or county.

~~((14))~~ (15) "Modify" means to substantially change the design or operational plans including, but not limited to, removal of a design element previously set forth in a permit application or the addition of a disposal or processing activity that is not approved in the permit.

~~((15))~~ (16) "Multiple family residence" means any structure housing two or more dwelling units.

~~((16))~~ (17) "Person" means individual, firm, association, copartnership, political subdivision, government agency, municipality, industry, public or private corporation, or any other entity whatsoever.

~~((17))~~ (18) "Recyclable materials" means those solid wastes that are separated for recycling or reuse, such as papers, metals, and glass, that are identified as recyclable material pursuant to a local comprehensive solid waste plan. Prior to the adoption of the local comprehensive solid waste plan, adopted pursuant to RCW 70.95.110(2), local governments may identify recyclable materials by ordinance from July 23, 1989.

~~((18))~~ (19) "Recycling" means transforming or remanufacturing waste materials into usable or marketable materials for use other than landfill disposal or incineration.

~~((19))~~ (20) "Residence" means the regular dwelling place of an individual or individuals.

~~((20))~~ (21) "Sewage sludge" means a semisolid substance consisting of settled sewage solids combined with varying amounts of water and dissolved materials, generated from a wastewater treatment system, that does not meet the requirements of chapter 70.95J RCW.

~~((21))~~ (22) "Soil amendment" means any substance that is intended to improve the physical characteristics of the soil, except composted material, commercial fertilizers, agricultural liming agents, unmanipulated animal manures, unmanipulated vegetable manures, food wastes, food processing wastes, and materials exempted by rule of the department, such as biosolids as defined in chapter 70.95J RCW and wastewater as regulated in chapter 90.48 RCW.

~~((22))~~ (23) "Solid waste" or "wastes" means all putrescible and nonputrescible solid and semisolid wastes including, but not limited to, garbage, rubbish, ashes, industrial wastes, swill, sewage sludge, demolition and construction wastes, abandoned vehicles or parts thereof, and recyclable materials.

~~((23))~~ (24) "Solid waste handling" means the management, storage, collection, transportation, treatment, utilization, processing, and final disposal of solid wastes, including the recovery and recycling of materials from solid

wastes, the recovery of energy resources from solid wastes or the conversion of the energy in solid wastes to more useful forms or combinations thereof.

~~((24))~~ (25) "Source separation" means the separation of different kinds of solid waste at the place where the waste originates.

~~((25))~~ (26) "Vehicle" includes every device physically capable of being moved upon a public or private highway, road, street, or watercourse and in, upon, or by which any person or property is or may be transported or drawn upon a public or private highway, road, street, or watercourse, except devices moved by human or animal power or used exclusively upon stationary rails or tracks.

~~((26))~~ (27) "Waste-derived soil amendment" means any soil amendment as defined in this chapter that is derived from solid waste as defined in RCW 70.95.030, but does not include biosolids or biosolids products regulated under chapter 70.95J RCW or wastewaters regulated under chapter 90.48 RCW.

~~((27))~~ (28) "Waste reduction" means reducing the amount or toxicity of waste generated or reusing materials.

~~((28))~~ (29) "Yard debris" means plant material commonly created in the course of maintaining yards and gardens, and through horticulture, gardening, landscaping, or similar activities. Yard debris includes but is not limited to grass clippings, leaves, branches, brush, weeds, flowers, roots, windfall fruit, vegetable garden debris, holiday trees, and tree prunings four inches or less in diameter.

NEW SECTION. Sec. 2. A new section is added to chapter 70.95 RCW to read as follows:

(1) The department shall, as part of the minimum functional standards for solid waste handling required under RCW 70.95.060, develop specific criteria for the types of solid wastes that are allowed to be received by inert waste landfills that seek to continue operation after February 10, 2003.

(2) The criteria for inert waste developed under this section must, at a minimum, contain a list of substances that an inert waste landfill located in a county with fewer than forty-five thousand residents is permitted to receive if it was operational before February 10, 2003, and is located at a site with a five-year annual rainfall of twenty-five inches or less. The substances permitted for the inert waste landfills satisfying the criteria listed in this subsection must include the following types of solid waste if the waste has not been tainted, through exposure from chemical, physical, biological, or radiological substances, such that it presents a threat to human health or the environment greater than that inherent to the material:

- (a) Cured concrete, including any embedded steel reinforcing and wood;
- (b) Asphaltic materials, including road construction asphalt;
- (c) Brick and masonry;
- (d) Ceramic materials produced from fired clay or porcelain;
- (e) Glass;
- (f) Stainless steel and aluminum; and
- (g) Other materials as defined in chapter 173-350 WAC.

(3) The department shall work with the owner or operators of landfills that do not meet the minimum functional standards for inert waste landfills to explore and implement appropriate means of transition into a limited purpose

landfill that is able to accept additional materials as specified in WAC 173-350-400.

Passed by the House February 17, 2004.

Passed by the Senate March 5, 2004.

Approved by the Governor March 24, 2004.

Filed in Office of Secretary of State March 24, 2004.

CHAPTER 102

[Engrossed House Bill 2318]

FOREST RIPARIAN EASEMENT PROGRAM

AN ACT Relating to the verification of small forest landowner status for a forest riparian easement program application; amending RCW 76.13.120; adding a new section to chapter 76.13 RCW; and adding a new section to chapter 84.33 RCW.

Be it enacted by the Legislature of the State of Washington:

Sec. 1. RCW 76.13.120 and 2002 c 120 s 2 are each amended to read as follows:

(1) The legislature finds that the state should acquire easements along riparian and other sensitive aquatic areas from small forest landowners willing to sell or donate such easements to the state provided that the state will not be required to acquire such easements if they are subject to unacceptable liabilities. The legislature therefore establishes a forestry riparian easement program.

(2) The definitions in this subsection apply throughout this section and RCW 76.13.100 and 76.13.110 unless the context clearly requires otherwise.

(a) "Forestry riparian easement" means an easement covering qualifying timber granted voluntarily to the state by a small forest landowner.

(b) "Qualifying timber" means those trees covered by a forest practices application that the small forest landowner is required to leave unharvested under the rules adopted under RCW 76.09.055 and 76.09.370 or that is made uneconomic to harvest by those rules, and for which the small landowner is willing to grant the state a forestry riparian easement. "Qualifying timber" is timber within or bordering a commercially reasonable harvest unit as determined under rules adopted by the forest practices board, or timber for which an approved forest practices application for timber harvest cannot be obtained because of restrictions under the forest practices rules.

(c) "Small forest landowner" means a landowner meeting all of the following characteristics: (i) A forest landowner as defined in RCW 76.09.020 whose interest in the land and timber is in fee or who has rights to the timber to be included in the forestry riparian easement that extend at least fifty years from the date the forest practices application associated with the easement is submitted; (ii) an entity that has harvested from its own lands in this state during the three years prior to the year of application an average timber volume that would qualify the owner as a small harvester under RCW 84.33.035; and (iii) an entity that certifies at the time of application that it does not expect to harvest from its own lands more than the volume allowed by RCW 84.33.035 during the ten years following application. If a landowner's prior three-year average harvest exceeds the limit of RCW 84.33.035, or the landowner expects to exceed this limit during the ten years following application, and that landowner establishes to the department of natural resources' reasonable satisfaction that

the harvest limits were or will be exceeded to raise funds to pay estate taxes or equally compelling and unexpected obligations such as court-ordered judgments or extraordinary medical expenses, the landowner shall be deemed to be a small forest landowner.

For purposes of determining whether a person qualifies as a small forest landowner, the small forest landowner office, created in RCW 76.13.110, shall evaluate the landowner under this definition, pursuant to section 2 of this act, as of the date that the forest practices application is submitted or the date the landowner notifies the department that the harvest is to begin with which the forestry riparian easement is associated. A small forest landowner can include an individual, partnership, corporate, or other nongovernmental legal entity. If a landowner grants timber rights to another entity for less than five years, the landowner may still qualify as a small forest landowner under this section. If a landowner is unable to obtain an approved forest practices application for timber harvest for any of his or her land because of restrictions under the forest practices rules, the landowner may still qualify as a small forest landowner under this section.

(d) "Completion of harvest" means that the trees have been harvested from an area and that further entry into that area by mechanized logging or slash treating equipment is not expected.

(3) The department of natural resources is authorized and directed to accept and hold in the name of the state of Washington forestry riparian easements granted by small forest landowners covering qualifying timber and to pay compensation to such landowners in accordance with subsections (6) and (7) of this section. The department of natural resources may not transfer the easements to any entity other than another state agency.

(4) Forestry riparian easements shall be effective for fifty years from the date the forest practices application associated with the qualifying timber is submitted to the department of natural resources, unless the easement is terminated earlier by the department of natural resources voluntarily, based on a determination that termination is in the best interest of the state, or under the terms of a termination clause in the easement.

(5) Forestry riparian easements shall be restrictive only, and shall preserve all lawful uses of the easement premises by the landowner that are consistent with the terms of the easement and the requirement to protect riparian functions during the term of the easement, subject to the restriction that the leave trees required by the rules to be left on the easement premises may not be cut during the term of the easement. No right of public access to or across, or any public use of the easement premises is created by this statute or by the easement. Forestry riparian easements shall not be deemed to trigger the compensating tax of or otherwise disqualify land from being taxed under chapter 84.33 or 84.34 RCW.

(6) Upon application of a small forest landowner for a riparian easement that is associated with a forest practices application and the landowner's marking of the qualifying timber on the qualifying lands, the small forest landowner office shall determine the compensation to be offered to the small forest landowner as provided for in this section. The small forest landowner office shall also determine the compensation to be offered to a small forest landowner for qualifying timber for which an approved forest practices application for

timber harvest cannot be obtained because of restrictions under the forest practices rules. The legislature recognizes that there is not readily available market transaction evidence of value for easements of this nature, and thus establishes the following methodology to ascertain the value for forestry riparian easements. Values so determined shall not be considered competent evidence of value for any other purpose.

The small forest landowner office shall establish the volume of the qualifying timber. Based on that volume and using data obtained or maintained by the department of revenue under RCW 84.33.074 and 84.33.091, the small forest landowner office shall attempt to determine the fair market value of the qualifying timber as of the date the forest practices application associated with the qualifying timber was submitted or the date the landowner notifies the department that the harvest is to begin. Removal of any qualifying timber before the expiration of the easement must be in accordance with the forest practices rules and the terms of the easement. There shall be no reduction in compensation for reentry.

(7) Except as provided in subsection (8) of this section, the small forest landowner office shall, subject to available funding, offer compensation to the small forest landowner in the amount of fifty percent of the value determined in subsection (6) of this section, plus the compliance and reimbursement costs as determined in accordance with RCW 76.13.140. If the landowner accepts the offer for qualifying timber that will be harvested pursuant to an approved forest practices application, the department of natural resources shall pay the compensation promptly upon (a) completion of harvest in the area covered by the forestry riparian easement; (b) verification that there has been compliance with the rules requiring leave trees in the easement area; and (c) execution and delivery of the easement to the department of natural resources. If the landowner accepts the offer for qualifying timber for which an approved forest practices application for timber harvest cannot be obtained because of restrictions under the forest practices rules, the department of natural resources shall pay the compensation promptly upon (i) verification that there has been compliance with the rules requiring leave trees in the easement area; and (ii) execution and delivery of the easement to the department of natural resources. Upon donation or payment of compensation, the department of natural resources may record the easement.

(8) For approved forest practices applications where the regulatory impact is greater than the average percentage impact for all small landowners as determined by the department of natural resources analysis under the regulatory fairness act, chapter 19.85 RCW, the compensation offered will be increased to one hundred percent for that portion of the regulatory impact that is in excess of the average. Regulatory impact includes trees left in buffers, special management zones, and those rendered uneconomic to harvest by these rules. A separate average or high impact regulatory threshold shall be established for western and eastern Washington. Criteria for these measurements and payments shall be established by the small forest landowner office.

(9) The forest practices board shall adopt rules under the administrative procedure act, chapter 34.05 RCW, to implement the forestry riparian easement program, including the following:

- (a) A standard version or versions of all documents necessary or advisable to create the forestry riparian easements as provided for in this section;
- (b) Standards for descriptions of the easement premises with a degree of precision that is reasonable in relation to the values involved;
- (c) Methods and standards for cruises and valuation of forestry riparian easements for purposes of establishing the compensation. The department of natural resources shall perform the timber cruises of forestry riparian easements required under this chapter and chapter 76.09 RCW. Any rules concerning the methods and standards for valuations of forestry riparian easements shall apply only to the department of natural resources, small forest landowners, and the small forest landowner office;
- (d) A method to determine that a forest practices application involves a commercially reasonable harvest, and adopt criteria for entering into a forest riparian easement where a commercially reasonable harvest is not possible or a forest practices application that has been submitted cannot be approved because of restrictions under the forest practices rules;
- (e) A method to address blowdown of qualified timber falling outside the easement premises;
- (f) A formula for sharing of proceeds in relation to the acquisition of qualified timber covered by an easement through the exercise or threats of eminent domain by a federal or state agency with eminent domain authority, based on the present value of the department of natural resources' and the landowner's relative interests in the qualified timber;
- (g) High impact regulatory thresholds;
- (h) A method to determine timber that is qualifying timber because it is rendered uneconomic to harvest by the rules adopted under RCW 76.09.055 and 76.09.370; and
- (i) A method for internal department of natural resources review of small forest landowner office compensation decisions under subsection (7) of this section.

NEW SECTION. Sec. 2. A new section is added to chapter 76.13 RCW to read as follows:

When establishing a forest riparian easement program applicant's status as a qualifying small forest landowner pursuant to RCW 76.13.120, the department shall not review the applicant's timber harvest records, or any other tax-related documents, on file with the department of revenue. The department of revenue may confirm or deny an applicant's status as a small forest landowner at the request of the department; however, for the purposes of this section, the department of revenue may not disclose more information than whether or not the applicant has reported a harvest or harvests totaling greater than or less than the qualifying thresholds established in RCW 76.13.120. Nothing in this section, or section 3 of this act, prohibits the department from reviewing aggregate or general information provided by the department of revenue.

NEW SECTION. Sec. 3. A new section is added to chapter 84.33 RCW to read as follows:

The department shall, when contacted by the department of natural resources under section 2 of this act, rely on submitted tax-related documents to confirm or deny that an applicant for the forest riparian easement program

established in RCW 76.13.120 satisfies the definition of a small forest landowner, as that term is defined in RCW 76.13.120. Nothing in this section, or section 2 of this act, prohibits the department from providing the department of natural resources with aggregate or general information.

Passed by the House February 11, 2004.

Passed by the Senate March 3, 2004.

Approved by the Governor March 24, 2004.

Filed in Office of Secretary of State March 24, 2004.

CHAPTER 103

[House Bill 2454]

PARK LAND TRUST REVOLVING FUND—CONTRIBUTIONS

AN ACT Relating to voluntary contributions to the park land trust revolving fund; and amending RCW 43.30.385.

Be it enacted by the Legislature of the State of Washington:

Sec. 1. RCW 43.30.385 and 2003 c 334 s 106 are each amended to read as follows:

(1) The park land trust revolving fund is to be utilized by the department for the ~~((exclusive))~~ purpose of acquiring real property, including all reasonable costs associated with these acquisitions, as a replacement for the property transferred to the state parks and recreation commission, as directed by the legislature in order to maintain the land base of the affected trusts or under RCW 79.22.060 and to receive voluntary contributions for the purpose of operating and maintaining public use and recreation facilities, including trails, managed by the department. Proceeds from transfers of real property to the state parks and recreation commission or other proceeds identified from transfers of real property as directed by the legislature shall be deposited in this fund. Disbursement from the park land trust revolving fund to acquire replacement property and for operating and maintaining public use and recreation facilities shall be on the authorization of the department. In order to maintain an effective expenditure and revenue control, the park land trust revolving fund is subject in all respects to chapter 43.88 RCW, but no appropriation is required to permit expenditures and payment of obligations from the fund.

(2) The department is authorized to solicit and receive voluntary contributions for the purpose of operating and maintaining public use and recreation facilities, including trails, managed by the department. The department may seek voluntary contributions from individuals and organizations for this purpose. Voluntary contributions will be deposited into the park land trust revolving fund and used solely for the purpose of public use and recreation facilities operations and maintenance. Voluntary contributions are not considered a fee for use of these facilities.

Passed by the House February 11, 2004.

Passed by the Senate March 3, 2004.

Approved by the Governor March 24, 2004.

Filed in Office of Secretary of State March 24, 2004.

CHAPTER 104

[Substitute House Bill 2307]

WATER CONSERVANCY BOARDS—COMMISSIONER ELIGIBILITY

AN ACT Relating to eligibility to serve as a commissioner of a water conservancy board; amending RCW 90.80.050; and creating a new section.

Be it enacted by the Legislature of the State of Washington:

NEW SECTION. Sec. 1. The purpose of this act is to ensure that counties have a sufficient portion of their citizenry eligible to serve as commissioners of water conservancy boards to enable the appointing legislative authorities to fill positions on the boards in both urban and rural counties.

Sec. 2. RCW 90.80.050 and 2001 c 237 s 10 are each amended to read as follows:

(1) A water conservancy board constitutes a public body corporate and politic and a separate unit of local government in the state. Each board shall consist of three commissioners appointed by the county legislative authority or authorities as applicable for six-year terms. The county legislative authority or authorities shall stagger the initial appointment of commissioners so that the first commissioners who are appointed shall serve terms of two, four, and six years, respectively, from the date of their appointment. The county legislative authority or authorities may appoint two additional commissioners, for a total of five. If the county or counties elect to appoint five commissioners, the initial terms of the additional commissioners shall be for three and five-year terms respectively. All vacancies shall be filled for the unexpired term.

(2) The county legislative authority or authorities shall consider, but are not limited in appointing, nominations to the board by people or entities petitioning or requesting the creation of the board. The county legislative authority or authorities shall ensure that at least one commissioner is an individual water right holder who diverts or withdraws water for use within the area served by the board. The county legislative authority or authorities must appoint one person who is not a water right holder, except as provided in subsection (4) of this section. If the county legislative authority or authorities choose not to appoint five commissioners, and as of May 10, 2001, there is no commissioner on an existing board who is not a water right holder, the county or counties are not required to appoint a new commissioner until the first vacancy occurs. In making appointments to the board, the county legislative authority or authorities shall choose from among persons who are residents of the county or counties or a county that is contiguous to the county that the water conservancy board is to serve.

(3) No commissioner may participate in a record of decision of a board until he or she has successfully completed the necessary training required under RCW 90.80.040. Commissioners shall serve without compensation, but are entitled to reimbursement for necessary travel expenses in accordance with RCW 43.03.050 and 43.03.060 and costs incident to receiving training.

(4) For the purposes determining a person's eligibility to be appointed as a commissioner who is not a water right holder under this section, a person is not considered to be a water right holder: (a) By virtue of the person's receiving water from a municipal water supplier as defined in RCW 90.03.015, or (b) if the only water right held by the person is a right to the type of residential use of

water that is exempted from permit requirements by RCW 90.44.050 and that right is for water from a well located in a county with a population that is not greater than one hundred fifty thousand people.

Passed by the House February 11, 2004.

Passed by the Senate March 3, 2004.

Approved by the Governor March 24, 2004.

Filed in Office of Secretary of State March 24, 2004.

CHAPTER 105

[Substitute House Bill 2489]

OFF-ROAD VEHICLES

AN ACT Relating to off-road and nonhighway vehicles; amending RCW 46.09.020, 46.09.110, 46.09.130, 46.09.130, 46.09.240, 46.09.280, and 46.09.050; reenacting and amending RCW 46.09.170 and 46.09.170; adding a new section to chapter 46.09 RCW; providing effective dates; and providing expiration dates.

Be it enacted by the Legislature of the State of Washington:

Sec. 1. RCW 46.09.020 and 1986 c 206 s 1 are each amended to read as follows:

~~((As used in this chapter the following words and phrases have the designated meanings unless a different meaning is expressly provided or the context otherwise clearly indicates:~~

~~"Person" means any individual, firm, partnership, association, or corporation:~~

~~"Nonhighway vehicle" means any motorized vehicle when used for recreation travel on trails and nonhighway roads or for recreation cross-country travel on any one of the following or a combination thereof: Land, water, snow, ice, marsh, swampland, and other natural terrain. Such vehicles include but are not limited to, off road vehicles, two, three, or four wheel vehicles, motorcycles, four wheel drive vehicles, dune buggies, amphibious vehicles, ground effects or air cushion vehicles, and any other means of land transportation deriving motive power from any source other than muscle or wind.~~

~~Nonhighway vehicle does not include:~~

~~(1) Any vehicle designed primarily for travel on, over, or in the water;~~

~~(2) Snowmobiles or any military vehicles; or~~

~~(3) Any vehicle eligible for a motor vehicle fuel tax exemption or rebate under chapter 82.36 RCW while an exemption or rebate is claimed. This exemption includes but is not limited to farm, construction, and logging vehicles.~~

~~"Off road vehicle" or "ORV" means any nonhighway vehicle when used for cross-country travel on trails or on any one of the following or a combination thereof: Land, water, snow, ice, marsh, swampland and other natural terrain.~~

~~"ORV use permit" means a permit issued for operation of an off-road vehicle under this chapter.~~

~~"ORV trail" means a multiple use corridor designated and maintained for recreational travel by off-road vehicles that is not normally suitable for travel by conventional two wheel drive vehicles and is posted or designated by the managing authority of the property that the trail traverses as permitting ORV travel.~~

~~"ORV use area" means the entire area of a parcel of land except for camping and approved buffer areas that is posted or designated for ORV use in accordance with rules adopted by the managing authority.~~

~~"ORV recreation facility" includes ORV trails and ORV use areas.~~

~~"Owner" means the person other than the lienholder, having an interest in or title to a nonhighway vehicle, and entitled to the use or possession thereof.~~

~~"Operator" means each person who operates, or is in physical control of, any nonhighway vehicle.)~~

The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Advisory committee" means the nonhighway and off-road vehicle activities advisory committee established in RCW 46.09.280.

(2) "Committee" means the interagency committee for outdoor recreation established in RCW 79A.25.110.

(3) "Dealer" means a person, partnership, association, or corporation engaged in the business of selling off-road vehicles at wholesale or retail in this state.

(4) "Department" means the department of licensing.

~~("Hunt" means any effort to kill, injure, capture, or purposely disturb a wild animal or wild bird.~~

~~"Nonhighway road" means any road owned or managed by a public agency, or any private road for which the owner has granted a permanent easement for public use of the road, other than a highway generally capable of travel by a conventional two-wheel drive passenger automobile during most of the year and in use by such vehicles and that is not built or maintained with appropriations from the motor vehicle fund.~~

~~"Highway," for the purpose of this chapter only, means the entire width between the boundary lines of every way publicly maintained by the state department of transportation or any county or city when any part thereof is generally open to the use of the public for purposes of vehicular travel as a matter of right.~~

~~"Organized competitive event" means any competition, advertised in advance through written notice to organized clubs or published in local newspapers, sponsored by recognized clubs, and conducted at a predetermined time and place.)~~

(5) "Highway," for the purpose of this chapter only, means the entire width between the boundary lines of every roadway publicly maintained by the state department of transportation or any county or city with funding from the motor vehicle fund. A highway is generally capable of travel by a conventional two-wheel drive passenger automobile during most of the year and in use by such vehicles.

(6) "Motorized vehicle" means a vehicle that derives motive power from an internal combustion engine.

(7) "Nonhighway road" means any road owned or managed by a public agency or any private road for which the owner has granted an easement for public use for which appropriations from the motor vehicle fund were not used for (a) original construction or reconstruction in the last twenty-five years; or (b) maintenance in the last four years.

(8) "Nonhighway road recreation facilities" means recreational facilities that are adjacent to, or accessed by, a nonhighway road and intended primarily for nonhighway road recreational users.

(9) "Nonhighway road recreational user" means a person whose purpose for consuming fuel on a nonhighway road or off-road is primarily for nonhighway road recreational purposes, including, but not limited to, hunting, fishing, camping, sightseeing, wildlife viewing, picnicking, driving for pleasure, kayaking/canoeing, and gathering berries, firewood, mushrooms, and other natural products.

(10) "Nonhighway vehicle" means any motorized vehicle including an ORV when used for recreational purposes on nonhighway roads, trails, or a variety of other natural terrain.

Nonhighway vehicle does not include:

(a) Any vehicle designed primarily for travel on, over, or in the water;

(b) Snowmobiles or any military vehicles; or

(c) Any vehicle eligible for a motor vehicle fuel tax exemption or rebate under chapter 82.36 RCW while an exemption or rebate is claimed. This exemption includes but is not limited to farm, construction, and logging vehicles.

(11) "Nonmotorized recreational facilities" means recreational trails and facilities that are adjacent to, or accessed by, a nonhighway road and intended primarily for nonmotorized recreational users.

(12) "Nonmotorized recreational user" means a person whose purpose for consuming fuel on a nonhighway road or off-road is primarily for nonmotorized recreational purposes including, but not limited to, walking, hiking, backpacking, climbing, cross-country skiing, snowshoeing, mountain biking, horseback riding, and pack animal activities.

(13) "Off-road vehicle" or "ORV" means any nonstreet licensed vehicle when used for recreational purposes on nonhighway roads, trails, or a variety of other natural terrain. Such vehicles include, but are not limited to, all-terrain vehicles, motorcycles, four-wheel drive vehicles, and dune buggies.

(14) "Operator" means each person who operates, or is in physical control of, any nonhighway vehicle.

(15) "Organized competitive event" means any competition, advertised in advance through written notice to organized clubs or published in local newspapers, sponsored by recognized clubs, and conducted at a predetermined time and place.

(16) "ORV recreation facilities" include, but are not limited to, ORV trails, trailheads, campgrounds, ORV sports parks, and ORV use areas, designated for ORV use by the managing authority that are intended primarily for ORV recreational users.

(17) "ORV recreational user" means a person whose purpose for consuming fuel on nonhighway roads or off-road is primarily for ORV recreational purposes, including but not limited to riding an all-terrain vehicle, motorcycling, or driving a four-wheel drive vehicle or dune buggy.

(18) "ORV sport park" means a facility designed to accommodate competitive ORV recreational uses including, but not limited to, motocross racing, four-wheel drive competitions, and flat track racing. Use of ORV sports parks can be competitive or noncompetitive in nature.

(19) "ORV trail" means a multiple-use corridor designated by the managing authority and maintained for recreational use by motorized vehicles.

(20) "ORV use permit" means a permit issued for operation of an off-road vehicle under this chapter.

(21) "Owner" means the person other than the lienholder, having an interest in or title to a nonhighway vehicle, and entitled to the use or possession thereof.

(22) "Person" means any individual, firm, partnership, association, or corporation.

Sec. 2. RCW 46.09.110 and 1986 c 206 s 6 are each amended to read as follows:

The moneys collected by the department under this chapter shall be distributed from time to time but at least once a year in the following manner:

The department shall retain enough money to cover expenses incurred in the administration of this chapter: PROVIDED, That such retention shall never exceed eighteen percent of fees collected.

The remaining moneys shall be distributed for ORV recreation facilities by the interagency committee for outdoor recreation in accordance with RCW 46.09.170(~~((+)(d))~~) (2)(d)(ii)(A).

Sec. 3. RCW 46.09.130 and 1994 c 264 s 35 are each amended to read as follows:

No person may operate a nonhighway vehicle in such a way as to endanger human life. No person shall operate a nonhighway vehicle in such a way as to run down or harass any wildlife or animal, nor carry, transport, or convey any loaded weapon in or upon, nor hunt from, any nonhighway vehicle except by permit issued by the director of fish and wildlife under RCW 77.32.237: PROVIDED, That it shall not be unlawful to carry, transport, or convey a loaded pistol in or upon a nonhighway vehicle if the person complies with the terms and conditions of chapter 9.41 RCW.

For the purposes of this section, "hunt" means any effort to kill, injure, capture, or purposely disturb a wild animal or bird.

Violation of this section is a gross misdemeanor.

Sec. 4. RCW 46.09.130 and 2003 c 53 s 233 are each amended to read as follows:

(1) No person may operate a nonhighway vehicle in such a way as to endanger human life.

(2) No person shall operate a nonhighway vehicle in such a way as to run down or harass any wildlife or animal, nor carry, transport, or convey any loaded weapon in or upon, nor hunt from, any nonhighway vehicle except by permit issued by the director of fish and wildlife under RCW 77.32.237: PROVIDED, That it shall not be unlawful to carry, transport, or convey a loaded pistol in or upon a nonhighway vehicle if the person complies with the terms and conditions of chapter 9.41 RCW.

(3) For the purposes of this section, "hunt" means any effort to kill, injure, capture, or purposely disturb a wild animal or bird.

(4) Violation of this section is a gross misdemeanor.

Sec. 5. RCW 46.09.170 and 2003 1st sp.s. c 26 s 920, 2003 1st sp.s. c 25 s 922, and 2003 c 361 s 407 are each reenacted and amended to read as follows:

(1) From time to time, but at least once each year, the state treasurer shall refund from the motor vehicle fund one percent of the motor vehicle fuel tax revenues collected under chapter 82.36 RCW, based on a tax rate of: (a) Nineteen cents per gallon of motor vehicle fuel from July 1, 2003, through June 30, 2005; (b) twenty cents per gallon of motor vehicle fuel from July 1, 2005, through June 30, 2007; (c) twenty-one cents per gallon of motor vehicle fuel from July 1, 2007, through June 30, 2009; (d) twenty-two cents per gallon of motor vehicle fuel from July 1, 2009, through June 30, 2011; and (e) twenty-three cents per gallon of motor vehicle fuel beginning July 1, 2011, and thereafter, less proper deductions for refunds and costs of collection as provided in RCW 46.68.090.

(2) The treasurer shall place these funds in the general fund as follows:

~~((i) Forty))~~ (a) ~~Thirty-six~~ percent shall be credited to the ORV and nonhighway vehicle account and administered by the department of natural resources solely for acquisition, planning, development, maintenance, and management of ORV, nonmotorized, and nonhighway road recreation facilities, and information programs and maintenance of nonhighway roads~~((, and nonhighway road recreation facilities. The funds under this subsection shall be expended in accordance with the following limitations:~~

(A) ~~Not more than five percent may be expended for information programs under this chapter;~~

(B) ~~Not less than ten percent and not more than fifty percent may be expended for ORV recreation facilities;~~

(C) ~~Not more than twenty-five percent may be expended for maintenance of nonhighway roads;~~

(D) ~~Not more than fifty percent may be expended for nonhighway road recreation facilities;~~

(E) ~~Ten percent shall be transferred to the interagency committee for outdoor recreation for grants to law enforcement agencies in those counties where the department of natural resources maintains ORV facilities. This amount is in addition to those distributions made by the interagency committee for outdoor recreation under (e)(iv)(A) of this subsection);~~

~~((ii))~~ (b) Three and one-half percent shall be credited to the ORV and nonhighway vehicle account and administered by the department of fish and wildlife solely for the acquisition, planning, development, maintenance, and management of ORV, nonmotorized, and nonhighway ~~((roads and))~~ road recreation facilities and the maintenance of nonhighway roads;

~~((iii))~~ (c) Two percent shall be credited to the ORV and nonhighway vehicle account and administered by the parks and recreation commission solely for the acquisition, planning, development, maintenance, and management of ORV ~~((use areas and)), nonmotorized, and nonhighway road recreation facilities;~~ and

~~((iv) Fifty four))~~ (d) ~~Fifty-eight~~ and one-half percent~~((, together with the funds received by the interagency committee for outdoor recreation under RCW 46.09.110,))~~ shall be credited to the nonhighway and off-road vehicle activities program account to be administered by the committee for planning, acquisition, development, maintenance, and management of ORV, nonmotorized, and nonhighway road recreation facilities ~~((and nonhighway road recreation facilities; ORV user)), and for education~~ ~~((and)), information~~~~((;)), and~~ ~~((ORV))~~

law enforcement programs. During the fiscal year ending June 30, 2004, a portion of these funds may be appropriated to the department of natural resources to maintain and operate existing ORV and other recreation facilities, including ORV campgrounds, for the state parks and recreation commission to construct and upgrade trails and trail-related facilities for both motorized and nonmotorized uses, and for other activities identified in this section. The funds under this subsection shall be expended in accordance with the following limitations, except that during the fiscal year ending June 30, 2004, funds appropriated to the committee from motor vehicle fuel tax revenues for the activities in ~~((e)(iv)(B) and (C))~~ (d)(ii) of this subsection shall be reduced by the amounts appropriated to the department of natural resources and the state parks and recreation commission as provided in this subsection:

~~((A))~~ (i) Not more than ~~(twenty)~~ thirty percent may be expended for ~~((ORV))~~ education, information, and law enforcement programs under this chapter;

~~((B))~~ Not less than an amount equal to the funds received by the interagency committee for outdoor recreation under RCW 46.09.110 and not more than sixty percent may be expended for ORV recreation facilities;

~~(C) Not more than twenty percent may be expended for nonhighway road recreation facilities))~~ (ii) Not less than seventy percent may be expended for ORV, nonmotorized, and nonhighway road recreation facilities. Except as provided in (d)(iii) of this subsection, of this amount:

(A) Not less than thirty percent, together with the funds the committee receives under RCW 46.09.110, may be expended for ORV recreation facilities;

(B) Not less than thirty percent may be expended for nonmotorized recreation facilities. Funds expended under this subsection (2)(d)(ii)(B) shall be known as Ira Spring outdoor recreation facilities funds; and

(C) Not less than thirty percent may be expended for nonhighway road recreation facilities;

(iii) The committee may waive the minimum percentage cited in (d)(ii) of this subsection due to insufficient requests for funds or projects that score low in the committee's project evaluation. Funds remaining after such a waiver must be allocated in accordance with committee policy.

~~((2))~~ (3) On a yearly basis an agency may not, except as provided in RCW 46.09.110, expend more than ten percent of the funds it receives under this chapter for general administration expenses incurred in carrying out this chapter.

~~((3))~~ (4) During the 2003-05 fiscal biennium, the legislature may appropriate such amounts as reflect the excess fund balance in the ~~((ORV))~~ NOVA account to the interagency committee for outdoor recreation, the department of natural resources, the department of fish and wildlife, and the state parks and recreation commission. This appropriation is not required to follow the specific distribution specified in subsection ~~((4))~~ (2) of this section.

Sec. 6. RCW 46.09.170 and 2003 1st sp.s. c 25 s 922 and 2003 c 361 s 407 are each reenacted and amended to read as follows:

(1) From time to time, but at least once each year, the state treasurer shall refund from the motor vehicle fund one percent of the motor vehicle fuel tax revenues collected under chapter 82.36 RCW, based on a tax rate of: (a) Nineteen cents per gallon of motor vehicle fuel from July 1, 2003, through June 30, 2005; (b) twenty cents per gallon of motor vehicle fuel from July 1, 2005,

through June 30, 2007; (c) twenty-one cents per gallon of motor vehicle fuel from July 1, 2007, through June 30, 2009; (d) twenty-two cents per gallon of motor vehicle fuel from July 1, 2009, through June 30, 2011; and (e) twenty-three cents per gallon of motor vehicle fuel beginning July 1, 2011, and thereafter, less proper deductions for refunds and costs of collection as provided in RCW 46.68.090.

(2) The treasurer shall place these funds in the general fund as follows:

~~((i) Forty)) (a) Thirty-six~~ percent shall be credited to the ORV and nonhighway vehicle account and administered by the department of natural resources solely for acquisition, planning, development, maintenance, and management of ORV, nonmotorized, and nonhighway road recreation facilities, and information programs and maintenance of nonhighway roads~~((and nonhighway road recreation facilities. The funds under this subsection shall be expended in accordance with the following limitations:~~

(A) Not more than five percent may be expended for information programs under this chapter;

~~(B) Not less than ten percent and not more than fifty percent may be expended for ORV recreation facilities;~~

~~(C) Not more than twenty five percent may be expended for maintenance of nonhighway roads;~~

~~(D) Not more than fifty percent may be expended for nonhighway road recreation facilities;~~

~~(E) Ten percent shall be transferred to the interagency committee for outdoor recreation for grants to law enforcement agencies in those counties where the department of natural resources maintains ORV facilities. This amount is in addition to those distributions made by the interagency committee for outdoor recreation under (e)(iv)(A) of this subsection));~~

~~((ii)) (b) Three and one-half percent shall be credited to the ORV and nonhighway vehicle account and administered by the department of fish and wildlife solely for the acquisition, planning, development, maintenance, and management of ORV, nonmotorized, and nonhighway ~~((roads and)) road recreation facilities and the maintenance of nonhighway roads;~~~~

~~((iii)) (c) Two percent shall be credited to the ORV and nonhighway vehicle account and administered by the parks and recreation commission solely for the acquisition, planning, development, maintenance, and management of ORV ~~((use areas and)), nonmotorized, and nonhighway road recreation facilities; and~~~~

~~((iv) Fifty four)) (d) Fifty-eight and one-half percent~~((, together with the funds received by the interagency committee for outdoor recreation under RCW 46.09.110,)) shall be credited to the nonhighway and off-road vehicle activities program account to be administered by the committee for planning, acquisition, development, maintenance, and management of ORV, nonmotorized, and nonhighway road recreation facilities ~~((and nonhighway road recreation facilities; ORV user)) and for education ~~((and)), information~~((;)), and ~~((ORV))~~ law enforcement programs. The funds under this subsection shall be expended in accordance with the following limitations:~~~~~~~~~~

~~((A)) (i) Not more than ~~((twenty))~~ thirty percent may be expended for ~~((ORV))~~ education, information, and law enforcement programs under this chapter;~~

~~((B) Not less than an amount equal to the funds received by the interagency committee for outdoor recreation under RCW 46.09.110 and not more than sixty percent may be expended for ORV recreation facilities;~~

~~(C) Not more than twenty percent may be expended for nonhighway road recreation facilities)) (ii) Not less than seventy percent may be expended for ORV, nonmotorized, and nonhighway road recreation facilities. Except as provided in (d)(iii) of this subsection, of this amount:~~

~~(A) Not less than thirty percent, together with the funds the committee receives under RCW 46.09.110, may be expended for ORV recreation facilities;~~

~~(B) Not less than thirty percent may be expended for nonmotorized recreation facilities. Funds expended under this subsection (2)(d)(ii)(B) shall be known as Ira Spring outdoor recreation facilities funds; and~~

~~(C) Not less than thirty percent may be expended for nonhighway road recreation facilities;~~

~~(iii) The committee may waive the minimum percentage cited in (d)(ii) of this subsection due to insufficient requests for funds or projects that score low in the committee's project evaluation. Funds remaining after such a waiver must be allocated in accordance with committee policy.~~

~~((2)) (3) On a yearly basis an agency may not, except as provided in RCW 46.09.110, expend more than ten percent of the funds it receives under this chapter for general administration expenses incurred in carrying out this chapter.~~

~~((3)) (4) During the 2003-05 fiscal biennium, the legislature may appropriate such amounts as reflect the excess fund balance in the ((ORV)) NOVA account to the interagency committee for outdoor recreation, the department of natural resources, the department of fish and wildlife, and the state parks and recreation commission. This appropriation is not required to follow the specific distribution specified in subsection ((4)) (2) of this section.~~

Sec. 7. RCW 46.09.240 and 1998 c 144 s 1 are each amended to read as follows:

(1) After deducting administrative expenses and the expense of any programs conducted under this chapter, the interagency committee for outdoor recreation shall, at least once each year, distribute the funds it receives under RCW 46.09.110 and 46.09.170 to state agencies, counties, municipalities, federal agencies, nonprofit ORV organizations, and Indian tribes. Funds distributed under this section to nonprofit ORV organizations may be spent only on projects or activities that benefit ORV recreation on lands once publicly owned that come into private ownership in a federally approved land exchange completed between January 1, 1998, and January 1, 2005.

(2) The committee shall adopt rules governing applications for funds administered by the agency under this chapter and shall determine the amount of money distributed to each applicant. Agencies receiving funds under this chapter for capital purposes shall consider the possibility of contracting with the state parks and recreation commission, the department of natural resources, or other federal, state, and local agencies to employ the youth development and conservation corps or other youth crews in completing the project.

~~((2) The interagency committee shall require each applicant for land acquisition or development funds under this section to conduct, before submitting the application, a public hearing in the nearest town of five hundred~~

population or more, and publish notice of such hearing on the same day of each week for two consecutive weeks as follows:

(a) In the newspaper of general circulation published nearest the proposed project;

(b) In the newspaper having the largest circulation in the county or counties where the proposed project is located; and

(c) If the proposed project is located in a county with a population of less than forty thousand, the notice shall also be published in the newspaper having the largest circulation published in the nearest county that has a population of forty thousand or more.

~~(3) The notice shall state that the purpose of the hearing is to solicit comments regarding an application being prepared for submission to the interagency committee for outdoor recreation for acquisition or development funds under the off-road and nonhighway vehicle program. The applicant shall file notice of the hearing with the department of ecology at the main office in Olympia and shall comply with the State Environmental Policy Act, chapter 43.21C RCW. A written record and a magnetic tape recording of the hearing shall be included in the application.)~~

(3) The interagency committee for outdoor recreation shall require each applicant for acquisition or development funds under this section to comply with the requirements of either the state environmental policy act, chapter 43.21C RCW, or the national environmental policy act (42 U.S.C. Sec. 4321 et seq.).

Sec. 8. RCW 46.09.280 and 2003 c 185 s 1 are each amended to read as follows:

(1) The interagency committee for outdoor recreation shall establish the nonhighway and off-road vehicle activities advisory committee to provide advice regarding the administration of this chapter. The ((nonhighway and off-road vehicle advisory)) committee consists of governmental representatives, land managers, and a proportional representation of persons with recreational experience in areas identified in the most recent fuel use study, including but not limited to people with ((off-road vehicle)) ORV, hiking, equestrian, mountain biking, hunting, fishing, and wildlife viewing experience.

~~((Only representatives of organized ORV groups may be voting members of the committee with respect to))~~ (2) After the advisory committee has made recommendations regarding the expenditure of the fuel tax revenue portion of the nonhighway and off-road vehicle account moneys, the advisory committee's ORV and mountain biking recreationists, governmental representatives, and land managers will make recommendations regarding the expenditure of funds received under RCW 46.09.110.

(3) At least once a year, the interagency committee for outdoor recreation, the department of natural resources, the department of fish and wildlife, and the state parks and recreation commission shall report to the nonhighway and off-road vehicle activities advisory committee on the expenditures of funds received under RCW 46.09.110 and 46.09.170 and must proactively seek the advisory committee's advice regarding proposed expenditures.

(4) The advisory committee shall advise these agencies regarding the allocation of funds received under RCW 46.09.170 to ensure that overall expenditures reflect consideration of the results of the most recent fuel use study.

Sec. 9. RCW 46.09.050 and 1986 c 206 s 3 are each amended to read as follows:

ORV use permits and ORV tags shall be required under the provisions of this chapter except for the following:

(1) Off-road vehicles owned and operated by the United States, another state, or a political subdivision thereof.

(2) Off-road vehicles owned and operated by this state, or by any municipality or political subdivision thereof.

~~(3) ((An off-road vehicle operating in an organized competitive event on privately owned or leased land: PROVIDED, That if such leased land is owned by the state of Washington this exemption shall not apply unless the state agency exercising jurisdiction over the land in question specifically authorizes said competitive event: PROVIDED FURTHER, That such exemption shall be strictly construed.~~

~~(4))~~ (4)) Off-road vehicles operated on agricultural lands owned or leased by the ORV owner or operator ~~((or on lands which the operator has permission to operate without an ORV use permit)).~~

~~((5))~~ (4) Off-road vehicles owned by a resident of another state that have a valid ORV permit or vehicle license issued in accordance with the laws of the other state. This exemption shall apply only to the extent that a similar exemption or privilege is granted under the laws of that state.

~~((6))~~ (5) Off-road vehicles while being used for search and rescue purposes under the authority or direction of an appropriate search and rescue or law enforcement agency.

~~((7) Vehicles used primarily for construction or inspection purposes during the course of a commercial operation.~~

~~(8))~~ (6) Vehicles which are licensed pursuant to chapter 46.16 RCW or in the case of nonresidents, vehicles which are validly licensed for operation over public highways in the jurisdiction of the owner's residence.

NEW SECTION. Sec. 10. A new section is added to chapter 46.09 RCW to read as follows:

Except as provided in RCW 46.09.050, it is unlawful for any dealer to sell at retail an off-road vehicle without an ORV use permit required in RCW 46.09.040.

NEW SECTION. Sec. 11. (1) Section 3 of this act expires July 1, 2004.

(2) Section 4 of this act takes effect July 1, 2004.

(3) Section 5 of this act expires June 30, 2005.

(4) Section 6 of this act takes effect June 30, 2005.

Passed by the House March 9, 2004.

Passed by the Senate March 5, 2004.

Approved by the Governor March 24, 2004.

Filed in Office of Secretary of State March 24, 2004.

CHAPTER 106

[Substitute House Bill 2919]

OFF-ROAD VEHICLE USE PERMITS

AN ACT Relating to off-road vehicle use permits; amending RCW 46.09.070; and creating a new section.

Be it enacted by the Legislature of the State of Washington:

Sec. 1. RCW 46.09.070 and 2002 c 352 s 1 are each amended to read as follows:

(1) Application for annual or temporary ORV use permits shall be made to the department or its authorized agent in such manner and upon such forms as the department shall prescribe and shall state the name and address of each owner of the off-road vehicle.

(2) An application for an annual permit shall be signed by at least one owner, and shall be accompanied by a fee of (~~five~~) eighteen dollars. Upon receipt of the annual permit application and the application fee, the off-road vehicle shall be assigned a use permit number tag or decal, which shall be affixed to the off-road vehicle in a manner prescribed by the department. The annual permit is valid for a period of one year and is renewable each year in such manner as the department may prescribe for an additional period of one year upon payment of a renewal fee of (~~five~~) eighteen dollars.

Any person acquiring an off-road vehicle for which an annual permit has been issued who desires to continue to use the permit must, within fifteen days of the acquisition of the off-road vehicle, make application to the department or its authorized agent for transfer of the permit, and the application shall be accompanied by a transfer fee of five dollars.

(3) A temporary use permit is valid for sixty days. Application for a temporary permit shall be accompanied by a fee of (~~two~~) seven dollars. The permit shall be carried on the vehicle at all times during its operation in the state.

(4) Except as provided in RCW 46.09.050, any out-of-state operator of an off-road vehicle shall, when operating in this state, comply with this chapter, and if an ORV use permit is required under this chapter, the operator shall obtain an annual or temporary permit and tag.

NEW SECTION. Sec. 2. Section 1 of this act takes effect with registrations that are due or become due November 1, 2004, or later.

Passed by the House February 13, 2004.

Passed by the Senate March 5, 2004.

Approved by the Governor March 24, 2004.

Filed in Office of Secretary of State March 24, 2004.

CHAPTER 107

[Substitute House Bill 2431]

DUNGENESS CRAB ENDORSEMENT

AN ACT Relating to Dungeness crab endorsement; amending RCW 77.32.430; creating new sections; providing an effective date; and declaring an emergency.

Be it enacted by the Legislature of the State of Washington:

NEW SECTION. Sec. 1. It is the intent of the legislature to optimize the management of the recreational allocation of Dungeness crab in Washington state. To accomplish this task, it is necessary to accurately and efficiently quantify the total catch by recreational fishers for Dungeness crab using data from catch record cards. Therefore, an endorsement fee on the catch record card paid at the time of purchasing a recreational fishing license will be required for Dungeness crab to specifically identify the recreational crab harvesting

population. The endorsement fee will significantly improve the precision of the catch estimates by eliminating the current practice of sampling fishers who do not participate in the recreational crab fishery.

Sec. 2. RCW 77.32.430 and 2003 c 318 s 1 are each amended to read as follows:

(1) Catch record card~~((s))~~ information is necessary for proper management of the state's food fish and game fish species and shellfish resources. Catch record card administration shall be ((administered)) under rules adopted by the commission ((and issued at no charge for the)). There is no charge for an initial catch record card ((and ten dollars for)). Each subsequent or duplicate catch record card ((-A duplicate catch record [card]) costs ten dollars.

(2) A license to take and possess Dungeness crab is only valid in Puget Sound waters east of the Bonilla-Tatoosh line if the fisher has in possession a valid catch record card officially endorsed for Dungeness crab. The endorsement shall cost no more than three dollars including any or all fees authorized under RCW 77.32.050.

(3) Catch record cards issued with affixed temporary short-term charter stamp licenses are not subject to the ten-dollar charge ~~((as))~~ nor to the Dungeness crab endorsement fee provided for in this section. Charter boat or guide operators issuing temporary short-term charter stamp licenses shall affix the stamp to each catch record card issued before fishing commences. Catch record cards issued with a temporary short-term charter stamp are valid for two consecutive days.

~~((3))~~ (4) The department shall include provisions for recording marked and unmarked salmon in catch record cards issued after March 31, 2004.

~~((4))~~ (5) The funds received from the sale of catch record cards and the Dungeness crab endorsement must be deposited into the wildlife fund. The funds received from the Dungeness crab endorsement may be used only for the sampling, monitoring, and management of catch associated with the Dungeness crab recreational fisheries. Moneys allocated under this section shall supplement and not supplant other federal, state, and local funds used for Dungeness crab recreational fisheries management.

NEW SECTION. Sec. 3. After the completion of one season using the Dungeness crab endorsement fee for Puget Sound recreational Dungeness crab fisheries, the department of fish and wildlife shall evaluate the effectiveness of the endorsement fee as a method for improving the accuracy of catch estimates for the Puget Sound recreational Dungeness crab fishery. The department's report shall include how the method has affected their ability to more accurately estimate the preseason allocation of the Puget Sound recreational Dungeness crab fishery and monitor in-season catch. The department shall report their findings to the appropriate committees of the legislature by May 15, 2006.

NEW SECTION. Sec. 4. This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect May 15, 2004.

Passed by the House March 9, 2004.

Passed by the Senate March 4, 2004.

Approved by the Governor March 24, 2004.
Filed in Office of Secretary of State March 24, 2004.

CHAPTER 108

[House Bill 3172]

PAYMENT AGREEMENTS

AN ACT Relating to payment agreements; amending RCW 39.96.010 and 39.96.020; and repealing RCW 39.96.070.

Be it enacted by the Legislature of the State of Washington:

Sec. 1. RCW 39.96.010 and 2000 c 184 s 1 are each amended to read as follows:

The legislature finds and declares that the issuance by state and local governments of bonds and other obligations involves exposure to changes in interest rates; that a number of financial instruments are available to lower the net cost of these borrowings, or to reduce the exposure of state and local governments to changes in interest rates; that these reduced costs for state and local governments will benefit taxpayers and ratepayers; and that the legislature desires to provide state and local governments with express statutory authority to take advantage of these instruments. In recognition of the complexity of these financial instruments, the legislature desires that this authority be subject to certain limitations(~~(, and be granted for a period of twelve years)~~).

Sec. 2. RCW 39.96.020 and 2003 c 47 s 1 are each amended to read as follows:

The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Financial advisor" means a financial services or financial advisory firm:

(a) With recognized knowledge and experience in connection with the negotiation and execution of payment agreements;

(b) That is acting solely as financial advisor to the governmental entity in connection with the execution of the payment agreement and the issuance or incurring of any related obligations, and not as a principal, placement agent, purchaser, underwriter, or other similar party, and that does not control, nor is it controlled by or under common control with, any such party;

(c) That is compensated for its services in connection with the execution of payment agreements, either directly or indirectly, solely by the governmental entity; and

(d) Whose compensation is not based on a percentage of the notional amount of the payment agreement or of the principal amount of any related obligations.

(2) "Governmental entity" means state government or local government.

(3) "Local government" means any city, county, city transportation authority, regional transit authority established under chapter 81.112 RCW, port district, public hospital district, or public utility district, or any joint operating agency formed under RCW 43.52.360, that has or will have outstanding obligations in an aggregate principal amount of at least one hundred million dollars as of the date a payment agreement is executed or is scheduled by its

terms to commence or had at least one hundred million dollars in gross revenues during the preceding calendar year.

(4) "Obligations" means bonds, notes, bond anticipation notes, commercial paper, or other obligations for borrowed money, or lease, installment purchase, or other similar financing agreements or certificates of participation in such agreements.

(5) "Payment agreement" means a written agreement which provides for an exchange of payments based on interest rates, or for ceilings or floors on these payments, or an option on these payments, or any combination, entered into on either a current or forward basis.

(6) "State government" means (a) the state of Washington, acting by and through its state finance committee, (b) the Washington health care facilities authority, (c) the Washington higher education facilities authority, (d) the Washington state housing finance commission, or (e) the state finance committee upon adoption of a resolution approving a payment agreement on behalf of any state institution of higher education as defined under RCW 28B.10.016: PROVIDED, That such approval shall not constitute the pledge of the full faith and credit of the state, but a pledge of only those funds specified in the approved agreement.

NEW SECTION. Sec. 3. RCW 39.96.070 (Payment agreements not allowed after June 30, 2005—Exception) and 2000 c 184 s 3, 1998 c 245 s 35, 1995 c 192 s 2, & 1993 c 273 s 7 are each repealed.

Passed by the House March 9, 2004.

Passed by the Senate March 3, 2004.

Approved by the Governor March 24, 2004.

Filed in Office of Secretary of State March 24, 2004.

CHAPTER 109

[House Bill 1589]

TOW TRUCK PERMIT FEES

AN ACT Relating to tow truck permit fees; amending RCW 46.44.0941; and repealing RCW 46.44.015.

Be it enacted by the Legislature of the State of Washington:

Sec. 1. RCW 46.44.0941 and 1995 c 171 s 2 are each amended to read as follows:

The following fees, in addition to the regular license and tonnage fees, shall be paid for all movements under special permit made upon state highways. All funds collected, except the amount retained by authorized agents of the department as provided in RCW 46.44.096, shall be forwarded to the state treasury and shall be deposited in the motor vehicle fund:

| | |
|---|----------|
| All overlegal loads, except overweight, single trip | \$ 10.00 |
| Continuous operation of overlegal loads having either overwidth or overheight features only, for a period not to exceed thirty days | \$ 20.00 |

| | |
|--|------------------|
| Continuous operations of overlegal loads having overlength features only, for a period not to exceed thirty days | \$ 10.00 |
| Continuous operation of a combination of vehicles having one trailing unit that exceeds fifty-three feet and is not more than fifty-six feet in length, for a period of one year | \$ 100.00 |
| Continuous operation of a combination of vehicles having two trailing units which together exceed sixty-one feet and are not more than sixty-eight feet in length, for a period of one year | \$ 100.00 |
| Continuous operation of a three-axle fixed load vehicle having less than 65,000 pounds gross weight, for a period not to exceed thirty days | \$ 70.00 |
| Continuous operation of a four-axle fixed load vehicle meeting the requirements of RCW 46.44.091(1) and weighing less than 86,000 pounds gross weight, not to exceed thirty days | \$ 90.00 |
| Continuous movement of a mobile home or manufactured home having nonreducible features not to exceed eighty-five feet in total length and fourteen feet in width, for a period of one year | \$ 150.00 |
| <u>Continuous operation of a class C tow truck or a class E tow truck with a class C rating while performing emergency and nonemergency tows of oversize or overweight, or both, vehicles and vehicle combinations, under rules adopted by the transportation commission, for a period of one year</u> | <u>\$ 150.00</u> |
| <u>Continuous operation of a class B tow truck or a class E tow truck with a class B rating while performing emergency and nonemergency tows of oversize or overweight, or both, vehicles and vehicle combinations, under rules adopted by the transportation commission, for a period of one year</u> | <u>\$ 75.00</u> |
| Continuous operation of a two or three-axle collection truck, actually engaged in the collection of solid waste or recyclables, or both, under chapter 81.77 or 35.21 RCW or by contract under RCW 36.58.090, for one year with an additional six thousand pounds more than the weight authorized in RCW 46.16.070 on the rear axle of a two-axle truck or eight thousand pounds for the tandem axles of a three-axle truck. RCW 46.44.041 | |

and 46.44.091 notwithstanding, the tire limits specified in RCW 46.44.042 apply, but none of the excess weight is valid or may be permitted on any part of the federal interstate highway system

\$ 42.00
per thousand pounds

The department may issue any of the above-listed permits that involve height, length, or width for an expanded period of consecutive months, not to exceed one year.

Continuous operation of farm implements under a permit issued as authorized by RCW 46.44.140 by:

- (1) Farmers in the course of farming activities, for any three-month period \$ 10.00
- (2) Farmers in the course of farming activities, for a period not to exceed one year \$ 25.00
- (3) Persons engaged in the business of the sale, repair, or maintenance of such farm implements, for any three-month period. \$ 25.00
- (4) Persons engaged in the business of the sale, repair, or maintenance of such farm implements, for a period not to exceed one year \$ 100.00

Overweight Fee Schedule

| Excess weight over legal capacity, as provided in RCW 46.44.041. | Cost per mile. |
|---|----------------|
| 0-9,999 pounds. | \$.07 |
| 10,000-14,999 pounds. | \$.14 |
| 15,000-19,999 pounds. | \$.21 |
| 20,000-24,999 pounds. | \$.28 |
| 25,000-29,999 pounds. | \$.35 |
| 30,000-34,999 pounds. | \$.49 |
| 35,000-39,999 pounds. | \$.63 |
| 40,000-44,999 pounds. | \$.79 |
| 45,000-49,999 pounds. | \$.93 |
| 50,000-54,999 pounds. | \$ 1.14 |
| 55,000-59,999 pounds. | \$ 1.35 |
| 60,000-64,999 pounds. | \$ 1.56 |
| 65,000-69,999 pounds. | \$ 1.77 |
| 70,000-74,999 pounds. | \$ 2.12 |
| 75,000-79,999 pounds. | \$ 2.47 |
| 80,000-84,999 pounds. | \$ 2.82 |
| 85,000-89,999 pounds. | \$ 3.17 |
| 90,000-94,999 pounds. | \$ 3.52 |
| 95,000-99,999 pounds. | \$ 3.87 |
| 100,000 pounds. | \$ 4.25 |

The fee for weights in excess of 100,000 pounds is \$4.25 plus fifty cents for each 5,000 pound increment or portion thereof exceeding 100,000 pounds.

PROVIDED: (a) The minimum fee for any overweight permit shall be \$14.00, (b) the fee for issuance of a duplicate permit shall be \$14.00, (c) when computing overweight fees prescribed in this section or in RCW 46.44.095 that result in an amount less than even dollars the fee shall be carried to the next full dollar if fifty cents or over and shall be reduced to the next full dollar if forty-nine cents or under.

The fees levied in this section and RCW 46.44.095 do not apply to vehicles owned and operated by the state of Washington, a county within the state, a city or town or metropolitan municipal corporation within the state, or the federal government.

NEW SECTION. Sec. 2. RCW 46.44.015 (Tow truck exemptions) and 1991 c 276 s 1 are each repealed.

Passed by the House February 12, 2004.

Passed by the Senate March 5, 2004.

Approved by the Governor March 24, 2004.

Filed in Office of Secretary of State March 24, 2004.

CHAPTER 110

[House Bill 2509]

UNEMPLOYMENT COMPENSATION—DOMESTIC VIOLENCE REFERENCES

AN ACT Relating to correcting references to the domestic violence provision in RCW 50.20.050; and amending RCW 50.20.240, 50.20.100, and 50.29.020.

Be it enacted by the Legislature of the State of Washington:

Sec. 1. RCW 50.20.240 and 2003 2nd sp.s. c 4 s 10 are each amended to read as follows:

(1)(a) To ensure that following the initial application for benefits, an individual is actively engaged in searching for work, the employment security department shall implement a job search monitoring program. Effective January 4, 2004, the department shall contract with employment security agencies in other states to ensure that individuals residing in those states and receiving benefits under this title are actively engaged in searching for work in accordance with the requirements of this section. The department may use interactive voice technology and other electronic means to ensure that individuals are subject to comparable job search monitoring, regardless of whether they reside in Washington or elsewhere.

(b) Except for those individuals with employer attachment or union referral, individuals who qualify for unemployment compensation under RCW 50.20.050 (1)(b)(~~(iii)~~) (iv) or (2)(b)(~~(v)~~) (iv), as applicable, and individuals in commissioner-approved training, an individual who has received five or more weeks of benefits under this title, regardless of whether the individual resides in Washington or elsewhere, must provide evidence of seeking work, as directed by the commissioner or the commissioner's agents, for each week beyond five in which a claim is filed. With regard to claims with an effective date before January 4, 2004, the evidence must demonstrate contacts with at least three

employers per week or documented in-person job search activity at the local reemployment center. With regard to claims with an effective date on or after January 4, 2004, the evidence must demonstrate contacts with at least three employers per week or documented in-person job search activities at the local reemployment center at least three times per week.

(c) In developing the requirements for the job search monitoring program, the commissioner or the commissioner's agents shall utilize an existing advisory committee having equal representation of employers and workers.

(2) Effective January 4, 2004, an individual who fails to comply fully with the requirements for actively seeking work under RCW 50.20.010 shall lose all benefits for all weeks during which the individual was not in compliance, and the individual shall be liable for repayment of all such benefits under RCW 50.20.190.

Sec. 2. RCW 50.20.100 and 2003 2nd sp.s. c 4 s 13 are each amended to read as follows:

(1) Suitable work for an individual is employment in an occupation in keeping with the individual's prior work experience, education, or training and if the individual has no prior work experience, special education, or training for employment available in the general area, then employment which the individual would have the physical and mental ability to perform. In determining whether work is suitable for an individual, the commissioner shall also consider the degree of risk involved to the individual's health, safety, and morals, the individual's physical fitness, the individual's length of unemployment and prospects for securing local work in the individual's customary occupation, the distance of the available work from the individual's residence, and such other factors as the commissioner may deem pertinent, including state and national emergencies.

(2) For individuals with base year work experience in agricultural labor, any agricultural labor available from any employer shall be deemed suitable unless it meets conditions in RCW 50.20.110 or the commissioner finds elements of specific work opportunity unsuitable for a particular individual.

(3) For part-time workers as defined in RCW 50.20.119, suitable work includes suitable work under subsection (1) of this section that is for seventeen or fewer hours per week.

(4) For individuals who have qualified for unemployment compensation benefits under RCW 50.20.050 (1)(b)(~~(iii)~~) (iv) or (2)(b)(~~(iv)~~) (iv), as applicable, an evaluation of the suitability of the work must consider the individual's need to address the physical, psychological, legal, and other effects of domestic violence or stalking.

Sec. 3. RCW 50.29.020 and 2003 2nd sp.s. c 4 s 20 are each amended to read as follows:

(1) This section applies to benefits charged to the experience rating accounts of employers for claims that have an effective date before January 4, 2004.

(2) An experience rating account shall be established and maintained for each employer, except employers as described in RCW 50.44.010 and 50.44.030 who have properly elected to make payments in lieu of contributions, taxable local government employers as described in RCW 50.44.035, and those employers who are required to make payments in lieu of contributions, based on

existing records of the employment security department. Benefits paid to any eligible individuals shall be charged to the experience rating accounts of each of such individual's employers during the individual's base year in the same ratio that the wages paid by each employer to the individual during the base year bear to the wages paid by all employers to that individual during that base year, except as otherwise provided in this section.

(3) The legislature finds that certain benefit payments, in whole or in part, should not be charged to the experience rating accounts of employers except those employers described in RCW 50.44.010 and 50.44.030 who have properly elected to make payments in lieu of contributions, taxable local government employers described in RCW 50.44.035, and those employers who are required to make payments in lieu of contributions, as follows:

(a) Benefits paid to any individuals later determined to be ineligible shall not be charged to the experience rating account of any contribution paying employer.

(b) Benefits paid to an individual filing under the provisions of chapter 50.06 RCW shall not be charged to the experience rating account of any contribution paying employer only if:

(i) The individual files under RCW 50.06.020(1) after receiving crime victims' compensation for a disability resulting from a nonwork-related occurrence; or

(ii) The individual files under RCW 50.06.020(2).

(c) Benefits paid which represent the state's share of benefits payable as extended benefits defined under RCW 50.22.010(6) shall not be charged to the experience rating account of any contribution paying employer.

(d) In the case of individuals who requalify for benefits under RCW 50.20.050 or 50.20.060, benefits based on wage credits earned prior to the disqualifying separation shall not be charged to the experience rating account of the contribution paying employer from whom that separation took place.

(e) Individuals who qualify for benefits under RCW 50.20.050(1)(b)~~((iii))~~ (iv) shall not have their benefits charged to the experience rating account of any contribution paying employer.

(f) In the case of individuals identified under RCW 50.20.015, benefits paid with respect to a calendar quarter, which exceed the total amount of wages earned in the state of Washington in the higher of two corresponding calendar quarters included within the individual's determination period, as defined in RCW 50.20.015, shall not be charged to the experience rating account of any contribution paying employer.

(4)(a) A contribution-paying base year employer, not otherwise eligible for relief of charges for benefits under this section, may receive such relief if the benefit charges result from payment to an individual who:

(i) Last left the employ of such employer voluntarily for reasons not attributable to the employer;

(ii) Was discharged for misconduct connected with his or her work not a result of inability to meet the minimum job requirements;

(iii) Is unemployed as a result of closure or severe curtailment of operation at the employer's plant, building, worksite, or other facility. This closure must be for reasons directly attributable to a catastrophic occurrence such as fire, flood, or other natural disaster; or

(iv) Continues to be employed on a regularly scheduled permanent part-time basis by a base year employer and who at some time during the base year was concurrently employed and subsequently separated from at least one other base year employer. Benefit charge relief ceases when the employment relationship between the employer requesting relief and the claimant is terminated. This subsection does not apply to shared work employers under chapter 50.60 RCW.

(b) The employer requesting relief of charges under this subsection must request relief in writing within thirty days following mailing to the last known address of the notification of the valid initial determination of such claim, stating the date and reason for the separation or the circumstances of continued employment. The commissioner, upon investigation of the request, shall determine whether relief should be granted.

Passed by the House February 11, 2004.

Passed by the Senate March 4, 2004.

Approved by the Governor March 24, 2004.

Filed in Office of Secretary of State March 24, 2004.

CHAPTER 111

[Substitute House Bill 3092]

UNIFORM PARENTAGE ACT—ACKNOWLEDGMENT OR DENIAL OF PATERNITY

AN ACT Relating to the uniform parentage act; and amending RCW 26.26.330.

Be it enacted by the Legislature of the State of Washington:

Sec. 1. RCW 26.26.330 and 2002 c 302 s 307 are each amended to read as follows:

A signatory may rescind an acknowledgment or denial of paternity by commencing a court proceeding to rescind before the earlier of:

(1) Sixty days after the effective date (~~of the filing~~) of the acknowledgment or denial, as provided in RCW 26.26.315; or

(2) The date of the first hearing in a proceeding to which the signatory is a party before a court to adjudicate an issue relating to the child, including a proceeding that establishes support.

Passed by the House February 13, 2004.

Passed by the Senate March 4, 2004.

Approved by the Governor March 24, 2004.

Filed in Office of Secretary of State March 24, 2004.

CHAPTER 112

[House Bill 2014]

INSURANCE COVERAGE—ALCOHOL-RELATED INJURIES

AN ACT Relating to insurance coverage for injuries sustained because of alcohol or narcotic use; adding a new section to chapter 48.20 RCW; adding a new section to chapter 48.21 RCW; adding a new section to chapter 48.44 RCW; adding a new section to chapter 48.46 RCW; creating new sections; and repealing RCW 48.20.272.

Be it enacted by the Legislature of the State of Washington:

NEW SECTION. Sec. 1. The legislature finds that an alcohol or drug-related injury that requires treatment in an emergency department can be a

critical moment in the life of a person with a substance abuse problem. Studies have demonstrated that appropriate interventions by hospital staff at these times can reduce substance abuse and lower future health care costs. The perception among health care providers that they may be penalized by insurers for conducting these interventions prevents many of them from performing interventions which can make all the difference to a person at the crossroads of a substance abuse problem.

NEW SECTION. Sec. 2. A new section is added to chapter 48.20 RCW to read as follows:

An insurer may not deny coverage for the treatment of an injury solely because the injury was sustained as a consequence of the insured's being intoxicated or under the influence of a narcotic.

NEW SECTION. Sec. 3. A new section is added to chapter 48.21 RCW to read as follows:

An insurer may not deny coverage for the treatment of an injury solely because the injury was sustained as a consequence of the insured's being intoxicated or under the influence of a narcotic.

NEW SECTION. Sec. 4. A new section is added to chapter 48.44 RCW to read as follows:

A health care service contractor may not deny coverage for the treatment of an injury solely because the injury was sustained as a consequence of the enrolled participant's being intoxicated or under the influence of a narcotic.

NEW SECTION. Sec. 5. A new section is added to chapter 48.46 RCW to read as follows:

A health maintenance organization may not deny coverage for the treatment of an injury solely because the injury was sustained as a consequence of the enrolled participant's being intoxicated or under the influence of a narcotic.

NEW SECTION. Sec. 6. RCW 48.20.272 (Optional standard provision No. 23—Intoxicants and narcotics) and 1951 c 229 s 28 are each repealed.

NEW SECTION. Sec. 7. This act applies to all contracts issued or renewed on or after the effective date of this act.

- Passed by the House February 12, 2004.
- Passed by the Senate March 11, 2004.
- Approved by the Governor March 24, 2004.
- Filed in Office of Secretary of State March 24, 2004.

CHAPTER 113

[Engrossed Substitute House Bill 2891]

PUBLIC UTILITY DISTRICTS

AN ACT Relating to revising boundaries of a public utility district in incorporated territory; amending RCW 54.12.010; adding a new section to chapter 54.04 RCW; and declaring an emergency.

Be it enacted by the Legislature of the State of Washington:

Sec. 1. RCW 54.12.010 and 1994 c 223 s 56 are each amended to read as follows:

A public utility district that is created as provided in RCW 54.08.010 shall be a municipal corporation of the state of Washington, and the name of such public utility district shall be Public Utility District No. of County.

The powers of the public utility district shall be exercised through a commission consisting of three members in three commissioner districts, and five members in five commissioner districts.

~~((When))~~ (1) If the public utility district is county-wide and the county has three county legislative authority districts, then, at the first election of commissioners and until any change ~~((shall have been))~~ is made in the boundaries of public utility district commissioner districts, one public utility district commissioner shall be chosen from each of the three county legislative authority districts. ~~((When))~~

(2) If the public utility district comprises only a portion of the county, with boundaries established in accordance with chapter 54.08 RCW, or ~~((when))~~ if the public utility district is county-wide and the county does not have three county legislative authority districts, three public utility district commissioner districts, numbered consecutively, each with approximately equal population and following precinct lines, as far as practicable, shall be described in the petition for the formation of the public utility district, ~~((which shall be))~~ subject to appropriate change by the county legislative authority if and when it changes the boundaries of the proposed public utility district~~((, and))~~. One commissioner shall be elected as a commissioner of each of the public utility district commissioner districts. ~~((Commissioner districts shall be used as follows: (1))~~

(3) Only a registered voter who resides in a commissioner district may be a candidate for, or hold office as, a commissioner of the commissioner district~~((; and (2)))~~. Only voters of a commissioner district may vote at a primary to nominate candidates for a commissioner of the commissioner district. Voters of the entire public utility district may vote at a general election to elect a person as a commissioner of the commissioner district.

(4) The term of office of each public utility district commissioner other than the commissioners at large shall be six years, and the term of each commissioner at large shall be four years. Each term shall be computed in accordance with RCW ~~((29.04.170))~~ 29A.20.040 following the commissioner's election. All public utility district commissioners shall hold office until their successors shall have been elected and have qualified and assume office in accordance with RCW ~~((29.04.170))~~ 29A.20.040.

(5) A vacancy in the office of public utility district commissioner shall occur as provided in chapter 42.12 RCW or by nonattendance at meetings of the public utility district commission for a period of sixty days unless excused by the public utility district commission. Vacancies on a board of public utility district commissioners shall be filled as provided in chapter 42.12 RCW.

(6) The boundaries of the public utility district commissioner districts may be changed only by the public utility district commission, and shall be examined every ten years to determine substantial equality of population in accordance with chapter ~~((29.70))~~ 29A.76 RCW~~((, but))~~. Except as provided in this section or section 2 of this act, the boundaries shall not be changed oftener than once in four years~~((, and))~~. Boundaries may only be changed when all members of the commission are present. Whenever territory is added to a public utility district under RCW 54.04.035, or added or withdrawn under section 2 of this act, the

boundaries of the public utility commissioner districts shall be changed to include ~~((such))~~ the additional or exclude the withdrawn territory. Unless the boundaries are changed pursuant to section 2 of this act, the proposed change of the boundaries of the public utility district commissioner district must be made by resolution and after public hearing. Notice of the time of ((a)) the public hearing ((thereon)) shall be published for two weeks ((prior thereto)) before the hearing. Upon a referendum petition signed by ten percent of the qualified voters of the public utility district being filed with the county auditor, the county legislative authority shall submit ~~((such))~~ the proposed change of boundaries to the voters of the public utility district for their approval or rejection. ~~((Such))~~ The petition must be filed within ninety days after the adoption of resolution of the proposed action. The validity of the petition ~~((shall be))~~ is governed by the provisions of chapter 54.08 RCW.

NEW SECTION. Sec. 2. A new section is added to chapter 54.04 RCW to read as follows:

(1) Any voting precinct located within a county that has a federal nuclear reservation within its boundaries is:

(a) Withdrawn from a public utility district if the precinct receives at least one electric distribution, water, or sewer service from a city, and no electric distribution, water, or sewer service from a public utility district;

(b) Included in a public utility district if any portion of the precinct receives at least one electric distribution, water, or sewer service from the public utility district.

(2) For voting precincts that meet the requirements of subsection (1) of this section, within ten days after the effective date of this act, and for voting precincts that later meet the requirements of subsection (1) of this section, within thirty days of meeting the requirements:

(a) The city that provides any electric distribution, water, or sewer service to a precinct that is withdrawn from a public utility district under subsection (1) of this section shall submit to the public utility district and the county auditor a list of street addresses, or map of the areas to which any service is provided;

(b) The public utility district that provides any electric distribution, water, or sewer service to a precinct that is included in the public utility district under subsection (1) of this section shall submit to the city or town and the county auditor a list of street addresses, or map of the areas to which any service is provided.

(3) Within ten days of receipt of the information required under subsection (2) of this section, the auditor shall determine which voting precincts are required to be withdrawn from or included in the public utility district, and provide that information to the public utility district commissioners who shall, within ten days, revise the boundaries of the district in conformance with RCW 54.12.010 without dividing any voting precinct.

(4) Unless otherwise provided in an agreement between the public utility district and the city or town, taxes or assessments levied or assessed against property located in an area withdrawn from a public utility district shall remain a lien and be collected as by law (a) if the taxes or assessments were levied or assessed before the withdrawal or (b) if the levies or assessments were made to pay or secure an obligation of the district duly incurred or issued before the withdrawal. The withdrawal of an area from the boundaries of a district does not

exempt any property therein from taxation or assessment for the purpose of paying the costs of retiring or redeeming any obligation of the district duly incurred or issued before the withdrawal.

(5) Except as set forth in subsection (4) of this section, a public utility district may not levy or impose any taxes upon property located within those voting precincts withdrawn from the public utility district.

(6) Nothing in this act limits the authority of public utility districts and cities or towns to enter into service agreements that are otherwise permitted by law.

NEW SECTION. Sec. 3. This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately.

Passed by the House February 12, 2004.

Passed by the Senate March 4, 2004.

Approved by the Governor March 24, 2004.

Filed in Office of Secretary of State March 24, 2004.

CHAPTER 114

[Engrossed Substitute Senate Bill 6153]

REAL PROPERTY—SEX OFFENDER INFORMATION

AN ACT Relating to notifying home buyers of where information regarding registered sex offenders may be obtained; amending RCW 64.06.020; adding a new section to chapter 64.06 RCW; creating a new section; and providing an effective date.

Be it enacted by the Legislature of the State of Washington:

Sec. 1. RCW 64.06.020 and 2003 c 200 s 1 are each amended to read as follows:

(1) In a transaction for the sale of residential property, the seller shall, unless the buyer has expressly waived the right to receive the disclosure statement, or unless the transfer is exempt under RCW 64.06.010, deliver to the buyer a completed seller disclosure statement in the following format and that contains, at a minimum, the following information:

INSTRUCTIONS TO THE SELLER

Please complete the following form. Do not leave any spaces blank. If the question clearly does not apply to the property write "NA". If the answer is "yes" to any * items, please explain on attached sheets. Please refer to the line number(s) of the question(s) when you provide your explanation(s). For your protection you must date and sign each page of this disclosure statement and each attachment. Delivery of the disclosure statement must occur not later than five business days, unless otherwise agreed, after mutual acceptance of a written contract to purchase between a buyer and a seller.

NOTICE TO THE BUYER

THE FOLLOWING DISCLOSURES ARE MADE BY SELLER ABOUT THE CONDITION OF THE PROPERTY LOCATED AT ("THE PROPERTY"), OR AS LEGALLY DESCRIBED ON ATTACHED EXHIBIT A.

SELLER MAKES THE FOLLOWING DISCLOSURES OF EXISTING MATERIAL FACTS OR MATERIAL DEFECTS TO BUYER BASED ON

SELLER'S ACTUAL KNOWLEDGE OF THE PROPERTY AT THE TIME SELLER COMPLETES THIS DISCLOSURE STATEMENT. UNLESS YOU AND SELLER OTHERWISE AGREE IN WRITING, YOU HAVE THREE BUSINESS DAYS FROM THE DAY SELLER OR SELLER'S AGENT DELIVERS THIS DISCLOSURE STATEMENT TO YOU TO RESCIND THE AGREEMENT BY DELIVERING A SEPARATELY SIGNED WRITTEN STATEMENT OF RESCISSION TO SELLER OR SELLER'S AGENT. IF THE SELLER DOES NOT GIVE YOU A COMPLETED DISCLOSURE STATEMENT, THEN YOU MAY WAIVE THE RIGHT TO RESCIND PRIOR TO OR AFTER THE TIME YOU ENTER INTO A SALE AGREEMENT.

THE FOLLOWING ARE DISCLOSURES MADE BY SELLER AND ARE NOT THE REPRESENTATIONS OF ANY REAL ESTATE LICENSEE OR OTHER PARTY. THIS INFORMATION IS FOR DISCLOSURE ONLY AND IS NOT INTENDED TO BE A PART OF ANY WRITTEN AGREEMENT BETWEEN BUYER AND SELLER.

FOR A MORE COMPREHENSIVE EXAMINATION OF THE SPECIFIC CONDITION OF THIS PROPERTY YOU ARE ADVISED TO OBTAIN AND PAY FOR THE SERVICES OF QUALIFIED EXPERTS TO INSPECT THE PROPERTY, WHICH MAY INCLUDE, WITHOUT LIMITATION, ARCHITECTS, ENGINEERS, LAND SURVEYORS, PLUMBERS, ELECTRICIANS, ROOFERS, BUILDING INSPECTORS, ON-SITE WASTEWATER TREATMENT INSPECTORS, OR STRUCTURAL PEST INSPECTORS. THE PROSPECTIVE BUYER AND SELLER MAY WISH TO OBTAIN PROFESSIONAL ADVICE OR INSPECTIONS OF THE PROPERTY OR TO PROVIDE APPROPRIATE PROVISIONS IN A CONTRACT BETWEEN THEM WITH RESPECT TO ANY ADVICE, INSPECTION, DEFECTS OR WARRANTIES.

Seller is/ is not occupying the property.

I. SELLER'S DISCLOSURES:

If you answer "Yes" to a question with an asterisk (), please explain your answer and attach documents, if available and not otherwise publicly recorded. If necessary, use an attached sheet.

- | | | | |
|------------------------------|-----------------------------|-------------------------------------|--|
| <input type="checkbox"/> Yes | <input type="checkbox"/> No | <input type="checkbox"/> Don't know | 1. TITLE |
| <input type="checkbox"/> Yes | <input type="checkbox"/> No | <input type="checkbox"/> Don't know | A. Do you have legal authority to sell the property? If no, please explain. |
| <input type="checkbox"/> Yes | <input type="checkbox"/> No | <input type="checkbox"/> Don't know | *B. Is title to the property subject to any of the following? (1) First right of refusal (2) Option (3) Lease or rental agreement (4) Life estate? |
| <input type="checkbox"/> Yes | <input type="checkbox"/> No | <input type="checkbox"/> Don't know | *C. Are there any encroachments, boundary agreements, or boundary disputes? |
| <input type="checkbox"/> Yes | <input type="checkbox"/> No | <input type="checkbox"/> Don't know | *D. Are there any rights of way, easements, or access limitations that may affect the Buyer's use of the property? |
| <input type="checkbox"/> Yes | <input type="checkbox"/> No | <input type="checkbox"/> Don't know | *E. Are there any written agreements for joint maintenance of an easement or right of way? |

Yes No Don't know

*F. Is there any study, survey project, or notice that would adversely affect the property?

Yes No Don't know

*G. Are there any pending or existing assessments against the property?

Yes No Don't know

*H. Are there any zoning violations, nonconforming uses, or any unusual restrictions on the property that would affect future construction or remodeling?

Yes No Don't know

*I. Is there a boundary survey for the property?

Yes No Don't know

*J. Are there any covenants, conditions, or restrictions which affect the property?

2. WATER

A. Household Water

(1) The source of water for the property is:

Private or publicly owned water system

Private well serving only the subject property

* Other water system

Yes No Don't know

*If shared, are there any written agreements?

Yes No Don't know

*(2) Is there an easement (recorded or unrecorded) for access to and/or maintenance of the water source?

Yes No Don't know

*(3) Are there any known problems or repairs needed?

Yes No Don't know

(4) During your ownership, has the source provided an adequate year round supply of potable water? If no, please explain.

Yes No Don't know

*(5) Are there any water treatment systems for the property? If yes, are they Leased Owned

B. Irrigation

Yes No Don't know

(1) Are there any water rights for the property, such as a water right, permit, certificate, or claim?

Yes No Don't know

*(a) If yes, have the water rights been used during the last five years?

Yes No Don't know

*(b) If so, is the certificate available?

Yes No Don't know

C. Outdoor Sprinkler System

Yes No Don't know

(1) Is there an outdoor sprinkler system for the property?

Yes No Don't know

(2) If yes, are there any defects in the system?

Yes No Don't know

*(3) If yes, is the sprinkler system connected to irrigation water?

3. SEWER/ON-SITE SEWAGE SYSTEM

A. The property is served by: Public sewer system, On-site sewage system (including pipes, tanks, drainfields, and all other component parts) Other disposal system, please describe:

Yes No Don't know

B. If public sewer system service is available to the property, is the house connected to the sewer main? If no, please explain.

- Yes No Don't know
C. Is the property subject to any sewage system fees or charges in addition to those covered in your regularly billed sewer or on-site sewage system maintenance service?
- Yes No Don't know D. If the property is connected to an on-site sewage system:
* (1) Was a permit issued for its construction, and was it approved by the local health department or district following its construction?
(2) When was it last pumped:
.....
- Yes No Don't know * (3) Are there any defects in the operation of the on-site sewage system?
 Don't know (4) When was it last inspected?
.....
By Whom:
- Yes No Don't know (5) For how many bedrooms was the on-site sewage system approved?
..... bedrooms
- Yes No Don't know E. Are all plumbing fixtures, including laundry drain, connected to the sewer/on-site sewage system? If no, please explain:
- Yes No Don't know *F. Have there been any changes or repairs to the on-site sewage system?
- Yes No Don't know G. Is the on-site sewage system, including the drainfield, located entirely within the boundaries of the property? If no, please explain.
.....
- Yes No Don't know H. Does the on-site sewage system require monitoring and maintenance services more frequently than once a year? If yes, please explain.
.....

NOTICE: IF THIS RESIDENTIAL REAL PROPERTY DISCLOSURE STATEMENT IS BEING COMPLETED FOR NEW CONSTRUCTION WHICH HAS NEVER BEEN OCCUPIED, THE SELLER IS NOT REQUIRED TO COMPLETE THE QUESTIONS LISTED IN ITEM 4. STRUCTURAL OR ITEM 5. SYSTEMS AND FIXTURES

4. STRUCTURAL

- Yes No Don't know *A. Has the roof leaked?
- Yes No Don't know *B. Has the basement flooded or leaked?
- Yes No Don't know *C. Have there been any conversions, additions, or remodeling?
* (1) If yes, were all building permits obtained?
- Yes No Don't know * (2) If yes, were all final inspections obtained?
- Yes No Don't know D. Do you know the age of the house? If yes, year of original construction:
.....
- Yes No Don't know *E. Has there been any settling, slippage, or sliding of the property or its improvements?
- Yes No Don't know *F. Are there any defects with the following: (If yes, please check applicable items and explain.)

- Foundations
- Decks
- Exterior Walls
- Chimneys
- Interior Walls
- Fire Alarm
- Doors
- Windows
- Patio
- Ceilings
- Slab Floors
- Driveways
- Pools
- Hot Tub
- Sauna
- Sidewalks
- Outbuildings
- Fireplaces
- Garage Floors
- Walkways
- Siding
- Other
- Wood Stoves

Yes No Don't know *G. Was a structural pest or "whole house" inspection done? If yes, when and by whom was the inspection completed?

Yes No Don't know H. During your ownership, has the property had any wood destroying organism or pest infestation?

Yes No Don't know I. Is the attic insulated?

Yes No Don't know J. Is the basement insulated?

5. SYSTEMS AND FIXTURES

*A. If any of the following systems or fixtures are included with the transfer, are there any defects? If yes, please explain.

Yes No Don't know Electrical system, including wiring, switches, outlets, and service

Yes No Don't know Plumbing system, including pipes, faucets, fixtures, and toilets

Yes No Don't know Hot water tank

Yes No Don't know Garbage disposal

Yes No Don't know Appliances

Yes No Don't know Sump pump

Yes No Don't know Heating and cooling systems

Yes No Don't know Security system

Owned Leased

Other

*B. If any of the following fixtures or property is included with the transfer, are they leased? (If yes, please attach copy of lease.)

Yes No Don't know Security system

Yes No Don't know Tanks (type):

Yes No Don't know Satellite dish

Other:

6. COMMON INTERESTS

Yes No Don't know A. Is there a Home Owners' Association? Name of Association

Yes No Don't know B. Are there regular periodic assessments:

\$ per Month Year

Other

Yes No Don't know *C. Are there any pending special assessments?

Yes No Don't know *D. Are there any shared "common areas" or any joint maintenance agreements (facilities such as walls, fences, landscaping, pools, tennis courts, walkways, or other areas co-owned in undivided interest with others)?

7. GENERAL

Yes No Don't know *A. Have there been any drainage problems on the property?

- Yes No Don't know *B. Does the property contain fill material?
- Yes No Don't know *C. Is there any material damage to the property from fire, wind, floods, beach movements, earthquake, expansive soils, or landslides?
- Yes No Don't know D. Is the property in a designated flood plain?
- Yes No Don't know *E. Are there any substances, materials, or products on the property that may be environmental concerns, such as asbestos, formaldehyde, radon gas, lead-based paint, fuel or chemical storage tanks, or contaminated soil or water ?
- Yes No Don't know *G. Has the property ever been used as an illegal drug manufacturing site?
- Yes No Don't know *H. Are there any radio towers in the area that may cause interference with telephone reception?

8. MANUFACTURED AND MOBILE HOMES

If the property includes a manufactured or mobile home,

- Yes No Don't know *A. Did you make any alterations to the home? If yes, please describe the alterations:
- Yes No Don't know *B. Did any previous owner make any alterations to the home? If yes, please describe the alterations:
- Yes No Don't know *C. If alterations were made, were permits or variances for these alterations obtained?

9. FULL DISCLOSURE BY SELLERS

A. Other conditions or defects:

- Yes No Don't know *Are there any other existing material defects affecting the property that a prospective buyer should know about?

B. Verification:

The foregoing answers and attached explanations (if any) are complete and correct to the best of my/our knowledge and I/we have received a copy hereof. I/ we authorize all of my/our real estate licensees, if any, to deliver a copy of this disclosure statement to other real estate licensees and all prospective buyers of the property.

DATE SELLER SELLER

NOTICE TO THE BUYER

INFORMATION REGARDING REGISTERED SEX OFFENDERS MAY BE OBTAINED FROM LOCAL LAW ENFORCEMENT AGENCIES. THIS NOTICE IS INTENDED ONLY TO INFORM YOU OF WHERE TO OBTAIN THIS INFORMATION AND IS NOT AN INDICATION OF THE PRESENCE OF REGISTERED SEX OFFENDERS.

II. BUYER'S ACKNOWLEDGMENT

- A. Buyer hereby acknowledges that: Buyer has a duty to pay diligent attention to any material defects that are known to Buyer or can be known to Buyer by utilizing diligent attention and observation.
- B. The disclosures set forth in this statement and in any amendments to this statement are made only by the Seller and not by any real estate licensee or other party.

- C. Buyer acknowledges that, pursuant to RCW 64.06.050(2), real estate licensees are not liable for inaccurate information provided by Seller, except to the extent that real estate licensees know of such inaccurate information.
- D. This information is for disclosure only and is not intended to be a part of the written agreement between the Buyer and Seller.
- E. Buyer (which term includes all persons signing the "Buyer's acceptance" portion of this disclosure statement below) has received a copy of this Disclosure Statement (including attachments, if any) bearing Seller's signature.

DISCLOSURES CONTAINED IN THIS DISCLOSURE STATEMENT ARE PROVIDED BY SELLER BASED ON SELLER'S ACTUAL KNOWLEDGE OF THE PROPERTY AT THE TIME SELLER COMPLETES THIS DISCLOSURE STATEMENT. UNLESS BUYER AND SELLER OTHERWISE AGREE IN WRITING, BUYER SHALL HAVE THREE BUSINESS DAYS FROM THE DAY SELLER OR SELLER'S AGENT DELIVERS THIS DISCLOSURE STATEMENT TO RESCIND THE AGREEMENT BY DELIVERING A SEPARATELY SIGNED WRITTEN STATEMENT OF RESCISSION TO SELLER OR SELLER'S AGENT. IF THE SELLER DOES NOT GIVE YOU A COMPLETED DISCLOSURE STATEMENT, THEN YOU MAY WAIVE THE RIGHT TO RESCIND PRIOR TO OR AFTER THE TIME YOU ENTER INTO A SALE AGREEMENT. BUYER HEREBY ACKNOWLEDGES RECEIPT OF A COPY OF THIS DISCLOSURE STATEMENT AND ACKNOWLEDGES THAT THE DISCLOSURES MADE HEREIN ARE THOSE OF THE SELLER ONLY, AND NOT OF ANY REAL ESTATE LICENSEE OR OTHER PARTY.
 DATE BUYER BUYER

(2) If the disclosure statement is being completed for new construction which has never been occupied, the disclosure statement is not required to contain and the seller is not required to complete the questions listed in item 4. Structural or item 5. Systems and Fixtures.

(3) The seller disclosure statement shall be for disclosure only, and shall not be considered part of any written agreement between the buyer and seller of residential property. The seller disclosure statement shall be only a disclosure made by the seller, and not any real estate licensee involved in the transaction, and shall not be construed as a warranty of any kind by the seller or any real estate licensee involved in the transaction.

NEW SECTION. Sec. 2. A new section is added to chapter 64.06 RCW to read as follows:

The notice regarding sex offenders under RCW 64.06.020 does not create any legal duty on the part of the seller, or on the part of any real estate licensee, to investigate or to provide the buyer with information regarding the actual presence, or lack thereof, of registered sex offenders in the area of any property, including but not limited to any property that is the subject of a disclosure or waiver of disclosure under this chapter, or that is exempt from disclosure under RCW 64.06.010.

NEW SECTION. Sec. 3. This act applies prospectively only and not retroactively. It applies only to residential real property purchase and sale

agreements entered into on or after the effective date of this act, without regard to when the agreements are closed or finalized.

NEW SECTION. Sec. 4. This act takes effect January 1, 2005.

Passed by the Senate February 17, 2004.

Passed by the House March 3, 2004.

Approved by the Governor March 24, 2004.

Filed in Office of Secretary of State March 24, 2004.

CHAPTER 115

[Substitute Senate Bill 6494]

SOCIAL SECURITY NUMBERS—PROHIBITED USES

AN ACT Relating to prohibiting the use of social security numbers by health carriers and state health care programs; amending RCW 70.47.130; adding a new section to chapter 48.43 RCW; and adding a new section to chapter 74.09 RCW.

Be it enacted by the Legislature of the State of Washington:

NEW SECTION. Sec. 1. A new section is added to chapter 48.43 RCW to read as follows:

After December 31, 2005, a health carrier that issues a card identifying a person as an enrollee, and requires the person to present the card to providers for purposes of claims processing, may not display on the card an identification number that includes more than a four-digit portion of the person's complete social security number.

Sec. 2. RCW 70.47.130 and 2000 c 5 s 21 are each amended to read as follows:

(1) The activities and operations of the Washington basic health plan under this chapter, including those of managed health care systems to the extent of their participation in the plan, are exempt from the provisions and requirements of Title 48 RCW except:

(a) Benefits as provided in RCW 70.47.070;

(b) Managed health care systems are subject to the provisions of section 1 of this act, and RCW 48.43.500, 70.02.045, 48.43.505 through 48.43.535, 43.70.235, 48.43.545, 48.43.550, 70.02.110, and 70.02.900;

(c) Persons appointed or authorized to solicit applications for enrollment in the basic health plan, including employees of the health care authority, must comply with chapter 48.17 RCW. For purposes of this subsection (1)(c), "solicit" does not include distributing information and applications for the basic health plan and responding to questions; and

(d) Amounts paid to a managed health care system by the basic health plan for participating in the basic health plan and providing health care services for nonsubsidized enrollees in the basic health plan must comply with RCW 48.14.0201.

(2) The purpose of the 1994 amendatory language to this section in chapter 309, Laws of 1994 is to clarify the intent of the legislature that premiums paid on behalf of nonsubsidized enrollees in the basic health plan are subject to the premium and prepayment tax. The legislature does not consider this clarifying language to either raise existing taxes nor to impose a tax that did not exist previously.

NEW SECTION. Sec. 3. A new section is added to chapter 74.09 RCW to read as follows:

Any card issued after December 31, 2005, by the department or a managed health care system to a person receiving services under this chapter, that must be presented to providers for purposes of claims processing, may not display an identification number that includes more than a four-digit portion of the person's complete social security number.

Passed by the Senate February 11, 2004.

Passed by the House March 2, 2004.

Approved by the Governor March 24, 2004.

Filed in Office of Secretary of State March 24, 2004.

CHAPTER 116

[Substitute Senate Bill 6389]

COMMERCIAL SERVICE AIRPORTS—WEAPON PROHIBITION

AN ACT Relating to weapons in commercial service airports; and amending RCW 9.41.300.

Be it enacted by the Legislature of the State of Washington:

Sec. 1. RCW 9.41.300 and 1994 sp.s. c 7 s 429 are each amended to read as follows:

(1) It is unlawful for any person to enter the following places when he or she knowingly possesses or knowingly has under his or her control a weapon:

(a) The restricted access areas of a jail, or of a law enforcement facility, or any place used for the confinement of a person (i) arrested for, charged with, or convicted of an offense, (ii) held for extradition or as a material witness, or (iii) otherwise confined pursuant to an order of a court, except an order under chapter 13.32A or 13.34 RCW. Restricted access areas do not include common areas of egress or ingress open to the general public;

(b) Those areas in any building which are used in connection with court proceedings, including courtrooms, jury rooms, judge's chambers, offices and areas used to conduct court business, waiting areas, and corridors adjacent to areas used in connection with court proceedings. The restricted areas do not include common areas of ingress and egress to the building that is used in connection with court proceedings, when it is possible to protect court areas without restricting ingress and egress to the building. The restricted areas shall be the minimum necessary to fulfill the objective of this subsection (1)(b).

In addition, the local legislative authority shall provide either a stationary locked box sufficient in size for pistols and key to a weapon owner for weapon storage, or shall designate an official to receive weapons for safekeeping, during the owner's visit to restricted areas of the building. The locked box or designated official shall be located within the same building used in connection with court proceedings. The local legislative authority shall be liable for any negligence causing damage to or loss of a weapon either placed in a locked box or left with an official during the owner's visit to restricted areas of the building.

The local judicial authority shall designate and clearly mark those areas where weapons are prohibited, and shall post notices at each entrance to the building of the prohibition against weapons in the restricted areas;

(c) The restricted access areas of a public mental health facility certified by the department of social and health services for inpatient hospital care and state institutions for the care of the mentally ill, excluding those facilities solely for evaluation and treatment. Restricted access areas do not include common areas of egress and ingress open to the general public; ((or))

(d) That portion of an establishment classified by the state liquor control board as off-limits to persons under twenty-one years of age; or

(e) The restricted access areas of a commercial service airport designated in the airport security plan approved by the federal transportation security administration, including passenger screening checkpoints at or beyond the point at which a passenger initiates the screening process. These areas do not include airport drives, general parking areas and walkways, and shops and areas of the terminal that are outside the screening checkpoints and that are normally open to unscreened passengers or visitors to the airport. Any restricted access area shall be clearly indicated by prominent signs indicating that firearms and other weapons are prohibited in the area.

(2) Cities, towns, counties, and other municipalities may enact laws and ordinances:

(a) Restricting the discharge of firearms in any portion of their respective jurisdictions where there is a reasonable likelihood that humans, domestic animals, or property will be jeopardized. Such laws and ordinances shall not abridge the right of the individual guaranteed by Article I, section 24 of the state Constitution to bear arms in defense of self or others; and

(b) Restricting the possession of firearms in any stadium or convention center, operated by a city, town, county, or other municipality, except that such restrictions shall not apply to:

(i) Any pistol in the possession of a person licensed under RCW 9.41.070 or exempt from the licensing requirement by RCW 9.41.060; or

(ii) Any showing, demonstration, or lecture involving the exhibition of firearms.

(3)(a) Cities, towns, and counties may enact ordinances restricting the areas in their respective jurisdictions in which firearms may be sold, but, except as provided in (b) of this subsection, a business selling firearms may not be treated more restrictively than other businesses located within the same zone. An ordinance requiring the cessation of business within a zone shall not have a shorter grandfather period for businesses selling firearms than for any other businesses within the zone.

(b) Cities, towns, and counties may restrict the location of a business selling firearms to not less than five hundred feet from primary or secondary school grounds, if the business has a storefront, has hours during which it is open for business, and posts advertisements or signs observable to passersby that firearms are available for sale. A business selling firearms that exists as of the date a restriction is enacted under this subsection (3)(b) shall be grandfathered according to existing law.

(4) Violations of local ordinances adopted under subsection (2) of this section must have the same penalty as provided for by state law.

(5) The perimeter of the premises of any specific location covered by subsection (1) of this section shall be posted at reasonable intervals to alert the

public as to the existence of any law restricting the possession of firearms on the premises.

(6) Subsection (1) of this section does not apply to:

(a) A person engaged in military activities sponsored by the federal or state governments, while engaged in official duties;

(b) Law enforcement personnel; or

(c) Security personnel while engaged in official duties.

(7) Subsection (1)(a) of this section does not apply to a person licensed pursuant to RCW 9.41.070 who, upon entering the place or facility, directly and promptly proceeds to the administrator of the facility or the administrator's designee and obtains written permission to possess the firearm while on the premises or checks his or her firearm. The person may reclaim the firearms upon leaving but must immediately and directly depart from the place or facility.

(8) Subsection (1)(c) of this section does not apply to any administrator or employee of the facility or to any person who, upon entering the place or facility, directly and promptly proceeds to the administrator of the facility or the administrator's designee and obtains written permission to possess the firearm while on the premises.

(9) Subsection (1)(d) of this section does not apply to the proprietor of the premises or his or her employees while engaged in their employment.

(10) Any person violating subsection (1) of this section is guilty of a gross misdemeanor.

(11) "Weapon" as used in this section means any firearm, explosive as defined in RCW 70.74.010, or instrument or weapon listed in RCW 9.41.250.

Passed by the Senate March 8, 2004.

Passed by the House March 3, 2004.

Approved by the Governor March 24, 2004.

Filed in Office of Secretary of State March 24, 2004.

CHAPTER 117

[Substitute Senate Bill 6105]

ANIMAL CRUELTY—JUVENILE PENALTIES

AN ACT Relating to juvenile penalties for animal cruelty; amending RCW 13.40.127; reenacting and amending RCW 13.40.0357; prescribing penalties; and providing an effective date.

Be it enacted by the Legislature of the State of Washington:

Sec. 1. RCW 13.40.0357 and 2003 c 378 s 2, 2003 c 335 s 6, and 2003 c 53 s 97 are each reenacted and amended to read as follows:

DESCRIPTION AND OFFENSE CATEGORY

| JUVENILE DISPOSITION OFFENSE CATEGORY | DESCRIPTION (RCW CITATION) | JUVENILE DISPOSITION CATEGORY FOR ATTEMPT, BAILJUMP, CONSPIRACY, OR SOLICITATION |
|--|----------------------------|--|
|--|----------------------------|--|

Arson and Malicious Mischief

| | | |
|---|---------------------|----|
| A | Arson 1 (9A.48.020) | B+ |
| B | Arson 2 (9A.48.030) | C |

| | | |
|---|--|----|
| C | Reckless Burning 1 (9A.48.040) | D |
| D | Reckless Burning 2 (9A.48.050) | E |
| B | Malicious Mischief 1 (9A.48.070) | C |
| C | Malicious Mischief 2 (9A.48.080) | D |
| D | Malicious Mischief 3 (9A.48.090(2) (a) and (c)) | E |
| E | Malicious Mischief 3 (9A.48.090(2)(b)) | E |
| E | Tampering with Fire Alarm Apparatus (9.40.100) | E |
| E | Tampering with Fire Alarm Apparatus with Intent to Commit Arson (9.40.105) | E |
| A | Possession of Incendiary Device (9.40.120) | B+ |

Assault and Other Crimes Involving Physical Harm

| | | |
|----|---------------------------------------|----|
| A | Assault 1 (9A.36.011) | B+ |
| B+ | Assault 2 (9A.36.021) | C+ |
| C+ | Assault 3 (9A.36.031) | D+ |
| D+ | Assault 4 (9A.36.041) | E |
| B+ | Drive-By Shooting (9A.36.045) | C+ |
| D+ | Reckless Endangerment (9A.36.050) | E |
| C+ | Promoting Suicide Attempt (9A.36.060) | D+ |
| D+ | Coercion (9A.36.070) | E |
| C+ | Custodial Assault (9A.36.100) | D+ |

Burglary and Trespass

| | | |
|----|--|----|
| B+ | Burglary 1 (9A.52.020) | C+ |
| B | Residential Burglary (9A.52.025) | C |
| B | Burglary 2 (9A.52.030) | C |
| D | Burglary Tools (Possession of) (9A.52.060) | E |
| D | Criminal Trespass 1 (9A.52.070) | E |
| E | Criminal Trespass 2 (9A.52.080) | E |
| C | Mineral Trespass (78.44.330) | C |
| C | Vehicle Prowling 1 (9A.52.095) | D |
| D | Vehicle Prowling 2 (9A.52.100) | E |

Drugs

| | | |
|----|---|----|
| E | Possession/Consumption of Alcohol (66.44.270) | E |
| C | Illegally Obtaining Legend Drug (69.41.020) | D |
| C+ | Sale, Delivery, Possession of Legend Drug with Intent to Sell (69.41.030(2)(a)) | D+ |
| E | Possession of Legend Drug (69.41.030(2)(b)) | E |
| B+ | Violation of Uniform Controlled Substances Act - Narcotic, Methamphetamine, or Flunitrazepam Sale (69.50.40I(2) (a) or (b)) | B+ |

| | | |
|---|--|----|
| C | Violation of Uniform Controlled Substances Act - Nonnarcotic Sale (69.50.401(2)(c)) | C |
| E | Possession of Marihuana <40 grams (69.50.4014) | E |
| C | Fraudulently Obtaining Controlled Substance (69.50.403) | C |
| C+ | Sale of Controlled Substance for Profit (69.50.410) | C+ |
| E | Unlawful Inhalation (9.47A.020) | E |
| B | Violation of Uniform Controlled Substances Act - Narcotic, Methamphetamine, or Flunitrazepam Counterfeit Substances (69.50.4011(2) (a) or (b)) | B |
| C | Violation of Uniform Controlled Substances Act - Nonnarcotic Counterfeit Substances (69.50.4011(2) (c), (d), or (e)) | C |
| C | Violation of Uniform Controlled Substances Act - Possession of a Controlled Substance (69.50.4013) | C |
| C | Violation of Uniform Controlled Substances Act - Possession of a Controlled Substance (69.50.4012) | C |
| Firearms and Weapons | | |
| B | Theft of Firearm (9A.56.300) | C |
| B | Possession of Stolen Firearm (9A.56.310) | C |
| E | Carrying Loaded Pistol Without Permit (9.41.050) | E |
| C | Possession of Firearms by Minor (<18) (9.41.040(2)(a)(iii)) | C |
| D+ | Possession of Dangerous Weapon (9.41.250) | E |
| D | Intimidating Another Person by use of Weapon (9.41.270) | E |
| Homicide | | |
| A+ | Murder 1 (9A.32.030) | A |
| A+ | Murder 2 (9A.32.050) | B+ |
| B+ | Manslaughter 1 (9A.32.060) | C+ |
| C+ | Manslaughter 2 (9A.32.070) | D+ |
| B+ | Vehicular Homicide (46.61.520) | C+ |
| Kidnapping | | |
| A | Kidnap 1 (9A.40.020) | B+ |
| B+ | Kidnap 2 (9A.40.030) | C+ |
| C+ | Unlawful Imprisonment (9A.40.040) | D+ |
| Obstructing Governmental Operation | | |

| | | |
|---|---|----|
| D | Obstructing a Law Enforcement Officer (9A.76.020) | E |
| E | Resisting Arrest (9A.76.040) | E |
| B | Introducing Contraband 1 (9A.76.140) | C |
| C | Introducing Contraband 2 (9A.76.150) | D |
| E | Introducing Contraband 3 (9A.76.160) | E |
| B+ | Intimidating a Public Servant (9A.76.180) | C+ |
| B+ | Intimidating a Witness (9A.72.110) | C+ |
| Public Disturbance | | |
| C+ | Riot with Weapon (9A.84.010(2)(b)) | D+ |
| D+ | Riot Without Weapon (9A.84.010(2)(a)) | E |
| E | Failure to Disperse (9A.84.020) | E |
| E | Disorderly Conduct (9A.84.030) | E |
| Sex Crimes | | |
| A | Rape 1 (9A.44.040) | B+ |
| A- | Rape 2 (9A.44.050) | B+ |
| C+ | Rape 3 (9A.44.060) | D+ |
| A- | Rape of a Child 1 (9A.44.073) | B+ |
| B+ | Rape of a Child 2 (9A.44.076) | C+ |
| B | Incest 1 (9A.64.020(1)) | C |
| C | Incest 2 (9A.64.020(2)) | D |
| D+ | Indecent Exposure (Victim <14) (9A.88.010) | E |
| E | Indecent Exposure (Victim 14 or over) (9A.88.010) | E |
| B+ | Promoting Prostitution 1 (9A.88.070) | C+ |
| C+ | Promoting Prostitution 2 (9A.88.080) | D+ |
| E | O & A (Prostitution) (9A.88.030) | E |
| B+ | Indecent Liberties (9A.44.100) | C+ |
| A- | Child Molestation 1 (9A.44.083) | B+ |
| B | Child Molestation 2 (9A.44.086) | C+ |
| Theft, Robbery, Extortion, and Forgery | | |
| B | Theft 1 (9A.56.030) | C |
| C | Theft 2 (9A.56.040) | D |
| D | Theft 3 (9A.56.050) | E |
| B | Theft of Livestock 1 and 2 (9A.56.080 and 9A.56.083) | C |
| C | Forgery (9A.60.020) | D |
| A | Robbery 1 (9A.56.200) | B+ |
| B+ | Robbery 2 (9A.56.210) | C+ |
| B+ | Extortion 1 (9A.56.120) | C+ |
| C+ | Extortion 2 (9A.56.130) | D+ |
| C | Identity Theft 1 (9.35.020(2)) | D |
| D | Identity Theft 2 (9.35.020(3)) | E |

| | | |
|-------------------------------------|---|----------|
| D | Improperly Obtaining Financial Information (9.35.010) | E |
| B | Possession of Stolen Property 1 (9A.56.150) | C |
| C | Possession of Stolen Property 2 (9A.56.160) | D |
| D | Possession of Stolen Property 3 (9A.56.170) | E |
| C | Taking Motor Vehicle Without Permission 1 and 2 (9A.56.070 and 9A.56.075) | D |
| Motor Vehicle Related Crimes | | |
| E | Driving Without a License (46.20.005) | E |
| B+ | Hit and Run - Death (46.52.020(4)(a)) | C+ |
| C | Hit and Run - Injury (46.52.020(4)(b)) | D |
| D | Hit and Run-Attended (46.52.020(5)) | E |
| E | Hit and Run-Unattended (46.52.010) | E |
| C | Vehicular Assault (46.61.522) | D |
| C | Attempting to Elude Pursuing Police Vehicle (46.61.024) | D |
| E | Reckless Driving (46.61.500) | E |
| D | Driving While Under the Influence (46.61.502 and 46.61.504) | E |
| Other | | |
| <u>B</u> | <u>Animal Cruelty 1 (16.52.205)</u> | <u>C</u> |
| B | Bomb Threat (9.6I.160) | C |
| C | Escape 1 ¹ (9A.76.110) | C |
| C | Escape 2 ¹ (9A.76.120) | C |
| D | Escape 3 (9A.76.130) | E |
| E | Obscene, Harassing, Etc., Phone Calls (9.6I.230) | E |
| A | Other Offense Equivalent to an Adult Class A Felony | B+ |
| B | Other Offense Equivalent to an Adult Class B Felony | C |
| C | Other Offense Equivalent to an Adult Class C Felony | D |
| D | Other Offense Equivalent to an Adult Gross Misdemeanor | E |
| E | Other Offense Equivalent to an Adult Misdemeanor | E |
| V | Violation of Order of Restitution, Community Supervision, or Confinement (13.40.200) ² | V |

¹Escape 1 and 2 and Attempted Escape 1 and 2 are classed as C offenses and the standard range is established as follows:

1st escape or attempted escape during 12-month period - 4 weeks confinement

2nd escape or attempted escape during 12-month period - 8 weeks confinement

3rd and subsequent escape or attempted escape during 12-month period - 12 weeks confinement

²If the court finds that a respondent has violated terms of an order, it may impose a penalty of up to 30 days of confinement.

JUVENILE SENTENCING STANDARDS

This schedule must be used for juvenile offenders. The court may select sentencing option A, B, C, D, or RCW 13.40.167.

**OPTION A
JUVENILE OFFENDER SENTENCING GRID
STANDARD RANGE**

| | | | | | | | | |
|--------------------------|--|----------------------|---|---------------|---------------|---|---|---------|
| A+ | 180 WEEKS TO AGE 21 YEARS | | | | | | | |
| A | 103 WEEKS TO 129 WEEKS | | | | | | | |
| A- | 15-36 WEEKS EXCEPT 30-40 WEEKS FOR 15-17 YEAR OLDS | 52-65 WEEKS | 80-100 WEEKS | 103-129 WEEKS | | | | |
| Current Offense Category | B+ | 15-36 WEEKS | 52-65 WEEKS | 80-100 WEEKS | 103-129 WEEKS | | | |
| | B | LOCAL SANCTIONS (LS) | 15-36 WEEKS | 52-65 WEEKS | | | | |
| | C+ | LS | | 15-36 WEEKS | | | | |
| | C | LS | | 15-36 WEEKS | | | | |
| | D+ | LS | Local Sanctions: 0 to 30 Days 0 to 12 Months Community Supervision 0 to 150 Hours Community Restitution \$0 to \$500 Fine | | | | | |
| | D | LS | | | | | | |
| | E | LS | | | | | | |
| | | | 0 | 1 | 2 | 3 | 4 | or more |
| | | | PRIOR ADJUDICATIONS | | | | | |

NOTE: References in the grid to days or weeks mean periods of confinement.

(1) The vertical axis of the grid is the current offense category. The current offense category is determined by the offense of adjudication.

(2) The horizontal axis of the grid is the number of prior adjudications included in the juvenile's criminal history. Each prior felony adjudication shall

count as one point. Each prior violation, misdemeanor, and gross misdemeanor adjudication shall count as 1/4 point. Fractional points shall be rounded down.

(3) The standard range disposition for each offense is determined by the intersection of the column defined by the prior adjudications and the row defined by the current offense category.

(4) RCW 13.40.180 applies if the offender is being sentenced for more than one offense.

(5) A current offense that is a violation is equivalent to an offense category of E. However, a disposition for a violation shall not include confinement.

OR

OPTION B SUSPENDED DISPOSITION ALTERNATIVE

(1) If the offender is subject to a standard range disposition involving confinement by the department, the court may impose the standard range and suspend the disposition on condition that the offender comply with one or more local sanctions and any educational or treatment requirement. The treatment programs provided to the offender must be research-based best practice programs as identified by the Washington state institute for public policy or the joint legislative audit and review committee.

(2) If the offender fails to comply with the suspended disposition, the court may impose sanctions pursuant to RCW 13.40.200 or may revoke the suspended disposition and order the disposition's execution.

(3) An offender is ineligible for the suspended disposition option under this section if the offender is:

(a) Adjudicated of an A+ offense;

(b) Fourteen years of age or older and is adjudicated of one or more of the following offenses:

(i) A class A offense, or an attempt, conspiracy, or solicitation to commit a class A offense;

(ii) Manslaughter in the first degree (RCW 9A.32.060); or

(iii) Assault in the second degree (RCW 9A.36.021), extortion in the first degree (RCW 9A.56.120), kidnapping in the second degree (RCW 9A.40.030), robbery in the second degree (RCW 9A.56.210), residential burglary (RCW 9A.52.025), burglary in the second degree (RCW 9A.52.030), drive-by shooting (RCW 9A.36.045), vehicular homicide (RCW 46.61.520), hit and run death (RCW 46.52.020(4)(a)), intimidating a witness (RCW 9A.72.110), violation of the uniform controlled substances act (RCW 69.50.401(~~(a)(1)(i) or (ii)~~)) (2)(a) and (b)), or manslaughter 2 (RCW 9A.32.070), when the offense includes infliction of bodily harm upon another or when during the commission or immediate withdrawal from the offense the respondent was armed with a deadly weapon;

(c) Ordered to serve a disposition for a firearm violation under RCW 13.40.193; or

(d) Adjudicated of a sex offense as defined in RCW 9.94A.030.

OR

**OPTION C
CHEMICAL DEPENDENCY DISPOSITION ALTERNATIVE**

If the juvenile offender is subject to a standard range disposition of local sanctions or 15 to 36 weeks of confinement and has not committed an A- or B+ offense, the court may impose a disposition under RCW 13.40.160(4) and 13.40.165.

OR

**OPTION D
MANIFEST INJUSTICE**

If the court determines that a disposition under option A, B, or C would effectuate a manifest injustice, the court shall impose a disposition outside the standard range under RCW 13.40.160(2).

Sec.2. RCW 13.40.127 and 2001 c 175 s 3 are each amended to read as follows:

(1) A juvenile is eligible for deferred disposition unless he or she:

- (a) Is charged with a sex or violent offense;
- (b) Has a criminal history which includes any felony;
- (c) Has a prior deferred disposition or deferred adjudication; or
- (d) Has two or more adjudications.

(2) The juvenile court may, upon motion at least fourteen days before commencement of trial and, after consulting the juvenile's custodial parent or parents or guardian and with the consent of the juvenile, continue the case for disposition for a period not to exceed one year from the date the juvenile is found guilty. The court shall consider whether the offender and the community will benefit from a deferred disposition before deferring the disposition.

(3) Any juvenile who agrees to a deferral of disposition shall:

(a) Stipulate to the admissibility of the facts contained in the written police report;

(b) Acknowledge that the report will be entered and used to support a finding of guilt and to impose a disposition if the juvenile fails to comply with terms of supervision; and

(c) Waive the following rights to: (i) A speedy disposition; and (ii) call and confront witnesses.

The adjudicatory hearing shall be limited to a reading of the court's record.

(4) Following the stipulation, acknowledgment, waiver, and entry of a finding or plea of guilt, the court shall defer entry of an order of disposition of the juvenile.

(5) Any juvenile granted a deferral of disposition under this section shall be placed under community supervision. The court may impose any conditions of supervision that it deems appropriate including posting a probation bond. Payment of restitution under RCW 13.40.190 shall be a condition of community supervision under this section.

The court may require a juvenile offender convicted of animal cruelty in the first degree to submit to a mental health evaluation to determine if the offender would benefit from treatment and such intervention would promote the safety of

the community. After consideration of the results of the evaluation, as a condition of community supervision, the court may order the offender to attend treatment to address issues pertinent to the offense.

(6) A parent who signed for a probation bond has the right to notify the counselor if the juvenile fails to comply with the bond or conditions of supervision. The counselor shall notify the court and surety of any failure to comply. A surety shall notify the court of the juvenile's failure to comply with the probation bond. The state shall bear the burden to prove, by a preponderance of the evidence, that the juvenile has failed to comply with the terms of community supervision.

(7) A juvenile's lack of compliance shall be determined by the judge upon written motion by the prosecutor or the juvenile's juvenile court community supervision counselor. If a juvenile fails to comply with terms of supervision, the court shall enter an order of disposition.

(8) At any time following deferral of disposition the court may, following a hearing, continue the case for an additional one-year period for good cause.

(9) At the conclusion of the period set forth in the order of deferral and upon a finding by the court of full compliance with conditions of supervision and payment of full restitution, the respondent's conviction shall be vacated and the court shall dismiss the case with prejudice, except that a conviction under RCW 16.52.205 shall not be vacated.

NEW SECTION. Sec. 3. This act takes effect July 1, 2004.

Passed by the Senate March 8, 2004.

Passed by the House March 3, 2004.

Approved by the Governor March 24, 2004.

Filed in Office of Secretary of State March 24, 2004.

CHAPTER 118

[Senate Bill 6326]

UNLAWFUL BUS CONDUCT

AN ACT Relating to unlawful bus conduct; and amending RCW 9.91.025 and 46.04.355.

Be it enacted by the Legislature of the State of Washington:

Sec. 1. RCW 9.91.025 and 1994 c 45 s 4 are each amended to read as follows:

(1) A person is guilty of unlawful bus conduct if while on or in a municipal transit vehicle as defined by RCW 46.04.355 or in or at a municipal transit station and with knowledge that ~~((such))~~ the conduct is prohibited, he or she:

(a) Except while in or at a municipal transit station, smokes or carries a lighted or smoldering pipe, cigar, or cigarette;

(b) Discards litter other than in designated receptacles;

(c) Plays any radio, recorder, or other sound-producing equipment except that nothing herein ~~((shall))~~ prohibits the use of ~~((such))~~ the equipment when connected to earphones that limit the sound to individual listeners or the use of a communication device by an employee of the owner or operator of the municipal transit vehicle or municipal transit station;

(d) Spits or expectorates;

(e) Carries any flammable liquid, explosive, acid, or other article or material likely to cause harm to others except that nothing herein (~~shall~~) prevents a person from carrying a cigarette, cigar, or pipe lighter or carrying a firearm or ammunition in a way that is not otherwise prohibited by law;

(f) Intentionally obstructs or impedes the flow of municipal transit vehicles or passenger traffic, hinders or prevents access to municipal transit vehicles or stations, or otherwise unlawfully interferes with the provision or use of public transportation services;

(g) Intentionally disturbs others by engaging in loud, raucous, unruly, harmful, or harassing behavior; or

(h) Destroys, defaces, or otherwise damages property of a municipality as defined in RCW 35.58.272 or a regional transit authority authorized by chapter 81.112 RCW employed in the provision or use of public transportation services.

(2) For the purposes of this section, "municipal transit station" means all facilities, structures, lands, interest in lands, air rights over lands, and rights of way of all kinds that are owned, leased, held, or used by a municipality as defined in RCW 35.58.272, or a regional transit authority authorized by chapter 81.112 RCW for the purpose of providing public transportation services, including, but not limited to, park and ride lots, transit centers and tunnels, and bus shelters.

(3) Unlawful bus conduct is a misdemeanor.

Sec. 2. RCW 46.04.355 and 1984 c 167 s 2 are each amended to read as follows:

Municipal transit vehicle includes every motor vehicle, street car, train, trolley vehicle, and any other device, which (1) is capable of being moved within, upon, above, or below a public highway, (2) is owned or operated by a city, county, county transportation authority, public transportation benefit area, regional transit authority, or metropolitan municipal corporation within the state, and (3) is used for the purpose of carrying passengers together with incidental baggage and freight on a regular schedule.

Passed by the Senate February 16, 2004.

Passed by the House March 4, 2004.

Approved by the Governor March 24, 2004.

Filed in Office of Secretary of State March 24, 2004.

CHAPTER 119

[Senate Bill 6378]

MOVIE THEATERS—UNAUTHORIZED RECORDING

AN ACT Relating to prohibiting unauthorized operation of a recording device in a motion picture exhibition facility; adding a new chapter to Title 19 RCW; and prescribing penalties.

Be it enacted by the Legislature of the State of Washington:

NEW SECTION. Sec. 1. (1) Whoever, without the consent of the owner or lessee of the motion picture exhibition facility and the licensor of the motion picture being exhibited, knowingly operates an audiovisual recording function of a device in a motion picture exhibition facility is guilty of a gross misdemeanor.

(2) The owner or lessee of a motion picture exhibition facility where a motion picture is being exhibited, or the authorized agent or employee of such

owner or lessee, or the licensor of the motion picture being exhibited or his or her agent or employee, who alerts law enforcement authorities of an alleged violation of this section shall not be liable in any civil action arising out of measures taken by such owner, lessee, licensor, agent, or employee in the course of subsequently detaining a person that the owner, lessee, licensor, agent, or employee in good faith believed to have violated this section while awaiting the arrival of law enforcement authorities, unless the plaintiff can show by clear and convincing evidence that such measures were manifestly unreasonable or the period of detention was unreasonably long.

(3) This section does not prevent any lawfully authorized investigative, law enforcement protective, or intelligence gathering employee or agent, of the state or federal government, from operating any audiovisual recording device in any motion picture exhibition facility where a motion picture is being exhibited, as part of lawfully authorized investigative, protective, law enforcement, or intelligence gathering activities.

(4) For the purposes of this section:

(a) "Audiovisual recording function" means the capability of a device to record or transmit a motion picture or any part thereof by means of any technology now known or later developed.

(b) "Motion picture exhibition facility" means any theater, screening room, indoor or outdoor screening venue, auditorium, ballroom, or other premises where motion pictures are publicly exhibited, regardless of whether an admission fee is charged, but does not include a personal residence or retail establishment.

NEW SECTION. Sec. 2. Section 1 of this act constitutes a new chapter in Title 19 RCW.

Passed by the Senate March 8, 2004.

Passed by the House March 3, 2004.

Approved by the Governor March 24, 2004.

Filed in Office of Secretary of State March 24, 2004.

CHAPTER 120

[Engrossed Substitute Senate Bill 6472]

CRIME VICTIMS—JUVENILE OFFENDERS

AN ACT Relating to victims of crime; amending RCW 13.40.010, 13.40.165, 13.40.200, 7.69.030, 7.69A.030, and 13.04.040; reenacting and amending RCW 13.40.020, 13.40.080, 13.40.160, and 13.40.190; and providing an effective date.

Be it enacted by the Legislature of the State of Washington:

Sec. 1. RCW 13.40.010 and 1997 c 338 s 8 are each amended to read as follows:

(1) This chapter shall be known and cited as the Juvenile Justice Act of 1977.

(2) It is the intent of the legislature that a system capable of having primary responsibility for, being accountable for, and responding to the needs of youthful offenders and their victims, as defined by this chapter, be established. It is the further intent of the legislature that youth, in turn, be held accountable for their offenses and that communities, families, and the juvenile courts carry out their

functions consistent with this intent. To effectuate these policies, the legislature declares the following to be equally important purposes of this chapter:

- (a) Protect the citizenry from criminal behavior;
- (b) Provide for determining whether accused juveniles have committed offenses as defined by this chapter;
- (c) Make the juvenile offender accountable for his or her criminal behavior;
- (d) Provide for punishment commensurate with the age, crime, and criminal history of the juvenile offender;
- (e) Provide due process for juveniles alleged to have committed an offense;
- (f) Provide necessary treatment, supervision, and custody for juvenile offenders;
- (g) Provide for the handling of juvenile offenders by communities whenever consistent with public safety;
- (h) Provide for restitution to victims of crime;
- (i) Develop effective standards and goals for the operation, funding, and evaluation of all components of the juvenile justice system and related services at the state and local levels;
- (j) Provide for a clear policy to determine what types of offenders shall receive punishment, treatment, or both, and to determine the jurisdictional limitations of the courts, institutions, and community services; ~~((and))~~
- (k) Provide opportunities for victim participation in juvenile justice process, including court hearings on juvenile offender matters, and ensure that Article I, section 35 of the Washington state Constitution, the victim bill of rights, is fully observed; and
- (l) Encourage the parents, guardian, or custodian of the juvenile to actively participate in the juvenile justice process.

Sec. 2. RCW 13.40.020 and 2002 c 237 s 7 and 2002 c 175 s 19 are each reenacted and amended to read as follows:

For the purposes of this chapter:

- (1) "Community-based rehabilitation" means one or more of the following: Employment; attendance of information classes; literacy classes; counseling, outpatient substance abuse treatment programs, outpatient mental health programs, anger management classes, education or outpatient treatment programs to prevent animal cruelty, or other services; or attendance at school or other educational programs appropriate for the juvenile as determined by the school district. Placement in community-based rehabilitation programs is subject to available funds;
- (2) Community-based sanctions may include one or more of the following:
 - (a) A fine, not to exceed five hundred dollars;
 - (b) Community restitution not to exceed one hundred fifty hours of community restitution;
- (3) "Community restitution" means compulsory service, without compensation, performed for the benefit of the community by the offender as punishment for committing an offense. Community restitution may be performed through public or private organizations or through work crews;
- (4) "Community supervision" means an order of disposition by the court of an adjudicated youth not committed to the department or an order granting a deferred disposition. A community supervision order for a single offense may be for a period of up to two years for a sex offense as defined by RCW

9.94A.030 and up to one year for other offenses. As a mandatory condition of any term of community supervision, the court shall order the juvenile to refrain from committing new offenses. As a mandatory condition of community supervision, the court shall order the juvenile to comply with the mandatory school attendance provisions of chapter 28A.225 RCW and to inform the school of the existence of this requirement. Community supervision is an individualized program comprised of one or more of the following:

- (a) Community-based sanctions;
- (b) Community-based rehabilitation;
- (c) Monitoring and reporting requirements;
- (d) Posting of a probation bond;

(5) "Confinement" means physical custody by the department of social and health services in a facility operated by or pursuant to a contract with the state, or physical custody in a detention facility operated by or pursuant to a contract with any county. The county may operate or contract with vendors to operate county detention facilities. The department may operate or contract to operate detention facilities for juveniles committed to the department. Pretrial confinement or confinement of less than thirty-one days imposed as part of a disposition or modification order may be served consecutively or intermittently, in the discretion of the court;

(6) "Court," when used without further qualification, means the juvenile court judge(s) or commissioner(s);

(7) "Criminal history" includes all criminal complaints against the respondent for which, prior to the commission of a current offense:

(a) The allegations were found correct by a court. If a respondent is convicted of two or more charges arising out of the same course of conduct, only the highest charge from among these shall count as an offense for the purposes of this chapter; or

(b) The criminal complaint was diverted by a prosecutor pursuant to the provisions of this chapter on agreement of the respondent and after an advisement to the respondent that the criminal complaint would be considered as part of the respondent's criminal history. A successfully completed deferred adjudication that was entered before July 1, 1998, or a deferred disposition shall not be considered part of the respondent's criminal history;

(8) "Department" means the department of social and health services;

(9) "Detention facility" means a county facility, paid for by the county, for the physical confinement of a juvenile alleged to have committed an offense or an adjudicated offender subject to a disposition or modification order. "Detention facility" includes county group homes, inpatient substance abuse programs, juvenile basic training camps, and electronic monitoring;

(10) "Diversion unit" means any probation counselor who enters into a diversion agreement with an alleged youthful offender, or any other person, community accountability board, youth court under the supervision of the juvenile court, or other entity except a law enforcement official or entity, with whom the juvenile court administrator has contracted to arrange and supervise such agreements pursuant to RCW 13.40.080, or any person, community accountability board, or other entity specially funded by the legislature to arrange and supervise diversion agreements in accordance with the requirements of this chapter. For purposes of this subsection, "community accountability

board" means a board comprised of members of the local community in which the juvenile offender resides. The superior court shall appoint the members. The boards shall consist of at least three and not more than seven members. If possible, the board should include a variety of representatives from the community, such as a law enforcement officer, teacher or school administrator, high school student, parent, and business owner, and should represent the cultural diversity of the local community;

(11) "Foster care" means temporary physical care in a foster family home or group care facility as defined in RCW 74.15.020 and licensed by the department, or other legally authorized care;

(12) "Institution" means a juvenile facility established pursuant to chapters 72.05 and 72.16 through 72.20 RCW;

(13) "Intensive supervision program" means a parole program that requires intensive supervision and monitoring, offers an array of individualized treatment and transitional services, and emphasizes community involvement and support in order to reduce the likelihood a juvenile offender will commit further offenses;

(14) "Juvenile," "youth," and "child" mean any individual who is under the chronological age of eighteen years and who has not been previously transferred to adult court pursuant to RCW 13.40.110 or who is otherwise under adult court jurisdiction;

(15) "Juvenile offender" means any juvenile who has been found by the juvenile court to have committed an offense, including a person eighteen years of age or older over whom jurisdiction has been extended under RCW 13.40.300;

(16) "Local sanctions" means one or more of the following: (a) 0-30 days of confinement; (b) 0-12 months of community supervision; (c) 0-150 hours of community restitution; or (d) \$0-\$500 fine;

(17) "Manifest injustice" means a disposition that would either impose an excessive penalty on the juvenile or would impose a serious, and clear danger to society in light of the purposes of this chapter;

(18) "Monitoring and reporting requirements" means one or more of the following: Curfews; requirements to remain at home, school, work, or court-ordered treatment programs during specified hours; restrictions from leaving or entering specified geographical areas; requirements to report to the probation officer as directed and to remain under the probation officer's supervision; and other conditions or limitations as the court may require which may not include confinement;

(19) "Offense" means an act designated a violation or a crime if committed by an adult under the law of this state, under any ordinance of any city or county of this state, under any federal law, or under the law of another state if the act occurred in that state;

(20) "Probation bond" means a bond, posted with sufficient security by a surety justified and approved by the court, to secure the offender's appearance at required court proceedings and compliance with court-ordered community supervision or conditions of release ordered pursuant to RCW 13.40.040 or 13.40.050. It also means a deposit of cash or posting of other collateral in lieu of a bond if approved by the court;

(21) "Respondent" means a juvenile who is alleged or proven to have committed an offense;

(22) "Restitution" means financial reimbursement by the offender to the victim, and shall be limited to easily ascertainable damages for injury to or loss of property, actual expenses incurred for medical treatment for physical injury to persons, lost wages resulting from physical injury, and costs of the victim's counseling reasonably related to the offense (~~(if the offense is a sex offense)~~). Restitution shall not include reimbursement for damages for mental anguish, pain and suffering, or other intangible losses. Nothing in this chapter shall limit or replace civil remedies or defenses available to the victim or offender;

(23) "Secretary" means the secretary of the department of social and health services. "Assistant secretary" means the assistant secretary for juvenile rehabilitation for the department;

(24) "Services" means services which provide alternatives to incarceration for those juveniles who have pleaded or been adjudicated guilty of an offense or have signed a diversion agreement pursuant to this chapter;

(25) "Sex offense" means an offense defined as a sex offense in RCW 9.94A.030;

(26) "Sexual motivation" means that one of the purposes for which the respondent committed the offense was for the purpose of his or her sexual gratification;

(27) "Surety" means an entity licensed under state insurance laws or by the state department of licensing, to write corporate, property, or probation bonds within the state, and justified and approved by the superior court of the county having jurisdiction of the case;

(28) "Violation" means an act or omission, which if committed by an adult, must be proven beyond a reasonable doubt, and is punishable by sanctions which do not include incarceration;

(29) "Violent offense" means a violent offense as defined in RCW 9.94A.030;

(30) "Youth court" means a diversion unit under the supervision of the juvenile court.

Sec. 3. RCW 13.40.080 and 2002 c 237 s 8 and 2002 c 175 s 21 are each reenacted and amended to read as follows:

(1) A diversion agreement shall be a contract between a juvenile accused of an offense and a diversion unit whereby the juvenile agrees to fulfill certain conditions in lieu of prosecution. Such agreements may be entered into only after the prosecutor, or probation counselor pursuant to this chapter, has determined that probable cause exists to believe that a crime has been committed and that the juvenile committed it. Such agreements shall be entered into as expeditiously as possible.

(2) A diversion agreement shall be limited to one or more of the following:

(a) Community restitution not to exceed one hundred fifty hours, not to be performed during school hours if the juvenile is attending school;

(b) Restitution limited to the amount of actual loss incurred by any victim;

(c) Attendance at up to ten hours of counseling and/or up to twenty hours of educational or informational sessions at a community agency. The educational or informational sessions may include sessions relating to respect for self, others, and authority; victim awareness; accountability; self-worth;

responsibility; work ethics; good citizenship; literacy; and life skills. For purposes of this section, "community agency" may also mean a community-based nonprofit organization, if approved by the diversion unit. The state shall not be liable for costs resulting from the diversion unit exercising the option to permit diversion agreements to mandate attendance at up to ten hours of counseling and/or up to twenty hours of educational or informational sessions;

(d) A fine, not to exceed one hundred dollars;

(e) Requirements to remain during specified hours at home, school, or work, and restrictions on leaving or entering specified geographical areas; and

(f) Upon request of any victim or witness, requirements to refrain from any contact with victims or witnesses of offenses committed by the juvenile.

(3) Notwithstanding the provisions of subsection (2) of this section, youth courts are not limited to the conditions imposed by subsection (2) of this section in imposing sanctions on juveniles pursuant to RCW 13.40.630.

(4) In assessing periods of community restitution to be performed and restitution to be paid by a juvenile who has entered into a diversion agreement, the court officer to whom this task is assigned shall consult with the juvenile's custodial parent or parents or guardian (~~and~~). To the extent possible, the court officer shall advise the victims ((who have contacted the diversion unit)) of the juvenile offender of the diversion process, offer victim impact letter forms and restitution claim forms, and((, to the extent possible,)) involve members of the community. Such members of the community shall meet with the juvenile and advise the court officer as to the terms of the diversion agreement and shall supervise the juvenile in carrying out its terms.

(5)(a) A diversion agreement may not exceed a period of six months and may include a period extending beyond the eighteenth birthday of the divertee.

(b) If additional time is necessary for the juvenile to complete restitution to a victim, the time period limitations of this subsection may be extended by an additional six months.

(c) If the juvenile has not paid the full amount of restitution by the end of the additional six-month period, then the juvenile shall be referred to the juvenile court for entry of an order establishing the amount of restitution still owed to the victim. In this order, the court shall also determine the terms and conditions of the restitution, including a payment plan extending up to ten years if the court determines that the juvenile does not have the means to make full restitution over a shorter period. For the purposes of this subsection (5)(c), the juvenile shall remain under the court's jurisdiction for a maximum term of ten years after the juvenile's eighteenth birthday. Prior to the expiration of the initial ten-year period, the juvenile court may extend the judgment for restitution an additional ten years. The court may (~~not require the juvenile~~) relieve the juvenile of the requirement to pay full or partial restitution if the juvenile reasonably satisfies the court that he or she does not have the means to make full or partial restitution and could not reasonably acquire the means to pay the restitution over a ten-year period. If the court relieves the juvenile of the requirement to pay full or partial restitution, the court may order an amount of community restitution that the court deems appropriate. The county clerk shall make disbursements to victims named in the order. The restitution to victims named in the order shall be paid prior to any payment for other penalties or monetary assessments. A juvenile

under obligation to pay restitution may petition the court for modification of the restitution order.

(6) The juvenile shall retain the right to be referred to the court at any time prior to the signing of the diversion agreement.

(7) Divertees and potential divertees shall be afforded due process in all contacts with a diversion unit regardless of whether the juveniles are accepted for diversion or whether the diversion program is successfully completed. Such due process shall include, but not be limited to, the following:

(a) A written diversion agreement shall be executed stating all conditions in clearly understandable language;

(b) Violation of the terms of the agreement shall be the only grounds for termination;

(c) No divertee may be terminated from a diversion program without being given a court hearing, which hearing shall be preceded by:

(i) Written notice of alleged violations of the conditions of the diversion program; and

(ii) Disclosure of all evidence to be offered against the divertee;

(d) The hearing shall be conducted by the juvenile court and shall include:

(i) Opportunity to be heard in person and to present evidence;

(ii) The right to confront and cross-examine all adverse witnesses;

(iii) A written statement by the court as to the evidence relied on and the reasons for termination, should that be the decision; and

(iv) Demonstration by evidence that the divertee has substantially violated the terms of his or her diversion agreement.

(e) The prosecutor may file an information on the offense for which the divertee was diverted:

(i) In juvenile court if the divertee is under eighteen years of age; or

(ii) In superior court or the appropriate court of limited jurisdiction if the divertee is eighteen years of age or older.

(8) The diversion unit shall, subject to available funds, be responsible for providing interpreters when juveniles need interpreters to effectively communicate during diversion unit hearings or negotiations.

(9) The diversion unit shall be responsible for advising a divertee of his or her rights as provided in this chapter.

(10) The diversion unit may refer a juvenile to community-based counseling or treatment programs.

(11) The right to counsel shall inure prior to the initial interview for purposes of advising the juvenile as to whether he or she desires to participate in the diversion process or to appear in the juvenile court. The juvenile may be represented by counsel at any critical stage of the diversion process, including intake interviews and termination hearings. The juvenile shall be fully advised at the intake of his or her right to an attorney and of the relevant services an attorney can provide. For the purpose of this section, intake interviews mean all interviews regarding the diversion agreement process.

The juvenile shall be advised that a diversion agreement shall constitute a part of the juvenile's criminal history as defined by RCW 13.40.020(7). A signed acknowledgment of such advisement shall be obtained from the juvenile, and the document shall be maintained by the diversion unit together with the diversion agreement, and a copy of both documents shall be delivered to the

prosecutor if requested by the prosecutor. The supreme court shall promulgate rules setting forth the content of such advisement in simple language.

(12) When a juvenile enters into a diversion agreement, the juvenile court may receive only the following information for dispositional purposes:

- (a) The fact that a charge or charges were made;
- (b) The fact that a diversion agreement was entered into;
- (c) The juvenile's obligations under such agreement;
- (d) Whether the alleged offender performed his or her obligations under such agreement; and
- (e) The facts of the alleged offense.

(13) A diversion unit may refuse to enter into a diversion agreement with a juvenile. When a diversion unit refuses to enter a diversion agreement with a juvenile, it shall immediately refer such juvenile to the court for action and shall forward to the court the criminal complaint and a detailed statement of its reasons for refusing to enter into a diversion agreement. The diversion unit shall also immediately refer the case to the prosecuting attorney for action if such juvenile violates the terms of the diversion agreement.

(14) A diversion unit may, in instances where it determines that the act or omission of an act for which a juvenile has been referred to it involved no victim, or where it determines that the juvenile referred to it has no prior criminal history and is alleged to have committed an illegal act involving no threat of or instance of actual physical harm and involving not more than fifty dollars in property loss or damage and that there is no loss outstanding to the person or firm suffering such damage or loss, counsel and release or release such a juvenile without entering into a diversion agreement. A diversion unit's authority to counsel and release a juvenile under this subsection includes the authority to refer the juvenile to community-based counseling or treatment programs. Any juvenile released under this subsection shall be advised that the act or omission of any act for which he or she had been referred shall constitute a part of the juvenile's criminal history as defined by RCW 13.40.020(7). A signed acknowledgment of such advisement shall be obtained from the juvenile, and the document shall be maintained by the unit, and a copy of the document shall be delivered to the prosecutor if requested by the prosecutor. The supreme court shall promulgate rules setting forth the content of such advisement in simple language. A juvenile determined to be eligible by a diversion unit for release as provided in this subsection shall retain the same right to counsel and right to have his or her case referred to the court for formal action as any other juvenile referred to the unit.

(15) A diversion unit may supervise the fulfillment of a diversion agreement entered into before the juvenile's eighteenth birthday and which includes a period extending beyond the divertee's eighteenth birthday.

(16) If a fine required by a diversion agreement cannot reasonably be paid due to a change of circumstance, the diversion agreement may be modified at the request of the divertee and with the concurrence of the diversion unit to convert an unpaid fine into community restitution. The modification of the diversion agreement shall be in writing and signed by the divertee and the diversion unit. The number of hours of community restitution in lieu of a monetary penalty shall be converted at the rate of the prevailing state minimum wage per hour.

(17) Fines imposed under this section shall be collected and paid into the county general fund in accordance with procedures established by the juvenile court administrator under RCW 13.04.040 and may be used only for juvenile services. In the expenditure of funds for juvenile services, there shall be a maintenance of effort whereby counties exhaust existing resources before using amounts collected under this section.

Sec. 4. RCW 13.40.160 and 2003 c 378 s 3 and 2003 c 53 s 99 are each reenacted and amended to read as follows:

(1) The standard range disposition for a juvenile adjudicated of an offense is determined according to RCW 13.40.0357.

(a) When the court sentences an offender to a local sanction as provided in RCW 13.40.0357 option A, the court shall impose a determinate disposition within the standard ranges, except as provided in subsection (2), (3), (4), (5), or (6) of this section. The disposition may be comprised of one or more local sanctions.

(b) When the court sentences an offender to a standard range as provided in RCW 13.40.0357 option A that includes a term of confinement exceeding thirty days, commitment shall be to the department for the standard range of confinement, except as provided in subsection (2), (3), (4), (5), or (6) of this section.

(2) If the court concludes, and enters reasons for its conclusion, that disposition within the standard range would effectuate a manifest injustice the court shall impose a disposition outside the standard range, as indicated in option D of RCW 13.40.0357. The court's finding of manifest injustice shall be supported by clear and convincing evidence.

A disposition outside the standard range shall be determinate and shall be comprised of confinement or community supervision, or a combination thereof. When a judge finds a manifest injustice and imposes a sentence of confinement exceeding thirty days, the court shall sentence the juvenile to a maximum term, and the provisions of RCW 13.40.030(2) shall be used to determine the range. A disposition outside the standard range is appealable under RCW 13.40.230 by the state or the respondent. A disposition within the standard range is not appealable under RCW 13.40.230.

(3) When a juvenile offender is found to have committed a sex offense, other than a sex offense that is also a serious violent offense as defined by RCW 9.94A.030, and has no history of a prior sex offense, the court, on its own motion or the motion of the state or the respondent, may order an examination to determine whether the respondent is amenable to treatment.

The report of the examination shall include at a minimum the following: The respondent's version of the facts and the official version of the facts, the respondent's offense history, an assessment of problems in addition to alleged deviant behaviors, the respondent's social, educational, and employment situation, and other evaluation measures used. The report shall set forth the sources of the evaluator's information.

The examiner shall assess and report regarding the respondent's amenability to treatment and relative risk to the community. A proposed treatment plan shall be provided and shall include, at a minimum:

(a)(i) Frequency and type of contact between the offender and therapist;

(ii) Specific issues to be addressed in the treatment and description of planned treatment modalities;

(iii) Monitoring plans, including any requirements regarding living conditions, lifestyle requirements, and monitoring by family members, legal guardians, or others;

(iv) Anticipated length of treatment; and

(v) Recommended crime-related prohibitions.

The court on its own motion may order, or on a motion by the state shall order, a second examination regarding the offender's amenability to treatment. The evaluator shall be selected by the party making the motion. The defendant shall pay the cost of any second examination ordered unless the court finds the defendant to be indigent in which case the state shall pay the cost.

After receipt of reports of the examination, the court shall then consider whether the offender and the community will benefit from use of this special sex offender disposition alternative and consider the victim's opinion whether the offender should receive a treatment disposition under this section. If the court determines that this special sex offender disposition alternative is appropriate, then the court shall impose a determinate disposition within the standard range for the offense, or if the court concludes, and enters reasons for its conclusions, that such disposition would cause a manifest injustice, the court shall impose a disposition under option D, and the court may suspend the execution of the disposition and place the offender on community supervision for at least two years. As a condition of the suspended disposition, the court may impose the conditions of community supervision and other conditions, including up to thirty days of confinement and requirements that the offender do any one or more of the following:

(b)(i) Devote time to a specific education, employment, or occupation;

(ii) Undergo available outpatient sex offender treatment for up to two years, or inpatient sex offender treatment not to exceed the standard range of confinement for that offense. A community mental health center may not be used for such treatment unless it has an appropriate program designed for sex offender treatment. The respondent shall not change sex offender treatment providers or treatment conditions without first notifying the prosecutor, the probation counselor, and the court, and shall not change providers without court approval after a hearing if the prosecutor or probation counselor object to the change;

(iii) Remain within prescribed geographical boundaries and notify the court or the probation counselor prior to any change in the offender's address, educational program, or employment;

(iv) Report to the prosecutor and the probation counselor prior to any change in a sex offender treatment provider. This change shall have prior approval by the court;

(v) Report as directed to the court and a probation counselor;

(vi) Pay all court-ordered legal financial obligations, perform community restitution, or any combination thereof;

(vii) Make restitution to the victim for the cost of any counseling reasonably related to the offense;

(viii) Comply with the conditions of any court-ordered probation bond; or

(ix) The court shall order that the offender (~~(may)~~ shall) not attend the public or approved private elementary, middle, or high school attended by the victim or the victim's siblings. The parents or legal guardians of the offender are responsible for transportation or other costs associated with the offender's change of school that would otherwise be paid by the school district. The court shall send notice of the disposition and restriction on attending the same school as the victim or victim's siblings to the public or approved private school the juvenile will attend, if known, or if unknown, to the approved private schools and the public school district board of directors of the district in which the juvenile resides or intends to reside. This notice must be sent at the earliest possible date but not later than ten calendar days after entry of the disposition.

The sex offender treatment provider shall submit quarterly reports on the respondent's progress in treatment to the court and the parties. The reports shall reference the treatment plan and include at a minimum the following: Dates of attendance, respondent's compliance with requirements, treatment activities, the respondent's relative progress in treatment, and any other material specified by the court at the time of the disposition.

At the time of the disposition, the court may set treatment review hearings as the court considers appropriate.

Except as provided in this subsection (3), after July 1, 1991, examinations and treatment ordered pursuant to this subsection shall only be conducted by sex offender treatment providers certified by the department of health pursuant to chapter 18.155 RCW. A sex offender therapist who examines or treats a juvenile sex offender pursuant to this subsection does not have to be certified by the department of health pursuant to chapter 18.155 RCW if the court finds that: (A) The offender has already moved to another state or plans to move to another state for reasons other than circumventing the certification requirements; (B) no certified providers are available for treatment within a reasonable geographical distance of the offender's home; and (C) the evaluation and treatment plan comply with this subsection (3) and the rules adopted by the department of health.

If the offender violates any condition of the disposition or the court finds that the respondent is failing to make satisfactory progress in treatment, the court may revoke the suspension and order execution of the disposition or the court may impose a penalty of up to thirty days' confinement for violating conditions of the disposition. The court may order both execution of the disposition and up to thirty days' confinement for the violation of the conditions of the disposition. The court shall give credit for any confinement time previously served if that confinement was for the offense for which the suspension is being revoked.

For purposes of this section, "victim" means any person who has sustained emotional, psychological, physical, or financial injury to person or property as a direct result of the crime charged. "Victim" may also include a known parent or guardian of a victim who is a minor child unless the parent or guardian is the perpetrator of the offense.

A disposition entered under this subsection (3) is not appealable under RCW 13.40.230.

(4) If the juvenile offender is subject to a standard range disposition of local sanctions or 15 to 36 weeks of confinement and has not committed an A- or B+ offense, the court may impose the disposition alternative under RCW 13.40.165.

(5) If a juvenile is subject to a commitment of 15 to 65 weeks of confinement, the court may impose the disposition alternative under RCW 13.40.167.

(6) When the offender is subject to a standard range commitment of 15 to 36 weeks and is ineligible for a suspended disposition alternative, a manifest injustice disposition below the standard range, special sex offender disposition alternative, chemical dependency disposition alternative, or mental health disposition alternative, the court in a county with a pilot program under RCW 13.40.169, may impose the disposition alternative under RCW 13.40.169.

(7) RCW 13.40.193 shall govern the disposition of any juvenile adjudicated of possessing a firearm in violation of RCW 9.41.040(2)(a)(iii) or any crime in which a special finding is entered that the juvenile was armed with a firearm.

(8) Whenever a juvenile offender is entitled to credit for time spent in detention prior to a dispositional order, the dispositional order shall specifically state the number of days of credit for time served.

(9) Except as provided under subsection (3), (4), (5), or (6) of this section, or option B of RCW 13.40.0357, or RCW 13.40.127, the court shall not suspend or defer the imposition or the execution of the disposition.

(10) In no case shall the term of confinement imposed by the court at disposition exceed that to which an adult could be subjected for the same offense.

Sec. 5. RCW 13.40.165 and 2003 c 378 s 6 are each amended to read as follows:

(1) The purpose of this disposition alternative is to ensure that successful treatment options to reduce recidivism are available to eligible youth, pursuant to RCW 70.96A.520. The court must consider eligibility for the chemical dependency disposition alternative when a juvenile offender is subject to a standard range disposition of local sanctions or 15 to 36 weeks of confinement and has not committed an A- or B+ offense, other than a first time B+ offense under chapter 69.50 RCW. The court, on its own motion or the motion of the state or the respondent if the evidence shows that the offender may be chemically dependent or substance abusing, may order an examination by a chemical dependency counselor from a chemical dependency treatment facility approved under chapter 70.96A RCW to determine if the youth is chemically dependent or substance abusing. The offender shall pay the cost of any examination ordered under this subsection unless the court finds that the offender is indigent and no third party insurance coverage is available, in which case the state shall pay the cost.

(2) The report of the examination shall include at a minimum the following: The respondent's version of the facts and the official version of the facts, the respondent's offense history, an assessment of drug-alcohol problems and previous treatment attempts, the respondent's social, educational, and employment situation, and other evaluation measures used. The report shall set forth the sources of the examiner's information.

(3) The examiner shall assess and report regarding the respondent's relative risk to the community. A proposed treatment plan shall be provided and shall include, at a minimum:

- (a) Whether inpatient and/or outpatient treatment (a) is recommended;
- (b) Availability of appropriate treatment;

(c) Monitoring plans, including any requirements regarding living conditions, lifestyle requirements, and monitoring by family members, legal guardians, or others;

(d) Anticipated length of treatment; and

(e) Recommended crime-related prohibitions.

(4) The court on its own motion may order, or on a motion by the state or the respondent shall order, a second examination. The evaluator shall be selected by the party making the motion. The requesting party shall pay the cost of any examination ordered under this subsection unless the requesting party is the offender and the court finds that the offender is indigent and no third party insurance coverage is available, in which case the state shall pay the cost.

(5)(a) After receipt of reports of the examination, the court shall then consider whether the offender and the community will benefit from use of this chemical dependency disposition alternative and consider the victim's opinion whether the offender should receive a treatment disposition under this section.

(b) If the court determines that this chemical dependency disposition alternative is appropriate, then the court shall impose the standard range for the offense, or if the court concludes, and enters reasons for its conclusion, that such disposition would effectuate a manifest injustice, the court shall impose a disposition above the standard range as indicated in option D of RCW 13.40.0357 if the disposition is an increase from the standard range and the confinement of the offender does not exceed a maximum of fifty-two weeks, suspend execution of the disposition, and place the offender on community supervision for up to one year. As a condition of the suspended disposition, the court shall require the offender to undergo available outpatient drug/alcohol treatment and/or inpatient drug/alcohol treatment. For purposes of this section, inpatient treatment may not exceed ninety days. As a condition of the suspended disposition, the court may impose conditions of community supervision and other sanctions, including up to thirty days of confinement, one hundred fifty hours of community restitution, and payment of legal financial obligations and restitution.

(6) The drug/alcohol treatment provider shall submit monthly reports on the respondent's progress in treatment to the court and the parties. The reports shall reference the treatment plan and include at a minimum the following: Dates of attendance, respondent's compliance with requirements, treatment activities, the respondent's relative progress in treatment, and any other material specified by the court at the time of the disposition.

At the time of the disposition, the court may set treatment review hearings as the court considers appropriate.

If the offender violates any condition of the disposition or the court finds that the respondent is failing to make satisfactory progress in treatment, the court may impose sanctions pursuant to RCW 13.40.200 or revoke the suspension and order execution of the disposition. The court shall give credit for any confinement time previously served if that confinement was for the offense for which the suspension is being revoked.

(7) For purposes of this section, "victim" means any person who has sustained emotional, psychological, physical, or financial injury to person or property as a direct result of the offense charged. "Victim" may also include a

known parent or guardian of a victim who is a minor child or is not a minor child but is incapacitated, incompetent, disabled, or deceased.

(8) Whenever a juvenile offender is entitled to credit for time spent in detention prior to a dispositional order, the dispositional order shall specifically state the number of days of credit for time served.

(9) In no case shall the term of confinement imposed by the court at disposition exceed that to which an adult could be subjected for the same offense.

(10) A disposition under this section is not appealable under RCW 13.40.230.

Sec. 6. RCW 13.40.190 and 1997 c 338 s 29 and 1997 c 121 s 9 are each reenacted and amended to read as follows:

(1) In its dispositional order, the court shall require the respondent to make restitution to any persons who have suffered loss or damage as a result of the offense committed by the respondent. In addition, restitution may be ordered for loss or damage if the offender pleads guilty to a lesser offense or fewer offenses and agrees with the prosecutor's recommendation that the offender be required to pay restitution to a victim of an offense or offenses which, pursuant to a plea agreement, are not prosecuted. The payment of restitution shall be in addition to any punishment which is imposed pursuant to the other provisions of this chapter. The court may determine the amount, terms, and conditions of the restitution including a payment plan extending up to ten years if the court determines that the respondent does not have the means to make full restitution over a shorter period. Restitution may include the costs of counseling reasonably related to the offense. If the respondent participated in the crime with another person or other persons, all such participants shall be jointly and severally responsible for the payment of restitution. For the purposes of this section, the respondent shall remain under the court's jurisdiction for a maximum term of ten years after the respondent's eighteenth birthday. Prior to the expiration of the ten-year period, the juvenile court may extend the judgment for the payment of restitution for an additional ten years. At any time, the court may determine that the respondent is not required to pay, or may relieve the respondent of the requirement to pay, full or partial restitution to any insurance provider authorized under Title 48 RCW if the respondent reasonably satisfies the court that he or she does not have the means to make full or partial restitution to the insurance provider and could not reasonably acquire the means to pay the insurance provider the restitution over a ten-year period.

(2) Regardless of the provisions of subsection (1) of this section, the court shall order restitution in all cases where the victim is entitled to benefits under the crime victims' compensation act, chapter 7.68 RCW. If the court does not order restitution and the victim of the crime has been determined to be entitled to benefits under the crime victims' compensation act, the department of labor and industries, as administrator of the crime victims' compensation program, may petition the court within one year of entry of the disposition order for entry of a restitution order. Upon receipt of a petition from the department of labor and industries, the court shall hold a restitution hearing and shall enter a restitution order.

(3) If an order includes restitution as one of the monetary assessments, the county clerk shall make disbursements to victims named in the order. The

restitution to victims named in the order shall be paid prior to any payment for other penalties or monetary assessments.

(4) For purposes of this section, "victim" means any person who has sustained emotional, psychological, physical, or financial injury to person or property as a direct result of the offense charged. "Victim" may also include a known parent or guardian of a victim who is a minor child or is not a minor child but is incapacitated, incompetent, disabled, or deceased.

(5) A respondent under obligation to pay restitution may petition the court for modification of the restitution order.

Sec. 7. RCW 13.40.200 and 2002 c 175 s 25 are each amended to read as follows:

(1) When a respondent fails to comply with an order of restitution, community supervision, penalty assessments, or confinement of less than thirty days, the court upon motion of the prosecutor or its own motion, may modify the order after a hearing on the violation.

(2) The hearing shall afford the respondent the same due process of law as would be afforded an adult probationer. The court may issue a summons or a warrant to compel the respondent's appearance. The state shall have the burden of proving by a preponderance of the evidence the fact of the violation. The respondent shall have the burden of showing that the violation was not a willful refusal to comply with the terms of the order. If a respondent has failed to pay a fine, penalty assessments, or restitution or to perform community restitution hours, as required by the court, it shall be the respondent's burden to show that he or she did not have the means and could not reasonably have acquired the means to pay the fine, penalty assessments, or restitution or perform community restitution.

(3) If the court finds that a respondent has willfully violated the terms of an order pursuant to subsections (1) and (2) of this section, it may impose a penalty of up to thirty days' confinement. Penalties for multiple violations occurring prior to the hearing shall not be aggregated to exceed thirty days' confinement. Regardless of the number of times a respondent is brought to court for violations of the terms of a single disposition order, the combined total number of days spent by the respondent in detention shall never exceed the maximum term to which an adult could be sentenced for the underlying offense.

(4) If a respondent has been ordered to pay a fine or monetary penalty and due to a change of circumstance cannot reasonably comply with the order, the court, upon motion of the respondent, may order that the unpaid fine or monetary penalty be converted to community restitution unless the monetary penalty is the crime victim penalty assessment, which cannot be converted, waived, or otherwise modified, except for schedule of payment. The number of hours of community restitution in lieu of a monetary penalty or fine shall be converted at the rate of the prevailing state minimum wage per hour. The monetary penalties or fines collected shall be deposited in the county general fund. A failure to comply with an order under this subsection shall be deemed a failure to comply with an order of community supervision and may be proceeded against as provided in this section.

(5) When a respondent has willfully violated the terms of a probation bond, the court may modify, revoke, or retain the probation bond as provided in RCW 13.40.054.

Sec. 8. RCW 7.69.030 and 1999 c 323 s 2 are each amended to read as follows:

There shall be a reasonable effort made to ensure that victims, survivors of victims, and witnesses of crimes have the following rights, which apply to any criminal court and/or juvenile court proceeding:

(1) With respect to victims of violent or sex crimes, to receive, at the time of reporting the crime to law enforcement officials, a written statement of the rights of crime victims as provided in this chapter. The written statement shall include the name, address, and telephone number of a county or local crime victim/witness program, if such a crime victim/witness program exists in the county;

(2) To be informed by local law enforcement agencies or the prosecuting attorney of the final disposition of the case in which the victim, survivor, or witness is involved;

(3) To be notified by the party who issued the subpoena that a court proceeding to which they have been subpoenaed will not occur as scheduled, in order to save the person an unnecessary trip to court;

(4) To receive protection from harm and threats of harm arising out of cooperation with law enforcement and prosecution efforts, and to be provided with information as to the level of protection available;

(5) To be informed of the procedure to be followed to apply for and receive any witness fees to which they are entitled;

(6) To be provided, whenever practical, a secure waiting area during court proceedings that does not require them to be in close proximity to defendants and families or friends of defendants;

(7) To have any stolen or other personal property expeditiously returned by law enforcement agencies or the superior court when no longer needed as evidence. When feasible, all such property, except weapons, currency, contraband, property subject to evidentiary analysis, and property of which ownership is disputed, shall be photographed and returned to the owner within ten days of being taken;

(8) To be provided with appropriate employer intercession services to ensure that employers of victims, survivors of victims, and witnesses of crime will cooperate with the criminal justice process in order to minimize an employee's loss of pay and other benefits resulting from court appearance;

(9) To access to immediate medical assistance and not to be detained for an unreasonable length of time by a law enforcement agency before having such assistance administered. However, an employee of the law enforcement agency may, if necessary, accompany the person to a medical facility to question the person about the criminal incident if the questioning does not hinder the administration of medical assistance;

(10) With respect to victims of violent and sex crimes, to have a crime victim advocate from a crime victim/witness program, or any other support person of the victim's choosing, present at any prosecutorial or defense interviews with the victim, and at any judicial proceedings related to criminal acts committed against the victim. This subsection applies if practical and if the presence of the crime victim advocate or support person does not cause any unnecessary delay in the investigation or prosecution of the case. The role of the crime victim advocate is to provide emotional support to the crime victim;

(11) With respect to victims and survivors of victims, to be physically present in court during trial, or if subpoenaed to testify, to be scheduled as early as practical in the proceedings in order to be physically present during trial after testifying and not to be excluded solely because they have testified;

(12) With respect to victims and survivors of victims, to be informed by the prosecuting attorney of the date, time, and place of the trial and of the sentencing hearing for felony convictions upon request by a victim or survivor;

(13) To submit a victim impact statement or report to the court, with the assistance of the prosecuting attorney if requested, which shall be included in all presentence reports and permanently included in the files and records accompanying the offender committed to the custody of a state agency or institution;

(14) With respect to victims and survivors of victims, to present a statement personally or by representation, at the sentencing hearing for felony convictions;

(15) With respect to victims and survivors of victims, to entry of an order of restitution by the court in all felony cases, even when the offender is sentenced to confinement, unless extraordinary circumstances exist which make restitution inappropriate in the court's judgment; and

(16) With respect to victims and survivors of victims, to present a statement in person, via audio or videotape, in writing or by representation at any hearing conducted regarding an application for pardon or commutation of sentence.

Sec. 9. RCW 7.69A.030 and 1997 c 283 s 2 are each amended to read as follows:

In addition to the rights of victims and witnesses provided for in RCW 7.69.030, there shall be every reasonable effort made by law enforcement agencies, prosecutors, and judges to assure that child victims and witnesses are afforded the rights enumerated in this section. Except as provided in RCW 7.69A.050 regarding child victims or child witnesses of violent crimes, sex crimes, or child abuse, the enumeration of rights shall not be construed to create substantive rights and duties, and the application of an enumerated right in an individual case is subject to the discretion of the law enforcement agency, prosecutor, or judge. Child victims and witnesses have the following rights, which apply to any criminal court and/or juvenile court proceeding:

(1) To have explained in language easily understood by the child, all legal proceedings and/or police investigations in which the child may be involved.

(2) With respect to child victims of sex or violent crimes or child abuse, to have a crime victim advocate from a crime victim/witness program, or any other support person of the victim's choosing, present at any prosecutorial or defense interviews with the child victim. This subsection applies if practical and if the presence of the crime victim advocate or support person does not cause any unnecessary delay in the investigation or prosecution of the case. The role of the crime victim advocate is to provide emotional support to the child victim and to promote the child's feelings of security and safety.

(3) To be provided, whenever possible, a secure waiting area during court proceedings and to have an advocate or support person remain with the child prior to and during any court proceedings.

(4) To not have the names, addresses, nor photographs of the living child victim or witness disclosed by any law enforcement agency, prosecutor's office, or state agency without the permission of the child victim, child witness, parents,

or legal guardians to anyone except another law enforcement agency, prosecutor, defense counsel, or private or governmental agency that provides services to the child victim or witness.

(5) To allow an advocate to make recommendations to the prosecuting attorney about the ability of the child to cooperate with prosecution and the potential effect of the proceedings on the child.

(6) To allow an advocate to provide information to the court concerning the child's ability to understand the nature of the proceedings.

(7) To be provided information or appropriate referrals to social service agencies to assist the child and/or the child's family with the emotional impact of the crime, the subsequent investigation, and judicial proceedings in which the child is involved.

(8) To allow an advocate to be present in court while the child testifies in order to provide emotional support to the child.

(9) To provide information to the court as to the need for the presence of other supportive persons at the court proceedings while the child testifies in order to promote the child's feelings of security and safety.

(10) To allow law enforcement agencies the opportunity to enlist the assistance of other professional personnel such as child protection services, victim advocates or prosecutorial staff trained in the interviewing of the child victim.

(11) With respect to child victims of violent or sex crimes or child abuse, to receive either directly or through the child's parent or guardian if appropriate, at the time of reporting the crime to law enforcement officials, a written statement of the rights of child victims as provided in this chapter. The written statement shall include the name, address, and telephone number of a county or local crime victim/witness program, if such a crime victim/witness program exists in the county.

Sec. 10. RCW 13.04.040 and 1995 c 312 s 40 are each amended to read as follows:

The administrator shall, in any county or judicial district in the state, appoint or designate one or more persons of good character to serve as probation counselors during the pleasure of the administrator. The probation counselor shall:

(1) Receive and examine referrals to the juvenile court for the purpose of considering the filing of a petition or information pursuant to chapter 13.32A or 13.34 RCW or RCW 13.40.070;

(2) Make recommendations to the court regarding the need for continued detention or shelter care of a child unless otherwise provided in this title;

(3) Arrange and supervise diversion agreements as provided in RCW 13.40.080, and ensure that the requirements of such agreements are met except as otherwise provided in this title;

(4) Prepare predisposition studies as required in RCW ((13.34.120 and)) 13.40.130, and be present at the disposition hearing to respond to questions regarding the predisposition study: PROVIDED, That such duties shall be performed by the department for cases relating to dependency or to the termination of a parent and child relationship which is filed by the department unless otherwise ordered by the court; and

(5) Supervise court orders of disposition to ensure that all requirements of the order are met.

All probation counselors shall possess all the powers conferred upon sheriffs and police officers to serve process and make arrests of juveniles under their supervision for the violation of any state law or county or city ordinance.

The administrator may, in any county or judicial district in the state, appoint one or more persons who shall have charge of detention rooms or houses of detention.

The probation counselors and persons appointed to have charge of detention facilities shall each receive compensation which shall be fixed by the legislative authority of the county, or in cases of joint counties, judicial districts of more than one county, or joint judicial districts such sums as shall be agreed upon by the legislative authorities of the counties affected, and such persons shall be paid as other county officers are paid.

The administrator is hereby authorized, and to the extent possible is encouraged to, contract with private agencies existing within the community for the provision of services to youthful offenders and youth who have entered into diversion agreements pursuant to RCW 13.40.080.

The administrator shall establish procedures for the collection of fines assessed under RCW 13.40.080 (2)(d) and ~~((+3))~~ (14) and for the payment of the fines into the county general fund.

NEW SECTION. Sec. 11. This act takes effect July 1, 2004.

Passed by the Senate March 10, 2004.

Passed by the House March 3, 2004.

Approved by the Governor March 24, 2004.

Filed in Office of Secretary of State March 24, 2004.

CHAPTER 121

[Substitute Senate Bill 5168]

LEGAL FINANCIAL OBLIGATIONS—INTEREST

AN ACT Relating to interest on legal financial obligations; and amending RCW 10.82.090, 9.94A.637, 9.94A.760, 9.94A.772, and 50.13.020.

Be it enacted by the Legislature of the State of Washington:

Sec. 1. RCW 10.82.090 and 1995 c 291 s 7 are each amended to read as follows:

(1) Except as provided in subsection (2) of this section, financial obligations imposed in a judgment shall bear interest from the date of the judgment until payment, at the rate applicable to civil judgments. All nonrestitution interest retained by the court shall be split twenty-five percent to the state treasurer for deposit in the public safety and education account as provided in RCW 43.08.250, twenty-five percent to the state treasurer for deposit in the judicial information system account as provided in RCW 2.68.020, twenty-five percent to the county current expense fund, and twenty-five percent to the county current expense fund to fund local courts.

(2) The court may, on motion by the offender, following the offender's release from total confinement, reduce or waive the interest on legal financial obligations levied as a result of a criminal conviction. The court may reduce or

waive the interest only as an incentive for the offender to meet his or her legal financial obligations. The court may not waive the interest on the restitution portion of the legal financial obligation and may only reduce the interest on the restitution portion of the legal financial obligation if the principal of the restitution has been paid in full. The offender must show that he or she has personally made a good faith effort to pay, that the interest accrual is causing a significant hardship, and that he or she will be unable to pay the principal and interest in full and thapreduction or waiver of the interest will likel enable the offender to pay the full principal and any remaining interest thereon. For purposes of this section, "good faith effort" means that the offender has either (a) paid the principal amount in full; or (b) made twenty-four consecutive monthly payments, excluding any payments mandatorily deducted by the department of corrections, on his or her legal financial obligations under his or her payment agreement with the court. The court may grant the motion, establish a payment schedule, and retain jurisdiction over the offender for purposes of reviewing and revising the reduction or waiver of interest. This section applies to persons convicted as adults or in juvenile court.

Sec. 2. RCW 9.94A.637 and 2003 c 379 s 19 are each amended to read as follows:

(1)(a) When an offender has completed all requirements of the sentence, including any and all legal financial obligations, and while under the custody and supervision of the department, the secretary or the secretary's designee shall notify the sentencing court, which shall discharge the offender and provide the offender with a certificate of discharge by issuing the certificate to the offender in person or by mailing the certificate to the offender's last known address.

(b)(i) When an offender has reached the end of his or her supervision with the department and has completed all the requirements of the sentence except his or her legal financial obligations, the secretary's designee shall provide the county clerk with a notice that the offender has completed all nonfinancial requirements of the sentence.

(ii) When the department has provided the county clerk with notice that an offender has completed all the requirements of the sentence and the offender subsequently satisfies all legal financial obligations under the sentence, the county clerk shall notify the sentencing court, including the notice from the department, which shall discharge the offender and provide the offender with a certificate of discharge by issuing the certificate to the offender in person or by mailing the certificate to the offender's last known address.

(c) When an offender who is subject to requirements of the sentence in addition to the payment of legal financial obligations either is not subject to supervision by the department or does not complete the requirements while under supervision of the department, it is the offender's responsibility to provide the court with verification of the completion of the sentence conditions other than the payment of legal financial obligations. When the offender satisfies all legal financial obligations under the sentence, the county clerk shall notify the sentencing court that the legal financial obligations have been satisfied. When the court has received both notification from the clerk and adequate verification from the offender that the sentence requirements have been completed, the court shall discharge the offender and provide the offender with a certificate of

discharge by issuing the certificate to the offender in person or by mailing the certificate to the offender's last known address.

(2) The court shall send a copy of every signed certificate of discharge to the auditor for the county in which the court resides and to the department. The department shall create and maintain a data base containing the names of all felons who have been issued certificates of discharge, the date of discharge, and the date of conviction and offense.

(3) An offender who is not convicted of a violent offense or a sex offense and is sentenced to a term involving community supervision may be considered for a discharge of sentence by the sentencing court prior to the completion of community supervision, provided that the offender has completed at least one-half of the term of community supervision and has met all other sentence requirements.

(4) Except as provided in subsection (5) of this section, the discharge shall have the effect of restoring all civil rights lost by operation of law upon conviction, and the certificate of discharge shall so state. Nothing in this section prohibits the use of an offender's prior record for purposes of determining sentences for later offenses as provided in this chapter. Nothing in this section affects or prevents use of the offender's prior conviction in a later criminal prosecution either as an element of an offense or for impeachment purposes. A certificate of discharge is not based on a finding of rehabilitation.

(5) Unless otherwise ordered by the sentencing court, a certificate of discharge shall not terminate the offender's obligation to comply with an order issued under chapter 10.99 RCW that excludes or prohibits the offender from having contact with a specified person or coming within a set distance of any specified location that was contained in the judgment and sentence. An offender who violates such an order after a certificate of discharge has been issued shall be subject to prosecution according to the chapter under which the order was originally issued.

(6) Upon release from custody, the offender may apply to the department for counseling and help in adjusting to the community. This voluntary help may be provided for up to one year following the release from custody.

Sec. 3. RCW 9.94A.760 and 2003 c 379 s 14 are each amended to read as follows:

(1) Whenever a person is convicted (~~(of a felony)~~) in superior court, the court may order the payment of a legal financial obligation as part of the sentence. The court must on either the judgment and sentence or on a subsequent order to pay, designate the total amount of a legal financial obligation and segregate this amount among the separate assessments made for restitution, costs, fines, and other assessments required by law. On the same order, the court is also to set a sum that the offender is required to pay on a monthly basis towards satisfying the legal financial obligation. If the court fails to set the offender monthly payment amount, the department shall set the amount if the department has active supervision of the offender, otherwise the county clerk shall set the amount. Upon receipt of an offender's monthly payment, restitution shall be paid prior to any payments of other monetary obligations. After restitution is satisfied, the county clerk shall distribute the payment proportionally among all other fines, costs, and assessments imposed, unless otherwise ordered by the court.

(2) If the court determines that the offender, at the time of sentencing, has the means to pay for the cost of incarceration, the court may require the offender to pay for the cost of incarceration at a rate of fifty dollars per day of incarceration. Payment of other court-ordered financial obligations, including all legal financial obligations and costs of supervision shall take precedence over the payment of the cost of incarceration ordered by the court. All funds recovered from offenders for the cost of incarceration in the county jail shall be remitted to the county and the costs of incarceration in a prison shall be remitted to the department.

(3) The court may add to the judgment and sentence or subsequent order to pay a statement that a notice of payroll deduction is to be issued immediately. If the court chooses not to order the immediate issuance of a notice of payroll deduction at sentencing, the court shall add to the judgment and sentence or subsequent order to pay a statement that a notice of payroll deduction may be issued or other income-withholding action may be taken, without further notice to the offender if a monthly court-ordered legal financial obligation payment is not paid when due, and an amount equal to or greater than the amount payable for one month is owed.

If a judgment and sentence or subsequent order to pay does not include the statement that a notice of payroll deduction may be issued or other income-withholding action may be taken if a monthly legal financial obligation payment is past due, the department or the county clerk may serve a notice on the offender stating such requirements and authorizations. Service shall be by personal service or any form of mail requiring a return receipt.

(4) Independent of the department or the county clerk, the party or entity to whom the legal financial obligation is owed shall have the authority to use any other remedies available to the party or entity to collect the legal financial obligation. These remedies include enforcement in the same manner as a judgment in a civil action by the party or entity to whom the legal financial obligation is owed. Restitution collected through civil enforcement must be paid through the registry of the court and must be distributed proportionately according to each victim's loss when there is more than one victim. The judgment and sentence shall identify the party or entity to whom restitution is owed so that the state, party, or entity may enforce the judgment. If restitution is ordered pursuant to RCW 9.94A.750(6) or 9.94A.753(6) to a victim of rape of a child or a victim's child born from the rape, the Washington state child support registry shall be identified as the party to whom payments must be made. Restitution obligations arising from the rape of a child in the first, second, or third degree that result in the pregnancy of the victim may be enforced for the time periods provided under RCW 9.94A.750(6) and 9.94A.753(6). All other legal financial obligations for an offense committed prior to July 1, 2000, may be enforced at any time during the ten-year period following the offender's release from total confinement or within ten years of entry of the judgment and sentence, whichever period ends later. Prior to the expiration of the initial ten-year period, the superior court may extend the criminal judgment an additional ten years for payment of legal financial obligations including crime victims' assessments. All other legal financial obligations for an offense committed on or after July 1, 2000, may be enforced at any time the offender remains under the court's jurisdiction. For an offense committed on or after July 1, 2000, the court

shall retain jurisdiction over the offender, for purposes of the offender's compliance with payment of the legal financial obligations, until the obligation is completely satisfied, regardless of the statutory maximum for the crime. The department may only supervise the offender's compliance with payment of the legal financial obligations during any period in which the department is authorized to supervise the offender in the community under RCW 9.94A.728, 9.94A.501, or in which the offender is confined in a state correctional institution or a correctional facility pursuant to a transfer agreement with the department, and the department shall supervise the offender's compliance during any such period. The department is not responsible for supervision of the offender during any subsequent period of time the offender remains under the court's jurisdiction. The county clerk is authorized to collect unpaid legal financial obligations at any time the offender remains under the jurisdiction of the court for purposes of his or her legal financial obligations.

(5) In order to assist the court in setting a monthly sum that the offender must pay during the period of supervision, the offender is required to report to the department for purposes of preparing a recommendation to the court. When reporting, the offender is required, under oath, to respond truthfully and honestly to all questions concerning present, past, and future earning capabilities and the location and nature of all property or financial assets. The offender is further required to bring all documents requested by the department.

(6) After completing the investigation, the department shall make a report to the court on the amount of the monthly payment that the offender should be required to make towards a satisfied legal financial obligation.

(7)(a) During the period of supervision, the department may make a recommendation to the court that the offender's monthly payment schedule be modified so as to reflect a change in financial circumstances. If the department sets the monthly payment amount, the department may modify the monthly payment amount without the matter being returned to the court. During the period of supervision, the department may require the offender to report to the department for the purposes of reviewing the appropriateness of the collection schedule for the legal financial obligation. During this reporting, the offender is required under oath to respond truthfully and honestly to all questions concerning earning capabilities and the location and nature of all property or financial assets. The offender shall bring all documents requested by the department in order to prepare the collection schedule.

(b) Subsequent to any period of supervision, or if the department is not authorized to supervise the offender in the community, the county clerk may make a recommendation to the court that the offender's monthly payment schedule be modified so as to reflect a change in financial circumstances. If the county clerk sets the monthly payment amount, or if the department set the monthly payment amount and the department has subsequently turned the collection of the legal financial obligation over to the county clerk, the clerk may modify the monthly payment amount without the matter being returned to the court. During the period of repayment, the county clerk may require the offender to report to the clerk for the purpose of reviewing the appropriateness of the collection schedule for the legal financial obligation. During this reporting, the offender is required under oath to respond truthfully and honestly to all questions concerning earning capabilities and the location and nature of all

property or financial assets. The offender shall bring all documents requested by the county clerk in order to prepare the collection schedule.

(8) After the judgment and sentence or payment order is entered, the department is authorized, for any period of supervision, to collect the legal financial obligation from the offender. Subsequent to any period of supervision or, if the department is not authorized to supervise the offender in the community, the county clerk is authorized to collect unpaid legal financial obligations from the offender. Any amount collected by the department shall be remitted daily to the county clerk for the purpose of disbursements. The department and the county clerks are authorized, but not required, to accept credit cards as payment for a legal financial obligation, and any costs incurred related to accepting credit card payments shall be the responsibility of the offender.

(9) The department or any obligee of the legal financial obligation may seek a mandatory wage assignment for the purposes of obtaining satisfaction for the legal financial obligation pursuant to RCW 9.94A.7701. Any party obtaining a wage assignment shall notify the county clerk. The county clerks shall notify the department, or the administrative office of the courts, whichever is providing the monthly billing for the offender.

(10) The requirement that the offender pay a monthly sum towards a legal financial obligation constitutes a condition or requirement of a sentence and the offender is subject to the penalties for noncompliance as provided in RCW 9.94A.634, 9.94A.737, or 9.94A.740.

(11)(a) Until January 1, 2004, the department shall mail individualized monthly billings to the address known by the department for each offender with an unsatisfied legal financial obligation.

(b) Beginning January 1, 2004, the administrative office of the courts shall mail individualized monthly billings to the address known by the office for each offender with an unsatisfied legal financial obligation.

(c) The billing shall direct payments, other than outstanding cost of supervision assessments under RCW 9.94A.780, parole assessments under RCW 72.04A.120, and cost of probation assessments under RCW 9.95.214, to the county clerk, and cost of supervision, parole, or probation assessments to the department.

(d) The county clerk shall provide the administrative office of the courts with notice of payments by such offenders no less frequently than weekly.

(e) The county clerks, the administrative office of the courts, and the department shall maintain agreements to implement this subsection.

(12) The department shall arrange for the collection of unpaid legal financial obligations during any period of supervision in the community through the county clerk. The department shall either collect unpaid legal financial obligations or arrange for collections through another entity if the clerk does not assume responsibility or is unable to continue to assume responsibility for collection pursuant to subsection (4) of this section. The costs for collection services shall be paid by the offender.

(13) The county clerk may access the records of the employment security department for the purposes of verifying employment or income, seeking any assignment of wages, or performing other duties necessary to the collection of an offender's legal financial obligations.

(14) Nothing in this chapter makes the department, the state, the counties, or any state or county employees, agents, or other persons acting on their behalf liable under any circumstances for the payment of these legal financial obligations or for the acts of any offender who is no longer, or was not, subject to supervision by the department for a term of community custody, community placement, or community supervision, and who remains under the jurisdiction of the court for payment of legal financial obligations.

Sec. 4. RCW 9.94A.772 and 2003 c 379 s 22 are each amended to read as follows:

Notwithstanding any other provision of state law, monthly payment or starting dates set by the court, the county clerk, or the department before or after October 1, 2003, shall not be construed as a limitation on the due date or amount of legal financial obligations, which may be immediately collected by civil means and shall not be construed as a limitation for purposes of credit reporting. Monthly payments and commencement dates are to be construed to be applicable solely as a limitation upon the deprivation of an offender's liberty for nonpayment.

Sec. 5. RCW 50.13.020 and 1981 c 35 s 2 are each amended to read as follows:

Any information or records concerning an individual or employing unit obtained by the department of employment security pursuant to the administration of this title or other programs for which the department has responsibility shall be private and confidential, except as otherwise provided in this chapter. This chapter does not create a rule of evidence. Information or records may be released by the department of employment security when the release is:

(1) Required by the federal government in connection with, or as a condition of funding for, a program being administered by the department; or

(2) Requested by a county clerk for the purposes of RCW 9.94A.760.

The provisions of RCW 50.13.060 (1) (a), (b) and (c) will not apply to such release.

Passed by the Senate March 9, 2004.

Passed by the House March 3, 2004.

Approved by the Governor March 24, 2004.

Filed in Office of Secretary of State March 24, 2004.

CHAPTER 122

[Senate Bill 6338]

MERCHANDISE PALLETS—THEFT

AN ACT Relating to stolen merchandise pallets; and amending RCW 9A.56.020 and 9A.56.140.

Be it enacted by the Legislature of the State of Washington:

Sec. 1. RCW 9A.56.020 and 1975-'76 2nd ex.s. c 38 s 9 are each amended to read as follows:

(1) "Theft" means:

(a) To wrongfully obtain or exert unauthorized control over the property or services of another or the value thereof, with intent to deprive him or her of such property or services; or

(b) By color or aid of deception to obtain control over the property or services of another or the value thereof, with intent to deprive him or her of such property or services; or

(c) To appropriate lost or misdelivered property or services of another, or the value thereof, with intent to deprive him or her of such property or services.

(2) In any prosecution for theft, it shall be a sufficient defense that:

(a) The property or service was appropriated openly and avowedly under a claim of title made in good faith, even though the claim be untenable; or

(b) The property was merchandise pallets that were received by a pallet recycler or repairer in the ordinary course of its business.

Sec. 2. RCW 9A.56.140 and 1998 c 236 s 3 are each amended to read as follows:

(1) "Possessing stolen property" means knowingly to receive, retain, possess, conceal, or dispose of stolen property knowing that it has been stolen and to withhold or appropriate the same to the use of any person other than the true owner or person entitled thereto.

(2) The fact that the person who stole the property has not been convicted, apprehended, or identified is not a defense to a charge of possessing stolen property.

(3) When a person has in his or her possession, or under his or her control, stolen access devices issued in the names of two or more persons, or ten or more stolen merchandise pallets, or ten or more stolen beverage crates, or a combination of ten or more stolen merchandise pallets and beverage crates, as defined under RCW 9A.56.010, he or she is presumed to know that they are stolen.

(4) The presumption in subsection (3) of this section is rebuttable by evidence raising a reasonable inference that the possession of such stolen access devices, merchandise pallets, or beverage crates was without knowledge that they were stolen.

(5) In any prosecution for possessing stolen property, it is a sufficient defense that the property was merchandise pallets that were received by a pallet recycler or repairer in the ordinary course of its business.

Passed by the Senate February 16, 2004.

Passed by the House March 2, 2004.

Approved by the Governor March 24, 2004.

Filed in Office of Secretary of State March 24, 2004.

CHAPTER 123

[Substitute Senate Bill 6527]

ATTORNEY FEES

AN ACT Relating to attorney fees; and amending RCW 4.84.080 and 12.20.060.

Be it enacted by the Legislature of the State of Washington:

Sec. 1. RCW 4.84.080 and 1985 c 240 s 1 are each amended to read as follows:

When allowed to either party, costs to be called the attorney fee, shall be as follows:

(1) In all actions where judgment is rendered, ~~((one))~~ two hundred ~~((twenty-five))~~ dollars.

(2) In all actions where judgment is rendered in the supreme court or the court of appeals, after argument, ~~((one))~~ two hundred ~~((twenty-five))~~ dollars.

Sec. 2. RCW 12.20.060 and 1993 c 341 s 1 are each amended to read as follows:

When the prevailing party in district court is entitled to recover costs as authorized in RCW 4.84.010 in a civil action, the judge shall add the amount thereof to the judgment; in case of failure of the plaintiff to recover or of dismissal of the action, the judge shall enter up a judgment in favor of the defendant for the amount of his or her costs; and in case any party so entitled to costs is represented in the action by an attorney, the judge shall include attorney's fees ~~((of one hundred twenty-five dollars))~~ in the amount provided in RCW 4.84.060 as part of the costs: PROVIDED, HOWEVER, That the plaintiff shall not be entitled to such attorney fee unless he or she obtains, exclusive of costs, a judgment in the sum of fifty dollars or more: AND PROVIDED FURTHER, That if the plaintiff obtains judgment, exclusive of costs, of at least fifty dollars but less than two hundred dollars, the judge shall include attorney fees of one hundred twenty-five dollars as part of the costs.

Passed by the Senate February 17, 2004.

Passed by the House March 3, 2004.

Approved by the Governor March 24, 2004.

Filed in Office of Secretary of State March 24, 2004.

CHAPTER 124

[Engrossed Substitute Senate Bill 5861]

CRIMINAL IMPERSONATION—VETERANS

AN ACT Relating to criminal impersonation of a veteran of the armed forces; amending RCW 9A.60.045; prescribing penalties; and providing an effective date.

Be it enacted by the Legislature of the State of Washington:

Sec. 1. RCW 9A.60.045 and 2003 c 53 s 79 are each amended to read as follows:

(1) A person is guilty of criminal impersonation in the second degree if the person:

(a)(i) Claims to be a law enforcement officer or creates an impression that he or she is a law enforcement officer; and

~~((b))~~ (ii) Under circumstances not amounting to criminal impersonation in the first degree, does an act with intent to convey the impression that he or she is acting in an official capacity and a reasonable person would believe the person is a law enforcement officer; or

(b) Falsely assumes the identity of a veteran or active duty member of the armed forces of the United States with intent to defraud for the purpose of personal gain or to facilitate any unlawful activity.

(2) Criminal impersonation in the second degree is a misdemeanor.

NEW SECTION. Sec. 2. This act takes effect July 1, 2004.

Passed by the Senate March 4, 2004.
Passed by the House March 2, 2004.
Approved by the Governor March 24, 2004.
Filed in Office of Secretary of State March 24, 2004.

CHAPTER 125

[Senate Bill 6143]

SPECIAL LICENSE PLATES—VETERANS

AN ACT Relating to determining eligibility for veteran's regular or special license plates; and amending RCW 73.04.110.

Be it enacted by the Legislature of the State of Washington:

Sec. 1. RCW 73.04.110 and 1987 c 98 s 2 are each amended to read as follows:

Any person who is a veteran as defined in RCW ((41.04.005)) 41.04.007 who submits to the department of licensing satisfactory proof of a service-connected disability rating from the veterans administration or the military service from which the veteran was discharged and:

- (1) Has lost the use of both hands or one foot;
- (2) Was captured and incarcerated for more than twenty-nine days by an enemy of the United States during a period of war with the United States;
- (3) Has become blind in both eyes as the result of military service; or
- (4) Is rated by the veterans administration or the military service from which the veteran was discharged and is receiving service-connected compensation at the one hundred percent rate that is expected to exist for more than one year;

is entitled to regular or special license plates issued by the department of licensing. The special license plates shall bear distinguishing marks, letters, or numerals indicating that the motor vehicle is owned by a disabled veteran or former prisoner of war. This license shall be issued annually for one personal use vehicle without payment of any license fees or excise tax thereon. Whenever any person who has been issued license plates under the provisions of this section applies to the department for transfer of the plates to a subsequently acquired motor vehicle, a transfer fee of five dollars shall be charged in addition to all other appropriate fees. The department may periodically verify the one hundred percent rate as provided in subsection (4) of this section.

Any person who has been issued free motor vehicle license plates under this section prior to July 1, 1983, shall continue to be eligible for the annual free license plates.

For the purposes of this section, "blind" means the definition of "blind" used by the state of Washington in determining eligibility for financial assistance to the blind under Title 74 RCW.

Any unauthorized use of a special plate is a gross misdemeanor.

Passed by the Senate February 16, 2004.
Passed by the House March 4, 2004.
Approved by the Governor March 24, 2004.
Filed in Office of Secretary of State March 24, 2004.

CHAPTER 126

[Senate Bill 6439]

DRIVER TRAINING—MOTORCYCLE AWARENESS

AN ACT Relating to motorcycle safety training curriculum; amending RCW 46.82.420; and adding a new section to chapter 28A.220 RCW.

Be it enacted by the Legislature of the State of Washington:

NEW SECTION. Sec. I. A new section is added to chapter 28A.220 RCW to read as follows:

The superintendent of public instruction shall include information on motorcycle awareness, approved by the Motorcycle Safety Foundation, in instructional material used in traffic safety education courses, to ensure new operators of motor vehicles have been instructed in the importance of safely sharing the road with motorcyclists.

Sec. 2. RCW 46.82.420 and 1991 c 217 s 3 are each amended to read as follows:

The advisory committee shall compile and furnish to each qualifying applicant for an instructor's license or a driver training school license a basic minimum required curriculum. The basic minimum required curriculum shall also include (1) information on the effects of alcohol and drug use on motor vehicle operators, including information on drug and alcohol related traffic injury and mortality rates in the state of Washington~~((, and));~~ (2) current penalties for driving under the influence of drugs or alcohol; and (3) information on motorcycle awareness, approved by the Motorcycle Safety Foundation, to ensure new operators of motor vehicles have been instructed in the importance of safely sharing the road with motorcyclists. Should the director be presented with acceptable proof that any licensed instructor or driver training school is not showing proper diligence in teaching such basic minimum curriculum as required, the instructor or school shall be required to appear before the advisory committee and show cause why the license of the instructor or school should not be revoked for such negligence. If the committee does not accept such reasons as may be offered, the director may revoke the license of the instructor or school, or both.

Passed by the Senate February 17, 2004.

Passed by the House March 5, 2004.

Approved by the Governor March 24, 2004.

Filed in Office of Secretary of State March 24, 2004.

CHAPTER 127

[Substitute Senate Bill 6261]

JUROR PAY

AN ACT Relating to payments to jurors; and amending RCW 2.36.150.

Be it enacted by the Legislature of the State of Washington:

Sec. I. RCW 2.36.150 and 1987 c 202 s 105 are each amended to read as follows:

Jurors shall receive for each day's attendance, besides mileage at the rate determined under RCW 43.03.060, the following ~~((compensation))~~ expense payments:

- (1) Grand jurors may receive up to twenty-five dollars but in no case less than ten dollars;
- (2) Petit jurors may receive up to twenty-five dollars but in no case less than ten dollars;
- (3) Coroner's jurors may receive up to twenty-five dollars but in no case less than ten dollars;
- (4) District court jurors may receive up to twenty-five dollars but in no case less than ten dollars;

PROVIDED, That a person excused from jury service at his or her own request shall be allowed not more than a per diem and such mileage, if any, as to the court shall seem just and equitable under all circumstances: PROVIDED FURTHER, That the state shall fully reimburse the county in which trial is held for all jury fees and witness fees related to criminal cases which result from incidents occurring within an adult or juvenile correctional institution: PROVIDED FURTHER, That the ~~((compensation-paid))~~ expense payments paid to jurors shall be determined by the county legislative authority and shall be uniformly applied within the county.

Passed by the Senate February 9, 2004.
 Passed by the House March 4, 2004.
 Approved by the Governor March 24, 2004.
 Filed in Office of Secretary of State March 24, 2004.

CHAPTER 128

[Senate Bill 6164]

RESIDENCY STATUS—MILITARY DEPENDENTS

AN ACT Relating to allowing a student who is a military dependent to maintain residency status if the person on active military duty is reassigned out-of-state; and amending RCW 28B.15.012.

Be it enacted by the Legislature of the State of Washington:

Sec. 1. RCW 28B.15.012 and 2003 c 95 s 1 are each amended to read as follows:

Whenever used in chapter 28B.15 RCW:

- (1) The term "institution" shall mean a public university, college, or community college within the state of Washington.
- (2) The term "resident student" shall mean:
 - (a) A financially independent student who has had a domicile in the state of Washington for the period of one year immediately prior to the time of commencement of the first day of the semester or quarter for which the student has registered at any institution and has in fact established a bona fide domicile in this state primarily for purposes other than educational;
 - (b) A dependent student, if one or both of the student's parents or legal guardians have maintained a bona fide domicile in the state of Washington for at least one year immediately prior to commencement of the semester or quarter for which the student has registered at any institution;

(c) A student classified as a resident based upon domicile by an institution on or before May 31, 1982, who was enrolled at a state institution during any term of the 1982-1983 academic year, so long as such student's enrollment (excepting summer sessions) at an institution in this state is continuous;

(d) Any student who has spent at least seventy-five percent of both his or her junior and senior years in high schools in this state, whose parents or legal guardians have been domiciled in the state for a period of at least one year within the five-year period before the student graduates from high school, and who enrolls in a public institution of higher education within six months of leaving high school, for as long as the student remains continuously enrolled for three quarters or two semesters in any calendar year;

(e) Any person who has completed the full senior year of high school and obtained a high school diploma, both at a Washington public high school or private high school approved under chapter 28A.195 RCW, or a person who has received the equivalent of a diploma; who has lived in Washington for at least three years immediately prior to receiving the diploma or its equivalent; who has continuously lived in the state of Washington after receiving the diploma or its equivalent and until such time as the individual is admitted to an institution of higher education under subsection (1) of this section; and who provides to the institution an affidavit indicating that the individual will file an application to become a permanent resident at the earliest opportunity the individual is eligible to do so and a willingness to engage in any other activities necessary to acquire citizenship, including but not limited to citizenship or civics review courses;

(f) A student who is on active military duty stationed in the state or who is a member of the Washington national guard;

(g) A student who is the spouse or a dependent of a person who is on active military duty stationed in the state. If the person on active military duty is reassigned out-of-state, the student maintains the status as a resident student so long as the student is continuously enrolled in a degree program;

(h) A student who resides in the state of Washington and is the spouse or a dependent of a person who is a member of the Washington national guard;

(i) A student of an out-of-state institution of higher education who is attending a Washington state institution of higher education pursuant to a home tuition agreement as described in RCW 28B.15.725; or

(j) A student who meets the requirements of RCW 28B.15.0131: PROVIDED, That a nonresident student enrolled for more than six hours per semester or quarter shall be considered as attending for primarily educational purposes, and for tuition and fee paying purposes only such period of enrollment shall not be counted toward the establishment of a bona fide domicile of one year in this state unless such student proves that the student has in fact established a bona fide domicile in this state primarily for purposes other than educational.

(3) The term "nonresident student" shall mean any student who does not qualify as a "resident student" under the provisions of RCW 28B.15.012 and 28B.15.013. Except for students qualifying under subsection (2)(e) or (i) of this section, a nonresident student shall include:

(a) A student attending an institution with the aid of financial assistance provided by another state or governmental unit or agency thereof, such

nonresidency continuing for one year after the completion of such semester or quarter.

(b) A person who is not a citizen of the United States of America who does not have permanent or temporary resident status or does not hold "Refugee-Parolee" or "Conditional Entrant" status with the United States immigration and naturalization service or is not otherwise permanently residing in the United States under color of law and who does not also meet and comply with all the applicable requirements in RCW 28B.15.012 and 28B.15.013.

(4) The term "domicile" shall denote a person's true, fixed and permanent home and place of habitation. It is the place where the student intends to remain, and to which the student expects to return when the student leaves without intending to establish a new domicile elsewhere. The burden of proof that a student, parent or guardian has established a domicile in the state of Washington primarily for purposes other than educational lies with the student.

(5) The term "dependent" shall mean a person who is not financially independent. Factors to be considered in determining whether a person is financially independent shall be set forth in rules and regulations adopted by the higher education coordinating board and shall include, but not be limited to, the state and federal income tax returns of the person and/or the student's parents or legal guardian filed for the calendar year prior to the year in which application is made and such other evidence as the board may require.

(6) The term "active military duty" means the person is serving on active duty in:

(a) The armed forces of the United States government; or

(b) The Washington national guard; or

(c) The coast guard, merchant mariners, or other nonmilitary organization when such service is recognized by the United States government as equivalent to service in the armed forces.

Passed by the Senate March 4, 2004.

Passed by the House March 2, 2004.

Approved by the Governor March 24, 2004.

Filed in Office of Secretary of State March 24, 2004.

CHAPTER 129

[Substitute Senate Bill 5326]

REGIONAL FIRE PROTECTION SERVICE AUTHORITIES

AN ACT Relating to creating regional fire protection service authorities; amending RCW 57.90.010, 84.09.030, 84.52.010, 84.52.052, 84.52.069, and 35.21.766; adding a new section to chapter 84.52 RCW; adding a new chapter to Title 52 RCW; and creating a new section.

Be it enacted by the Legislature of the State of Washington:

NEW SECTION. **Sec. 1. FINDINGS.** The legislature finds that:

(1) The ability to respond to emergency situations by many of Washington state's fire protection jurisdictions has not kept up with the state's needs, particularly in urban regions;

(2) Providing a fire protection service system requires a shared partnership and responsibility among the federal, state, local, and regional governments and the private sector;

(3) There are efficiencies to be gained by regional fire protection service delivery while retaining local control; and

(4) Timely development of significant projects can best be achieved through enhanced funding options for regional fire protection service agencies, using already existing taxing authority to address fire protection emergency service needs and new authority to address critical fire protection projects and emergency services.

NEW SECTION. Sec. 2. DEFINITIONS. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Board" means the governing body of a regional fire protection service authority.

(2) "Regional fire protection service authority" or "authority" means a municipal corporation, an independent taxing authority within the meaning of Article VII, section 1 of the state Constitution, and a taxing district within the meaning of Article VII, section 2 of the state Constitution, whose boundaries are coextensive with two or more adjacent fire protection jurisdictions and that has been created by a vote of the people under this chapter to implement a regional fire protection service authority plan.

(3) "Regional fire protection service authority planning committee" or "planning committee" means the advisory committee created under section 3 of this act to create and propose to fire protection jurisdictions a regional fire protection service authority plan to design, finance, and develop fire protection service projects.

(4) "Regional fire protection service authority plan" or "plan" means a plan to develop and finance a fire protection service authority project or projects, including, but not limited to, specific capital projects, fire operations and emergency service operations pursuant to section 4(3)(b) of this act, and preservation and maintenance of existing or future facilities.

(5) "Fire protection jurisdiction" means a fire district, city, town, port district, or Indian tribe.

(6) "Regular property taxes" has the same meaning as in RCW 84.04.140.

NEW SECTION. Sec. 3. PLANNING COMMITTEE FORMATION. Regional fire protection service authority planning committees are advisory entities that are created, convened, and empowered as follows:

(1) Any two or more adjacent fire protection jurisdictions may create a regional fire protection service authority and convene a regional fire protection service authority planning committee. No fire protection jurisdiction may participate in more than one authority.

(2) Each governing body of the fire protection jurisdictions participating in planning under this chapter shall appoint three elected officials to the authority planning committee. Members of the planning committee may receive compensation of seventy dollars per day, or portion thereof, not to exceed seven hundred dollars per year, for attendance at planning committee meetings and for performance of other services in behalf of the authority, and may be reimbursed for travel and incidental expenses at the discretion of their respective governing body.

(3) A regional fire protection service authority planning committee may receive state funding, as appropriated by the legislature, or county funding

provided by the affected counties for start-up funding to pay for salaries, expenses, overhead, supplies, and similar expenses ordinarily and necessarily incurred. Upon creation of a regional fire protection service authority, the authority shall within one year reimburse the state or county for any sums advanced for these start-up costs from the state or county.

(4) The planning committee shall conduct its affairs and formulate a regional fire protection service authority plan as provided under section 4 of this act.

(5) At its first meeting, a regional fire protection service authority planning committee may elect officers and provide for the adoption of rules and other operating procedures.

(6) The planning committee may dissolve itself at any time by a majority vote of the total membership of the planning committee. Any participating fire protection jurisdiction may withdraw upon thirty calendar days' written notice to the other jurisdictions.

NEW SECTION. Sec. 4. PLANNING COMMITTEE DUTIES. (1) A regional fire protection service authority planning committee shall adopt a regional fire protection service authority plan providing for the design, financing, and development of fire protection services. The planning committee may consider the following factors in formulating its plan:

(a) Land use planning criteria; and

(b) The input of cities and counties located within, or partially within, a participating fire protection jurisdiction.

(2) The planning committee may coordinate its activities with neighboring cities, towns, and other local governments that engage in fire protection planning.

(3) The planning committee shall:

(a) Create opportunities for public input in the development of the plan;

(b) Adopt a plan proposing the creation of a regional fire protection service authority and recommending design, financing, and development of fire protection and emergency service facilities and operations, including maintenance and preservation of facilities or systems, except that no ambulance service may be recommended unless the regional fire protection service authority determines that the fire protection jurisdictions that are members of the authority are not adequately served by existing private ambulance service in which case the authority may provide for the establishment of a system of ambulance service to be operated by the authority or operated by contract after a call for bids; and

(c) Recommend sources of revenue authorized by section 5 of this act and a financing plan to fund selected fire protection service projects.

(4) Once adopted, the plan must be forwarded to the participating fire protection jurisdictions' governing bodies to initiate the election process under section 6 of this act.

(5) If the ballot measure is not approved, the planning committee may redefine the selected regional fire protection service authority projects, financing plan, and the ballot measure. The fire protection jurisdictions' governing bodies may approve the new plan and ballot measure, and may then submit the revised proposition to the voters at a subsequent election or a special election. If a ballot

measure is not approved by the voters by the third vote, the planning committee is dissolved.

NEW SECTION. Sec. 5. TAXES AND FEES. (1) A regional fire protection service authority planning committee may, as part of a regional fire protection service authority plan, recommend the imposition of some or all of the following revenue sources, which a regional fire protection service authority may impose upon approval of the voters as provided in this chapter:

- (a) Benefit charges under sections 24 through 33 of this act;
- (b) Property taxes under sections 15 through 18 and 20 of this act and RCW 84.09.030, 84.52.010, 84.52.052, and 84.52.069; or
- (c) Both (a) and (b) of this subsection.

(2) Taxes and benefit charges may not be imposed unless they are identified in the regional fire protection service authority plan and the plan is approved by an affirmative vote of the majority of the voters within the boundaries of the authority voting on a ballot proposition as set forth in section 6 of this act. The voter approval requirement provided in this section is in addition to any other voter approval requirement under law for the levying of property taxes or the imposition of benefit charges. Revenues from these taxes and benefit charges may be used only to implement the plan as set forth in this chapter.

NEW SECTION. Sec. 6. SUBMISSION OF PLAN TO THE VOTERS. The governing bodies of two or more adjacent fire protection jurisdictions, upon receipt of the regional fire protection service authority plan under section 4 of this act, may certify the plan to the ballot, including identification of the tax options necessary to fund the plan. The governing bodies of the fire protection jurisdictions may draft a ballot title, give notice as required by law for ballot measures, and perform other duties as required to put the plan before the voters of the proposed authority for their approval or rejection as a single ballot measure that both approves formation of the authority and approves the plan. Authorities may negotiate interlocal agreements necessary to implement the plan. The electorate is the voters voting within the boundaries of the proposed regional fire protection service authority. A simple majority of the total persons voting on the single ballot measure to approve the plan, establish the authority, and approve the taxes is required for approval. The authority must act in accordance with the general election laws of the state. The authority is liable for its proportionate share of the costs when the elections are held under RCW 29A.04.320 and 29A.04.330.

NEW SECTION. Sec. 7. CERTIFICATION OF FORMATION. If the voters approve the plan, including creation of a regional fire protection service authority and imposition of taxes, if any, the authority is formed. The appropriate county election officials shall, within fifteen days of the final certification of the election results, publish a notice in a newspaper or newspapers of general circulation in the authority declaring the authority formed. A party challenging the procedure or the formation of a voter-approved authority must file the challenge in writing by serving the prosecuting attorney of each county within, or partially within, the regional fire protection service authority and the attorney general within thirty days after the final certification of the election. Failure to challenge within that time forever bars further challenge of the authority's valid formation.

NEW SECTION. **Sec. 8. BOARD ORGANIZATION AND COMPOSITION.** (1) The board shall adopt rules for the conduct of business. The board shall adopt bylaws to govern authority affairs, which may include:

- (a) The time and place of regular meetings;
- (b) Rules for calling special meetings;
- (c) The method of keeping records of proceedings and official acts;
- (d) Procedures for the safekeeping and disbursement of funds; and
- (e) Any other provisions the board finds necessary to include.

(2) The governing board shall be determined by the plan and consist solely of elected officials.

NEW SECTION. **Sec. 9. BOARD'S POWERS AND DUTIES.** (1) The governing board of the authority is responsible for the execution of the voter-approved plan. Participating jurisdictions shall review the plan every ten years. The board shall:

(a) Levy and impose taxes as authorized in the plan and approved by authority voters;

(b) Enter into agreements with federal, state, local, and regional entities and departments as necessary to accomplish authority purposes and protect the authority's investments;

(c) Accept gifts, grants, or other contributions of funds that will support the purposes and programs of the authority;

(d) Monitor and audit the progress and execution of fire protection service projects to protect the investment of the public and annually make public its findings;

(e) Pay for services and enter into leases and contracts, including professional service contracts;

(f) Hire, manage, and terminate employees; and

(g) Exercise other powers and duties as may be reasonable to carry out the purposes of the authority.

(2) An authority may acquire, hold, or dispose of real property.

(3) An authority may exercise the powers of eminent domain.

(4) An authority may enforce fire codes as provided under chapter 19.27 RCW.

NEW SECTION. **Sec. 10. TRANSFER OF RESPONSIBILITIES.** (1) All powers, duties, and functions of a participating fire protection jurisdiction pertaining to providing fire protection services may be transferred, by resolution, to the regional fire protection service authority.

(2)(a) All reports, documents, surveys, books, records, files, papers, or written material in the possession of the participating fire protection jurisdiction pertaining to the powers, functions, and duties transferred shall be delivered to the custody of the regional fire protection service authority. All real property and personal property including cabinets, furniture, office equipment, motor vehicles, and other tangible property employed by the participating fire protection jurisdiction in carrying out the powers, functions, and duties transferred shall be made available to the regional fire protection service authority. All funds, credits, or other assets held in connection with the powers, functions, and duties transferred shall be assigned to the regional fire protection service authority.

(b) Any appropriations made to the participating fire protection jurisdiction for carrying out the powers, functions, and duties transferred shall, on the effective date of the resolution, be transferred and credited to the regional fire protection service authority.

(c) Whenever any question arises as to the transfer of any personnel, funds, books, documents, records, papers, files, equipment, or other tangible property used or held in the exercise of the powers and the performance of the duties and functions transferred, the governing body of the participating fire protection jurisdiction shall make a determination as to the proper allocation.

(3) All rules and all pending business before the participating fire protection jurisdiction pertaining to the powers, functions, and duties transferred shall be continued and acted upon by the regional fire protection service authority. All existing contracts and obligations shall remain in full force and shall be performed by the regional fire protection service authority.

(4) The transfer of the powers, duties, functions, and personnel of the participating fire protection jurisdiction shall not affect the validity of any act performed before the effective date of the resolution.

(5) If apportionments of budgeted funds are required because of the transfers directed by the resolution, the treasurer under section 18 of this act shall certify the apportionments.

(6) Nothing contained in this section may be construed to alter any existing collective bargaining unit or the provisions of any existing collective bargaining agreement until the agreement has expired or until the bargaining unit has been modified as provided by law. RCW 35.13.215 through 35.13.235 apply to the transfer of employees under this section.

NEW SECTION. Sec. 11. WITHDRAWAL OR REANNEXATION OF AREAS. (1) As provided in this section, a regional fire protection service authority may withdraw areas from its boundaries or reannex into the authority areas that previously had been withdrawn from the authority under this section.

(2)(a) The withdrawal of an area is authorized upon: (i) Adoption of a resolution by the board approving the withdrawal and finding that, in the opinion of the board, inclusion of this area within the regional fire protection service authority will result in a reduction of the authority's tax levy rate under the provisions of RCW 84.52.010; or (ii) adoption of a resolution by the city or town council approving the withdrawal, if the area is located within the city or town, or adoption of a resolution by the governing body of the fire protection district within which the area is located approving the withdrawal, if the area is located outside of a city or town, but within a fire protection district.

(b) A withdrawal under this section is effective at the end of the day on the thirty-first day of December in the year in which the resolution under (a)(i) or (ii) of this subsection is adopted, but for purposes of establishing boundaries for property tax purposes, the boundaries shall be established immediately upon the adoption of the resolution.

(c) The withdrawal of an area from the boundaries of an authority does not exempt any property therein from taxation for the purpose of paying the costs of redeeming any indebtedness of the authority existing at the time of withdrawal.

(3)(a) An area that has been withdrawn from the boundaries of a regional fire protection service authority under this section may be reannexed into the authority upon: (i) Adoption of a resolution by the board proposing the

reannexation; and (ii) adoption of a resolution by the city or town council approving the reannexation, if the area is located within the city or town, or adoption of a resolution by the governing body of the fire protection district within which the area is located approving the reannexation, if the area is located outside of a city or town but within a fire protection district.

(b) A reannexation under this section shall be effective at the end of the day on the thirty-first day of December in the year in which the adoption of the resolution under (a)(ii) of this subsection occurs, but for purposes of establishing boundaries for property tax purposes, the boundaries shall be established immediately upon the adoption of the resolution.

(c)(i) Referendum action on the proposed reannexation under this section may be taken by the voters of the area proposed to be reannexed if a petition calling for a referendum is filed with the city or town council, or governing body of the fire protection district, within a thirty-day period after the adoption of the resolution under (a)(ii) of this subsection, which petition has been signed by registered voters of the area proposed to be reannexed equal in number to ten percent of the total number of the registered voters residing in that area.

(ii) If a valid petition signed by the requisite number of registered voters has been so filed, the effect of the resolutions shall be held in abeyance and a ballot proposition to authorize the reannexation shall be submitted to the voters of the area at the next special election date specified in RCW 29A.04.330 that occurs forty-five or more days after the petitions have been validated. Approval of the ballot proposition authorizing the reannexation by a simple majority vote shall authorize the reannexation.

NEW SECTION. Sec. 12. DISSOLUTION—ELECTION. Any fire protection district within the authority may be dissolved by a majority vote of the registered electors of the district at an election conducted by the election officials of the county or counties in which the district is located in accordance with the general election laws of the state. The proceedings for dissolution may be initiated by the adoption of a resolution by the board. The dissolution of the district shall not cancel outstanding obligations of the district or of a local improvement district within the district, and the county legislative authority or authorities of the county or counties in which the district was located may make annual levies against the lands within the district until the obligations of the districts are paid. All powers, duties, and functions of a dissolved fire protection jurisdiction within the authority boundaries, pertaining to providing fire protection services may be transferred, by resolution, to the regional fire protection service authority.

Sec. 13. RCW 57.90.010 and 1999 c 153 s 24 are each amended to read as follows:

Water-sewer, park and recreation, metropolitan park, county rural library, cemetery, flood control, mosquito control, diking and drainage, irrigation or reclamation, weed, health, or fire protection districts, and any air pollution control authority or regional fire protection service authority, hereinafter referred to as "special districts," which are located wholly or in part within a county with a population of two hundred ten thousand or more may be discontinued when the district has not actively carried out any of the special purposes or functions for which it was formed within the preceding consecutive five-year period.

NEW SECTION. Sec. 14. DEBT AND BONDING. Unless contrary to this section, chapter 39.42 RCW applies to debt and bonding under this section. The authority may borrow money, but may not issue any debt of its own for more than ten years' duration. An authority may issue notes or other evidences of indebtedness with a maturity of not more than twenty years. An authority may, when authorized by the plan, enter into agreements with the state to pledge taxes or other revenues of the authority for the purpose of paying in part or whole principal and interest on bonds issued by the authority. The contracts pledging revenues and taxes are binding for the term of the agreement, but not to exceed twenty-five years, and no tax pledged by an agreement may be eliminated or modified if it would impair the pledge of the agreement.

NEW SECTION. Sec. 15. (1) To carry out the purposes for which a regional fire protection service authority is created, as authorized in the plan and approved by the voters, the governing board of an authority may annually levy the following taxes:

(a) An ad valorem tax on all taxable property located within the authority not to exceed fifty cents per thousand dollars of assessed value;

(b) An ad valorem tax on all property located within the authority not to exceed fifty cents per thousand dollars of assessed value and which will not cause the combined levies to exceed the constitutional or statutory limitations. This levy, or any portion of this levy, may also be made when dollar rates of other taxing units are released by agreement with the other taxing units from their authorized levies; and

(c) An ad valorem tax on all taxable property located within the authority not to exceed fifty cents per thousand dollars of assessed value if the authority has at least one full-time, paid employee, or contracts with another municipal corporation for the services of at least one full-time, paid employee. This levy may be made only if it will not affect dollar rates which other taxing districts may lawfully claim nor cause the combined levies to exceed the constitutional or statutory limitations or both.

(2) Levies in excess of the amounts provided in subsection (1) of this section or in excess of the aggregate dollar rate limitations or both may be made for any authority purpose when so authorized at a special election under RCW 84.52.052. Any such tax when levied must be certified to the proper county officials for the collection of the tax as for other general taxes. The taxes when collected shall be placed in the appropriate authority fund or funds as provided by law, and must be paid out on warrants of the auditor of the county in which all, or the largest portion of, the authority is located, upon authorization of the governing board of the authority.

(3) Authorities are additionally authorized to incur general indebtedness and to issue general obligation bonds for capital purposes as provided in section 14 of this act. Authorities may provide for the retirement of general indebtedness by excess property tax levies, when the voters of the authority have approved a proposition authorizing such indebtedness and levies by an affirmative vote of three-fifths of those voting on the proposition at such an election, at which election the total number of persons voting shall constitute not less than forty percent of the voters in the authority who voted at the last preceding state general election. Elections must be held as provided in RCW 39.36.050. The maximum term of any bonds issued under the authority of this section may not

exceed ten years and must be issued and sold in accordance with chapter 39.46 RCW.

(4) For purposes of this section, the term "value of the taxable property" has the same meaning as in RCW 39.36.015.

NEW SECTION. Sec. 16. At the time of making general tax levies in each year, the county legislative authority or authorities of the county or counties in which a regional fire protection service authority is located shall make the required levies for authority purposes against the real and personal property in the authority in accordance with the equalized valuations of the property for general tax purposes and as a part of the general taxes. The tax levies are part of the general tax roll and must be collected as a part of the general taxes against the property in the authority.

NEW SECTION. Sec. 17. In the event that lands lie within both a regional fire protection service authority and a forest protection assessment area they shall be taxed and assessed as follows:

(1) If the lands are wholly unimproved, they are subject to forest protection assessments but not to authority levies;

(2) If the lands are wholly improved, they are subject to authority levies but not to forest protection assessments; and

(3) If the lands are partly improved and partly unimproved, they are subject both to authority levies and to forest protection assessments. However, upon request, accompanied by appropriate legal descriptions, the county assessor shall segregate any unimproved portions which each consist of twenty or more acres, and thereafter the unimproved portion or portions are subject only to forest protection assessments.

NEW SECTION. Sec. 18. It is the duty of the county treasurer of the county in which the regional fire protection service authority created under this chapter is located to collect taxes authorized and levied under this chapter. However, when a regional fire protection service authority is located in more than one county, the county treasurer of each county in which the authority is located shall collect the regional fire protection service authority's taxes that are imposed on property located within the county and transfer these funds to the treasurer of the county in which the majority of the authority lies.

Sec. 19. RCW 84.09.030 and 1996 c 230 s 1613 are each amended to read as follows:

Except as follows, the boundaries of counties, cities and all other taxing districts, for purposes of property taxation and the levy of property taxes, shall be the established official boundaries of such districts existing on the first day of March of the year in which the property tax levy is made.

The official boundaries of a newly incorporated taxing district shall be established at a different date in the year in which the incorporation occurred as follows:

(1) Boundaries for a newly incorporated city shall be established on the last day of March of the year in which the initial property tax levy is made, and the boundaries of a road district, library district, or fire protection district or districts, that include any portion of the area that was incorporated within its boundaries shall be altered as of this date to exclude this area, if the budget for the newly incorporated city is filed pursuant to RCW 84.52.020 and the levy request of the

newly incorporated city is made pursuant to RCW 84.52.070. Whenever a proposed city incorporation is on the March special election ballot, the county auditor shall submit the legal description of the proposed city to the department of revenue on or before the first day of March;

(2) Boundaries for a newly incorporated port district or regional fire protection service authority shall be established on the first day of October if the boundaries of the newly incorporated port district or regional fire protection service authority are coterminous with the boundaries of another taxing district or districts, as they existed on the first day of March of that year;

(3) Boundaries of any other newly incorporated taxing district shall be established on the first day of June of the year in which the property tax levy is made if the taxing district has boundaries coterminous with the boundaries of another taxing district, as they existed on the first day of March of that year;

(4) Boundaries for a newly incorporated water-sewer district shall be established on the fifteenth of June of the year in which the proposition under RCW 57.04.050 authorizing a water district excess levy is approved.

The boundaries of a taxing district shall be established on the first day of June if territory has been added to, or removed from, the taxing district after the first day of March of that year with boundaries coterminous with the boundaries of another taxing district as they existed on the first day of March of that year. However, the boundaries of a road district, library district, or fire protection district or districts, that include any portion of the area that was annexed to a city or town within its boundaries shall be altered as of this date to exclude this area. In any case where any instrument setting forth the official boundaries of any newly established taxing district, or setting forth any change in such boundaries, is required by law to be filed in the office of the county auditor or other county official, said instrument shall be filed in triplicate. The officer with whom such instrument is filed shall transmit two copies to the county assessor.

No property tax levy shall be made for any taxing district whose boundaries are not established as of the dates provided in this section.

NEW SECTION. Sec. 20. A new section is added to chapter 84.52 RCW to read as follows:

(1) If a fire protection district is a participating fire protection jurisdiction in a regional fire protection service authority, the regular property tax levies of the fire protection district are limited as follows:

(a) The regular levy of the district under RCW 52.16.130 shall not exceed fifty cents per thousand dollars of assessed value of taxable property in the district less the amount of any levy imposed by the authority under section 15(1)(a) of this act;

(b) The levy of the district under RCW 52.16.140 shall not exceed fifty cents per thousand dollars of assessed value of taxable property in the district less the amount of any levy imposed by the authority under section 15(1)(b) of this act; and

(c) The levy of the district under RCW 52.16.160 shall not exceed fifty cents per thousand dollars of assessed value of taxable property in the district less the amount of any levy imposed by the authority under section 15(1)(c) of this act.

(2) If a city or town is a participating fire protection jurisdiction in a regional fire protection service authority, the regular levies of the city or town

shall not exceed the applicable rates provided in RCW 27.12.390, 52.04.081, and 84.52.043(1) less the aggregate rates of any regular levies made by the authority under section 15(1) of this act.

(3) If a port district is a participating fire protection jurisdiction in a regional fire protection service authority, the regular levy of the port district under RCW 53.36.020 shall not exceed forty-five cents per thousand dollars of assessed value of taxable property in the district less the aggregate rates of any regular levies imposed by the authority under section 15(1) of this act.

(4) For purposes of this section, the following definitions apply:

(a) "Fire protection jurisdiction" means a fire protection district, city, town, Indian tribe, or port district; and

(b) "Participating fire protection jurisdiction" means a fire protection district, city, town, Indian tribe, or port district that is represented on the governing board of a regional fire protection service authority.

Sec. 21. RCW 84.52.010 and 2003 c 83 s 310 are each amended to read as follows:

Except as is permitted under RCW 84.55.050, all taxes shall be levied or voted in specific amounts.

The rate percent of all taxes for state and county purposes, and purposes of taxing districts coextensive with the county, shall be determined, calculated and fixed by the county assessors of the respective counties, within the limitations provided by law, upon the assessed valuation of the property of the county, as shown by the completed tax rolls of the county, and the rate percent of all taxes levied for purposes of taxing districts within any county shall be determined, calculated and fixed by the county assessors of the respective counties, within the limitations provided by law, upon the assessed valuation of the property of the taxing districts respectively.

When a county assessor finds that the aggregate rate of tax levy on any property, that is subject to the limitations set forth in RCW 84.52.043 or 84.52.050, exceeds the limitations provided in either of these sections, the assessor shall recompute and establish a consolidated levy in the following manner:

(1) The full certified rates of tax levy for state, county, county road district, and city or town purposes shall be extended on the tax rolls in amounts not exceeding the limitations established by law; however any state levy shall take precedence over all other levies and shall not be reduced for any purpose other than that required by RCW 84.55.010. If, as a result of the levies imposed under RCW 36.54.130, 84.52.069, 84.34.230, the portion of the levy by a metropolitan park district that was protected under RCW 84.52.120, and 84.52.105, the combined rate of regular property tax levies that are subject to the one percent limitation exceeds one percent of the true and fair value of any property, then these levies shall be reduced as follows: (a) The levy imposed by a ferry district under RCW 36.54.130 must be reduced until the combined rate no longer exceeds one percent of the true and fair value of any property or must be eliminated; (b) if the combined rate of regular property tax levies that are subject to the one percent limitation still exceeds one percent of the true and fair value of any property, the portion of the levy by a metropolitan park district that is protected under RCW 84.52.120 shall be reduced until the combined rate no longer exceeds one percent of the true and fair value of any property or shall be

eliminated; (c) if the combined rate of regular property tax levies that are subject to the one percent limitation still exceeds one percent of the true and fair value of any property, then the levies imposed under RCW 84.34.230, 84.52.105, and any portion of the levy imposed under RCW 84.52.069 that is in excess of thirty cents per thousand dollars of assessed value, shall be reduced on a pro rata basis until the combined rate no longer exceeds one percent of the true and fair value of any property or shall be eliminated; and (d) if the combined rate of regular property tax levies that are subject to the one percent limitation still exceeds one percent of the true and fair value of any property, then the thirty cents per thousand dollars of assessed value of tax levy imposed under RCW 84.52.069 shall be reduced until the combined rate no longer exceeds one percent of the true and fair value of any property or eliminated.

(2) The certified rates of tax levy subject to these limitations by all junior taxing districts imposing taxes on such property shall be reduced or eliminated as follows to bring the consolidated levy of taxes on such property within the provisions of these limitations:

(a) First, the certified property tax levy rates of those junior taxing districts authorized under RCW 36.68.525, 36.69.145, 35.95A.100, and 67.38.130 shall be reduced on a pro rata basis or eliminated;

(b) Second, if the consolidated tax levy rate still exceeds these limitations, the certified property tax levy rates of flood control zone districts shall be reduced on a pro rata basis or eliminated;

(c) Third, if the consolidated tax levy rate still exceeds these limitations, the certified property tax levy rates of all other junior taxing districts, other than fire protection districts, regional fire protection service authorities, library districts, the first fifty cent per thousand dollars of assessed valuation levies for metropolitan park districts, and the first fifty cent per thousand dollars of assessed valuation levies for public hospital districts, shall be reduced on a pro rata basis or eliminated;

(d) Fourth, if the consolidated tax levy rate still exceeds these limitations, the first fifty cent per thousand dollars of assessed valuation levies for metropolitan park districts created on or after January 1, 2002, shall be reduced on a pro rata basis or eliminated;

(e) Fifth, if the consolidated tax levy rate still exceeds these limitations, the certified property tax levy rates authorized to regional fire protection service authorities under section 15(1) (b) and (c) of this act and fire protection districts under RCW 52.16.140 and 52.16.160 shall be reduced on a pro rata basis or eliminated; and

(f) Sixth, if the consolidated tax levy rate still exceeds these limitations, the certified property tax levy rates authorized for regional fire protection service authorities under section 15(1)(a) of this act, fire protection districts under RCW 52.16.130, library districts, metropolitan park districts created before January 1, 2002, under their first fifty cent per thousand dollars of assessed valuation levy, and public hospital districts under their first fifty cent per thousand dollars of assessed valuation levy, shall be reduced on a pro rata basis or eliminated.

In determining whether the aggregate rate of tax levy on any property, that is subject to the limitations set forth in RCW 84.52.050, exceeds the limitations provided in that section, the assessor shall use the hypothetical state levy, as

apportioned to the county under RCW 84.48.080, that was computed under RCW 84.48.080 without regard to the reduction under RCW 84.55.012.

Sec. 22. RCW 84.52.052 and 2003 c 83 s 312 are each amended to read as follows:

The limitations imposed by RCW 84.52.050 through 84.52.056, and RCW 84.52.043 shall not prevent the levy of additional taxes by any taxing district, except school districts and fire protection districts, in which a larger levy is necessary in order to prevent the impairment of the obligation of contracts. As used in this section, the term "taxing district" means any county, metropolitan park district, park and recreation service area, park and recreation district, water-sewer district, solid waste disposal district, public facilities district, flood control zone district, county rail district, service district, public hospital district, road district, rural county library district, island library district, rural partial-county library district, intercounty rural library district, cemetery district, city, town, transportation benefit district, emergency medical service district with a population density of less than one thousand per square mile, cultural arts, stadium, and convention district, ferry district, ~~((or))~~ city transportation authority, or regional fire protection service authority.

Any such taxing district may levy taxes at a rate in excess of the rate specified in RCW 84.52.050 through 84.52.056 and 84.52.043, or 84.55.010 through 84.55.050, when authorized so to do by the voters of such taxing district in the manner set forth in Article VII, section 2(a) of the Constitution of this state at a special or general election to be held in the year in which the levy is made.

A special election may be called and the time therefor fixed by the county legislative authority, or council, board of commissioners, or other governing body of any such taxing district, by giving notice thereof by publication in the manner provided by law for giving notices of general elections, at which special election the proposition authorizing such excess levy shall be submitted in such form as to enable the voters favoring the proposition to vote "yes" and those opposed thereto to vote "no."

Sec. 23. RCW 84.52.069 and 1999 c 224 s 1 are each amended to read as follows:

(1) As used in this section, "taxing district" means a county, emergency medical service district, city or town, public hospital district, urban emergency medical service district, regional fire protection service authority, or fire protection district.

(2) A taxing district may impose additional regular property tax levies in an amount equal to fifty cents or less per thousand dollars of the assessed value of property in the taxing district. The tax shall be imposed (a) each year for six consecutive years, (b) each year for ten consecutive years, or (c) permanently. A tax levy under this section must be specifically authorized by a majority of at least three-fifths of the registered voters thereof approving a proposition authorizing the levies submitted at a general or special election, at which election the number of persons voting "yes" on the proposition shall constitute three-fifths of a number equal to forty percent of the total number of voters voting in such taxing district at the last preceding general election when the number of registered voters voting on the proposition does not exceed forty percent of the total number of voters voting in such taxing district in the last

preceding general election; or by a majority of at least three-fifths of the registered voters thereof voting on the proposition when the number of registered voters voting on the proposition exceeds forty percent of the total number of voters voting in such taxing district in the last preceding general election. Ballot propositions shall conform with RCW ~~((29.30.111))~~ 29A.36.210. A taxing district shall not submit to the voters at the same election multiple propositions to impose a levy under this section.

(3) A taxing district imposing a permanent levy under this section shall provide for separate accounting of expenditures of the revenues generated by the levy. The taxing district shall maintain a statement of the accounting which shall be updated at least every two years and shall be available to the public upon request at no charge.

(4) A taxing district imposing a permanent levy under this section shall provide for a referendum procedure to apply to the ordinance or resolution imposing the tax. This referendum procedure shall specify that a referendum petition may be filed at any time with a filing officer, as identified in the ordinance or resolution. Within ten days, the filing officer shall confer with the petitioner concerning form and style of the petition, issue the petition an identification number, and secure an accurate, concise, and positive ballot title from the designated local official. The petitioner shall have thirty days in which to secure the signatures of not less than fifteen percent of the registered voters of the taxing district, as of the last general election, upon petition forms which contain the ballot title and the full text of the measure to be referred. The filing officer shall verify the sufficiency of the signatures on the petition and, if sufficient valid signatures are properly submitted, shall certify the referendum measure to the next election within the taxing district if one is to be held within one hundred eighty days from the date of filing of the referendum petition, or at a special election to be called for that purpose in accordance with RCW ~~((29.13.020))~~ 29A.04.330.

The referendum procedure provided in this subsection shall be exclusive in all instances for any taxing district imposing the tax under this section and shall supersede the procedures provided under all other statutory or charter provisions for initiative or referendum which might otherwise apply.

(5) Any tax imposed under this section shall be used only for the provision of emergency medical care or emergency medical services, including related personnel costs, training for such personnel, and related equipment, supplies, vehicles and structures needed for the provision of emergency medical care or emergency medical services.

(6) If a county levies a tax under this section, no taxing district within the county may levy a tax under this section. If a regional fire protection service authority imposes a tax under this section, no other taxing district that is a participating fire protection jurisdiction in the regional fire protection service authority may levy a tax under this section. No other taxing district may levy a tax under this section if another taxing district has levied a tax under this section within its boundaries: PROVIDED, That if a county levies less than fifty cents per thousand dollars of the assessed value of property, then any other taxing district may levy a tax under this section equal to the difference between the rate of the levy by the county and fifty cents: PROVIDED FURTHER, That if a taxing district within a county levies this tax, and the voters of the county

subsequently approve a levying of this tax, then the amount of the taxing district levy within the county shall be reduced, when the combined levies exceed fifty cents. Whenever a tax is levied county-wide, the service shall, insofar as is feasible, be provided throughout the county: PROVIDED FURTHER, That no county-wide levy proposal may be placed on the ballot without the approval of the legislative authority of each city exceeding fifty thousand population within the county: AND PROVIDED FURTHER, That this section and RCW 36.32.480 shall not prohibit any city or town from levying an annual excess levy to fund emergency medical services: AND PROVIDED, FURTHER, That if a county proposes to impose tax levies under this section, no other ballot proposition authorizing tax levies under this section by another taxing district in the county may be placed before the voters at the same election at which the county ballot proposition is placed: AND PROVIDED FURTHER, That any taxing district emergency medical service levy that is limited in duration and that is authorized subsequent to a county emergency medical service levy that is limited in duration, shall expire concurrently with the county emergency medical service levy.

(7) The limitations in RCW 84.52.043 shall not apply to the tax levy authorized in this section.

(8) If a ballot proposition approved under subsection (2) of this section did not impose the maximum allowable levy amount authorized for the taxing district under this section, any future increase up to the maximum allowable levy amount must be specifically authorized by the voters in accordance with subsection (2) of this section at a general or special election.

(9) The limitation in RCW 84.55.010 shall not apply to the first levy imposed pursuant to this section following the approval of such levy by the voters pursuant to subsection (2) of this section.

(10) For purposes of this section, the following definitions apply:

(a) "Fire protection jurisdiction" means a fire protection district, city, town, Indian tribe, or port district; and

(b) "Participating fire protection jurisdiction" means a fire protection district, city, town, Indian tribe, or port district that is represented on the governing board of a regional fire protection service authority.

NEW SECTION. Sec. 24. (1) The governing board of a regional fire protection service authority may by resolution, as authorized in the plan and approved by the voters, for authority purposes authorized by law, fix and impose a benefit charge on personal property and improvements to real property which are located within the authority on the date specified and which have received or will receive the benefits provided by the authority, to be paid by the owners of the properties. A benefit charge does not apply to personal property and improvements to real property owned or used by any recognized religious denomination or religious organization as, or including, a sanctuary or for purposes related to the bona fide religious ministries of the denomination or religious organization, including schools and educational facilities used for kindergarten, primary, or secondary educational purposes or for institutions of higher education and all grounds and buildings related thereto. However, a benefit charge does apply to personal property and improvements to real property owned or used by any recognized religious denomination or religious organization for business operations, profit-making enterprises, or activities not

including use of a sanctuary or related to kindergarten, primary, or secondary educational purposes or for institutions of higher education. The aggregate amount of these benefit charges in any one year may not exceed an amount equal to sixty percent of the operating budget for the year in which the benefit charge is to be collected. It is the duty of the county legislative authority or authorities of the county or counties in which the regional fire protection service authority is located to make any necessary adjustments to assure compliance with this limitation and to immediately notify the governing board of an authority of any changes thereof.

(2) A benefit charge imposed must be reasonably proportioned to the measurable benefits to property resulting from the services afforded by the authority. It is acceptable to apportion the benefit charge to the values of the properties as found by the county assessor or assessors modified generally in the proportion that fire insurance rates are reduced or entitled to be reduced as the result of providing the services. Any other method that reasonably apportions the benefit charges to the actual benefits resulting from the degree of protection, which may include but is not limited to the distance from regularly maintained fire protection equipment, the level of fire prevention services provided to the properties, or the need of the properties for specialized services, may be specified in the resolution and is subject to contest on the grounds of unreasonable or capricious action or action in excess of the measurable benefits to the property resulting from services afforded by the authority. The governing board of an authority may determine that certain properties or types or classes of properties are not receiving measurable benefits based on criteria they establish by resolution. A benefit charge authorized by this chapter is not applicable to the personal property or improvements to real property of any individual, corporation, partnership, firm, organization, or association maintaining a fire department and whose fire protection and training system has been accepted by a fire insurance underwriter maintaining a fire protection engineering and inspection service authorized by the state insurance commissioner to do business in this state, but the property may be protected by the authority under a contractual agreement.

(3) For administrative purposes, the benefit charge imposed on any individual property may be compiled into a single charge, provided that the authority, upon request of the property owner, provide an itemized list of charges for each measurable benefit included in the charge.

(4) For the purposes of this section and sections 25 through 33 of this act, the following definitions apply:

(a)(i) "Personal property" includes every form of tangible personal property including, but not limited to, all goods, chattels, stock in trade, estates, or crops.

(ii) "Personal property" does not include any personal property used for farming, field crops, farm equipment, or livestock.

(b) "Improvements to real property" does not include permanent growing crops, field improvements installed for the purpose of aiding the growth of permanent crops, or other field improvements normally not subject to damage by fire.

NEW SECTION. Sec. 25. All personal property not assessed and subjected to ad valorem taxation under Title 84 RCW, all property under contract or for which the regional fire protection service authority is receiving payment for as

authorized by law, all property subject to chapter 54.28 RCW, and all property that is subject to a contract for services with an authority, is exempt from the benefit charge imposed under this chapter.

NEW SECTION. Sec. 26. (1) The resolution establishing benefit charges as specified in section 24 of this act must specify, by legal geographical areas or other specific designations, the charge to apply to each property by location, type, or other designation, or other information that is necessary to the proper computation of the benefit charge to be charged to each property owner subject to the resolution.

(2) The county assessor of each county in which the regional fire protection service authority is located shall determine and identify the personal properties and improvements to real property that are subject to a benefit charge in each authority and shall furnish and deliver to the county treasurer of that county a listing of the properties with information describing the location, legal description, and address of the person to whom the statement of benefit charges is to be mailed, the name of the owner, and the value of the property and improvements, together with the benefit charge to apply to each. These benefit charges must be certified to the county treasurer for collection in the same manner that is used for the collection of fire protection charges for forest lands protected by the department of natural resources under RCW 76.04.610 and the same penalties and provisions for collection apply.

NEW SECTION. Sec. 27. Each regional fire protection service authority shall contract, prior to the imposition of a benefit charge, for the administration and collection of the benefit charge by each county treasurer, who shall deduct a percentage, as provided by contract to reimburse the county for expenses incurred by the county assessor and county treasurer in the administration of the resolution and this chapter. The county treasurer shall make distributions each year, as the charges are collected, in the amount of the benefit charges imposed on behalf of each authority, less the deduction provided for in the contract.

NEW SECTION. Sec. 28. (1) Notwithstanding any other provision in this chapter to the contrary, any benefit charge authorized by this chapter is not effective unless a proposition to impose the benefit charge is approved by a sixty percent majority of the voters of the regional fire protection service authority voting at a general election or at a special election called by the authority for that purpose, held within the authority. An election held under this section must be held not more than twelve months prior to the date on which the first charge is to be assessed. A benefit charge approved at an election expires in six years or fewer as authorized by the voters, unless subsequently reapproved by the voters.

(2) The ballot must be submitted so as to enable the voters favoring the authorization of a regional fire protection service authority benefit charge to vote "Yes" and those opposed to vote "No." The ballot question is as follows:

"Shall the regional fire protection service authority composed of (insert the participating fire protection jurisdictions) be authorized to impose benefit charges each year for . . . (insert number of years not to exceed six) years, not to exceed an amount equal to sixty percent of its operating budget, and be prohibited from imposing an additional property tax under RCW . . . (section 15(1)(c) of this act)?"

YES NO

(3) Authorities renewing the benefit charge may elect to use the following alternative ballot:

"Shall the regional fire protection service authority composed of (insert the participating fire protection jurisdictions) be authorized to continue voter-authorized benefit charges each year for . . . (insert number of years not to exceed six) years, not to exceed an amount equal to sixty percent of its operating budget, and be prohibited from imposing an additional property tax under RCW . . . (section 15(1)(c) of this act)?

YES NO

NEW SECTION. Sec. 29. (1) Not fewer than ten days nor more than six months before the election at which the proposition to impose the benefit charge is submitted as provided in this chapter, the governing board of the regional fire protection service authority shall hold a public hearing specifically setting forth its proposal to impose benefit charges for the support of its legally authorized activities that will maintain or improve the services afforded in the authority. A report of the public hearing shall be filed with the county treasurer of each county in which the property is located and be available for public inspection.

(2) Prior to November 15th of each year the governing board of the authority shall hold a public hearing to review and establish the regional fire protection service authority benefit charges for the subsequent year.

(3) All resolutions imposing or changing the benefit charges must be filed with the county treasurer or treasurers of each county in which the property is located, together with the record of each public hearing, before November 30th immediately preceding the year in which the benefit charges are to be collected on behalf of the authority.

(4) After the benefit charges have been established, the owners of the property subject to the charge must be notified of the amount of the charge.

NEW SECTION. Sec. 30. A regional fire protection service authority that imposes a benefit charge under this chapter shall not impose all or part of the property tax authorized under section 15(1)(c) of this act.

NEW SECTION. Sec. 31. After notice has been given to the property owners of the amount of the charge, the governing board of a regional fire protection service authority imposing a benefit charge under this chapter shall form a review board for at least a two-week period and shall, upon complaint in writing of an aggrieved party owning property in the authority, reduce the charge of a person who, in their opinion, has been charged too large a sum, to a sum or amount as they believe to be the true, fair, and just amount.

NEW SECTION. Sec. 32. The Washington fire commissioners association, as soon as practicable, shall draft a model resolution to impose the regional fire protection service authority benefit charge authorized by this chapter and may provide assistance to authorities in the establishment of a program to develop benefit charges.

NEW SECTION. Sec. 33. A person who is receiving the exemption contained in RCW 84.36.381 through 84.36.389 is exempt from any legal obligation to pay a portion of the benefit charge imposed under this chapter as follows:

(1) A person who meets the income limitation contained in RCW 84.36.381(5)(a) and does not meet the income limitation contained in RCW 84.36.381(5)(b) (i) or (ii) is exempt from twenty-five percent of the charge;

(2) A person who meets the income limitation contained in RCW 84.36.381(5)(b)(i) is exempt from fifty percent of the charge; and

(3) A person who meets the income limitation contained in RCW 84.36.381(5)(b)(ii) shall be exempt from seventy-five percent of the charge.

Sec. 34. RCW 35.21.766 and 1975 1st ex.s. c 24 s 1 are each amended to read as follows:

Whenever a regional fire protection service authority or the legislative authority of any city or town determines that the fire protection jurisdictions that are members of the authority or the city or town or a substantial portion of the city or town is not adequately served by existing private ambulance service, the governing board of the authority may by resolution, or the legislative authority of the city or town may by appropriate legislation, provide for the establishment of a system of ambulance service to be operated by the authority as a public utility of the city or town, or operated by contract after a call for bids.

NEW SECTION. Sec. 35. CAPTIONS. Captions used in this act are not any part of the law.

NEW SECTION. Sec. 36. CODIFICATION. Sections 1 through 12, 14 through 18, and 24 through 33 of this act constitute a new chapter in Title 52 RCW.

NEW SECTION. Sec. 37. SEVERABILITY. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected.

- Passed by the Senate March 10, 2004.
- Passed by the House March 5, 2004.
- Approved by the Governor March 24, 2004.
- Filed in Office of Secretary of State March 24, 2004.

CHAPTER 130

[Substitute Senate Bill 6113]

SALES AND USE TAX—RURAL COUNTIES

AN ACT Relating to the use of rural county sales and use tax proceeds; amending RCW 82.14.370; and creating a new section.

Be it enacted by the Legislature of the State of Washington:

NEW SECTION. Sec. 1. It is the intent of the legislature in enacting this 2004 act to reaffirm the original goals of the 1997 act which first provided distressed counties with the local option sales and use tax contained in RCW 82.14.370. The local option tax is now available to all rural counties and the continuing legislative goal for RCW 82.14.370 is to promote the creation,

attraction, expansion, and retention of businesses and provide for family wage jobs.

Sec. 2. RCW 82.14.370 and 2002 c 184 s 1 are each amended to read as follows:

(1) The legislative authority of a rural county may impose a sales and use tax in accordance with the terms of this chapter. The tax is in addition to other taxes authorized by law and shall be collected from those persons who are taxable by the state under chapters 82.08 and 82.12 RCW upon the occurrence of any taxable event within the county. The rate of tax shall not exceed 0.08 percent of the selling price in the case of a sales tax or value of the article used in the case of a use tax, except that for rural counties with population densities between sixty and one hundred persons per square mile, the rate shall not exceed 0.04 percent before January 1, 2000.

(2) The tax imposed under subsection (1) of this section shall be deducted from the amount of tax otherwise required to be collected or paid over to the department of revenue under chapter 82.08 or 82.12 RCW. The department of revenue shall perform the collection of such taxes on behalf of the county at no cost to the county.

(3)(a) Moneys collected under this section shall only be used ~~((for the purpose of financing))~~ to finance public facilities serving economic development purposes in rural counties. The public facility must be listed as an item in the officially adopted county overall economic development plan, or the economic development section of the county's comprehensive plan, or the comprehensive plan of a city or town located within the county for those counties planning under RCW 36.70A.040. For those counties that do not have an adopted overall economic development plan and do not plan under the growth management act, the public facility must be listed in the county's capital facilities plan or the capital facilities plan of a city or town located within the county.

(b) In implementing this section, the county shall consult with cities, towns, and port districts located within the county and the associate development organization serving the county to ensure that the expenditure meets the goals of this act and the requirements of (a) of this subsection. Each county collecting money under this section shall report to the office of the state auditor, no later than October 1st of each year, a list of new projects from the prior fiscal year, showing that the county has used the funds for those projects consistent with the goals of this act and the requirements of (a) of this subsection. Any projects financed prior to the effective date of this act from the proceeds of obligations to which the tax imposed under subsection (1) of this section has been pledged shall not be deemed to be new projects under this subsection.

(c) For the purposes of this section, (i) "public facilities" means bridges, roads, domestic and industrial water facilities, sanitary sewer facilities, earth stabilization, storm sewer facilities, railroad, electricity, natural gas, buildings, structures, telecommunications infrastructure, transportation infrastructure, or commercial infrastructure, and port facilities in the state of Washington; and (ii) "economic development purposes" means those purposes which facilitate the creation or retention of businesses and jobs in a county.

(4) No tax may be collected under this section before July 1, 1998. No tax may be collected under this section by a county more than twenty-five years after the date that a tax is first imposed under this section.

(5) For purposes of this section, "rural county" means a county with a population density of less than one hundred persons per square mile or a county smaller than two hundred twenty-five square miles as determined by the office of financial management and published each year by the department for the period July 1st to June 30th.

Passed by the Senate February 17, 2004.

Passed by the House March 3, 2004.

Approved by the Governor March 24, 2004.

Filed in Office of Secretary of State March 24, 2004.

CHAPTER 131

[Senate Bill 6091]

PERSONAL WIRELESS SERVICE FACILITIES—RIGHTS OF WAY

AN ACT Relating to assuring that the rights of way of state highways accommodate the deployment of personal wireless service facilities; amending RCW 47.52.001; and adding a new section to chapter 47.04 RCW.

Be it enacted by the Legislature of the State of Washington:

Sec. 1. RCW 47.52.001 and 1961 c 13 s 47.52.001 are each amended to read as follows:

(1) Unrestricted access to and from public highways has resulted in congestion and peril for the traveler. It has caused undue slowing of all traffic in many areas. The investment of the public in highway facilities has been impaired and highway facilities costing vast sums of money will have to be relocated and reconstructed.

(2) Personal wireless service is a critical part of the state's infrastructure. The rapid deployment of personal wireless service facilities is critical to ensure public safety, network access, quality of service, and rural economic development.

(3) It is, therefore, the declared policy of this state to limit access to the highway facilities of this state in the interest of highway safety and for the preservation of the investment of the public in such facilities, and to assure that the use of rights of way of limited access facilities accommodate the deployment of personal wireless service facilities consistent with these interests.

NEW SECTION. Sec. 2. A new section is added to chapter 47.04 RCW to read as follows:

Personal wireless service is a critical part of the state's infrastructure. The rapid deployment of personal wireless service facilities is critical to ensure public safety, network access, quality of service, and rural economic development.

It is the declared policy of this state to assure that the use of rights of way of state highways accommodate the deployment of personal wireless service facilities consistent with highway safety and the preservation of the public investment in state highway facilities.

Passed by the Senate February 3, 2004.

Passed by the House March 4, 2004.

Approved by the Governor March 24, 2004.
Filed in Office of Secretary of State March 24, 2004.

CHAPTER 132

[Senate Bill 6465]

DAIRY INSPECTION PROGRAM ASSESSMENT

AN ACT Relating to extending the expiration date of the dairy inspection program assessment; amending RCW 15.36.551; and providing an expiration date.

Be it enacted by the Legislature of the State of Washington:

Sec. 1. RCW 15.36.551 and 1999 c 291 s 26 are each amended to read as follows:

There is levied on all milk processed in this state an assessment not to exceed fifty-four one-hundredths of one cent per hundredweight. The director shall determine, by rule, an assessment, that with contribution from the general fund, will support an inspection program to maintain compliance with the provisions of the pasteurized milk ordinance of the national conference on interstate milk shipment. All assessments shall be levied on the operator of the first milk processing plant receiving the milk for processing. This shall include milk processing plants that produce their own milk for processing and milk processing plants that receive milk from other sources. Milk processing plants whose monthly assessment for receipt of milk totals less than twenty dollars in any given month are exempted from paying this assessment for that month. All moneys collected under this section shall be paid to the director by the twentieth day of the succeeding month for the previous month's assessments. The director shall deposit the funds into the dairy inspection account hereby created within the agricultural local fund established in RCW 43.23.230. The funds shall be used only to provide inspection services to the dairy industry. If the operator of a milk processing plant fails to remit any assessments, that sum shall be a lien on any property owned by him or her, and shall be reported by the director and collected in the manner and with the same priority over other creditors as prescribed for the collection of delinquent taxes under chapters 84.60 and 84.64 RCW.

This section expires June 30, (~~2005~~) 2010.

Passed by the Senate February 16, 2004.

Passed by the House March 2, 2004.

Approved by the Governor March 24, 2004.

Filed in Office of Secretary of State March 24, 2004.

CHAPTER 133

[Senate Bill 6480]

SPECIAL OCCASION LIQUOR LICENSES

AN ACT Relating to the special occasion liquor license; and amending RCW 66.24.010 and 66.24.380.

Be it enacted by the Legislature of the State of Washington:

Sec. 1. RCW 66.24.010 and 2002 c 119 s 3 are each amended to read as follows:

(1) Every license shall be issued in the name of the applicant, and the holder thereof shall not allow any other person to use the license.

(2) For the purpose of considering any application for a license, the board may cause an inspection of the premises to be made, and may inquire into all matters in connection with the construction and operation of the premises. For the purpose of reviewing any application for a license and for considering the denial, suspension or revocation of any license, the liquor control board may consider any prior criminal conduct of the applicant including a criminal history record information check. The board may submit the criminal history record information check to the Washington state patrol and to the identification division of the federal bureau of investigation in order that these agencies may search their records for prior arrests and convictions of the individual or individuals who filled out the forms. The board shall require fingerprinting of any applicant whose criminal history record information check is submitted to the federal bureau of investigation. The provisions of RCW 9.95.240 and of chapter 9.96A RCW shall not apply to such cases. The board may, in its discretion, grant or refuse the license applied for. Authority to approve an uncontested or unopposed license may be granted by the board to any staff member the board designates in writing. Conditions for granting such authority shall be adopted by rule. No retail license of any kind may be issued to:

(a) A person who has not resided in the state for at least one month prior to making application, except in cases of licenses issued to dining places on railroads, boats, or aircraft;

(b) A copartnership, unless all of the members thereof are qualified to obtain a license, as provided in this section;

(c) A person whose place of business is conducted by a manager or agent, unless such manager or agent possesses the same qualifications required of the licensee;

(d) A corporation or a limited liability company, unless it was created under the laws of the state of Washington or holds a certificate of authority to transact business in the state of Washington.

(3)(a) The board may, in its discretion, subject to the provisions of RCW 66.08.150, suspend or cancel any license; and all rights of the licensee to keep or sell liquor thereunder shall be suspended or terminated, as the case may be.

(b) The board shall immediately suspend the license or certificate of a person who has been certified pursuant to RCW 74.20A.320 by the department of social and health services as a person who is not in compliance with a support order. If the person has continued to meet all other requirements for reinstatement during the suspension, reissuance of the license or certificate shall be automatic upon the board's receipt of a release issued by the department of social and health services stating that the licensee is in compliance with the order.

(c) The board may request the appointment of administrative law judges under chapter 34.12 RCW who shall have power to administer oaths, issue subpoenas for the attendance of witnesses and the production of papers, books, accounts, documents, and testimony, examine witnesses, and to receive testimony in any inquiry, investigation, hearing, or proceeding in any part of the state, under such rules and regulations as the board may adopt.

(d) Witnesses shall be allowed fees and mileage each way to and from any such inquiry, investigation, hearing, or proceeding at the rate authorized by RCW 34.05.446, as now or hereafter amended. Fees need not be paid in advance of appearance of witnesses to testify or to produce books, records, or other legal evidence.

(e) In case of disobedience of any person to comply with the order of the board or a subpoena issued by the board, or any of its members, or administrative law judges, or on the refusal of a witness to testify to any matter regarding which he or she may be lawfully interrogated, the judge of the superior court of the county in which the person resides, on application of any member of the board or administrative law judge, shall compel obedience by contempt proceedings, as in the case of disobedience of the requirements of a subpoena issued from said court or a refusal to testify therein.

(4) Upon receipt of notice of the suspension or cancellation of a license, the licensee shall forthwith deliver up the license to the board. Where the license has been suspended only, the board shall return the license to the licensee at the expiration or termination of the period of suspension. The board shall notify all vendors in the city or place where the licensee has its premises of the suspension or cancellation of the license; and no employee may allow or cause any liquor to be delivered to or for any person at the premises of that licensee.

(5)(a) At the time of the original issuance of a spirits, beer, and wine restaurant license, the board shall prorate the license fee charged to the new licensee according to the number of calendar quarters, or portion thereof, remaining until the first renewal of that license is required.

(b) Unless sooner canceled, every license issued by the board shall expire at midnight of the thirtieth day of June of the fiscal year for which it was issued. However, if the board deems it feasible and desirable to do so, it may establish, by rule pursuant to chapter 34.05 RCW, a system for staggering the annual renewal dates for any and all licenses authorized by this chapter. If such a system of staggered annual renewal dates is established by the board, the license fees provided by this chapter shall be appropriately prorated during the first year that the system is in effect.

(6) Every license issued under this section shall be subject to all conditions and restrictions imposed by this title or by the regulations in force from time to time. All conditions and restrictions imposed by the board in the issuance of an individual license shall be listed on the face of the individual license along with the trade name, address, and expiration date.

(7) Every licensee shall post and keep posted its license, or licenses, in a conspicuous place on the premises.

(8)(a) Unless (b) of this subsection applies, before the board ((shall)) issues a license to an applicant it shall give notice of such application to the chief executive officer of the incorporated city or town, if the application ((be)) is for a license within an incorporated city or town, or to the county legislative authority, if the application ((be)) is for a license outside the boundaries of incorporated cities or towns(, and such).

(b) If the application for a special occasion license is for an event held during a county, district, or area fair as defined by RCW 15.76.120, and the county, district, or area fair is located on property owned by the county but located within an incorporated city or town, the county legislative authority shall

be the entity notified by the board under (a) of this subsection. The board shall send a duplicate notice to the incorporated city or town within which the fair is located.

(c) The incorporated city or town(;) through the official or employee selected by it, or the county legislative authority or the official or employee selected by it, shall have the right to file with the board within twenty days after date of transmittal of such notice, written objections against the applicant or against the premises for which the license is asked(~~(, and)~~).

(d) The written objections shall include (~~with such objections~~) a statement of all facts upon which such objections are based, and in case written objections are filed, may request and the liquor control board may in its discretion hold a formal hearing subject to the applicable provisions of Title 34 RCW.

(e) Upon the granting of a license under this title the board shall send a duplicate of the license or written notification to the chief executive officer of the incorporated city or town in which the license is granted, or to the county legislative authority if the license is granted outside the boundaries of incorporated cities or towns. When the license is for a special occasion license for an event held during a county, district, or area fair as defined by RCW 15.76.120, and the county, district, or area fair is located on county-owned property but located within an incorporated city or town, the duplicate shall be sent to both the incorporated city or town and the county legislative authority.

(9) Before the board issues any license to any applicant, it shall give (a) due consideration to the location of the business to be conducted under such license with respect to the proximity of churches, schools, and public institutions and (b) written notice by certified mail of the application to churches, schools, and public institutions within five hundred feet of the premises to be licensed. The board shall issue no beer retailer license for either on-premises or off-premises consumption or wine retailer license for either on-premises or off-premises consumption or spirits, beer, and wine restaurant license covering any premises not now licensed, if such premises are within five hundred feet of the premises of any tax-supported public elementary or secondary school measured along the most direct route over or across established public walks, streets, or other public passageway from the outer property line of the school grounds to the nearest public entrance of the premises proposed for license, and if, after receipt by the school or public institution of the notice as provided in this subsection, the board receives written notice, within twenty days after posting such notice, from an official representative or representatives of the school within five hundred feet of said proposed licensed premises, indicating to the board that there is an objection to the issuance of such license because of proximity to a school. For the purpose of this section, church shall mean a building erected for and used exclusively for religious worship and schooling or other activity in connection therewith. No liquor license may be issued or reissued by the board to any motor sports facility or licensee operating within the motor sports facility unless the motor sports facility enforces a program reasonably calculated to prevent alcohol or alcoholic beverages not purchased within the facility from entering the facility and such program is approved by local law enforcement agencies. It is the intent under this subsection that a retail license shall not be issued by the board where doing so would, in the judgment of the board, adversely affect a private school meeting the requirements for private schools under Title 28A RCW, which school is

within five hundred feet of the proposed licensee. The board shall fully consider and give substantial weight to objections filed by private schools. If a license is issued despite the proximity of a private school, the board shall state in a letter addressed to the private school the board's reasons for issuing the license.

(10) The restrictions set forth in subsection (9) of this section shall not prohibit the board from authorizing the assumption of existing licenses now located within the restricted area by other persons or licenses or relocations of existing licensed premises within the restricted area. In no case may the licensed premises be moved closer to a church or school than it was before the assumption or relocation.

(11) Nothing in this section prohibits the board, in its discretion, from issuing a temporary retail or distributor license to an applicant assuming an existing retail or distributor license to continue the operation of the retail or distributor premises during the period the application for the license is pending and when the following conditions exist:

(a) The licensed premises has been operated under a retail or distributor license within ninety days of the date of filing the application for a temporary license;

(b) The retail or distributor license for the premises has been surrendered pursuant to issuance of a temporary operating license;

(c) The applicant for the temporary license has filed with the board an application to assume the retail or distributor license at such premises to himself or herself; and

(d) The application for a temporary license is accompanied by a temporary license fee established by the board by rule.

A temporary license issued by the board under this section shall be for a period not to exceed sixty days. A temporary license may be extended at the discretion of the board for an additional sixty-day period upon payment of an additional fee and upon compliance with all conditions required in this section.

Refusal by the board to issue or extend a temporary license shall not entitle the applicant to request a hearing. A temporary license may be canceled or suspended summarily at any time if the board determines that good cause for cancellation or suspension exists. RCW 66.08.130 and chapter 34.05 RCW shall apply to temporary licenses.

Application for a temporary license shall be on such form as the board shall prescribe. If an application for a temporary license is withdrawn before issuance or is refused by the board, the fee which accompanied such application shall be refunded in full.

Sec. 2. RCW 66.24.380 and 1997 c 321 s 24 are each amended to read as follows:

There shall be a retailer's license to be designated as a special occasion license to be issued to a not-for-profit society or organization to sell spirits, beer, and wine by the individual serving for on-premises consumption at a specified event, such as at picnics or other special occasions, at a specified date and place; fee sixty dollars per day.

(1) The not-for-profit society or organization is limited to sales of no more than twelve calendar days per year. For the purposes of this subsection, special occasion licensees that are "agricultural area fairs" or "agricultural county, district, and area fairs," as defined by RCW 15.76.120, that receive a special

occasion license may, once per calendar year, count as one event fairs that last multiple days, so long as alcohol sales are at set dates, times, and locations, and the board receives prior notification of the dates, times, and locations. The special occasion license applicant will pay the sixty dollars per day for this event.

(2) The licensee may sell beer and/or wine in original, unopened containers for off-premises consumption if permission is obtained from the board prior to the event.

(3) Sale, service, and consumption of spirits, beer, and wine is to be confined to specified premises or designated areas only.

(4) Spirituous liquor sold under this special occasion license must be purchased at a state liquor store or agency without discount at retail prices, including all taxes.

(5) Any violation of this section is a class 1 civil infraction having a maximum penalty of two hundred fifty dollars as provided for in chapter 7.80 RCW.

Passed by the Senate March 8, 2004.

Passed by the House March 3, 2004.

Approved by the Governor March 24, 2004.

Filed in Office of Secretary of State March 24, 2004.

CHAPTER 134

[Substitute Senate Bill 6171]

MISCONDUCT INVESTIGATIONS BY SPI

AN ACT Relating to misconduct investigations conducted by the superintendent of public instruction; amending RCW 28A.410.095 and 28A.410.090; and prescribing penalties.

Be it enacted by the Legislature of the State of Washington:

Sec. 1. RCW 28A.410.095 and 1992 c 159 s 5 are each amended to read as follows:

(1) The superintendent of public instruction may initiate and conduct investigations as may be reasonably necessary to establish the existence of any alleged violations of or noncompliance with this chapter or any rules adopted under it. For the purpose of any investigation or proceeding under this chapter, the superintendent or any officer designated by the superintendent may administer oaths and affirmations, subpoena witnesses and compel their attendance, take evidence, and require the production of any books, papers, correspondence, memoranda, agreements, or other documents or records that the superintendent deems relevant and material to the inquiry.

(2) Investigations conducted by the superintendent of public instruction concerning alleged sexual misconduct towards a child shall be completed within one year of the initiation of the investigation or within thirty days of the completion of all proceedings, including court proceedings, resulting from an investigation conducted by law enforcement or child protective services if there is such an investigation. The superintendent of public instruction may take, for reasonable cause, additional time for completion of the investigation after informing the victim, the individual being investigated, and the school district that employs the individual being investigated of the reasons additional time is

needed and the amount of additional time needed. Written notification must be provided to each of the parties who must be informed. The sole remedy for a failure to complete an investigation of sexual misconduct within the time allowed by this subsection is a civil penalty of fifty dollars per day for each day beyond the allowed time.

(3) If any person fails to obey a subpoena or obeys a subpoena but refuses to give evidence, any court of competent jurisdiction, upon application by the superintendent, may issue to that person an order requiring him or her to appear before the court and to show cause why he or she should not be compelled to obey the subpoena, and give evidence material to the matter under investigation. The failure to obey an order of the court may be punishable as contempt.

(4) Once an investigation has been initiated by the superintendent of public instruction, the investigation shall be completed regardless of whether the individual being investigated has resigned his or her position or allowed his or her teaching certificate to lapse. The superintendent shall make a written finding regarding each investigation indicating the actions taken, including a statement of the reasons why a complaint was dismissed or did not warrant further investigation or action by the superintendent, and shall provide such notice to each person who filed the complaint. Written findings under this section are subject to public disclosure under chapter 42.17 RCW.

(5) An investigation into sexual or physical abuse of a student by a school employee shall only be initiated by the superintendent of public instruction after the superintendent of public instruction verifies that the incident has been reported to the proper law enforcement agency or the department of social and health services as required under RCW 26.44.030.

Sec. 2. RCW 28A.410.090 and 1996 c 126 s 2 are each amended to read as follows:

(1) Any certificate or permit authorized under the provisions of this chapter, chapter 28A.405 RCW, or rules promulgated thereunder may be revoked or suspended by the authority authorized to grant the same based upon a criminal records report authorized by law, or upon the complaint of any school district superintendent, educational service district superintendent, or private school administrator for immorality, violation of written contract, unprofessional conduct, intemperance, or crime against the law of the state.

If the superintendent of public instruction has reasonable cause to believe that an alleged violation of this chapter or rules adopted under it has occurred based on a written complaint alleging physical abuse or sexual misconduct by a certificated school employee filed by a parent or another person, but no complaint has been ((filed pursuant to this chapter)) forwarded to the superintendent by a school district superintendent, educational service district superintendent, or private school administrator, and that a school district superintendent, educational service district superintendent, or private school administrator has sufficient notice of the alleged violation and opportunity to file a complaint, the superintendent of public instruction may cause an investigation to be made of the alleged violation, together with such other matters that may be disclosed in the course of the investigation related to certificated personnel.

(2) A parent or another person may file a written complaint with the superintendent of public instruction alleging physical abuse or sexual misconduct by a certificated school employee if:

(a) The parent or other person has already filed a written complaint with the educational service district superintendent concerning that employee;

(b) The educational service district superintendent has not caused an investigation of the allegations and has not forwarded the complaint to the superintendent of public instruction for investigation; and

(c) The written complaint states the grounds and factual basis upon which the parent or other person believes an investigation should be conducted.

(3) Any such certificate or permit authorized under this chapter or chapter 28A.405 RCW shall be revoked by the authority authorized to grant the certificate upon a guilty plea or the conviction of any felony crime involving the physical neglect of a child under chapter 9A.42 RCW, the physical injury or death of a child under chapter 9A.32 or 9A.36 RCW (excepting motor vehicle violations under chapter 46.61 RCW), sexual exploitation of a child under chapter 9.68A RCW, sexual offenses under chapter 9A.44 RCW where a minor is the victim, promoting prostitution of a minor under chapter 9A.88 RCW, the sale or purchase of a minor child under RCW 9A.64.030, or violation of similar laws of another jurisdiction. The person whose certificate is in question shall be given an opportunity to be heard. Mandatory permanent revocation upon a guilty plea or the conviction of felony crimes specified under this subsection shall apply to such convictions or guilty pleas which occur after July 23, 1989. Revocation of any certificate or permit authorized under this chapter or chapter 28A.405 RCW for a guilty plea or criminal conviction occurring prior to July 23, 1989, shall be subject to the provisions of subsection (1) of this section.

Passed by the Senate March 8, 2004.

Passed by the House March 4, 2004.

Approved by the Governor March 26, 2004.

Filed in Office of Secretary of State March 26, 2004.

CHAPTER 135

[Second Substitute Senate Bill 6220]

CHILD ABUSE REPORTING

AN ACT Relating to school employee duty to report suspected child abuse or neglect; and adding a new section to chapter 28A.400 RCW.

Be it enacted by the Legislature of the State of Washington:

NEW SECTION, Sec. 1. A new section is added to chapter 28A.400 RCW to read as follows:

(1) A certificated or classified school employee who has knowledge or reasonable cause to believe that a student has been a victim of physical abuse or sexual misconduct by another school employee, shall report such abuse or misconduct to the appropriate school administrator. The school administrator shall cause a report to be made to the proper law enforcement agency if he or she has reasonable cause to believe that the misconduct or abuse has occurred as required under RCW 26.44.030. During the process of making a reasonable cause determination, the school administrator shall contact all parties involved in the complaint.

(2) Certificated and classified school employees shall receive training regarding their reporting obligations under state law in their orientation training

when hired and then every three years thereafter. The training required under this subsection shall take place within existing training programs and related resources.

(3) Nothing in this section changes any of the duties established under RCW 26.44.030.

Passed by the Senate March 8, 2004.

Passed by the House March 5, 2004.

Approved by the Governor March 26, 2004.

Filed in Office of Secretary of State March 26, 2004.

CHAPTER 136

[Substitute Senate Bill 6402]

LANDLORD TRUST ACCOUNTS

AN ACT Relating to giving landlords the flexibility to deposit landlord trust account funds in any financial institution; and amending RCW 59.18.270 and 59.20.170.

Be it enacted by the Legislature of the State of Washington:

Sec. 1. RCW 59.18.270 and 1975 1st ex.s. c 233 s 1 are each amended to read as follows:

All moneys paid to the landlord by the tenant as a deposit as security for performance of the tenant's obligations in a lease or rental agreement shall promptly be deposited by the landlord in a trust account, maintained by the landlord for the purpose of holding such security deposits for tenants of the landlord, in a ~~((bank, savings and loan association, mutual savings bank,))~~ financial institution as defined by RCW 30.22.041 or licensed escrow agent located in Washington. Unless otherwise agreed in writing, the landlord shall be entitled to receipt of interest paid on such trust account deposits. The landlord shall provide the tenant with a written receipt for the deposit and shall provide written notice of the name and address and location of the depository and any subsequent change thereof. If during a tenancy the status of landlord is transferred to another, any sums in the deposit trust account affected by such transfer shall simultaneously be transferred to an equivalent trust account of the successor landlord, and the successor landlord shall promptly notify the tenant of the transfer and of the name, address, and location of the new depository. The tenant's claim to any moneys paid under this section shall be prior to that of any creditor of the landlord, including a trustee in bankruptcy or receiver, even if such moneys are commingled.

Sec. 2. RCW 59.20.170 and 1999 c 359 s 15 are each amended to read as follows:

(1) All moneys paid to the landlord by the tenant as a deposit as security for performance of the tenant's obligations in a rental agreement shall promptly be deposited by the landlord in a trust account, maintained by the landlord for the purpose of holding such security deposits for tenants of the landlord, in a ~~((bank, savings and loan association, mutual savings bank,))~~ financial institution as defined by RCW 30.22.041 or licensed escrow agent located in Washington. Except as provided in subsection (2) of this section, unless otherwise agreed in writing, the landlord shall be entitled to receipt of interest paid on such trust account deposits. The landlord shall provide the tenant with a written receipt for

the deposit and shall provide written notice of the name and address and location of the depository and any subsequent change thereof. If during a tenancy the status of landlord is transferred to another, any sums in the deposit trust account affected by such transfer shall simultaneously be transferred to an equivalent trust account of the successor landlord, and the successor landlord shall promptly notify the tenant of the transfer and of the name, address and location of the new depository. The tenant's claim to any moneys paid under this section shall be prior to that of any creditor of the landlord, including a trustee in bankruptcy or receiver, even if such moneys are commingled.

(2) All moneys paid, in excess of two months' rent on the mobile home lot, to the landlord by the tenant as a deposit as security for performance of the tenant's obligations in a rental agreement shall be deposited into an interest-bearing trust account for the particular tenant. The interest accruing on the deposit in the account, minus fees charged to administer the account, shall be paid to the tenant on an annual basis. All other provisions of subsection (1) of this section shall apply to deposits under this subsection.

Passed by the Senate March 9, 2004.

Passed by the House March 4, 2004.

Approved by the Governor March 26, 2004.

Filed in Office of Secretary of State March 26, 2004.

CHAPTER 137

[Substitute Senate Bill 6649]

MOBILE HOME ALTERATION PERMIT FEES

AN ACT Relating to retaining fees for mobile/manufactured homes and factory built housing and commercial structures; amending RCW 43.22.434; providing an effective date; and declaring an emergency.

Be it enacted by the Legislature of the State of Washington:

Sec. 1. RCW 43.22.434 and 2003 c 67 s 1 are each amended to read as follows:

(1) The director or the director's authorized representative may conduct such inspections, investigations, and audits as may be necessary to adopt or enforce manufactured and mobile home, commercial coach, conversion vending units, medical units, recreational vehicle, park trailer, factory built housing, and factory built commercial structure rules adopted under the authority of this chapter or to carry out the director's duties under this chapter.

(2) For purposes of enforcement of this chapter, persons duly designated by the director upon presenting appropriate credentials to the owner, operator, or agent in charge may:

(a) At reasonable times and without advance notice enter any factory, warehouse, or establishment in which manufactured and mobile homes, commercial coaches, conversion vending units, medical units, recreational vehicles, park trailers, factory built housing, and factory built commercial structures are manufactured, stored, or held for sale;

(b) At reasonable times, within reasonable limits, and in a reasonable manner inspect any factory, warehouse, or establishment as required to comply with the standards adopted by the secretary of housing and urban development under the national manufactured home construction and safety standards act of

1974. Each inspection shall be commenced and completed with reasonable promptness; and

(c) As requested by an owner of a conversion vending unit or medical unit, inspect an alteration.

(3) For purposes of determining compliance with this chapter's permitting requirements for alterations of mobile and manufactured homes, the department may audit the records of a contractor as defined in chapter 18.27 RCW or RCW 18.106.020(1) or an electrical contractor as defined in RCW 19.28.006 when the department has reason to believe that a violation of the permitting requirements has occurred. The department shall adopt rules implementing the auditing procedures. Information obtained from a contractor through an audit authorized by this subsection is confidential and not open to public inspection under chapter 42.17 RCW.

(4)(a) The department shall set a schedule of fees by rule which will cover the costs incurred by the department in the administration of RCW 43.22.335 through 43.22.490. The department may waive mobile/manufactured home alteration permit fees for indigent permit applicants.

(b)(i) ~~Until April 1, ((2004)) 2009, subject to (a) of this subsection, ((and for the purposes of implementing the pilot project approved by the mobile/manufactured home alteration task force,)) the department may adopt by rule a temporary statewide fee schedule that decreases fees for mobile/manufactured home alteration permits and increases fees for factory-built housing and commercial structures plan review and inspection services. ((Under the temporary fee schedule, the department may waive mobile/manufactured home alteration permit fees for indigent permit applicants. The department may increase fees for factory-built housing and commercial structures plan review and inspection services in excess of the fiscal growth factor under chapter 43.135 RCW, if the increases are necessary to fund the cost of administering RCW 43.22.335 through 43.22.490. In no instance shall any fee that applies to the factory-built housing and commercial plan review and inspection services be increased in excess of forty percent.))~~

(ii) Effective April 1, ((2004)) 2009, the department must adopt a new fee schedule that is the same as the fee schedule that was in effect immediately prior to the temporary fee schedule authorized in (b)(i) of this subsection. However, the new fee schedule must be adjusted by the fiscal growth factors not applied during the period that the temporary fee schedule was in effect.

NEW SECTION. Sec. 2. This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect March 31, 2004.

Passed by the Senate March 8, 2004.

Passed by the House March 2, 2004.

Approved by the Governor March 26, 2004.

Filed in Office of Secretary of State March 26, 2004.

CHAPTER 138

[Substitute Senate Bill 5436]

SCHOOL FOOD AND BEVERAGE SALES

AN ACT Relating to the sales of competitive foods and beverages sold and served on public school campuses; and creating new sections.

Be it enacted by the Legislature of the State of Washington:

NEW SECTION. Sec. 1. (1) The legislature finds:

(a) Childhood obesity has reached epidemic levels in Washington and throughout the nation. Nearly one in five Washington adolescents in grades nine through twelve were recently found to be either overweight or at risk of being overweight;

(b) Overweight and obese children are at higher risk for developing severe long-term health problems, including but not limited to Type 2 diabetes, cardiovascular disease, high blood pressure, and certain cancers;

(c) Overweight youth also are often affected by discrimination, psychological stress, and low self-esteem;

(d) Obesity and subsequent diseases are largely preventable through diet and regular physical activity;

(e) A child who has eaten a well-balanced meal and is healthy is more likely to be prepared to learn in the classroom;

(f) Encouraging adolescents to adopt healthy lifelong eating habits can increase their productivity and reduce their risk of dying prematurely;

(g) Frequent eating of carbohydrate-rich foods or drinking sweet liquids throughout the day increases a child's risk for dental decay, the most common chronic childhood disease;

(h) Schools are a logical place to address the issue of obesity in children and adolescents; and

(i) Increased emphasis on physical activity at all grade levels is essential to enhancing the well-being of Washington's youth.

(2) While the United States department of agriculture regulates the nutritional content of meals sold in schools under its school breakfast and lunch program, limited standards are in place to regulate "competitive foods," which may be high in added sugars, sodium, and saturated fat content. However, the United States department of agriculture does call for states and local entities to add restrictions on competitive foods, as necessary.

NEW SECTION. Sec. 2. (1) Consistent with the essential academic learning requirements for health and fitness, including nutrition, the Washington state school directors association, with the assistance of the office of the superintendent of public instruction, the department of health, and the Washington alliance for health, physical education, recreation and dance, shall convene an advisory committee to develop a model policy regarding access to nutritious foods, opportunities for developmentally appropriate exercise, and accurate information related to these topics. The policy shall address the nutritional content of foods and beverages, including fluoridated bottled water, sold or provided throughout the school day or sold in competition with the federal school breakfast and lunch program and the availability and quality of health, nutrition, and physical education and fitness curriculum. The model policy should include the development of a physical education and fitness

curriculum for students. For middle school students, physical education and fitness curriculum means a daily period of physical activity, a minimum of twenty minutes of which is aerobic activity in the student's target heart rate zone, which includes instruction and practice in basic movement and fine motor skills, progressive physical fitness, athletic conditioning, and nutrition and wellness instruction through age-appropriate activities.

(2) The school directors association shall submit the model policy and recommendations on the related issues, along with a recommendation for local adoption, to the governor and the legislature and shall post the model policy on its web site by January 1, 2005.

(3) Each district's board of directors shall establish its own policy by August 1, 2005.

Passed by the Senate March 9, 2004.

Passed by the House March 4, 2004.

Approved by the Governor March 26, 2004.

Filed in Office of Secretary of State March 26, 2004.

CHAPTER 139

[Substitute Senate Bill 6601]

OBESITY LAWSUITS

AN ACT Relating to obesity lawsuits; adding a new section to chapter 7.72 RCW; and creating a new section.

Be it enacted by the Legislature of the State of Washington:

NEW SECTION. Sec. 1. A new section is added to chapter 7.72 RCW to read as follows:

(1) Any manufacturer, packer, distributor, carrier, holder, marketer, or seller of a food or nonalcoholic beverage intended for human consumption, or an association of one or more such entities, shall not be subject to civil liability in an action brought by a private party based on an individual's purchase or consumption of food or nonalcoholic beverages in cases where liability is premised upon the individual's weight gain, obesity, or a health condition associated with the individual's weight gain or obesity and resulting from the individual's long-term purchase or consumption of a food or nonalcoholic beverage.

(2) For the purposes of this section, the term "long-term consumption" means the cumulative effect of the consumption of food or nonalcoholic beverages, and not the effect of a single instance of consumption.

NEW SECTION. Sec. 2. This act may be cited as the commonsense consumption act.

Passed by the Senate March 10, 2004.

Passed by the House March 4, 2004.

Approved by the Governor March 26, 2004.

Filed in Office of Secretary of State March 26, 2004.

CHAPTER 140

[Substitute Senate Bill 5733]

BOARDING AND ADULT FAMILY HOMES

AN ACT Relating to fairness and protection in boarding homes and adult family homes; amending RCW 18.20.050, 18.20.110, 70.128.060, 18.20.125, 18.20.195, and 74.39A.050; and repealing RCW 18.20.120.

Be it enacted by the Legislature of the State of Washington:

Sec. 1. RCW 18.20.050 and 2003 c 231 s 4 are each amended to read as follows:

(1) Upon receipt of an application for license, if the applicant and the boarding home facilities meet the requirements established under this chapter, the department shall issue a license. If there is a failure to comply with the provisions of this chapter or the standards and rules adopted pursuant thereto, the department may in its discretion issue to an applicant for a license, or for the renewal of a license, a provisional license which will permit the operation of the boarding home for a period to be determined by the department, but not to exceed twelve months, which provisional license shall not be subject to renewal. The department may also place conditions on the license under RCW 18.20.190. At the time of the application for or renewal of a license or provisional license the licensee shall pay a license fee as established by the department under RCW 43.20B.110. All licenses issued under the provisions of this chapter shall expire on a date to be set by the department, but no license issued pursuant to this chapter shall exceed twelve months in duration. However, when the annual license renewal date of a previously licensed boarding home is set by the department on a date less than twelve months prior to the expiration date of a license in effect at the time of reissuance, the license fee shall be prorated on a monthly basis and a credit be allowed at the first renewal of a license for any period of one month or more covered by the previous license. All applications for renewal of a license shall be made not later than thirty days prior to the date of expiration of the license. Each license shall be issued only for the premises and persons named in the application, and no license shall be transferable or assignable. Licenses shall be posted in a conspicuous place on the licensed premises.

(2) A licensee who receives notification of the department's initiation of a denial, suspension, nonrenewal, or revocation of a boarding home license may, in lieu of appealing the department's action, surrender or relinquish the license. The department shall not issue a new license to or contract with the licensee, for the purposes of providing care to vulnerable adults or children, for a period of twenty years following the surrendering or relinquishment of the former license. The licensing record shall indicate that the licensee relinquished or surrendered the license, without admitting the violations, after receiving notice of the department's initiation of a denial, suspension, nonrenewal, or revocation of a license.

(3) The department shall establish, by rule, the circumstances requiring a change in licensee, which include, but are not limited to, a change in ownership or control of the boarding home or licensee, a change in the licensee's form of legal organization, such as from sole proprietorship to partnership or corporation, and a dissolution or merger of the licensed entity with another legal organization. The new licensee is subject to the provisions of this chapter, the

rules adopted under this chapter, and other applicable law. In order to ensure that the safety of residents is not compromised by a change in licensee, the new licensee is responsible for correction of all violations that may exist at the time of the new license.

(4) The department may deny, suspend, modify, revoke, or refuse to renew a license when the department finds that the applicant or licensee or any partner, officer, director, managerial employee, or majority owner of the applicant or licensee:

(a) Operated a boarding home without a license or under a revoked or suspended license; or

(b) Knowing or with reason to know made a false statement of a material fact (i) in an application for license or any data attached to the application, or (ii) in any matter under investigation by the department; or

(c) Refused to allow representatives or agents of the department to inspect (i) the books, records, and files required to be maintained, or (ii) any portion of the premises of the boarding home; or

(d) Willfully prevented, interfered with, or attempted to impede in any way (i) the work of any authorized representative of the department, or (ii) the lawful enforcement of any provision of this chapter; or

(e) Has a history of significant noncompliance with federal or state regulations in providing care or services to vulnerable adults or children. In deciding whether to deny, suspend, modify, revoke, or refuse to renew a license under this section, the factors the department considers shall include the gravity and frequency of the noncompliance.

(5) The department shall serve upon the applicant a copy of the decision granting or denying an application for a license. An applicant shall have the right to contest denial of his or her application for a license as provided in chapter 34.05 RCW by requesting a hearing in writing within twenty-eight days after receipt of the notice of denial.

**Sec. 2. RCW 18.20.110 and 2003 c 280 s 1 are each amended to read as follows:*

The department shall make or cause to be made, at least every eighteen months with an annual average of fifteen months, an inspection and investigation of all boarding homes. However, the department may delay an inspection to twenty-four months if the boarding home has had three consecutive inspections with no written notice of violations and has received no written notice of violations resulting from complaint investigation during that same time period. The department may at anytime make an unannounced inspection of a licensed home to assure that the licensee is in compliance with this chapter and the rules adopted under this chapter. Every inspection shall focus primarily on actual or potential resident outcomes, and may include an inspection of every part of the premises and an examination of all records (~~((other than financial records))~~), methods of administration, the general and special dietary, and the stores and methods of supply; however, the department shall not have access to financial records or to other records, except that financial records of the boarding home may be examined when the department has reasonable cause to believe that a financial obligation related to resident care or services will not be met, such as a complaint that staff wages or utility costs have not been paid, or when necessary for the

department to investigate alleged financial exploitation of a resident. Following such an inspection or inspections, written notice of any violation of this law or the rules adopted hereunder shall be given to the applicant or licensee and the department. The department may prescribe by rule that any licensee or applicant desiring to make specified types of alterations or additions to its facilities or to construct new facilities shall, before commencing such alteration, addition, or new construction, submit plans and specifications ((therefor)) to the agencies responsible for plan reviews for preliminary inspection and approval or recommendations with respect to compliance with the rules and standards herein authorized.

*Sec. 2 was vetoed. See message at end of chapter.

Sec. 3. RCW 70.128.060 and 2001 c 193 s 9 are each amended to read as follows:

(1) An application for license shall be made to the department upon forms provided by it and shall contain such information as the department reasonably requires.

(2) Subject to the provisions of this section, the department shall issue a license to an adult family home if the department finds that the applicant and the home are in compliance with this chapter and the rules adopted under this chapter, unless (a) the applicant or a person affiliated with the applicant has prior violations of this chapter relating to the adult family home subject to the application or any other adult family home, or of any other law regulating residential care facilities within the past five years that resulted in revocation, suspension, or nonrenewal of a license or contract with the department; or (b) the applicant or a person affiliated with the applicant has a history of significant noncompliance with federal, state, or local laws, rules, or regulations relating to the provision of care or services to vulnerable adults or to children. A person is considered affiliated with an applicant if the person is listed on the license application as a partner, officer, director, resident manager, or majority owner of the applying entity, or is the spouse of the applicant.

(3) The license fee shall be submitted with the application.

(4) The department shall serve upon the applicant a copy of the decision granting or denying an application for a license. An applicant shall have the right to contest denial of his or her application for a license as provided in chapter 34.05 RCW by requesting a hearing in writing within twenty-eight days after receipt of the notice of denial.

(5) The department shall not issue a license to a provider if the department finds that the provider or spouse of the provider or any partner, officer, director, managerial employee, or majority owner ~~((of five percent or more if the provider))~~ has a history of significant noncompliance with federal or state regulations, rules, or laws in providing care or services to vulnerable adults or to children.

(6) The department shall license an adult family home for the maximum level of care that the adult family home may provide. The department shall define, in rule, license levels based upon the education, training, and caregiving experience of the licensed provider or staff.

(7) The department shall establish, by rule, standards used to license nonresident providers and multiple facility operators.

(8) The department shall establish, by rule, for multiple facility operators educational standards substantially equivalent to recognized national certification standards for residential care administrators.

(9) The license fee shall be set at fifty dollars per year for each home. A fifty dollar processing fee shall also be charged each home when the home is initially licensed.

(10) A provider who receives notification of the department's initiation of a denial, suspension, nonrenewal, or revocation of an adult family home license may, in lieu of appealing the department's action, surrender or relinquish the license. The department shall not issue a new license to or contract with the provider, for the purposes of providing care to vulnerable adults or children, for a period of twenty years following the surrendering or relinquishment of the former license. The licensing record shall indicate that the provider relinquished or surrendered the license, without admitting the violations, after receiving notice of the department's initiation of a denial, suspension, nonrenewal, or revocation of a license.

(11) The department shall establish, by rule, the circumstances requiring a change in the licensed provider, which include, but are not limited to, a change in ownership or control of the adult family home or provider, a change in the provider's form of legal organization, such as from sole proprietorship to partnership or corporation, and a dissolution or merger of the licensed entity with another legal organization. The new provider is subject to the provisions of this chapter, the rules adopted under this chapter, and other applicable law. In order to ensure that the safety of residents is not compromised by a change in provider, the new provider is responsible for correction of all violations that may exist at the time of the new license.

Sec. 4. RCW 18.20.125 and 2003 c 231 s 5 are each amended to read as follows:

(1) Inspections must be outcome based and responsive to resident complaints and based on a clear set of health, quality of care, and safety standards that are easily understandable and have been made available to facilities, residents, and other interested parties. This includes that when conducting licensing inspections, the department shall interview an appropriate percentage of residents, family members, and advocates in addition to interviewing appropriate staff.

(2) Prompt and specific enforcement remedies shall also be implemented without delay, consistent with RCW 18.20.190, for facilities found to have delivered care or failed to deliver care resulting in problems that are serious, recurring, or uncorrected, or that create a hazard that is causing or likely to cause death or serious harm to one or more residents. These enforcement remedies may also include, when appropriate, reasonable conditions on a license. In the selection of remedies, the safety, health, and well-being of residents shall be of paramount importance.

(3) To the extent funding is available, the licensee, administrator, and their staff should be screened through background checks in a uniform and timely manner to ensure that they do not have a criminal history that would disqualify them from working with vulnerable adults. Employees may be provisionally hired pending the results of the background check if they have been given three positive references.

(4) No licensee, administrator, or staff, or prospective licensee, administrator, or staff, with a stipulated finding of fact, conclusion of law, and agreed order, or finding of fact, conclusion of law, or final order issued by a disciplining authority, a court of law, or entered into the state registry finding him or her guilty of abuse, neglect, exploitation, or abandonment of a minor or a vulnerable adult as defined in chapter 74.34 RCW shall be employed in the care of and have unsupervised access to vulnerable adults.

Sec. 5. RCW 18.20.195 and 2001 c 193 s 7 are each amended to read as follows:

(1) The licensee or its designee has the right to an informal dispute resolution process to dispute any violation found or enforcement remedy imposed by the department during a licensing inspection or complaint investigation. The purpose of the informal dispute resolution process is to provide an opportunity for an exchange of information that may lead to the modification, deletion, or removal of a violation, or parts of a violation, or enforcement remedy imposed by the department.

(2) The informal dispute resolution process provided by the department shall include, but is not necessarily limited to, an opportunity for review by a department employee who did not participate in, or oversee, the determination of the violation or enforcement remedy under dispute. The department shall develop, or further develop, an informal dispute resolution process consistent with this section.

(3) A request for an informal dispute resolution shall be made to the department within ten working days from the receipt of a written finding of a violation or enforcement remedy. The request shall identify the violation or violations and enforcement remedy or remedies being disputed. The department shall convene a meeting, when possible, within ten working days of receipt of the request for informal dispute resolution, unless by mutual agreement a later date is agreed upon.

(4) If the department determines that a violation or enforcement remedy should not be cited or imposed, the department shall delete the violation or immediately rescind or modify the enforcement remedy. If the department determines that a violation should have been cited or an enforcement remedy imposed, the department shall add the citation or enforcement remedy. Upon request, the department shall issue a clean copy of the revised report, statement of deficiencies, or notice of enforcement action.

(5) The request for informal dispute resolution does not delay the effective date of any enforcement remedy imposed by the department, except that civil monetary fines are not payable until the exhaustion of any formal hearing and appeal rights provided under this chapter. The licensee shall submit to the department, within the time period prescribed by the department, a plan of correction to address any undisputed violations, and including any violations that still remain following the informal dispute resolution.

Sec. 6. RCW 74.39A.050 and 2000 c 121 s 10 are each amended to read as follows:

The department's system of quality improvement for long-term care services shall use the following principles, consistent with applicable federal laws and regulations:

(1) The system shall be client-centered and promote privacy, independence, dignity, choice, and a home or home-like environment for consumers consistent with chapter 392, Laws of 1997.

(2) The goal of the system is continuous quality improvement with the focus on consumer satisfaction and outcomes for consumers. This includes that when conducting licensing or contract inspections, the department shall interview an appropriate percentage of residents, family members, resident case managers, and advocates in addition to interviewing providers and staff.

(3) Providers should be supported in their efforts to improve quality and address identified problems initially through training, consultation, technical assistance, and case management.

(4) The emphasis should be on problem prevention both in monitoring and in screening potential providers of service.

(5) Monitoring should be outcome based and responsive to consumer complaints and based on a clear set of health, quality of care, and safety standards that are easily understandable and have been made available to providers, residents, and other interested parties.

(6) Prompt and specific enforcement remedies shall also be implemented without delay, pursuant to RCW 74.39A.080, RCW 70.128.160, chapter 18.51 RCW, or chapter 74.42 RCW, for providers found to have delivered care or failed to deliver care resulting in problems that are serious, recurring, or uncorrected, or that create a hazard that is causing or likely to cause death or serious harm to one or more residents. These enforcement remedies may also include, when appropriate, reasonable conditions on a contract or license. In the selection of remedies, the safety, health, and well-being of residents shall be of paramount importance.

(7) To the extent funding is available, all long-term care staff directly responsible for the care, supervision, or treatment of vulnerable persons should be screened through background checks in a uniform and timely manner to ensure that they do not have a criminal history that would disqualify them from working with vulnerable persons. Whenever a state conviction record check is required by state law, persons may be employed or engaged as volunteers or independent contractors on a conditional basis according to law and rules adopted by the department.

(8) No provider or staff, or prospective provider or staff, with a stipulated finding of fact, conclusion of law, an agreed order, or finding of fact, conclusion of law, or final order issued by a disciplining authority, a court of law, or entered into a state registry finding him or her guilty of abuse, neglect, exploitation, or abandonment of a minor or a vulnerable adult as defined in chapter 74.34 RCW shall be employed in the care of and have unsupervised access to vulnerable adults.

(9) The department shall establish, by rule, a state registry which contains identifying information about personal care aides identified under this chapter who have substantiated findings of abuse, neglect, financial exploitation, or abandonment of a vulnerable adult as defined in RCW 74.34.020. The rule must include disclosure, disposition of findings, notification, findings of fact, appeal rights, and fair hearing requirements. The department shall disclose, upon request, substantiated findings of abuse, neglect, financial exploitation, or abandonment to any person so requesting this information.

(10) The department shall by rule develop training requirements for individual providers and home care agency providers. Effective March 1, 2002, individual providers and home care agency providers must satisfactorily complete department-approved orientation, basic training, and continuing education within the time period specified by the department in rule. The department shall adopt rules by March 1, 2002, for the implementation of this section based on the recommendations of the community long-term care training and education steering committee established in RCW 74.39A.190. The department shall deny payment to an individual provider or a home care provider who does not complete the training requirements within the time limit specified by the department by rule.

(11) In an effort to improve access to training and education and reduce costs, especially for rural communities, the coordinated system of long-term care training and education must include the use of innovative types of learning strategies such as internet resources, videotapes, and distance learning using satellite technology coordinated through community colleges or other entities, as defined by the department.

(12) The department shall create an approval system by March 1, 2002, for those seeking to conduct department-approved training. In the rule-making process, the department shall adopt rules based on the recommendations of the community long-term care training and education steering committee established in RCW 74.39A.190.

(13) The department shall establish, by rule, training, background checks, and other quality assurance requirements for personal aides who provide in-home services funded by medicaid personal care as described in RCW 74.09.520, community options program entry system waiver services as described in RCW 74.39A.030, or chore services as described in RCW 74.39A.110 that are equivalent to requirements for individual providers.

(14) Under existing funds the department shall establish internally a quality improvement standards committee to monitor the development of standards and to suggest modifications.

(15) Within existing funds, the department shall design, develop, and implement a long-term care training program that is flexible, relevant, and qualifies towards the requirements for a nursing assistant certificate as established under chapter 18.88A RCW. This subsection does not require completion of the nursing assistant certificate training program by providers or their staff. The long-term care teaching curriculum must consist of a fundamental module, or modules, and a range of other available relevant training modules that provide the caregiver with appropriate options that assist in meeting the resident's care needs. Some of the training modules may include, but are not limited to, specific training on the special care needs of persons with developmental disabilities, dementia, mental illness, and the care needs of the elderly. No less than one training module must be dedicated to workplace violence prevention. The nursing care quality assurance commission shall work together with the department to develop the curriculum modules. The nursing care quality assurance commission shall direct the nursing assistant training programs to accept some or all of the skills and competencies from the curriculum modules towards meeting the requirements for a nursing assistant certificate as defined in chapter 18.88A RCW. A process may be developed to

test persons completing modules from a caregiver's class to verify that they have the transferable skills and competencies for entry into a nursing assistant training program. The department may review whether facilities can develop their own related long-term care training programs. The department may develop a review process for determining what previous experience and training may be used to waive some or all of the mandatory training. The department of social and health services and the nursing care quality assurance commission shall work together to develop an implementation plan by December 12, 1998.

NEW SECTION. Sec. 7. RCW 18.20.120 (Information disclosure) and 2000 c 47 s 5, 1994 c 214 s 25, & 1957 c 253 s 12 are each repealed.

Passed by the Senate March 10, 2004.

Passed by the House March 3, 2004.

Approved by the Governor March 26, 2004, with the exception of certain items that were vetoed.

Filed in Office of Secretary of State March 26, 2004.

Note: Governor's explanation of partial veto is as follows:

"I am returning herewith, without my approval as to section 2, Substitute Senate Bill No. 5733 entitled:

"AN ACT Relating to fairness and protection in boarding homes and adult family homes;"

This bill improves the laws governing the licensing of boarding homes and adult family homes. It clarifies responsibilities of the Department of Social and Health Services (DSHS) to communicate inspection and other quality of care findings to residents and their families.

Section 2 would have allowed DSHS to access the financial records of a boarding home when needed to investigate allegations of financial exploitation of a resident, or to examine instances in which there is reason to believe that a financial obligation related to resident care will not be met. This same section of statute is amended by section 3 of Substitute Senate Bill No. 6160. The amendments in Substitute Senate Bill No. 6160 provide additional protections that support the operation of quality assurance committees in boarding homes. In light of the amendments in Substitute Senate Bill No. 6160, section 2 of this bill would have introduced confusion in quality monitoring activities and is unnecessary.

For these reasons, I have vetoed section 2 of Substitute Senate Bill No. 5733.

With the exception of section 2, Substitute Senate Bill No. 5733 is approved."

CHAPTER 141

[Substitute Senate Bill 5732]

LONG-TERM CARE SERVICES

AN ACT Relating to in-home long-term care services liability; and amending RCW 74.39A.095, 74.09.520, and 74.39A.090.

Be it enacted by the Legislature of the State of Washington:

Sec. 1. RCW 74.39A.095 and 2002 c 3 s 11 are each amended to read as follows:

(1) In carrying out case management responsibilities established under RCW 74.39A.090 for consumers who are receiving services under the medicaid personal care, community options programs entry system or chore services program through an individual provider, each area agency on aging shall provide oversight of the care being provided to consumers receiving services under this

section to the extent of available funding. Case management responsibilities incorporate this oversight, and include, but are not limited to:

(a) Verification that any individual provider who has not been referred to a consumer by the authority established under chapter 3, Laws of 2002 has met any training requirements established by the department;

(b) Verification of a sample of worker time sheets;

(c) Monitoring the consumer's plan of care to (~~ensure~~) verify that it adequately meets the needs of the consumer, through activities such as home visits, telephone contacts, and responses to information received by the area agency on aging indicating that a consumer may be experiencing problems relating to his or her home care;

(d) Reassessment and reauthorization of services;

(e) Monitoring of individual provider performance. If, in the course of its case management activities, the area agency on aging identifies concerns regarding the care being provided by an individual provider who was referred by the authority, the area agency on aging must notify the authority regarding its concerns; and

(f) Conducting criminal background checks or verifying that criminal background checks have been conducted for any individual provider who has not been referred to a consumer by the authority.

(2) The area agency on aging case manager shall work with each consumer to develop a plan of care under this section that identifies and ensures coordination of health and long-term care services that meet the consumer's needs. In developing the plan, they shall utilize, and modify as needed, any comprehensive community service plan developed by the department as provided in RCW 74.39A.040. The plan of care shall include, at a minimum:

(a) The name and telephone number of the consumer's area agency on aging case manager, and a statement as to how the case manager can be contacted about any concerns related to the consumer's well-being or the adequacy of care provided;

(b) The name and telephone numbers of the consumer's primary health care provider, and other health or long-term care providers with whom the consumer has frequent contacts;

(c) A clear description of the roles and responsibilities of the area agency on aging case manager and the consumer receiving services under this section;

(d) The duties and tasks to be performed by the area agency on aging case manager and the consumer receiving services under this section;

(e) The type of in-home services authorized, and the number of hours of services to be provided;

(f) The terms of compensation of the individual provider;

(g) A statement (~~that~~) by the individual provider that he or she has the ability and willingness to carry out his or her responsibilities relative to the plan of care; and

(h)(i) Except as provided in (h)(ii) of this subsection, a clear statement indicating that a consumer receiving services under this section has the right to waive any of the case management services offered by the area agency on aging under this section, and a clear indication of whether the consumer has, in fact, waived any of these services.

(ii) The consumer's right to waive case management services does not include the right to waive reassessment or reauthorization of services, or verification that services are being provided in accordance with the plan of care.

(3) Each area agency on aging shall retain a record of each waiver of services included in a plan of care under this section.

(4) Each consumer has the right to direct and participate in the development of their plan of care to the maximum practicable extent of their abilities and desires, and to be provided with the time and support necessary to facilitate that participation.

(5) A copy of the plan of care must be distributed to the consumer's primary care provider, individual provider, and other relevant providers with whom the consumer has frequent contact, as authorized by the consumer.

(6) The consumer's plan of care shall be an attachment to the contract between the department, or their designee, and the individual provider.

(7) If the department or area agency on aging case manager finds that an individual provider's inadequate performance or inability to deliver quality care is jeopardizing the health, safety, or well-being of a consumer receiving service under this section, the department or the area agency on aging may take action to terminate the contract between the department and the individual provider. If the department or the area agency on aging has a reasonable, good faith belief that the health, safety, or well-being of a consumer is in imminent jeopardy, the department or area agency on aging may summarily suspend the contract pending a fair hearing. The consumer may request a fair hearing to contest the planned action of the case manager, as provided in chapter 34.05 RCW. When the department or area agency on aging terminates or summarily suspends a contract under this subsection, it must provide oral and written notice of the action taken to the authority. The department may by rule adopt guidelines for implementing this subsection.

(8) The department or area agency on aging may reject a request by a consumer receiving services under this section to have a family member or other person serve as his or her individual provider if the case manager has a reasonable, good faith belief that the family member or other person will be unable to appropriately meet the care needs of the consumer. The consumer may request a fair hearing to contest the decision of the case manager, as provided in chapter 34.05 RCW. The department may by rule adopt guidelines for implementing this subsection.

Sec. 2. RCW 74.09.520 and 2003 c 279 s 1 are each amended to read as follows:

(1) The term "medical assistance" may include the following care and services: (a) Inpatient hospital services; (b) outpatient hospital services; (c) other laboratory and x-ray services; (d) nursing facility services; (e) physicians' services, which shall include prescribed medication and instruction on birth control devices; (f) medical care, or any other type of remedial care as may be established by the secretary; (g) home health care services; (h) private duty nursing services; (i) dental services; (j) physical and occupational therapy and related services; (k) prescribed drugs, dentures, and prosthetic devices; and eyeglasses prescribed by a physician skilled in diseases of the eye or by an optometrist, whichever the individual may select; (l) personal care services, as provided in this section; (m) hospice services; (n) other diagnostic, screening,

preventive, and rehabilitative services; and (o) like services when furnished to a child by a school district in a manner consistent with the requirements of this chapter. For the purposes of this section, the department may not cut off any prescription medications, oxygen supplies, respiratory services, or other life-sustaining medical services or supplies.

"Medical assistance," notwithstanding any other provision of law, shall not include routine foot care, or dental services delivered by any health care provider, that are not mandated by Title XIX of the social security act unless there is a specific appropriation for these services.

(2) The department shall amend the state plan for medical assistance under Title XIX of the federal social security act to include personal care services, as defined in 42 C.F.R. 440.170(f), in the categorically needy program.

(3) The department shall adopt, amend, or rescind such administrative rules as are necessary to ensure that Title XIX personal care services are provided to eligible persons in conformance with federal regulations.

(a) These administrative rules shall include financial eligibility indexed according to the requirements of the social security act providing for medicaid eligibility.

(b) The rules shall require clients be assessed as having a medical condition requiring assistance with personal care tasks. Plans of care for clients requiring health-related consultation for assessment and service planning may be reviewed by a nurse.

(c) The department shall determine by rule which clients have a health-related assessment or service planning need requiring registered nurse consultation or review. This definition may include clients that meet indicators or protocols for review, consultation, or visit.

(4) The department shall design and implement a means to assess the level of functional disability of persons eligible for personal care services under this section. The personal care services benefit shall be provided to the extent funding is available according to the assessed level of functional disability. Any reductions in services made necessary for funding reasons should be accomplished in a manner that assures that priority for maintaining services is given to persons with the greatest need as determined by the assessment of functional disability.

(5) Effective July 1, 1989, the department shall offer hospice services in accordance with available funds.

(6) For Title XIX personal care services administered by aging and ~~((adult))~~ disability services administration of the department, the department shall contract with area agencies on aging:

(a) To provide case management services to individuals receiving Title XIX personal care services in their own home; and

(b) To reassess and reauthorize Title XIX personal care services or other home and community services as defined in RCW 74.39A.009 in home or in other settings for individuals consistent with the intent of this section:

(i) Who have been initially authorized by the department to receive Title XIX personal care services or other home and community services as defined in RCW 74.39A.009; and

(ii) Who, at the time of reassessment and reauthorization, are receiving such services in their own home.

(7) In the event that an area agency on aging is unwilling to enter into or satisfactorily fulfill a contract (~~(to provide these services)~~) or an individual consumer's need for case management services will be met through an alternative delivery system, the department is authorized to:

- (a) Obtain the services through competitive bid; and
- (b) Provide the services directly until a qualified contractor can be found.

Sec. 3. RCW 74.39A.090 and 1999 c 175 s 2 are each amended to read as follows:

(1) The legislature intends that any staff reassigned by the department as a result of shifting of the reauthorization responsibilities by contract outlined in this section shall be dedicated for discharge planning and assisting with discharge planning and information on existing discharge planning cases. Discharge planning, as directed in this section, is intended for residents and patients identified for discharge to long-term care pursuant to RCW 70.41.320, 74.39A.040, and 74.42.058. The purpose of discharge planning is to protect residents and patients from the financial incentives inherent in keeping residents or patients in a more expensive higher level of care and shall focus on care options that are in the best interest of the patient or resident.

(2) The department shall contract with area agencies on aging:

(a) To provide case management services to consumers receiving home and community services in their own home; and

(b) To reassess and reauthorize home and community services in home or in other settings for consumers consistent with the intent of this section:

(i) Who have been initially authorized by the department to receive home and community services; and

(ii) Who, at the time of reassessment and reauthorization, are receiving home and community services in their own home.

(3) In the event that an area agency on aging is unwilling to enter into or satisfactorily fulfill a contract (~~(to provide these services)~~) or an individual consumer's need for case management services will be met through an alternative delivery system, the department is authorized to:

(a) Obtain the services through competitive bid; and

(b) Provide the services directly until a qualified contractor can be found.

(4) The department shall include, in its oversight and monitoring of area agency on aging performance, assessment of case management roles undertaken by area agencies on aging in this section. The scope of oversight and monitoring (~~(must be expanded to)~~) includes, but is not limited to, assessing the degree and quality of the case management performed by area agency on aging staff for elderly and disabled persons in the community.

(5) Area agencies on aging shall assess the quality of the in-home care services provided to consumers who are receiving services under the medicaid personal care, community options programs entry system or chore services program through an individual provider or home care agency. Quality indicators may include, but are not limited to, home care consumers satisfaction surveys, how quickly home care consumers are linked with home care workers, and whether the plan of care under RCW 74.39A.095 has been honored by the agency or the individual provider.

(6) The department shall develop model language for the plan of care established in RCW 74.39A.095. The plan of care shall be in clear language,

and written at a reading level that will ensure the ability of consumers to understand the rights and responsibilities expressed in the plan of care.

Passed by the Senate March 10, 2004.

Passed by the House March 4, 2004.

Approved by the Governor March 26, 2004.

Filed in Office of Secretary of State March 26, 2004.

CHAPTER 142

[Substitute Senate Bill 6225]

BOARDING HOMES

AN ACT Relating to boarding homes; amending RCW 18.20.020, 18.20.160, 18.20.290, 74.39A.009, 74.39A.020, and 18.20.030; adding new sections to chapter 18.20 RCW; adding a new section to chapter 42.17 RCW; creating a new section; providing an effective date; and declaring an emergency.

Be it enacted by the Legislature of the State of Washington:

Sec. 1. RCW 18.20.020 and 2003 c 231 s 2 are each amended to read as follows:

As used in this chapter:

(1) "Boarding home" means any home or other institution, however named, which is advertised, announced, or maintained for the express or implied purpose of providing ~~((board and))~~ housing, basic services, and assuming general responsibility for the safety and well-being of the residents, and may also provide domiciliary care, consistent with this act, to seven or more residents after July 1, 2000. However, a boarding home that is licensed ~~((to provide board and domiciliary care to))~~ for three to six residents prior to or on July 1, 2000, may maintain its boarding home license as long as it is continually licensed as a boarding home. "Boarding home" shall not include facilities certified as group training homes pursuant to RCW 71A.22.040, nor any home, institution or section thereof which is otherwise licensed and regulated under the provisions of state law providing specifically for the licensing and regulation of such home, institution or section thereof. Nor shall it include any independent senior housing, independent living units in continuing care retirement communities, or other similar living situations including those subsidized by the department of housing and urban development.

(2) "Basic services" means housekeeping services, meals, nutritious snacks, laundry, and activities.

(3) "Person" means any individual, firm, partnership, corporation, company, association, or joint stock association, and the legal successor thereof.

~~((3))~~ (4) "Secretary" means the secretary of social and health services.

~~((4))~~ (5) "Department" means the state department of social and health services.

~~((5))~~ (6) "Resident's representative" means a person designated voluntarily by a competent resident, in writing, to act in the resident's behalf concerning the care and services provided by the boarding home and to receive information from the boarding home, if there is no legal representative. The resident's competence shall be determined using the criteria in RCW 11.88.010(1)(e). The resident's representative may not be affiliated with the licensee, boarding home, or management company, unless the affiliated person is a family member of the

resident. The resident's representative shall not have authority to act on behalf of the resident once the resident is no longer competent.

~~(7) "Domiciliary care" means: Assistance with activities of daily living provided by the boarding home either directly or indirectly; or ((assuming general responsibility for the safety and well-being of the resident)) health support services, if provided directly or indirectly by the boarding home; or intermittent nursing services, if provided directly or indirectly by the boarding home. ((("Domiciliary care" does not include general observation or preadmission assessment for the purposes of transitioning to a licensed care setting.~~

~~(6)) (8) "General responsibility for the safety and well-being of the resident" means the provision of the following: Prescribed general low sodium diets; prescribed general diabetic diets; prescribed mechanical soft foods; emergency assistance; monitoring of the resident; arranging health care appointments with outside health care providers and reminding residents of such appointments as necessary; coordinating health care services with outside health care providers consistent with section 10 of this act; assisting the resident to obtain and maintain glasses, hearing aids, dentures, canes, crutches, walkers, wheelchairs, and assistive communication devices; observation of the resident for changes in overall functioning; blood pressure checks as scheduled; responding appropriately when there are observable or reported changes in the resident's physical, mental, or emotional functioning; or medication assistance as permitted under RCW 69.41.085 and as defined in RCW 69.41.010.~~

~~((("General responsibility for the safety and well-being of the resident" does not include: (a) Emergency assistance provided on an intermittent or nonroutine basis to any nonresident individual; or (b) services customarily provided under landlord-tenant agreements governed by the residential landlord-tenant act, chapter 59.18 RCW. Such services do not include care or supervision.~~

~~(7)) (9) "Legal representative" means a person or persons identified in RCW 7.70.065 who may act on behalf of the resident pursuant to the scope of their legal authority. The legal representative shall not be affiliated with the licensee, boarding home, or management company, unless the affiliated person is a family member of the resident.~~

~~(10) "Nonresident individual" means a person who resides in independent senior housing, independent living units in continuing care retirement communities, or in other similar living environments or in a boarding home and may receive one or more of the services listed in RCW 18.20.030(5), but may not receive domiciliary care, as defined in this chapter, directly or indirectly by the facility and may not receive the items and services listed in subsection (8) of this section.~~

~~(11) "Resident" means an individual who((:—Lives in a boarding home, including those receiving respite care;)) is not related by blood or marriage to the operator of the boarding home((:)), and by reason of age or disability, ((receives)) chooses to reside in the boarding home and receives basic services and one or more of the services listed under general responsibility for the safety and well-being of the resident and may receive domiciliary care or respite care provided ((either)) directly or indirectly by the boarding home and shall be permitted to receive hospice care through an outside service provider when~~

arranged by the resident or the resident's legal representative under section 10 of this act.

(12) "Resident applicant" means an individual who is seeking admission to a licensed boarding home and who has completed and signed an application for admission, or such application for admission has been completed and signed in their behalf by their legal representative if any, and if not, then the designated representative if any.

NEW SECTION. Sec. 2. A new section is added to chapter 18.20 RCW to read as follows:

(1) A boarding home, licensed under this chapter, may provide domiciliary care services, as defined in this chapter, and shall disclose the scope of care and services that it chooses to provide.

(2) The boarding home licensee shall disclose to the residents, the residents' legal representative if any, and if not, the residents' representative if any, and to interested consumers upon request, the scope of care and services offered, using the form developed and provided by the department, in addition to any supplemental information that may be provided by the licensee. The form that the department develops shall be standardized, reasonable in length, and easy to read. The boarding home's disclosure statement shall indicate the scope of domiciliary care assistance provided and shall indicate that it permits the resident or the resident's legal representative to independently arrange for outside services under section 10 of this act.

(3)(a) If the boarding home licensee decreases the scope of services that it provides due to circumstances beyond the licensee's control, the licensee shall provide a minimum of thirty days' written notice to the residents, the residents' legal representative if any, and if not, the residents' representative if any, before the effective date of the decrease in the scope of care or services provided.

(b) If the licensee voluntarily decreases the scope of services, and any such decrease in the scope of services provided will result in the discharge of one or more residents, then ninety days' written notice shall be provided prior to the effective date of the decrease. Notice shall be provided to the affected residents, the residents' legal representative if any, and if not, the residents' representative if any.

(c) If the boarding home licensee increases the scope of services that it chooses to provide, the licensee shall promptly provide written notice to the residents, the residents' legal representative if any, and if not, the residents' representative if any, and shall indicate the date on which the increase in the scope of care or services is effective.

(4) When the care needs of a resident exceed the disclosed scope of care or services that a boarding home licensee provides, the licensee may exceed the care or services disclosed consistent with RCW 70.129.030(3) and RCW 70.129.110(3)(a). Providing care or services to a resident that exceed the care and services disclosed may or may not mean that the provider is capable of or required to provide the same care or services to other residents.

(5) Even though the boarding home licensee may disclose that it can provide certain care or services to resident applicants or to their legal representative if any, and if not, to the resident applicants' representative if any, the licensee may deny admission to a resident applicant when the licensee determines that the

needs of the resident applicant cannot be met, as long as the provider operates in compliance with state and federal law, including RCW 70.129.030(3).

(6) The disclosure form is intended to assist consumers in selecting boarding home services and, therefore, shall not be construed as an implied or express contract between the boarding home licensee and the resident.

NEW SECTION. Sec. 3. A new section is added to chapter 18.20 RCW to read as follows:

(1) Boarding homes are not required to provide assistance with one or more activities of daily living.

(2) If a boarding home licensee chooses to provide assistance with activities of daily living, the licensee shall provide at least the minimal level of assistance for all activities of daily living consistent with subsection (3) of this section and consistent with the reasonable accommodation requirements in state or federal laws. Activities of daily living are limited to and include the following:

- (a) Bathing;
- (b) Dressing;
- (c) Eating;
- (d) Personal hygiene;
- (e) Transferring;
- (f) Toileting; and
- (g) Ambulation and mobility.

(3) The department shall, in rule, define the minimum level of assistance that will be provided for all activities of daily living, however, such rules shall not require more than occasional stand-by assistance or more than occasional physical assistance.

(4) The licensee shall clarify, through the disclosure form, the assistance with activities of daily living that may be provided, and any limitations or conditions that may apply. The licensee shall also clarify through the disclosure form any additional services that may be provided.

(5) In providing assistance with activities of daily living, the boarding home shall observe the resident for changes in overall functioning and respond appropriately when there are observable or reported changes in the resident's physical, mental, or emotional functioning.

NEW SECTION. Sec. 4. A new section is added to chapter 18.20 RCW to read as follows:

(1) The boarding home licensee may choose to provide any of the following health support services, however, the facility may or may not need to provide additional health support services to comply with the reasonable accommodation requirements in federal or state law:

- (a) Blood glucose testing;
- (b) Puree diets;
- (c) Calorie controlled diabetic diets;
- (d) Dementia care;
- (e) Mental health care; and
- (f) Developmental disabilities care.

(2) The licensee shall clarify on the disclosure form any limitations, additional services, or conditions that may apply.

(3) In providing health support services, the boarding home shall observe the resident for changes in overall functioning and respond appropriately when there are observable or reported changes in the resident's physical, mental, or emotional functioning.

NEW SECTION. Sec. 5. A new section is added to chapter 18.20 RCW to read as follows:

(1) Boarding homes are not required to provide intermittent nursing services. The boarding home licensee may choose to provide any of the following intermittent nursing services through appropriately licensed and credentialed staff, however, the facility may or may not need to provide additional intermittent nursing services to comply with the reasonable accommodation requirements in federal or state law:

- (a) Medication administration;
- (b) Administration of health care treatments;
- (c) Diabetic management;
- (d) Nonroutine ostomy care;
- (e) Tube feeding; and
- (f) Nurse delegation consistent with chapter 18.79 RCW.

(2) The licensee shall clarify on the disclosure form any limitations, additional services, or conditions that may apply under this section.

(3) In providing intermittent nursing services, the boarding home shall observe the resident for changes in overall functioning and respond appropriately when there are observable or reported changes in the resident's physical, mental, or emotional functioning.

(4) The boarding home may provide intermittent nursing services to the extent permitted by RCW 18.20.160.

NEW SECTION. Sec. 6. A new section is added to chapter 18.20 RCW to read as follows:

(1) A boarding home licensee may permit a resident's family member to administer medications or treatments or to provide medication or treatment assistance to the resident. The licensee shall disclose to the department, residents, the residents' legal representative if any, and if not, the residents' representative if any, and to interested consumers upon request, information describing whether the licensee permits such family administration or assistance and, if so, the extent of limitations or conditions thereof.

(2) If a boarding home licensee permits a resident's family member to administer medications or treatments or to provide medication or treatment assistance, the licensee shall request that the family member submit to the licensee a written medication or treatment plan. At a minimum, the written medication or treatment plan shall identify:

(a) By name, the family member who will administer the medication or treatment or provide assistance therewith;

(b) The medication or treatment administration or assistance that the family member will provide consistent with subsection (1) of this section. This will be referred to as the primary plan;

(c) An alternate plan that will meet the resident's medication or treatment needs if the family member is unable to fulfill his or her duties as specified in the primary plan; and

(d) An emergency contact person and telephone number if the boarding home licensee observes changes in the resident's overall functioning or condition that may relate to the medication or treatment plan.

(3) The boarding home licensee may require that the primary or alternate medication or treatment plan include other information in addition to that specified in subsection (2) of this section.

(4) The medication or treatment plan shall be signed and dated by:

(a) The resident, if able;

(b) The resident's legal representative, if any, and, if not, the resident's representative, if any;

(c) The resident's family member; and

(d) The boarding home licensee.

(5) The boarding home may through policy or procedure require the resident's family member to immediately notify the boarding home licensee of any change in the primary or alternate medication or treatment plan.

(6) When a boarding home licensee permits residents' family members to assist with or administer medications or treatments, the licensee's duty of care, and any negligence that may be attributed thereto, shall be limited to: Observation of the resident for changes in overall functioning consistent with RCW 18.20.280; notification to the person or persons identified in RCW 70.129.030 when there are observed changes in the resident's overall functioning or condition, or when the boarding home is aware that both the primary and alternate plan are not implemented; and appropriately responding to obtain needed assistance when there are observable or reported changes in the resident's physical or mental functioning.

NEW SECTION. Sec. 7. A new section is added to chapter 18.20 RCW to read as follows:

(1) The boarding home licensee shall conduct a preadmission assessment for each resident applicant. The preadmission assessment shall include the following information, unless unavailable despite the best efforts of the licensee:

(a) Medical history;

(b) Necessary and contraindicated medications;

(c) A licensed medical or health professional's diagnosis, unless the individual objects for religious reasons;

(d) Significant known behaviors or symptoms that may cause concern or require special care;

(e) Mental illness diagnosis, except where protected by confidentiality laws;

(f) Level of personal care needs;

(g) Activities and service preferences; and

(h) Preferences regarding other issues important to the resident applicant, such as food and daily routine.

(2) The boarding home licensee shall complete the preadmission assessment before admission unless there is an emergency. If there is an emergency admission, the preadmission assessment shall be completed within five days of the date of admission. For purposes of this section, "emergency" includes, but is not limited to: Evening, weekend, or Friday afternoon admissions if the resident applicant would otherwise need to remain in an unsafe setting or be without adequate and safe housing.

(3) The boarding home licensee shall complete an initial resident service plan upon move-in to identify the resident's immediate needs and to provide direction to staff and caregivers relating to the resident's immediate needs. The initial resident service plan shall include as much information as can be obtained, under subsection (1) of this section.

NEW SECTION. Sec. 8. A new section is added to chapter 18.20 RCW to read as follows:

(1) The boarding home licensee shall within fourteen days of the resident's date of move-in, unless extended by the department for good cause, and thereafter at least annually, complete a full reassessment addressing the following:

(a) The individual's recent medical history, including, but not limited to: A health professional's diagnosis, unless the resident objects for religious reasons; chronic, current, and potential skin conditions; known allergies to foods or medications; or other considerations for providing care or services;

(b) Current necessary and contraindicated medications and treatments for the individual, including:

(i) Any prescribed medications and over-the-counter medications that are commonly taken by the individual, and that the individual is able to independently self-administer or safely and accurately direct others to administer to him or her;

(ii) Any prescribed medications and over-the-counter medications that are commonly taken by the individual and that the individual is able to self-administer when he or she has the assistance of a resident-care staff person; and

(iii) Any prescribed medications and over-the-counter medications that are commonly taken by the individual and that the individual is not able to self-administer;

(c) The individual's nursing needs when the individual requires the services of a nurse on the boarding home premises;

(d) The individual's sensory abilities, including vision and hearing;

(e) The individual's communication abilities, including modes of expression, ability to make himself or herself understood, and ability to understand others;

(f) Significant known behaviors or symptoms of the individual causing concern or requiring special care, including: History of substance abuse; history of harming self, others, or property, or other conditions that may require behavioral intervention strategies; the individual's ability to leave the boarding home unsupervised; and other safety considerations that may pose a danger to the individual or others, such as use of medical devices or the individual's ability to smoke unsupervised, if smoking is permitted in the boarding home;

(g) The individual's special needs, by evaluating available information, or selecting and using an appropriate tool to determine the presence of symptoms consistent with, and implications for care and services of: Mental illness, or needs for psychological or mental health services, except where protected by confidentiality laws; developmental disability; dementia; or other conditions affecting cognition, such as traumatic brain injury;

(h) The individual's level of personal care needs, including: Ability to perform activities of daily living; medication management ability, including the individual's ability to obtain and appropriately use over-the-counter medications;

and how the individual will obtain prescribed medications for use in the boarding home;

(i) The individual's activities, typical daily routines, habits, and service preferences;

(j) The individual's personal identity and lifestyle, to the extent the individual is willing to share the information, and the manner in which they are expressed, including preferences regarding food, community contacts, hobbies, spiritual preferences, or other sources of pleasure and comfort; and

(k) Who has decision-making authority for the individual, including: The presence of any advance directive, or other legal document that will establish a substitute decision maker in the future; the presence of any legal document that establishes a current substitute decision maker; and the scope of decision-making authority of any substitute decision maker.

(2) Complete a limited assessment of a resident's change of condition when the resident's negotiated service agreement no longer addresses the resident's current needs.

NEW SECTION. Sec. 9. A new section is added to chapter 18.20 RCW to read as follows:

(1) The boarding home licensee shall complete a negotiated service agreement using the preadmission assessment, initial resident service plan, and full reassessment information obtained under sections 7 and 8 of this act. The licensee shall include the resident and the resident's legal representative if any, or the resident's representative if any, in the development of the negotiated service agreement. If the resident is a medicaid client, the department's case manager shall also be involved.

(2) The negotiated service agreement shall be completed or updated:

(a) Within thirty days of the date of move-in;

(b) As necessary following the annual full assessment of the resident; and

(c) Whenever the resident's negotiated service agreement no longer adequately addresses the resident's current needs and preferences.

NEW SECTION. Sec. 10. A new section is added to chapter 18.20 RCW to read as follows:

(1) The boarding home licensee shall permit the resident, or the resident's legal representative if any, to independently arrange for or contract with a practitioner licensed under Title 18 RCW regulating health care professions, or a home health, hospice, or home care agency licensed under chapter 70.127 RCW, to provide on-site care and services to the resident, consistent with RCW 18.20.160 and chapter 70.129 RCW. The boarding home licensee may permit the resident, or the resident's legal representative if any, to independently arrange for other persons to provide on-site care and services to the resident.

(2) The boarding home licensee may establish policies and procedures that describe limitations, conditions, or requirements that must be met prior to an outside service provider being allowed on-site.

(3) When the resident or the resident's legal representative independently arranges for outside services under subsection (1) of this section, the licensee's duty of care, and any negligence that may be attributed thereto, shall be limited to: The responsibilities described under subsection (4) of this section, excluding supervising the activities of the outside service provider; observation of the

resident for changes in overall functioning, consistent with RCW 18.20.280; notification to the person or persons identified in RCW 70.129.030 when there are observed changes in the resident's overall functioning or condition; and appropriately responding to obtain needed assistance when there are observable or reported changes in the resident's physical or mental functioning.

(4) Consistent with RCW 18.20.280, the boarding home licensee shall not be responsible for supervising the activities of the outside service provider. When information sharing is authorized by the resident or the resident's legal representative, the licensee shall request such information and integrate relevant information from the outside service provider into the resident's negotiated service agreement, only to the extent that such information is actually shared with the licensee.

****NEW SECTION. Sec. II. A new section is added to chapter 18.20 RCW to read as follows:***

By December 12, 2005, the department shall report on the payment system for licensed boarding homes to the chairs of the senate and house of representatives health care committees. The department shall include in the report findings regarding the average costs of providing care and services for the nonmetropolitan statistical areas, metropolitan statistical areas, and King county to determine whether the rates of payment within the designated areas are, on average, reasonably related to the identified average costs. The cost data is exempt from disclosure as provided in section 16 of this act. The purpose of this cost-to-rate comparison study is to assess any cost impacts that may be attributed to the implementation of new boarding home rules occurring between September 1, 2004, and June 30, 2005. If the department adopts new boarding home rules after June 30, 2005, the report to the chairs of the senate and house of representatives health care committees will instead be due by December 12, 2006.

****Sec. 11 was vetoed. See message at end of chapter.***

Sec. 12. RCW 18.20.160 and 1985 c 297 s 2 are each amended to read as follows:

No person operating a boarding home licensed under this chapter shall admit to or retain in the boarding home any aged person requiring nursing or medical care of a type provided by institutions licensed under chapters 18.51, 70.41 or 71.12 RCW, except that when registered nurses are available, and upon a doctor's order that a supervised medication service is needed, it may be provided. Supervised medication services, as defined by the department and consistent with chapters 69.41 and 18.79 RCW, may include an approved program of self-medication or self-directed medication. Such medication service shall be provided only to (~~boarders~~) residents who otherwise meet all requirements for residency in a boarding home. No boarding home shall admit or retain a person who requires the frequent presence and frequent evaluation of a registered nurse, excluding persons who are receiving hospice care or persons who have a short-term illness that is expected to be resolved within fourteen days.

Sec. 13. RCW 18.20.290 and 2003 c 231 s 11 are each amended to read as follows:

(1) When a boarding home contracts with the department to provide adult residential care services, enhanced adult residential care services, or assisted living services under chapter 74.39A RCW, the boarding home must hold a medicaid eligible resident's room or unit when short-term care is needed in a nursing home or hospital, the resident is likely to return to the boarding home, and payment is made under subsection (2) of this section.

(2) The medicaid resident's bed or unit shall be held for up to twenty days. The per day bed or unit hold compensation amount shall be seventy percent of the daily rate paid for the first seven days the bed or unit is held for the resident who needs short-term nursing home care or hospitalization. The rate for the eighth through the twentieth day a bed is held shall be established in rule, but shall be no lower than ten dollars per day the bed or unit is held.

(3) The boarding home may seek third-party payment to hold a bed or unit for twenty-one days or longer. The third-party payment shall not exceed ~~((eighty-five percent of))~~ the ~~((average))~~ medicaid daily rate paid to the facility for the resident. If third-party payment is not available, the medicaid resident may return to the first available and appropriate bed or unit, if the resident continues to meet the admission criteria under this chapter.

(4) The department shall monitor the use and impact of the policy established under this section and shall report its findings to the appropriate committees of the senate and house of representatives by December 31, 2005.

(5) This section expires June 30, 2006.

Sec. 14. RCW 74.39A.009 and 1997 c 392 s 103 are each amended to read as follows:

Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Adult family home" means a home licensed under chapter 70.128 RCW.

(2) "Adult residential care" means services provided by a boarding home that is licensed under chapter 18.20 RCW and that has a contract with the department under RCW 74.39A.020 to provide personal care services.

(3) "Assisted living services" means services provided by a boarding home that has a contract with the department under RCW 74.39A.010 to provide personal care services, intermittent nursing services, and medication administration services, and the resident is housed in a private apartment-like unit.

(4) "Boarding home" means a facility licensed under chapter 18.20 RCW.

(5) "Cost-effective care" means care provided in a setting of an individual's choice that is necessary to promote the most appropriate level of physical, mental, and psychosocial well-being consistent with client choice, in an environment that is appropriate to the care and safety needs of the individual, and such care cannot be provided at a lower cost in any other setting. But this in no way precludes an individual from choosing a different residential setting to achieve his or her desired quality of life.

(6) "Department" means the department of social and health services.

(7) "Enhanced adult residential care" means services provided by a boarding home that is licensed under chapter 18.20 RCW and that has a contract with the department under RCW 74.39A.010 to provide personal care services, intermittent nursing services, and medication administration services.

(8) "Functionally disabled person" is synonymous with chronic functionally disabled and means a person who because of a recognized chronic physical or mental condition or disease, including chemical dependency, is impaired to the extent of being dependent upon others for direct care, support, supervision, or monitoring to perform activities of daily living. "Activities of daily living", in this context, means self-care abilities related to personal care such as bathing, eating, using the toilet, dressing, and transfer. Instrumental activities of daily living may also be used to assess a person's functional abilities as they are related to the mental capacity to perform activities in the home and the community such as cooking, shopping, house cleaning, doing laundry, working, and managing personal finances.

(9) "Home and community services" means adult family homes, in-home services, and other services administered or provided by contract by the department directly or through contract with area agencies on aging or similar services provided by facilities and agencies licensed by the department.

(10) "Long-term care" is synonymous with chronic care and means care and supports delivered indefinitely, intermittently, or over a sustained time to persons of any age disabled by chronic mental or physical illness, disease, chemical dependency, or a medical condition that is permanent, not reversible or curable, or is long-lasting and severely limits their mental or physical capacity for self-care. The use of this definition is not intended to expand the scope of services, care, or assistance by any individuals, groups, residential care settings, or professions unless otherwise expressed by law.

(11) "Nursing home" means a facility licensed under chapter 18.51 RCW.

(12) "Secretary" means the secretary of social and health services.

(13) "Tribally licensed boarding home" means a boarding home licensed by a federally recognized Indian tribe which home provides services similar to boarding homes licensed under chapter 18.20 RCW.

Sec. 15. RCW 74.39A.020 and 1995 1st sp.s. c 18 s 15 are each amended to read as follows:

(1) To the extent of available funding, the department of social and health services may contract for adult residential care (~~(and enhanced adult residential care)~~).

(2) The department shall, by rule, develop terms and conditions for facilities that contract with the department for adult residential care (~~(and enhanced adult residential care)~~) to establish:

(a) Facility service standards consistent with the principles in RCW 74.39A.050 and consistent with chapter 70.129 RCW; and

(b) Training requirements for providers and their staff.

(3) The department shall, by rule, provide that services in adult residential care (~~(and enhanced adult residential care)~~) facilities:

(a) Recognize individual needs, privacy, and autonomy;

(b) Include personal care (~~(and limited nursing services)~~) and other services that promote independence and self-sufficiency and aging in place;

(c) Are directed first to those persons most likely, in the absence of adult residential care (~~(and enhanced adult residential care)~~) services, to need hospital, nursing facility, or other out-of-home placement; and

(d) Are provided in compliance with applicable facility and professional licensing laws and rules.

(4) When a facility contracts with the department for adult residential care (~~((and enhanced adult residential care))~~), only services and facility standards that are provided to or in behalf of the adult residential care (~~((or the enhanced adult residential care))~~) client shall be subject to the adult residential care (~~((or enhanced adult residential care))~~) rules.

(5) To the extent of available funding, the department may also contract under this section with a tribally licensed boarding home for the provision of services of the same nature as the services provided by adult residential care facilities. The provisions of subsections (2)(a) and (b) and (3)(a) through (d) of this section apply to such a contract.

NEW SECTION. Sec. 16. A new section is added to chapter 42.17 RCW to read as follows:

Data collected by the department of social and health services for the reports required by section 11 of this act and section 8, chapter 231, Laws of 2003, except as compiled in the aggregate and reported to the senate and house of representatives, is exempt from disclosure under this chapter.

Sec. 17. RCW 18.20.030 and 2003 c 231 s 3 are each amended to read as follows:

(1) After January 1, 1958, no person shall operate or maintain a boarding home as defined in this chapter within this state without a license under this chapter.

(2) A boarding home license is not required for the housing, or services, that are customarily provided under landlord tenant agreements governed by the residential landlord-tenant act, chapter 59.18 RCW, or when housing nonresident individuals who, without ongoing assistance from the boarding home, initiate and arrange for services provided by persons other than the boarding home licensee or the licensee's contractor. This subsection does not prohibit the licensee from furnishing written information concerning available community resources to the nonresident individual or the individual's family members or legal representatives. The licensee may not require the use of any particular service provider.

(3) Residents receiving domiciliary care, directly or indirectly by the boarding home, are not considered nonresident individuals for the purposes of this section.

(4) A boarding home license is required when any person other than an outside service provider, under section 10 of this act, or family member:

(a) Assumes general responsibility for the safety and well-being of a resident;

(b) Provides assistance with activities of daily living, either directly or indirectly;

(c) Provides health support services, either directly or indirectly; or

(d) Provides intermittent nursing services, either directly or indirectly.

(5) A boarding home license is not required for (~~((emergency assistance when that emergency assistance is not provided on a frequent or routine basis to any one nonresident individual and the nonresident individual resides in independent senior housing, independent living units in continuing care retirement communities, independent living units having common ownership with a licensed boarding home, or other similar living situations including those~~

subsidized by the department of housing and urban development)) one or more of the following services that may be provided to a nonresident individual: (a) Emergency assistance provided on an intermittent or nonroutine basis to any nonresident individual; (b) systems employed by independent senior housing, or independent living units in continuing care retirement communities, to respond to the potential need for emergency services for nonresident individuals; (c) infrequent, voluntary, and nonscheduled blood pressure checks for nonresident individuals; (d) nurse referral services provided at the request of a nonresident individual to determine whether referral to an outside health care provider is recommended; (e) making health care appointments at the request of nonresident individuals; (f) preadmission assessment, at the request of the nonresident individual, for the purposes of transitioning to a licensed care setting; or (g) services customarily provided under landlord tenant agreements governed by the residential landlord-tenant act, chapter 59.18 RCW. The preceding services may not include continual care or supervision of a nonresident individual without a boarding home license.

NEW SECTION. Sec. 18. This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately, except that sections 1 through 10 and 12 of this act take effect September 1, 2004.

NEW SECTION. Sec. 19. The department of social and health services shall adopt rules by September 1, 2004, for the implementation of sections 1 through 10 and 12 of this act.

Passed by the Senate March 10, 2004.

Passed by the House March 3, 2004.

Approved by the Governor March 26, 2004, with the exception of certain items that were vetoed.

Filed in Office of Secretary of State March 26, 2004.

Note: Governor's explanation of partial veto is as follows:

"I am returning herewith, without my approval as to section 11, Substitute Senate Bill No. 6225 entitled:

"AN ACT Relating to boarding homes;"

This bill improves laws governing the licensing of boarding homes, by supporting flexibility in the level of care provided by boarding homes while protecting residents' rights to quality care. It will refine extensive boarding home rule reforms being implemented in September.

Section 11 would have required the Department of Social and Health Services to conduct a study to determine potential financial impacts of these new rules and to determine the degree to which payments for boarding home services are related to the actual costs of providing services. This study would have largely duplicated a study currently underway, as required by Chapter 231, Laws of 2003. The proposed study in section 11 would have only covered an additional six months experience and therefore would not likely produce meaningfully different results.

Regretfully, the existing study is likely to have limitations, resulting from an inability to collect the needed data. To be valuable, such a study needs to address the complexities of data gathering in a manner that is statistically sound, yet sensitive to the boarding home industry's concerns regarding the proprietary nature of the data.

I recognize the merits of studying our boarding home payment system. Boarding homes provide services to support our state's vulnerable population. Therefore, I encourage the Legislature and industry to consider an alternative that will afford a more comprehensive approach.

For these reasons, I have vetoed section 11 of Substitute Senate Bill No. 6225.

With the exception of section 11, Substitute Senate Bill No. 6225 is approved."

CHAPTER 143

[Substitute Senate Bill 5797]

ADULT FAMILY HOME INSPECTIONS

AN ACT Relating to the timing of the inspection of adult family homes; and amending RCW 70.128.070.

Be it enacted by the Legislature of the State of Washington:

Sec. 1. RCW 70.128.070 and 1998 c 272 s 4 are each amended to read as follows:

(1) A license shall remain valid unless voluntarily surrendered, suspended, or revoked in accordance with this chapter.

(2)(a) Homes applying for a license shall be inspected at the time of licensure.

(b) Homes licensed by the department shall be inspected at least every eighteen months, subject to available funds. However, an adult family home may be allowed to continue without inspection for two years if the adult family home had no inspection citations for the past three consecutive inspections and has received no written notice of violations resulting from complaint investigations during that same time period.

(c) The department may make an unannounced inspection of a licensed home at any time to assure that the home and provider are in compliance with this chapter and the rules adopted under this chapter.

(3) If the department finds that the home is not in compliance with this chapter, it shall require the home to correct any violations as provided in this chapter.

Passed by the Senate March 4, 2004.

Passed by the House March 2, 2004.

Approved by the Governor March 26, 2004.

Filed in Office of Secretary of State March 26, 2004.

CHAPTER 144

[Substitute Senate Bill 6160]

BOARDING HOMES—QUALITY ASSURANCE

AN ACT Relating to fairness and accuracy in the distribution of risk; amending RCW 18.20.110; adding new sections to chapter 18.20 RCW; creating a new section; and declaring an emergency.

Be it enacted by the Legislature of the State of Washington:

NEW SECTION. Sec. 1. The legislature finds that quality assurance efforts will promote compliance with regulations by providers and achieve the goal of providing high quality of care to citizens residing in licensed boarding homes,

and may reduce property and liability insurance premium costs for such facilities.

NEW SECTION. Sec. 2. A new section is added to chapter 18.20 RCW to read as follows:

(1) To ensure the proper delivery of services and the maintenance and improvement in quality of care through self-review, any boarding home licensed under this chapter may maintain a quality assurance committee that, at a minimum, includes:

- (a) A licensed registered nurse under chapter 18.79 RCW;
- (b) The administrator; and
- (c) Three other members from the staff of the boarding home.

(2) When established, the quality assurance committee shall meet at least quarterly to identify issues that may adversely affect quality of care and services to residents and to develop and implement plans of action to correct identified quality concerns or deficiencies in the quality of care provided to residents.

(3) To promote quality of care through self-review without the fear of reprisal, and to enhance the objectivity of the review process, the department shall not require, and the long-term care ombudsman program shall not request, disclosure of any quality assurance committee records or reports, unless the disclosure is related to the committee's compliance with this section, if:

(a) The records or reports are not maintained pursuant to statutory or regulatory mandate; and

(b) The records or reports are created for and collected and maintained by the committee.

(4) If the boarding home refuses to release records or reports that would otherwise be protected under this section, the department may then request only that information that is necessary to determine whether the boarding home has a quality assurance committee and to determine that it is operating in compliance with this section. However, if the boarding home offers the department documents generated by, or for, the quality assurance committee as evidence of compliance with boarding home requirements, the documents are not protected as quality assurance committee documents when in the possession of the department.

(5) Good faith attempts by the committee to identify and correct quality deficiencies shall not be used as a basis for sanctions.

(6) Any records that are created for and collected and maintained by the quality assurance committee shall not be discoverable or admitted into evidence in a civil action brought against a boarding home.

(7) Notwithstanding any records created for the quality assurance committee, the facility shall fully set forth in the resident's records, available to the resident, the department, and others as permitted by law, the facts concerning any incident of injury or loss to the resident, the steps taken by the facility to address the resident's needs, and the resident outcome.

Sec. 3. RCW 18.20.110 and 2003 c 280 s 1 are each amended to read as follows:

The department shall make or cause to be made, at least every eighteen months with an annual average of fifteen months, an inspection and investigation of all boarding homes. However, the department may delay an

inspection to twenty-four months if the boarding home has had three consecutive inspections with no written notice of violations and has received no written notice of violations resulting from complaint investigation during that same time period. The department may at anytime make an unannounced inspection of a licensed home to assure that the licensee is in compliance with this chapter and the rules adopted under this chapter. Every inspection shall focus primarily on actual or potential resident outcomes, and may include an inspection of every part of the premises and an examination of all records (~~(((other than financial records)))~~), methods of administration, the general and special dietary, and the stores and methods of supply; however, the department shall not have access to financial records or to other records or reports described in section 2 of this act. Financial records of the boarding home may be examined when the department has reasonable cause to believe that a financial obligation related to resident care or services will not be met, such as a complaint that staff wages or utility costs have not been paid, or when necessary for the department to investigate alleged financial exploitation of a resident. Following such an inspection or inspections, written notice of any violation of this law or the rules adopted hereunder shall be given to the applicant or licensee and the department. The department may prescribe by rule that any licensee or applicant desiring to make specified types of alterations or additions to its facilities or to construct new facilities shall, before commencing such alteration, addition, or new construction, submit plans and specifications therefor to the agencies responsible for plan reviews for preliminary inspection and approval or recommendations with respect to compliance with the rules and standards herein authorized.

NEW SECTION. Sec. 4. A new section is added to chapter 18.20 RCW to read as follows:

If during an inspection, reinspection, or complaint investigation by the department, a boarding home corrects a violation or deficiency that the department discovers, the department shall record and consider such violation or deficiency for purposes of the facility's compliance history, however the licenser or complaint investigator shall not include in the facility report the violation or deficiency if the violation or deficiency:

- (1) Is corrected to the satisfaction of the department prior to the exit conference;
- (2) Is not recurring; and
- (3) Did not pose a significant risk of harm or actual harm to a resident.

For the purposes of this section, "recurring" means that the violation or deficiency was found under the same regulation or statute in one of the two most recent preceding inspections, reinspections, or complaint investigations.

NEW SECTION. Sec. 5. This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately.

Passed by the Senate March 8, 2004.

Passed by the House March 2, 2004.

Approved by the Governor March 26, 2004.

Filed in Office of Secretary of State March 26, 2004.

CHAPTER 145

[Engrossed Substitute Senate Bill 6210]

HEALTH CARE—QUALITY IMPROVEMENT

AN ACT Relating to peer review committees and coordinated quality improvement programs; and amending RCW 4.24.250, 43.70.510, and 70.41.200.

Be it enacted by the Legislature of the State of Washington:

Sec. 1. RCW 4.24.250 and 1981 c 181 s 1 are each amended to read as follows:

(1) Any health care provider as defined in RCW 7.70.020 (1) and (2) as now existing or hereafter amended who, in good faith, files charges or presents evidence against another member of their profession based on the claimed incompetency or gross misconduct of such person before a regularly constituted review committee or board of a professional society or hospital whose duty it is to evaluate the competency and qualifications of members of the profession, including limiting the extent of practice of such person in a hospital or similar institution, or before a regularly constituted committee or board of a hospital whose duty it is to review and evaluate the quality of patient care and any person or entity who, in good faith, shares any information or documents with one or more other committees, boards, or programs under subsection (2) of this section, shall be immune from civil action for damages arising out of such activities. For the purposes of this section, sharing information is presumed to be in good faith. However, the presumption may be rebutted upon a showing of clear, cogent, and convincing evidence that the information shared was knowingly false or deliberately misleading. The proceedings, reports, and written records of such committees or boards, or of a member, employee, staff person, or investigator of such a committee or board, shall not be subject to subpoena or discovery proceedings in any civil action, except actions arising out of the recommendations of such committees or boards involving the restriction or revocation of the clinical or staff privileges of a health care provider as defined above.

(2) A coordinated quality improvement program maintained in accordance with RCW 43.70.510 or 70.41.200 and any committees or boards under subsection (1) of this section may share information and documents, including complaints and incident reports, created specifically for, and collected and maintained by a coordinated quality improvement committee or committees or boards under subsection (1) of this section, with one or more other coordinated quality improvement programs or committees or boards under subsection (1) of this section for the improvement of the quality of health care services rendered to patients and the identification and prevention of medical malpractice. The privacy protections of chapter 70.02 RCW and the federal health insurance portability and accountability act of 1996 and its implementing regulations apply to the sharing of individually identifiable patient information held by a coordinated quality improvement program. Any rules necessary to implement this section shall meet the requirements of applicable federal and state privacy laws. Information and documents disclosed by one coordinated quality improvement program or committee or board under subsection (1) of this section to another coordinated quality improvement program or committee or board under subsection (1) of this section and any information and documents created

or maintained as a result of the sharing of information and documents shall not be subject to the discovery process and confidentiality shall be respected as required by subsection (1) of this section and by RCW 43.70.510(4) and 70.41.200(3).

Sec. 2. RCW 43.70.510 and 1995 c 267 s 7 are each amended to read as follows:

(1)(a) Health care institutions and medical facilities, other than hospitals, that are licensed by the department, professional societies or organizations, health care service contractors, health maintenance organizations, health carriers approved pursuant to chapter 48.43 RCW, and any other person or entity providing health care coverage under chapter 48.42 RCW that is subject to the jurisdiction and regulation of any state agency or any subdivision thereof may maintain a coordinated quality improvement program for the improvement of the quality of health care services rendered to patients and the identification and prevention of medical malpractice as set forth in RCW 70.41.200.

(b) All such programs shall comply with the requirements of RCW 70.41.200(1)(a), (c), (d), (e), (f), (g), and (h) as modified to reflect the structural organization of the institution, facility, professional societies or organizations, health care service contractors, health maintenance organizations, health carriers, or any other person or entity providing health care coverage under chapter 48.42 RCW that is subject to the jurisdiction and regulation of any state agency or any subdivision thereof, unless an alternative quality improvement program substantially equivalent to RCW 70.41.200(1)(a) is developed. All such programs, whether complying with the requirement set forth in RCW 70.41.200(1)(a) or in the form of an alternative program, must be approved by the department before the discovery limitations provided in subsections (3) and (4) of this section and the exemption under RCW 42.17.310(1)(hh) and subsection (5) of this section shall apply. In reviewing plans submitted by licensed entities that are associated with physicians' offices, the department shall ensure that the exemption under RCW 42.17.310(1)(hh) and the discovery limitations of this section are applied only to information and documents related specifically to quality improvement activities undertaken by the licensed entity.

(2) Health care provider groups of ~~(ten)~~ five or more providers may maintain a coordinated quality improvement program for the improvement of the quality of health care services rendered to patients and the identification and prevention of medical malpractice as set forth in RCW 70.41.200. All such programs shall comply with the requirements of RCW 70.41.200(1)(a), (c), (d), (e), (f), (g), and (h) as modified to reflect the structural organization of the health care provider group. All such programs must be approved by the department before the discovery limitations provided in subsections (3) and (4) of this section and the exemption under RCW 42.17.310(1)(hh) and subsection (5) of this section shall apply.

(3) Any person who, in substantial good faith, provides information to further the purposes of the quality improvement and medical malpractice prevention program or who, in substantial good faith, participates on the quality improvement committee shall not be subject to an action for civil damages or other relief as a result of such activity. Any person or entity participating in a coordinated quality improvement program that, in substantial good faith, shares information or documents with one or more other programs, committees, or

boards under subsection (6) of this section is not subject to an action for civil damages or other relief as a result of the activity or its consequences. For the purposes of this section, sharing information is presumed to be in substantial good faith. However, the presumption may be rebutted upon a showing of clear, cogent, and convincing evidence that the information shared was knowingly false or deliberately misleading.

(4) Information and documents, including complaints and incident reports, created specifically for, and collected, and maintained by a quality improvement committee are not subject to discovery or introduction into evidence in any civil action, and no person who was in attendance at a meeting of such committee or who participated in the creation, collection, or maintenance of information or documents specifically for the committee shall be permitted or required to testify in any civil action as to the content of such proceedings or the documents and information prepared specifically for the committee. This subsection does not preclude: (a) In any civil action, the discovery of the identity of persons involved in the medical care that is the basis of the civil action whose involvement was independent of any quality improvement activity; (b) in any civil action, the testimony of any person concerning the facts that form the basis for the institution of such proceedings of which the person had personal knowledge acquired independently of such proceedings; (c) in any civil action by a health care provider regarding the restriction or revocation of that individual's clinical or staff privileges, introduction into evidence information collected and maintained by quality improvement committees regarding such health care provider; (d) in any civil action challenging the termination of a contract by a state agency with any entity maintaining a coordinated quality improvement program under this section if the termination was on the basis of quality of care concerns, introduction into evidence of information created, collected, or maintained by the quality improvement committees of the subject entity, which may be under terms of a protective order as specified by the court; (e) in any civil action, disclosure of the fact that staff privileges were terminated or restricted, including the specific restrictions imposed, if any and the reasons for the restrictions; or (f) in any civil action, discovery and introduction into evidence of the patient's medical records required by rule of the department of health to be made regarding the care and treatment received.

(5) Information and documents created specifically for, and collected and maintained by a quality improvement committee are exempt from disclosure under chapter 42.17 RCW.

(6) A coordinated quality improvement program may share information and documents, including complaints and incident reports, created specifically for, and collected and maintained by a quality improvement committee or a peer review committee under RCW 4.24.250 with one or more other coordinated quality improvement programs maintained in accordance with this section or with RCW 70.41.200 or a peer review committee under RCW 4.24.250, for the improvement of the quality of health care services rendered to patients and the identification and prevention of medical malpractice. The privacy protections of chapter 70.02 RCW and the federal health insurance portability and accountability act of 1996 and its implementing regulations apply to the sharing of individually identifiable patient information held by a coordinated quality improvement program. Any rules necessary to implement this section shall meet

the requirements of applicable federal and state privacy laws. Information and documents disclosed by one coordinated quality improvement program to another coordinated quality improvement program or a peer review committee under RCW 4.24.250 and any information and documents created or maintained as a result of the sharing of information and documents shall not be subject to the discovery process and confidentiality shall be respected as required by subsection (4) of this section and RCW 4.24.250.

(7) The department of health shall adopt rules as are necessary to implement this section.

Sec. 3. RCW 70.41.200 and 2000 c 6 s 3 are each amended to read as follows:

(1) Every hospital shall maintain a coordinated quality improvement program for the improvement of the quality of health care services rendered to patients and the identification and prevention of medical malpractice. The program shall include at least the following:

(a) The establishment of a quality improvement committee with the responsibility to review the services rendered in the hospital, both retrospectively and prospectively, in order to improve the quality of medical care of patients and to prevent medical malpractice. The committee shall oversee and coordinate the quality improvement and medical malpractice prevention program and shall ensure that information gathered pursuant to the program is used to review and to revise hospital policies and procedures;

(b) A medical staff privileges sanction procedure through which credentials, physical and mental capacity, and competence in delivering health care services are periodically reviewed as part of an evaluation of staff privileges;

(c) The periodic review of the credentials, physical and mental capacity, and competence in delivering health care services of all persons who are employed or associated with the hospital;

(d) A procedure for the prompt resolution of grievances by patients or their representatives related to accidents, injuries, treatment, and other events that may result in claims of medical malpractice;

(e) The maintenance and continuous collection of information concerning the hospital's experience with negative health care outcomes and incidents injurious to patients, patient grievances, professional liability premiums, settlements, awards, costs incurred by the hospital for patient injury prevention, and safety improvement activities;

(f) The maintenance of relevant and appropriate information gathered pursuant to (a) through (e) of this subsection concerning individual physicians within the physician's personnel or credential file maintained by the hospital;

(g) Education programs dealing with quality improvement, patient safety, medication errors, injury prevention, staff responsibility to report professional misconduct, the legal aspects of patient care, improved communication with patients, and causes of malpractice claims for staff personnel engaged in patient care activities; and

(h) Policies to ensure compliance with the reporting requirements of this section.

(2) Any person who, in substantial good faith, provides information to further the purposes of the quality improvement and medical malpractice prevention program or who, in substantial good faith, participates on the quality

improvement committee shall not be subject to an action for civil damages or other relief as a result of such activity. Any person or entity participating in a coordinated quality improvement program that, in substantial good faith, shares information or documents with one or more other programs, committees, or boards under subsection (8) of this section is not subject to an action for civil damages or other relief as a result of the activity. For the purposes of this section, sharing information is presumed to be in substantial good faith. However, the presumption may be rebutted upon a showing of clear, cogent, and convincing evidence that the information shared was knowingly false or deliberately misleading.

(3) Information and documents, including complaints and incident reports, created specifically for, and collected, and maintained by a quality improvement committee are not subject to discovery or introduction into evidence in any civil action, and no person who was in attendance at a meeting of such committee or who participated in the creation, collection, or maintenance of information or documents specifically for the committee shall be permitted or required to testify in any civil action as to the content of such proceedings or the documents and information prepared specifically for the committee. This subsection does not preclude: (a) In any civil action, the discovery of the identity of persons involved in the medical care that is the basis of the civil action whose involvement was independent of any quality improvement activity; (b) in any civil action, the testimony of any person concerning the facts which form the basis for the institution of such proceedings of which the person had personal knowledge acquired independently of such proceedings; (c) in any civil action by a health care provider regarding the restriction or revocation of that individual's clinical or staff privileges, introduction into evidence information collected and maintained by quality improvement committees regarding such health care provider; (d) in any civil action, disclosure of the fact that staff privileges were terminated or restricted, including the specific restrictions imposed, if any and the reasons for the restrictions; or (e) in any civil action, discovery and introduction into evidence of the patient's medical records required by regulation of the department of health to be made regarding the care and treatment received.

(4) Each quality improvement committee shall, on at least a semiannual basis, report to the governing board of the hospital in which the committee is located. The report shall review the quality improvement activities conducted by the committee, and any actions taken as a result of those activities.

(5) The department of health shall adopt such rules as are deemed appropriate to effectuate the purposes of this section.

(6) The medical quality assurance commission or the board of osteopathic medicine and surgery, as appropriate, may review and audit the records of committee decisions in which a physician's privileges are terminated or restricted. Each hospital shall produce and make accessible to the commission or board the appropriate records and otherwise facilitate the review and audit. Information so gained shall not be subject to the discovery process and confidentiality shall be respected as required by subsection (3) of this section. Failure of a hospital to comply with this subsection is punishable by a civil penalty not to exceed two hundred fifty dollars.

(7) The department, the joint commission on accreditation of health care organizations, and any other accrediting organization may review and audit the records of a quality improvement committee or peer review committee in connection with their inspection and review of hospitals. Information so obtained shall not be subject to the discovery process, and confidentiality shall be respected as required by subsection (3) of this section. Each hospital shall produce and make accessible to the department the appropriate records and otherwise facilitate the review and audit.

(8) A coordinated quality improvement program may share information and documents, including complaints and incident reports, created specifically for, and collected and maintained by a quality improvement committee or a peer review committee under RCW 4.24.250 with one or more other coordinated quality improvement programs maintained in accordance with this section or with RCW 43.70.510 or a peer review committee under RCW 4.24.250, for the improvement of the quality of health care services rendered to patients and the identification and prevention of medical malpractice. The privacy protections of chapter 70.02 RCW and the federal health insurance portability and accountability act of 1996 and its implementing regulations apply to the sharing of individually identifiable patient information held by a coordinated quality improvement program. Any rules necessary to implement this section shall meet the requirements of applicable federal and state privacy laws. Information and documents disclosed by one coordinated quality improvement program to another coordinated quality improvement program or a peer review committee under RCW 4.24.250 and any information and documents created or maintained as a result of the sharing of information and documents shall not be subject to the discovery process and confidentiality shall be respected as required by subsection (3) of this section and RCW 4.24.250.

(9) Violation of this section shall not be considered negligence per se.

Passed by the Senate March 10, 2004.

Passed by the House March 3, 2004.

Approved by the Governor March 26, 2004.

Filed in Office of Secretary of State March 26, 2004.

CHAPTER 146

[Senate Bill 6643]

DEPENDENT CHILDREN FAMILY VISITS

AN ACT Relating to family visitation for dependent children; amending RCW 13.34.136; adding new sections to chapter 13.34 RCW; and creating a new section.

Be it enacted by the Legislature of the State of Washington:

Sec. 1. RCW 13.34.136 and 2003 c 227 s 4 are each amended to read as follows:

(1) Whenever a child is ordered removed from the child's home, the agency charged with his or her care shall provide the court with:

(a) A permanency plan of care that shall identify one of the following outcomes as a primary goal and may identify additional outcomes as alternative goals: Return of the child to the home of the child's parent, guardian, or legal custodian; adoption; guardianship; permanent legal custody; long-term relative

or foster care, until the child is age eighteen, with a written agreement between the parties and the care provider; successful completion of a responsible living skills program; or independent living, if appropriate and if the child is age sixteen or older. The department shall not discharge a child to an independent living situation before the child is eighteen years of age unless the child becomes emancipated pursuant to chapter 13.64 RCW;

(b) Unless the court has ordered, pursuant to RCW 13.34.130(4), that a termination petition be filed, a specific plan as to where the child will be placed, what steps will be taken to return the child home, what steps the agency will take to promote existing appropriate sibling relationships and/or facilitate placement together or contact in accordance with the best interests of each child, and what actions the agency will take to maintain parent-child ties. All aspects of the plan shall include the goal of achieving permanence for the child.

(i) The agency plan shall specify what services the parents will be offered to enable them to resume custody, what requirements the parents must meet to resume custody, and a time limit for each service plan and parental requirement.

(ii) Visitation is the right of the family, including the child and the parent, in cases in which visitation is in the best interest of the child. Early, consistent, and frequent visitation is crucial for maintaining parent-child relationships and making it possible for parents and children to safely reunify. The agency shall encourage the maximum parent and child and sibling contact possible, when it is in the best interest of the child, including regular visitation and participation by the parents in the care of the child while the child is in placement. Visitation shall not be limited as a sanction for a parent's failure to comply with court orders or services where the health, safety, or welfare of the child is not at risk as a result of the visitation. Visitation may be limited or denied only if the court determines that such limitation or denial is necessary to protect the child's health, safety, or welfare. The court and the agency should rely upon community resources, relatives, foster parents, and other appropriate persons to provide transportation and supervision for visitation to the extent that such resources are available, and appropriate, and the child's safety would not be compromised.

(iii) A child shall be placed as close to the child's home as possible, preferably in the child's own neighborhood, unless the court finds that placement at a greater distance is necessary to promote the child's or parents' well-being.

(iv) The agency charged with supervising a child in placement shall provide all reasonable services that are available within the agency, or within the community, or those services which the department has existing contracts to purchase. It shall report to the court if it is unable to provide such services; and

(c) If the court has ordered, pursuant to RCW 13.34.130(4), that a termination petition be filed, a specific plan as to where the child will be placed, what steps will be taken to achieve permanency for the child, services to be offered or provided to the child, and, if visitation would be in the best interests of the child, a recommendation to the court regarding visitation between parent and child pending a fact-finding hearing on the termination petition. The agency shall not be required to develop a plan of services for the parents or provide services to the parents if the court orders a termination petition be filed. However, reasonable efforts to ensure visitation and contact between siblings shall be made unless there is reasonable cause to believe the best interests of the child or siblings would be jeopardized.

(2) If the court determines that the continuation of reasonable efforts to prevent or eliminate the need to remove the child from his or her home or to safely return the child home should not be part of the permanency plan of care for the child, reasonable efforts shall be made to place the child in a timely manner and to complete whatever steps are necessary to finalize the permanent placement of the child.

(3) The court shall consider the child's relationships with the child's siblings in accordance with RCW 13.34.130(3).

NEW SECTION. Sec. 2. A new section is added to chapter 13.34 RCW to read as follows:

The court may order expert evaluations of parties to obtain information regarding visitation issues or other issues in a case. These evaluations shall be performed by appointed evaluators who are mutually agreed upon by the court, the state, and the parents' counsel, and, if the child is to be evaluated, by the representative for the child. If no agreement can be reached, the court shall select the expert evaluator.

NEW SECTION. Sec. 3. A new section is added to chapter 13.34 RCW to read as follows:

The department of social and health services shall develop consistent policies and protocols, based on current relevant research, concerning visitation for dependent children to be implemented consistently throughout the state. The department shall develop the policies and protocols in consultation with researchers in the field, community-based agencies, court-appointed special advocates, parents' representatives, and court representatives. The policies and protocols shall include, but not be limited to: The structure and quality of visitations; and training for caseworkers, visitation supervisors, and foster parents related to visitation.

The policies and protocols shall be consistent with the provisions of this chapter and implementation of the policies and protocols shall be consistent with relevant orders of the court.

NEW SECTION. Sec. 4. The department of social and health services shall report on the policies and protocols required under section 3 of this act to the appropriate committees of the legislature by January 1, 2005.

Passed by the Senate March 9, 2004.

Passed by the House March 5, 2004.

Approved by the Governor March 26, 2004.

Filed in Office of Secretary of State March 26, 2004.

CHAPTER 147

[Engrossed Substitute Senate Bill 6642]

SHELTER CARE CASE CONFERENCES

AN ACT Relating to case conferences following shelter care hearings; amending RCW 13.34.067, 13.34.062, and 13.34.094; creating a new section; and providing an effective date.

Be it enacted by the Legislature of the State of Washington:

Sec. 1. RCW 13.34.067 and 2001 c 332 s 1 are each amended to read as follows:

(1) Following shelter care and no later than ~~((twenty-five))~~ thirty days prior to fact-finding, the department ~~((, upon the parent's request or counsel for the parent's request,))~~ shall ~~((facilitate))~~ convene a case conference as required in the shelter care order to develop and specify in a written service agreement the expectations of both the department and the parent regarding ~~((the care and placement of the child))~~ voluntary services for the parent.

~~((The department shall invite to))~~ The case conference shall include the parent, counsel for the parent, ~~((the foster parent or other out-of-home care provider,))~~ caseworker, counsel for the state, guardian ad litem, ~~((counselor, or other relevant health care provider))~~ counsel for the child, and any other person ~~((connected to the development and well-being of the child))~~ agreed upon by the parties. Once the shelter care order is entered, the department is not required to provide additional notice of the case conference to any participants in the case conference.

The ~~((initial))~~ written service agreement expectations must correlate with the court's findings at the shelter care hearing. The written service agreement must set forth specific ~~((criteria that enables the court to measure the performance of both the department and the parent, and must be updated throughout the dependency process to reflect changes in expectations. The service agreement must serve as the unifying document for all expectations established in the department's various case planning and case management documents and the findings and orders of the court during dependency proceedings.))~~

The court shall review the written service agreement at each stage of the dependency proceedings and evaluate the performance of both the department and the parent for consistent, measurable progress in complying with the expectations identified in the agreement) services to be provided to the parent.

The case conference agreement must be agreed to and signed by the parties. The court shall not consider the content of the discussions at the case conference at the time of the fact-finding hearing for the purposes of establishing that the child is a dependent child, and the court shall not consider any documents or written materials presented at the case conference but not incorporated into the case conference agreement, unless the documents or written materials were prepared for purposes other than or as a result of the case conference and are otherwise admissible under the rules of evidence.

(2) At any other stage in a dependency proceeding, the department, upon the parent's request, shall ~~((facilitate))~~ convene a case conference.

Sec. 2. RCW 13.34.062 and 2001 c 332 s 2 are each amended to read as follows:

(1) The written notice of custody and rights required by RCW 13.34.060 shall be in substantially the following form:

"NOTICE

Your child has been placed in temporary custody under the supervision of Child Protective Services (or other person or agency). You have important legal rights and you must take steps to protect your interests.

1. A court hearing will be held before a judge within 72 hours of the time your child is taken into custody excluding Saturdays, Sundays, and holidays.

You should call the court at (insert appropriate phone number here) for specific information about the date, time, and location of the court hearing.

2. You have the right to have a lawyer represent you at the hearing. Your right to representation continues after the shelter care hearing. You have the right to records the department intends to rely upon. A lawyer can look at the files in your case, talk to child protective services and other agencies, tell you about the law, help you understand your rights, and help you at hearings. If you cannot afford a lawyer, the court will appoint one to represent you. To get a court-appointed lawyer you must contact: (explain local procedure).

3. At the hearing, you have the right to speak on your own behalf, to introduce evidence, to examine witnesses, and to receive a decision based solely on the evidence presented to the judge.

4. If your hearing occurs before a court commissioner, you have the right to have the decision of the court commissioner reviewed by a superior court judge. To obtain that review, you must, within ten days after the entry of the decision of the court commissioner, file with the court a motion for revision of the decision, as provided in RCW 2.24.050.

You should be present at any shelter care hearing. If you do not come, the judge will not hear what you have to say.

You may call the Child Protective Services' caseworker for more information about your child. The caseworker's name and telephone number are: (insert name and telephone number).

5. You (~~(may request that the department facilitate)~~) have a right to a case conference to develop a written service agreement following the shelter care hearing. The service agreement may not conflict with the court's order of shelter care. You may request that a multidisciplinary team, family group conference, or prognostic staffing(~~(, or case conference)~~) be convened for your child's case. You may participate in these processes with your counsel present."

Upon receipt of the written notice, the parent, guardian, or legal custodian shall acknowledge such notice by signing a receipt prepared by child protective services. If the parent, guardian, or legal custodian does not sign the receipt, the reason for lack of a signature shall be written on the receipt. The receipt shall be made a part of the court's file in the dependency action.

If after making reasonable efforts to provide notification, child protective services is unable to determine the whereabouts of the parents, guardian, or legal custodian, the notice shall be delivered or sent to the last known address of the parent, guardian, or legal custodian.

(2) If child protective services is not required to give notice under RCW 13.34.060(2) and subsection (1) of this section, the juvenile court counselor assigned to the matter shall make all reasonable efforts to advise the parents, guardian, or legal custodian of the time and place of any shelter care hearing, request that they be present, and inform them of their basic rights as provided in RCW 13.34.090.

(3) Reasonable efforts to advise and to give notice, as required in RCW 13.34.060(2) and subsections (1) and (2) of this section, shall include, at a minimum, investigation of the whereabouts of the parent, guardian, or legal custodian. If such reasonable efforts are not successful, or the parent, guardian,

or legal custodian does not appear at the shelter care hearing, the petitioner shall testify at the hearing or state in a declaration:

(a) The efforts made to investigate the whereabouts of, and to advise, the parent, guardian, or legal custodian; and

(b) Whether actual advice of rights was made, to whom it was made, and how it was made, including the substance of any oral communication or copies of written materials used.

(4) The court shall hear evidence regarding notice given to, and efforts to notify, the parent, guardian, or legal custodian and shall examine the need for shelter care. The court shall hear evidence regarding the efforts made to place the child with a relative. The court shall make an express finding as to whether the notice required under RCW 13.34.060(2) and subsections (1) and (2) of this section was given to the parent, guardian, or legal custodian. All parties have the right to present testimony to the court regarding the need or lack of need for shelter care. Hearsay evidence before the court regarding the need or lack of need for shelter care must be supported by sworn testimony, affidavit, or declaration of the person offering such evidence.

(5)(a) A shelter care order issued pursuant to RCW 13.34.065 shall include the requirement for a case conference as provided in RCW 13.34.067. However, if the parent is not present at the shelter care hearing, or does not agree to the case conference, the court shall not include the requirement for the case conference in the shelter care order.

(b) If the court orders a case conference, the shelter care order shall include notice to all parties and establish the date, time, and location of the case conference which shall be no later than thirty days prior to the fact-finding hearing.

(c) The court may order a conference or meeting as an alternative to the case conference required under RCW 13.34.067 so long as the conference or meeting ordered by the court meets all requirements under RCW 13.34.067, including the requirement of a written agreement specifying the services to be provided to the parent.

(6) A shelter care order issued pursuant to RCW 13.34.065 may be amended at any time with notice and hearing thereon. The shelter care decision of placement shall be modified only upon a showing of change in circumstances. No child may be placed in shelter care for longer than thirty days without an order, signed by the judge, authorizing continued shelter care.

~~((6))~~ (7) Any parent, guardian, or legal custodian who for good cause is unable to attend the initial shelter care hearing may request that a subsequent shelter care hearing be scheduled. The request shall be made to the clerk of the court where the petition is filed prior to the initial shelter care hearing. Upon the request of the parent, the court shall schedule the hearing within seventy-two hours of the request, excluding Saturdays, Sundays, and holidays. The clerk shall notify all other parties of the hearing by any reasonable means.

Sec. 3. RCW 13.34.094 and 2001 c 332 s 6 are each amended to read as follows:

The department shall, within existing resources, provide to parents requesting or participating in a multidisciplinary team, family group conference, case conference, or prognostic staffing~~(, or case conference,)~~ information that describes these processes prior to the processes being undertaken.

NEW SECTION. Sec. 4. If specific funding for the purposes of this act, referencing this act by bill or chapter number, is not provided by June 30, 2004, in the omnibus appropriations act, this act is null and void.

NEW SECTION. Sec. 5. This act takes effect July 1, 2004.

Passed by the Senate March 9, 2004.

Passed by the House March 4, 2004.

Approved by the Governor March 26, 2004.

Filed in Office of Secretary of State March 26, 2004.

CHAPTER 148

[Engrossed Senate Bill 5083]

CONCEALED WEAPON PERMIT RECIPROCITY

AN ACT Relating to recognizing concealed weapon licenses issued by other states; and adding a new section to chapter 9.41 RCW.

Be it enacted by the Legislature of the State of Washington:

NEW SECTION. Sec. 1. A new section is added to chapter 9.41 RCW to read as follows:

(1)(a) A person licensed to carry a pistol in a state the laws of which recognize and give effect in that state to a concealed pistol license issued under the laws of the state of Washington is authorized to carry a concealed pistol in this state if:

(i) The licensing state does not issue concealed pistol licenses to persons under twenty-one years of age; and

(ii) The licensing state requires mandatory fingerprint-based background checks of criminal and mental health history for all persons who apply for a concealed pistol license.

(b) This section applies to a license holder from another state only while the license holder is not a resident of this state. A license holder from another state must carry the handgun in compliance with the laws of this state.

(2) The attorney general shall periodically publish a list of states the laws of which recognize and give effect in that state to a concealed pistol license issued under the laws of the state of Washington and which meet the requirements of subsection (1)(a)(i) and (ii) of this section.

Passed by the Senate March 9, 2004.

Passed by the House March 4, 2004.

Approved by the Governor March 26, 2004.

Filed in Office of Secretary of State March 26, 2004.

CHAPTER 149

[Substitute Senate Bill 6103]

EXTREME FIGHTING

AN ACT Relating to making certain types of extreme fighting illegal; amending RCW 67.08.002 and 67.08.015; prescribing penalties; and declaring an emergency.

Be it enacted by the Legislature of the State of Washington:

Sec. 1. RCW 67.08.002 and 2002 c 147 s 1 are each amended to read as follows:

The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Amateur" means a person who ~~((engages in athletic activities as a pastime and not as a professional))~~ has never received nor competed for any purse or other article of value, either for expenses of training or for participating in an event, other than a prize of fifty dollars in value or less.

(2) "Boxing" means ~~((a contest in))~~ the sport of attack and defense which uses the contestants ~~((exchange blows with their))~~ fists and where the contestants compete with the intent not to injure or disable an opponent, but to win by decision, knockout, or technical knockout, but does not include professional wrestling.

(3) "Chiropractor" means a person licensed under chapter 18.25 RCW as a doctor of chiropractic or under the laws of any jurisdiction in which that person resides.

(4) "Department" means the department of licensing.

(5) "Director" means the director of the department of licensing or the director's designee.

(6) "Event" includes, but is not limited to, a boxing, wrestling, or martial arts contest, sparring, fisticuffs, match, show, or exhibition.

(7) "Event physician" means the physician licensed under RCW 67.08.100 and who is responsible for the activities described in RCW 67.08.090.

(8) "Face value" means the dollar value of a ticket or order, which value must reflect the dollar amount that the customer is required to pay or, for a complimentary ticket, would have been required to pay to purchase a ticket with equivalent seating priority, in order to view the event.

(9) "Gross receipts" means the amount received from the face value of all tickets sold and complimentary tickets redeemed.

(10) "Kickboxing" means a type of boxing in which blows are delivered with the ~~((hand))~~ fist and any part of the leg below the hip, including the foot and where the contestants compete with the intent not to injure or disable an opponent, but to win by decision, knockout, or technical knockout.

(11) "Martial arts" means a type of boxing including sumo, judo, karate, kung fu, tae kwon do, pankration, muay thai, or other forms of full-contact martial arts or self-defense conducted on a full-contact basis where weapons are not used and the participants utilize kicks, punches, blows, or other techniques with the intent not to injure or disable an opponent, but to defeat an opponent or win by decision, knockout, technical knockout, or submission.

(12) "No holds barred fighting," also known as "frontier fighting" and "extreme fighting," means a contest, exhibition, or match between contestants where any part of the contestant's body may be used as a weapon or any means of fighting may be used with the specific purpose to intentionally injure the other contestant in such a manner that they may not defend themselves and a winner is declared. Rules may or may not be used.

(13) "Combative fighting," also known as "toughman fighting," "toughwoman fighting," "badman fighting," and "so you think you're tough," means a contest, exhibition, or match between contestants who use their fists, with or without gloves, or their feet, or both, and which allows contestants that

are not trained in the sport to compete and the object is to defeat an opponent or to win by decision, knockout, or technical knockout.

(14) "Physician" means a person licensed under chapter 18.57, 18.36A, or 18.71 RCW as a physician or a person holding an osteopathic or allopathic physician license under the laws of any jurisdiction in which the person resides.

~~((13))~~ (15) "Professional" means a person who has received or competed for ~~((money))~~ any purse or other articles of value greater than fifty dollars, either for the expenses of training or for participating in an event.

~~((14))~~ (16) "Promoter" means a person, and includes any officer, director, employee, or stockholder of a corporate promoter, who produces, arranges, stages, holds, or gives an event in this state involving a professional boxing, martial arts, or wrestling event, or shows or causes to be shown in this state a closed circuit telecast of a match involving a professional participant whether or not the telecast originates in this state.

~~((15))~~ (17) "Wrestling exhibition" or "wrestling show" means a form of sports entertainment in which the participants display their skills in a physical struggle against each other in the ring and either the outcome may be predetermined or the participants do not necessarily strive to win, or both.

(18) "Amateur event" means an event in which all the participants are "amateurs" and which is registered and sanctioned by:

(a) United States Amateur Boxing, Inc.;

(b) Washington Interscholastic Activities Association;

(c) National Collegiate Athletic Association;

(d) Amateur Athletic Union;

(e) Golden Gloves of America;

(f) United Full Contact Federation;

(g) Any similar organization recognized by the department as exclusively or primarily dedicated to advancing the sport of amateur boxing, kickboxing, or martial arts, as those sports are defined in this section; or

(h) Local affiliate of any organization identified in this subsection.

(19) "Elimination tournament" means any contest in which contestants compete in a series of matches until not more than one contestant remains in any weight category. The term does not include any event that complies with the provisions of RCW 67.08.015(2) (a) or (b).

Sec. 2. RCW 67.08.015 and 2002 c 86 s 306 are each amended to read as follows:

(1) In the interest of ensuring the safety and welfare of the participants, the department shall have power and it shall be its duty to direct, supervise, and control all boxing, martial arts, and wrestling events conducted within this state and an event may not be held in this state except in accordance with the provisions of this chapter. The department may, in its discretion, issue and for cause, which includes concern for the safety and welfare of the participants, take any of the actions specified in RCW 18.235.110 against a license to promote, conduct, or hold boxing, kickboxing, martial arts, or wrestling events where an admission fee is charged by any person, club, corporation, organization, association, or fraternal society.

(2) All boxing, kickboxing, martial arts, or wrestling events that:

(a) Are conducted by any common school, college, or university, whether public or private, or by the official student association thereof, whether on or off

the school, college, or university grounds, where all the participating contestants are bona fide students enrolled in any common school, college, or university, within or without this state; or

(b) Are entirely amateur events as defined in RCW 67.08.002(18) and promoted on a nonprofit basis or for charitable purposes; are not subject to the licensing provisions of this chapter. A boxing, martial arts, kickboxing, or wrestling event may not be conducted within the state except under a license issued in accordance with this chapter and the rules of the department except as provided in this section.

(3) The director shall prohibit events unless all of the contestants are ~~((either))~~ licensed or otherwise exempt from licensure as provided under this chapter ~~((or trained by an amateur or professional sanctioning body recognized by the department)).~~

(4) No amateur or professional no holds barred fighting or combative fighting type of contest, exhibition, match, or similar type of event, nor any elimination tournament, may be held in this state. Any person promoting such an event is guilty of a class C felony. Additionally, the director may apply to a superior court for an injunction against any and all promoters of a contest, and may request that the court seize all money and assets relating to the competition.

NEW SECTION. Sec. 3. This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately.

Passed by the Senate February 11, 2004.

Passed by the House March 4, 2004.

Approved by the Governor March 26, 2004.

Filed in Office of Secretary of State March 26, 2004.

CHAPTER 150

[Substitute Senate Bill 6568]

WOMEN'S HISTORY CENTER

AN ACT Relating to directing the institute for public policy to develop a proposal for establishing a Washington state women's history center or information network; and creating new sections.

Be it enacted by the Legislature of the State of Washington:

NEW SECTION. Sec. 1. The legislature finds that citizens of Washington state take great pride in the many landmark achievements in Washington state during the last several decades, and earlier, in achieving innumerable substantial improvements in legal rights and broad opportunities for women and girls. These include rights and opportunities in all spheres of life: Personal, professional, labor, education, business, science and technology, health, sports, arts, financial, community leadership, public administration, civil rights, political leadership, elective office, and much more. Because of the substantial commitment and dedicated efforts of untold tens of thousands of Washingtonians, state laws and opportunities for women in Washington advanced more quickly and substantially than in many other states. Washington achieved recognition as a bellwether state and a model for similar efforts in other states. The history of this sustained effort over many years is a significant

component of Washington state history and national history. Many people are interested in learning about and researching how and why Washington has become such a major leader, and Washington students in kindergarten through grade twelve should have the opportunity to learn about this important part of state history.

The legislature further finds that there has been no systematic effort to compile this landmark history, maintain documents, photographs, and other artifacts, or index where such items can be accessed. Unfortunately, much valuable history is scattered and fragmented. While various museums, archives, and libraries have some documentation of these important achievements, a very great quantity of historically valuable records and artifacts continue to reside in individuals' memories, organizational minutes, and boxes in people's attics and garages. Thus, without an intentional effort, this critical history might become lost to history forever.

NEW SECTION. Sec. 2. (1) The institute for public policy may undertake a study and make recommendations to the 2005 legislature for development of a center or an information network, or both, that would achieve the following:

(a) Develop an approach for systematically collecting, preserving, maintaining, and providing public access to historically valuable records and artifacts pertaining to women's history in Washington state;

(b) Develop a general outline of where historically significant records and artifacts are located and may be accessed;

(c) Encourage citizens with historically significant records and artifacts to preserve them and make them accessible;

(d) Encourage development of educational programs and displays, including those which can tour throughout the state;

(e) Encourage development of learning opportunities for K-12 students, as well as providing materials for women's history studies in colleges and universities;

(f) Actively promote collection of oral histories;

(g) Encourage research about this history;

(h) Encourage private donations of funds to assist this effort; and

(i) Encourage private donations or loans of records and artifacts for public access, including protecting the ability of donors to specify conditions under which loaned materials will be returned to the donor or their heirs.

(2) The institute may create an advisory committee or engage in other efforts to consult with interested parties, including: Higher education institutions and archives, state and local libraries, state and local museums, state historical societies, state archives, interested organizations and individuals who participated in this historic effort, members and staff of the former state women's commission, current and former state elected officials and their staffs, current and former legislators and their staffs, historians, state agencies, local governments, office of financial management, state commissions on African-American affairs, Hispanic affairs, and Asian Pacific American affairs, governor's office of Indian affairs, business organizations, labor organizations, and such others as appropriate.

(3) The institute shall submit its recommendations to the appropriate committees of the legislature by December 1, 2004.

Passed by the Senate February 17, 2004.

Passed by the House March 3, 2004.

Approved by the Governor March 26, 2004.

Filed in Office of Secretary of State March 26, 2004.

CHAPTER 151

[Substitute Senate Bill 6146]

ENERGY CONSERVATION

AN ACT Relating to encouraging renewable energy and energy efficiency businesses in Washington; amending RCW 28B.20.285 and 28B.20.287; and adding new sections to chapter 28B.20 RCW.

Be it enacted by the Legislature of the State of Washington:

NEW SECTION. **Sec. 1.** A new section is added to chapter 28B.20 RCW to read as follows:

(1) The legislature finds that Washington state currently derives many benefits from its renewable energy and energy efficiency sectors. These sectors are an important source of employment and income for a significant number of Washington residents, currently generating close to one billion dollars in annual revenue and employing over three thousand eight hundred people. Equally important, energy efficiency and renewable energy businesses add to the region's quality of life by employing technologies that can reduce some of the harmful effects of the reliance on fossil fuels. Washington state possesses all the necessary elements to do much more to develop these sectors and to become a national leader in the research, development, manufacturing, and marketing of clean energy technologies and services. The state's work force is highly educated; the state's higher education institutions are supportive of clean energy research and cooperate closely with the private sector in developing and deploying new energy technologies; there are numerous enterprises already located in the state that are engaged in clean energy research and development; and the state's citizens, utilities, and governmental sectors at all levels are committed to diversifying the state's energy sources and increasing energy efficiency.

(2) It is therefore declared to be the policy of the state that its public agencies and institutions of higher learning maximize their efforts collectively and cooperatively with the private sector to establish the state as a leader in clean energy research, development, manufacturing, and marketing. To this end, all state agencies are directed to employ their existing authorities and responsibilities to:

(a) Work with local organizations and energy companies to facilitate the development and implementation of workable renewable energy and energy efficiency projects;

(b) Actively promote policies that support energy efficiency and renewable energy development;

(c) Encourage utilities and customer groups to invest in new renewables and products and services that promote energy efficiency; and

(d) Assist in the development of stronger markets for renewables and products and services that promote energy efficiency.

(3) For the purposes of this section and section 2 of this act and for RCW 28B.20.285 and 28B.20.287, energy efficiency shall include the application of digital technologies to the generation, delivery, and use of power.

NEW SECTION. Sec. 2. A new section is added to chapter 28B.20 RCW to read as follows:

(1) The Washington technology center, through its northwest energy technology collaborative, shall provide a forum for public and private collaborative initiatives to promote renewable energy and energy efficiency sectors in Washington state and the Pacific Northwest. The center shall seek to integrate the initiatives of the northwest energy technology collaborative into existing state programs and initiatives, including grant programs administered by the center, and energy efficiency business development projects and energy assistance programs of the department of community, trade, and economic development.

(2) The center, through its northwest energy technology collaborative, shall develop and implement a strategic plan for public and private collaboration in renewable energy and energy efficiency business development. The center, together with the department, shall prepare an initial draft of a statewide strategic plan and circulate it widely among businesses and individuals in these sectors for review and comment. The center shall also organize a summit of public and private sector interests to further developments of the proposed strategic plan. The plan shall address, among other things, the role that public sector policies, programs, and expenditures may play in promoting these economic sectors, including subjects such as work force development, education, tax incentives, economic development assistance, public sector energy purchases, public sector construction standards, transportation, and land use regulation and zoning. The strategic plan shall include recommendations for legislative and administrative policy changes and for legislative appropriations. The plan shall also recommend proposals for capital and operating investments in public higher education facilities, proposals for creating and strengthening public and private partnerships, and proposals for federal financial assistance and expenditures for research and development programs in Washington state. The finalized strategic plan shall be provided to the governor and to the appropriate committees of the senate and house of representatives by January 1, 2005.

(3) The strategic plan required by subsection (2) of this section may be incorporated into the center's five-year strategic plan required by RCW 28B.20.289(3)(f).

Sec. 3. RCW 28B.20.285 and 2003 c 403 s 10 are each amended to read as follows:

A Washington technology center is created to be a collaborative effort between the state's universities, private industry, and government. The technology center shall be headquartered at the University of Washington. The mission of the technology center shall be to perform and commercialize research on a statewide basis that benefits the intermediate and long-term economic vitality of the state of Washington, and to develop and strengthen university-industry relationships through the conduct of research that is primarily of

interest to Washington-based companies or state economic development programs. The technology center shall:

(1) Perform and/or facilitate research supportive of state science and technology objectives, particularly as they relate to state industries;

(2) Provide leading edge collaborative research and technology transfer opportunities primarily to state industries;

(3) Provide substantial opportunities for training undergraduate and graduate students through direct involvement in research and industry interactions;

(4) Emphasize and develop nonstate support of the technology center's research activities;

(5) Administer the investing in innovation grants program;

(6) Through its northwest energy technology collaborative, carry out the activities required by section 2 of this act; and

~~((6))~~ (7) Provide a forum for effective interaction between the state's technology-based industries and its academic research institutions through promotion of faculty collaboration with industry, particularly within the state.

Sec. 4. RCW 28B.20.287 and 1992 c 142 s 2 are each amended to read as follows:

Unless the context clearly requires otherwise, the definitions in this section apply throughout RCW 28B.20.285 and 28B.20.289 through 28B.20.295.

(1) "Technology center" means the Washington technology center, including the affiliated staff, faculty, facilities, and research centers operated by the technology center.

(2) "Board" means the board of directors of the Washington technology center.

(3) "High technology" or "technology" includes but is not limited to the modernization, miniaturization, integration, and computerization of electronic, hydraulic, pneumatic, laser, mechanical, robotics, nuclear, chemical, telecommunication, and other technological applications to enhance productivity in areas including but not limited to manufacturing, communications, medicine, bioengineering, renewable energy and energy efficiency, and commerce.

Passed by the Senate February 10, 2004.

Passed by the House March 4, 2004.

Approved by the Governor March 26, 2004.

Filed in Office of Secretary of State March 26, 2004.

CHAPTER 152

[Senate Bill 6490]

FUEL CELLS—TAX EXEMPTION

AN ACT Relating to exempting fuel cells from sales and use taxes; and amending RCW 82.08.02567 and 82.12.02567.

Be it enacted by the Legislature of the State of Washington:

Sec. 1. RCW 82.08.02567 and 2001 c 213 s 1 are each amended to read as follows:

(1) The tax levied by RCW 82.08.020 shall not apply to sales of machinery and equipment used directly in generating electricity using fuel cells, wind, sun,

or landfill gas as the principal source of power, or to sales of or charges made for labor and services rendered in respect to installing such machinery and equipment, but only if the purchaser develops with such machinery, equipment, and labor a facility capable of generating not less than two hundred watts of electricity and provides the seller with an exemption certificate in a form and manner prescribed by the department. The seller shall retain a copy of the certificate for the seller's files.

(2) For purposes of this section and RCW 82.12.02567:

(a) "Landfill gas" means biomass fuel of the type qualified for federal tax credits under 26 U.S.C. Sec. 29 collected from a landfill. "Landfill" means a landfill as defined under RCW 70.95.030;

(b) "Machinery and equipment" means industrial fixtures, devices, and support facilities that are integral and necessary to the generation of electricity using fuel cells, wind, sun, or landfill gas as the principal source of power;

(c) "Machinery and equipment" does not include: (i) Hand-powered tools; (ii) property with a useful life of less than one year; (iii) repair parts required to restore machinery and equipment to normal working order; (iv) replacement parts that do not increase productivity, improve efficiency, or extend the useful life of machinery and equipment; (v) buildings; or (vi) building fixtures that are not integral and necessary to the generation of electricity that are permanently affixed to and become a physical part of a building;

(d) Machinery and equipment is "used directly" in generating electricity with fuel cells or by wind energy, solar energy, or landfill gas power if it provides any part of the process that captures the energy of the wind, sun, or landfill gas, converts that energy to electricity, and stores, transforms, or transmits that electricity for entry into or operation in parallel with electric transmission and distribution systems;

(e) "Fuel cell" means an electrochemical reaction that generates electricity by combining atoms of hydrogen and oxygen in the presence of a catalyst.

(3) This section expires June 30, 2009.

Sec. 2. RCW 82.12.02567 and 2003 c 5 s 6 are each amended to read as follows:

(1) The provisions of this chapter shall not apply with respect to machinery and equipment used directly in generating not less than two hundred watts of electricity using fuel cells, wind, sun, or landfill gas as the principal source of power, or to the use of labor and services rendered in respect to installing such machinery and equipment.

(2) The definitions in RCW 82.08.02567 apply to this section.

(3) This section expires June 30, 2009.

Passed by the Senate March 10, 2004.

Passed by the House March 10, 2004.

Approved by the Governor March 26, 2004.

Filed in Office of Secretary of State March 26, 2004.

CHAPTER 153

[Senate Bill 6515]

SALES AND USE TAX CORRECTIONS

AN ACT Relating to correcting errors, omissions, and inconsistencies within Title 82 RCW from chapter 168, Laws of 2003, which implemented portions of the streamlined sales and use tax agreement; amending RCW 82.08.0283, 82.08.0281, 82.08.945, 82.12.945, 82.08.0293, 82.08.037, 82.08.100, 82.12.037, 82.12.070, 82.32.060, 82.04.4284, 82.16.050, 82.14B.150, 82.58.050, 82.04.040, 82.32.520, 82.32.530, 82.02.230, 82.08.010, 82.04.050, 82.32.525, 82.08.080, and 82.04.530; amending 2003 c 168 s 902 (uncodified); reenacting and amending RCW 82.12.0277; adding new sections to chapter 82.08 RCW; adding new sections to chapter 82.12 RCW; creating a new section; providing effective dates; providing a contingent expiration date; and declaring an emergency.

Be it enacted by the Legislature of the State of Washington:

PART I

MEDICAL PROVISIONS

Sec. 101. RCW 82.08.0283 and 2003 c 168 s 409 are each amended to read as follows:

(1) The tax levied by RCW 82.08.020 shall not apply to sales of;

(a) Prosthetic devices prescribed, fitted, or furnished for an individual by a person licensed under ((chapter 18.22, 18.25, 18.57, or 18.71 RCW)) the laws of this state to prescribe, fit, or furnish prosthetic devices;

(b) Medicines of mineral, animal, and botanical origin prescribed, administered, dispensed, or used in the treatment of an individual by a person licensed under chapter 18.36A RCW; and

(c) Medically prescribed oxygen, including, but not limited to, oxygen concentrator systems, oxygen enricher systems, liquid oxygen systems, and gaseous, bottled oxygen systems prescribed for an individual by a person licensed under chapter 18.57 or 18.71 RCW for use in the medical treatment of that individual.

(2) In addition, the tax levied by RCW 82.08.020 shall not apply to charges made for labor and services rendered in respect to the repairing, cleaning, altering, or improving of any of the items exempted under subsection (1) of this section.

~~((2))~~ (3) The exemption in subsection (1) of this section shall not apply to sales of durable medical equipment or mobility enhancing equipment.

~~((3))~~ (4) The definitions in this subsection apply throughout this section.

(a) "Prosthetic device" means a replacement, corrective, or supportive device, including repair and replacement parts for a prosthetic device, worn on or in the body to:

- (i) Artificially replace a missing portion of the body;
- (ii) Prevent or correct a physical deformity or malfunction; or
- (iii) Support a weak or deformed portion of the body.

(b) "Durable medical equipment" means equipment, including repair and replacement parts for durable medical equipment(~~(, but does not include mobility enhancing equipment,)~~) that:

- (i) Can withstand repeated use;
- (ii) Is primarily and customarily used to serve a medical purpose;

(iii) Generally is not useful to a person in the absence of illness or injury; and

(iv) Does not work in or on the body.

(c) "Mobility enhancing equipment" means equipment, including repair and replacement parts for mobility enhancing equipment(~~(, but does not include medical equipment,)~~) that:

(i) Is primarily and customarily used to provide or increase the ability to move from one place to another and that is appropriate for use either ~~((~~at~~))~~ in a home or a motor vehicle;

(ii) Is not generally used by persons with normal mobility; and

(iii) Does not include any motor vehicle or equipment on a motor vehicle normally provided by a motor vehicle manufacturer.

(d) The terms "durable medical equipment" and "mobility enhancing equipment" are mutually exclusive.

NEW SECTION. Sec. 102. A new section is added to chapter 82.08 RCW to read as follows:

The tax levied by RCW 82.08.020 shall not apply to sales of insulin for human use.

NEW SECTION. Sec. 103. A new section is added to chapter 82.12 RCW to read as follows:

The provisions of this chapter shall not apply in respect to the use of insulin by humans.

NEW SECTION. Sec. 104. A new section is added to chapter 82.08 RCW to read as follows:

The tax levied by RCW 82.08.020 shall not apply to sales of nebulizers, including repair and replacement parts for nebulizers, for human use pursuant to a prescription. In addition, the tax levied by RCW 82.08.020 shall not apply to charges made for labor and services rendered in respect to the repairing, cleaning, altering, or improving of nebulizers. "Nebulizer" means a device, not a building fixture, that converts a liquid medication into a mist so that it can be inhaled.

NEW SECTION. Sec. 105. A new section is added to chapter 82.12 RCW to read as follows:

The provisions of this chapter shall not apply in respect to the use of nebulizers, including repair and replacement parts for nebulizers, for human use pursuant to a prescription. In addition, the provisions of this chapter shall not apply in respect to labor and services rendered in respect to the repairing, cleaning, altering, or improving of nebulizers. "Nebulizer" has the same meaning as in section 104 of this act.

NEW SECTION. Sec. 106. A new section is added to chapter 82.08 RCW to read as follows:

The tax levied by RCW 82.08.020 shall not apply to sales of ostomic items used by colostomy, ileostomy, or urostomy patients. "Ostomic items" means disposable medical supplies used by colostomy, ileostomy, and urostomy patients, and includes bags, belts to hold up bags, tapes, tubes, adhesives, deodorants, soaps, jellies, creams, germicides, and other like supplies. "Ostomic items" does not include undergarments, pads and shields to protect undergarments, sponges, or rubber sheets.

NEW SECTION. Sec. 107. A new section is added to chapter 82.12 RCW to read as follows:

The provisions of this chapter shall not apply in respect to the use of ostomic items by colostomy, ileostomy, or urostomy patients. "Ostomic items" has the same meaning as in section 106 of this act.

Sec. 108. RCW 82.08.0281 and 2003 c 168 s 403 are each amended to read as follows:

(1) The tax levied by RCW 82.08.020 shall not apply to sales of drugs for human use dispensed or to be dispensed to patients, pursuant to a prescription.

(2) The tax levied by RCW 82.08.020 shall not apply to sales of drugs or devices used for family planning purposes, including the prevention of conception, for human use dispensed or to be dispensed to patients, pursuant to a prescription.

(3) The tax levied by RCW 82.08.020 shall not apply to sales of drugs and devices used for family planning purposes, including the prevention of conception, for human use supplied by a family planning clinic that is under contract with the department of health to provide family planning services.

(4) The definitions in this subsection apply throughout this section.

(a) "Prescription" means an order, formula, or recipe issued in any form of oral, written, electronic, or other means of transmission by a duly licensed practitioner authorized by the laws of this state to prescribe.

(b) "Drug" means a compound, substance, or preparation, and any component of a compound, substance, or preparation, other than food and food ingredients, dietary supplements, or alcoholic beverages:

(i) Recognized in the official United States pharmacopoeia, official homeopathic pharmacopoeia of the United States, or official national formulary, or any supplement to any of them; or

(ii) Intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease; or

(iii) Intended to affect the structure or any function of the body.

(c) "Over-the-counter drug" means a drug that contains a label that identifies the product as a drug required by 21 C.F.R. Sec. 201.66, as amended or renumbered on January 1, 2003. The label includes:

(i) A "drug facts" panel; or

(ii) A statement of the "active ingredient(s)" with a list of those ingredients contained in the compound, substance, or preparation.

Sec. 109. RCW 82.12.0277 and 2003 c 168 s 412 and 2003 c 5 s 8 are each reenacted and amended to read as follows:

(1) The provisions of this chapter shall not apply in respect to the use of:

(a) Prosthetic devices prescribed, fitted, or furnished for an individual by a person licensed under (~~chapter 18.22, 18.25, 18.57, or 18.71 RCW~~) the laws of this state to prescribe, fit, or furnish prosthetic devices;

(b) Medicines of mineral, animal, and botanical origin prescribed, administered, dispensed, or used in the treatment of an individual by a person licensed under chapter 18.36A RCW; and

(c) Medically prescribed oxygen, including, but not limited to, oxygen concentrator systems, oxygen enricher systems, liquid oxygen systems, and gaseous, bottled oxygen systems prescribed for an individual by a person

licensed under chapter 18.57 or 18.71 RCW for use in the medical treatment of that individual.

(2) In addition, the provisions of this chapter shall not apply in respect to the use of labor and services rendered in respect to the repairing, cleaning, altering, or improving of any of the items exempted under subsection (1) of this section.

~~((2))~~ (3) The exemption provided by subsection (1) of this section shall not apply to the use of durable medical equipment or mobility enhancing equipment.

~~((3))~~ (4) "Prosthetic device," "durable medical equipment," and "mobility enhancing equipment" have the same meanings as in RCW 82.08.0283.

Sec. 110. RCW 82.08.945 and 2003 c 168 s 410 are each amended to read as follows:

The tax levied by RCW 82.08.020 shall not apply to sales of kidney dialysis devices, including repair and replacement parts, for human use pursuant to a prescription. In addition, the tax levied by RCW 82.08.020 shall not apply to charges made for labor and services rendered in respect to the repairing, cleaning, altering, or improving of kidney dialysis devices.

Sec. 111. RCW 82.12.945 and 2003 c 168 s 411 are each amended to read as follows:

The provisions of this chapter shall not apply to the use of kidney dialysis devices, including repair and replacement parts, for human use pursuant to a prescription. In addition, the provisions of this chapter shall not apply in respect to the use of labor and services rendered in respect to the repairing, cleaning, altering, or improving of kidney dialysis devices.

PART II FOOD PROVISIONS

Sec. 201. RCW 82.08.0293 and 2003 c 168 s 301 are each amended to read as follows:

(1) The tax levied by RCW 82.08.020 shall not apply to sales of food and food ingredients. "Food and food ingredients" means substances, whether in liquid, concentrated, solid, frozen, dried, or dehydrated form, that are sold for ingestion or chewing by humans and are consumed for their taste or nutritional value. "Food and food ingredients" does not include:

(a) "Alcoholic beverages," which means beverages that are suitable for human consumption and contain one-half of one percent or more of alcohol by volume; and

(b) "Tobacco," which means cigarettes, cigars, chewing or pipe tobacco, or any other item that contains tobacco.

(2) The exemption of "food and food ingredients" provided for in subsection (1) of this section shall not apply to prepared food, soft drinks, or dietary supplements.

(a) "Prepared food" means:

(i) Food sold in a heated state or heated by the seller;

(ii) ~~((Two or more food ingredients mixed or combined by the seller for sale as a single item; or~~

~~((iii)))~~ Food sold with eating utensils provided by the seller, including plates, knives, forks, spoons, glasses, cups, napkins, or straws. A plate does not include a container or packaging used to transport the food(-

"Prepared food" in (a)(ii) of this subsection, does not include); or
(iii) Two or more food ingredients mixed or combined by the seller for sale as a single item, except:

(A) Food that is only cut, repackaged, or pasteurized by the seller ((and raw)); or

(B) Raw eggs, fish, meat, poultry, and foods containing these raw animal foods requiring cooking by the consumer as recommended by the federal food and drug administration in chapter 3, part 401.11 of The Food Code, published by the food and drug administration, as amended or renumbered as of January 1, 2003, so as to prevent foodborne illness((; or bakery items, including bread, rolls, buns, biscuits, bagels, croissants, pastries, donuts, danish, cakes, tortes, pies, tarts, muffins, bars, cookies, or tortillas)).

(b) "Prepared food" does not include the following food or food ingredients, if the food or food ingredients are sold without eating utensils provided by the seller:

(i) Food sold by a seller whose proper primary North American industry classification system (NAICS) classification is manufacturing in sector 311, except subsector 3118 (bakeries), as provided in the "North American industry classification system—United States, 2002":

(ii) Food sold in an unheated state by weight or volume as a single item; or

(iii) Bakery items. The term "bakery items" includes bread, rolls, buns, biscuits, bagels, croissants, pastries, donuts, Danish, cakes, tortes, pies, tarts, muffins, bars, cookies, or tortillas.

(c) "Soft drinks" means nonalcoholic beverages that contain natural or artificial sweeteners. Soft drinks do not include beverages that contain: Milk or milk products; soy, rice, or similar milk substitutes; or greater than fifty percent of vegetable or fruit juice by volume.

((e)) (d) "Dietary supplement" means any product, other than tobacco, intended to supplement the diet that:

(i) Contains one or more of the following dietary ingredients:

(A) A vitamin;

(B) A mineral;

(C) An herb or other botanical;

(D) An amino acid;

(E) A dietary substance for use by humans to supplement the diet by increasing the total dietary intake; or

(F) A concentrate, metabolite, constituent, extract, or combination of any ingredient described in this subsection; ((and))

(ii) Is intended for ingestion in tablet, capsule, powder, softgel, gelcap, or liquid form, or if not intended for ingestion in such form, is not represented as conventional food and is not represented for use as a sole item of a meal or of the diet; and

((#)) (iii) Is required to be labeled as a dietary supplement, identifiable by the "supplement facts" box found on the label as required pursuant to 21 C.F.R. Sec. 101.36, as amended or renumbered as of January 1, 2003.

(3) Notwithstanding anything in this section to the contrary, the exemption of "food and food ingredients" provided in this section shall apply to food and food ingredients ((which)) that are furnished, prepared, or served as meals:

(a) Under a state administered nutrition program for the aged as provided for in the Older Americans Act (P.L. 95-478 Title III) and RCW 74.38.040(6); or

(b) ~~((Which))~~ That are provided to senior citizens, disabled persons, or low-income persons by a not-for-profit organization organized under chapter 24.03 or 24.12 RCW.

(4)(a) Subsection (1) of this section notwithstanding, the retail sale of food and food ingredients is subject to sales tax under RCW 82.08.020 if the food and food ingredients are sold through a vending machine, and in this case the selling price for purposes of RCW 82.08.020 is fifty-seven percent of the gross receipts.

(b) This subsection (4) does not apply to hot prepared food and food ingredients, other than food and food ingredients which are heated after they have been dispensed from the vending machine.

(c) For tax collected under this subsection (4), the requirements that the tax be collected from the buyer and that the amount of tax be stated as a separate item are waived.

PART III BAD DEBT PROVISIONS

NEW SECTION. **Sec. 301.** For the purposes of sections 302 through 305 of this act, the legislature does not intend by any provision of this act relating to bad debts, and did not intend by any provision of chapter 168, Laws of 2003 relating to bad debts, to affect the holding of the supreme court of the state of Washington in *Puget Sound National Bank v. the Department of Revenue*, 123 Wn. 2d 284 (1994).

Sec. 302. RCW 82.08.037 and 2003 c 168 s 212 are each amended to read as follows:

(1) A seller is entitled to a credit or refund for sales taxes previously paid on ~~((debts which are))~~ bad debts ~~((under))~~, as that term is used in 26 U.S.C. Sec. 166, as amended or renumbered as of January 1, 2003~~((except for))~~.

(2) For purposes of this section, "bad debts" does not include:

(a) Amounts due on property that remains in the possession of the seller until the full purchase price is paid;

(b) Expenses incurred in attempting to collect debt; and

(c) Repossessed property.

~~((2))~~ (3) If a credit or refund of sales tax is taken for a bad debt and the debt is subsequently collected in whole or in part, the tax on the amount collected must be paid and reported on the return filed for the period in which the collection is made.

~~((3))~~ (4) Payments on a previously claimed bad debt are applied first proportionally to the taxable price of the property or service and the sales or use tax thereon, and secondly to interest, service charges, and any other charges.

~~((4))~~ (5) If the seller uses a certified service provider as defined in RCW 82.58.010 to administer its sales tax responsibilities, the certified service provider may claim, on behalf of the seller, the credit or refund allowed by this section. The certified service provider must credit or refund the full amount received to the seller.

(6) The department shall allow an allocation of bad debts among member states to the streamlined sales tax agreement, as defined in RCW 82.58.010(1), if the books and records of the person claiming bad debts support the allocation.

Sec. 303. RCW 82.08.100 and 1982 1st ex.s. c 35 s 37 are each amended to read as follows:

The department of revenue, by general regulation, shall provide that a taxpayer whose regular books of account are kept on a cash receipts basis may file returns based upon his cash receipts for each reporting period and pay the tax herein provided upon such basis in lieu of reporting and paying the tax on all sales made during such period. A taxpayer filing returns on a cash receipts basis is not required to pay such tax on ~~((debts which are deductible as worthless for federal income tax purposes))~~ debt subject to credit or refund under RCW 82.08.037.

Sec. 304. RCW 82.12.037 and 1982 1st ex.s. c 35 s 36 are each amended to read as follows:

(1) A seller is entitled to a credit or refund for use taxes previously paid on ~~((debts which are deductible as worthless for federal income tax purposes))~~ bad debts, as that term is used in 26 U.S.C. Sec. 166, as amended or renumbered as of January 1, 2003.

(2) For purposes of this section, "bad debts" does not include:

(a) Amounts due on property that remains in the possession of the seller until the full purchase price is paid;

(b) Expenses incurred in attempting to collect debt; and

(c) Repossessed property.

(3) If a credit or refund of use tax is taken for a bad debt and the debt is subsequently collected in whole or in part, the tax on the amount collected must be paid and reported on the return filed for the period in which the collection is made.

(4) Payments on a previously claimed bad debt are applied first proportionally to the taxable price of the property or service and the sales or use tax thereon, and secondly to interest, service charges, and any other charges.

(5) If the seller uses a certified service provider as defined in RCW 82.58.010 to administer its use tax responsibilities, the certified service provider may claim, on behalf of the seller, the credit or refund allowed by this section. The certified service provider must credit or refund the full amount received to the seller.

(6) The department shall allow an allocation of bad debts among member states to the streamlined sales and use tax agreement, as defined in RCW 82.58.010(1), if the books and records of the person claiming bad debts support the allocation.

Sec. 305. RCW 82.12.070 and 1982 1st ex.s. c 35 s 38 are each amended to read as follows:

The department of revenue, by general regulation, shall provide that a taxpayer whose regular books of account are kept on a cash receipts basis may file returns based upon his cash receipts for each reporting period and pay the tax herein provided upon such basis in lieu of reporting and paying the tax on all sales made during such period. A taxpayer filing returns on a cash receipts basis is not required to pay such tax on ~~((debts which are deductible as worthless for~~

~~federal income tax purposes))~~ debt subject to credit or refund under RCW 82.12.037.

Sec. 306. RCW 82.32.060 and 2003 c 73 s 2 are each amended to read as follows:

(1) If, upon receipt of an application by a taxpayer for a refund or for an audit of the taxpayer's records, or upon an examination of the returns or records of any taxpayer, it is determined by the department that within the statutory period for assessment of taxes, penalties, or interest prescribed by RCW 82.32.050 any amount of tax, penalty, or interest has been paid in excess of that properly due, the excess amount paid within, or attributable to, such period shall be credited to the taxpayer's account or shall be refunded to the taxpayer, at the taxpayer's option. Except as provided in subsection (2) of this section, no refund or credit shall be made for taxes, penalties, or interest paid more than four years prior to the beginning of the calendar year in which the refund application is made or examination of records is completed.

(2)(a) The execution of a written waiver under RCW 82.32.050 or 82.32.100 shall extend the time for making a refund or credit of any taxes paid during, or attributable to, the years covered by the waiver if, prior to the expiration of the waiver period, an application for refund of such taxes is made by the taxpayer or the department discovers a refund or credit is due.

(b) A refund or credit shall be allowed for an excess payment resulting from the failure to claim a bad debt deduction, credit, or refund under RCW 82.04.4284, 82.08.037, 82.12.037, 82.14B.150, or 82.16.050(5) for debts that became bad debts under 26 U.S.C. Sec. 166, as amended or renumbered as of January 1, 2003, less than four years prior to the beginning of the calendar year in which the refund application is made or examination of records is completed.

(3) Any such refunds shall be made by means of vouchers approved by the department and by the issuance of state warrants drawn upon and payable from such funds as the legislature may provide. However, taxpayers who are required to pay taxes by electronic funds transfer under RCW 82.32.080 shall have any refunds paid by electronic funds transfer.

(4) Any judgment for which a recovery is granted by any court of competent jurisdiction, not appealed from, for tax, penalties, and interest which were paid by the taxpayer, and costs, in a suit by any taxpayer shall be paid in the same manner, as provided in subsection (3) of this section, upon the filing with the department of a certified copy of the order or judgment of the court.

(a) Interest at the rate of three percent per annum shall be allowed by the department and by any court on the amount of any refund, credit, or other recovery allowed to a taxpayer for taxes, penalties, or interest paid by the taxpayer before January 1, 1992. This rate of interest shall apply for all interest allowed through December 31, 1998. Interest allowed after December 31, 1998, shall be computed at the rate as computed under RCW 82.32.050(2). The rate so computed shall be adjusted on the first day of January of each year for use in computing interest for that calendar year.

(b) For refunds or credits of amounts paid or other recovery allowed to a taxpayer after December 31, 1991, the rate of interest shall be the rate as computed for assessments under RCW 82.32.050(2) less one percent. This rate of interest shall apply for all interest allowed through December 31, 1998. Interest allowed after December 31, 1998, shall be computed at the rate as

computed under RCW 82.32.050(2). The rate so computed shall be adjusted on the first day of January of each year for use in computing interest for that calendar year.

(5) Interest allowed on a credit notice or refund issued after December 31, 2003, shall be computed as follows:

(a) If all overpayments for each calendar year and all reporting periods ending with the final month included in a notice or refund were made on or before the due date of the final return for each calendar year or the final reporting period included in the notice or refund:

(i) Interest shall be computed from January 31st following each calendar year included in a notice or refund; or

(ii) Interest shall be computed from the last day of the month following the final month included in a notice or refund.

(b) If the taxpayer has not made all overpayments for each calendar year and all reporting periods ending with the final month included in a notice or refund on or before the dates specified by RCW 82.32.045 for the final return for each calendar year or the final month included in the notice or refund, interest shall be computed from the last day of the month following the date on which payment in full of the liabilities was made for each calendar year included in a notice or refund, and the last day of the month following the date on which payment in full of the liabilities was made if the final month included in a notice or refund is not the end of a calendar year.

(c) Interest included in a credit notice shall accrue up to the date the taxpayer could reasonably be expected to use the credit notice, as defined by the department's rules. If a credit notice is converted to a refund, interest shall be recomputed to the date the refund is issued, but not to exceed the amount of interest that would have been allowed with the credit notice.

Sec. 307. RCW 82.04.4284 and 1980 c 37 s 5 are each amended to read as follows:

(1) In computing tax there may be deducted from the measure of tax (~~the amount of credit losses actually sustained by taxpayers whose regular books of account are kept upon an accrual basis~~) bad debts, as that term is used in 26 U.S.C. Sec. 166, as amended or renumbered as of January 1, 2003, on which tax was previously paid.

(2) For purposes of this section, "bad debts" do not include:

(a) Amounts due on property that remains in the possession of the seller until the full purchase price is paid;

(b) Expenses incurred in attempting to collect debt;

(c) Sales or use taxes payable to a seller; and

(d) Repossessed property.

(3) If a deduction is taken for a bad debt and the debt is subsequently collected in whole or in part, the tax on the amount collected must be paid and reported on the return filed for the period in which the collection is made.

(4) Payments on a previously claimed bad debt must be applied under RCW 82.08.037(4) and 82.12.037, according to such rules as the department may prescribe.

Sec. 308. RCW 82.16.050 and 2000 c 245 s 1 are each amended to read as follows:

In computing tax there may be deducted from the gross income the following items:

(1) Amounts derived by municipally owned or operated public service businesses, directly from taxes levied for the support or maintenance thereof: PROVIDED, That this section shall not be construed to exempt service charges which are spread on the property tax rolls and collected as taxes;

(2) Amounts derived from the sale of commodities to persons in the same public service business as the seller, for resale as such within this state. This deduction is allowed only with respect to water distribution, gas distribution or other public service businesses which furnish water, gas or any other commodity in the performance of public service businesses;

(3) Amounts actually paid by a taxpayer to another person taxable under this chapter as the latter's portion of the consideration due for services furnished jointly by both, if the total amount has been credited to and appears in the gross income reported for tax by the former;

(4) The amount of cash discount actually taken by the purchaser or customer;

(5) The amount of ~~((credit losses actually sustained by taxpayers whose regular books of accounts are kept upon an accrual basis))~~ bad debts, as that term is used in 26 U.S.C. Sec. 166, as amended or renumbered as of January 1, 2003, on which tax was previously paid under this chapter;

(6) Amounts derived from business which the state is prohibited from taxing under the Constitution of this state or the Constitution or laws of the United States;

(7) Amounts derived from the distribution of water through an irrigation system, for irrigation purposes;

(8) Amounts derived from the transportation of commodities from points of origin in this state to final destination outside this state, or from points of origin outside this state to final destination in this state, with respect to which the carrier grants to the shipper the privilege of stopping the shipment in transit at some point in this state for the purpose of storing, manufacturing, milling, or other processing, and thereafter forwards the same commodity, or its equivalent, in the same or converted form, under a through freight rate from point of origin to final destination; and amounts derived from the transportation of commodities from points of origin in the state to an export elevator, wharf, dock or ship side on tidewater or navigable tributaries thereto from which such commodities are forwarded, without intervening transportation, by vessel, in their original form, to interstate or foreign destinations: PROVIDED, That no deduction will be allowed when the point of origin and the point of delivery to such an export elevator, wharf, dock, or ship side are located within the corporate limits of the same city or town;

(9) Amounts derived from the production, sale, or transfer of electrical energy for resale within or outside the state or for consumption outside the state;

(10) Amounts derived from the distribution of water by a nonprofit water association and used for capital improvements by that nonprofit water association;

(11) Amounts paid by a sewerage collection business taxable under RCW 82.16.020(1)(a) to a person taxable under chapter 82.04 RCW for the treatment or disposal of sewage.

Sec. 309. RCW 82.14B.150 and 1998 c 304 s 7 are each amended to read as follows:

(1) A local exchange company or radio communications service company shall file tax returns on a cash receipts or accrual basis according to which method of accounting is regularly employed in keeping the books of the company. A local exchange company or radio communications service company filing returns on a cash receipts basis is not required to pay tax on ~~((debts that are deductible as worthless for federal income tax purposes))~~ debt subject to credit or refund under subsection (2) of this section.

(2) A local exchange company or radio communications service company is entitled to a credit or refund for state enhanced 911 excise taxes previously paid on bad debts ((that are deductible as worthless for federal income tax purposes)), as that term is used in 26 U.S.C. Sec. 166, as amended or renumbered as of January 1, 2003.

PART IV MISCELLANEOUS PROVISIONS

Sec. 401. RCW 82.58.050 and 2002 c 267 s 7 are each amended to read as follows:

The department shall not enter into the streamlined sales and use tax agreement unless the agreement requires each state to abide by the requirements in this section.

(1) The agreement must set restrictions to limit over time the number of state rates.

(2) The agreement must establish uniform standards for:

- (a) The sourcing of transactions to taxing jurisdictions;
- (b) The administration of exempt sales; and
- (c) Sales and use tax returns and remittances.

(3) The agreement must provide a central, electronic registration system that allows a seller to register to collect and remit sales and use taxes for all signatory states.

(4) The agreement must provide that registration with the central registration system and the collection of sales and use taxes in the signatory states will not be used as a factor in determining whether the seller has nexus with a state for any tax.

(5) The agreement must provide for reduction of the burdens of complying with local sales and use taxes by:

- (a) Restricting variances between the state and local tax bases;
- (b) Requiring states to administer any sales and use taxes levied by local jurisdictions within the state so that sellers collecting and remitting these taxes will not have to register or file returns with, remit funds to, or be subject to independent audits from local taxing jurisdictions;
- (c) Restricting the frequency of changes in the local sales and use tax rates and setting effective dates for the application of local jurisdictional boundary changes to local sales and use taxes; and

(d) Providing notice of changes in local sales and use tax rates and of changes in the boundaries of local taxing jurisdictions.

(6) The agreement must outline any monetary allowances that are to be provided by the states to sellers or certified service providers. The agreement must allow for a joint public and private sector study of the compliance cost on sellers and certified service providers to collect sales and use taxes for state and local governments under various levels of complexity (~~to be completed by July 1, 2002~~).

(7) The agreement must require each state to certify compliance with the terms of the agreement before joining and to maintain compliance, under the laws of the member state, with all provisions of the agreement while a member.

(8) The agreement must require each state to adopt a uniform policy for certified service providers that protects the privacy of consumers and maintains the confidentiality of tax information.

(9) The agreement must provide for the appointment of an advisory council of private sector representatives and an advisory council of nonmember state representatives to consult with in the administration of the agreement.

Sec. 402. RCW 82.04.040 and 2003 c 168 s 103 are each amended to read as follows:

(1) "Sale" means any transfer of the ownership of, title to, or possession of property for a valuable consideration and includes any activity classified as a "sale at retail" or "retail sale" under RCW 82.04.050. It includes lease or rental, conditional sale contracts, and any contract under which possession of the property is given to the purchaser but title is retained by the vendor as security for the payment of the purchase price. It also includes the furnishing of food, drink, or meals for compensation whether consumed upon the premises or not.

(2) "Casual or isolated sale" means a sale made by a person who is not engaged in the business of selling the type of property involved.

(3)(a) "Lease or rental" means any transfer of possession or control of tangible personal property for a fixed or indeterminate term for consideration. A lease or rental may include future options to purchase or extend. "Lease or rental" includes (~~transactions under~~) agreements covering motor vehicles and trailers where the amount of consideration may be increased or decreased by reference to the amount realized upon sale or disposition of the property as defined in 26 U.S.C. Sec. 7701(h)(1), as amended or renumbered as of January 1, 2003. The definition in this subsection (3) shall be used for sales and use tax purposes regardless if a transaction is characterized as a lease or rental under generally accepted accounting principles, the United States internal revenue code, Washington state's commercial code, or other provisions of federal, state, or local law.

(b) "Lease or rental" does not include:

(i) A transfer of possession or control of property under a security agreement or deferred payment plan that requires the transfer of title upon completion of the required payments;

(ii) A transfer of possession or control of (~~party~~) property under an agreement that requires the transfer of title upon completion of required payments, and payment of an option price does not exceed the greater of one hundred dollars or one percent of the total required payments; or

(iii) Providing tangible personal property along with an operator for a fixed or indeterminate period of time. A condition of this exclusion is that the operator is necessary for the (~~equipment~~) tangible personal property to perform

as designed. For the purpose of this subsection (3)(b)(iii), an operator must do more than maintain, inspect, or set up the tangible personal property.

Sec. 403. RCW 82.32.520 and 2003 c 168 s 501 are each amended to read as follows:

(1) Except for the defined telecommunications services listed in this section, the sale of telephone service as defined in RCW 82.04.065 sold on a call-by-call basis shall be sourced to (a) each level of taxing jurisdiction where the call originates and terminates in that jurisdiction or (b) each level of taxing jurisdiction where the call either originates or terminates and in which the service address is also located.

(2) Except for the defined telecommunications services listed in this section, a sale of telephone service as defined in RCW 82.04.065 sold on a basis other than a call-by-call basis, is sourced to the customer's place of primary use.

(3) The sales of telephone service as defined in RCW 82.04.065 that are listed in this section shall be sourced to each level of taxing jurisdiction as follows:

(a) A sale of mobile telecommunications services, other than air-ground radiotelephone service and prepaid calling service, is sourced to the customer's place of primary use as required by RCW 82.08.066.

(b) A sale of postpaid calling service is sourced to the origination point of the telecommunications signal as first identified by either (i) the seller's telecommunications system, or (ii) information received by the seller from its ((home)) service provider, where the system used to transport such signals is not that of the seller.

(c) A sale of prepaid calling service is sourced as follows:

(i) When a prepaid calling service is received by the purchaser at a business location of the seller, the sale is sourced to that business location;

(ii) When a prepaid calling service is not received by the purchaser at a business location of the seller, the sale is sourced to the location where receipt by the purchaser or the purchaser's donee, designated as such by the purchaser, occurs, including the location indicated by instructions for delivery to the purchaser or donee, known to the seller;

(iii) When (c)(i) and (ii) of this subsection do not apply, the sale is sourced to the location indicated by an address for the purchaser that is available from the business records of the seller that are maintained in the ordinary course of the seller's business when use of this address does not constitute bad faith;

(iv) When (c)(i), (ii), and (iii) of this subsection do not apply, the sale is sourced to the location indicated by an address for the purchaser obtained during the consummation of the sale, including the address of a purchaser's payment instrument, if no other address is available, when use of this address does not constitute bad faith;

(v) When (c)(i), (ii), (iii), and (iv) of this subsection do not apply, including the circumstance where the seller is without sufficient information to apply those provisions, then the location shall be determined by the address from which tangible personal property was shipped, from which the digital good or the computer software delivered electronically was first available for transmission by the seller, or from which the service defined as a retail sale under RCW 82.04.050 was provided, disregarding for these purposes any location that merely provided the digital transfer of the product sold;

(vi) In the case of a sale of mobile telecommunications service that is a prepaid telecommunications service, ~~(c)((iv))~~ (v) of this subsection shall include as an option the location associated with the mobile telephone number.

(d) A sale of a private communication service is sourced as follows:

(i) Service for a separate charge related to a customer channel termination point is sourced to each level of jurisdiction in which such customer channel termination point is located.

(ii) Service where all customer termination points are located entirely within one jurisdiction or levels of jurisdiction is sourced in such jurisdiction in which the customer channel termination points are located.

(iii) Service for segments of a channel between two customer channel termination points located in different jurisdictions and which segment of channel are separately charged is sourced fifty percent in each level of jurisdiction in which the customer channel termination points are located.

(iv) Service for segments of a channel located in more than one jurisdiction or levels of jurisdiction and which segments are not separately billed is sourced in each jurisdiction based on the percentage determined by dividing the number of customer channel termination points in the jurisdiction by the total number of customer channel termination points.

(4) The definitions in this subsection apply throughout this chapter.

(a) "Air-ground radiotelephone service" means air-ground radio service, as defined in 47 C.F.R. Sec. 22.99, as amended or renumbered as of January 1, 2003, in which common carriers are authorized to offer and provide radio telecommunications service for hire to subscribers in aircraft.

(b) "Call-by-call basis" means any method of charging for telecommunications services where the price is measured by individual calls.

(c) "Communications channel" means a physical or virtual path of communications over which signals are transmitted between or among customer channel termination points.

(d) "Customer" means the person or entity that contracts with the seller of telecommunications services. If the end user of telecommunications services is not the contracting party, the end user of the telecommunications service is the customer of the telecommunications service. "Customer" does not include a reseller of telecommunications service or for mobile telecommunications service of a serving carrier under an agreement to serve the customer outside the home service provider's licensed service area.

(e) "Customer channel termination point" means the location where the customer either inputs or receives the communications.

(f) "End user" means the person who uses the telecommunications service. In the case of an entity, the term end user means the individual who uses the service on behalf of the entity.

(g) "Home service provider" means the same as that term is defined in RCW 82.04.065.

(h) "Mobile telecommunications service" means the same as that term is defined in RCW 82.04.065.

(i) "Place of primary use" means the street address representative of where the customer's use of the telecommunications service primarily occurs, which must be the residential street address or the primary business street address of the customer. In the case of mobile telecommunications services, "place of

primary use" must be within the licensed service area of the home service provider.

(j) "Postpaid calling service" means the telecommunications service obtained by making a payment on a call-by-call basis either through the use of a credit card or payment mechanism such as a bank card, travel card, credit card, or debit card, or by charge made to which a telephone number that is not associated with the origination or termination of the telecommunications service. A postpaid calling service includes a telecommunications service that would be a prepaid calling service except it is not exclusively a telecommunications service.

(k) "Prepaid calling service" means the right to access exclusively telecommunications services, which must be paid for in advance and which enables the origination of calls using ~~((and -{an})~~) an access number and/or authorization code, whether manually or electronically dialed, and that is sold in predetermined units or dollars of which the number declines with use in a known amount.

(l) "Private communication service" means a telecommunications service that entitles the customer to exclusive or priority use of a communications channel or group of channels between or among termination points, regardless of the manner in which such channel or channels are connected, and includes switching capacity, extension lines, stations, and any other associated services that are provided in connection with the use of such channel or channels.

(m) "Service address" means:

(i) The location of the telecommunications equipment to which a customer's call is charged and from which the call originates or terminates, regardless of where the call is billed or paid;

(ii) If the location in (m)(i) of this subsection is not known, the origination point of the signal of the telecommunications services first identified by either the seller's telecommunications system or in information received by the seller from its ~~((home))~~ service provider, where the system used to transport such signals is not that of the seller;

(iii) If the ~~((location[s]))~~ locations in (m)(i) and (ii) of this subsection are not known, the location of the customer's place of primary use.

Sec. 404. RCW 82.32.530 and 2003 c 168 s 213 are each amended to read as follows:

The department may not ~~((attribute nexus with Washington to any seller solely by virtue of the seller registering under the streamlined sales and use tax agreement))~~ use registration under the streamlined sales and use tax agreement and collection of sales and use taxes in member states as a factor in determining whether the seller has nexus with Washington for any tax at any time.

Sec. 405. RCW 82.02.230 and 2003 c 168 s 801 are each amended to read as follows:

(1) There shall be one statewide rate for sales and use taxes imposed at the state level. This subsection does not apply to the taxes imposed by RCW 82.08.150, 82.12.022, or 82.18.020, or to taxes imposed on the sale, rental, lease, or use of motor vehicles, aircraft, watercraft, modular homes, manufactured homes, or mobile homes.

(2) There shall be one jurisdiction-wide rate for local sales and use taxes imposed at levels below the state level. This subsection does not apply to the

taxes imposed by chapter 67.28 RCW, RCW 35.21.280, 36.38.010, 36.38.040, 67.40.090, or 82.14.360, or to taxes imposed on the sale, rental, lease, or use of motor vehicles, aircraft, watercraft, modular homes, manufactured homes, or mobile homes.

Sec. 406. RCW 82.08.010 and 2003 c 168 s 101 are each amended to read as follows:

For the purposes of this chapter:

(1) "Selling price" includes "sales price." "Sales price" means the total amount of consideration, except separately stated trade-in property of like kind, including cash, credit, property, and services, for which tangible personal property or services defined as a "retail sale" under RCW 82.04.050 are sold, leased, or rented, valued in money, whether received in money or otherwise. No deduction from the total amount of consideration is allowed for the following: (a) The seller's cost of the property sold; (b) the cost of materials used, labor or service cost, interest, losses, all costs of transportation to the seller, all taxes imposed on the seller, and any other expense of the seller; (c) charges by the seller for any services necessary to complete the sale, other than delivery and installation charges; (d) delivery charges; (e) installation charges; and (f) the value of exempt tangible personal property given to the purchaser where taxable and exempt tangible personal property have been bundled together and sold by the seller as a single product or piece of merchandise.

When tangible personal property is rented or leased under circumstances that the consideration paid does not represent a reasonable rental for the use of the articles so rented or leased, the "selling price" shall be determined as nearly as possible according to the value of such use at the places of use of similar products of like quality and character under such rules as the department may prescribe.

"Selling price" or "sales price" does not include: Discounts, including cash, term, or coupons that are not reimbursed by a third party that are allowed by a seller and taken by a purchaser on a sale; interest, financing, and carrying charges from credit extended on the sale of tangible personal property or services, if the amount is separately stated on the invoice, bill of sale, or similar document given to the purchaser; and any taxes legally imposed directly on the consumer that are separately stated on the invoice, bill of sale, or similar document given to the purchaser;

(2) "Seller" means every person, including the state and its departments and institutions, making sales at retail or retail sales to a buyer, purchaser, or consumer, whether as agent, broker, or principal, except "seller" does not mean the state and its departments and institutions when making sales to the state and its departments and institutions;

(3) "Buyer," "purchaser," and "consumer" include, without limiting the scope hereof, every individual, receiver, assignee, trustee in bankruptcy, trust, estate, firm, copartnership, joint venture, club, company, joint stock company, business trust, corporation, association, society, or any group of individuals acting as a unit, whether mutual, cooperative, fraternal, nonprofit, or otherwise, municipal corporation, quasi municipal corporation, and also the state, its departments and institutions and all political subdivisions thereof, irrespective of the nature of the activities engaged in or functions performed, and also the United States or any instrumentality thereof;

(4) "Delivery charges" means charges by the seller of personal property or services for preparation and delivery to a location designated by the purchaser of personal property or services including, but not limited to, transportation, shipping, postage, handling, crating, and packing;

(5) The meaning attributed in chapter 82.04 RCW to the terms "tax year," "taxable year," "person," "company," "sale," "sale at retail," "retail sale," "sale at wholesale," "wholesale," "business," "engaging in business," "cash discount," "successor," "consumer," "in this state" and "within this state" shall apply equally to the provisions of this chapter;

(6) For the purposes of the taxes imposed under this chapter and under chapter 82.12 RCW, "tangible personal property" means personal property that can be seen, weighed, measured, felt, or touched, or that is in any other manner perceptible to the senses. Tangible personal property includes electricity, water, gas, steam, and prewritten computer software.

Sec. 407. RCW 82.04.050 and 2003 c 168 s 104 are each amended to read as follows:

(1) "Sale at retail" or "retail sale" means every sale of tangible personal property (including articles produced, fabricated, or imprinted) to all persons irrespective of the nature of their business and including, among others, without limiting the scope hereof, persons who install, repair, clean, alter, improve, construct, or decorate real or personal property of or for consumers other than a sale to a person who presents a resale certificate under RCW 82.04.470 and who:

(a) Purchases for the purpose of resale as tangible personal property in the regular course of business without intervening use by such person, but a purchase for the purpose of resale by a regional transit authority under RCW 81.112.300 is not a sale for resale; or

(b) Installs, repairs, cleans, alters, imprints, improves, constructs, or decorates real or personal property of or for consumers, if such tangible personal property becomes an ingredient or component of such real or personal property without intervening use by such person; or

(c) Purchases for the purpose of consuming the property purchased in producing for sale a new article of tangible personal property or substance, of which such property becomes an ingredient or component or is a chemical used in processing, when the primary purpose of such chemical is to create a chemical reaction directly through contact with an ingredient of a new article being produced for sale; or

(d) Purchases for the purpose of consuming the property purchased in producing ferrosilicon which is subsequently used in producing magnesium for sale, if the primary purpose of such property is to create a chemical reaction directly through contact with an ingredient of ferrosilicon; or

(e) Purchases for the purpose of providing the property to consumers as part of competitive telephone service, as defined in RCW 82.04.065. The term shall include every sale of tangible personal property which is used or consumed or to be used or consumed in the performance of any activity classified as a "sale at retail" or "retail sale" even though such property is resold or utilized as provided in (a), (b), (c), (d), or (e) of this subsection following such use. The term also means every sale of tangible personal property to persons engaged in any business which is taxable under RCW 82.04.280 (2) and (7) and 82.04.290.

(2) The term "sale at retail" or "retail sale" shall include the sale of or charge made for tangible personal property consumed and/or for labor and services rendered in respect to the following:

(a) The installing, repairing, cleaning, altering, imprinting, or improving of tangible personal property of or for consumers, including charges made for the mere use of facilities in respect thereto, but excluding charges made for the use of coin-operated laundry facilities when such facilities are situated in an apartment house, rooming house, or mobile home park for the exclusive use of the tenants thereof, and also excluding sales of laundry service to nonprofit health care facilities, and excluding services rendered in respect to live animals, birds and insects;

(b) The constructing, repairing, decorating, or improving of new or existing buildings or other structures under, upon, or above real property of or for consumers, including the installing or attaching of any article of tangible personal property therein or thereto, whether or not such personal property becomes a part of the realty by virtue of installation, and shall also include the sale of services or charges made for the clearing of land and the moving of earth excepting the mere leveling of land used in commercial farming or agriculture;

(c) The charge for labor and services rendered in respect to constructing, repairing, or improving any structure upon, above, or under any real property owned by an owner who conveys the property by title, possession, or any other means to the person performing such construction, repair, or improvement for the purpose of performing such construction, repair, or improvement and the property is then reconveyed by title, possession, or any other means to the original owner;

(d) The sale of or charge made for labor and services rendered in respect to the cleaning, fumigating, razing or moving of existing buildings or structures, but shall not include the charge made for janitorial services; and for purposes of this section the term "janitorial services" shall mean those cleaning and caretaking services ordinarily performed by commercial janitor service businesses including, but not limited to, wall and window washing, floor cleaning and waxing, and the cleaning in place of rugs, drapes and upholstery. The term "janitorial services" does not include painting, papering, repairing, furnace or septic tank cleaning, snow removal or sandblasting;

(e) The sale of or charge made for labor and services rendered in respect to automobile towing and similar automotive transportation services, but not in respect to those required to report and pay taxes under chapter 82.16 RCW;

(f) The sale of and charge made for the furnishing of lodging and all other services by a hotel, rooming house, tourist court, motel, trailer camp, and the granting of any similar license to use real property, as distinguished from the renting or leasing of real property, and it shall be presumed that the occupancy of real property for a continuous period of one month or more constitutes a rental or lease of real property and not a mere license to use or enjoy the same. For the purposes of this subsection, it shall be presumed that the sale of and charge made for the furnishing of lodging for a continuous period of one month or more to a person is a rental or lease of real property and not a mere license to enjoy the same;

(g) The sale of or charge made for tangible personal property, labor and services to persons taxable under (a), (b), (c), (d), (e), and (f) of this subsection

when such sales or charges are for property, labor and services which are used or consumed in whole or in part by such persons in the performance of any activity defined as a "sale at retail" or "retail sale" even though such property, labor and services may be resold after such use or consumption. Nothing contained in this subsection shall be construed to modify subsection (1) of this section and nothing contained in subsection (1) of this section shall be construed to modify this subsection.

(3) The term "sale at retail" or "retail sale" shall include the sale of or charge made for personal, business, or professional services including amounts designated as interest, rents, fees, admission, and other service emoluments however designated, received by persons engaging in the following business activities:

(a) Amusement and recreation services including but not limited to golf, pool, billiards, skating, bowling, ski lifts and tows, day trips for sightseeing purposes, and others, when provided to consumers;

(b) Abstract, title insurance, and escrow services;

(c) Credit bureau services;

(d) Automobile parking and storage garage services;

(e) Landscape maintenance and horticultural services but excluding (i) horticultural services provided to farmers and (ii) pruning, trimming, repairing, removing, and clearing of trees and brush near electric transmission or distribution lines or equipment, if performed by or at the direction of an electric utility;

(f) Service charges associated with tickets to professional sporting events; and

(g) The following personal services: Physical fitness services, tanning salon services, tattoo parlor services, steam bath services, turkish bath services, escort services, and dating services.

(4)(a) The term shall also include:

(i) The renting or leasing of tangible personal property to consumers; and

(ii) Providing tangible personal property along with an operator for a fixed or indeterminate period of time. A consideration of this is that the operator is necessary for the ~~((equipment))~~ tangible personal property to perform as designed. For the purpose of this subsection (4)(a)(ii), an operator must do more than maintain, inspect, or set up the tangible personal property.

(b) The term shall not include the renting or leasing of tangible personal property where the lease or rental is for the purpose of sublease or subrent.

(5) The term shall also include the providing of telephone service, as defined in RCW 82.04.065, to consumers.

(6) The term shall also include the sale of prewritten computer software other than a sale to a person who presents a resale certificate under RCW 82.04.470, regardless of the method of delivery to the end user, but shall not include custom software or the customization of prewritten computer software.

(7) The term shall not include the sale of or charge made for labor and services rendered in respect to the building, repairing, or improving of any street, place, road, highway, easement, right of way, mass public transportation terminal or parking facility, bridge, tunnel, or trestle which is owned by a municipal corporation or political subdivision of the state or by the United States

and which is used or to be used primarily for foot or vehicular traffic including mass transportation vehicles of any kind.

(8) The term shall also not include sales of chemical sprays or washes to persons for the purpose of postharvest treatment of fruit for the prevention of scald, fungus, mold, or decay, nor shall it include sales of feed, seed, seedlings, fertilizer, agents for enhanced pollination including insects such as bees, and spray materials to: (a) Persons who participate in the federal conservation reserve program, the environmental quality incentives program, the wetlands reserve program, and the wildlife habitat incentives program, or their successors administered by the United States department of agriculture; (b) farmers for the purpose of producing for sale any agricultural product; and (c) farmers acting under cooperative habitat development or access contracts with an organization exempt from federal income tax under 26 U.S.C. Sec. 501(c)(3) or the Washington state department of fish and wildlife to produce or improve wildlife habitat on land that the farmer owns or leases.

(9) The term shall not include the sale of or charge made for labor and services rendered in respect to the constructing, repairing, decorating, or improving of new or existing buildings or other structures under, upon, or above real property of or for the United States, any instrumentality thereof, or a county or city housing authority created pursuant to chapter 35.82 RCW, including the installing, or attaching of any article of tangible personal property therein or thereto, whether or not such personal property becomes a part of the realty by virtue of installation. Nor shall the term include the sale of services or charges made for the clearing of land and the moving of earth of or for the United States, any instrumentality thereof, or a county or city housing authority. Nor shall the term include the sale of services or charges made for cleaning up for the United States, or its instrumentalities, radioactive waste and other byproducts of weapons production and nuclear research and development.

(10) Until July 1, 2003, the term shall not include the sale of or charge made for labor and services rendered for environmental remedial action as defined in RCW 82.04.2635(2).

Sec. 408. RCW 82.32.525 and 2003 c 168 s 211 are each amended to read as follows:

(1) A purchaser's cause of action against the seller for over-collected sales or use tax does not accrue until the purchaser has provided written notice to the seller and the seller has sixty days to respond. The notice to the seller must contain the information necessary to determine the validity of the request.

(2) In connection with a purchaser's request from a seller for over-collected sales or use taxes, a seller shall be presumed to have a reasonable business practice, if in the collection of such sales or use taxes, the seller:

(a) Uses either a provider or a system, including a proprietary system, that is certified by the state; and

(b) Has remitted to the state all taxes collected less any deductions, credits, or collection allowances.

Sec. 409. RCW 82.08.080 and 1986 c 36 s 2 are each amended to read as follows:

(1) The department of revenue may authorize a seller to pay the tax levied under this chapter upon sales made under conditions of business such as to

render impracticable the collection of the tax as a separate item and waive collection of the tax from the customer. Where sales are made by ~~((receipt of a coin or coins dropped into a receptacle))~~ a vending machine that results in delivery of the merchandise in single purchases of smaller value than the minimum sale upon which a one cent tax may be collected from the purchaser, according to the schedule provided by the department under authority of RCW 82.08.060, and where the design of the sales device is such that multiple sales of items are not possible or cannot be detected so as practically to assess a tax, in such a case the selling price for the purposes of the tax imposed under RCW 82.08.020 shall be sixty percent of the gross receipts of the vending machine through which such sales are made.

(2) No such authority shall be granted except upon application to the department and unless the department, after hearing, finds that the conditions of the applicant's business are such as to render impracticable the collection of the tax in the manner otherwise provided. The department, by ~~((regulation))~~ rule, may provide that the applicant, under this section, furnish a proper bond sufficient to secure the payment of the tax.

(3) "Vending machine" means a machine or other mechanical device that accepts payment and:

(a) Dispenses tangible personal property;

(b) Provides facilities for installing, repairing, cleaning, altering, imprinting, or improving tangible personal property; or

(c) Provides a service to the buyer.

Sec. 410. RCW 82.04.530 and 2002 c 67 s 3 are each amended to read as follows:

For purposes of this chapter, a telephone business other than a mobile telecommunications service provider must calculate gross proceeds of retail sales ((by including all charges for network telephone services originating from or received on telecommunications equipment or apparatus in this state if the charge for the service is billed to a person in this state)) in a manner consistent with the sourcing rules provided in RCW 82.32.520. The department may adopt rules to implement this section, including rules that provide a formulary method of determining gross proceeds that reasonably approximates the taxable activity of a telephone business.

PART V MISCELLANEOUS

NEW SECTION. Sec. 501. (1) Section 201 of this act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and retroactively takes effect January 1, 2004.

(2) This act takes effect July 1, 2004, except section 201 of this act.

Sec. 502. 2003 c 168 s 902 (uncodified) is amended to read as follows:

(1) If a court of competent jurisdiction enters a final judgment on the merits that is based on federal or state law, is no longer subject to appeal, and substantially limits or impairs the essential elements of P.L. 106-252, 4 U.S.C. Secs. 116 through 126, or chapter 67, Laws of 2002, then chapter 67, Laws of 2002 is null and void in its entirety.

(2) If the contingency in subsection (1) of this section occurs, section 502, chapter 168, Laws of 2003 is null and void.

(3) If the contingency in subsection (1) of this section occurs, section 410, chapter . . . , Laws of 2004 (section 410 of this act) is null and void.

Passed by the Senate March 10, 2004.

Passed by the House March 10, 2004.

Approved by the Governor March 26, 2004.

Filed in Office of Secretary of State March 26, 2004.

CHAPTER 154

[Senate Bill 6259]

INTERNET SERVICE TAX

AN ACT Relating to the taxation of internet services; and amending RCW 35.21.717.

Be it enacted by the Legislature of the State of Washington:

Sec. 1. RCW 35.21.717 and 2002 c 181 s 1 are each amended to read as follows:

Until July 1, ~~((2004))~~ 2006, a city or town may not impose any new taxes or fees specific to internet service providers. A city or town may tax internet service providers under generally applicable business taxes or fees, at a rate not to exceed the rate applied to a general service classification. For the purposes of this section, "internet service" has the same meaning as in RCW 82.04.297.

Passed by the Senate February 13, 2004.

Passed by the House March 3, 2004.

Approved by the Governor March 26, 2004.

Filed in Office of Secretary of State March 26, 2004.

CHAPTER 155

[Substitute Senate Bill 6115]

AMUSEMENT AND RECREATION SERVICES DONATION—USE TAX EXEMPTION

AN ACT Relating to a use tax exemption for amusement and recreation services donated to or by nonprofit organizations or state or local governmental entities; amending RCW 82.12.02595; and declaring an emergency.

Be it enacted by the Legislature of the State of Washington:

Sec. 1. RCW 82.12.02595 and 2003 c 5 s 11 are each amended to read as follows:

(1) This chapter does not apply to the use by a nonprofit charitable organization or state or local governmental entity of any item of tangible personal property that has been donated to the nonprofit charitable organization or state or local governmental entity, or to the subsequent use of the property by a person to whom the property is donated or bailed in furtherance of the purpose for which the property was originally donated.

(2) This chapter does not apply to the donation of tangible personal property without intervening use to a nonprofit charitable organization, or to the incorporation of tangible personal property without intervening use into real or personal property of or for a nonprofit charitable organization in the course of

installing, repairing, cleaning, altering, imprinting, improving, constructing, or decorating the real or personal property for no charge.

(3) This chapter does not apply to the use by a nonprofit charitable organization of labor and services rendered in respect to installing, repairing, cleaning, altering, imprinting, or improving personal property provided to the charitable organization at no charge, or to the donation of such services.

(4) This chapter does not apply to the donation of amusement and recreation services without intervening use to a nonprofit organization or state or local governmental entity, to the use by a nonprofit organization or state or local governmental entity of amusement and recreation services, or to the subsequent use of the services by a person to whom the services are donated or bailed in furtherance of the purpose for which the services were originally donated. As used in this subsection, "amusement and recreation services" has the meaning in RCW 82.04.050(3)(a).

NEW SECTION. Sec. 2. This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately.

Passed by the Senate March 4, 2004.

Passed by the House March 5, 2004.

Approved by the Governor March 26, 2004.

Filed in Office of Secretary of State March 26, 2004.

CHAPTER 156

[Senate Bill 6141]

EXEMPT LICENSE VEHICLES—PROPERTY TAX EXEMPT

AN ACT Relating to the property taxation of vehicles carrying exempt licenses; and amending RCW 84.36.595.

Be it enacted by the Legislature of the State of Washington:

Sec. 1. RCW 84.36.595 and 2000 c 136 s 1 are each amended to read as follows:

(1) For the purposes of this section, the following definitions apply:

(a) "Motor vehicle" means all motor vehicles, trailers, and semitrailers used, or of the type designed primarily to be used, upon the public streets and highways, for the convenience or pleasure of the owner, or for the conveyance, for hire or otherwise, of persons or property, including fixed loads and facilities for human habitation; but shall not include (i) vehicles carrying exempt licenses; (ii) dock and warehouse tractors and their cars or trailers, lumber carriers of the type known as spiders, and all other automotive equipment not designed primarily for use upon public streets or highways; (iii) motor vehicles or their trailers used entirely upon private property; (iv) mobile homes as defined in RCW 46.04.302; or (v) motor vehicles owned by nonresident military personnel of the armed forces of the United States stationed in the state of Washington, provided personnel were also nonresident at the time of their entry into military service.

(b) "Travel trailer" has the meaning given in RCW 46.04.623. However, if a park trailer, as defined in RCW 46.04.622, has substantially lost its identity as a mobile unit by virtue of its being permanently sited in location and placed on a

foundation of either posts or blocks with connections with sewer, water, or other utilities for the operation of installed fixtures and appliances, it will be considered real property and will be subject to ad valorem property taxation imposed in accordance with this title, including the provisions with respect to omitted property, except that a park trailer located on land not owned by the owner of the park trailer will be subject to the personal property provisions of chapter 84.56 RCW and RCW 84.60.040.

(c) "Camper" has the meaning given in RCW 46.04.085.

(2) Motor vehicles, vehicles carrying exempt licenses, travel trailers, and campers are exempt from property taxation.

Passed by the Senate February 12, 2004.

Passed by the House March 5, 2004.

Approved by the Governor March 26, 2004.

Filed in Office of Secretary of State March 26, 2004.

CHAPTER 157

[Engrossed Second Substitute Senate Bill 6274]

COMPETENCY RESTORATION

AN ACT Relating to competency restoration; amending RCW 10.77.010; reenacting and amending RCW 71.05.390; adding new sections to chapter 10.77 RCW; creating new sections; and declaring an emergency.

Be it enacted by the Legislature of the State of Washington:

NEW SECTION. Sec. 1. The legislature finds that recent state and federal case law requires clarification of state statutes with regard to competency evaluations and involuntary medication ordered in the context of competency restoration.

The legislature finds that the court in *Born v. Thompson*, 117 Wn. App. 57 (2003) interpreted the term "nonfatal injuries" in a manner that conflicts with the stated intent of the legislature to: "(1) Clarify that it is the nature of a person's current conduct, current mental condition, history, and likelihood of committing future acts that pose a threat to public safety or himself or herself, rather than simple categorization of offenses, that should determine treatment procedures and level; ... and (3) provide additional opportunities for mental health treatment for persons whose conduct threatens himself or herself or threatens public safety and has led to contact with the criminal justice system" as stated in section 1, chapter 297, Laws of 1998. Consequently, the legislature intends to clarify that it intended "nonfatal injuries" to be interpreted in a manner consistent with the purposes of the competency restoration statutes.

The legislature also finds that the decision in *Sell v. United States*, ___ U.S. ___ (2003), requires a determination whether a particular criminal offense is "serious" in the context of competency restoration and the state's duty to protect the public. The legislature further finds that, in order to adequately protect the public and in order to provide additional opportunities for mental health treatment for persons whose conduct threatens themselves or threatens public safety and has led to contact with the criminal justice system in the state, the determination of those criminal offenses that are "serious" offenses must be made consistently throughout the state. In order to facilitate this consistency, the legislature intends to determine those offenses that are serious in every case as

well as the standards by which other offenses may be determined to be serious. The legislature also intends to clarify that a court may, to the extent permitted by federal law and required by the *Sell* decision, inquire into the civil commitment status of a defendant and may be told, if known.

Sec. 2. RCW 10.77.010 and 2000 c 94 s 12 are each amended to read as follows:

As used in this chapter:

(1) "Admission" means acceptance based on medical necessity, of a person as a patient.

(2) "Commitment" means the determination by a court that a person should be detained for a period of either evaluation or treatment, or both, in an inpatient or a less-restrictive setting.

(3) "Conditional release" means modification of a court-ordered commitment, which may be revoked upon violation of any of its terms.

(4) "County designated mental health professional" has the same meaning as provided in RCW 71.05.020.

(5) A "criminally insane" person means any person who has been acquitted of a crime charged by reason of insanity, and thereupon found to be a substantial danger to other persons or to present a substantial likelihood of committing criminal acts jeopardizing public safety or security unless kept under further control by the court or other persons or institutions.

(6) "Department" means the state department of social and health services.

(7) "Detention" or "detain" means the lawful confinement of a person, under the provisions of this chapter, pending evaluation.

(8) "Developmental disabilities professional" means a person who has specialized training and three years of experience in directly treating or working with persons with developmental disabilities and is a psychiatrist or psychologist, or a social worker, and such other developmental disabilities professionals as may be defined by rules adopted by the secretary.

(9) "Developmental disability" means the condition as defined in RCW 71A.10.020(3).

(10) "Discharge" means the termination of hospital medical authority. The commitment may remain in place, be terminated, or be amended by court order.

(11) "Furlough" means an authorized leave of absence for a resident of a state institution operated by the department designated for the custody, care, and treatment of the criminally insane, consistent with an order of conditional release from the court under this chapter, without any requirement that the resident be accompanied by, or be in the custody of, any law enforcement or institutional staff, while on such unescorted leave.

(12) "Habilitative services" means those services provided by program personnel to assist persons in acquiring and maintaining life skills and in raising their levels of physical, mental, social, and vocational functioning. Habilitative services include education, training for employment, and therapy. The habilitative process shall be undertaken with recognition of the risk to the public safety presented by the individual being assisted as manifested by prior charged criminal conduct.

(13) "History of one or more violent acts" means violent acts committed during: (a) The ten-year period of time prior to the filing of criminal charges;

plus (b) the amount of time equal to time spent during the ten-year period in a mental health facility or in confinement as a result of a criminal conviction.

(14) "Incompetency" means a person lacks the capacity to understand the nature of the proceedings against him or her or to assist in his or her own defense as a result of mental disease or defect.

(15) "Indigent" means any person who is financially unable to obtain counsel or other necessary expert or professional services without causing substantial hardship to the person or his or her family.

(16) "Individualized service plan" means a plan prepared by a developmental disabilities professional with other professionals as a team, for an individual with developmental disabilities, which shall state:

(a) The nature of the person's specific problems, prior charged criminal behavior, and habilitation needs;

(b) The conditions and strategies necessary to achieve the purposes of habilitation;

(c) The intermediate and long-range goals of the habilitation program, with a projected timetable for the attainment;

(d) The rationale for using this plan of habilitation to achieve those intermediate and long-range goals;

(e) The staff responsible for carrying out the plan;

(f) Where relevant in light of past criminal behavior and due consideration for public safety, the criteria for proposed movement to less-restrictive settings, criteria for proposed eventual release, and a projected possible date for release; and

(g) The type of residence immediately anticipated for the person and possible future types of residences.

(17) "Professional person" means:

(a) A psychiatrist licensed as a physician and surgeon in this state who has, in addition, completed three years of graduate training in psychiatry in a program approved by the American medical association or the American osteopathic association and is certified or eligible to be certified by the American board of psychiatry and neurology or the American osteopathic board of neurology and psychiatry;

(b) A psychologist licensed as a psychologist pursuant to chapter 18.83 RCW; or

(c) A social worker with a master's or further advanced degree from an accredited school of social work or a degree deemed equivalent under rules adopted by the secretary.

(18) "Release" means legal termination of the court-ordered commitment under the provisions of this chapter.

(19) "Secretary" means the secretary of the department of social and health services or his or her designee.

(20) "Treatment" means any currently standardized medical or mental health procedure including medication.

(21) "Violent act" means behavior that: (a)(i) Resulted in; (ii) if completed as intended would have resulted in; or (iii) was threatened to be carried out by a person who had the intent and opportunity to carry out the threat and would have resulted in, homicide, nonfatal injuries, or substantial damage to property; or (b) recklessly creates an immediate risk of serious physical injury to another person.

As used in this subsection, "nonfatal injuries" means physical pain or injury, illness, or an impairment of physical condition. "Nonfatal injuries" shall be construed to be consistent with the definition of "bodily injury," as defined in RCW 9A.04.110.

NEW SECTION. Sec. 3. A new section is added to chapter 10.77 RCW to read as follows:

(1) For purposes of determining whether a court may authorize involuntary medication for the purpose of competency restoration pursuant to RCW 10.77.090, a pending charge involving any one or more of the following crimes is a serious offense per se in the context of competency restoration:

(a) Any violent offense, sex offense, serious traffic offense, and most serious offense, as those terms are defined in RCW 9.94A.030;

(b) Any offense, except nonfelony counterfeiting offenses, included in crimes against persons in RCW 9.94A.411;

(c) Any offense contained in chapter 9.41 RCW (firearms and dangerous weapons);

(d) Any offense listed as domestic violence in RCW 10.99.020;

(e) Any offense listed as a harassment offense in chapter 9A.46 RCW;

(f) Any violation of chapter 69.50 RCW that is a class B felony; or

(g) Any city or county ordinance or statute that is equivalent to an offense referenced in this subsection.

(2)(a) In a particular case, a court may determine that a pending charge not otherwise defined as serious by state or federal law or by a city or county ordinance is, nevertheless, a serious offense within the context of competency restoration treatment when the conduct in the charged offense falls within the standards established in (b) of this subsection.

(b) To determine that the particular case is a serious offense within the context of competency restoration, the court must consider the following factors and determine that one or more of the following factors creates a situation in which the offense is serious:

(i) The charge includes an allegation that the defendant actually inflicted bodily or emotional harm on another person or that the defendant created a reasonable apprehension of bodily or emotional harm to another;

(ii) The extent of the impact of the alleged offense on the basic human need for security of the citizens within the jurisdiction;

(iii) The number and nature of related charges pending against the defendant;

(iv) The length of potential confinement if the defendant is convicted; and

(v) The number of potential and actual victims or persons impacted by the defendant's alleged acts.

NEW SECTION. Sec. 4. A new section is added to chapter 10.77 RCW to read as follows:

When the court must make a determination whether to order involuntary medications for the purpose of competency restoration or for maintenance of competency, the court shall inquire, and shall be told, and to the extent that the prosecutor or defense attorney is aware, whether the defendant is the subject of a pending civil commitment proceeding or has been ordered into involuntary treatment pursuant to a civil commitment proceeding.

Sec. 5. RCW 71.05.390 and 2000 c 94 s 9, 2000 c 75 s 6, and 2000 c 74 s 7 are each reenacted and amended to read as follows:

Except as provided in this section, the fact of admission and all information and records compiled, obtained, or maintained in the course of providing services to either voluntary or involuntary recipients of services at public or private agencies shall be confidential.

Information and records may be disclosed only:

(1) In communications between qualified professional persons to meet the requirements of this chapter, in the provision of services or appropriate referrals, or in the course of guardianship proceedings. The consent of the patient, or his or her guardian, shall be obtained before information or records may be disclosed by a professional person employed by a facility unless provided to a professional person: (a) Employed by the facility; (b) who has medical responsibility for the patient's care; (c) who is a county designated mental health professional; (d) who is providing services under chapter 71.24 RCW; (e) who is employed by a state or local correctional facility where the person is confined; or (f) who is providing evaluation, treatment, or follow-up services under chapter 10.77 RCW.

(2) When the communications regard the special needs of a patient and the necessary circumstances giving rise to such needs and the disclosure is made by a facility providing outpatient services to the operator of a care facility in which the patient resides.

(3) When the person receiving services, or his or her guardian, designates persons to whom information or records may be released, or if the person is a minor, when his or her parents make such designation.

(4) To the extent necessary for a recipient to make a claim, or for a claim to be made on behalf of a recipient for aid, insurance, or medical assistance to which he or she may be entitled.

(5) For either program evaluation or research, or both: PROVIDED, That the secretary adopts rules for the conduct of the evaluation or research, or both. Such rules shall include, but need not be limited to, the requirement that all evaluators and researchers must sign an oath of confidentiality substantially as follows:

"As a condition of conducting evaluation or research concerning persons who have received services from (fill in the facility, agency, or person) I,, agree not to divulge, publish, or otherwise make known to unauthorized persons or the public any information obtained in the course of such evaluation or research regarding persons who have received services such that the person who received such services is identifiable.

I recognize that unauthorized release of confidential information may subject me to civil liability under the provisions of state law.

/s/"

(6)(a) To the courts as necessary to the administration of this chapter or to a court ordering an evaluation or treatment under chapter 10.77 RCW solely for the purpose of preventing the entry of any evaluation or treatment order that is inconsistent with any order entered under this chapter.

(b) To a court or its designee in which a motion under chapter 10.77 RCW has been made for involuntary medication of a defendant for the purpose of competency restoration.

(c) Disclosure under this subsection is mandatory for the purpose of the health insurance portability and accountability act.

(7) To law enforcement officers, public health officers, or personnel of the department of corrections or the indeterminate sentence review board for persons who are the subject of the records and who are committed to the custody of the department of corrections or indeterminate sentence review board which information or records are necessary to carry out the responsibilities of their office. Except for dissemination of information released pursuant to RCW 71.05.425 and 4.24.550, regarding persons committed under this chapter under RCW 71.05.280(3) and 71.05.320(2)(c) after dismissal of a sex offense as defined in RCW 9.94A.030, the extent of information that may be released is limited as follows:

(a) Only the fact, place, and date of involuntary commitment, the fact and date of discharge or release, and the last known address shall be disclosed upon request; and

(b) The law enforcement and public health officers or personnel of the department of corrections or indeterminate sentence review board shall be obligated to keep such information confidential in accordance with this chapter; and

(c) Additional information shall be disclosed only after giving notice to said person and his or her counsel and upon a showing of clear, cogent, and convincing evidence that such information is necessary and that appropriate safeguards for strict confidentiality are and will be maintained. However, in the event the said person has escaped from custody, said notice prior to disclosure is not necessary and that the facility from which the person escaped shall include an evaluation as to whether the person is of danger to persons or property and has a propensity toward violence.

(8) To the attorney of the detained person.

(9) To the prosecuting attorney as necessary to carry out the responsibilities of the office under RCW 71.05.330(2) and 71.05.340(1)(b) and 71.05.335. The prosecutor shall be provided access to records regarding the committed person's treatment and prognosis, medication, behavior problems, and other records relevant to the issue of whether treatment less restrictive than inpatient treatment is in the best interest of the committed person or others. Information shall be disclosed only after giving notice to the committed person and the person's counsel.

(10) To appropriate law enforcement agencies and to a person, when the identity of the person is known to the public or private agency, whose health and safety has been threatened, or who is known to have been repeatedly harassed, by the patient. The person may designate a representative to receive the disclosure. The disclosure shall be made by the professional person in charge of the public or private agency or his or her designee and shall include the dates of commitment, admission, discharge, or release, authorized or unauthorized absence from the agency's facility, and only such other information that is pertinent to the threat or harassment. The decision to disclose or not shall not

result in civil liability for the agency or its employees so long as the decision was reached in good faith and without gross negligence.

(11) To appropriate law enforcement agencies, upon request, all necessary and relevant information in the event of a crisis or emergent situation that poses a significant and imminent risk to the public. The decision to disclose or not shall not result in civil liability for the mental health service provider or its employees so long as the decision was reached in good faith and without gross negligence.

(12) To the persons designated in RCW 71.05.425 for the purposes described in that section.

(13) Civil liability and immunity for the release of information about a particular person who is committed to the department under RCW 71.05.280(3) and 71.05.320(2)(c) after dismissal of a sex offense as defined in RCW 9.94A.030, is governed by RCW 4.24.550.

(14) To a patient's next of kin, guardian, or conservator, if any, in the event of death, as provided in RCW 71.05.400.

(15) To the department of health for the purposes of determining compliance with state or federal licensure, certification, or registration rules or laws. However, the information and records obtained under this subsection are exempt from public inspection and copying pursuant to chapter 42.17 RCW.

The fact of admission, as well as all records, files, evidence, findings, or orders made, prepared, collected, or maintained pursuant to this chapter shall not be admissible as evidence in any legal proceeding outside this chapter without the written consent of the person who was the subject of the proceeding except in a subsequent criminal prosecution of a person committed pursuant to RCW 71.05.280(3) or 71.05.320(2)(c) on charges that were dismissed pursuant to chapter 10.77 RCW due to incompetency to stand trial or in a civil commitment proceeding pursuant to chapter 71.09 RCW. The records and files maintained in any court proceeding pursuant to this chapter shall be confidential and available subsequent to such proceedings only to the person who was the subject of the proceeding or his or her attorney. In addition, the court may order the subsequent release or use of such records or files only upon good cause shown if the court finds that appropriate safeguards for strict confidentiality are and will be maintained.

****NEW SECTION. Sec. 6. The department of social and health services shall study and identify in its budget request to the office of financial management the need, options, and plans to address the increasing need for capacity in the forensic units of the state hospitals.***

*Sec. 6 was vetoed. See message at end of chapter.

NEW SECTION. Sec. 7. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected.

NEW SECTION. Sec. 8. This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately.

Passed by the Senate March 8, 2004.

Passed by the House March 3, 2004.

Approved by the Governor March 26, 2004, with the exception of certain items that were vetoed.

Filed in Office of Secretary of State March 26, 2004.

Note: Governor's explanation of partial veto is as follows:

"I am returning herewith, without my approval as to section 6, Engrossed Second Substitute Senate Bill No. 6274 entitled:

"AN ACT Relating to competency restoration;"

This bill defines "nonfatal injuries" and "serious offense" for purposes of competency restoration for criminal defendants found incompetent to stand trial, including involuntary administration of medication.

Section 6 would have directed the Department of Social and Health Services to study and identify, in its budget request to the Office of Financial Management, "the need, options, and plans to address the increasing need for capacity in the forensic units of the state hospitals." Though intended to address an important issue, this language would have intruded on the budget development process of the executive branch. Ultimately, the Legislature will determine what is funded, but it should not attempt to direct development of the proposed budget within the executive branch. Further, Section 6 does not specify the fiscal period to which it applies. Although the section is not codified, it could be interpreted to require such an analysis every year into the future.

For these reasons, I have vetoed section 6 of Engrossed Second Substitute Senate Bill No. 6274.

With the exception of section 6, Engrossed Second Substitute Senate Bill No. 6274 is approved."

CHAPTER 158

[Engrossed Senate Bill 6598]

WHOLESALE TELECOMMUNICATIONS SERVICES BY P.U.D.S

AN ACT Relating to accounting for the provision of wholesale telecommunications services by public utility districts; and amending RCW 54.16.330.

Be it enacted by the Legislature of the State of Washington:

Sec. 1. RCW 54.16.330 and 2000 c 81 s 3 are each amended to read as follows:

(1) A public utility district in existence on June 8, 2000, may construct, purchase, acquire, develop, finance, lease, license, handle, provide, add to, contract for, interconnect, alter, improve, repair, operate, and maintain any telecommunications facilities within or without the district's limits for the following purposes:

- (a) For the district's internal telecommunications needs; and
- (b) For the provision of wholesale telecommunications services within the district and by contract with another public utility district.

Nothing in this subsection shall be construed to authorize public utility districts to provide telecommunications services to end users.

(2) A public utility district providing wholesale telecommunications services shall ensure that rates, terms, and conditions for such services are not unduly or unreasonably discriminatory or preferential. Rates, terms, and conditions are discriminatory or preferential when a public utility district offering rates, terms, and conditions to an entity for wholesale telecommunications services does not offer substantially similar rates, terms, and conditions to all other entities seeking substantially similar services.

(3) ~~((When))~~ A public utility district ~~((establishes a separate utility function for the provision of wholesale telecommunications services, it shall account for any and all revenues and expenditures related to its wholesale telecommunications facilities and services separately from revenues and expenditures related to its internal telecommunications operations))~~ providing wholesale telecommunications services shall not be required to but may establish a separate utility system or function for such purpose. In either case, a public utility district providing wholesale telecommunications services shall separately account for any revenues and expenditures for those services according to standards established by the state auditor pursuant to its authority in chapter 43.09 RCW and consistent with the provisions of this title. Any revenues received from the provision of wholesale telecommunications services must be dedicated to ~~((the utility function that includes the provision of wholesale telecommunications services for))~~ costs incurred to build and maintain ~~((the))~~ any telecommunications facilities constructed, installed, or acquired to provide such services, including payments on debt issued to finance such services, until such time as any bonds or other financing instruments executed after June 8, 2000, and used to finance ~~((the))~~ such telecommunications facilities are discharged or retired.

(4) ~~When a public utility district~~ ~~((establishes a separate utility function for the provision of))~~ provides wholesale telecommunications services, all telecommunications services rendered ~~((by the separate function))~~ to the district for the district's internal telecommunications needs shall be allocated or charged at its true and full value. A public utility district may not charge its nontelecommunications operations rates that are preferential or discriminatory compared to those it charges entities purchasing wholesale telecommunications services.

(5) A public utility district shall not exercise powers of eminent domain to acquire telecommunications facilities or contractual rights held by any other person or entity to telecommunications facilities.

(6) Except as otherwise specifically provided, a public utility district may exercise any of the powers granted to it under this title and other applicable laws in carrying out the powers authorized under this section. Nothing in chapter 81, Laws of 2000 limits any existing authority of a public utility district under this title.

Passed by the Senate February 16, 2004.

Passed by the House March 3, 2004.

Approved by the Governor March 26, 2004.

Filed in Office of Secretary of State March 26, 2004.

CHAPTER 159

[Senate Bill 6123]

CERTIFIED PUBLIC ACCOUNTANTS

AN ACT Relating to modifying the public accountancy act but only with respect to: Expanding board member term limits, extending the experience look-back period for certificate holders, allowing out-of-state CPAs to qualify for a license with three years of public practice experience during the immediate past five years, expanding sanctioning authority over imposters and exam cheaters, and establishing a penalty for imposters whose license or certificate has been

suspended or revoked; amending RCW 18.04.035, 18.04.105, 18.04.180, and 18.04.295; reenacting and amending RCW 18.04.370; prescribing penalties; and providing an effective date.

Be it enacted by the Legislature of the State of Washington:

Sec. 1. RCW 18.04.035 and 2001 c 294 s 3 are each amended to read as follows:

(1) There is created a board of accountancy for the state of Washington to be known as the Washington state board of accountancy. Effective June 30, 2001, the board shall consist of nine members appointed by the governor. Members of the board shall include six persons who have been licensed in this state continuously for the previous ten years. Three members shall be public members qualified to judge whether the qualifications, activities, and professional practice of those regulated under this chapter conform with standards to protect the public interest, including one public member qualified to represent the interests of clients of individuals and firms licensed under this chapter.

(2) The members of the board shall be appointed by the governor to a term of three years. Vacancies occurring during a term shall be filled by appointment for the unexpired term. Upon the expiration of a member's term of office, the member shall continue to serve until a successor has been appointed and has assumed office. The governor shall remove from the board any member whose license to practice has been revoked or suspended and may, after hearing, remove any member of the board for neglect of duty or other just cause. No person who has served ~~((two))~~ three successive complete terms is eligible for reappointment. Appointment to fill an unexpired term is not considered a complete term. In order to stagger their terms, of the two new appointments made to the board upon June 11, 1992, the first appointed member shall serve a term of two years initially.

Sec. 2. RCW 18.04.105 and 2001 c 294 s 7 are each amended to read as follows:

(1) A license to practice public accounting shall be granted by the board to any person:

(a) Who is of good character. Good character, for purposes of this section, means lack of a history of dishonest or felonious acts. The board may refuse to grant a license on the ground of failure to satisfy this requirement only if there is a substantial connection between the lack of good character of the applicant and the professional and ethical responsibilities of a licensee and if the finding by the board of lack of good character is supported by a preponderance of evidence. When an applicant is found to be unqualified for a license because of a lack of good character, the board shall furnish the applicant a statement containing the findings of the board and a notice of the applicant's right of appeal;

(b) Who has met the educational standards established by rule as the board determines to be appropriate;

(c) Who has passed an examination;

(d) Who has had one year of experience which is gained:

(i) Through the use of accounting, issuing reports on financial statements, management advisory, financial advisory, tax, tax advisory, or consulting skills;

(ii) While employed in government, industry, academia, or public practice;

and

(iii) Meeting the competency requirements in a manner as determined by the board to be appropriate and established by board rule; and

(e) Who has paid appropriate fees as established by rule by the board.

(2) The examination described in subsection (1)(c) of this section shall test the applicant's knowledge of the subjects of accounting and auditing, and other related fields the board may specify by rule. The time for holding the examination is fixed by the board and may be changed from time to time. The board shall prescribe by rule the methods of applying for and taking the examination, including methods for grading examinations and determining a passing grade required of an applicant for a license. The board shall to the extent possible see to it that the grading of the examination, and the passing grades, are uniform with those applicable to all other states. The board may make use of all or a part of the uniform certified public accountant examination and advisory grading service of the American Institute of Certified Public Accountants and may contract with third parties to perform administrative services with respect to the examination as the board deems appropriate to assist it in performing its duties under this chapter. The board shall establish by rule provisions for transitioning to a new examination structure or to a new media for administering the examination.

(3) The board shall charge each applicant an examination fee for the initial examination or for reexamination. The applicable fee shall be paid by the person at the time he or she applies for examination, reexamination, or evaluation of educational qualifications. Fees for examination, reexamination, or evaluation of educational qualifications shall be determined by the board under chapter 18.04 RCW. There is established in the state treasury an account to be known as the certified public accountants' account. All fees received from candidates to take any or all sections of the certified public accountant examination shall be used only for costs related to the examination.

(4) Persons who on June 30, 2001, held valid certificates previously issued under this chapter shall be deemed to be certificate holders, subject to the following:

(a) Certificate holders may, prior to June 30, ~~((2004))~~ 2006, petition the board to become licensees by documenting to the board that they have gained one year of experience through the use of accounting, issuing reports on financial statements, management advisory, financial advisory, tax, tax advisory, or consulting skills, without regard to the eight-year limitation set forth in (b) of this subsection, while employed in government, industry, academia, or public practice.

(b) Certificate holders who do not petition to become licensees prior to June 30, ~~((2004))~~ 2006, may after that date petition the board to become licensees by documenting to the board that they have one year of experience acquired within eight years prior to applying for a license through the use of accounting, issuing reports on financial statements, management advisory, financial advisory, tax, tax advisory, or consulting skills in government, industry, academia, or public practice.

(c) Certificate holders who petition the board pursuant to (a) or (b) of this subsection must also meet competency requirements in a manner as determined by the board to be appropriate and established by board rule.

(d) Any certificate holder petitioning the board pursuant to (a) or (b) of this subsection to become a licensee must submit to the board satisfactory proof of having completed an accumulation of one hundred twenty hours of CPE during the thirty-six months preceding the date of filing the petition.

(e) Any certificate holder petitioning the board pursuant to (a) or (b) of this subsection to become a licensee must pay the appropriate fees established by rule by the board.

(5) Certificate holders shall comply with the prohibition against the practice of public accounting in RCW 18.04.345.

(6) Persons who on June 30, 2001, held valid certificates previously issued under this chapter are deemed to hold inactive certificates, subject to renewal as inactive certificates, until they have petitioned the board to become licensees and have met the requirements of subsection (4) of this section. No individual who did not hold a valid certificate before July 1, 2001, is eligible to obtain an inactive certificate.

(7) Persons deemed to hold inactive certificates under subsection (6) of this section shall comply with the prohibition against the practice of public accounting in subsection (8)(b) of this section and RCW 18.04.345, but are not required to display the term inactive as part of their title, as required by subsection (8)(a) of this section until renewal. Certificates renewed to any persons after June 30, 2001, are inactive certificates and the inactive certificate holders are subject to the requirements of subsection (8) of this section.

(8) Persons holding an inactive certificate:

(a) Must use or attach the term "inactive" whenever using the title CPA or certified public accountant or referring to the certificate, and print the word "inactive" immediately following the title, whenever the title is printed on a business card, letterhead, or any other document, including documents published or transmitted through electronic media, in the same font and font size as the title; and

(b) Are prohibited from practicing public accounting.

Sec. 3. RCW 18.04.180 and 2001 c 294 s 8 are each amended to read as follows:

(1) The board shall issue a license to a holder of a certificate/valid license issued by another state that entitles the holder to practice public accountancy, provided that:

(a) Such state makes similar provision to grant reciprocity to a holder of a valid certificate or license in this state;

(b) The applicant meets the CPE requirements of RCW 18.04.215(5);

(c) The applicant meets the good character requirements of RCW 18.04.105(1)(a); and

(d) The applicant passed the examination required for issuance of his or her certificate or license with grades that would have been passing grades at that time in this state and meets all current requirements in this state for issuance of a license at the time application is made; or at the time of the issuance of the applicant's license in the other state, met all the requirements then applicable in this state; or has three years of experience within the five years immediately preceding application or had five years of experience within the ten years immediately preceding application in the practice of public accountancy that meets the requirements prescribed by the board.

(2) The board may accept NASBA's designation of the applicant as substantially equivalent to national standards as meeting the requirement of subsection (1)(d) of this section.

(3) A licensee who has been granted a license under the reciprocity provisions of this section shall notify the board within thirty days if the license or certificate issued in the other jurisdiction has lapsed or if the status of the license or certificate issued in the other jurisdiction becomes otherwise invalid.

Sec. 4. RCW 18.04.295 and 2003 c 290 s 3 are each amended to read as follows:

The board shall have the power to: Revoke, suspend, or refuse to issue, renew, or reinstate a license or certificate; impose a fine in an amount not to exceed thirty thousand dollars plus the board's investigative and legal costs in bringing charges against a certified public accountant, a certificate holder, a licensee, a licensed firm, an applicant, a non-CPA violating the provisions of RCW 18.04.345, or a nonlicensee holding an ownership interest in a licensed firm; may impose full restitution to injured parties; may impose conditions precedent to renewal of a certificate or a license; or may prohibit a nonlicensee from holding an ownership interest in a licensed firm, for any of the following causes:

- (1) Fraud or deceit in obtaining a license, or in any filings with the board;
 - (2) Dishonesty, fraud, or negligence while representing oneself as a nonlicensee owner holding an ownership interest in a licensed firm, a licensee, or a certificate holder;
 - (3) A violation of any provision of this chapter;
 - (4) A violation of a rule of professional conduct promulgated by the board under the authority granted by this chapter;
 - (5) Conviction of a crime or an act constituting a crime under:
 - (a) The laws of this state;
 - (b) The laws of another state, and which, if committed within this state, would have constituted a crime under the laws of this state; or
 - (c) Federal law;
 - (6) Cancellation, revocation, suspension, or refusal to renew the authority to practice as a certified public accountant by any other state for any cause other than failure to pay a fee or to meet the requirements of CPE in the other state;
 - (7) Suspension or revocation of the right to practice matters relating to public accounting before any state or federal agency;
- For purposes of subsections (6) and (7) of this section, a certified copy of such revocation, suspension, or refusal to renew shall be prima facie evidence;
- (8) Failure to maintain compliance with the requirements for issuance, renewal, or reinstatement of a certificate or license, or to report changes to the board;
 - (9) Failure to cooperate with the board by:
 - (a) Failure to furnish any papers or documents requested or ordered by the board;
 - (b) Failure to furnish in writing a full and complete explanation covering the matter contained in the complaint filed with the board or the inquiry of the board;
 - (c) Failure to respond to subpoenas issued by the board, whether or not the recipient of the subpoena is the accused in the proceeding;

(10) Failure by a nonlicensee owner of a licensed firm to comply with the requirements of this chapter or board rule; and

(11) Failure to comply with an order of the board.

Sec. 5. RCW 18.04.370 and 2003 c 290 s 5 and 2003 c 53 s 120 are each reenacted and amended to read as follows:

(1) Any person who violates any provision of this chapter shall be guilty of a crime, as follows:

(a) Any person who violates any provision of this chapter is guilty of a misdemeanor, and upon conviction thereof, shall be subject to a fine of not more than thirty thousand dollars, or to imprisonment for not more than six months, or to both such fine and imprisonment.

(b) Notwithstanding (a) of this subsection, any person who uses a professional title intended to deceive the public, in violation of RCW 18.04.345, having previously entered into a stipulated agreement and order of assurance with the board, is guilty of a class C felony, and upon conviction thereof, is subject to a fine of not more than thirty thousand dollars, or to imprisonment for not more than two years, or to both such fine and imprisonment.

(c) Notwithstanding (a) of this subsection, any person whose license or certificate was suspended or revoked by the board and who uses the CPA professional title intending to deceive the public, in violation of RCW 18.04.345, having previously entered into a stipulated agreement and order of assurance with the board, is guilty of a class C felony, and upon conviction thereof, is subject to a fine of not more than thirty thousand dollars, or to imprisonment for not more than two years, or to both fine and imprisonment.

(2) With the exception of first time violations of RCW 18.04.345, subject to subsection (3) of this section whenever the board has reason to believe that any person is violating the provisions of this chapter it shall certify the facts to the prosecuting attorney of the county in which such person resides or may be apprehended and the prosecuting attorney shall cause appropriate proceedings to be brought against such person.

(3) The board may elect to enter into a stipulated agreement and orders of assurance with persons in violation of RCW 18.04.345 who have not previously been found to have violated the provisions of this chapter. The board may order full restitution to injured parties as a condition of a stipulated agreement and order of assurance.

(4) Nothing herein contained shall be held to in any way affect the power of the courts to grant injunctive or other relief as above provided.

NEW SECTION. **Sec. 6.** Section 5 of this act takes effect July 1, 2004.

Passed by the Senate February 10, 2004.

Passed by the House March 3, 2004.

Approved by the Governor March 26, 2004.

Filed in Office of Secretary of State March 26, 2004.

CHAPTER 160

[Substitute Senate Bill 6655]

BEER AND WINE REPRESENTATIVES

AN ACT Relating to certificates of approval for authorized representatives of beer and wine manufacturers and distributors; amending RCW 66.04.010, 66.24.200, 66.24.203, 66.24.206,

66.24.230, 66.24.250, 66.24.261, 66.24.270, 66.28.010, 66.28.030, 66.28.040, 66.28.042, 66.28.043, 66.28.150, 66.28.155, 66.28.160, 66.28.170, 66.28.180, and 19.126.020; and providing an effective date.

Be it enacted by the Legislature of the State of Washington:

Sec. 1. RCW 66.04.010 and 2000 c 142 s 1 are each amended to read as follows:

In this title, unless the context otherwise requires:

(1) "Alcohol" is that substance known as ethyl alcohol, hydrated oxide of ethyl, or spirit of wine, which is commonly produced by the fermentation or distillation of grain, starch, molasses, or sugar, or other substances including all dilutions and mixtures of this substance. The term "alcohol" does not include alcohol in the possession of a manufacturer or distiller of alcohol fuel, as described in RCW 66.12.130, which is intended to be denatured and used as a fuel for use in motor vehicles, farm implements, and machines or implements of husbandry.

(2) "Authorized representative" means a person who:

(a) Is required to have a federal basic permit issued pursuant to the federal alcohol administration act, 27 U.S.C. Sec. 204;

(b) Has its business located in the United States outside of the state of Washington;

(c) Acquires ownership of beer or wine for transportation into and resale in the state of Washington; and which beer or wine is produced anywhere outside Washington by a brewery or winery which does not hold a certificate of approval issued by the board; and

(d) Is appointed by the brewery or winery referenced in (c) of this subsection as its exclusive authorized representative for marketing and selling its products within the United States in accordance with a written agreement between the authorized representative and such brewery or winery pursuant to this title. The board may waive the requirement for the written agreement of exclusivity in situations consistent with the normal marketing practices of certain products, such as classified growths.

(3) "Beer" means any malt beverage or malt liquor as these terms are defined in this chapter.

~~((3))~~ (4) "Beer distributor" means a person who buys beer from a ~~((brewer or))~~ domestic brewery ~~((located either within or beyond the boundaries of the state))~~, microbrewery, beer certificate of approval holder, or beer importers, or who acquires foreign produced beer from a source outside of the ~~((state of Washington))~~ United States, for the purpose of selling the same pursuant to this title, or who represents such brewer or brewery as agent.

~~((4))~~ (5) "Beer importer" means a person or business within Washington who purchases beer from a ~~((United States brewery holding a))~~ beer certificate of approval ~~((B5))~~ holder or who acquires foreign produced beer from a source outside of the ~~((state of Washington))~~ United States for the purpose of selling the same pursuant to this title.

~~((5))~~ (6) "Brewer" or "brewery" means any person engaged in the business of manufacturing beer and malt liquor. Brewer includes a brand owner of malt beverages who holds a brewer's notice with the federal bureau of alcohol, tobacco, and firearms at a location outside the state and whose malt beverage is contract-produced by a licensed in-state brewery, and who may exercise within

the state, under a domestic brewery license, only the privileges of storing, selling to licensed beer distributors, and exporting beer from the state.

~~((6))~~ (7) "Board" means the liquor control board, constituted under this title.

~~((7))~~ (8) "Club" means an organization of persons, incorporated or unincorporated, operated solely for fraternal, benevolent, educational, athletic or social purposes, and not for pecuniary gain.

~~((8))~~ (9) "Consume" includes the putting of liquor to any use, whether by drinking or otherwise.

~~((9))~~ (10) "Dentist" means a practitioner of dentistry duly and regularly licensed and engaged in the practice of his profession within the state pursuant to chapter 18.32 RCW.

~~((10))~~ (11) "Distiller" means a person engaged in the business of distilling spirits.

~~((11))~~ (12) "Domestic brewery" means a place where beer and malt liquor are manufactured or produced by a brewer within the state.

~~((12))~~ (13) "Domestic winery" means a place where wines are manufactured or produced within the state of Washington.

~~((13))~~ (14) "Druggist" means any person who holds a valid certificate and is a registered pharmacist and is duly and regularly engaged in carrying on the business of pharmaceutical chemistry pursuant to chapter 18.64 RCW.

~~((14))~~ (15) "Drug store" means a place whose principal business is, the sale of drugs, medicines and pharmaceutical preparations and maintains a regular prescription department and employs a registered pharmacist during all hours the drug store is open.

~~((15))~~ (16) "Employee" means any person employed by the board, including a vendor, as hereinafter in this section defined.

~~((16))~~ (17) "Fund" means 'liquor revolving fund.'

~~((17))~~ (18) "Hotel" means every building or other structure kept, used, maintained, advertised or held out to the public to be a place where food is served and sleeping accommodations are offered for pay to transient guests, in which twenty or more rooms are used for the sleeping accommodation of such transient guests and having one or more dining rooms where meals are served to such transient guests, such sleeping accommodations and dining rooms being conducted in the same building and buildings, in connection therewith, and such structure or structures being provided, in the judgment of the board, with adequate and sanitary kitchen and dining room equipment and capacity, for preparing, cooking and serving suitable food for its guests: PROVIDED FURTHER, That in cities and towns of less than five thousand population, the board shall have authority to waive the provisions requiring twenty or more rooms.

~~((18))~~ (19) "Importer" means a person who buys distilled spirits from a distillery outside the state of Washington and imports such spirituous liquor into the state for sale to the board or for export.

~~((19))~~ (20) "Imprisonment" means confinement in the county jail.

~~((20))~~ (21) "Liquor" includes the four varieties of liquor herein defined (alcohol, spirits, wine and beer), and all fermented, spirituous, vinous, or malt liquor, or combinations thereof, and mixed liquor, a part of which is fermented, spirituous, vinous or malt liquor, or otherwise intoxicating; and every liquid or

solid or semisolid or other substance, patented or not, containing alcohol, spirits, wine or beer, and all drinks or drinkable liquids and all preparations or mixtures capable of human consumption, and any liquid, semisolid, solid, or other substance, which contains more than one percent of alcohol by weight shall be conclusively deemed to be intoxicating. Liquor does not include confections or food products that contain one percent or less of alcohol by weight.

~~((21))~~ (22) "Manufacturer" means a person engaged in the preparation of liquor for sale, in any form whatsoever.

~~((22))~~ (23) "Malt beverage" or "malt liquor" means any beverage such as beer, ale, lager beer, stout, and porter obtained by the alcoholic fermentation of an infusion or decoction of pure hops, or pure extract of hops and pure barley malt or other wholesome grain or cereal in pure water containing not more than eight percent of alcohol by weight, and not less than one-half of one percent of alcohol by volume. For the purposes of this title, any such beverage containing more than eight percent of alcohol by weight shall be referred to as "strong beer."

~~((23))~~ (24) "Package" means any container or receptacle used for holding liquor.

~~((24))~~ (25) "Permit" means a permit for the purchase of liquor under this title.

~~((25))~~ (26) "Person" means an individual, copartnership, association, or corporation.

~~((26))~~ (27) "Physician" means a medical practitioner duly and regularly licensed and engaged in the practice of his profession within the state pursuant to chapter 18.71 RCW.

~~((27))~~ (28) "Prescription" means a memorandum signed by a physician and given by him to a patient for the obtaining of liquor pursuant to this title for medicinal purposes.

~~((28))~~ (29) "Public place" includes streets and alleys of incorporated cities and towns; state or county or township highways or roads; buildings and grounds used for school purposes; public dance halls and grounds adjacent thereto; those parts of establishments where beer may be sold under this title, soft drink establishments, public buildings, public meeting halls, lobbies, halls and dining rooms of hotels, restaurants, theatres, stores, garages and filling stations which are open to and are generally used by the public and to which the public is permitted to have unrestricted access; railroad trains, stages, and other public conveyances of all kinds and character, and the depots and waiting rooms used in conjunction therewith which are open to unrestricted use and access by the public; publicly owned bathing beaches, parks, and/or playgrounds; and all other places of like or similar nature to which the general public has unrestricted right of access, and which are generally used by the public.

~~((29))~~ (30) "Regulations" means regulations made by the board under the powers conferred by this title.

~~((30))~~ (31) "Restaurant" means any establishment provided with special space and accommodations where, in consideration of payment, food, without lodgings, is habitually furnished to the public, not including drug stores and soda fountains.

~~((31))~~ (32) "Sale" and "sell" include exchange, barter, and traffic; and also include the selling or supplying or distributing, by any means whatsoever, of

liquor, or of any liquid known or described as beer or by any name whatever commonly used to describe malt or brewed liquor or of wine, by any person to any person; and also include a sale or selling within the state to a foreign consignee or his agent in the state. "Sale" and "sell" shall not include the giving, at no charge, of a reasonable amount of liquor by a person not licensed by the board to a person not licensed by the board, for personal use only. "Sale" and "sell" also does not include a raffle authorized under RCW 9.46.0315: PROVIDED, That the nonprofit organization conducting the raffle has obtained the appropriate permit from the board.

~~((32))~~ (33) "Soda fountain" means a place especially equipped with apparatus for the purpose of dispensing soft drinks, whether mixed or otherwise.

~~((33))~~ (34) "Spirits" means any beverage which contains alcohol obtained by distillation, including wines exceeding twenty-four percent of alcohol by volume.

~~((34))~~ (35) "Store" means a state liquor store established under this title.

~~((35))~~ (36) "Tavern" means any establishment with special space and accommodation for sale by the glass and for consumption on the premises, of beer, as herein defined.

~~((36))~~ (37) "Vendor" means a person employed by the board as a store manager under this title.

~~((37))~~ (38) "Winery" means a business conducted by any person for the manufacture of wine for sale, other than a domestic winery.

~~((38))~~ (39) "Wine" means any alcoholic beverage obtained by fermentation of fruits (grapes, berries, apples, et cetera) or other agricultural product containing sugar, to which any saccharine substances may have been added before, during or after fermentation, and containing not more than twenty-four percent of alcohol by volume, including sweet wines fortified with wine spirits, such as port, sherry, muscatel and angelica, not exceeding twenty-four percent of alcohol by volume and not less than one-half of one percent of alcohol by volume. For purposes of this title, any beverage containing no more than fourteen percent of alcohol by volume when bottled or packaged by the manufacturer shall be referred to as "table wine," and any beverage containing alcohol in an amount more than fourteen percent by volume when bottled or packaged by the manufacturer shall be referred to as "fortified wine." However, "fortified wine" shall not include: (a) Wines that are both sealed or capped by cork closure and aged two years or more; and (b) wines that contain more than fourteen percent alcohol by volume solely as a result of the natural fermentation process and that have not been produced with the addition of wine spirits, brandy, or alcohol.

This subsection shall not be interpreted to require that any wine be labeled with the designation "table wine" or "fortified wine."

~~((39))~~ (40) "Wine distributor" means a person who buys wine from a ~~(vintner or)~~ domestic winery (located either within or beyond the boundaries of the state), wine certificate of approval holder, or wine importer, or who acquires foreign produced wine from a source outside of the United States, for the purpose of selling the same not in violation of this title, or who represents such vintner or winery as agent.

~~((40))~~ (41) "Wine importer" means a person or business within Washington who purchases wine from a ~~(United States winery holding a)~~ wine

certificate of approval (~~((W7))~~) holder or who acquires foreign produced wine from a source outside of the (~~(state of Washington)~~) United States for the purpose of selling the same pursuant to this title.

Sec. 2. RCW 66.24.200 and 1997 c 321 s 5 are each amended to read as follows:

There shall be a license for wine distributors to sell wine, purchased from licensed Washington wineries, wine certificate of approval holders (~~((W7))~~), licensed wine importers, or suppliers of foreign wine located outside of the (~~(state of Washington)~~) United States, to licensed wine retailers and other wine distributors and to export the same from the state; fee six hundred sixty dollars per year for each distributing unit.

Sec. 3. RCW 66.24.203 and 1997 c 321 s 6 are each amended to read as follows:

There shall be a license for wine importers that authorizes the licensee to import wine (~~((manufactured within the United States by))~~) purchased from certificate of approval holders (~~((W7))~~) into the state of Washington. The licensee may also import, from suppliers located outside of the United States, wine manufactured outside the United States.

(1) Wine so imported may be sold to licensed wine distributors or exported from the state.

(2) Every person, firm, or corporation licensed as a wine importer shall establish and maintain a principal office within the state at which shall be kept proper records of all wine imported into the state under this license.

(3) No wine importer's license shall be granted to a nonresident of the state nor to a corporation whose principal place of business is outside the state until such applicant has established a principal office and agent within the state upon which service can be made.

(4) As a requirement for license approval, a wine importer shall enter into a written agreement with the board to furnish on or before the twentieth day of each month, a report under oath, detailing the quantity of wine sold or delivered to each licensed wine distributor. Failure to file such reports may result in the suspension or cancellation of this license.

(5) Wine imported under this license must conform to the provisions of RCW 66.28.110 and have received label approval from the board. The board shall not certify wines labeled with names that may be confused with other nonalcoholic beverages whether manufactured or produced from a domestic winery or imported nor wines that fail to meet quality standards established by the board.

(6) The license fee shall be one hundred sixty dollars per year.

Sec. 4. RCW 66.24.206 and 1997 c 321 s 7 are each amended to read as follows:

(1)(a) A United States winery or manufacturer of wine(;) located outside the state of Washington(;) must hold a certificate of approval ((W7)) to allow sales and shipment of the certificate of approval holder's wine to licensed Washington wine distributors or importers.

(b) Authorized representatives must hold a certificate of approval to allow sales and shipment of United States produced wine to licensed Washington wine distributors or importers.

(c) Authorized representatives must also hold a certificate of approval to allow sales and shipments of foreign produced wine to licensed Washington wine distributors or importers.

(2) The certificate of approval shall not be granted unless and until such winery or manufacturer of wine or authorized representative shall have made a written agreement with the board to furnish to the board, on or before the twentieth day of each month, a report under oath, on a form to be prescribed by the board, showing the quantity of wine sold or delivered to each licensed wine distributor or importer, during the preceding month, and shall further have agreed with the board, that such wineries (~~((or))~~), manufacturers, or authorized representatives, and all general sales corporations or agencies maintained by them, and all of their trade representatives, shall and will faithfully comply with all laws of the state of Washington pertaining to the sale of intoxicating liquors and all rules and regulations of the Washington state liquor control board. A violation of the terms of this agreement will cause the board to take action to suspend or revoke such certificate.

(3) The fee for the certificate of approval, issued pursuant to the provisions of this title, shall be ~~((one hundred dollars per year, which sum shall accompany the application for such certificate))~~ from time to time established by the board at a level that is sufficient to defray the costs of administering the certificate of approval program. The fee shall be fixed by rule by the board in accordance with the provisions of the administrative procedure act, chapter 34.05 RCW.

Sec. 5. RCW 66.24.230 and 1997 c 321 s 10 are each amended to read as follows:

Every domestic winery, wine certificate of approval holder, wine importer, and wine distributor licensed under this title shall make monthly reports to the board pursuant to the regulations. Such domestic winery, wine certificate of approval holder, wine importer, and wine distributor shall make no sales of wine within the state of Washington except to the board, or as otherwise provided in this title.

Sec. 6. RCW 66.24.250 and 2003 c 167 s 2 are each amended to read as follows:

There shall be a license for beer distributors to sell beer and strong beer, purchased from licensed Washington breweries, beer certificate of approval holders (~~((B5))~~), licensed beer importers, or suppliers of foreign beer located outside of the ((state of Washington)) United States, to licensed beer retailers and other beer distributors and to export same from the state of Washington; fee six hundred sixty dollars per year for each distributing unit.

Sec. 7. RCW 66.24.261 and 2003 c 167 s 3 are each amended to read as follows:

There shall be a license for beer importers that authorizes the licensee to import beer and strong beer (~~((manufactured within the United States by))~~ purchased from beer certificate of approval holders (~~((B5))~~) into the state of Washington. The licensee may also import, from suppliers located outside of the United States, beer and strong beer manufactured outside the United States.

(1) Beer and strong beer so imported may be sold to licensed beer distributors or exported from the state.

(2) Every person, firm, or corporation licensed as a beer importer shall establish and maintain a principal office within the state at which shall be kept proper records of all beer and strong beer imported into the state under this license.

(3) No beer importer's license shall be granted to a nonresident of the state nor to a corporation whose principal place of business is outside the state until such applicant has established a principal office and agent within the state upon which service can be made.

(4) As a requirement for license approval, a beer importer shall enter into a written agreement with the board to furnish on or before the twentieth day of each month, a report under oath, detailing the quantity of beer and strong beer sold or delivered to each licensed beer distributor. Failure to file such reports may result in the suspension or cancellation of this license.

(5) Beer and strong beer imported under this license must conform to the provisions of RCW 66.28.120 and have received label approval from the board. The board shall not certify beer or strong beer labeled with names which may be confused with other nonalcoholic beverages whether manufactured or produced from a domestic brewery or imported nor shall it certify beer or strong beer which fails to meet quality standards established by the board.

(6) The license fee shall be one hundred sixty dollars per year.

Sec. 8. RCW 66.24.270 and 2003 c 167 s 4 are each amended to read as follows:

(1) Every person, firm or corporation, holding a license to manufacture malt liquors or strong beer within the state of Washington, shall, on or before the twentieth day of each month, furnish to the Washington state liquor control board, on a form to be prescribed by the board, a statement showing the quantity of malt liquors and strong beer sold for resale during the preceding calendar month to each beer distributor within the state of Washington.

(2)(a) A United States brewery or manufacturer of beer or strong beer, located outside the state of Washington, must hold a certificate of approval ~~((B5))~~ to allow sales and shipment of the certificate of approval holder's beer or strong beer to licensed Washington beer distributors or importers.

(b) Authorized representatives must hold a certificate of approval to allow sales and shipment of United States produced beer or strong beer to licensed Washington beer distributors or importers.

(c) Authorized representatives must also hold a certificate of approval to allow sales and shipments of foreign produced beer or strong beer to licensed Washington beer distributors or importers.

(3) The certificate of approval shall not be granted unless and until such brewer or manufacturer of beer or strong beer or authorized representative shall have made a written agreement with the board to furnish to the board, on or before the twentieth day of each month, a report under oath, on a form to be prescribed by the board, showing the quantity of beer and strong beer sold or delivered to each licensed beer distributor or importer during the preceding month, and shall further have agreed with the board, that such brewer or manufacturer of beer or strong beer or authorized representative and all general sales corporations or agencies maintained by them, and all of their trade representatives, corporations, and agencies, shall and will faithfully comply with all laws of the state of Washington pertaining to the sale of intoxicating liquors

and all rules and regulations of the Washington state liquor control board. A violation of the terms of this agreement will cause the board to take action to suspend or revoke such certificate.

~~((3))~~ (4) The fee for the certificate of approval, issued pursuant to the provisions of this title, shall be ~~((one hundred dollars per year, which sum shall accompany the application for such certificate))~~ from time to time established by the board at a level that is sufficient to defray the costs of administering the certificate of approval program. The fee shall be fixed by rule by the board in accordance with the provisions of the administrative procedure act, chapter 34.05 RCW.

Sec. 9. RCW 66.28.010 and 2002 c 109 s 1 are each amended to read as follows:

(1)(a) No manufacturer, importer, ~~((or))~~ or authorized representative, or person financially interested, directly or indirectly, in such business; whether resident or nonresident, shall have any financial interest, direct or indirect, in any licensed retail business, unless the retail business is owned by a corporation in which a manufacturer or importer has no direct stock ownership and there are no interlocking officers and directors, the retail license is held by a corporation that is not owned directly or indirectly by a manufacturer or importer, the sales of liquor are incidental to the primary activity of operating the property as a hotel, alcoholic beverages produced by the manufacturer or importer or their subsidiaries are not sold at the licensed premises, and the board reviews the ownership and proposed method of operation of all involved entities and determines that there will not be an unacceptable level of control or undue influence over the operation or the retail licensee; nor shall any manufacturer, importer, ~~((or))~~ or authorized representative own any of the property upon which such licensed persons conduct their business; nor shall any such licensed person, under any arrangement whatsoever, conduct his or her business upon property in which any manufacturer, importer, ~~((or))~~ or authorized representative has any interest unless title to that property is owned by a corporation in which a manufacturer has no direct stock ownership and there are no interlocking officers or directors, the retail license is held by a corporation that is not owned directly or indirectly by the manufacturer, the sales of liquor are incidental to the primary activity of operating the property either as a hotel or as an amphitheater offering live musical and similar live entertainment activities to the public, alcoholic beverages produced by the manufacturer or any of its subsidiaries are not sold at the licensed premises, and the board reviews the ownership and proposed method of operation of all involved entities and determines that there will not be an unacceptable level of control or undue influence over the operation of the retail licensee. Except as provided in subsection (3) of this section, no manufacturer, importer, ~~((or))~~ or authorized representative shall advance moneys or moneys' worth to a licensed person under an arrangement, nor shall such licensed person receive, under an arrangement, an advance of moneys or moneys' worth. "Person" as used in this section only shall not include those state or federally chartered banks, state or federally chartered savings and loan associations, state or federally chartered mutual savings banks, or institutional investors which are not controlled directly or indirectly by a manufacturer, importer, ~~((or))~~ or authorized

representative as long as the bank, savings and loan association, or institutional investor does not influence or attempt to influence the purchasing practices of the retailer with respect to alcoholic beverages. Except as otherwise provided in this section, no manufacturer, importer, ~~((or))~~ distributor, or authorized representative shall be eligible to receive or hold a retail license under this title, nor shall such manufacturer, importer, ~~((or))~~ distributor, or authorized representative sell at retail any liquor as herein defined. A corporation granted an exemption under this subsection may use debt instruments issued in connection with financing construction or operations of its facilities.

(b) Nothing in this section shall prohibit a licensed domestic brewery or microbrewery from being licensed as a retailer pursuant to chapter 66.24 RCW for the purpose of selling beer or wine at retail on the brewery premises and nothing in this section shall prohibit a domestic winery from being licensed as a retailer pursuant to chapter 66.24 RCW for the purpose of selling beer or wine at retail on the winery premises. Such beer and wine so sold at retail shall be subject to the taxes imposed by RCW 66.24.290 and 66.24.210 and to reporting and bonding requirements as prescribed by regulations adopted by the board pursuant to chapter 34.05 RCW, and beer and wine that is not produced by the brewery or winery shall be purchased from a licensed beer or wine distributor.

(c) Nothing in this section shall prohibit a licensed distiller, domestic brewery, microbrewery, domestic winery, or a lessee of a licensed domestic brewer, microbrewery, or domestic winery, from being licensed as a spirits, beer, and wine restaurant pursuant to chapter 66.24 RCW for the purpose of selling liquor at a spirits, beer, and wine restaurant premises on the property on which the primary manufacturing facility of the licensed distiller, domestic brewer, microbrewery, or domestic winery is located or on contiguous property owned or leased by the licensed distiller, domestic brewer, microbrewery, or domestic winery as prescribed by rules adopted by the board pursuant to chapter 34.05 RCW.

(2) Financial interest, direct or indirect, as used in this section, shall include any interest, whether by stock ownership, mortgage, lien, or through interlocking directors, or otherwise. Pursuant to rules promulgated by the board in accordance with chapter 34.05 RCW manufacturers, distributors, and importers may perform, and retailers may accept the service of building, rotating and restocking case displays and stock room inventories; rotating and rearranging can and bottle displays of their own products; provide point of sale material and brand signs; price case goods of their own brands; and perform such similar normal business services as the board may by regulation prescribe.

(3)(a) This section does not prohibit a manufacturer, importer, or distributor from providing services to a special occasion licensee for: (i) Installation of draft beer dispensing equipment or advertising, (ii) advertising, pouring, or dispensing of beer or wine at a beer or wine tasting exhibition or judging event, or (iii) a special occasion licensee from receiving any such services as may be provided by a manufacturer, importer, or distributor. Nothing in this section shall prohibit a retail licensee, or any person financially interested, directly or indirectly, in such a retail licensee from having a financial interest, direct or indirect, in a business which provides, for a compensation commensurate in value to the services provided, bottling, canning or other services to a

manufacturer, so long as the retail licensee or person interested therein has no direct financial interest in or control of said manufacturer.

(b) A person holding contractual rights to payment from selling a liquor distributor's business and transferring the license shall not be deemed to have a financial interest under this section if the person (i) lacks any ownership in or control of the distributor, (ii) is not employed by the distributor, and (iii) does not influence or attempt to influence liquor purchases by retail liquor licensees from the distributor.

(c) The board shall adopt such rules as are deemed necessary to carry out the purposes and provisions of subsection (3)(a) of this section in accordance with the administrative procedure act, chapter 34.05 RCW.

(4) A license issued under RCW 66.24.395 does not constitute a retail license for the purposes of this section.

(5) A public house license issued under RCW 66.24.580 does not violate the provisions of this section as to a retailer having an interest directly or indirectly in a liquor-licensed manufacturer.

Sec. 10. RCW 66.28.030 and 1997 c 321 s 47 are each amended to read as follows:

Every (~~licensed brewer,~~) domestic (~~brewer~~) brewery and (~~microbrewer~~) microbrewery, domestic winery, (~~manufacturer holding a~~) certificate of approval holder, licensed wine importer, and licensed beer importer shall be responsible for the conduct of any licensed beer or wine distributor in selling, or contracting to sell, to retail licensees, beer or wine manufactured by such (~~brewer,~~) domestic (~~brewer and microbrewer~~) brewery, microbrewery, domestic winery, manufacturer holding a certificate of approval, sold by an authorized representative holding a certificate of approval, or imported by such beer or wine importer. Where the board finds that any licensed beer or wine distributor has violated any of the provisions of this title or of the regulations of the board in selling or contracting to sell beer or wine to retail licensees, the board may, in addition to any punishment inflicted or imposed upon such distributor, prohibit the sale of the brand or brands of beer or wine involved in such violation to any or all retail licensees within the trade territory usually served by such distributor for such period of time as the board may fix, irrespective of whether the brewer manufacturing such beer or the beer importer importing such beer or the domestic winery manufacturing such wine or the wine importer importing such wine or the certificate of approval holder manufacturing such beer or wine or acting as authorized representative actually participated in such violation.

Sec. 11. RCW 66.28.040 and 2000 c 179 s 1 are each amended to read as follows:

Except as permitted by the board under RCW 66.20.010, no domestic brewery, microbrewery, distributor, distiller, domestic winery, importer, rectifier, certificate of approval holder, or other manufacturer of liquor shall, within the state of Washington, give to any person any liquor; but nothing in this section nor in RCW 66.28.010 shall prevent a domestic brewery, microbrewery, distributor, domestic winery, distiller, certificate of approval holder, or importer from furnishing samples of beer, wine, or spirituous liquor to authorized licensees for the purpose of negotiating a sale, in accordance with regulations

adopted by the liquor control board, provided that the samples are subject to taxes imposed by RCW 66.24.290 and 66.24.210, and in the case of spirituous liquor, any product used for samples must be purchased at retail from the board; nothing in this section shall prevent the furnishing of samples of liquor to the board for the purpose of negotiating the sale of liquor to the state liquor control board; nothing in this section shall prevent a domestic brewery, microbrewery, domestic winery, distillery, certificate of approval holder, or distributor from furnishing beer, wine, or spirituous liquor for instructional purposes under RCW 66.28.150 (~~and 66.28.155~~); nothing in this section shall prevent a domestic winery, certificate of approval holder, or distributor from furnishing wine without charge, subject to the taxes imposed by RCW 66.24.210, to a not-for-profit group organized and operated solely for the purpose of enology or the study of viticulture which has been in existence for at least six months and that uses wine so furnished solely for such educational purposes or a domestic winery, or an out-of-state certificate of approval holder, from furnishing wine without charge or a domestic brewery, or an out-of-state certificate of approval holder, from furnishing beer without charge, subject to the taxes imposed by RCW 66.24.210 or 66.24.290, to a nonprofit charitable corporation or association exempt from taxation under section 501(c)(3) of the internal revenue code of 1986 (26 U.S.C. Sec. 501(c)(3)) for use consistent with the purpose or purposes entitling it to such exemption; nothing in this section shall prevent a (~~brewer~~) domestic brewery or microbrewery from serving beer without charge, on the brewery premises; nothing in this section shall prevent donations of wine for the purposes of RCW 66.12.180; and nothing in this section shall prevent a domestic winery from serving wine without charge, on the winery premises.

Sec. 12. RCW 66.28.042 and 1990 c 125 s 1 are each amended to read as follows:

A liquor manufacturer, importer, authorized representative holding a certificate of approval, or (~~wholesaler~~) distributor may provide to licensed retailers and their employees food and beverages for consumption at a meeting at which the primary purpose is the discussion of business, and may provide local ground transportation to and from such meetings. The value of the food, beverage, or transportation provided under this section shall not be considered the advancement of moneys or moneys' worth within the meaning of RCW 66.28.010, nor shall it be considered the giving away of liquor within the meaning of RCW 68.28.040. The board may adopt rules for the implementation of this section.

Sec. 13. RCW 66.28.043 and 1990 c 125 s 2 are each amended to read as follows:

A liquor manufacturer, importer, authorized representative holding a certificate of approval, or (~~wholesaler~~) distributor may provide to licensed retailers and their employees tickets or admission fees for athletic events or other forms of entertainment occurring within the state of Washington, if the manufacturer, importer, (~~wholesaler~~) distributor, authorized representative holding a certificate of approval, or any of their employees accompanies the licensed retailer or its employees to the event. A liquor manufacturer, importer, authorized representative holding a certificate of approval, or (~~wholesaler~~) distributor may also provide to licensed retailers and their employees food and

beverages for consumption at such events, and local ground transportation to and from activities allowed under this section. The value of the food, beverage, transportation, or admission to events provided under this section shall not be considered the advancement of moneys or moneys' worth within the meaning of RCW 66.28.010, nor shall it be considered the giving away of liquor within the meaning of RCW 68.28.040. The board may adopt rules for the implementation of this section.

Sec. 14. RCW 66.28.150 and 1997 c 39 s 2 are each amended to read as follows:

A domestic brewery, microbrewery, domestic winery, distillery, (~~wholesaler~~) distributor, certificate of approval holder, or its licensed agent may, without charge, instruct licensees and their employees, or conduct courses of instruction for licensees and their employees, on the subject of beer, wine, or spirituous liquor, including but not limited to, the history, nature, values, and characteristics of beer, wine, or spirituous liquor, the use of wine lists, and the methods of presenting, serving, storing, and handling beer, wine, or spirituous liquor. The domestic brewery, microbrewery, domestic winery, distillery, (~~wholesaler~~) distributor, certificate of approval holder, or its licensed agent may furnish beer, wine, or spirituous liquor and such other equipment, materials, and utensils as may be required for use in connection with the instruction or courses of instruction. The instruction or courses of instruction may be given at the premises of the domestic brewery, microbrewery, domestic winery, distillery, or (~~wholesaler~~) authorized representative holding a certificate of approval, at the premises of a retail licensee, or elsewhere within the state of Washington.

Sec. 15. RCW 66.28.155 and 1997 c 39 s 3 are each amended to read as follows:

A domestic brewery, microbrewery, domestic winery, distillery, (~~wholesaler~~) distributor, certificate of approval holder, or its licensed agent may conduct educational activities or provide product information to the consumer on the licensed premises of a retailer. Information on the subject of wine, beer, or spirituous liquor, including but not limited to, the history, nature, quality, and characteristics of a wine, beer, or spirituous liquor, methods of harvest, production, storage, handling, and distribution of a wine, beer, or spirituous liquor, and the general development of the wine, beer, and spirituous liquor industry may be provided by a domestic brewery, microbrewery, domestic winery, distillery, (~~wholesaler~~) distributor, certificate of approval holder, or its licensed agent to the public on the licensed premises of a retailer. The retailer requesting such activity shall attempt to schedule a series of brewery, winery, authorized representative, or distillery and (~~wholesaler~~) distributor appearances in an effort to equitably represent the industries. Nothing in this section permits a domestic brewery, microbrewery, domestic winery, distillery, (~~wholesaler~~) distributor, certificate of approval holder, or its licensed agent to receive compensation or financial benefit from the educational activities or product information presented on the licensed premises of a retailer. The promotional value of such educational activities or product information shall not be considered advancement of moneys or of moneys' worth within the meaning of RCW 66.28.010.

Sec. 16. RCW 66.28.160 and 1985 c 352 s 20 are each amended to read as follows:

No liquor manufacturer, importer, (~~wholesaler~~) distributor, retailer, authorized representative holding a certificate of approval, agent thereof, or campus representative of any of the foregoing, may conduct promotional activities for any liquor product on the campus of any college or university nor may any such entities engage in activities that facilitate or promote the consumption of alcoholic beverages by the students of the college or university at which the activity takes place. This section does not prohibit the following:

- (1) The sale of alcoholic beverages, by retail licensees on their licensed premises, to persons of legal age and condition to consume alcoholic beverages;
- (2) Sponsorship of broadcasting services for events on a college or university campus;
- (3) Liquor advertising in campus publications; or
- (4) Financial assistance to an activity and acknowledgment of the source of the assistance, if the assistance, activity, and acknowledgment are each approved by the college or university administration.

Sec. 17. RCW 66.28.170 and 1997 c 321 s 50 are each amended to read as follows:

It is unlawful for a manufacturer of wine or malt beverages holding a certificate of approval issued under RCW 66.24.270 or 66.24.206 or the manufacturer's authorized representative, a brewery (~~license~~), or a domestic winery (~~license~~) to discriminate in price in selling to any purchaser for resale in the state of Washington.

Sec. 18. RCW 66.28.180 and 1997 c 321 s 51 are each amended to read as follows:

It is unlawful for a person, firm, or corporation holding a certificate of approval issued under RCW 66.24.270 or 66.24.206, a beer distributor's license, a domestic (~~brewer's~~) brewery license, a (~~microbrewer's~~) microbrewery license, a beer importer's license, a beer distributor's license, a domestic winery license, a wine importer's license, or a wine distributor's license within the state of Washington to modify any prices without prior notification to and approval of the board.

(1) Intent. This section is enacted, pursuant to the authority of this state under the twenty-first amendment to the United States Constitution, to promote the public's interest in fostering the orderly and responsible distribution of malt beverages and wine towards effective control of consumption; to promote the fair and efficient three-tier system of distribution of such beverages; and to confirm existing board rules as the clear expression of state policy to regulate the manner of selling and pricing of wine and malt beverages by licensed suppliers and distributors.

(2) Beer and wine distributor price posting.

(a) Every beer or wine distributor shall file with the board at its office in Olympia a price posting showing the wholesale prices at which any and all brands of beer and wine sold by such beer and/or wine distributor shall be sold to retailers within the state.

(b) Each price posting shall be made on a form prepared and furnished by the board, or a reasonable facsimile thereof, and shall set forth:

(i) All brands, types, packages, and containers of beer offered for sale by such beer and/or wine distributor;

(ii) The wholesale prices thereof to retail licensees, including allowances, if any, for returned empty containers.

(c) No beer and/or wine distributor may sell or offer to sell any package or container of beer or wine to any retail licensee at a price differing from the price for such package or container as shown in the price posting filed by the beer and/or wine distributor and then in effect, according to rules adopted by the board.

(d) Quantity discounts are prohibited. No price may be posted that is below acquisition cost plus ten percent of acquisition cost. However, the board is empowered to review periodically, as it may deem appropriate, the amount of the percentage of acquisition cost as a minimum mark-up over cost and to modify such percentage by rule of the board, except such percentage shall be not less than ten percent.

(e) Distributor prices on a "close-out" item shall be accepted by the board if the item to be discontinued has been listed on the state market for a period of at least six months, and upon the further condition that the distributor who posts such a close-out price shall not restock the item for a period of one year following the first effective date of such close-out price.

(f) The board may reject any price posting that it deems to be in violation of this section or any rule, or portion thereof, or that would tend to disrupt the orderly sale and distribution of beer and wine. Whenever the board rejects any posting, the licensee submitting the posting may be heard by the board and shall have the burden of showing that the posting is not in violation of this section or a rule or does not tend to disrupt the orderly sale and distribution of beer and wine. If the posting is accepted, it shall become effective at the time fixed by the board. If the posting is rejected, the last effective posting shall remain in effect until such time as an amended posting is filed and approved, in accordance with the provisions of this section.

(g) All price postings filed as required by this section shall at all times be open to inspection to all trade buyers within the state of Washington and shall not in any sense be considered confidential.

(h) Any beer and/or wine distributor or employee authorized by the distributor-employer may sell beer and/or wine at the distributor's posted prices to any annual or special occasion retail licensee upon presentation to the distributor or employee at the time of purchase of a special permit issued by the board to such licensee.

(i) Every annual or special occasion retail licensee, upon purchasing any beer and/or wine from a distributor, shall immediately cause such beer or wine to be delivered to the licensed premises, and the licensee shall not thereafter permit such beer to be disposed of in any manner except as authorized by the license.

(ii) Beer and wine sold as provided in this section shall be delivered by the distributor or an authorized employee either to the retailer's licensed premises or directly to the retailer at the distributor's licensed premises. A distributor's prices to retail licensees shall be the same at both such places of delivery.

(3) Beer and wine suppliers' price filings, contracts, and memoranda.

(a) Every domestic brewery, microbrewery, and domestic winery offering beer and/or wine for sale within the state shall file with the board at its office in Olympia a copy of every written contract and a memorandum of every oral

agreement which such brewery or winery may have with any beer or wine distributor, which contracts or memoranda shall contain a schedule of prices charged to distributors for all items and all terms of sale, including all regular and special discounts; all advertising, sales and trade allowances, and incentive programs; and all commissions, bonuses or gifts, and any and all other discounts or allowances. Whenever changed or modified, such revised contracts or memoranda shall forthwith be filed with the board as provided for by rule. The provisions of this section also apply to certificate of approval holders, beer and/or wine importers, and beer and/or wine distributors who sell to other beer and/or wine distributors.

Each price schedule shall be made on a form prepared and furnished by the board, or a reasonable facsimile thereof, and shall set forth all brands, types, packages, and containers of beer or wine offered for sale by such licensed brewery or winery; all additional information required may be filed as a supplement to the price schedule forms.

(b) Prices filed by a domestic brewery ((☞)), microbrewery, domestic winery, or certificate of approval holder shall be uniform prices to all distributors on a statewide basis less bona fide allowances for freight differentials. Quantity discounts are prohibited. No price shall be filed that is below acquisition/production cost plus ten percent of that cost, except that acquisition cost plus ten percent of acquisition cost does not apply to sales of beer or wine between a beer or wine importer who sells beer or wine to another beer or wine importer or to a beer or wine distributor, or to a beer or wine distributor who sells beer or wine to another beer or wine distributor. However, the board is empowered to review periodically, as it may deem appropriate, the amount of the percentage of acquisition/production cost as a minimum mark-up over cost and to modify such percentage by rule of the board, except such percentage shall be not less than ten percent.

(c) No domestic brewery, microbrewery, domestic winery, certificate of approval holder, beer or wine importer, or beer or wine distributor may sell or offer to sell any beer or wine to any persons whatsoever in this state until copies of such written contracts or memoranda of such oral agreements are on file with the board.

(d) No domestic brewery ((☞)), microbrewery, domestic winery, or certificate of approval holder may sell or offer to sell any package or container of beer or wine to any distributor at a price differing from the price for such package or container as shown in the schedule of prices filed by the domestic brewery ((☞)), microbrewery, domestic winery, or certificate of approval holder and then in effect, according to rules adopted by the board.

(e) The board may reject any supplier's price filing, contract, or memorandum of oral agreement, or portion thereof that it deems to be in violation of this section or any rule or that would tend to disrupt the orderly sale and distribution of beer or wine. Whenever the board rejects any such price filing, contract, or memorandum, the licensee submitting the price filing, contract, or memorandum may be heard by the board and shall have the burden of showing that the price filing, contract, or memorandum is not in violation of this section or a rule or does not tend to disrupt the orderly sale and distribution of beer or wine. If the price filing, contract, or memorandum is accepted, it shall become effective at a time fixed by the board. If the price filing, contract, or

memorandum, or portion thereof, is rejected, the last effective price filing, contract, or memorandum shall remain in effect until such time as an amended price filing, contract, or memorandum is filed and approved, in accordance with the provisions of this section.

(f) All prices, contracts, and memoranda filed as required by this section shall at all times be open to inspection to all trade buyers within the state of Washington and shall not in any sense be considered confidential.

Sec. 19. RCW 19.126.020 and 2003 c 59 s 2 are each amended to read as follows:

The definitions set forth in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Agreement of distributorship" means any contract, agreement, commercial relationship, license, association, or any other arrangement, for a definite or indefinite period, between a supplier and distributor.

(2) "Distributor" means any person, including but not limited to a component of a supplier's distribution system constituted as an independent business, importing or causing to be imported into this state, or purchasing or causing to be purchased within this state, any malt beverage for sale or resale to retailers licensed under the laws of this state, regardless of whether the business of such person is conducted under the terms of any agreement with a malt beverage manufacturer.

(3) "Supplier" means any malt beverage manufacturer or importer who enters into or is a party to any agreement of distributorship with a wholesale distributor. "Supplier" does not include: (a) Any domestic ~~((brewer))~~ brewery or ~~((microbrewer))~~ microbrewery licensed under RCW 66.24.240 and producing less than fifty thousand barrels of malt liquor annually; ~~((or))~~ (b) any brewer or manufacturer of malt liquor producing less than fifty thousand barrels of malt liquor annually and holding a certificate of approval issued under RCW 66.24.270; or (c) any authorized representative of malt liquor manufacturers who holds an appointment from one or more malt liquor manufacturers which, in the aggregate, produce less than fifty thousand barrels of malt liquor.

(4) "Malt beverage manufacturer" means every brewer, fermenter, processor, bottler, or packager of malt beverages located within or outside this state, or any other person, whether located within or outside this state, who enters into an agreement of distributorship for the resale of malt beverages in this state with any wholesale distributor doing business in the state of Washington.

(5) "Importer" means any distributor importing beer into this state for sale to retailer accounts or for sale to other ~~((wholesalers))~~ distributors designated as "subjobbers" for resale.

(6) "Authorized representative" has the same meaning as "authorized representative" as defined in RCW 66.04.010.

(7) "Person" means any natural person, corporation, partnership, trust, agency, or other entity, as well as any individual officers, directors, or other persons in active control of the activities of such entity.

NEW SECTION. Sec. 20. This act takes effect January 1, 2005.

Passed by the Senate March 9, 2004.

Passed by the House March 4, 2004.

Approved by the Governor March 26, 2004.
Filed in Office of Secretary of State March 26, 2004.

CHAPTER 161

[Substitute Senate Bill 6302]

ACTIVE DUTY MILITARY RIGHTS

AN ACT Relating to persons ordered to active military service; amending RCW 28B.15.600, 28B.15.605, 28B.15.625, and 84.56.020; adding a new section to chapter 28B.10 RCW; adding a new section to chapter 61.24 RCW; and declaring an emergency.

Be it enacted by the Legislature of the State of Washington:

NEW SECTION. Sec. 1. A new section is added to chapter 28B.10 RCW to read as follows:

(1) A member of the Washington national guard or any other military reserve component who is a student at an institution of higher education and who is ordered for a period exceeding thirty days to either active state service, as defined in RCW 38.04.010, or to federal active military service has the following rights:

(a) With regard to courses in which the person is enrolled, the person may:

(i) Withdraw from one or more courses for which tuition and fees have been paid that are attributable to the courses. The tuition and fees must be credited to the person's account at the institution. Any refunds are subject to the requirements of the state or federal financial aid programs of origination. In such a case, the student shall not receive credit for the courses and shall not receive a failing grade, an incomplete, or other negative annotation on the student's record, and the student's grade point average shall not be altered or affected in any manner because of action under this item;

(ii) Be given a grade of incomplete and be allowed to complete the course upon release from active duty under the institution's standard practice for completion of incompletes; or

(iii) Continue and complete the course for full credit. Class sessions the student misses due to performance of state or federal active military service must be counted as excused absences and must not be used in any way to adversely impact the student's grade or standing in the class. Any student who selects this option is not, however, automatically excused from completing assignments due during the period the student is performing state or federal active military service. A letter grade or a grade of pass must only be awarded if, in the opinion of the faculty member teaching the course, the student has completed sufficient work and has demonstrated sufficient progress toward meeting course requirements to justify the grade;

(b) To receive a refund of amounts paid for room, board, and fees attributable to the time period during which the student was serving in state or federal active military service and did not use the facilities or services for which the amounts were paid. Any refund of room, board, and fees is subject to the requirements of the state or federal financial aid programs of origination; and

(c) If the student chooses to withdraw, the student has the right to be readmitted and enrolled as a student at the institution, without penalty or redetermination of admission eligibility, within one year following release from the state or federal active military service.

(2) The protections in this section may be invoked as follows:

(a) The person, or an appropriate officer from the military organization in which the person will be serving, must give written notice that the person is being, or has been, ordered to qualifying service; and

(b) Upon written request from the institution, the person shall provide written verification of service.

(3) This section provides minimum protections for students. Nothing in this section prevents institutions of higher education from providing additional options or protections to students who are ordered to state or federal active military service.

Sec. 2. RCW 28B.15.600 and 2003 c 319 s 1 are each amended to read as follows:

(1) The governing boards of the state universities, the regional universities, and The Evergreen State College may refund or cancel in full the tuition and services and activities fees if the student withdraws from a university or college course or program prior to the sixth day of instruction of the quarter or semester for which the fees have been paid or are due. If the student withdraws on or after the sixth day of instruction, the governing boards may refund or cancel up to one-half of the fees, provided such withdrawal occurs within the first thirty calendar days following the beginning of instruction. However, if a different policy is required by federal law in order for the institution of higher education to maintain eligibility for federal funding of programs, the governing board may adopt a refund policy that meets the minimum requirements of the federal law, and the policy may treat all students attending the institution in the same manner. Additionally, if federal law provides that students who receive federal financial aid must return a larger amount to the federal government than that refunded by the institution, the governing board may adopt a refund policy that uses the formula used to calculate the amount returned to the federal government, and the policy may treat all students attending the institution in the same manner.

(2) The governing boards of the respective universities and college may adopt rules for the refund of tuition and fees for courses or programs that begin after the start of the regular quarter or semester.

(3) The governing boards may extend the refund or cancellation period for students who withdraw for medical reasons ~~((or))~~, shall adopt policies that comply with section 1 of this act for students who are called into the military service of the United States, and may refund other fees pursuant to such rules as they may prescribe.

Sec. 3. RCW 28B.15.605 and 1995 c 36 s 2 are each amended to read as follows:

(1) The governing boards of the community colleges and technical colleges shall refund or cancel up to one hundred percent but no less than eighty percent of the tuition and services and activities fees if the student withdraws from a college course or program before the sixth day of instruction of the regular quarter for which the fees have been paid or are due. If the student withdraws on or after the sixth day of instruction, the governing boards shall refund or cancel up to fifty percent but no less than forty percent of the fees provided such withdrawal occurs within the first twenty calendar days following the beginning of instruction. However, if a different policy is required by federal law in order

for the college to maintain eligibility for federal funding of programs, the governing board may adopt a refund policy that meets the minimum requirements of the federal law and the policy may treat all students attending the institution in the same manner.

(2) The governing boards of the respective community college or technical college shall adopt rules consistent with subsection (1) of this section for the refund of tuition and fees for the summer quarter and for courses or programs that begin after the start of the regular quarter.

(3) The governing boards of community colleges and technical colleges ~~((may adopt rules to comply with RCW 28B.15.623 and))~~ may extend the refund or cancellation period for students who withdraw for medical reasons ~~((or))~~ and shall adopt policies that comply with section 1 of this act for students who are called into the military service of the United States.

Sec. 4. RCW 28B.15.625 and 1991 c 164 s 10 are each amended to read as follows:

Private vocational schools and private higher education institutions are encouraged to provide students ~~((deployed either to the Persian Gulf combat zone, as designated by the president of the United States through executive order, or in another location in support of the Persian Gulf combat zone, with the choice of tuition refunds or one free term, as provided under RCW 28B.10.017 and 28B.15.623 for))~~ who are members of the Washington national guard or any other military reserve component and who are ordered for a period exceeding thirty days into active state service or federal active military service the same rights and opportunities provided under section 1 of this act by public higher education institutions.

NEW SECTION. **Sec. 5.** A new section is added to chapter 61.24 RCW to read as follows:

All of the rights, duties, and privileges conveyed under the federal servicemembers civil relief act, P.L. 108-189, are applicable to deeds of trust under Washington law.

Sec. 6. RCW 84.56.020 and 1996 c 153 s 1 are each amended to read as follows:

(1) The county treasurer shall be the receiver and collector of all taxes extended upon the tax rolls of the county, whether levied for state, county, school, bridge, road, municipal or other purposes, and also of all fines, forfeitures or penalties received by any person or officer for the use of his or her county. All taxes upon real and personal property made payable by the provisions of this title shall be due and payable to the treasurer on or before the thirtieth day of April and, except as provided in this section, shall be delinquent after that date.

(2) Each tax statement shall include a notice that checks for payment of taxes may be made payable to "Treasurer of County" or other appropriate office, but tax statements shall not include any suggestion that checks may be made payable to the name of the individual holding the office of treasurer nor any other individual.

(3) When the total amount of tax or special assessments on personal property or on any lot, block or tract of real property payable by one person is fifty dollars or more, and if one-half of such tax be paid on or before the thirtieth

day of April, the remainder of such tax shall be due and payable on or before the thirty-first day of October following and shall be delinquent after that date.

(4) When the total amount of tax or special assessments on any lot, block or tract of real property or on any mobile home payable by one person is fifty dollars or more, and if one-half of such tax be paid after the thirtieth day of April but before the thirty-first day of October, together with the applicable interest and penalty on the full amount of tax payable for that year, the remainder of such tax shall be due and payable on or before the thirty-first day of October following and shall be delinquent after that date.

(5) Delinquent taxes under this section are subject to interest at the rate of twelve percent per annum computed on a monthly basis on the full year amount of tax unpaid from the date of delinquency until paid. Interest shall be calculated at the rate in effect at the time of payment of the tax, regardless of when the taxes were first delinquent. In addition, delinquent taxes under this section are subject to penalties as follows:

(a) A penalty of three percent of the full year amount of tax unpaid shall be assessed on the tax delinquent on June 1st of the year in which the tax is due.

(b) An additional penalty of eight percent shall be assessed on the amount of tax delinquent on December 1st of the year in which the tax is due.

(6) Subsection (5) of this section notwithstanding, no interest or penalties may be assessed for the period April 30, ~~((1996))~~ 2003, through ~~((December 31, 1996))~~ April 30, 2005, on delinquent taxes imposed ~~((in 1995))~~ for collection in ~~((1996))~~ 2003 or 2004 which are imposed on the personal residences owned by military personnel who participated in the situation known as "~~((Joint Endeavor))~~ Operation Enduring Freedom."

(7) For purposes of this chapter, "interest" means both interest and penalties.

(8) All collections of interest on delinquent taxes shall be credited to the county current expense fund; but the cost of foreclosure and sale of real property, and the fees and costs of distraint and sale of personal property, for delinquent taxes, shall, when collected, be credited to the operation and maintenance fund of the county treasurer prosecuting the foreclosure or distraint or sale; and shall be used by the county treasurer as a revolving fund to defray the cost of further foreclosure, distraint and sale for delinquent taxes without regard to budget limitations.

NEW SECTION. Sec. 7. This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately.

Passed by the Senate March 9, 2004.

Passed by the House March 5, 2004.

Approved by the Governor March 26, 2004.

Filed in Office of Secretary of State March 26, 2004.

CHAPTER 162

[Substitute Senate Bill 6377]

HOTEL-MOTEL LICENSE RENEWAL

AN ACT Relating to renewal of transient accommodation licenses; and amending RCW 70.62.260.

Be it enacted by the Legislature of the State of Washington:

Sec. 1. RCW 70.62.260 and 1994 c 250 s 6 are each amended to read as follows:

(1) No person shall operate a transient accommodation as defined in this chapter without having a valid license issued by the department. Applications for a transient accommodation license shall be filed with the department sixty days or more before initiating business as a transient accommodation. All licenses issued under the provisions of this chapter shall expire one year from the effective date.

(2) All applications for renewal of licenses shall be ~~((made thirty days or more prior to the date of expiration of the license))~~ either: (a) Postmarked no later than midnight on the date the license expires; or (b) if personally presented to the department or sent by electronic means, received by the department by 5:00 p.m. on the date the license expires.

(3) A licensee that submits a license renewal application in accordance with this section and the rules and fee schedule adopted under this chapter shall be deemed to possess a valid license for the year following the expiration date of the expiring license, or until the department suspends or revokes the license pursuant to RCW 70.62.270.

(4) The license of a licensee that fails to submit a license renewal application in accordance with this section, and the rules and fee schedule adopted under this chapter, shall become invalid on the thirty-fifth day after the expiration date, unless the licensee shall have corrected any and all deficiencies in the renewal application and paid a penalty fee as established by rule by the department before the thirty-fifth day following the expiration date. An invalid license may be reinstated upon reapplication as an applicant for a new license under subsection (1) of this section.

(5) Each license shall be issued only for the premises and persons named in the application.

Passed by the Senate February 17, 2004.

Passed by the House March 3, 2004.

Approved by the Governor March 26, 2004.

Filed in Office of Secretary of State March 26, 2004.

CHAPTER 163

[Senate Bill 6356]

INDUSTRIAL INSURANCE CLAIM PROCESSING BY PHYSICIANS' ASSISTANTS

AN ACT Relating to physician assistants executing a certain certificate for labor and industries; adding a new section to chapter 51.28 RCW; creating a new section; providing an effective date; and providing an expiration date.

Be it enacted by the Legislature of the State of Washington:

NEW SECTION. **Sec. 1.** A new section is added to chapter 51.28 RCW to read as follows:

Physician assistants practicing with physician supervision as required by chapters 18.57A and 18.71A RCW may assist workers who suffer simple industrial injuries in making application for compensation under this title as specified in RCW 51.28.020. Physician assistants may not rate a worker's

permanent partial disability under RCW 51.32.055, or determine a worker's entitlement to benefits under chapter 51.32 RCW. The department shall adopt rules necessary to implement this section, including rules identifying simple industrial injuries using diagnosis codes and other relevant criteria.

NEW SECTION. Sec. 2. By December 1, 2006, the department of labor and industries shall report to the senate committee on commerce and trade and the house committee on commerce and labor, or successor committees, on the implementation of this act, including but not limited to the effects of this act on injured worker outcomes, claim costs, and disputed claims.

NEW SECTION. Sec. 3. This act takes effect July 1, 2004.

NEW SECTION. Sec. 4. Sections 1 and 2 of this act expire July 1, 2007.

Passed by the Senate March 10, 2004.

Passed by the House March 3, 2004.

Approved by the Governor March 26, 2004.

Filed in Office of Secretary of State March 26, 2004.

CHAPTER 164

[Engrossed Senate Bill 6158]

INSURANCE GUARANTEES

AN ACT Relating to the Washington insurance guarantee association act; and creating a new section.

Be it enacted by the Legislature of the State of Washington:

NEW SECTION. Sec. 1. The legislature finds that the consumers who purchase workers' compensation insurance from the private marketplace in Washington are not protected from the insolvency and liquidation of these insurers. The legislature further finds that it is in the best interest of the citizens of this state to provide a mechanism to protect these policyholders from the insolvency of their insurers. The insurance commissioner shall study the impact of covering workers' compensation policies purchased on the commercial market under the Washington guarantee association.

The insurance commissioner shall study and develop recommendations regarding the following:

The impact and effectiveness of covering longshore and harbor workers' compensation act insurance, as defined in 33 U.S.C. Sec. 901 et seq., under the Washington guarantee association. In the conduct of this study, the insurance commissioner shall consult with appropriate state agencies; United States longshore and harbor workers' compensation act insurers; insurance carriers; insurance agents and brokers; organized labor; the United States longshore and harbor workers' compensation act assigned risk plan; and maritime employers. The department of labor and industries shall consult with this study on an ex officio basis.

The insurance commissioner also shall examine the impact of excluding from guarantee protection workers' compensation policies purchased on the commercial market for employments identified in RCW 51.12.020 and the impact of excluding workers' compensation policies purchased by tribal

employers and other groups affected by commercial market workers' compensation products.

The insurance commissioner shall report the results of these studies to the legislature not later than December 1, 2004.

Passed by the Senate March 9, 2004.

Passed by the House March 3, 2004.

Approved by the Governor March 26, 2004.

Filed in Office of Secretary of State March 26, 2004.

CHAPTER 165

[Substitute Senate Bill 6189]

RECEIVERSHIPS

AN ACT Relating to receiverships; amending RCW 4.28.320, 6.32.100, 6.32.150, 7.08.010, 7.08.030, 7.56.110, 11.64.022, 23B.14.320, 24.06.305, 87.56.065, and 87.56.100; adding new sections to chapter 7.60 RCW; adding a new section to chapter 31.12 RCW; adding a new section to chapter 35.07 RCW; adding a new section to chapter 35A.15 RCW; creating new sections; and repealing RCW 4.28.081, 6.25.200, 6.32.290, 6.32.300, 6.32.310, 6.32.320, 6.32.330, 6.32.340, 6.32.350, 7.08.020, 7.08.050, 7.08.060, 7.08.070, 7.08.080, 7.08.090, 7.08.100, 7.08.110, 7.08.120, 7.08.130, 7.08.140, 7.08.150, 7.08.170, 7.08.180, 7.08.190, 7.08.200, 7.60.010, 7.60.020, 7.60.030, 7.60.040, 7.60.050, 23.72.010, 23.72.020, 23.72.030, 23.72.040, 23.72.050, 23.72.060, 24.03.275, 24.03.280, 24.03.285, 24.03.310, 24.03.315, 24.03.320, 87.56.070, 87.56.080, 87.56.085, 87.56.090, 87.56.110, 87.56.120, 87.56.130, 87.56.135, 87.56.140, 87.56.145, 87.56.150, and 87.56.155.

Be it enacted by the Legislature of the State of Washington:

NEW SECTION. Sec. 1. PURPOSE. The purpose of this act is to create more comprehensive, streamlined, and cost-effective procedures applicable to proceedings in which property of a person is administered by the courts of this state for the benefit of creditors and other persons having an interest therein.

NEW SECTION. Sec. 2. A new section is added to chapter 7.60 RCW to read as follows:

DEFINITIONS. The definitions in this section apply throughout this chapter unless the context requires otherwise.

(1) "Court" means the superior court of this state in which the receivership is pending.

(2) "Entity" means a person other than a natural person.

(3) "Estate" means the entirety of the property with respect to which a receiver's appointment applies, but does not include trust fund taxes or property of an individual person exempt from execution under the laws of this state. Estate property includes any nonexempt interest in property that is partially exempt, including fee title to property subject to a homestead exemption under chapter 6.13 RCW.

(4) "Executory contract" means a contract where the obligation of both the person over whose property the receiver is appointed and the other party to the contract are so far unperformed that the failure of either party to the contract to complete performance would constitute a material breach of the contract, thereby excusing the other party's performance of the contract.

(5) "Insolvent" or "insolvency" means a financial condition of a person such that the sum of the person's debts and other obligations is greater than all of that person's property, at a fair valuation, exclusive of (a) property transferred, concealed, or removed with intent to hinder, delay, or defraud any creditors of

the person, and (b) any property exempt from execution under any statutes of this state.

(6) "Lien" means a charge against or interest in property to secure payment of a debt or the performance of an obligation.

(7) "Notice and a hearing" or any similar phrase means notice and opportunity for a hearing.

(8) "Person" means an individual, corporation, limited liability company, general partnership, limited partnership, limited liability partnership, association, governmental entity, or other entity, of any kind or nature.

(9) "Property" includes all right, title, and interests, both legal and equitable, and including any community property interest, in or with respect to any property of a person with respect to which a receiver is appointed, regardless of the manner by which the property has been or is acquired. "Property" includes any proceeds, products, offspring, rents, or profits of or from property in the estate. "Property" does not include any power that a person may exercise solely for the benefit of another person or trust fund taxes.

(10) "Receiver" means a person appointed by the court as the court's agent, and subject to the court's direction, to take possession of, manage, or dispose of property of a person.

(11) "Receivership" means the case in which the receiver is appointed. "General receivership" means a receivership in which a general receiver is appointed. "Custodial receivership" means a receivership in which a custodial receiver is appointed.

(12) "Security interest" means a lien created by an agreement.

(13) "State agent" and "state agency" means any office, department, division, bureau, board, commission, or other agency of the state of Washington or of any subdivision thereof, or any individual acting in an official capacity on behalf of any state agent or state agency.

(14) "Utility" means a person providing any service regulated by the utilities and transportation commission.

NEW SECTION. Sec. 3. A new section is added to chapter 7.60 RCW to read as follows:

TYPES OF RECEIVERS. A receiver must be either a general receiver or a custodial receiver. A receiver must be a general receiver if the receiver is appointed to take possession and control of all or substantially all of a person's property with authority to liquidate that property and, in the case of a business over which the receiver is appointed, wind up affairs. A receiver must be a custodial receiver if the receiver is appointed to take charge of limited or specific property of a person or is not given authority to liquidate property. The court shall specify in the order appointing a receiver whether the receiver is appointed as a general receiver or as a custodial receiver. When the sole basis for the appointment is the pendency of an action to foreclose upon a lien against real property, or the giving of a notice of a trustee's sale under RCW 61.24.040 or a notice of forfeiture under RCW 61.30.040, the court shall appoint the receiver as a custodial receiver. The court by order may convert either a general receivership or a custodial receivership into the other.

NEW SECTION. Sec. 4. A new section is added to chapter 7.60 RCW to read as follows:

APPOINTMENT OF RECEIVER. (1) A receiver may be appointed by the superior court of this state in the following instances, but except in any case in which a receiver's appointment is expressly required by statute, or any case in which a receiver's appointment is sought by a state agent whose authority to seek the appointment of a receiver is expressly conferred by statute, or any case in which a receiver's appointment with respect to real property is sought under (b)(ii) of this subsection, a receiver shall be appointed only if the court additionally determines that the appointment of a receiver is reasonably necessary and that other available remedies either are not available or are inadequate:

(a) On application of any party, when the party is determined to have a probable right to or interest in property that is a subject of the action and in the possession of an adverse party, or when the property or its revenue-producing potential is in danger of being lost or materially injured or impaired. A receiver may be appointed under this subsection (1)(a) whether or not the application for appointment of a receiver is combined with, or is ancillary to, an action seeking a money judgment or other relief;

(b) Provisionally, during the pendency of any action to foreclose upon any lien against or for forfeiture of any interest in real or personal property, or after notice of a trustee's sale has been given under RCW 61.24.040, or after notice of forfeiture has been given under RCW 61.30.040, on application of any person, when the interest in the property that is the subject of foreclosure or forfeiture of the person seeking the receiver's appointment is determined to be probable and either:

(i) The property or its revenue-producing potential is in danger of being lost or materially injured or impaired; or

(ii) The appointment of a receiver with respect to the real or personal property that is the subject of the action, the notice of trustee's sale or notice of forfeiture is provided for by agreement or is reasonably necessary to effectuate or enforce an assignment of rents or other revenues from the property;

(c) After judgment, in order to give effect to the judgment;

(d) To dispose of property according to provisions of a judgment dealing with its disposition;

(e) To the extent that property is not exempt from execution, at the instance of a judgment creditor either before or after the issuance of any execution, to preserve or protect it, or prevent its transfer;

(f) If and to the extent that property is subject to execution to satisfy a judgment, to preserve the property during the pendency of an appeal, or when an execution has been returned unsatisfied, or when an order requiring a judgment debtor to appear for proceedings supplemental to judgment has been issued and the judgment debtor fails to submit to examination as ordered;

(g) Upon an attachment of real or personal property when the property attached is of a perishable nature or is otherwise in danger of waste, impairment, or destruction, or where the abandoned property's owner has absconded with, secreted, or abandoned the property, and it is necessary to collect, conserve, manage, control, or protect it, or to dispose of it promptly, or when the court determines that the nature of the property or the exigency of the case otherwise provides cause for the appointment of a receiver;

(h) In an action by a transferor of real or personal property to avoid or rescind the transfer on the basis of fraud, or in an action to subject property or a fund to the payment of a debt;

(i) In an action against any person who is not an individual if the object of the action is the dissolution of that person, or if that person has been dissolved, or if that person is insolvent or is not generally paying the person's debts as those debts become due unless they are the subject of bona fide dispute, or if that person is in imminent danger of insolvency;

(j) In accordance with RCW 7.08.030 (4) and (6), in cases in which a general assignment for the benefit of creditors has been made;

(k) In quo warranto proceedings under chapter 7.56 RCW;

(l) As provided under RCW 11.64.022;

(m) In an action by the department of licensing under RCW 18.35.220(3) with respect to persons engaged in the business of dispensing of hearing aids, RCW 18.85.350 in the case of persons engaged in the business of a real estate broker, associate real estate broker, or real estate salesperson, or RCW 19.105.470 with respect to persons engaged in the business of camping resorts;

(n) In an action under RCW 18.44.470 or 18.44.490 in the case of persons engaged in the business of escrow agents;

(o) Upon a petition with respect to a nursing home in accordance with and subject to receivership provisions under chapter 18.51 RCW;

(p) Under RCW 19.40.071(3), in connection with a proceeding for relief with respect to a transfer fraudulent as to a creditor or creditors;

(q) Under RCW 19.100.210(1), in an action by the attorney general or director of financial institutions to restrain any actual or threatened violation of the franchise investment protection act;

(r) In an action by the attorney general or by a prosecuting attorney under RCW 19.110.160 with respect to a seller of business opportunities;

(s) In an action by the director of financial institutions under RCW 21.20.390 in cases involving actual or threatened violations of the securities act of Washington or under RCW 21.30.120 in cases involving actual or threatened violations of chapter 21.30 RCW with respect to certain businesses and transactions involving commodities;

(t) In an action for dissolution of a business corporation under RCW 23B.14.310 or 23B.14.320, for dissolution of a nonprofit corporation under RCW 24.03.270, for dissolution of a mutual corporation under RCW 24.06.305, or in any other action for the dissolution or winding up of any other entity provided for by Title 23, 23B, 24, or 25 RCW;

(u) In any action in which the dissolution of any public or private entity is sought, in any action involving any dispute with respect to the ownership or governance of such an entity, or upon the application of a person having an interest in such an entity when the appointment is reasonably necessary to protect the property of the entity or its business or other interests;

(v) Under RCW 25.05.215, in aid of a charging order with respect to a partner's interest in a partnership;

(w) Under and subject to RCW 30.44.100, 30.44.270, and 30.56.030, in the case of a bank or trust company or, under and subject to RCW 32.24.070 through 32.24.090, in the case of a mutual savings bank;

(x) Under and subject to RCW 31.12.637 and 31.12.671 through 31.12.724, in the case of credit unions;

(y) Upon the application of the director of financial institutions under RCW 31.35.090 in actions to enforce chapter 31.35 RCW applicable to agricultural lenders, under RCW 31.40.120 in actions to enforce chapter 31.40 RCW applicable to entities engaged in federally guaranteed small business loans, under RCW 31.45.160 in actions to enforce chapter 31.45 RCW applicable to persons licensed as check cashers or check sellers, or under RCW 19.230.230 in actions to enforce chapter 19.230 RCW applicable to persons licensed under the uniform money services act;

(z) Under RCW 35.82.090 or 35.82.180, with respect to a housing project;

(aa) Under RCW 39.84.160 or 43.180.360, in proceedings to enforce rights under any revenue bonds issued for the purpose of financing industrial development facilities or bonds of the Washington state housing finance commission, or any financing document securing any such bonds;

(bb) Under and subject to RCW 43.70.195, in an action by the secretary of health or by a local health officer with respect to a public water system;

(cc) As contemplated by RCW 61.24.030, with respect to real property that is the subject of nonjudicial foreclosure proceedings under chapter 61.24 RCW;

(dd) As contemplated by RCW 61.30.030(3), with respect to real property that is the subject of judicial or nonjudicial forfeiture proceedings under chapter 61.30 RCW;

(ee) Under RCW 64.32.200(2), in an action to foreclose upon a lien for common expenses against a dwelling unit subject to the horizontal property regimes act, chapter 64.32 RCW;

(ff) Under RCW 64.34.364(10), in an action by a unit owners' association to foreclose a lien for nonpayment of delinquent assessments against condominium units;

(gg) Upon application of the attorney general under RCW 64.36.220(3), in aid of any writ or order restraining or enjoining violations of chapter 64.36 RCW applicable to timeshares;

(hh) Under RCW 70.95A.050(3), in aid of the enforcement of payment or performance of municipal bonds issued with respect to facilities used to abate, control, or prevent pollution;

(ii) Upon the application of the department of social and health services under RCW 74.42.580, in cases involving nursing homes;

(jj) Upon the application of the utilities and transportation commission under RCW 80.28.040, with respect to a water company that has failed to comply with an order of such commission within the time deadline specified therein;

(kk) Under RCW 87.56.065, in connection with the dissolution of an irrigation district;

(ll) Upon application of the attorney general or the department of licensing, in any proceeding that either of them are authorized by statute to bring to enforce Title 18 or 19 RCW; the securities act of Washington, chapter 21.20 RCW; the Washington commodities act, chapter 21.30 RCW; the land development act, chapter 58.19 RCW; or under chapter 64.36 RCW relating to the regulation of timeshares;

(mm) Upon application of the director of financial institutions in any proceeding that the director of financial institutions is authorized to bring to enforce chapters 31.35, 31.40, and 31.45 RCW; or

(nn) In such other cases as may be provided for by law, or when, in the discretion of the court, it may be necessary to secure ample justice to the parties.

(2) The superior courts of this state shall appoint as receiver of property located in this state a person who has been appointed by a federal or state court located elsewhere as receiver with respect to the property specifically or with respect to the owner's property generally, upon the application of the person or of any party to that foreign proceeding, and following the appointment shall give effect to orders, judgments, and decrees of the foreign court affecting the property in this state held by the receiver, unless the court determines that to do so would be manifestly unjust or inequitable. The venue of such a proceeding may be any county in which the person resides or maintains any office, or any county in which any property over which the receiver is to be appointed is located at the time the proceeding is commenced.

(3) At least seven days' notice of any application for the appointment of a receiver shall be given to the owner of property to be subject thereto and to all other parties in the action, and to other parties in interest as the court may require. If any execution by a judgment creditor under Title 6 RCW or any application by a judgment creditor for the appointment of a receiver, with respect to property over which the receiver's appointment is sought, is pending in any other action at the time the application is made, then notice of the application for the receiver's appointment also shall be given to the judgment creditor in the other action. The court may shorten or expand the period for notice of an application for the appointment of a receiver upon good cause shown.

(4) The order appointing a receiver in all cases shall reasonably describe the property over which the receiver is to take charge, by category, individual items, or both if the receiver is to take charge of less than all of the owner's property. If the order appointing a receiver does not expressly limit the receiver's authority to designated property or categories of property of the owner, the receiver is a general receiver with the authority to take charge over all of the owner's property, wherever located.

(5) The court may condition the appointment of a receiver upon the giving of security by the person seeking the receiver's appointment, in such amount as the court may specify, for the payment of costs and damages incurred or suffered by any person should it later be determined that the appointment of the receiver was wrongfully obtained.

NEW SECTION. Sec. 5. A new section is added to chapter 7.60 RCW to read as follows:

ELIGIBILITY TO SERVE AS RECEIVER. Except as provided in this chapter or otherwise by statute, any person, whether or not a resident of this state, may serve as a receiver, with the exception that a person may not be appointed as a receiver, and shall be replaced as receiver if already appointed, if it should appear to the court that the person:

(1) Has been convicted of a felony or other crime involving moral turpitude or is controlled by a person who has been convicted of a felony or other crime involving moral turpitude;

(2) Is a party to the action, or is a parent, grandparent, child, grandchild, sibling, partner, director, officer, agent, attorney, employee, secured or unsecured creditor or lienor of, or holder of any equity interest in, or controls or is controlled by, the person whose property is to be held by the receiver, or who is the agent or attorney of any disqualified person;

(3) Has an interest materially adverse to the interest of persons to be affected by the receivership generally; or

(4) Is the sheriff of any county.

NEW SECTION. Sec. 6. A new section is added to chapter 7.60 RCW to read as follows:

RECEIVER'S BOND. Except as otherwise provided for by statute or court rule, before entering upon duties of receiver, a receiver shall execute a bond with one or more sureties approved by the court, in the amount the court specifies, conditioned that the receiver will faithfully discharge the duties of receiver in accordance with orders of the court and state law. Unless otherwise ordered by the court, the receiver's bond runs in favor of all persons having an interest in the receivership proceeding or property held by the receiver and in favor of state agencies. The receiver's bond must provide substantially as follows:

[Case Caption]

RECEIVER'S BOND

TO WHOM IT MAY CONCERN:

KNOW ALL BY THESE PRESENTS, that, as Principal, and, as Surety, are held and firmly bound in the amount of Dollars (\$) for the faithful performance by Principal of the Principal's duties as receiver with respect to property of in accordance with order(s) of such court previously or hereafter entered in the above-captioned proceeding and state law. If the Principal faithfully discharges the duties of receiver in accordance with such orders, this obligation shall be void, but otherwise it will remain in full force and effect.

Dated this . . . day of,

.....
[Signature of Receiver]

.....
[Signature of Surety]

The court, in lieu of a bond, may approve the posting of alternative security, such as a letter of credit or a deposit of funds with the clerk of the court, to be held by the clerk to secure the receiver's faithful performance of the receiver's duties in accordance with orders of the court and state law until the court authorizes the release or return of the deposited sums. No part of the property over which the receiver is appointed may be used in making the deposit; however, any interest that may accrue on a deposit ordered by the court shall be remitted to the receiver upon the receiver's discharge. A claim against the bond shall be made

within one year from the date the receiver is discharged. Claims by state agencies against the bond shall have priority.

NEW SECTION. Sec. 7. A new section is added to chapter 7.60 RCW to read as follows:

POWERS OF THE COURT. Except as otherwise provided for by this chapter, the court in all cases has exclusive authority over the receiver, and the exclusive possession and right of control with respect to all real property and all tangible and intangible personal property with respect to which the receiver is appointed, wherever located, and the exclusive jurisdiction to determine all controversies relating to the collection, preservation, application, and distribution of all the property, and all claims against the receiver arising out of the exercise of the receiver's powers or the performance of the receiver's duties. However, the court does not have exclusive jurisdiction over actions in which a state agency is a party and in which a statute expressly vests jurisdiction or venue elsewhere.

NEW SECTION. Sec. 8. A new section is added to chapter 7.60 RCW to read as follows:

POWERS AND DUTIES OF RECEIVER GENERALLY. (1) A receiver has the following powers and authority in addition to those specifically conferred by this chapter or otherwise by statute, court rule, or court order:

(a) The power to incur or pay expenses incidental to the receiver's preservation and use of the property with respect to which the appointment applies, and otherwise in the performance of the receiver's duties, including the power to pay obligations incurred prior to the receiver's appointment if and to the extent that payment is determined by the receiver to be prudent in order to preserve the value of property in the receiver's possession and the funds used for this purpose are not subject to any lien or right of setoff in favor of a creditor who has not consented to the payment and whose interest is not otherwise adequately protected;

(b) If the appointment applies to all or substantially all of the property of an operating business or any revenue-producing property of any person, to do all things which the owner of the business or property might do in the ordinary course of the operation of the business as a going concern or use of the property including, but not limited to, the purchase and sale of goods or services in the ordinary course of such business, and the incurring and payment of expenses of the business or property in the ordinary course;

(c) The power to assert any rights, claims, or choses in action of the person over whose property the receiver is appointed relating thereto, if and to the extent that the claims are themselves property within the scope of the appointment or relate to any property, to maintain in the receiver's name or in the name of such a person any action to enforce any right, claim, or chose in action, and to intervene in actions in which the person over whose property the receiver is appointed is a party for the purpose of exercising the powers under this subsection (1)(c);

(d) The power to intervene in any action in which a claim is asserted against the person over whose property the receiver is appointed relating thereto, for the purpose of prosecuting or defending the claim and requesting the transfer of venue of the action to the court. However, the court shall not transfer actions in

which both a state agency is a party and as to which a statute expressly vests jurisdiction or venue elsewhere. This power is exercisable with court approval in the case of a liquidating receiver, and with or without court approval in the case of a general receiver;

(e) The power to assert rights, claims, or choses in action of the receiver arising out of transactions in which the receiver is a participant;

(f) The power to pursue in the name of the receiver any claim under chapter 19.40 RCW assertable by any creditor of the person over whose property the receiver is appointed, if pursuit of the claim is determined by the receiver to be appropriate;

(g) The power to seek and obtain advice or instruction from the court with respect to any course of action with respect to which the receiver is uncertain in the exercise of the receiver's powers or the discharge of the receiver's duties;

(h) The power to obtain appraisals with respect to property in the hands of the receiver;

(i) The power by subpoena to compel any person to submit to an examination under oath, in the manner of a deposition in a civil case, with respect to estate property or any other matter that may affect the administration of the receivership; and

(j) Other powers as may be conferred upon the receiver by the court or otherwise by statute or rule.

(2) A receiver has the following duties in addition to those specifically conferred by this chapter or otherwise by statute or court rule:

(a) The duty to notify all federal and state taxing and applicable regulatory agencies of the receiver's appointment in accordance with any applicable laws imposing this duty, including but not limited to 26 U.S.C. Sec. 6036 and RCW 51.14.073, 51.16.160, and 82.32.240, or any successor statutes;

(b) The duty to comply with state law;

(c) If the receiver is appointed with respect to any real property, the duty to file with the auditor of the county in which the real property is located, or the registrar of lands in accordance with RCW 65.12.600 in the case of registered lands, a certified copy of the order of appointment, together with a legal description of the real property if one is not included in that order; and

(d) Other duties as the receiver may be directed to perform by the court or as may be provided for by statute or rule.

(3) The various powers and duties of a receiver provided for by this chapter may be expanded, modified, or limited by order of the court for good cause shown.

NEW SECTION. Sec. 9. A new section is added to chapter 7.60 RCW to read as follows:

TURNOVER OF PROPERTY. Upon demand by a receiver appointed under this chapter, any person shall turn over any property over which the receiver has been appointed that is within the possession or control of that person unless otherwise ordered by the court for good cause shown. A receiver by motion may seek to compel turnover of estate property unless there exists a bona fide dispute with respect to the existence or nature of the receiver's interest in the property, in which case turnover shall be sought by means of an action under section 18 of this act. In the absence of a bona fide dispute with respect to the receiver's right to possession of estate property, the failure to relinquish

possession and control to the receiver shall be punishable as a contempt of the court.

NEW SECTION. Sec. 10. A new section is added to chapter 7.60 RCW to read as follows:

DUTIES OF PERSON OVER WHOSE PROPERTY THE RECEIVER IS APPOINTED. The person over whose property the receiver is appointed shall:

(1) Assist and cooperate fully with the receiver in the administration of the estate and the discharge of the receiver's duties, and comply with all orders of the court;

(2) Supply to the receiver information necessary to enable the receiver to complete any schedules that the receiver may be required to file under section 11 of this act, and otherwise assist the receiver in the completion of the schedules;

(3) Upon the receiver's appointment, deliver into the receiver's possession all of the property of the estate in the person's possession, custody, or control, including, but not limited to, all accounts, books, papers, records, and other documents; and

(4) Following the receiver's appointment, submit to examination by the receiver, or by any other person upon order of the court, under oath, concerning the acts, conduct, property, liabilities, and financial condition of that person or any matter relating to the receiver's administration of the estate.

When the person over whose property the receiver is appointed is an entity, each of the officers, directors, managers, members, partners, or other individuals exercising or having the power to exercise control over the affairs of the entity are subject to the requirements of this section.

NEW SECTION. Sec. 11. A new section is added to chapter 7.60 RCW to read as follows:

SCHEDULES OF PROPERTY AND LIABILITIES—INVENTORY OF PROPERTY—APPRAISALS. (1) In the event of a general assignment of property for the benefit of creditors under chapter 7.08 RCW, the assignment shall have annexed as schedule a true list of all of the person's known creditors, their mailing addresses, the amount and nature of their claims, and whether their claims are disputed; and as schedule B a true list of all property of the estate, including the estimated liquidation value and location of the property and, if real property, a legal description thereof, as of the date of the assignment.

(2) In all other cases, within twenty days after the date of appointment of a general receiver, the receiver shall file as schedule A a true list of all of the known creditors and applicable regulatory and taxing agencies of the person over whose assets the receiver is appointed, their mailing addresses, the amount and nature of their claims, and whether their claims are disputed; and as schedule B a true list of all property of the estate identifiable by the receiver, including the estimated liquidation value and location of the property and, if real property, a legal description thereof, as of the date of appointment of the receiver.

(3) The schedules must be in substantially the following forms:

SCHEDULE A—CREDITOR LIST

1. List all creditors having security interests or liens, showing:

| Name | Address | Amount | Collateral | Whether or not disputed |
|------|---------|--------|------------|-------------------------|
|------|---------|--------|------------|-------------------------|

2. List all wages, salaries, commissions, or contributions to an employee benefit plan owed, showing:

| | | | |
|------|---------|--------|-------------------------|
| Name | Address | Amount | Whether or not disputed |
|------|---------|--------|-------------------------|

3. List all consumer deposits owed, showing:

| | | | |
|------|---------|--------|-------------------------|
| Name | Address | Amount | Whether or not disputed |
|------|---------|--------|-------------------------|

4. List all taxes owed, showing:

| | | | |
|------|---------|--------|-------------------------|
| Name | Address | Amount | Whether or not disputed |
|------|---------|--------|-------------------------|

5. List all unsecured claims, showing:

| | | | |
|------|---------|--------|-------------------------|
| Name | Address | Amount | Whether or not disputed |
|------|---------|--------|-------------------------|

6. List all owners or shareholders, showing:

| | | |
|------|---------|-------------------------|
| Name | Address | Percentage of Ownership |
|------|---------|-------------------------|

7. List all applicable regulatory agencies, showing:

| | |
|------|---------|
| Name | Address |
|------|---------|

SCHEDULE B—LIST OF PROPERTY

List each category of property and for each give approximate value obtainable for the asset on the date of assignment/appointment of the receiver, and address where asset is located.

I. Nonexempt Property

| | Description and Location | Liquidation Value on Date of Assignment/Appointment of Receiver |
|----|---|--|
| 1. | Legal Description and street | |
| 2. | address of real property, including | |
| 3. | leasehold interests: | |
| | Fixtures: | |
| | Cash and bank accounts: | |
| 4. | Inventory: | |
| 5. | Accounts receivable: | |
| 6. | Equipment: | |
| 7. | Prepaid expenses, including deposits, insurance, rents, and utilities: | |
| 8. | Other, including loans to third parties, claims, and choses in action: | |

II. Exempt Property

| | |
|-----------------------------|--|
| Description and Location | Liquidation Value on Date of Assignment/Appointment of Receiver |
|-----------------------------|--|

I DECLARE under penalty of perjury under the laws of the state of Washington that the foregoing is true, correct, and complete to the best of my knowledge. DATED this . . . day of,, at, state of

.
[SIGNATURE]

(4) When schedules are filed by a person making a general assignment of property for the benefit of creditors under chapter 7.08 RCW, the schedules shall be duly verified upon oath by such person.

(5) The receiver shall obtain an appraisal or other independent valuation of the property in the receiver's possession if ordered by the court.

(6) The receiver shall file a complete inventory of the property in the receiver's possession if ordered by the court.

NEW SECTION. Sec. 12. A new section is added to chapter 7.60 RCW to read as follows:

RECEIVER'S REPORTS. A general receiver shall file with the court a monthly report of the receiver's operations and financial affairs unless otherwise ordered by the court. Except as otherwise ordered by the court, each report of a general receiver shall be due by the last day of the subsequent month and shall include the following:

- (1) A balance sheet;
- (2) A statement of income and expenses;
- (3) A statement of cash receipts and disbursements;
- (4) A statement of accrued accounts receivable of the receiver. The statement shall disclose amounts considered to be uncollectable;
- (5) A statement of accounts payable of the receiver, including professional fees. The statement shall list the name of each creditor and the amounts owing and remaining unpaid over thirty days; and
- (6) A tax disclosure statement, which shall list postfiling taxes due or tax deposits required, the name of the taxing agency, the amount due, the date due, and an explanation for any failure to make payments or deposits.

A custodial receiver shall file with the court all such reports the court may require.

NEW SECTION. Sec. 13. A new section is added to chapter 7.60 RCW to read as follows:

AUTOMATIC STAY OF CERTAIN PROCEEDINGS. (1) Except as otherwise ordered by the court, the entry of an order appointing a general receiver or a custodial receiver with respect to all of a person's property shall operate as a stay, applicable to all persons, of:

- (a) The commencement or continuation, including the issuance or employment of process, of a judicial, administrative, or other action or proceeding against the person over whose property the receiver is appointed that was or could have been commenced before the entry of the order of

appointment, or to recover a claim against the person that arose before the entry of the order of appointment;

(b) The enforcement, against the person over whose property the receiver is appointed or any estate property, of a judgment obtained before the order of appointment;

(c) Any act to obtain possession of estate property from the receiver, or to interfere with, or exercise control over, estate property;

(d) Any act to create, perfect, or enforce any lien or claim against estate property except by exercise of a right of setoff, to the extent that the lien secures a claim against the person that arose before the entry of the order of appointment; or

(e) Any act to collect, assess, or recover a claim against the person that arose before the entry of the order of appointment.

(2) The stay shall automatically expire as to the acts specified in subsection (1)(a), (b), and (e) of this section sixty days after the entry of the order of appointment unless before the expiration of the sixty-day period the receiver, for good cause shown, obtains an order of the court extending the stay, after notice and a hearing. A person whose action or proceeding is stayed by motion to the court may seek relief from the stay for good cause shown. Any judgment obtained against the person over whose property the receiver is appointed or estate property following the entry of the order of appointment is not a lien against estate property unless the receivership is terminated prior to a conveyance of the property against which the judgment would otherwise constitute a lien.

(3) The entry of an order appointing a receiver does not operate as a stay of:

(a) The commencement or continuation of a criminal proceeding against the person over whose property the receiver is appointed;

(b) The commencement or continuation of an action or proceeding to establish paternity, or to establish or modify an order for alimony, maintenance, or support, or to collect alimony, maintenance, or support under any order of a court;

(c) Any act to perfect, or to maintain or continue the perfection of, an interest in estate property if the interest perfected would be effective against a creditor of the person over whose property the receiver is appointed holding at the time of the entry of the order of appointment either a perfected nonpurchase money security interest under chapter 62A.9A RCW against the property involved, or a lien by attachment, levy, or the like, whether or not such a creditor exists. If perfection of an interest would require seizure of the property involved or the commencement of an action, the perfection shall instead be accomplished by filing, and by serving upon the receiver, or receiver's counsel, if any, notice of the interest within the time fixed by law for seizure or commencement;

(d) The commencement or continuation of an action or proceeding by a governmental unit to enforce its police or regulatory power;

(e) The enforcement of a judgment, other than a money judgment, obtained in an action or proceeding by a governmental unit to enforce its police or regulatory power, or with respect to any licensure of the person over whose property the receiver is appointed;

(f) The exercise of a right of setoff, including but not limited to (i) any right of a commodity broker, forward contract merchant, stockbroker, financial

institution, or securities clearing agency to set off a claim for a margin payment or settlement payment arising out of a commodity contract, forward contract, or securities contract against cash, securities, or other property held or due from the commodity broker, forward contract merchant, stockbroker, financial institution, or securities clearing agency to margin, guarantee, secure, or settle the commodity contract, forward contract, or securities contract, and (ii) any right of a swap participant to set off a claim for a payment due to the swap participant under or in connection with a swap agreement against any payment due from the swap participant under or in connection with the swap agreement or against cash, securities, or other property of the debtor held by or due from the swap participant to guarantee, secure, or settle the swap agreement; or

(g) The establishment by a governmental unit of any tax liability and any appeal thereof.

NEW SECTION. Sec. 14. A new section is added to chapter 7.60 RCW to read as follows:

UTILITY SERVICE. A utility providing service to estate property may not alter, refuse, or discontinue service to the property without first giving the receiver fifteen days' notice of any default or intention to alter, refuse, or discontinue service to estate property. This section does not prohibit the court, upon motion by the receiver, to prohibit the alteration or cessation of utility service if the receiver can furnish adequate assurance of payment, in the form of deposit or other security, for service to be provided after entry of the order appointing the receiver.

NEW SECTION. Sec. 15. A new section is added to chapter 7.60 RCW to read as follows:

EXECUTORY CONTRACTS AND UNEXPIRED LEASES. (1) A general receiver may assume or reject any executory contract or unexpired lease of the person over whose property the receiver is appointed upon order of the court following notice to the other party to the contract or lease upon notice and a hearing. The court may condition assumption or rejection of any executory contract or unexpired lease on the terms and conditions the court believes are just and proper under the particular circumstances of the case. A general receiver's performance of an executory contract or unexpired lease prior to the court's authorization of its assumption or rejection shall not constitute an assumption of the contract or lease, or an agreement by the receiver to assume it, nor otherwise preclude the receiver thereafter from seeking the court's authority to reject it.

(2) Any obligation or liability incurred by a general receiver on account of the receiver's assumption of an executory contract or unexpired lease shall be treated as an expense of the receivership. A general receiver's rejection of an executory contract or unexpired lease shall be treated as a breach of the contract or lease occurring immediately prior to the receiver's appointment; and the receiver's right to possess or use property pursuant to any executory contract or lease shall terminate upon rejection of the contract or lease. The other party to an executory contract or unexpired lease that is rejected by a general receiver may take such steps as may be necessary under applicable law to terminate or cancel the contract or lease. The claim of a party to an executory contract or unexpired lease resulting from a general receiver's rejection of it shall be served

upon the receiver in the manner provided for by section 23 of this act within thirty days following the rejection.

(3) A general receiver's power under this section to assume an executory contract or unexpired lease shall not be affected by any provision in the contract or lease that would effect or permit a forfeiture, modification, or termination of it on account of either the receiver's appointment, the financial condition of the person over whose property the receiver is appointed, or an assignment for the benefit of creditors by that person.

(4) A general receiver may not assume an executory contract or unexpired lease of the person over whose property the receiver is appointed without the consent of the other party to the contract or lease if:

(a) Applicable law would excuse a party, other than the person over whose property the receiver is appointed, from accepting performance from or rendering performance to anyone other than the person even in the absence of any provisions in the contract or lease expressly restricting or prohibiting an assignment of the person's rights or the performance of the person's duties;

(b) The contract or lease is a contract to make a loan or extend credit or financial accommodations to or for the benefit of the person over whose property the receiver is appointed, or to issue a security of the person; or

(c) The executory contract or lease expires by its own terms, or under applicable law prior to the receiver's assumption thereof.

(5) A receiver may not assign an executory contract or unexpired lease without assuming it, absent the consent of the other parties to the contract or lease.

(6) If the receiver rejects an executory contract or unexpired lease for:

(a) The sale of real property under which the person over whose property the receiver is appointed is the seller and the purchaser is in possession of the real property;

(b) The sale of a real property timeshare interest under which the person over whose property the receiver is appointed is the seller;

(c) The license of intellectual property rights under which the person over whose property the receiver is appointed is the licensor; or

(d) The lease of real property in which the person over whose property the receiver is appointed is the lessor;

then the purchaser, licensee, or lessee may treat the rejection as a termination of the contract, license agreement, or lease, or alternatively, the purchaser, licensee, or lessee may remain in possession in which case the purchaser, licensee, or lessee shall continue to perform all obligations arising thereunder as and when they may fall due, but may offset against any payments any damages occurring on account of the rejection after it occurs. The purchaser of real property in such a case is entitled to receive from the receiver any deed or any other instrument of conveyance which the person over whose property the receiver is appointed is obligated to deliver under the executory contract when the purchaser becomes entitled to receive it, and the deed or instrument has the same force and effect as if given by the person. A purchaser, licensee, or lessee who elects to remain in possession under the terms of this subsection has no rights against the receiver on account of any damages arising from the receiver's rejection except as expressly provided for by this subsection. A purchaser of real property who elects to treat rejection of an executory contract as a termination has a lien

against the interest in that real property of the person over whose property the receiver is appointed for the recovery of any portion of the purchase price that the purchaser has paid.

(7) Any contract with the state shall be deemed rejected if not assumed within sixty days of appointment of a general receiver unless the receiver and state agency agree to its assumption.

(8) Nothing in this chapter affects the enforceability of antiassignment prohibitions provided under contract or applicable law.

NEW SECTION. **Sec. 16.** A new section is added to chapter 7.60 RCW to read as follows:

RECEIVERSHIP FINANCING. (1) If a receiver is authorized to operate the business of a person or manage a person's property, the receiver may obtain unsecured credit and incur unsecured debt in the ordinary course of business allowable under section 25(1)(a) of this act as an administrative expense of the receiver without order of the court.

(2) The court, after notice and a hearing, may authorize a receiver to obtain credit or incur indebtedness other than in the ordinary course of business. The court may allow the receiver to mortgage, pledge, hypothecate, or otherwise encumber estate property as security for repayment of any indebtedness that the receiver may incur.

NEW SECTION. **Sec. 17.** A new section is added to chapter 7.60 RCW to read as follows:

ABANDONMENT OF PROPERTY. The receiver, or any party in interest, upon order of the court following notice and a hearing, and upon the conditions or terms the court considers just and proper, may abandon any estate property that is burdensome to the receiver or is of inconsequential value or benefit. However, a receiver may not abandon property that is a hazard or potential hazard to the public in contravention of a state statute or rule that is reasonably designed to protect the public health or safety from identified hazards, including but not limited to chapters 70.105 and 70.105D RCW. Property that is abandoned no longer constitutes estate property.

NEW SECTION. **Sec. 18.** A new section is added to chapter 7.60 RCW to read as follows:

ACTIONS BY AND AGAINST THE RECEIVER OR AFFECTING PROPERTY HELD BY RECEIVER. (1) The receiver has the right to sue and be sued in the receiver's capacity as such, without leave of court, in all cases necessary or proper for the conduct of the receivership. However, action seeking to dispossess the receiver of any estate property or otherwise to interfere with the receiver's management or control of any estate property may not be maintained or continued unless permitted by order of the court obtained upon notice and a hearing.

(2) Litigation by or against a receiver is adjunct to the receivership case. The clerk of the court shall assign a cause number that reflects the relationship of any litigation to the receivership case. All pleadings in adjunct litigation shall include the cause number of the receivership case as well as the adjunct litigation number assigned by the clerk of the court. All adjunct litigation shall be referred to the judge, if any, assigned to the receivership case.

(3) The receiver may be joined or substituted as a party in any suit or proceeding that was pending at the time of the receiver's appointment and in which the person over whose property the receiver is appointed is a party, upon application by the receiver to the court or agency before which the action is pending.

(4) Venue for adjunct litigation by or against the receiver shall lie in the court in which the receivership is pending, if the courts of this state have jurisdiction over the cause. Actions in other courts in this state shall be transferred to the court upon the receiver's filing of a motion for change of venue, provided that the receiver files the motion within thirty days following service of original process upon the receiver. However, actions in other courts or forums in which a state agency is a party shall not be transferred on request of the receiver absent consent of the affected state agency or grounds provided under other applicable law.

(5) Action by or against a receiver does not abate by reason of death or resignation of the receiver, but continues against the successor receiver or against the entity in receivership, if a successor receiver is not appointed.

(6) Whenever the assets of any domestic or foreign corporation, that has been doing business in this state, has been placed in the hands of any general receiver and the receiver is in possession of its assets, service of all process upon the corporation may be made upon the receiver.

(7) A judgment against a general receiver is not a lien on the property or funds of the receivership, nor shall any execution issue thereon, but upon entry of the judgment in the court in which a general receivership is pending, or upon filing in a general receivership of a certified copy of the judgment from another jurisdiction, the judgment shall be treated as an allowed claim in the receivership. A judgment against a custodial receiver shall be treated and has the same effect as a judgment against the person over whose property the receiver is appointed, except that the judgment is not enforceable against estate property unless otherwise ordered by the court upon notice and a hearing.

NEW SECTION. Sec. 19. A new section is added to chapter 7.60 RCW to read as follows:

PERSONAL LIABILITY OF RECEIVER. (1)(a) The receiver is personally liable to the person over whose property the receiver is appointed or its record or beneficial owners, or to the estate, for loss or diminution in value of or damage to estate property, only if (i) the loss or damage is caused by a failure on the part of the receiver to comply with an order of the court, or (ii) the loss or damage is caused by an act or omission for which members of a board of directors of a business corporation organized and existing under the laws of this state who vote to approve the act or omission are liable to the corporation in cases in which the liability of directors is limited to the maximum extent permitted by RCW 23B.08.320.

(b) A general receiver is personally liable to state agencies for failure to remit sales tax collected after appointment. A custodial receiver is personally liable to state agencies for failure to remit sales tax collected after appointment with regard to assets administered by the receiver.

(2) The receiver has no personal liability to a person other than the person over whose property the receiver is appointed or its record or beneficial owners for any loss or damage occasioned by the receiver's performance of the duties

imposed by the appointment, or out of the receiver's authorized operation of any business of a person, except loss or damage occasioned by fraud on the part of the receiver, by acts intended by the receiver to cause loss or damage to the specific claimant, or by acts or omissions for which an officer of a business corporation organized and existing under the laws of this state are liable to the claimant under the same circumstances.

(3) Notwithstanding subsections (1)(a) and (2) of this section, a receiver has no personal liability to any person for acts or omissions of the receiver specifically contemplated by any order of the court.

(4) A person other than a successor receiver duly appointed by the court does not have a right of action against a receiver under this section to recover property or the value thereof for or on behalf of the estate.

NEW SECTION. Sec. 20. A new section is added to chapter 7.60 RCW to read as follows:

EMPLOYMENT AND COMPENSATION OF PROFESSIONALS. (1) The receiver, with the court's approval, may employ one or more attorneys, accountants, appraisers, auctioneers, or other professional persons that do not hold or represent an interest adverse to the estate to represent or assist the receiver in carrying out the receiver's duties.

(2) A person is not disqualified for employment under this section solely because of the person's employment by, representation of, or other relationship with a creditor or other party in interest, if the relationship is disclosed in the application for the person's employment and if the court determines that there is no actual conflict of interest or inappropriate appearance of a conflict.

(3) This section does not preclude the court from authorizing the receiver to act as attorney or accountant if the authorization is in the best interests of the estate.

(4) The receiver, and any professionals employed by the receiver, is permitted to file an itemized billing statement with the court indicating both the time spent, billing rates of all who perform work to be compensated, and a detailed list of expenses and serve copies on any person who has been joined as a party in the action, or any person requesting the same, advising that unless objections are filed with the court, the receiver may make the payments specified in the notice. If an objection is filed, the receiver or professional whose compensation is affected may request the court to hold a hearing on the objection on five days' notice to the persons who have filed objections. If the receiver is a custodial receiver appointed in aid of foreclosure, payment of fees and expenses may be allowed upon the stipulation of any creditor holding a security interest in the property for whose benefit the receiver is appointed.

NEW SECTION. Sec. 21. A new section is added to chapter 7.60 RCW to read as follows:

PARTICIPATION OF CREDITORS AND PARTIES IN INTEREST IN RECEIVERSHIP PROCEEDING—EFFECT OF COURT ORDERS ON NONPARTIES. (1) Creditors and parties in interest to whom written notice of the pendency of the receivership is given in accordance with section 23 of this act, and creditors or other persons submitting written claims in the receivership or otherwise appearing and participating in the receivership, are bound by the

acts of the receiver with regard to management and disposition of estate property whether or not they are formally joined as parties.

(2) Any person having a claim against or interest in any estate property or in the receivership proceedings may appear in the receivership, either in person or by an attorney. Appearance must be made by filing a written notice of appearance, including the name and mailing address of the party in interest, and the name and address of the person's attorney, if any, with the clerk, and by serving a copy of the notice upon the receiver and the receiver's attorney of record, if any. The receiver shall maintain a master mailing list of all persons joined as parties in the receivership and of all persons serving and filing notices of appearance in the receivership in accordance with this section. A creditor or other party in interest has a right to be heard with respect to all matters affecting the person, whether or not the person is joined as a party to the action.

(3) Any request for relief against a state agency shall be mailed to or otherwise served on the agency and on the office of the attorney general.

(4) Orders of the court with respect to the treatment of claims and disposition of estate property, including but not limited to orders providing for sales of property free and clear of liens, are effective as to any person having a claim against or interest in the receivership estate and who has actual knowledge of the receivership, whether or not the person receives written notice from the receiver and whether or not the person appears or participates in the receivership.

(5) The receiver shall give not less than ten days' written notice by mail of any examination by the receiver of the person with respect to whose property the receiver has been appointed and to persons who serve and file an appearance in the proceeding.

(6) Persons on the master mailing list are entitled to not less than thirty days' written notice of the hearing of any motion or other proceeding involving any proposed:

(a) Allowance or disallowance of any claim or claims;

(b) Abandonment, disposition, or distribution of estate property, other than an emergency disposition of perishable property or a disposition of property in the ordinary course of business;

(c) Compromise or settlement of a controversy that might affect the distribution to creditors from the estate;

(d) Compensation of the receiver or any professional employed by the receiver; or

(e) Application for termination of the receivership or discharge of the receiver. Notice of the application shall also be sent to state taxing and applicable regulatory agencies.

Any opposition to any motion to authorize any of the actions under (a) through (e) of this subsection must be filed and served upon the receiver and the receiver's attorney, if any, at least three days before the date of the proposed action. Persons on the master mailing list shall be served with all pleadings or in opposition to any motion. The court may require notice to be given to persons on the master mailing list of additional matters the court deems appropriate, and may enlarge or reduce any time period provided for by this section for good cause shown. The receiver shall make a copy of the current master mailing list available to any person on that list upon the person's request.

RECEIVER

Attorney for receiver (if any): _____

Address: _____

NEW SECTION. Sec. 23. A new section is added to chapter 7.60 RCW to read as follows:

SUBMISSION OF CLAIMS IN GENERAL RECEIVERSHIPS. (1) All claims, whether contingent, liquidated, unliquidated, or disputed, other than claims of creditors with security interests in or other liens against property of the estate, arising prior to the receiver's appointment, must be served in accordance with this chapter, and any claim not so filed is barred from participating in any distribution to creditors in any general receivership.

(2) Claims must be served by delivering the claim to the general receiver within thirty days from the date notice is given by mail under this section, unless the court reduces or extends the period for cause shown, except that a claim arising from the rejection of an executory contract or an unexpired lease of the person over whose property the receiver is appointed may be filed within thirty days after the rejection. Claims need not be filed. Claims must be served by state agencies on the general receiver within one hundred eighty days from the date notice is given by mail under this section.

(3) Claims must be in written form entitled "Proof of Claim," setting forth the name and address of the creditor and the nature and amount of the claim, and executed by the creditor or the creditor's authorized agent. When a claim, or an interest in estate property of securing the claim, is based on a writing, the original or a copy of the writing must be included as a part of the proof of claim, together with evidence of perfection of any security interest or other lien asserted by the claimant.

(4) A claim, executed and served in accordance with this section, constitutes prima facie evidence of the validity and amount of the claim.

NEW SECTION. Sec. 24. A new section is added to chapter 7.60 RCW to read as follows:

OBJECTION TO AND ALLOWANCE OF CLAIMS. (1) At any time prior to the entry of an order approving the general receiver's final report, the general receiver or any party in interest may file with the court an objection to a claim, which objection must be in writing and must set forth the grounds for the objection. A copy of the objection, together with notice of hearing, must be mailed to the creditor at least thirty days prior to the hearing. Claims properly served upon the general receiver and not disallowed by the court are entitled to share in distributions from the estate in accordance with the priorities provided for by this chapter or otherwise by law.

(2) Upon the request of a creditor, the general receiver, or any party in interest objecting to the creditor's claim, or upon order of the court, an objection is subject to mediation prior to adjudication of the objection, under the rules or orders adopted or issued with respect to mediations. However, state claims are not subject to mediation absent agreement of the state.

(3) Upon motion of the general receiver or other party in interest, the following claims may be estimated for purpose of allowance under this section under the rules or orders applicable to the estimation of claims under this subsection:

(a) Any contingent or unliquidated claim, the fixing or liquidation of which, as the case may be, would unduly delay the administration of the case; or

(b) Any right to payment arising from a right to an equitable remedy for breach of performance.

Claims subject to this subsection shall be allowed in the estimated amount thereof.

NEW SECTION. Sec. 25. A new section is added to chapter 7.60 RCW to read as follows:

PRIORITIES. (1) Allowed claims in a general receivership shall receive distribution under this chapter in the order of priority under (a) through (h) of this subsection and, with the exception of (a) and (c) of this subsection, on a pro rata basis.

(a) Creditors with liens on property of the estate, which liens are duly perfected under applicable law, shall receive the proceeds from the disposition of their collateral. However, the receiver may recover from property securing an allowed secured claim the reasonable, necessary expenses of preserving, protecting, or disposing of the property to the extent of any benefit to the creditors. If and to the extent that the proceeds are less than the amount of a creditor's allowed claim or a creditor's lien is avoided on any basis, the creditor is an unsecured claim under (h) of this subsection. Secured claims shall be paid from the proceeds in accordance with their respective priorities under otherwise applicable law.

(b) Actual, necessary costs and expenses incurred during the administration of the estate, other than those expenses allowable under (a) of this subsection, including allowed fees and reimbursement of reasonable charges and expenses of the receiver and professional persons employed by the receiver under section 20 of this act. Notwithstanding (a) of this subsection, expenses incurred during the administration of the estate have priority over the secured claim of any creditor obtaining or consenting to the appointment of the receiver.

(c) Creditors with liens on property of the estate, which liens have not been duly perfected under applicable law, shall receive the proceeds from the disposition of their collateral if and to the extent that unsecured claims are made subject to those liens under applicable law.

(d) Claims for wages, salaries, or commissions, including vacation, severance, and sick leave pay, or contributions to an employee benefit plan, earned by the claimant within ninety days of the date of appointment of the receiver or the cessation of the estate's business, whichever occurs first, but only to the extent of two thousand dollars.

(e) Allowed unsecured claims, to the extent of nine hundred dollars for each individual, arising from the deposit with the person over whose property the receiver is appointed before the date of appointment of the receiver of money in connection with the purchase, lease, or rental of property or the purchase of services for personal, family, or household use by individuals that were not delivered or provided.

(f) Claims for a support debt as defined in RCW 74.20A.020(10), but not to the extent that the debt (i) is assigned to another entity, voluntarily, by operation of law, or otherwise; or (ii) includes a liability designated as a support obligation unless that liability is actually in the nature of a support obligation.

(g) Unsecured claims of governmental units for taxes which accrued prior to the date of appointment of the receiver.

(h) Other unsecured claims.

(2) If all of the classes under subsection (1) of this section have been paid in full, any residue shall be paid to the person over whose property the receiver is appointed.

NEW SECTION. Sec. 26. A new section is added to chapter 7.60 RCW to read as follows:

SECURED CLAIMS AGAINST AFTER-ACQUIRED PROPERTY. Except as otherwise provided for by statute, property acquired by the estate or by the person over whose property the receiver is appointed after the date of appointment of the receiver is subject to an allowed secured claim to the same extent as would be the case in the absence of a receivership.

NEW SECTION. Sec. 27. A new section is added to chapter 7.60 RCW to read as follows:

INTEREST ON CLAIMS. To the extent that funds are available in the estate for distribution to creditors in a general receivership, the holder of an allowed noncontingent, liquidated claim is entitled to receive interest at the legal rate or other applicable rate from the date of appointment of the receiver or the date on which the claim became a noncontingent, liquidated claim. If there are sufficient funds in the estate to fully pay all interest owing to all members of the class, then interest shall be paid proportionately to each member of the class.

NEW SECTION. Sec. 28. A new section is added to chapter 7.60 RCW to read as follows:

RECEIVER'S DISPOSITION OF PROPERTY—SALES FREE AND CLEAR. (1) The receiver, with the court's approval after notice and a hearing, may use, sell, or lease estate property other than in the ordinary course of business. Except in the case of a leasehold estate with a remaining term of less than two years or a vendor's interest in a real estate contract, estate property consisting of real property may not be sold by a custodial receiver other than in the ordinary course of business.

(2) The court may order that a general receiver's sale of estate property under subsection (1) of this section be effected free and clear of liens and of all rights of redemption, whether or not the sale will generate proceeds sufficient to fully satisfy all claims secured by the property, unless either:

(a) The property is real property used principally in the production of crops, livestock, or aquaculture, or the property is a homestead under RCW 6.13.010(1), and the owner of the property has not consented to the sale following the appointment of the receiver; or

(b) The owner of the property or a creditor with an interest in the property serves and files a timely opposition to the receiver's sale, and the court determines that the amount likely to be realized by the objecting person from the receiver's sale is less than the person would realize within a reasonable time in the absence of the receiver's sale.

Upon any sale free and clear of liens authorized by this section, all security interests and other liens encumbering the property conveyed transfer and attach to the proceeds of the sale, net of reasonable expenses incurred in the disposition of the property, in the same order, priority, and validity as the liens had with respect to the property immediately before the conveyance. The court may authorize the receiver at the time of sale to satisfy, in whole or in part, any allowed claim secured by the property out of the proceeds of its sale if the interest of any other creditor having a lien against the proceeds of the sale would not thereby be impaired.

(3) At a public sale of property under subsection (1) of this section, a creditor with an allowed claim secured by a lien against the property to be sold may bid at the sale of the property. A secured creditor who purchases the property from a receiver may offset against the purchase price its allowed secured claim against the property, provided that the secured creditor tenders cash sufficient to satisfy in full all secured claims payable out of the proceeds of sale having priority over the secured creditor's secured claim. If the lien or the claim it secures is the subject of a bona fide dispute, the court may order the holder of the claim to provide the receiver with adequate security to assure full payment of the purchase price in the event the lien, the claim, or any part thereof is determined to be invalid or unenforceable.

(4) If estate property includes an interest as a coowner of property, the receiver shall have the rights and powers of a coowner afforded by applicable state or federal law, including but not limited to any rights of partition.

(5) The reversal or modification on appeal of an authorization to sell or lease estate property under this section does not affect the validity of a sale or lease under that authorization to an entity that purchased or leased the property in good faith, whether or not the entity knew of the pendency of the appeal, unless the authorization and sale or lease were stayed pending the appeal.

NEW SECTION. Sec.29. A new section is added to chapter 7.60 RCW to read as follows:

ANCILLARY RECEIVERSHIPS. (1) A receiver appointed in any action pending in the courts of this state, without first seeking approval of the court, may apply to any court outside of this state for appointment as receiver with respect to any property or business of the person over whose property the receiver is appointed constituting estate property which is located in any other jurisdiction, if the appointment is necessary to the receiver's possession, control, management, or disposition of property in accordance with orders of the court.

(2) A receiver appointed by a court of another state, or by a federal court in any district outside of this state, or any other person having an interest in that proceeding, may obtain appointment by a superior court of this state of that same receiver with respect to any property or business of the person over whose property the receiver is appointed constituting property of the foreign receivership that is located in this jurisdiction, if the person is eligible under section 5 of this act to serve as receiver, and if the appointment is necessary to the receiver's possession, control, or disposition of the property in accordance with orders of the court in the foreign proceeding. The superior court upon the receiver's request shall enter the orders, not offensive to the laws and public policy of this state, necessary to effectuate orders entered by the court in the foreign receivership proceeding. A receiver appointed in an ancillary

receivership in this state is required to comply with this chapter requiring notice to creditors or other parties in interest only as may be required by the superior court in the ancillary receivership.

NEW SECTION. Sec. 30. A new section is added to chapter 7.60 RCW to read as follows:

RESIGNATION OR REMOVAL OF RECEIVER. (1) The court shall remove or replace the receiver on application of the person over whose property the receiver is appointed, the receiver, or any creditor, or on the court's own motion, if the receiver fails to execute and file the bond required by section 6 of this act, or if the receiver resigns or refuses or fails to serve for any reason, or for other good cause.

(2) Upon removal, resignation, or death of the receiver, the court shall appoint a successor receiver if the court determines that further administration of the estate is required. Upon executing and filing a bond under section 6 of this act, the successor receiver shall immediately take possession of the estate and assume the duties of receiver.

(3) Whenever the court is satisfied that the receiver so removed or replaced has fully accounted for and turned over to the successor receiver appointed by the court all of the property of the estate and has filed a report of all receipts and disbursements during the person's tenure as receiver, the court shall enter an order discharging that person from all further duties and responsibilities as receiver after notice and a hearing.

NEW SECTION. Sec. 31. A new section is added to chapter 7.60 RCW to read as follows:

TERMINATION OF RECEIVERSHIP. (1) Upon distribution or disposition of all property of the estate, or the completion of the receiver's duties with respect to estate property, the receiver shall move the court to be discharged upon notice and a hearing.

(2) The receiver's final report and accounting setting forth all receipts and disbursements of the estate shall be annexed to the petition for discharge and filed with the court.

(3) Upon approval of the final report, the court shall discharge the receiver.

(4) The receiver's discharge releases the receiver from any further duties and responsibilities as receiver under this chapter.

(5) Upon motion of any party in interest, or upon the court's own motion, the court has the power to discharge the receiver and terminate the court's administration of the property over which the receiver was appointed. If the court determines that the appointment of the receiver was wrongfully procured or procured in bad faith, the court may assess against the person who procured the receiver's appointment (a) all of the receiver's fees and other costs of the receivership and (b) any other sanctions the court determines to be appropriate.

NEW SECTION. Sec. 32. A new section is added to chapter 7.60 RCW to read as follows:

APPLICABILITY. This chapter applies to receivers and receiverships otherwise provided for by the laws of this state except as otherwise expressly provided for by statute or as necessary to give effect to the laws of this state. This chapter does not apply to any proceeding authorized by or commenced under Title 48 RCW.

Sec. 33. RCW 4.28.320 and 1999 c 233 s 1 are each amended to read as follows:

~~((In an action affecting the title to real property the plaintiff, at the time of filing the complaint, or at any time afterwards, or whenever a writ of attachment of property shall be issued, or at any time afterwards, the plaintiff or a defendant, when he sets up an affirmative cause of action in his answer, and demands substantive relief at the time of filing his answer, or at any time afterwards, if the same be intended to affect real property,))~~ At any time after an action affecting title to real property has been commenced, or after a writ of attachment with respect to real property has been issued in an action, or after a receiver has been appointed with respect to any real property, the plaintiff, the defendant, or such a receiver may file with the auditor of each county in which the property is situated a notice of the pendency of the action, containing the names of the parties, the object of the action, and a description of the real property in that county affected thereby. From the time of the filing only shall the pendency of the action be constructive notice to a purchaser or encumbrancer of the property affected thereby, and every person whose conveyance or encumbrance is subsequently executed or subsequently recorded shall be deemed a subsequent purchaser or encumbrancer, and shall be bound by all proceedings taken after the filing of such notice to the same extent as if he or she were a party to the action. For the purpose of this section an action shall be deemed to be pending from the time of filing such notice: PROVIDED, HOWEVER, That such notice shall be of no avail unless it shall be followed by the first publication of the summons, or by the personal service thereof on a defendant within sixty days after such filing. And the court in which the said action was commenced may, at its discretion, at any time after the action shall be settled, discontinued or abated, on application of any person aggrieved and on good cause shown and on such notice as shall be directed or approved by the court, order the notice authorized in this section to be canceled of record, in whole or in part, by the county auditor of any county in whose office the same may have been filed or recorded, and such cancellation shall be evidenced by the recording of the court order.

Sec. 34. RCW 6.32.100 and 1893 c 133 s 10 are each amended to read as follows:

~~((After a receiver has been appointed or a receivership has been extended to the special proceedings, the judge must, by order, direct the sheriff to pay the money, or the proceeds of the property, deducting his fees, to the receiver; or if the case so requires to deliver to the receiver the property in his hands. But if it appears to the satisfaction of the judge that an order appointing a receiver or extending a receivership is not necessary, he may, by an order reciting that fact,))~~ Unless a receiver has been appointed or extended with respect to money or property in the hands of the sheriff, the judge may direct the sheriff to apply the money ((so paid)), the property, or the proceeds of the property ((so delivered)), upon an execution in favor of the judgment creditor issued either before or after the payment or delivery to the sheriff.

Sec. 35. RCW 6.32.150 and 1893 c 133 s 15 are each amended to read as follows:

A special proceeding instituted as prescribed in this chapter may be discontinued at any time upon such terms as justice requires, by an order of the

judge made upon the application of the judgment creditor. Where the judgment creditor unreasonably delays or neglects to proceed, or where it appears that ~~((his))~~ the judgment has been satisfied, ~~((his))~~ the special proceedings may be dismissed upon like terms by a like order made upon the application of the judgment debtor, or of plaintiff in a judgment creditor's action against the debtor, or of a judgment creditor who has instituted either of the special proceedings authorized by this chapter. ~~((Where an order appointing a receiver or extending a receivership has been made in the course of the special proceeding, notice of the application for an order specified in this section must be given in such manner as the judge deems proper, to all persons interested in the receivership as far as they can conveniently be ascertained.))~~

Sec. 36. RCW 7.08.010 and 1893 c 100 s 1 are each amended to read as follows:

No general assignment of property by an insolvent, or in contemplation of insolvency, for the benefit of creditors, shall be valid unless it be made for the benefit of all ~~((his))~~ of the assignor's creditors in proportion to the amount of their respective claims ~~((; and after the payment of the costs and disbursements thereof, including the attorney fees allowed by law in case of judgment, out of the estate of the insolvent, such claim or claims shall be deemed as presented, and shall share pro rata with other claims as hereinafter provided))~~.

Sec. 37. RCW 7.08.030 and 1890 p 83 s 3 are each amended to read as follows:

~~((The debtor shall annex to such assignment an inventory, under oath, of all his estate, real and personal, according to the best of his knowledge, and also a list of his creditors, with their post office address and a list of the amount of their respective demands, but such inventory shall not be conclusive as to the amount of the debtor's estate. Every assignment shall be in writing, and duly acknowledged in the same manner as conveyances of real estate, and recorded in the record of deeds of the county where the person making the same resides, or where the business in respect to which the same is made has been carried on.))~~

(1) An assignment under this chapter must be in substantially the following form:

ASSIGNMENT

THIS ASSIGNMENT is made this day of, by and between with a principal place of business at (hereinafter "assignor"), and, whose address is (hereinafter "assignee").

WHEREAS, the assignor has been engaged in the business of

WHEREAS, the assignor is indebted to creditors, as set forth in Schedule A annexed hereto, is unable to pay debts as they become due, and is desirous of providing for the payment of debts, so far as it is possible by an assignment of all property for that purpose.

NOW, THEREFORE, the assignor, in consideration of the assignee's acceptance of this assignment, and for other good and valuable consideration, hereby grants, assigns, conveys, transfers, and sets over, unto the assignee, and the assignee's successors and assigns, all of assignor's property, except such

property as is exempt by law from levy and sale under an execution (and then only to the extent of such exemption), including, but not limited to, all real property, fixtures, goods, stock, inventory, equipment, furniture, furnishings, accounts receivable, general intangibles, bank deposits, cash, promissory notes, cash value and proceeds of insurance policies, claims, and demands belonging to the assignor, wherever such property may be located (hereinafter collectively the "estate"), which property is, to the best knowledge and belief of the assignor, fully and accurately set forth on Schedule B annexed hereto.

By making this assignment, the assignor consents to the appointment of the assignee as a general receiver with respect to the assignee's property in accordance with Chapter 7.60 RCW.

The assignee shall take possession and administer the estate, and shall liquidate the estate with reasonable dispatch and convert the estate into money, collect all claims and demands hereby assigned as and to the extent they may be collectible, and pay and discharge all reasonable expenses, costs, and disbursements in connection with the execution and administration of this assignment from the proceeds of such liquidations and collections.

The assignee shall then pay and discharge in full, to the extent that funds are available in the estate after payment of administrative expenses, costs, and disbursements, all of the debts and liabilities now due from the assignor, including interest on such debts and liabilities in full, according to their priority as established by law, and on a pro rata basis within each class.

In the event that all debts and liabilities are paid in full, the remainder of the estate shall be returned to the assignor.

To accomplish the purposes of this assignment, the assignor hereby irrevocably appoints the assignee as the assignor's true and lawful attorney in fact, with full power and authority to do all acts and things which may be necessary to execute and fulfill the assignment hereby created, to the same extent as such acts and things might be done by assignor in the absence of this assignment, including but not limited to the power to demand and recover from all persons all property of the estate; to sue for the recovery of such property; to execute, acknowledge, and deliver all necessary deeds, instruments, and conveyances, and to grant and convey any or all of the real or personal property of the estate pursuant thereto; and to appoint one or more attorneys to assist the assignee in carrying out the assignee's duties hereunder.

The assignor hereby authorizes the assignee to sign the name of the assignor to any check, draft, promissory note, or other instrument in writing which is payable to the order of the assignor, or to sign the name of the assignor to any instrument in writing, whenever it shall be necessary to do so, to carry out the purposes of this assignment.

The assignor declares, under penalty of perjury under the laws of the state of Washington, that the attached list of creditors and of the property of the assignor is true and complete to the best of the assignor's knowledge.

The assignment shall be signed by the assignor and duly acknowledged in the same manner as conveyances of real property before a notary public of this state, and shall include an acceptance of the assignment by the assignee in substantially the following form:

The assignee hereby accepts the trust created by the foregoing assignment, and agrees faithfully and without delay to carry out the assignee's duties under the foregoing assignment.

| | |
|---------------------|---------------------|
| | |
| <u>Assignor</u> | <u>Assignee</u> |
| <u>Dated:</u> | <u>Dated:</u> |

(2) The assignor shall annex to such assignment schedules in the form provided for by section 11(3) of this act in the case of general receiverships, setting forth the creditors and the property of the assignor.

(3) Every assignment shall be effective when a petition to appoint the assignee as receiver has been filed by the assignor, by the assignee, or by any creditor of the assignor with the clerk of the superior court in the county of the assignor's residence if the assignor is an individual or a marital community, or in the county of the assignor's principal place of business or registered office within this state if the assignor is any other person. A petition shall set forth the name and address of the assignor and the name and address of the assignee, and shall include a copy of the assignment and the schedules affixed thereto, and a request that the court fix the amount of the receiver's bond to be filed with the clerk of the court.

(4) A person to whom a general assignment of property for the benefit of creditors has been made shall be appointed as general receiver with respect to the assignor's property by the superior court upon the filing of a petition under subsection (3) of this section. Except as provided for by subsection (5) of this section, following the assignee's appointment as general receiver, all proceedings involving the administration of the assignor's property and the claims of the assignee's creditors shall be governed by the provisions of chapter 7.60 RCW applicable to general receiverships and court rules applicable thereto.

(5) Upon ~~((the application))~~ motion of two or more creditors of ~~((said debtor therefor, by petition to the judge of the superior court of the county in which such assignment is or should be recorded,))~~ the assignor served and filed at any time within thirty days ~~((from the making or recording of such assignment))~~ following the date upon which notice is mailed to all known creditors under section 22 of this act, it shall be the duty of ~~((said superior judge))~~ the court to direct the clerk of ~~((said superior))~~ the court to order a meeting of the creditors of ~~((said debtors))~~ the assignor, to ~~((choose an assignee of the estate of said debtor in lieu of))~~ determine whether a person other than the assignee named ~~((by the debtor in his))~~ in the assignment should be appointed as general receiver with respect to the property of the assignor; and thereupon the clerk of ~~((said))~~ the court shall ~~((forthwith))~~ immediately give notice to all the creditors ~~((of said debtor))~~ identified in the schedules affixed to the assignment to meet at ~~((his))~~ the clerk's office or at such other location within the county as the clerk may specify, at a time stated~~((;))~~ not to exceed fifteen days from the date of such notice, to ~~((select one or more assignees in the place of the assignee named by~~

~~the debtor in his assignment))~~ determine whether a person other than the assignee named in the assignment should be appointed as general receiver with respect to the property of the assignor. ~~((Such))~~ The assignor's creditors may appear in person or by proxy at the meeting, and a majority in both number and value of ((said)) claims of the creditors attending ((such)) or represented at the meeting ((shall)) may select ((one or more assignees; and in the event that no one shall receive a majority vote of said creditors who represent at least one-half in amount of all claims represented at such meeting, then, and in that event, said clerk shall certify that fact to the judge of the superior court aforesaid, and thereupon said superior judge shall select and appoint an assignee.

~~When such assignee shall have been selected by such creditors, or appointed by the superior judge as herein provided, then the assignee named in the debtor's assignment shall forthwith make to the assignee elected by the creditors or appointed by the superior judge, an assignment and conveyance of all the estate, real and personal, that has been assigned or conveyed to him by said debtor; and such assignee so elected by the creditors or appointed by the superior judge, upon giving the bond required of an assignee by RCW 7.08.010 through 7.08.170, shall possess all the powers, and be subject to all the duties imposed by RCW 7.08.010 through 7.08.170, as fully to all intents and purposes as though named in the debtor's assignment.))~~ a person other than the assignee named in the assignment to serve as general receiver with respect to the assignor's property, whereupon the court shall appoint the selected person as receiver under subsection (4) of this section if a receiver has not already been appointed, and shall appoint the person to replace the original assignee as receiver if the appointment already has been made, unless the court determines upon good cause shown that the appointment as receiver of the person selected by the creditors would not be in the best interests of creditors in general, in which event the court shall appoint or substitute as the receiver a person selected by the court other than the original assignee. If at least one-third of the number or amount of claims represented in person or by proxy at the meeting of creditors vote for the appointment as receiver of a person or persons other than the assignee named in the assignment, then the court upon motion of any creditor served and filed within ten days following the meeting shall appoint as receiver a person selected by the court other than the original assignee, discharging the original assignee if the person previously was appointed as receiver. A creditor may not vote at any meeting of creditors called for the purpose of determining whether a person other than the assignee named in the assignment should be appointed as receiver, until the creditor has presented to the clerk, who presides at the meeting, a proof of claim in accordance with section 23 of this act.

~~(6) From the time ((of the pending of an application to elect an assignee by the creditors, and until the time shall be terminated by an election or appointment as herein provided))~~ a motion is made to elect a new assignee in accordance with subsection (5) of this section, and until either the meeting of creditors occurs without a selection of a new assignee, or until the court enters an order appointing as receiver a person other than the original assignee if the creditors vote to select a new assignee at that meeting, no property of the ((debtor)) assignor, except perishable property, ((shall)) may be sold or disposed of by ((any)) the assignee, whether or not the assignee has been appointed as receiver; but the same shall be safely and securely kept until ((the election or

~~appointment of an assignee as herein provided. No creditor shall be entitled to vote at any such meeting called for the purpose of electing an assignee, until he shall have presented to the clerk of the superior court, who shall preside at such meeting, a verified statement of his claim against the debtor)) then.~~

Sec. 38. RCW 7.56.110 and Code 1881 s 712 are each amended to read as follows:

If judgment be rendered against any corporation or against any persons claiming to be a corporation, the court may cause the costs to be collected by executions against the persons claiming to be a corporation or by attachment against the directors or other officers of the corporation, and shall restrain the corporation, ~~((appoint a receiver of its property and effects,))~~ take an account, and make a distribution thereof among the creditors. The prosecuting attorney shall immediately institute proceedings for that purpose.

Sec. 39. RCW 11.64.022 and 1989 c 373 s 15 are each amended to read as follows:

If the surviving partner or partners fail or refuse to furnish an inventory or list of liabilities, to permit an appraisal, or to account to the personal representative, or to furnish a bond when required pursuant to RCW 11.64.016, the court shall order a citation to issue requiring the surviving partner or partners to appear and show cause why they have not furnished an inventory list of liabilities, or permitted an appraisal or why they should not account to the personal representative or file a bond. The citation shall be served not less than ten days before the return day designated therein, or such shorter period as the court upon a showing of good cause deems appropriate. If the surviving partner or partners neglect or refuse to file an inventory or list of liabilities, or to permit an appraisal, or fail to account to the court or to file a bond, after they have been directed to do so, they may be punished for a contempt of court as provided in chapter 7.21 RCW. Where the surviving partner or partners fail to file a bond after being ordered to do so by the court, the court may also appoint a receiver of the partnership estate ~~((with like powers and duties of receivers in equity))~~ under chapter 7.60 RCW, and may order the costs and expenses of the proceedings to be paid out of the partnership estate or out of the estate of the decedent, or by the surviving partner or partners personally, or partly by each of the parties.

Sec. 40. RCW 23B.14.320 and 1989 c 165 s 165 are each amended to read as follows:

(1) A court in a judicial proceeding brought to dissolve a corporation may appoint one or more receivers to wind up and liquidate, or one or more custodians to manage, the business and affairs of the corporation. The court shall hold a hearing, after notifying all parties to the proceeding and any interested persons designated by the court, before appointing a receiver or custodian. ~~((The court appointing a receiver or custodian has exclusive jurisdiction over the corporation and all of its property wherever located.))~~

(2) The court may appoint an individual or a domestic or foreign corporation, authorized to transact business in this state, as a receiver or custodian. The court may require the receiver or custodian to post bond, with or without sureties, in an amount the court directs.

~~(3) The court shall describe the powers and duties of the receiver or custodian in its appointing order, which may be amended from time to time. Among other powers:~~

~~(a) The receiver (i) may dispose of all or any part of the assets of the corporation wherever located, at a public or private sale, if authorized by the court, and (ii) may sue and defend in the receiver's own name as receiver of the corporation in all courts of this state; and~~

~~(b) The) receiver or custodian may exercise all of the powers of the corporation, through or in place of its board of directors or officers, to the extent necessary to manage the affairs of the corporation in the best interests of its shareholders and creditors.~~

(4) The court, during a receivership, may redesignate the receiver a custodian, and during a custodianship may redesignate the custodian a receiver, if doing so is in the best interests of the corporation, its shareholders, and creditors.

(5) The court from time to time during the receivership or custodianship may order compensation paid and expense disbursements or reimbursements made to the receiver or custodian and counsel from the assets of the corporation or proceeds from the sale of the assets.

Sec. 41. RCW 24.06.305 and 1969 ex.s. c 120 s 61 are each amended to read as follows:

(1) In proceedings to liquidate the assets and affairs of a corporation the court shall have the power to:

(a) Issue injunctions;

(b) Appoint a receiver or receivers pendente lite, with such powers and duties as the court may, from time to time, direct;

(c) Take such other proceedings as may be requisite to preserve the corporate assets wherever situated; and

(d) Carry on the affairs of the corporation until a full hearing can be had.

After a hearing had upon such notice as the court may direct to be given to all parties to the proceedings, and to any other parties in interest designated by the court, the court may appoint a receiver ~~((with authority to collect the assets of the corporation. Such receiver shall have authority, subject to the order of the court, to sell, convey and dispose of all or any part of the assets of the corporation wherever situated, either at public or private sale. The order appointing such receiver shall state his powers and duties. Such powers and duties may be increased or diminished at any time during the proceedings))~~.

(2) The assets of the corporation or the proceeds resulting from the sale, conveyance, or other disposition thereof shall be applied and distributed as follows:

(a) All costs and expenses of the court proceedings, and all liabilities and obligations of the corporation shall be paid, satisfied and discharged, or adequate provision made therefor;

(b) Assets held by the corporation upon condition requiring return, transfer, or conveyance, which condition occurs by reason of the dissolution or liquidation, shall be returned, transferred, or conveyed in accordance with such requirements;

(c) Remaining assets, if any, shall be distributed to the members, shareholders, or others in accordance with the provisions of the articles of incorporation.

(3) The court shall have power to make periodic allowances, as expenses of the liquidation and compensation to the receivers and attorneys in the proceeding accrue, and to direct the payment thereof from the assets of the corporation or from the proceeds of any sale or disposition of such assets.

~~((A receiver appointed under the provisions of this section shall have authority to sue and defend in all courts in his own name, as receiver of such corporation. The court appointing such receiver shall have exclusive jurisdiction of the corporation and its property, wherever situated.))~~

NEW SECTION. Sec. 42. A new section is added to chapter 31.12 RCW to read as follows:

Except in cases in which a receiver is appointed by a court on a temporary basis under RCW 31.12.721, the provisions of Title 7 RCW generally applicable to receivers and receiverships do not apply to receivers elected or appointed under this chapter.

NEW SECTION. Sec. 43. A new section is added to chapter 35.07 RCW to read as follows:

The provisions of Title 7 RCW generally applicable to receivers and receiverships do not apply to receivers elected or appointed under this chapter.

NEW SECTION. Sec. 44. A new section is added to chapter 35A.15 RCW to read as follows:

The provisions of Title 7 RCW generally applicable to receivers and receiverships do not apply to receivers elected or appointed under this chapter.

Sec. 45. RCW 87.56.065 and 1925 ex.s. c 124 s 7 are each amended to read as follows:

At the time and place fixed in ~~((said))~~ the notice the court shall hear the objections of interested persons and shall determine whether the district is insolvent within the provisions of this chapter and whether the district shall be dissolved. If the court concludes that the district shall not dissolve, ~~((he))~~ the court shall so find and dismiss the action. If the court concludes that the district should be dissolved, ~~((he))~~ the court shall appoint a receiver ~~((with bond conditioned for faithful performance of his duties in such sum as the court shall determine.))~~ to take charge of the district assets and to perform such other duties as may be required by the court or by law.

Sec. 46. RCW 87.56.100 and 1925 ex.s. c 124 s 12 are each amended to read as follows:

If the owner or holder of a claim of indebtedness against the district not yet due or matured ((shall be entitled to serve upon the receiver and file a statement of his claim with the clerk of the court, as in the case of due and matured indebtedness, and the filing of such claim shall constitute an election on the part of the claimant authorizing the court in its discretion to accelerate the maturity of said indebtedness)) files a claim in any case in which a receiver is appointed under RCW 87.56.065, the maturity of the indebtedness owing to the person by the district shall be accelerated to such date as the court shall determine upon.

***NEW SECTION. Sec. 47.** The following acts or parts of acts are each repealed:

- (1) RCW 4.28.081 (Summons, how served—When corporation in hands of receiver) and 1897 c 97 s 1;
- (2) RCW 6.25.200 (Appointment of receiver for property) and 1987 c 442 s 820, 1957 c 9 s 9, & 1886 p 42 s 15;
- (3) RCW 6.32.290 (Appointment of receiver—Notice) and 1893 c 133 s 28;
- (4) RCW 6.32.300 (Effect on pending supplemental proceedings) and 1893 c 133 s 29;
- (5) RCW 6.32.310 (Only one receiver may be appointed—Extending receivership) and 1893 c 133 s 30;
- (6) RCW 6.32.320 (Order, where to be filed) and 1893 c 133 s 31;
- (7) RCW 6.32.330 (Property vested in receiver) and 1893 c 133 s 32;
- (8) RCW 6.32.340 (Receiver's title extends back by relation) and 1893 c 133 s 33;
- (9) RCW 6.32.350 (Records to be kept by clerk) and 2002 c 30 s 2 & 1893 c 133 s 34;
- (10) RCW 7.08.020 (Assent of creditors presumed) and 1890 p 83 s 2;
- (11) RCW 7.08.050 (Inventory by assignee—Bond) and 1890 p 85 s 4;
- (12) RCW 7.08.060 (Notice to creditors) and 1890 p 85 s 5;
- (13) RCW 7.08.070 (List of creditors' claims) and 1890 p 85 s 6;
- (14) RCW 7.08.080 (Exceptions to claims) and 1957 c 9 s 7 & 1890 p 85 s 7;
- (15) RCW 7.08.090 (Dividends—Final account—Compensation) and 1893 c 26 s 1 & 1890 p 86 s 8;
- (16) RCW 7.08.100 (Assignee subject to court's control) and 1890 p 86 s 9;
- (17) RCW 7.08.110 (Assignment not void, when) and 1957 c 9 s 8 & 1890 p 86 s 10;
- (18) RCW 7.08.120 (Additional inventory) and 1890 p 86 s 11;
- (19) RCW 7.08.130 (Procedure on claims not due—Limitation on presentment of claims) and 1890 p 86 s 12;
- (20) RCW 7.08.140 (Authority of assignee to dispose of assets) and 1890 p 87 s 13;
- (21) RCW 7.08.150 (Procedure when assignee dies, fails to act, misapplies estate, or if bond insufficient) and 1890 p 87 s 14;
- (22) RCW 7.08.170 (Discharge of assignor) and 1895 c 151 s 1 & 1890 p 88 s 15;
- (23) RCW 7.08.180 (Sheriff disqualified from acting) and 1893 c 137 s 1;
- (24) RCW 7.08.190 (Right of assignor to exemption) and 1897 c 6 s 1;
- (25) RCW 7.08.200 (Exemption, how claimed—Objections) and 1897 c 6 s 2;
- (26) RCW 7.60.010 (Receiver defined) and 1891 c 52 s 1;
- (27) RCW 7.60.020 (Grounds for appointment) and 1998 c 295 s 18, 1937 c 47 s 1, Code 1881 s 193, 1877 p 40 s 197, 1869 p 48 s 196, & 1854 p 162 s 171;
- (28) RCW 7.60.030 (Oath—Bond) and Code 1881 s 194, 1877 p 41 s 198, 1869 p 48 s 198, & 1854 p 162 s 173;
- (29) RCW 7.60.040 (Powers of receiver) and Code 1881 s 198, 1877 p 41 s 202, 1869 p 49 s 202, & 1854 p 163 s 177;

- (30) RCW 7.60.050 (Order when part of claim admitted) and Code 1881 s 199, 1877 p 41 s 203, 1869 p 49 s 203, & 1854 p 163 s 178;
- (31) RCW 23.72.010 (Definitions) and 1959 c 219 s 1 & 1941 c 103 s 1;
- (32) RCW 23.72.020 (Action to recover—Limitation) and 1941 c 103 s 2;
- (33) RCW 23.72.030 (Preference voidable, when—Recovery) and 1959 c 219 s 2 & 1941 c 103 s 3;
- (34) RCW 23.72.040 (Mutual debts and credits) and 1941 c 103 s 4;
- (35) RCW 23.72.050 (Attorney's fees—Reexamination) and 1941 c 103 s 5;
- (36) RCW 23.72.060 (Setoffs and counterclaims) and 1941 c 103 s 6;
- (37) RCW 24.03.275 (Qualification of receivers—Bond) and 1967 c 235 s 56;
- (38) RCW 24.03.280 (Filing of claims in liquidation proceedings) and 1967 c 235 s 57;
- (39) RCW 24.03.285 (Discontinuance of liquidation proceedings) and 1967 c 235 s 58;
- (40) *RCW 24.03.310 (Powers of foreign corporation) and 1967 c 235 s 63;*
- (41) *RCW 24.03.315 (Corporate name of foreign corporation—Fictitious name) and 1982 c 35 s 98 & 1967 c 235 s 64;*
- (42) *RCW 24.03.320 (Change of name by foreign corporation) and 1986 c 240 s 44 & 1967 c 235 s 65;*
- (43) RCW 87.56.070 (Qualifications, duties, compensation of receiver) and 1925 ex.s. c 124 s 8;
- (44) RCW 87.56.080 (Notice to creditors) and 1985 c 469 s 93 & 1925 ex.s. c 124 s 9;
- (45) RCW 87.56.085 (Notice to creditors—Contents) and 1925 ex.s. c 124 s 10;
- (46) RCW 87.56.090 (Unfiled claims barred—Effect of not filing claim of bond lien) and 1925 ex.s. c 124 s 11;
- (47) RCW 87.56.110 (Collection and disbursement of funds) and 1925 ex.s. c 124 s 13;
- (48) RCW 87.56.120 (Receiver's report—Plan of liquidation) and 1925 ex.s. c 124 s 14;
- (49) RCW 87.56.130 (Time for hearing receiver's report to be fixed—Notice) and 1985 c 469 s 94 & 1925 ex.s. c 124 s 15;
- (50) RCW 87.56.135 (Time for hearing receiver's report to be fixed—Contents) and 1925 ex.s. c 124 s 16;
- (51) RCW 87.56.140 (Objections to report) and 1925 ex.s. c 124 s 17;
- (52) RCW 87.56.145 (Objections to report—Fee) and 1925 ex.s. c 124 s 18;
- (53) RCW 87.56.150 (Hearing—Court's powers and duties) and 1925 ex.s. c 124 s 19; and
- (54) RCW 87.56.155 (Decree—Plan of liquidation) and 1925 ex.s. c 124 s 20.

*Sec. 47 was partially vetoed. See message at end of chapter.

NEW SECTION. Sec. 48. Captions used in this act are not part of the law.

Passed by the Senate March 10, 2004.

Passed by the House March 5, 2004.

Approved by the Governor March 26, 2004, with the exception of certain items that were vetoed.

Filed in Office of Secretary of State March 26, 2004.

Note: Governor's explanation of partial veto is as follows:

"I am returning herewith, without my approval as to sections 47 (40), 47 (41) and 47 (42), Substitute Senate Bill No. 6189 entitled:

"AN ACT Relating to receiverships;"

This bill develops a body of statutes to govern receivership proceedings and consolidates these laws into one chapter.

In creating this chapter, it was necessary to repeal duplicative or inconsistent statutes. These statutes are repealed in section 47. Section 47 (40) repeals RCW 24.03.310; section 47 (41) repeals RCW 24.03.315; and section 47 (42) repeals RCW 24.03.320. All three statutes deal with foreign corporations, and have no connection with receivership proceedings. These statutes were included in error, as the statutes that were meant to be repealed are RCW 24.06.310, RCW 24.06.315, and RCW 24.06.320.

For these reasons, I have vetoed sections 47 (40), 47 (41) and 47 (42) of Substitute Senate Bill No. 6189.

With the exception of sections 47 (40), 47 (41) and 47 (42), Substitute Senate Bill No. 6189 is approved."

CHAPTER 166

[Engrossed Second Substitute Senate Bill 6358]

OFFENDERS UNDER TREATMENT ORDERS

AN ACT Relating to improved collaboration regarding offenders with treatment orders; amending RCW 71.05.040, 71.05.445, 72.09.585, 71.34.225, and 70.02.030; reenacting and amending RCW 71.05.390; adding a new section to chapter 10.77 RCW; adding new sections to chapter 9.94A RCW; adding a new section to chapter 9.95 RCW; adding new sections to chapter 71.05 RCW; adding new sections to chapter 70.96A RCW; adding a new section to chapter 70.48 RCW; adding a new section to chapter 72.09 RCW; adding a new section to chapter 4.24 RCW; creating new sections; providing an effective date; and declaring an emergency.

Be it enacted by the Legislature of the State of Washington:

****NEW SECTION. Sec. 1. The legislature makes the following findings:***

(1) In some cases, there is confusion over whether the cause of a person's mental disorder can make that person ineligible for involuntary treatment;

(2) Some offenders under supervision in the community are concurrently subject to court-ordered mental health or chemical dependency treatment;

(3) Some offenders under supervision in the community are subject to department of corrections-ordered mental health or substance abuse treatment;

(4) The department of corrections frequently does not know that an offender is subject to court-ordered treatment;

(5) Treatment providers frequently do not know that a client is subject to department of corrections supervision;

(6) There is confusion about the extent to which information about an offender subject to both treatment orders and supervision by the department of corrections may be shared;

(7) When information is not shared, the lack of information creates gaps in enforcement both of the court order and the offender's conditions of supervision; and

(8) When there are gaps in enforcement, there is an increased risk to public safety.

Consequently, the legislature intends to clarify the standards for commitment and improve the coordination between the department of corrections and mental health and chemical dependency treatment providers to enhance public safety by improving compliance with treatment and supervision orders and by providing both treatment providers and the department of corrections with more current, complete information about the offender's status.

*Sec. 1 was vetoed. See message at end of chapter.

Sec. 2. RCW 71.05.040 and 1997 c 112 s 4 are each amended to read as follows:

Persons who are developmentally disabled, impaired by chronic alcoholism or drug abuse, or suffering from dementia shall not be detained for evaluation and treatment or judicially committed solely by reason of that condition unless such condition causes a person to be gravely disabled or as a result of a mental disorder such condition exists that constitutes a likelihood of serious harm; Provided however, That persons who are developmentally disabled, impaired by chronic alcoholism or drug abuse, or suffering from dementia and who otherwise meet the criteria for detention or judicial commitment are not ineligible for detention or commitment based on this condition alone.

NEW SECTION. Sec. 3. A new section is added to chapter 10.77 RCW to read as follows:

When a county designated mental health professional or a professional person has determined that a person has a mental disorder, and is otherwise committable, the cause of the person's mental disorder shall not make the person ineligible for commitment under chapter 71.05 RCW.

Sec. 4. RCW 71.05.445 and 2002 c 39 s 2 are each amended to read as follows:

(1) The definitions in this subsection apply throughout this section unless the context clearly requires otherwise.

(a) "Information related to mental health services" means all information and records compiled, obtained, or maintained in the course of providing services to either voluntary or involuntary recipients of services by a mental health service provider. This may include documents of legal proceedings under this chapter or chapter 71.34 or 10.77 RCW, or somatic health care information.

(b) "Mental health service provider" means a public or private agency that provides services to persons with mental disorders as defined under RCW 71.05.020 and receives funding from public sources. This includes evaluation and treatment facilities as defined in RCW 71.05.020, community mental health service delivery systems, or community mental health programs as defined in RCW 71.24.025, and facilities conducting competency evaluations and restoration under chapter 10.77 RCW.

(2)(a) Information related to mental health services delivered to a person subject to chapter 9.94A or 9.95 RCW shall be released, upon request, by a mental health service provider to department of corrections personnel for whom the information is necessary to carry out the responsibilities of their office. The information must be provided only for the purposes of completing presentence investigations or risk assessment reports, supervision of an incarcerated ((person)) offender or offender under supervision in the community, planning for

and provision of supervision of ~~((a person))~~ an offender, or assessment of ~~((a person's))~~ an offender's risk to the community. The request shall be in writing and shall not require the consent of the subject of the records.

(b) If an offender subject to chapter 9.94A or 9.95 RCW has failed to report for department of corrections supervision or in the event of an emergent situation that poses a significant risk to the public or the offender, information related to mental health services delivered to the offender and, if known, information regarding where the offender is likely to be found shall be released by the mental health services provider to the department of corrections upon request. The initial request may be written or oral. All oral requests must be subsequently confirmed in writing. Information released in response to an oral request is limited to a statement as to whether the offender is or is not being treated by the mental health services provider and the address or information about the location or whereabouts of the offender. Information released in response to a written request may include information identified by rule as provided in subsections (4) and (5) of this section. For purposes of this subsection a written request includes requests made by e-mail or facsimile so long as the requesting person at the department of corrections is clearly identified. The request must specify the information being requested. Disclosure of the information requested does not require the consent of the subject of the records unless the offender has received relief from disclosure under section 11, 12, or 13 of this act.

(3)(a) When a mental health service provider conducts its initial assessment for a person receiving court-ordered treatment, the service provider shall inquire and shall be told by the offender whether he or she is subject to supervision by the department of corrections.

(b) When a person receiving court-ordered treatment or treatment ordered by the department of corrections discloses to his or her mental health service provider that he or she is subject to supervision by the department of corrections, the mental health services provider shall notify the department of corrections that he or she is treating the offender and shall notify the offender that his or her community corrections officer will be notified of the treatment, provided that if the offender has received relief from disclosure pursuant to section 11, 12, or 13 of this act and the offender has provided the mental health services provider with a copy of the order granting relief from disclosure pursuant to section 11, 12, or 13 of this act, the mental health services provider is not required to notify the department of corrections that the mental health services provider is treating the offender. The notification may be written or oral and shall not require the consent of the offender. If an oral notification is made, it must be confirmed by a written notification. For purposes of this section, a written notification includes notification by e-mail or facsimile, so long as the notifying mental health service provider is clearly identified.

(4) The information to be released to the department of corrections shall include all relevant records and reports, as defined by rule, necessary for the department of corrections to carry out its duties, including those records and reports identified in subsection (2) of this section.

~~((4))~~ (5) The department and the department of corrections, in consultation with regional support networks, mental health service providers as defined in subsection (1) of this section, mental health consumers, and advocates for persons with mental illness, shall adopt rules to implement the provisions of this

section related to the type and scope of information to be released. These rules shall:

(a) Enhance and facilitate the ability of the department of corrections to carry out its responsibility of planning and ensuring community protection with respect to persons subject to sentencing under chapter 9.94A or 9.95 RCW, including accessing and releasing or disclosing information of persons who received mental health services as a minor; and

(b) Establish requirements for the notification of persons under the supervision of the department of corrections regarding the provisions of this section.

~~((5))~~ (6) The information received by the department of corrections under this section shall remain confidential and subject to the limitations on disclosure outlined in chapter 71.05 RCW, except as provided in RCW 72.09.585.

~~((6))~~ (7) No mental health service provider or individual employed by a mental health service provider shall be held responsible for information released to or used by the department of corrections under the provisions of this section or rules adopted under this section except under RCW 71.05.670 and 71.05.440.

~~((7))~~ (8) Whenever federal law or federal regulations restrict the release of information contained in the treatment records of any patient who receives treatment for alcoholism or drug dependency, the release of the information may be restricted as necessary to comply with federal law and regulations.

~~((8))~~ (9) This section does not modify the terms and conditions of disclosure of information related to sexually transmitted diseases under chapter 70.24 RCW.

(10) The department shall, subject to available resources, electronically, or by the most cost-effective means available, provide the department of corrections with the names, last dates of services, and addresses of specific regional support networks and mental health service providers that delivered mental health services to a person subject to chapter 9.94A or 9.95 RCW pursuant to an agreement between the departments.

Sec. 5. RCW 72.09.585 and 2000 c 75 s 4 are each amended to read as follows:

(1) When the department is determining an offender's risk management level, the department shall inquire of the offender and shall be told whether the offender is subject to court-ordered treatment for mental health services or chemical dependency services. The department shall request and the offender shall provide an authorization to release information form that meets applicable state and federal requirements and shall provide the offender with written notice that the department will request the offender's mental health and substance abuse treatment information. An offender's failure to inform the department of court-ordered treatment is a violation of the conditions of supervision if the offender is in the community and an infraction if the offender is in confinement, and the violation or infraction is subject to sanctions.

(2) When an offender discloses that he or she is subject to court-ordered mental health services or chemical dependency treatment, the department shall provide the mental health services provider or chemical dependency treatment provider with a written request for information and any necessary authorization to release information forms. The written request shall comply with rules adopted by the department of social and health services or protocols developed

jointly by the department and the department of social and health services. A single request shall be valid for the duration of the offender's supervision in the community. Disclosures of information related to mental health services made pursuant to a department request shall not require consent of the offender.

~~((3))~~ (3) The information received by the department under RCW 71.05.445 or 71.34.225 may be released to the indeterminate sentence review board as relevant to carry out its responsibility of planning and ensuring community protection with respect to persons under its jurisdiction. Further disclosure by the indeterminate sentence review board is subject to the limitations set forth in subsections ~~((3))~~ (5) and ~~((4))~~ (6) of this section and must be consistent with the written policy of the indeterminate sentence review board. The decision to disclose or not shall not result in civil liability for the indeterminate sentence review board or its employees provided that the decision was reached in good faith and without gross negligence.

~~((2))~~ (4) The information received by the department under RCW 71.05.445 or 71.34.225 may be used to meet the statutory duties of the department to provide evidence or report to the court. Disclosure to the public of information provided to the court by the department related to mental health services shall be limited in accordance with RCW 9.94A.500 or this section.

~~((3))~~ (5) The information received by the department under RCW 71.05.445 or 71.34.225 may be disclosed by the department to other state and local agencies as relevant to plan for and provide offenders transition, treatment, and supervision services, or as relevant and necessary to protect the public and counteract the danger created by a particular offender, and in a manner consistent with the written policy established by the secretary. The decision to disclose or not shall not result in civil liability for the department or its employees so long as the decision was reached in good faith and without gross negligence. The information received by a state or local agency from the department shall remain confidential and subject to the limitations on disclosure set forth in chapters 70.02, 71.05, and 71.34 RCW and, subject to these limitations, may be released only as relevant and necessary to counteract the danger created by a particular offender.

~~((4))~~ (6) The information received by the department under RCW 71.05.445 or 71.34.225 may be disclosed by the department to individuals only with respect to offenders who have been determined by the department to have a high risk of reoffending by a risk assessment, as defined in RCW 9.94A.030, only as relevant and necessary for those individuals to take reasonable steps for the purpose of self-protection, or as provided in RCW 72.09.370(2). The information may not be disclosed for the purpose of engaging the public in a system of supervision, monitoring, and reporting offender behavior to the department. The department must limit the disclosure of information related to mental health services to the public to descriptions of an offender's behavior, risk he or she may present to the community, and need for mental health treatment, including medications, and shall not disclose or release to the public copies of treatment documents or records, except as otherwise provided by law. All disclosure of information to the public must be done in a manner consistent with the written policy established by the secretary. The decision to disclose or not shall not result in civil liability for the department or its employees so long as the decision was reached in good faith and without gross negligence. Nothing in

this subsection prevents any person from reporting to law enforcement or the department behavior that he or she believes creates a public safety risk.

Sec. 6. RCW 71.05.390 and 2000 c 94 s 9, 2000 c 75 s 6, and 2000 c 74 s 7 are each reenacted and amended to read as follows:

Except as provided in this section, the fact of admission and all information and records compiled, obtained, or maintained in the course of providing services to either voluntary or involuntary recipients of services at public or private agencies shall be confidential.

Information and records may be disclosed only:

(1) In communications between qualified professional persons to meet the requirements of this chapter, in the provision of services or appropriate referrals, or in the course of guardianship proceedings. The consent of the patient, or his or her guardian, shall be obtained before information or records may be disclosed by a professional person employed by a facility unless provided to a professional person:

- (a) Employed by the facility;
- (b) Who has medical responsibility for the patient's care;
- (c) Who is a county designated mental health professional;
- (d) Who is providing services under chapter 71.24 RCW;
- (e) Who is employed by a state or local correctional facility where the person is confined or supervised; or
- (f) Who is providing evaluation, treatment, or follow-up services under chapter 10.77 RCW.

(2) When the communications regard the special needs of a patient and the necessary circumstances giving rise to such needs and the disclosure is made by a facility providing outpatient services to the operator of a care facility in which the patient resides.

(3) When the person receiving services, or his or her guardian, designates persons to whom information or records may be released, or if the person is a minor, when his or her parents make such designation.

(4) To the extent necessary for a recipient to make a claim, or for a claim to be made on behalf of a recipient for aid, insurance, or medical assistance to which he or she may be entitled.

(5) For either program evaluation or research, or both: PROVIDED, That the secretary adopts rules for the conduct of the evaluation or research, or both. Such rules shall include, but need not be limited to, the requirement that all evaluators and researchers must sign an oath of confidentiality substantially as follows:

"As a condition of conducting evaluation or research concerning persons who have received services from (fill in the facility, agency, or person) I,, agree not to divulge, publish, or otherwise make known to unauthorized persons or the public any information obtained in the course of such evaluation or research regarding persons who have received services such that the person who received such services is identifiable.

I recognize that unauthorized release of confidential information may subject me to civil liability under the provisions of state law.

/s/"

(6) To the courts as necessary to the administration of this chapter or to a court ordering an evaluation or treatment under chapter 10.77 RCW solely for the purpose of preventing the entry of any evaluation or treatment order that is inconsistent with any order entered under this chapter.

(7) To law enforcement officers, public health officers, or personnel of the department of corrections or the indeterminate sentence review board for persons who are the subject of the records and who are committed to the custody or supervision of the department of corrections or indeterminate sentence review board which information or records are necessary to carry out the responsibilities of their office. Except for dissemination of information released pursuant to RCW 71.05.425 and 4.24.550, regarding persons committed under this chapter under RCW 71.05.280(3) and 71.05.320(2)(c) after dismissal of a sex offense as defined in RCW 9.94A.030, the extent of information that may be released is limited as follows:

(a) Only the fact, place, and date of involuntary commitment, the fact and date of discharge or release, and the last known address shall be disclosed upon request; ~~((and))~~

(b) The law enforcement and public health officers or personnel of the department of corrections or indeterminate sentence review board shall be obligated to keep such information confidential in accordance with this chapter; ~~((and))~~

(c) Additional information shall be disclosed only after giving notice to said person and his or her counsel and upon a showing of clear, cogent, and convincing evidence that such information is necessary and that appropriate safeguards for strict confidentiality are and will be maintained. However, in the event the said person has escaped from custody, said notice prior to disclosure is not necessary and that the facility from which the person escaped shall include an evaluation as to whether the person is of danger to persons or property and has a propensity toward violence;

(d) Information and records shall be disclosed to the department of corrections pursuant to and in compliance with the provisions of RCW 71.05.445 for the purposes of completing presentence investigations or risk assessment reports, supervision of an incarcerated offender or offender under supervision in the community, planning for and provision of supervision of an offender, or assessment of an offender's risk to the community; and

(e) Disclosure under this subsection is mandatory for the purposes of the health insurance portability and accountability act.

(8) To the attorney of the detained person.

(9) To the prosecuting attorney as necessary to carry out the responsibilities of the office under RCW 71.05.330(2) and 71.05.340(1)(b) and 71.05.335. The prosecutor shall be provided access to records regarding the committed person's treatment and prognosis, medication, behavior problems, and other records relevant to the issue of whether treatment less restrictive than inpatient treatment is in the best interest of the committed person or others. Information shall be disclosed only after giving notice to the committed person and the person's counsel.

(10) To appropriate law enforcement agencies and to a person, when the identity of the person is known to the public or private agency, whose health and safety has been threatened, or who is known to have been repeatedly harassed,

by the patient. The person may designate a representative to receive the disclosure. The disclosure shall be made by the professional person in charge of the public or private agency or his or her designee and shall include the dates of commitment, admission, discharge, or release, authorized or unauthorized absence from the agency's facility, and only such other information that is pertinent to the threat or harassment. The decision to disclose or not shall not result in civil liability for the agency or its employees so long as the decision was reached in good faith and without gross negligence.

(11) To appropriate corrections and law enforcement agencies(~~(, upon request,)~~) all necessary and relevant information in the event of a crisis or emergent situation that poses a significant and imminent risk to the public. The decision to disclose or not shall not result in civil liability for the mental health service provider or its employees so long as the decision was reached in good faith and without gross negligence.

(12) To the persons designated in RCW 71.05.425 for the purposes described in that section.

(13) Civil liability and immunity for the release of information about a particular person who is committed to the department under RCW 71.05.280(3) and 71.05.320(2)(c) after dismissal of a sex offense as defined in RCW 9.94A.030, is governed by RCW 4.24.550.

(14) To a patient's next of kin, guardian, or conservator, if any, in the event of death, as provided in RCW 71.05.400.

(15) To the department of health for the purposes of determining compliance with state or federal licensure, certification, or registration rules or laws. However, the information and records obtained under this subsection are exempt from public inspection and copying pursuant to chapter 42.17 RCW.

The fact of admission, as well as all records, files, evidence, findings, or orders made, prepared, collected, or maintained pursuant to this chapter shall not be admissible as evidence in any legal proceeding outside this chapter without the written consent of the person who was the subject of the proceeding except in a subsequent criminal prosecution of a person committed pursuant to RCW 71.05.280(3) or 71.05.320(2)(c) on charges that were dismissed pursuant to chapter 10.77 RCW due to incompetency to stand trial or in a civil commitment proceeding pursuant to chapter 71.09 RCW. The records and files maintained in any court proceeding pursuant to this chapter shall be confidential and available subsequent to such proceedings only to the person who was the subject of the proceeding or his or her attorney. In addition, the court may order the subsequent release or use of such records or files only upon good cause shown if the court finds that appropriate safeguards for strict confidentiality are and will be maintained.

NEW SECTION. Sec. 7. A new section is added to chapter 9.94A RCW to read as follows:

An offender's failure to inform the department of court-ordered treatment upon request by the department is a violation of the conditions of supervision if the offender is in the community and an infraction if the offender is in confinement, and the violation or infraction is subject to sanctions.

Sec. 8. RCW 71.34.225 and 2002 c 39 s 1 are each amended to read as follows:

(1) The definitions in this subsection apply throughout this section unless the context clearly requires otherwise.

(a) "Information related to mental health services" means all information and records compiled, obtained, or maintained in the course of providing services to either voluntary or involuntary recipients of services by a mental health service provider. This may include documents of legal proceedings under this chapter or chapter 71.05 or 10.77 RCW, or somatic health care information.

(b) "Mental health service provider" means a public or private agency that provides services to persons with mental disorders as defined under RCW 71.34.020 and receives funding from public sources. This includes evaluation and treatment facilities as defined in RCW 71.34.020, community mental health service delivery systems, or community mental health programs, as defined in RCW 71.24.025, and facilities conducting competency evaluations and restoration under chapter 10.77 RCW.

(2) Information related to mental health services delivered to a person subject to chapter 9.94A or 9.95 RCW shall be released, upon request, by a mental health service provider to department of corrections personnel for whom the information is necessary to carry out the responsibilities of their office. The information must be provided only for the purpose of completing presentence investigations, supervision of an incarcerated person, planning for and provision of supervision of a person, or assessment of a person's risk to the community. The request shall be in writing and shall not require the consent of the subject of the records.

(3) The information to be released to the department of corrections shall include all relevant records and reports, as defined by rule, necessary for the department of corrections to carry out its duties, including those records and reports identified in subsection (2) of this section.

(4) The department shall, subject to available resources, electronically, or by the most cost-effective means available, provide the department of corrections with the names, last dates of services, and addresses of specific regional support networks and mental health service providers that delivered mental health services to a person subject to chapter 9.94A or 9.95 RCW pursuant to an agreement between the departments.

(5) The department and the department of corrections, in consultation with regional support networks, mental health service providers as defined in subsection (1) of this section, mental health consumers, and advocates for persons with mental illness, shall adopt rules to implement the provisions of this section related to the type and scope of information to be released. These rules shall:

(a) Enhance and facilitate the ability of the department of corrections to carry out its responsibility of planning and ensuring community protection with respect to persons subject to sentencing under chapter 9.94A or 9.95 RCW, including accessing and releasing or disclosing information of persons who received mental health services as a minor; and

(b) Establish requirements for the notification of persons under the supervision of the department of corrections regarding the provisions of this section.

~~((5))~~ (6) The information received by the department of corrections under this section shall remain confidential and subject to the limitations on disclosure outlined in RCW 71.34.200, except as provided in RCW 72.09.585.

~~((6))~~ (7) No mental health service provider or individual employed by a mental health service provider shall be held responsible for information released to or used by the department of corrections under the provisions of this section or rules adopted under this section.

~~((7))~~ (8) Whenever federal law or federal regulations restrict the release of information contained in the treatment records of any patient who receives treatment for alcoholism or drug dependency, the release of the information may be restricted as necessary to comply with federal law and regulations.

~~((8))~~ (9) This section does not modify the terms and conditions of disclosure of information related to sexually transmitted diseases under chapter 70.24 RCW.

NEW SECTION. Sec. 9. A new section is added to chapter 9.94A RCW to read as follows:

When an offender receiving court-ordered mental health or chemical dependency treatment or treatment ordered by the department of corrections presents for treatment from a mental health or chemical dependency treatment provider, the offender must disclose to the mental health or chemical dependency treatment provider whether he or she is subject to supervision by the department of corrections. If an offender has received relief from disclosure pursuant to section 11, 12, or 13 of this act, the offender must provide the mental health or chemical dependency treatment provider with a copy of the order granting the relief.

NEW SECTION. Sec. 10. A new section is added to chapter 9.95 RCW to read as follows:

When an offender receiving court-ordered mental health or chemical dependency treatment or treatment ordered by the department of corrections presents for treatment from a mental health or chemical dependency treatment provider, the offender must disclose to the mental health or chemical dependency treatment provider whether he or she is subject to supervision by the department of corrections. If an offender has received relief from disclosure pursuant to section 11, 12, or 13 of this act, the offender must provide the mental health or chemical dependency treatment provider with a copy of the order granting the relief.

NEW SECTION. Sec. 11. A new section is added to chapter 9.94A RCW to read as follows:

When any person is convicted in a superior court, the judgment and sentence shall include a statement that if the offender is or becomes subject to court-ordered mental health or chemical dependency treatment, the offender must notify the department and the offender's treatment information must be shared with the department of corrections for the duration of the offender's incarceration and supervision. Upon a petition by an offender who does not have a history of one or more violent acts, as defined in RCW 71.05.020, the court may, for good cause, find that public safety is not enhanced by the sharing of this offender's information.

NEW SECTION. Sec. 12. A new section is added to chapter 71.05 RCW to read as follows:

When any court orders a person to receive treatment under this chapter, the order shall include a statement that if the person is, or becomes, subject to supervision by the department of corrections, the person must notify the treatment provider and the person's mental health treatment information must be shared with the department of corrections for the duration of the offender's incarceration and supervision, under RCW 71.05.445. Upon a petition by a person who does not have a history of one or more violent acts, the court may, for good cause, find that public safety would not be enhanced by the sharing of this person's information.

NEW SECTION. Sec. 13. A new section is added to chapter 70.96A RCW to read as follows:

When any court orders a person to receive treatment under this chapter, the order shall include a statement that if the person is, or becomes, subject to supervision by the department of corrections, the person must notify the treatment provider and the person's chemical dependency treatment information must be shared with the department of corrections for the duration of the offender's incarceration and supervision. Upon a petition by a person who does not have a history of one or more violent acts, as defined in RCW 71.05.020, the court may, for good cause, find that public safety would not be enhanced by the sharing of this person's information.

NEW SECTION. Sec. 14. A new section is added to chapter 70.48 RCW to read as follows:

(1) A person having charge of a jail, or that person's designee, shall notify the county designated mental health professional or the designated chemical dependency specialist seventy-two hours prior to the release to the community of an offender or defendant who was subject to a discharge review under section 18 of this act. If the person having charge of the jail does not receive seventy-two hours notice of the release, the notification to the county designated mental health professional or the designated chemical dependency specialist shall be made as soon as reasonably possible, but not later than the actual release to the community of the defendant or offender.

(2) When a person having charge of a jail, or that person's designee, releases an offender or defendant who was the subject of a discharge review under section 18 of this act, the person having charge of a jail, or that person's designee, shall notify the state hospital from which the offender or defendant was released.

NEW SECTION. Sec. 15. A new section is added to chapter 70.96A RCW to read as follows:

(1) When a designated chemical dependency specialist is notified by a jail that a defendant or offender who was subject to a discharge review under section 18 of this act is to be released to the community, the designated chemical dependency specialist shall evaluate the person within seventy-two hours of release, if the person's treatment information indicates that he or she may need chemical dependency treatment.

(2) When an offender is under court-ordered treatment in the community and the supervision of the department of corrections, and the treatment provider

becomes aware that the person is in violation of the terms of the court order, the treatment provider shall notify the designated chemical dependency specialist of the violation and request an evaluation for purposes of revocation of the conditional release.

(3) When a designated chemical dependency specialist becomes aware that an offender who is under court-ordered treatment in the community and the supervision of the department of corrections is in violation of a treatment order or a condition of supervision that relates to public safety, or the designated chemical dependency specialist detains a person under this chapter, the designated chemical dependency specialist shall notify the person's treatment provider and the department of corrections.

(4) When an offender who is confined in a state correctional facility or is under supervision of the department of corrections in the community is subject to a petition for involuntary treatment under this chapter, the petitioner shall notify the department of corrections and the department of corrections shall provide documentation of its risk assessment or other concerns to the petitioner and the court if the department of corrections classified the offender as a high risk or high needs offender.

(5) Nothing in this section creates a duty on any treatment provider or designated chemical dependency specialist to provide offender supervision.

NEW SECTION. Sec. 16. A new section is added to chapter 71.05 RCW to read as follows:

(1) When a county designated mental health professional is notified by a jail that a defendant or offender who was subject to a discharge review under section 18 of this act is to be released to the community, the county designated mental health professional shall evaluate the person within seventy-two hours of release.

(2) When an offender is under court-ordered treatment in the community and the supervision of the department of corrections, and the treatment provider becomes aware that the person is in violation of the terms of the court order, the treatment provider shall notify the county designated mental health professional of the violation and request an evaluation for purposes of revocation of the less restrictive alternative.

(3) When a county designated mental health professional becomes aware that an offender who is under court-ordered treatment in the community and the supervision of the department of corrections is in violation of a treatment order or a condition of supervision, or the county designated mental health professional detains a person under this chapter, the county designated mental health professional shall notify the person's treatment provider and the department of corrections.

(4) When an offender who is confined in a state correctional facility or is under supervision of the department of corrections in the community is subject to a petition for involuntary treatment under this chapter, the petitioner shall notify the department of corrections and the department of corrections shall provide documentation of its risk assessment or other concerns to the petitioner and the court if the department of corrections classified the offender as a high risk or high needs offender.

(5) Nothing in this section creates a duty on any treatment provider or county designated mental health professional to provide offender supervision.

NEW SECTION. Sec. 17. A new section is added to chapter 72.09 RCW to read as follows:

(1) When an offender is under court-ordered mental health or chemical dependency treatment in the community and the supervision of the department of corrections, and the community corrections officer becomes aware that the person is in violation of the terms of the court's treatment order, the community corrections officer shall notify the county designated mental health professional or the designated chemical dependency specialist, as appropriate, of the violation and request an evaluation for purposes of revocation of the less restrictive alternative or conditional release.

(2) When a county designated mental health professional or the designated chemical dependency specialist notifies the department that an offender in a state correctional facility is the subject of a petition for involuntary treatment under chapter 71.05 or 70.96A RCW, the department shall provide documentation of its risk assessment or other concerns to the petitioner and the court if the department classified the offender as a high risk or high needs offender.

NEW SECTION. Sec. 18. A new section is added to chapter 71.05 RCW to read as follows:

(1) When a state hospital admits a person for evaluation or treatment under this chapter who has a history of one or more violent acts and:

(a) Has been transferred from a correctional facility; or

(b) Is or has been under the authority of the department of corrections or the indeterminate sentence review board,

the state hospital shall consult with the appropriate corrections and chemical dependency personnel and the appropriate forensic staff at the state hospital to conduct a discharge review to determine whether the person presents a likelihood of serious harm and whether the person is appropriate for release to a less restrictive alternative.

(2) When a state hospital returns a person who was reviewed under subsection (1) of this section to a correctional facility, the hospital shall notify the correctional facility that the person was subject to a discharge review pursuant to this section.

Sec. 19. RCW 70.02.030 and 1994 sp.s. c 9 s 741 are each amended to read as follows:

(1) A patient may authorize a health care provider to disclose the patient's health care information. A health care provider shall honor an authorization and, if requested, provide a copy of the recorded health care information unless the health care provider denies the patient access to health care information under RCW 70.02.090.

(2) A health care provider may charge a reasonable fee for providing the health care information and is not required to honor an authorization until the fee is paid.

(3) To be valid, a disclosure authorization to a health care provider shall:

(a) Be in writing, dated, and signed by the patient;

(b) Identify the nature of the information to be disclosed;

(c) Identify the name, address, and institutional affiliation of the person to whom the information is to be disclosed;

(d) Except for third-party payors, identify the provider who is to make the disclosure; and

(e) Identify the patient.

(4) Except as provided by this chapter, the signing of an authorization by a patient is not a waiver of any rights a patient has under other statutes, the rules of evidence, or common law.

(5) A health care provider shall retain each authorization or revocation in conjunction with any health care information from which disclosures are made. This requirement shall not apply to disclosures to third-party payors.

(6) Except for authorizations given pursuant to an agreement with a treatment or monitoring program or disciplinary authority under chapter 18.71 or 18.130 RCW, when the patient is under the supervision of the department of corrections, or to provide information to third-party payors, an authorization may not permit the release of health care information relating to future health care that the patient receives more than ninety days after the authorization was signed. Patients shall be advised of the period of validity of their authorization on the disclosure authorization form. If the authorization does not contain an expiration date and the patient is not under the supervision of the department of corrections, it expires ninety days after it is signed.

(7) Where the patient is under the supervision of the department of corrections, an authorization signed pursuant to this section for health care information related to mental health or drug or alcohol treatment expires at the end of the term of supervision, unless the patient is part of a treatment program that requires the continued exchange of information until the end of the period of treatment.

NEW SECTION. Sec. 20. (1) The department of social and health services and the department of corrections shall develop a training plan for department employees, contractors, and necessary mental health service providers and chemical dependency treatment providers covering the information sharing processes for offenders with treatment orders and terms of supervision in the community.

(2) The department of corrections and the department of social and health services, in consultation with prosecuting attorneys, the Washington association of sheriffs and police chiefs, regional support networks, county designated chemical dependency specialists, and other experts that the departments deem appropriate, shall develop a model for multidisciplinary case management and release planning of offenders classified as having high resource needs in multiple service areas.

NEW SECTION. Sec. 21. A new section is added to chapter 4.24 RCW to read as follows:

Information shared and actions taken without gross negligence and in good faith compliance with RCW 71.05.445, 72.09.585, or sections 15 through 17 of this act are not a basis for any private civil cause of action.

NEW SECTION. Sec. 22. The department of social and health services, in consultation with the appropriate committees of the legislature, shall assess the current and needed residential capacity for crisis response and ongoing treatment services for persons in need of treatment for mental disorders and chemical dependency. In addition to considering the demand for persons with either a

mental disorder or chemical dependency, the assessment shall consider the demand for services for mentally ill offenders, and persons with co-occurring disorders, mental disorders caused by traumatic brain injury or dementia, and drug induced psychosis. An initial report assessing the types, number, and location of needed mental health crisis response and emergency treatment beds, both in community hospital-based and in other settings, shall be submitted to appropriate committees of the legislature by November 1, 2004. A final report assessing the types, number, and location of beds needed for mental health and chemical dependency emergency, transitional, and ongoing treatment shall be submitted to appropriate committees of the legislature by December 1, 2005. Both reports shall set forth the projected costs and benefits of alternative strategies and timelines for addressing identified needs.

Legislative staff shall review and analyze the use of mental health resources in other state programs for providing community based and hospital based care for persons with mental illness, including information available through the council of state governments and the national conference of state legislatures.

NEW SECTION. Sec. 23. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected.

NEW SECTION. Sec. 24. This act takes effect July 1, 2004, except for sections 6, 20, and 22 of this act, which are necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and take effect immediately.

Passed by the Senate March 9, 2004.

Passed by the House March 4, 2004.

Approved by the Governor March 26, 2004, with the exception of certain items that were vetoed.

Filed in Office of Secretary of State March 26, 2004.

Note: Governor's explanation of partial veto is as follows:

"I am returning herewith, without my approval as to section 1, Engrossed Second Substitute Senate Bill No. 6358 entitled:

"AN ACT Relating to improved collaboration regarding offenders with treatment orders;"

This bill requires more comprehensive and effective communication between correctional authorities and treatment providers regarding people who are subject to both correctional supervision, based on criminal charges or convictions, and civil commitment, based on mental illness or chemical dependency.

Section 1 of this bill contained language that may have given an inaccurate view of the current environment, knowledge of state and local agencies, and procedures followed. Taken out of context, this language could have been misunderstood and used to indicate an admission of liability when none exists. To avoid these unintended consequences and the inadvertent misuse of this language, I have vetoed section 1.

For these reasons, I have vetoed section 1 of Engrossed Second Substitute Senate Bill No. 6358.

With the exception of section 1, Engrossed Second Substitute Senate Bill No. 6358 is approved."

CHAPTER 167

[Engrossed Second Substitute Senate Bill 6489]

CORRECTIONAL INDUSTRIES—COMPETITION

AN ACT Relating to fair competition in correctional industries; amending RCW 72.09.070, 72.09.100, 72.09.460, and 72.09.015; reenacting and amending RCW 72.09.100, 72.09.111, and 28B.10.029; adding new sections to chapter 72.09 RCW; adding a new section to chapter 42.17 RCW; creating a new section; providing an effective date; and providing an expiration date.

Be it enacted by the Legislature of the State of Washington:

Sec. 1. RCW 72.09.070 and 1994 sp.s. c 7 s 535 are each amended to read as follows:

(1) There is created a correctional industries board of directors which shall have the composition provided in RCW 72.09.080.

(2) Consistent with general department of corrections policies and procedures pertaining to the general administration of correctional facilities, the board shall establish and implement policy for correctional industries programs designed to:

(a) Offer inmates meaningful employment, work experience, and training in vocations that are specifically designed to reduce recidivism and thereby enhance public safety by providing opportunities for legitimate means of livelihood upon their release from custody;

(b) Provide industries which will reduce the tax burden of corrections and save taxpayers money through production of goods and services for sale and use;

(c) Operate correctional work programs in an effective and efficient manner which are as similar as possible to those provided by the private sector;

(d) Encourage the development of and provide for selection of, contracting for, and supervision of work programs with participating private enterprise firms;

(e) Develop and ((design)) select correctional industries work programs that do not unfairly compete with Washington businesses;

(f) Invest available funds in correctional industries enterprises and meaningful work programs that minimize the impact on in-state jobs and businesses.

(3) The board of directors shall at least annually review the work performance of the director of correctional industries division with the secretary.

(4) The director of correctional industries division shall review and evaluate the productivity, funding, and appropriateness of all correctional work programs and report on their effectiveness to the board and to the secretary.

(5) The board of directors shall have the authority to identify and establish trade advisory or apprenticeship committees to advise them on correctional industries work programs. The secretary shall appoint the members of the committees.

Where a labor management trade advisory and apprenticeship committee has already been established by the department pursuant to RCW 72.62.050 the existing committee shall also advise the board of directors.

(6) The board shall develop a strategic yearly marketing plan that shall be consistent with and work towards achieving the goals established in the six-year phased expansion of class I and class II correctional industries established in RCW 72.09.111. This marketing plan shall be presented to the appropriate

committees of the legislature by January 17 of each calendar year until the goals set forth in RCW 72.09.111 are achieved.

Sec. 2. RCW 72.09.100 and 2002 c 175 s 49 are each amended to read as follows:

It is the intent of the legislature to vest in the department the power to provide for a comprehensive inmate work program and to remove statutory and other restrictions which have limited work programs in the past. It is also the intent of the legislature to ensure that the correctional industries board of directors, in developing and selecting correctional industries work programs, does not encourage the development of, or provide for selection of or contracting for, or the significant expansion of, any new or existing class I correctional industries work programs that unfairly compete with Washington businesses. The legislature intends that the requirements relating to fair competition in the correctional industries work programs be liberally construed by the correctional industries board of directors to protect Washington businesses from unfair competition.

For purposes of establishing such a comprehensive program, the legislature recommends that the department consider adopting any or all, or any variation of, the following classes of work programs:

(1) CLASS I: FREE VENTURE INDUSTRIES.

(a) The employer model industries in this class shall be operated and managed in total or in part by any profit or nonprofit organization pursuant to an agreement between the organization and the department. The organization shall produce goods or services for sale to both the public and private sector.

(b) The customer model industries in this class shall be operated and managed by the department to provide Washington state manufacturers or businesses with products or services currently produced or provided by out-of-state or foreign suppliers.

(c) The correctional industries board of directors shall review these proposed industries, including any potential new class I industries work program or the significant expansion of an existing class I industries work program, before the department contracts to provide such products or services. The review shall include ~~((an))~~ the analysis ~~((of the potential impact of the proposed products and services on the Washington state business community and labor market))~~ required under section 4 of this act to determine if the proposed correctional industries work program will compete with any Washington business. An agreement for a new class I correctional industries work program, or an agreement for a significant expansion of an existing class I correctional industries work program, that unfairly competes with any Washington business is prohibited.

(d) The department of corrections shall supply appropriate security and custody services without charge to the participating firms.

(e) Inmates who work in free venture industries shall do so at their own choice. They shall be paid a wage comparable to the wage paid for work of a similar nature in the locality in which the industry is located, as determined by the director of correctional industries. If the director cannot reasonably determine the comparable wage, then the pay shall not be less than the federal minimum wage.

(f) An inmate who is employed in the class I program of correctional industries shall not be eligible for unemployment compensation benefits pursuant to any of the provisions of Title 50 RCW until released on parole or discharged.

(2) CLASS II: TAX REDUCTION INDUSTRIES.

(a) Industries in this class shall be state-owned and operated enterprises designed to reduce the costs for goods and services for tax-supported agencies and for nonprofit organizations.

(b) The industries selected for development within this class shall, as much as possible, match the available pool of inmate work skills and aptitudes with the work opportunities in the free community. The industries shall be closely patterned after private sector industries but with the objective of reducing public support costs rather than making a profit. The products and services of this industry, including purchased products and services necessary for a complete product line, may be sold to public agencies, to nonprofit organizations, and to private contractors when the goods purchased will be ultimately used by a public agency or a nonprofit organization. Clothing manufactured by an industry in this class may be donated to nonprofit organizations that provide clothing free of charge to low-income persons.

(c)(i) Class II correctional industries products and services shall be reviewed by the correctional industries board of directors before offering such products and services for sale to private contractors.

(ii) The board of directors shall conduct a yearly marketing review of the products and services offered under this subsection. Such review shall include an analysis of the potential impact of the proposed products and services on the Washington state business community. To avoid waste or spoilage and consequent loss to the state(;) when there is no public sector market for such goods, byproducts and surpluses of timber, agricultural, and animal husbandry enterprises may be sold to private persons, at private sale. Surplus byproducts and surpluses of timber, agricultural and animal husbandry enterprises that cannot be sold to public agencies or to private persons may be donated to nonprofit organizations. All sales of surplus products shall be carried out in accordance with rules prescribed by the secretary.

(d) Security and custody services shall be provided without charge by the department of corrections.

(e) Inmates working in this class of industries shall do so at their own choice and shall be paid for their work on a gratuity scale which shall not exceed the wage paid for work of a similar nature in the locality in which the industry is located and which is approved by the director of correctional industries.

(f) Subject to approval of the correctional industries board, provisions of RCW 41.06.380 prohibiting contracting out work performed by classified employees shall not apply to contracts with Washington state businesses entered into by the department of corrections through class II industries.

(3) CLASS III: INSTITUTIONAL SUPPORT INDUSTRIES.

(a) Industries in this class shall be operated by the department of corrections. They shall be designed and managed to accomplish the following objectives:

((a)) (i) Whenever possible, to provide basic work training and experience so that the inmate will be able to qualify for better work both within correctional

industries and the free community. It is not intended that an inmate's work within this class of industries should be his or her final and total work experience as an inmate.

~~((b))~~ (ii) Whenever possible, to provide forty hours of work or work training per week.

~~((e))~~ (iii) Whenever possible, to offset tax and other public support costs.

(b) Class III correctional industries shall be reviewed by the correctional industries board of directors to set policy for work crews. The department shall present to the board of directors quarterly detail statements showing where work crews worked, what correctional industry class, and the hours worked. The board of directors may review any class III program at its discretion.

(c) Supervising, management, and custody staff shall be employees of the department.

(d) All able and eligible inmates who are assigned work and who are not working in other classes of industries shall work in this class.

(e) Except for inmates who work in work training programs, inmates in this class shall be paid for their work in accordance with an inmate gratuity scale. The scale shall be adopted by the secretary of corrections.

(4) CLASS IV: COMMUNITY WORK INDUSTRIES.

(a) Industries in this class shall be operated by the department of corrections. They shall be designed and managed to provide services in the inmate's resident community at a reduced cost. The services shall be provided to public agencies, to persons who are poor or infirm, or to nonprofit organizations.

(b) Class IV correctional industries shall be reviewed by the correctional industries board of directors to set policy for work crews. The department shall present to the board of directors quarterly detail statements showing where work crews worked, what correctional industry class, and the hours worked. The board of directors may review any class IV program at its discretion. Class IV correctional industries operated in work camps established pursuant to RCW 72.64.050 are exempt from the requirements of this subsection (4)(b).

(c) Inmates in this program shall reside in facilities owned by, contracted for, or licensed by the department of corrections. A unit of local government shall provide work supervision services without charge to the state and shall pay the inmate's wage.

(d) The department of corrections shall reimburse participating units of local government for liability and workers compensation insurance costs.

(e) Inmates who work in this class of industries shall do so at their own choice and shall receive a gratuity which shall not exceed the wage paid for work of a similar nature in the locality in which the industry is located.

(5) CLASS V: COMMUNITY RESTITUTION PROGRAMS.

(a) Programs in this class shall be subject to supervision by the department of corrections. The purpose of this class of industries is to enable an inmate, placed on community supervision, to work off all or part of a community restitution order as ordered by the sentencing court.

(b) Employment shall be in a community restitution program operated by the state, local units of government, or a nonprofit agency.

(c) To the extent that funds are specifically made available for such purposes, the department of corrections shall reimburse nonprofit agencies for workers compensation insurance costs.

Sec. 3. RCW 72.09.100 and 2002 c 354 s 238 and 2002 c 175 s 49 are each reenacted and amended to read as follows:

It is the intent of the legislature to vest in the department the power to provide for a comprehensive inmate work program and to remove statutory and other restrictions which have limited work programs in the past. It is also the intent of the legislature to ensure that the correctional industries board of directors, in developing and selecting correctional industries work programs, does not encourage the development of, or provide for selection of or contracting for, or the significant expansion of, any new or existing class I correctional industries work programs that unfairly compete with Washington businesses. The legislature intends that the requirements relating to fair competition in the correctional industries work programs be liberally construed by the correctional industries board of directors to protect Washington businesses from unfair competition. For purposes of establishing such a comprehensive program, the legislature recommends that the department consider adopting any or all, or any variation of, the following classes of work programs:

(1) CLASS I: FREE VENTURE INDUSTRIES.

(a) The employer model industries in this class shall be operated and managed in total or in part by any profit or nonprofit organization pursuant to an agreement between the organization and the department. The organization shall produce goods or services for sale to both the public and private sector.

(b) The customer model industries in this class shall be operated and managed by the department to provide Washington state manufacturers or businesses with products or services currently produced or provided by out-of-state or foreign suppliers.

(c) The correctional industries board of directors shall review these proposed industries, including any potential new class I industries work program or the significant expansion of an existing class I industries work program, before the department contracts to provide such products or services. The review shall include ~~((an))~~ the analysis ~~((of the potential impact of the proposed products and services on the Washington state business community and labor market))~~ required under section 4 of this act to determine if the proposed correctional industries work program will compete with any Washington business. An agreement for a new class I correctional industries work program, or an agreement for a significant expansion of an existing class I correctional industries work program, that unfairly competes with any Washington business is prohibited.

(d) The department of corrections shall supply appropriate security and custody services without charge to the participating firms.

(e) Inmates who work in free venture industries shall do so at their own choice. They shall be paid a wage comparable to the wage paid for work of a similar nature in the locality in which the industry is located, as determined by the director of correctional industries. If the director cannot reasonably determine the comparable wage, then the pay shall not be less than the federal minimum wage.

(f) An inmate who is employed in the class I program of correctional industries shall not be eligible for unemployment compensation benefits pursuant to any of the provisions of Title 50 RCW until released on parole or discharged.

(2) CLASS II: TAX REDUCTION INDUSTRIES.

(a) Industries in this class shall be state-owned and operated enterprises designed to reduce the costs for goods and services for tax-supported agencies and for nonprofit organizations.

(b) The industries selected for development within this class shall, as much as possible, match the available pool of inmate work skills and aptitudes with the work opportunities in the free community. The industries shall be closely patterned after private sector industries but with the objective of reducing public support costs rather than making a profit. The products and services of this industry, including purchased products and services necessary for a complete product line, may be sold to public agencies, to nonprofit organizations, and to private contractors when the goods purchased will be ultimately used by a public agency or a nonprofit organization. Clothing manufactured by an industry in this class may be donated to nonprofit organizations that provide clothing free of charge to low-income persons.

(c)(i) Class II correctional industries products and services shall be reviewed by the correctional industries board of directors before offering such products and services for sale to private contractors.

(ii) The board of directors shall conduct a yearly marketing review of the products and services offered under this subsection. Such review shall include an analysis of the potential impact of the proposed products and services on the Washington state business community. To avoid waste or spoilage and consequent loss to the state, when there is no public sector market for such goods, byproducts and surpluses of timber, agricultural, and animal husbandry enterprises may be sold to private persons, at private sale. Surplus byproducts and surpluses of timber, agricultural and animal husbandry enterprises that cannot be sold to public agencies or to private persons may be donated to nonprofit organizations. All sales of surplus products shall be carried out in accordance with rules prescribed by the secretary.

(d) Security and custody services shall be provided without charge by the department of corrections.

(e) Inmates working in this class of industries shall do so at their own choice and shall be paid for their work on a gratuity scale which shall not exceed the wage paid for work of a similar nature in the locality in which the industry is located and which is approved by the director of correctional industries.

(f) Subject to approval of the correctional industries board, provisions of RCW 41.06.142 shall not apply to contracts with Washington state businesses entered into by the department of corrections through class II industries.

(3) CLASS III: INSTITUTIONAL SUPPORT INDUSTRIES.

(a) Industries in this class shall be operated by the department of corrections. They shall be designed and managed to accomplish the following objectives:

((a)) (i) Whenever possible, to provide basic work training and experience so that the inmate will be able to qualify for better work both within correctional industries and the free community. It is not intended that an inmate's work within this class of industries should be his or her final and total work experience as an inmate.

((b)) (ii) Whenever possible, to provide forty hours of work or work training per week.

~~((e))~~ (iii) Whenever possible, to offset tax and other public support costs.

(b) Class III correctional industries shall be reviewed by the correctional industries board of directors to set policy for work crews. The department shall present to the board of directors quarterly detail statements showing where work crews worked, what correctional industry class, and the hours worked. The board of directors may review any class III program at its discretion.

(c) Supervising, management, and custody staff shall be employees of the department.

(d) All able and eligible inmates who are assigned work and who are not working in other classes of industries shall work in this class.

(e) Except for inmates who work in work training programs, inmates in this class shall be paid for their work in accordance with an inmate gratuity scale. The scale shall be adopted by the secretary of corrections.

(4) CLASS IV: COMMUNITY WORK INDUSTRIES.

(a) Industries in this class shall be operated by the department of corrections. They shall be designed and managed to provide services in the inmate's resident community at a reduced cost. The services shall be provided to public agencies, to persons who are poor or infirm, or to nonprofit organizations.

(b) Class IV correctional industries shall be reviewed by the correctional industries board of directors to set policy for work crews. The department shall present to the board of directors quarterly detail statements showing where work crews worked, what correctional industry class, and the hours worked. The board of directors may review any class IV program at its discretion. Class IV correctional industries operated in work camps established pursuant to RCW 72.64.050 are exempt from the requirements of this subsection (4)(b).

(c) Inmates in this program shall reside in facilities owned by, contracted for, or licensed by the department of corrections. A unit of local government shall provide work supervision services without charge to the state and shall pay the inmate's wage.

(d) The department of corrections shall reimburse participating units of local government for liability and workers compensation insurance costs.

(e) Inmates who work in this class of industries shall do so at their own choice and shall receive a gratuity which shall not exceed the wage paid for work of a similar nature in the locality in which the industry is located.

(5) CLASS V: COMMUNITY RESTITUTION PROGRAMS.

(a) Programs in this class shall be subject to supervision by the department of corrections. The purpose of this class of industries is to enable an inmate, placed on community supervision, to work off all or part of a community restitution order as ordered by the sentencing court.

(b) Employment shall be in a community restitution program operated by the state, local units of government, or a nonprofit agency.

(c) To the extent that funds are specifically made available for such purposes, the department of corrections shall reimburse nonprofit agencies for workers compensation insurance costs.

NEW SECTION. Sec. 4. A new section is added to chapter 72.09 RCW to read as follows:

(1) The department must prepare a threshold analysis for any proposed new class I correctional industries work program or the significant expansion of an existing class I correctional industries work program before the department

enters into an agreement to provide such products or services. The analysis must state whether the proposed new or expanded program will impact any Washington business and must be based on information sufficient to evaluate the impact on Washington business.

(2) If the threshold analysis determines that a proposed new or expanded class I correctional industries work program will impact a Washington business, the department must complete a business impact analysis before the department enters into an agreement to provide such products or services. The business impact analysis must include:

(a) A detailed statement identifying the scope and types of impacts caused by the proposed new or expanded correctional industries work program on Washington businesses; and

(b) A detailed statement of the business costs of the proposed correctional industries work program compared to the business costs of the Washington businesses that may be impacted by the proposed class I correctional industries work program. Business costs of the proposed correctional industries work program include rent, water, sewer, electricity, disposal, labor costs, and any other quantifiable expense unique to operating in a prison. Business costs of the impacted Washington business include rent, water, sewer, electricity, disposal, property taxes, and labor costs including employee taxes, unemployment insurance, and workers' compensation.

(3) The completed threshold analysis and any completed business impact analysis with all supporting documents must be shared in a meaningful and timely manner with local chambers of commerce, trade or business associations, local and state labor union organizations, and government entities before a finding required under subsection (4) of this section is made on the proposed new or expanded class I correctional industries work program.

(4) If a business impact analysis is completed, the department must conduct a public hearing to take public testimony on the business impact analysis. The department must, at a minimum, establish a publicly accessible web site containing information reasonably calculated to provide notice to each Washington business assigned the same three-digit standard industrial classification code, or the corresponding North American industry classification system code, as the organization seeking the class I correctional industries work program agreement of the date, time, and place of the hearing. Notice of the hearing shall be posted at least thirty days prior to the hearing.

(5) Following the public hearing, the department shall adopt a finding that the proposed new or expanded class I correctional industries work program: (a) Will not compete with any Washington business; (b) will not compete unfairly with any Washington business; or (c) will compete unfairly with any Washington business and is therefore prohibited under this act.

Sec. 5. RCW 72.09.460 and 1998 c 244 s 10 are each amended to read as follows:

(1) The legislature intends that all inmates be required to participate in department-approved education programs, work programs, or both, unless exempted under subsection (4) of this section. Eligible inmates who refuse to participate in available education or work programs available at no charge to the inmates shall lose privileges according to the system established under RCW 72.09.130. Eligible inmates who are required to contribute financially to an

education or work program and refuse to contribute shall be placed in another work program. Refusal to contribute shall not result in a loss of privileges. The legislature recognizes more inmates may agree to participate in education and work programs than are available. The department must make every effort to achieve maximum public benefit by placing inmates in available and appropriate education and work programs.

(2) The department shall provide access to a program of education to all offenders who are under the age of eighteen and who have not met high school graduation or general equivalency diploma requirements in accordance with chapter 28A.193 RCW. The program of education established by the department and education provider under RCW 28A.193.020 for offenders under the age of eighteen must provide each offender a choice of curriculum that will assist the inmate in achieving a high school diploma or general equivalency diploma. The program of education may include but not be limited to basic education, prevocational training, work ethic skills, conflict resolution counseling, substance abuse intervention, and anger management counseling. The curriculum may balance these and other rehabilitation, work, and training components.

(3) The department shall, to the extent possible and considering all available funds, prioritize its resources to meet the following goals for inmates in the order listed:

(a) Achievement of basic academic skills through obtaining a high school diploma or its equivalent and achievement of vocational skills necessary for purposes of work programs and for an inmate to qualify for work upon release;

(b) Additional work and education programs based on assessments and placements under subsection (5) of this section; and

(c) Other work and education programs as appropriate.

(4) The department shall establish, by rule, objective medical standards to determine when an inmate is physically or mentally unable to participate in available education or work programs. When the department determines an inmate is permanently unable to participate in any available education or work program due to a medical condition, the inmate is exempt from the requirement under subsection (1) of this section. When the department determines an inmate is temporarily unable to participate in an education or work program due to a medical condition, the inmate is exempt from the requirement of subsection (1) of this section for the period of time he or she is temporarily disabled. The department shall periodically review the medical condition of all temporarily disabled inmates to ensure the earliest possible entry or reentry by inmates into available programming.

(5) The department shall establish, by rule, standards for participation in department-approved education and work programs. The standards shall address the following areas:

(a) Assessment. The department shall assess all inmates for their basic academic skill levels using a professionally accepted method of scoring reading, math, and language skills as grade level equivalents. The department shall determine an inmate's education history, work history, and vocational or work skills. The initial assessment shall be conducted, whenever possible, within the first thirty days of an inmate's entry into the correctional system, except that initial assessments are not required for inmates who are sentenced to life without

the possibility of release, assigned to an intensive management unit within the first thirty days after entry into the correctional system, are returning to the correctional system within one year of a prior release, or whose physical or mental condition renders them unable to complete the assessment process. The department shall track and record changes in the basic academic skill levels of all inmates reflected in any testing or assessment performed as part of their education programming;

(b) Placement. The department shall follow the policies set forth in subsection (1) of this section in establishing criteria for placing inmates in education and work programs. The department shall, to the extent possible, place all inmates whose composite grade level score for basic academic skills is below the eighth grade level in a combined education and work program. The placement criteria shall include at least the following factors:

(i) An inmate's release date and custody level(~~(, except)~~). An inmate shall not be precluded from participating in an education or work program solely on the basis of his or her release date, except that inmates with a release date of more than one hundred twenty months in the future shall not comprise more than ten percent of inmates participating in a new class I correctional industry not in existence on the effective date of this section;

(ii) An inmate's education history and basic academic skills;

(iii) An inmate's work history and vocational or work skills;

(iv) An inmate's economic circumstances, including but not limited to an inmate's family support obligations; and

(v) Where applicable, an inmate's prior performance in department-approved education or work programs;

(c) Performance and goals. The department shall establish, and periodically review, inmate behavior standards and program goals for all education and work programs. Inmates shall be notified of applicable behavior standards and program goals prior to placement in an education or work program and shall be removed from the education or work program if they consistently fail to meet the standards or goals;

(d) Financial responsibility. (i) The department shall establish a formula by which inmates, based on their ability to pay, shall pay all or a portion of the costs or tuition of certain programs. Inmates shall, based on the formula, pay a portion of the costs or tuition of participation in:

(A) Second and subsequent vocational programs associated with an inmate's work programs; and

(B) An associate of arts or baccalaureate degree program when placement in a degree program is the result of a placement made under this subsection;

(ii) Inmates shall pay all costs and tuition for participation in:

(A) Any postsecondary academic degree program which is entered independently of a placement decision made under this subsection; and

(B) Second and subsequent vocational programs not associated with an inmate's work program.

Enrollment in any program specified in (d)(ii) of this subsection shall only be allowed by correspondence or if there is an opening in an education or work program at the institution where an inmate is incarcerated and no other inmate who is placed in a program under this subsection will be displaced; and

(e) Notwithstanding any other provision in this section, an inmate sentenced to life without the possibility of release:

(i) Shall not be required to participate in education programming; and

(ii) May receive not more than one postsecondary academic degree in a program offered by the department or its contracted providers.

If an inmate sentenced to life without the possibility of release requires prevocational or vocational training for a work program, he or she may participate in the training subject to this section.

(6) The department shall coordinate education and work programs among its institutions, to the greatest extent possible, to facilitate continuity of programming among inmates transferred between institutions. Before transferring an inmate enrolled in a program, the department shall consider the effect the transfer will have on the inmate's ability to continue or complete a program. This subsection shall not be used to delay or prohibit a transfer necessary for legitimate safety or security concerns.

(7) Before construction of a new correctional institution or expansion of an existing correctional institution, the department shall adopt a plan demonstrating how cable, closed-circuit, and satellite television will be used for education and training purposes in the institution. The plan shall specify how the use of television in the education and training programs will improve inmates' preparedness for available work programs and job opportunities for which inmates may qualify upon release.

(8) The department shall adopt a plan to reduce the per-pupil cost of instruction by, among other methods, increasing the use of volunteer instructors and implementing technological efficiencies. The plan shall be adopted by December 1996 and shall be transmitted to the legislature upon adoption. The department shall, in adoption of the plan, consider distance learning, satellite instruction, video tape usage, computer-aided instruction, and flexible scheduling of offender instruction.

(9) Following completion of the review required by section 27(3), chapter 19, Laws of 1995 1st sp. sess. the department shall take all necessary steps to assure the vocation and education programs are relevant to work programs and skills necessary to enhance the employability of inmates upon release.

Sec. 6. RCW 72.09.015 and 1995 1st sp.s. c 19 s 3 are each amended to read as follows:

The definitions in this section apply throughout this chapter.

(1) "Base level of correctional services" means the minimum level of field services the department of corrections is required by statute to provide for the supervision and monitoring of offenders.

(2) "Contraband" means any object or communication the secretary determines shall not be allowed to be: (a) Brought into; (b) possessed while on the grounds of; or (c) sent from any institution under the control of the secretary.

(3) "County" means a county or combination of counties.

(4) "Department" means the department of corrections.

(5) "Earned early release" means earned (~~early~~) release as authorized by RCW 9.94A.728.

(6) "Extended family visit" means an authorized visit between an inmate and a member of his or her immediate family that occurs in a private visiting unit located at the correctional facility where the inmate is confined.

(7) "Good conduct" means compliance with department rules and policies.

(8) "Good performance" means successful completion of a program required by the department, including an education, work, or other program.

(9) "Immediate family" means the inmate's children, stepchildren, grandchildren, great grandchildren, parents, stepparents, grandparents, great grandparents, siblings, and a person legally married to an inmate. "Immediate family" does not include an inmate adopted by another inmate or the immediate family of the adopted or adopting inmate.

(10) "Indigent inmate," "indigent," and "indigency" mean an inmate who has less than a ten-dollar balance of disposable income in his or her institutional account on the day a request is made to utilize funds and during the thirty days previous to the request.

(11) "Inmate" means a person committed to the custody of the department, including but not limited to persons residing in a correctional institution or facility and persons released on furlough, work release, or community custody, and persons received from another state, state agency, county, or federal jurisdiction.

(12) "Privilege" means any goods or services, education or work programs, or earned early release days, the receipt of which are directly linked to an inmate's (a) good conduct; and (b) good performance. Privileges do not include any goods or services the department is required to provide under the state or federal Constitution or under state or federal law.

(13) "Secretary" means the secretary of corrections or his or her designee.

(14) "Significant expansion" includes any expansion into a new product line or service to the class I business that results from an increase in benefits provided by the department, including a decrease in labor costs, rent, or utility rates (for water, sewer, electricity, and disposal), an increase in work program space, tax advantages, or other overhead costs.

(15) "Superintendent" means the superintendent of a correctional facility under the jurisdiction of the Washington state department of corrections, or his or her designee.

~~((15))~~ (16) "Unfair competition" means any net competitive advantage that a business may acquire as a result of a correctional industries contract, including labor costs, rent, tax advantages, utility rates (water, sewer, electricity, and disposal), and other overhead costs. To determine net competitive advantage, the correctional industries board shall review and quantify any expenses unique to operating a for-profit business inside a prison.

(17) "Washington business" means an in-state manufacturer or service provider subject to chapter 82.04 RCW existing on the effective date of this section.

(18) "Work programs" means all classes of correctional industries jobs authorized under RCW 72.09.100.

Sec. 7. RCW 72.09.111 and 2003 c 379 s 25 and 2003 c 271 s 2 are each reenacted and amended to read as follows:

(1) The secretary shall deduct taxes and legal financial obligations from the gross wages, gratuities, or workers' compensation benefits payable directly to the inmate under chapter 51.32 RCW, of each inmate working in correctional industries work programs, or otherwise receiving such wages, gratuities, or benefits. The secretary shall also deduct child support payments from the

gratuities of each inmate working in class II through class IV correctional industries work programs. The secretary shall develop a formula for the distribution of offender wages, gratuities, and benefits. The formula shall not reduce the inmate account below the indigency level, as defined in RCW 72.09.015.

(a) The formula shall include the following minimum deductions from class I gross wages and from all others earning at least minimum wage:

(i) Five percent to the public safety and education account for the purpose of crime victims' compensation;

(ii) Ten percent to a department personal inmate savings account;

(iii) Twenty percent to the department to contribute to the cost of incarceration; and

(iv) Twenty percent for payment of legal financial obligations for all inmates who have legal financial obligations owing in any Washington state superior court.

(b) The formula shall include the following minimum deductions from class II gross gratuities:

(i) Five percent to the public safety and education account for the purpose of crime victims' compensation;

(ii) Ten percent to a department personal inmate savings account;

(iii) Fifteen percent to the department to contribute to the cost of incarceration;

(iv) Twenty percent for payment of legal financial obligations for all inmates who have legal financial obligations owing in any Washington state superior court; and

(v) Fifteen percent for any child support owed under a support order.

(c) The formula shall include the following minimum deductions from any workers' compensation benefits paid pursuant to RCW 51.32.080:

(i) Five percent to the public safety and education account for the purpose of crime victims' compensation;

(ii) Ten percent to a department personal inmate savings account;

(iii) Twenty percent to the department to contribute to the cost of incarceration; and

(iv) An amount equal to any legal financial obligations owed by the inmate established by an order of any Washington state superior court up to the total amount of the award.

(d) The formula shall include the following minimum deductions from class III gratuities:

(i) Five percent for the purpose of crime victims' compensation; and

(ii) Fifteen percent for any child support owed under a support order.

(e) The formula shall include the following minimum deduction from class IV gross gratuities:

(i) Five percent to the department to contribute to the cost of incarceration; and

(ii) Fifteen percent for any child support owed under a support order.

(2) Any person sentenced to life imprisonment without possibility of release or parole under chapter 10.95 RCW or sentenced to death shall be exempt from the requirement under subsection (1)(a)(ii), (b)(ii), or (c)(ii).

(3) The department personal inmate savings account, together with any accrued interest, shall only be available to an inmate at the time of his or her release from confinement, unless the secretary determines that an emergency exists for the inmate, at which time the funds can be made available to the inmate in an amount determined by the secretary. The management of classes I, II, and IV correctional industries may establish an incentive payment for offender workers based on productivity criteria. This incentive shall be paid separately from the hourly wage/gratuity rate and shall not be subject to the specified deduction for cost of incarceration.

(4)(a) Subject to availability of funds for the correctional industries program, the expansion of inmate employment in class I and class II correctional industries shall be implemented according to the following schedule:

(i) Not later than June 30, 2005, the secretary shall achieve a net increase of at least two hundred in the number of inmates employed in class I or class II correctional industries work programs above the number so employed on June 30, 2003;

(ii) Not later than June 30, 2006, the secretary shall achieve a net increase of at least four hundred in the number of inmates employed in class I or class II correctional industries work programs above the number so employed on June 30, 2003;

(iii) Not later than June 30, 2007, the secretary shall achieve a net increase of at least six hundred in the number of inmates employed in class I or class II correctional industries work programs above the number so employed on June 30, 2003;

(iv) Not later than June 30, 2008, the secretary shall achieve a net increase of at least nine hundred in the number of inmates employed in class I or class II correctional industries work programs above the number so employed on June 30, 2003;

(v) Not later than June 30, 2009, the secretary shall achieve a net increase of at least one thousand two hundred in the number of inmates employed in class I or class II correctional industries work programs above the number so employed on June 30, 2003;

(vi) Not later than June 30, 2010, the secretary shall achieve a net increase of at least one thousand five hundred in the number of inmates employed in class I or class II correctional industries work programs above the number so employed on June 30, 2003.

(b) Failure to comply with the schedule in this subsection does not create a private right of action.

(5) In the event that the offender worker's wages, gratuity, or workers' compensation benefit is subject to garnishment for support enforcement, the crime victims' compensation, savings, and cost of incarceration deductions shall be calculated on the net wages after taxes, legal financial obligations, and garnishment.

~~((5))~~ (6) The department shall explore other methods of recovering a portion of the cost of the inmate's incarceration and for encouraging participation in work programs, including development of incentive programs that offer inmates benefits and amenities paid for only from wages earned while working in a correctional industries work program.

~~((6))~~ (7) The department shall develop the necessary administrative structure to recover inmates' wages and keep records of the amount inmates pay for the costs of incarceration and amenities. All funds deducted from inmate wages under subsection (1) of this section for the purpose of contributions to the cost of incarceration shall be deposited in a dedicated fund with the department and shall be used only for the purpose of enhancing and maintaining correctional industries work programs.

~~((7))~~ The expansion of inmate employment in class I and class II correctional industries shall be implemented according to the following schedule:

~~(a) Not later than June 30, 1995, the secretary shall achieve a net increase of at least two hundred in the number of inmates employed in class I or class II correctional industries work programs above the number so employed on June 30, 1994;~~

~~(b) Not later than June 30, 1996, the secretary shall achieve a net increase of at least four hundred in the number of inmates employed in class I or class II correctional industries work programs above the number so employed on June 30, 1994;~~

~~(c) Not later than June 30, 1997, the secretary shall achieve a net increase of at least six hundred in the number of inmates employed in class I or class II correctional industries work programs above the number so employed on June 30, 1994;~~

~~(b) Not later than June 30, 1996, the secretary shall achieve a net increase of at least nine hundred in the number of inmates employed in class I or class II correctional industries work programs above the number so employed on June 30, 1994;~~

~~(e) Not later than June 30, 1999, the secretary shall achieve a net increase of at least one thousand two hundred in the number of inmates employed in class I or class II correctional industries work programs above the number so employed on June 30, 1994;~~

~~(f) Not later than June 30, 2000, the secretary shall achieve a net increase of at least one thousand five hundred in the number of inmates employed in class I or class II correctional industries work programs above the number so employed on June 30, 1994.))~~

(8) It shall be in the discretion of the secretary to apportion the inmates between class I and class II depending on available contracts and resources.

(9) Nothing in this section shall limit the authority of the department of social and health services division of child support from taking collection action against an inmate's moneys, assets, or property pursuant to chapter 26.23, 74.20, or 74.20A RCW.

NEW SECTION. Sec. 8. A new section is added to chapter 72.09 RCW to read as follows:

All records, documents, data, and other materials obtained under the requirements of section 4 of this act from an existing correctional industries class I work program participant or an applicant for a proposed new or expanded class I correctional industries work program are exempt from public disclosure under chapter 42.17 RCW.

NEW SECTION. **Sec. 9.** A new section is added to chapter 42.17 RCW to read as follows:

All records, documents, data, and other materials obtained under the requirements of section 4 of this act from an existing correctional industries class I work program participant or an applicant for a proposed new or expanded class I correctional industries work program are exempt from public disclosure under this chapter.

Sec. 10. RCW 28B.10.029 and 1998 c 344 s 5 and 1998 c 111 s 2 are each reenacted and amended to read as follows:

(1) An institution of higher education may exercise independently those powers otherwise granted to the director of general administration in chapter 43.19 RCW in connection with the purchase and disposition of all material, supplies, services, and equipment needed for the support, maintenance, and use of the respective institution of higher education. Property disposition policies followed by institutions of higher education shall be consistent with policies followed by the department of general administration. Purchasing policies and procedures followed by institutions of higher education shall be in compliance with chapters 39.19, 39.29, and 43.03 RCW, and RCW 43.19.1901, 43.19.1906, 43.19.1911, 43.19.1917, 43.19.1937, 43.19.534, 43.19.685, 43.19.700 through 43.19.704, and 43.19.560 through 43.19.637. The community and technical colleges shall comply with RCW 43.19.450. Except for the University of Washington, institutions of higher education shall comply with RCW ((43.19.1935, 43.19.19363, and 43.19.19368)) 43.41.310, 43.41.290, and 43.41.350. If an institution of higher education can satisfactorily demonstrate to the director of the office of financial management that the cost of compliance is greater than the value of benefits from any of the following statutes, then it shall be exempt from them: RCW 43.19.685; 43.19.534; and 43.19.637. Any institution of higher education that chooses to exercise independent purchasing authority for a commodity or group of commodities shall notify the director of general administration. Thereafter the director of general administration shall not be required to provide those services for that institution for the duration of the general administration contract term for that commodity or group of commodities.

(2) The council of presidents and the state board for community and technical colleges shall convene its correctional industries business development advisory committee, and work collaboratively with correctional industries, to:

(a) Reaffirm purchasing criteria and ensure that quality, service, and timely delivery result in the best value for expenditure of state dollars;

(b) Update the approved list of correctional industries products from which higher education shall purchase; and

(c) Develop recommendations on ways to continue to build correctional industries' business with institutions of higher education.

(3) Higher education and correctional industries shall develop a plan to build higher education business with correctional industries to increase higher education purchases of correctional industries products, based upon the criteria established in subsection (2) of this section. The plan shall include the correctional industries' production and sales goals for higher education and an approved list of products from which higher education institutions shall purchase, based on the criteria established in subsection (2) of this section.

Higher education and correctional industries shall report to the legislature regarding the plan and its implementation no later than January 30, 2005.

(4) Institutions of higher education shall set as a target to contract, beginning not later than June 30, 2006, to purchase one percent of the total goods and services required by the institutions each year produced or provided in whole or in part from class II inmate work programs operated by the department of corrections. Institutions of higher education shall set as a target to contract, beginning not later than June 30, 2008, to purchase two percent of the total goods and services required by the institutions each year produced or provided in whole or in part from class II inmate work programs operated by the department of corrections.

(5) An institution of higher education may exercise independently those powers otherwise granted to the public printer in chapter 43.78 RCW in connection with the production or purchase of any printing and binding needed by the respective institution of higher education. Purchasing policies and procedures followed by institutions of higher education shall be in compliance with chapter 39.19 RCW. Any institution of higher education that chooses to exercise independent printing production or purchasing authority shall notify the public printer. Thereafter the public printer shall not be required to provide those services for that institution.

NEW SECTION. Sec. 11. If specific funding for the purposes of this act, referencing this act by bill or chapter number, is not provided by June 30, 2004, in the omnibus appropriations act, this act is null and void.

NEW SECTION. Sec. 12. Section 3 of this act takes effect July 1, 2005.

NEW SECTION. Sec. 13. Section 2 of this act expires July 1, 2005.

Passed by the Senate March 9, 2004.

Passed by the House March 4, 2004.

Approved by the Governor March 26, 2004.

Filed in Office of Secretary of State March 26, 2004.

CHAPTER 168

[Engrossed House Bill 3036]

GIFT CERTIFICATES

AN ACT Relating to gift certificates; amending RCW 63.29.010, 63.29.020, 63.29.140, and 63.29.170; adding a new chapter to Title 19 RCW; creating a new section; and providing effective dates.

Be it enacted by the Legislature of the State of Washington:

NEW SECTION. Sec. 1. It is the intent of the legislature to relieve businesses from the obligation of reporting gift certificates as unclaimed property. In order to protect consumers, the legislature intends to prohibit acts and practices of retailers that deprive consumers of the full value of gift certificates, such as expiration dates, service fees, and dormancy and inactivity charges, on gift certificates. The legislature does not intend that this act be construed to apply to cards or other payment instruments issued for payment of wages or other intangible property. To that end, the legislature intends that this act should be liberally construed to benefit consumers and that any ambiguities

should be resolved by applying the uniform unclaimed property act to the intangible property in question.

NEW SECTION. Sec. 2. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Artistic and cultural organization" has the same meaning as in RCW 82.04.4328.

(2) "Charitable organization" means an organization exempt from tax under section 501(c)(3) of the internal revenue code of 1986 (26 U.S.C. Sec. 501(c)(3)).

(3) "Fund-raising activity" has the same meaning as in RCW 82.04.3651.

(4) "Gift card" means a record as described in subsection (5) of this section in the form of a card, or a stored value card or other physical medium, containing stored value primarily intended to be exchanged for consumer goods and services.

(5) "Gift certificate" means an instrument evidencing a promise by the seller or issuer of the record that consumer goods or services will be provided to the bearer of the record to the value or credit shown in the record and includes gift cards.

(6) "Bearer" means a person with a right to receive consumer goods and services under the terms of a gift certificate, without regard to any fee, expiration date, or dormancy or inactivity charge.

(7) "Issue" means to sell or otherwise provide a gift certificate to any person, and includes reloading or adding value to an existing gift certificate.

(8) "Stored value" has the same meaning as in RCW 19.230.010.

NEW SECTION. Sec. 3. (1) Except as provided in sections 4 through 8 of this act, it is unlawful for any person or entity to issue, or to enforce against a bearer, a gift certificate that contains:

- (a) An expiration date;
- (b) Any fee, including a service fee; or
- (c) A dormancy or inactivity charge.

(2) If a gift certificate is issued with the sale of tangible personal property or services, the gift certificate is subject to subsection (1) of this section.

(3) If a purchase is made with a gift certificate for an amount that is less than the value of the gift certificate, the issuer must make the remaining value available to the bearer in cash or as a gift certificate at the option of the issuer. If after the purchase the remaining value of the gift certificate is less than five dollars, the gift certificate must be redeemable in cash for its remaining value on demand of the bearer. A gift certificate is valid until redeemed or replaced.

(4) This section does not require, unless otherwise required by law, the issuer of a gift certificate to replace a lost or stolen gift certificate.

NEW SECTION. Sec. 4. (1) It is lawful to issue, and to enforce against the bearer, a gift certificate containing an expiration date if:

(a) The gift certificate is issued pursuant to an awards or loyalty program or in other instances where no money or other thing of value is given in exchange for the gift certificate.

(b) The gift certificate is donated to a charitable organization without any money or other thing of value being given in exchange for the gift certificate if

the gift certificate is used by a charitable organization solely to provide charitable services.

(2) The expiration date must be disclosed clearly and legibly on any gift certificate described in subsection (1) of this section.

NEW SECTION. Sec. 5. It is lawful to issue, and to enforce against the bearer, a gift card containing a dormancy or inactivity charge if:

(1) A statement is printed on the gift card in at least six-point font stating the amount of the charge, how often the charge will occur, and that the charge is triggered by inactivity of the gift card. The statement may appear on the front or back of the gift card, but shall appear in a location where it is visible to any purchaser before the purchase of the gift card;

(2) The remaining value of the gift card is five dollars or less each time the charge is assessed;

(3) The charge does not exceed one dollar per month;

(4) The charge can only be assessed when there has been no activity on the gift card for twenty-four consecutive months, including but not limited to, purchases, the adding of value, or balance inquiries;

(5) The bearer may reload or add value to the gift card; and

(6) After a dormancy or inactivity charge is assessed, the remaining value of the gift certificate is redeemable in cash on demand.

NEW SECTION. Sec. 6. It is lawful to issue, and to enforce against the bearer, a gift certificate containing an expiration date if:

(1) The gift certificate is donated to a charitable organization and is used for fund-raising activities of a charitable organization, without any money or other thing of value being given in exchange for the gift certificate by the charitable organization;

(2) The expiration date is clearly and legibly printed on the front or face of the gift certificate, or printed on the back of the certificate in at least ten-point font; and

(3) The expiration date is at least one year from the date the gift certificate is issued by the charitable organization.

NEW SECTION. Sec. 7. It is lawful to issue, and to enforce against the bearer, a gift certificate containing an expiration date if:

(1) The gift certificate is redeemable solely for goods or services provided in the state of Washington by artistic and cultural organizations;

(2) The expiration date is clearly and legibly printed on the front or face of the gift certificate, or printed on the back of the certificate in at least ten-point font;

(3) The expiration date is at least three years from the date the gift certificate is issued by the artistic and cultural organizations; and

(4) The unused value of the gift certificate at the time of expiration accrues solely to the benefit of artistic and cultural organizations.

NEW SECTION. Sec. 8. A requirement under sections 4 through 7 of this act that a statement or expiration date be printed on a gift certificate is satisfied if the statement appears as otherwise required on a sticker permanently affixed to the gift certificate.

NEW SECTION. Sec. 9. An issuer is not required to honor a gift certificate presumed abandoned under RCW 63.29.110, reported, and delivered to the department of revenue in the dissolution of a business association.

NEW SECTION. Sec. 10. (1) A gift certificate constitutes value held in trust by the issuer of the gift certificate on behalf of the beneficiary of the gift certificate. The value represented by the gift certificate belongs to the beneficiary, or to the legal representative of the beneficiary to the extent provided by law, and not to the issuer.

(2) An issuer of a gift certificate who is in bankruptcy shall continue to honor a gift certificate issued before the date of the bankruptcy filing on the grounds that the value of the gift certificate constitutes trust property of the beneficiary.

(3) The terms of a gift certificate may not make its redemption or other use invalid in the event of a bankruptcy.

(4) This section does not require, unless otherwise required by law, the issuer of a gift certificate to:

- (a) Redeem a gift certificate for cash;
- (b) Replace a lost or stolen gift certificate; or
- (c) Maintain a separate account for the funds used to purchase the gift certificate.

(5) This section does not create an interest in favor of the beneficiary of the gift certificate in any specific property of the issuer.

(6) This section does not create a fiduciary or quasi-fiduciary relationship between the beneficiary of the gift certificates and the issuer unless otherwise provided by law.

(7) The issuer of a gift certificate has no obligation to pay interest on the value of a gift certificate held in trust under this section, unless otherwise provided by law.

NEW SECTION. Sec. 11. This chapter does not apply to gift certificates issued by financial institutions as defined in RCW 30.22.041 or their operating subsidiaries that are usable with multiple unaffiliated sellers of goods or services.

NEW SECTION. Sec. 12. An agreement made in violation of the provisions of this chapter is contrary to public policy and is void and unenforceable against the bearer.

Sec. 13. RCW 63.29.010 and 1983 c 179 s 1 are each amended to read as follows:

As used in this chapter, unless the context otherwise requires:

(1) "Department" means the department of revenue established under RCW 82.01.050.

(2) "Apparent owner" means the person whose name appears on the records of the holder as the person entitled to property held, issued, or owing by the holder.

(3) "Attorney general" means the chief legal officer of this state referred to in chapter 43.10 RCW.

(4) "Banking organization" means a bank, trust company, savings bank, land bank, safe deposit company, private banker, or any organization defined by other law as a bank or banking organization.

(5) "Business association" means a nonpublic corporation, joint stock company, investment company, business trust, partnership, or association for business purposes of two or more individuals, whether or not for profit, including a banking organization, financial organization, insurance company, or utility.

(6) "Domicile" means the state of incorporation of a corporation and the state of the principal place of business of an unincorporated person.

(7) "Financial organization" means a savings and loan association, cooperative bank, building and loan association, or credit union.

(8) "Gift certificate" has the same meaning as in section 2 of this act.

(9) "Holder" means a person, wherever organized or domiciled, who is:

(a) In possession of property belonging to another,

(b) A trustee, or

(c) Indebted to another on an obligation.

~~((9))~~ (10) "Insurance company" means an association, corporation, fraternal or mutual benefit organization, whether or not for profit, which is engaged in providing insurance coverage, including accident, burial, casualty, credit life, contract performance, dental, fidelity, fire, health, hospitalization, illness, life (including endowments and annuities), malpractice, marine, mortgage, surety, and wage protection insurance.

~~((10))~~ (11) "Intangible property" does not include contract claims which are unliquidated but does include:

(a) Moneys, checks, drafts, deposits, interest, dividends, and income;

(b) Credit balances, customer overpayments, gift certificates, security deposits, refunds, credit memos, unpaid wages, unused airline tickets, and unidentified remittances, but does not include discounts which represent credit balances for which no consideration was given;

(c) Stocks, and other intangible ownership interests in business associations;

(d) Moneys deposited to redeem stocks, bonds, coupons, and other securities, or to make distributions;

(e) Liquidated amounts due and payable under the terms of insurance policies; and

(f) Amounts distributable from a trust or custodial fund established under a plan to provide health, welfare, pension, vacation, severance, retirement, death, stock purchase, profit sharing, employee savings, supplemental unemployment insurance, or similar benefits.

~~((11))~~ (12) "Last known address" means a description of the location of the apparent owner sufficient for the purpose of the delivery of mail.

~~((12))~~ (13) "Owner" means a depositor in the case of a deposit, a beneficiary in case of a trust other than a deposit in trust, a creditor, claimant, or payee in the case of other intangible property, or a person having a legal or equitable interest in property subject to this chapter or his legal representative.

~~((13))~~ (14) "Person" means an individual, business association, state or other government, governmental subdivision or agency, public corporation, public authority, estate, trust, two or more persons having a joint or common interest, or any other legal or commercial entity.

~~((14))~~ (15) "State" means any state, district, commonwealth, territory, insular possession, or any other area subject to the legislative authority of the United States.

~~((15))~~ (16) "Third party bank check" means any instrument drawn against a customer's account with a banking organization or financial organization on which the banking organization or financial organization is only secondarily liable.

~~((16))~~ (17) "Utility" means a person who owns or operates for public use any plant, equipment, property, franchise, or license for the transmission of communications or the production, storage, transmission, sale, delivery, or furnishing of electricity, water, steam, or gas.

Sec. 14. RCW 63.29.020 and 2003 1st sp.s. c 13 s 1 are each amended to read as follows:

(1) Except as otherwise provided by this chapter, all intangible property, including any income or increment derived therefrom, less any lawful charges, that is held, issued, or owing in the ordinary course of the holder's business and has remained unclaimed by the owner for more than three years after it became payable or distributable is presumed abandoned.

(2) Property, with the exception of unredeemed Washington state lottery tickets and unrepresented winning parimutuel tickets, is payable and distributable for the purpose of this chapter notwithstanding the owner's failure to make demand or to present any instrument or document required to receive payment.

(3) This chapter does not apply to claims drafts issued by insurance companies representing offers to settle claims unliquidated in amount or settled by subsequent drafts or other means.

(4) This chapter does not apply to property covered by chapter 63.26 RCW.

(5) This chapter does not apply to used clothing, umbrellas, bags, luggage, or other used personal effects if such property is disposed of by the holder as follows:

(a) In the case of personal effects of negligible value, the property is destroyed; or

(b) The property is donated to a bona fide charity.

(6) This chapter does not apply to a gift certificate subject to the prohibition against expiration dates under section 3 of this act or to a gift certificate subject to sections 4 through 7 of this act. However, this chapter applies to gift certificates presumed abandoned under RCW 63.29.110.

Sec. 15. RCW 63.29.140 and 2003 1st sp.s. c 13 s 7 are each amended to read as follows:

(1) A gift certificate or a credit memo issued in the ordinary course of an issuer's business which remains unclaimed by the owner for more than three years after becoming payable or distributable is presumed abandoned.

(2) In the case of a gift certificate, the amount presumed abandoned is the price paid by the purchaser for the gift certificate. In the case of a credit memo, the amount presumed abandoned is the amount credited to the recipient of the memo.

(3) A gift certificate that is presumed abandoned under this section may, but need not be, included in the report as provided under RCW 63.29.170(4). If a gift certificate that is presumed abandoned under this section is not timely reported as provided under RCW 63.29.170(4), sections 1 through 12 of this act apply to the gift certificate.

Sec. 16. RCW 63.29.170 and 2003 c 237 s 1 are each amended to read as follows:

(1) A person holding property presumed abandoned and subject to custody as unclaimed property under this chapter shall report to the department concerning the property as provided in this section.

(2) The report must be verified and must include:

(a) Except with respect to travelers checks and money orders, the name, if known, and last known address, if any, of each person appearing from the records of the holder to be the owner of property with a value of more than fifty dollars presumed abandoned under this chapter;

(b) In the case of unclaimed funds of more than fifty dollars held or owing under any life or endowment insurance policy or annuity contract, the full name and last known address of the insured or annuitant and of the beneficiary according to the records of the insurance company holding or owing the funds;

(c) In the case of the contents of a safe deposit box or other safekeeping repository or in the case of other tangible property, a description of the property and the place where it is held and where it may be inspected by the department, and any amounts owing to the holder;

(d) The nature and identifying number, if any, or description of the property and the amount appearing from the records to be due, but items with a value of fifty dollars or less each may be reported in the aggregate;

(e) The date the property became payable, demandable, or returnable, and the date of the last transaction with the apparent owner with respect to the property; and

(f) Other information the department prescribes by rule as necessary for the administration of this chapter.

(3) If the person holding property presumed abandoned and subject to custody as unclaimed property is a successor to other persons who previously held the property for the apparent owner or the holder has changed his or her name while holding the property, the holder shall file with the report all known names and addresses of each previous holder of the property.

(4) The report must be filed before November 1st of each year and shall include, except as provided in RCW 63.29.140(3), all property presumed abandoned and subject to custody as unclaimed property under this chapter that is in the holder's possession as of the preceding June 30th. On written request by any person required to file a report, the department may postpone the reporting date.

(5) After May 1st, but before August 1st, of each year in which a report is required by this section, the holder in possession of property presumed abandoned and subject to custody as unclaimed property under this chapter shall send written notice to the apparent owner at the last known address informing him or her that the holder is in possession of property subject to this chapter if:

(a) The holder has in its records an address for the apparent owner which the holder's records do not disclose to be inaccurate;

(b) The claim of the apparent owner is not barred by the statute of limitations; and

(c) The property has a value of more than seventy-five dollars.

NEW SECTION. Sec. 17. Sections 1 through 12 of this act constitute a new chapter in Title 19 RCW.

NEW SECTION. Sec. 18. Sections 1 through 12 of this act apply to:

- (1) Gift certificates issued on or after July 1, 2004; and
- (2) Those gift certificates presumed abandoned on or after July 1, 2004, and not reported as provided in RCW 63.29.170(4).

NEW SECTION. Sec. 19. Sections 13 and 14 of this act take effect July 1, 2004.

NEW SECTION. Sec. 20. Sections 15 and 16 of this act take effect January 1, 2005.

Passed by the House March 17, 2004.

Passed by the Senate March 5, 2004.

Approved by the Governor March 26, 2004.

Filed in Office of Secretary of State March 26, 2004.

CHAPTER 169

[House Bill 2934]

FLAG DISPLAY—HOMEOWNERS' ASSOCIATIONS

AN ACT Relating to ensuring that members of homeowners' associations may display the flag of the United States on their properties; and adding a new section to chapter 64.38 RCW.

Be it enacted by the Legislature of the State of Washington:

NEW SECTION. Sec. 1. A new section is added to chapter 64.38 RCW to read as follows:

(1) The governing documents may not prohibit the outdoor display of the flag of the United States by an owner or resident on the owner's or resident's property if the flag is displayed in a manner consistent with federal flag display law, 4 U.S.C. Sec. 1 et seq. The governing documents may include reasonable rules and regulations, consistent with 4 U.S.C. Sec. 1 et seq., regarding the placement and manner of display of the flag of the United States.

(2) The governing documents may not prohibit the installation of a flagpole for the display of the flag of the United States. The governing documents may include reasonable rules and regulations regarding the location and the size of the flagpole.

(3) For purposes of this section, "flag of the United States" means the flag of the United States as defined in federal flag display law, 4 U.S.C. Sec. 1 et seq., that is made of fabric, cloth, or paper and that is displayed from a staff or flagpole or in a window. For purposes of this section, "flag of the United States" does not mean a flag depiction or emblem made of lights, paint, roofing, siding, paving materials, flora, or balloons, or of any similar building, landscaping, or decorative component.

(4) The provisions of this section shall be construed to apply retroactively to any governing documents in effect on the effective date of this section. Any provision in a governing document in effect on the effective date of this section that is inconsistent with this section shall be void and unenforceable.

Passed by the House February 17, 2004.

Passed by the Senate March 10, 2004.

Approved by the Governor March 26, 2004.

Filed in Office of Secretary of State March 26, 2004.

CHAPTER 170

[House Bill 2534]

WASHINGTON STATE PATROL—RETIREE'S DEATH BENEFITS

AN ACT Relating to death benefits for members of the Washington state patrol retirement system plan 2; and amending RCW 43.43.295.

Be it enacted by the Legislature of the State of Washington:

Sec. 1. RCW 43.43.295 and 2003 c 294 s 15 are each amended to read as follows:

(1) For members commissioned on or after January 1, 2003, except as provided in RCW 11.07.010, if a member or a vested member who has not completed at least ten years of service dies, the amount of the accumulated contributions standing to such member's credit in the retirement system at the time of such member's death, less any amount identified as owing to an obligee upon withdrawal of accumulated contributions pursuant to a court order filed under RCW 41.50.670, shall be paid to the member's estate, or such person or persons, trust, or organization as the member shall have nominated by written designation duly executed and filed with the department. If there be no such designated person or persons still living at the time of the member's death, such member's accumulated contributions standing to such member's credit in the retirement system, less any amount identified as owing to an obligee upon withdrawal of accumulated contributions pursuant to a court order filed under RCW 41.50.670, shall be paid to the member's surviving spouse as if in fact such spouse had been nominated by written designation, or if there be no such surviving spouse, then to such member's legal representatives.

(2) If a member who is eligible for retirement or a member who has completed at least ten years of service dies, the surviving spouse or eligible child or children shall elect to receive either:

(a) A retirement allowance computed as provided for in RCW 43.43.260, actuarially reduced, except under subsection (4) of this section, by the amount of any lump sum benefit identified as owing to an obligee upon withdrawal of accumulated contributions pursuant to a court order filed under RCW 41.50.670 and actuarially adjusted to reflect a joint and one hundred percent survivor option under RCW 43.43.278 and if the member was not eligible for normal retirement at the date of death a further reduction from age fifty-five or when the member could have attained twenty-five years of service, whichever is less; if a surviving spouse who is receiving a retirement allowance dies leaving a child or children of the member under the age of majority, then such child or children shall continue to receive an allowance in an amount equal to that which was being received by the surviving spouse, share and share alike, until such child or children reach the age of majority; if there is no surviving spouse eligible to receive an allowance at the time of the member's death, such member's child or children under the age of majority shall receive an allowance share and share alike calculated under this section making the assumption that the ages of the spouse and member were equal at the time of the member's death; or

(b)(i) The member's accumulated contributions, less any amount identified as owing to an obligee upon withdrawal of accumulated contributions pursuant to a court order filed under RCW 41.50.670; or

(ii) If the member dies, one hundred fifty percent of the member's accumulated contributions, less any amount identified as owing to an obligee upon withdrawal of accumulated contributions pursuant to a court order filed under RCW 41.50.670. Any accumulated contributions attributable to restorations made under RCW 41.50.165(2) shall be refunded at one hundred percent.

(3) If a member who is eligible for retirement or a member who has completed at least ten years of service dies, and is not survived by a spouse or an eligible child, then the accumulated contributions standing to the member's credit, less any amount identified as owing to an obligee upon withdrawal of accumulated contributions pursuant to a court order filed under RCW 41.50.670, shall be paid:

(a) To an estate, a person or persons, trust, or organization as the member shall have nominated by written designation duly executed and filed with the department; or

(b) If there is no such designated person or persons still living at the time of the member's death, then to the member's legal representatives.

(4) The retirement allowance of a member who is killed in the course of employment, as determined by the director of the department of labor and industries, is not subject to an actuarial reduction.

Passed by the House February 11, 2004.

Passed by the Senate March 3, 2004.

Approved by the Governor March 26, 2004.

Filed in Office of Secretary of State March 26, 2004.

CHAPTER 171

[Senate Bill 6254]

WASHINGTON STATE PATROL—RETIREEES' DEATH BENEFITS

AN ACT Relating to death benefits for members of the Washington state patrol retirement system plan 2; and amending RCW 43.43.295.

Be it enacted by the Legislature of the State of Washington:

Sec. 1. RCW 43.43.295 and 2003 c 294 s 15 are each amended to read as follows:

(1) For members commissioned on or after January 1, 2003, except as provided in RCW 11.07.010, if a member or a vested member who has not completed at least ten years of service dies, the amount of the accumulated contributions standing to such member's credit in the retirement system at the time of such member's death, less any amount identified as owing to an obligee upon withdrawal of accumulated contributions pursuant to a court order filed under RCW 41.50.670, shall be paid to the member's estate, or such person or persons, trust, or organization as the member shall have nominated by written designation duly executed and filed with the department. If there be no such designated person or persons still living at the time of the member's death, such member's accumulated contributions standing to such member's credit in the retirement system, less any amount identified as owing to an obligee upon withdrawal of accumulated contributions pursuant to a court order filed under RCW 41.50.670, shall be paid to the member's surviving spouse as if in fact such

spouse had been nominated by written designation, or if there be no such surviving spouse, then to such member's legal representatives.

(2) If a member who is eligible for retirement or a member who has completed at least ten years of service dies, the surviving spouse or eligible child or children shall elect to receive either:

(a) A retirement allowance computed as provided for in RCW 43.43.260, actuarially reduced, except under subsection (4) of this section, by the amount of any lump sum benefit identified as owing to an obligee upon withdrawal of accumulated contributions pursuant to a court order filed under RCW 41.50.670 and actuarially adjusted to reflect a joint and one hundred percent survivor option under RCW 43.43.278 and if the member was not eligible for normal retirement at the date of death a further reduction from age fifty-five or when the member could have attained twenty-five years of service, whichever is less; if a surviving spouse who is receiving a retirement allowance dies leaving a child or children of the member under the age of majority, then such child or children shall continue to receive an allowance in an amount equal to that which was being received by the surviving spouse, share and share alike, until such child or children reach the age of majority; if there is no surviving spouse eligible to receive an allowance at the time of the member's death, such member's child or children under the age of majority shall receive an allowance share and share alike calculated under this section making the assumption that the ages of the spouse and member were equal at the time of the member's death; or

(b)(i) The member's accumulated contributions, less any amount identified as owing to an obligee upon withdrawal of accumulated contributions pursuant to a court order filed under RCW 41.50.670; or

(ii) If the member dies, one hundred fifty percent of the member's accumulated contributions, less any amount identified as owing to an obligee upon withdrawal of accumulated contributions pursuant to a court order filed under RCW 41.50.670. Any accumulated contributions attributable to restorations made under RCW 41.50.165(2) shall be refunded at one hundred percent.

(3) If a member who is eligible for retirement or a member who has completed at least ten years of service dies, and is not survived by a spouse or an eligible child, then the accumulated contributions standing to the member's credit, less any amount identified as owing to an obligee upon withdrawal of accumulated contributions pursuant to a court order filed under RCW 41.50.670, shall be paid:

(a) To an estate, a person or persons, trust, or organization as the member shall have nominated by written designation duly executed and filed with the department; or

(b) If there is no such designated person or persons still living at the time of the member's death, then to the member's legal representatives.

(4) The retirement allowance of a member who is killed in the course of employment, as determined by the director of the department of labor and industries, is not subject to an actuarial reduction.

Passed by the Senate February 17, 2004.

Passed by the House March 3, 2004.

Approved by the Governor March 26, 2004.
Filed in Office of Secretary of State March 26, 2004.

CHAPTER 172

[House Bill 2535]

PUBLIC AND SCHOOL RETIREES—SERVICE CREDIT PURCHASE

AN ACT Relating to permitting members of the public employees' retirement system plan 2 and plan 3 and the school employees' retirement system plan 2 and plan 3 who qualify for early retirement or alternate early retirement to make a one-time purchase of additional service credit; adding new sections to chapter 41.40 RCW; adding new sections to chapter 41.35 RCW; and providing an effective date.

Be it enacted by the Legislature of the State of Washington:

NEW SECTION. Sec. 1. A new section is added to chapter 41.40 RCW under the subchapter heading "plan 2" to read as follows:

(1) A member eligible to retire under RCW 41.40.630 (2) or (3) may, at the time of filing a written application for retirement with the department, apply to the department to make a one-time purchase of up to five years of additional service credit.

(2) To purchase additional service credit under this section, a member shall pay the actuarial equivalent value of the resulting increase in the member's benefit.

(3) Subject to rules adopted by the department, a member purchasing additional service credit under this section may pay all or part of the cost with a lump sum payment, eligible rollover, direct rollover, or trustee-to-trustee transfer from an eligible retirement plan. The department shall adopt rules to ensure that all lump sum payments, rollovers, and transfers comply with the requirements of the internal revenue code and regulations adopted by the internal revenue service. The rules adopted by the department may condition the acceptance of a rollover or transfer from another plan on the receipt of information necessary to enable the department to determine the eligibility of any transferred funds for tax-free rollover treatment or other treatment under federal income tax law.

(4) Additional service credit purchased under this section is not membership service, and may not be used to qualify a member for retirement under RCW 41.40.630.

NEW SECTION. Sec. 2. A new section is added to chapter 41.40 RCW under the subchapter heading "plan 3" to read as follows:

(1) A member eligible to retire under RCW 41.40.820 (2) or (3) may, at the time of filing a written application for retirement with the department, apply to the department to make a one-time purchase of up to five years of additional service credit.

(2) To purchase additional service credit under this section, a member shall pay the actuarial equivalent value of the resulting increase in the member's benefit.

(3) Subject to rules adopted by the department, a member purchasing additional service credit under this section may pay all or part of the cost with a lump sum payment, eligible rollover, direct rollover, or trustee-to-trustee transfer from an eligible retirement plan. The department shall adopt rules to ensure that all lump sum payments, rollovers, and transfers comply with the requirements of

the internal revenue code and regulations adopted by the internal revenue service. The rules adopted by the department may condition the acceptance of a rollover or transfer from another plan on the receipt of information necessary to enable the department to determine the eligibility of any transferred funds for tax-free rollover treatment or other treatment under federal income tax law.

(4) Additional service credit purchased under this section is not membership service, and may not be used to qualify for retirement under RCW 41.40.820.

NEW SECTION. Sec. 3. A new section is added to chapter 41.35 RCW under the subchapter heading "plan 2" to read as follows:

(1) A member eligible to retire under RCW 41.35.420 (2) or (3) may, at the time of filing a written application for retirement with the department, apply to the department to make a one-time purchase of up to five years of additional service credit.

(2) To purchase additional service credit under this section, a member shall pay the actuarial equivalent value of the resulting increase in the member's benefit.

(3) Subject to rules adopted by the department, a member purchasing additional service credit under this section may pay all or part of the cost with a lump sum payment, eligible rollover, direct rollover, or trustee-to-trustee transfer from an eligible retirement plan. The department shall adopt rules to ensure that all lump sum payments, rollovers, and transfers comply with the requirements of the internal revenue code and regulations adopted by the internal revenue service. The rules adopted by the department may condition the acceptance of a rollover or transfer from another plan on the receipt of information necessary to enable the department to determine the eligibility of any transferred funds for tax-free rollover treatment or other treatment under federal income tax law.

(4) Additional service credit purchased under this section is not membership service, and may not be used to qualify a member for retirement under RCW 41.35.420.

NEW SECTION. Sec. 4. A new section is added to chapter 41.35 RCW under the subchapter heading "plan 3" to read as follows:

(1) A member eligible to retire under RCW 41.35.680 (2) or (3) may, at the time of filing a written application for retirement with the department, apply to the department to make a one-time purchase of up to five years of additional service credit.

(2) To purchase additional service credit under this section, a member shall pay the actuarial equivalent value of the resulting increase in the member's benefit.

(3) Subject to rules adopted by the department, a member purchasing additional service credit under this section may pay all or part of the cost with a lump sum payment, eligible rollover, direct rollover, or trustee-to-trustee transfer from an eligible retirement plan. The department shall adopt rules to ensure that all lump sum payments, rollovers, and transfers comply with the requirements of the internal revenue code and regulations adopted by the internal revenue service. The rules adopted by the department may condition the acceptance of a rollover or transfer from another plan on the receipt of information necessary to enable the department to determine the eligibility of any transferred funds for tax-free rollover treatment or other treatment under federal income tax law.

(4) Additional service credit purchased under this section is not membership service, and may not be used to qualify for retirement under RCW 41.35.680.

NEW SECTION. **Sec. 5.** This act takes effect July 1, 2006.

Passed by the House February 11, 2004.

Passed by the Senate March 5, 2004.

Approved by the Governor March 26, 2004.

Filed in Office of Secretary of State March 26, 2004.

CHAPTER 173

[Substitute House Bill 2985]

RETIRED AND DISABLED PUBLIC EMPLOYEES—HEALTH INSURANCE

AN ACT Relating to health insurance for retired and disabled public employees; amending RCW 41.04.208; repealing 2002 c 319 s 5 (unmodified); and declaring an emergency.

Be it enacted by the Legislature of the State of Washington:

Sec. 1. RCW 41.04.208 and 2002 c 319 s 2 are each amended to read as follows:

(1) Unless the context clearly requires otherwise, the definitions in this subsection apply throughout this section.

(a) "Disabled employee" means (~~an individual~~) a person eligible to receive a disability retirement allowance from the Washington law enforcement officers' and fire fighters' retirement system plan 2 and the public employees' retirement system.

(b) "Health plan" means a contract, policy, fund, trust, or other program established jointly or individually by a county, municipality, or other political subdivision of the state that provides for all or a part of hospitalization or medical aid for its employees and their dependents under RCW 41.04.180.

(c) "Retired employee" means a public employee meeting the retirement eligibility, years of service requirements, and other criteria (~~set forth in~~) of the Washington law enforcement officers' and fire fighters' retirement system plan 2 and the public employees' retirement system.

(2) A county, municipality, or other political subdivision that provides a health plan for its employees shall permit retired and disabled employees and their dependents to continue participation in a plan subject to the exceptions, limitations, and conditions set forth in this section. However, this section does not apply to a county, municipality, or other political subdivision participating in an insurance program administered under chapter 41.05 RCW if retired and disabled employees and their dependents of the participating county, municipality, or other political subdivision are covered under an insurance program administered under chapter 41.05 RCW. Nothing in this subsection or chapter 319, Laws of 2002 precludes the local government employer from offering retired or disabled employees a health plan with a benefit structure, copayment, deductible, coinsurance, lifetime benefit maximum, and other plan features which differ from those offered through a health plan provided to active employees. Further, nothing in this subsection precludes a local government employer from joining with other public agency employers, including interjurisdictional benefit pools and multi-employer associations or consortiums, to fulfill its obligations under chapter 319, Laws of 2002.

(3) A county, municipality, or other political subdivision has full authority to require a person who requests continued participation in a health plan under subsection (2) of this section to pay the full cost of such participation, including any amounts necessary for administration. However, this subsection does not require an employer who is currently paying for all or part of a health plan for its retired and disabled employees to discontinue those payments.

(4) Payments for continued participation in a former employer's health plan may be assigned to the underwriter of the health plan from public pension benefits or may be paid to the former employer, as determined by the former employer, so that an underwriter of the health plan that is an insurance company, health care service contractor, or health maintenance organization is not required to accept individual payments from persons continuing participation in the employer's health plan.

(5) After an initial open enrollment period of ninety days after January 1, 2003, an employer may not be required to permit a person to continue participation in the health plan if the person is responsible for a lapse in coverage under the plan. In addition, an employer may not be required to permit a person to continue participation in the employer's health plan if the employer offered continued participation in a health plan that meets the requirements of chapter 319, Laws of 2002.

(6) If a person continuing participation in the former employer's health plan has medical coverage available through another employer, the medical coverage of the other employer is the primary coverage for purposes of coordination of benefits as provided for in the former employer's health plan.

(7) If a person's continued participation in a health plan was permitted because of the person's relationship to a retired or disabled employee of the employer providing the health plan and the retired or disabled employee dies, then that person is permitted to continue participation in the health plan for a period of not more than six months after the death of the retired or disabled employee. However, the employer providing the health plan may permit continued participation beyond that time period.

(8) An employer may offer one or more health plans different from that provided for active employees and designed to meet the needs of persons requesting continued participation in the employer's health plan. An employer, in designing or offering continued participation in a health plan, may utilize terms or conditions necessary to administer the plan to the extent the terms and conditions do not conflict with this section.

(9) If an employer changes the underwriter of a health plan, the replaced underwriter has no further responsibility or obligation to persons who continued participation in a health plan of the replaced underwriter. However, the employer shall permit those persons to participate in any new health plan.

(10) The benefits granted under this section are not considered a matter of contractual right. Should the legislature, a county, municipality, or other political subdivision of the state revoke or change any benefits granted under this section, an affected person is not entitled to receive the benefits as a matter of contractual right.

(11) This section does not affect any health plan contained in a collective bargaining agreement in existence as of January 1, 2003. However, any plan contained in future collective bargaining agreements shall conform to this

section. In addition, this section does not affect any health plan contract or policy in existence as of January 1, 2003. However, any renewal of the contract or policy shall conform to this section.

(12) Counties, municipalities, and other political subdivisions that make a documented good faith effort to comply with the provisions of subsections (2) through (11) of this section and are unable to provide access to a fully insured group health benefit plan are discharged from any obligations under subsections (2) through (11) of this section but shall assist disabled employees and retired employees in applying for health insurance. Assistance may include developing and distributing standardized information on the availability and cost of individual health benefit plans, application packages, and health benefit fairs.

(13) The office of the insurance commissioner shall make available to counties, municipalities, and other political subdivisions information regarding individual health benefit plans, including a list of carriers offering individual coverage, the rates charged, and how to apply for coverage.

NEW SECTION. Sec. 2. 2002 c 319 s 5 (uncodified) is repealed.

NEW SECTION. Sec. 3. This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately.

Passed by the House March 11, 2004.

Passed by the Senate March 11, 2004.

Approved by the Governor March 26, 2004.

Filed in Office of Secretary of State March 26, 2004.

CHAPTER 174

[Substitute House Bill 1328]

BOARDING HOMES—TAX TREATMENT

AN ACT Relating to the tax treatment of boarding homes; amending RCW 82.04.290, 82.04.050, 82.04.190, 82.04.440, and 82.04.460; adding new sections to chapter 82.04 RCW; and providing an effective date.

Be it enacted by the Legislature of the State of Washington:

NEW SECTION. Sec. 1. A new section is added to chapter 82.04 RCW to read as follows:

(1) Upon every person engaging within this state in the business of providing room and domiciliary care to residents of a boarding home licensed under chapter 18.20 RCW, the amount of tax with respect to such business shall be equal to the gross income from such services multiplied by the rate of 0.275 percent.

(2) If the persons described in subsection (1) of this section receive income from sources other than those described in subsection (1) of this section or provide services other than those named in subsection (1) of this section, that income and those services are subject to tax as otherwise provided in this chapter.

(3) "Domiciliary care" has the same meaning as in RCW 18.20.020.

Sec. 2. RCW 82.04.290 and 2003 c 343 s 2 are each amended to read as follows:

(1) Upon every person engaging within this state in the business of providing international investment management services, as to such persons, the amount of tax with respect to such business shall be equal to the gross income or gross proceeds of sales of the business multiplied by a rate of 0.275 percent.

(2) Upon every person engaging within this state in any business activity other than or in addition to those enumerated in RCW 82.04.230, 82.04.240, 82.04.250, 82.04.255, 82.04.260, 82.04.270, 82.04.298, 82.04.2905, 82.04.280, 82.04.2907, 82.04.272, (~~and~~) 82.04.2906, and section 1 of this act, and subsection (1) of this section; as to such persons the amount of tax on account of such activities shall be equal to the gross income of the business multiplied by the rate of 1.5 percent.

(3) Subsection (2) of this section includes, among others, and without limiting the scope hereof (whether or not title to materials used in the performance of such business passes to another by accession, confusion or other than by outright sale), persons engaged in the business of rendering any type of service which does not constitute a "sale at retail" or a "sale at wholesale." The value of advertising, demonstration, and promotional supplies and materials furnished to an agent by his principal or supplier to be used for informational, educational and promotional purposes shall not be considered a part of the agent's remuneration or commission and shall not be subject to taxation under this section.

Sec. 3. RCW 82.04.050 and 2003 c 168 s 104 are each amended to read as follows:

(1) "Sale at retail" or "retail sale" means every sale of tangible personal property (including articles produced, fabricated, or imprinted) to all persons irrespective of the nature of their business and including, among others, without limiting the scope hereof, persons who install, repair, clean, alter, improve, construct, or decorate real or personal property of or for consumers other than a sale to a person who presents a resale certificate under RCW 82.04.470 and who:

(a) Purchases for the purpose of resale as tangible personal property in the regular course of business without intervening use by such person, but a purchase for the purpose of resale by a regional transit authority under RCW 81.112.300 is not a sale for resale; or

(b) Installs, repairs, cleans, alters, imprints, improves, constructs, or decorates real or personal property of or for consumers, if such tangible personal property becomes an ingredient or component of such real or personal property without intervening use by such person; or

(c) Purchases for the purpose of consuming the property purchased in producing for sale a new article of tangible personal property or substance, of which such property becomes an ingredient or component or is a chemical used in processing, when the primary purpose of such chemical is to create a chemical reaction directly through contact with an ingredient of a new article being produced for sale; or

(d) Purchases for the purpose of consuming the property purchased in producing ferrosilicon which is subsequently used in producing magnesium for sale, if the primary purpose of such property is to create a chemical reaction directly through contact with an ingredient of ferrosilicon; or

(e) Purchases for the purpose of providing the property to consumers as part of competitive telephone service, as defined in RCW 82.04.065. The term shall

include every sale of tangible personal property which is used or consumed or to be used or consumed in the performance of any activity classified as a "sale at retail" or "retail sale" even though such property is resold or utilized as provided in (a), (b), (c), (d), or (e) of this subsection following such use. The term also means every sale of tangible personal property to persons engaged in any business which is taxable under RCW 82.04.280 (2) and (7) (~~and~~), 82.04.290, and section 1 of this act.

(2) The term "sale at retail" or "retail sale" shall include the sale of or charge made for tangible personal property consumed and/or for labor and services rendered in respect to the following:

(a) The installing, repairing, cleaning, altering, imprinting, or improving of tangible personal property of or for consumers, including charges made for the mere use of facilities in respect thereto, but excluding charges made for the use of coin-operated laundry facilities when such facilities are situated in an apartment house, rooming house, or mobile home park for the exclusive use of the tenants thereof, and also excluding sales of laundry service to nonprofit health care facilities, and excluding services rendered in respect to live animals, birds and insects;

(b) The constructing, repairing, decorating, or improving of new or existing buildings or other structures under, upon, or above real property of or for consumers, including the installing or attaching of any article of tangible personal property therein or thereto, whether or not such personal property becomes a part of the realty by virtue of installation, and shall also include the sale of services or charges made for the clearing of land and the moving of earth excepting the mere leveling of land used in commercial farming or agriculture;

(c) The charge for labor and services rendered in respect to constructing, repairing, or improving any structure upon, above, or under any real property owned by an owner who conveys the property by title, possession, or any other means to the person performing such construction, repair, or improvement for the purpose of performing such construction, repair, or improvement and the property is then reconveyed by title, possession, or any other means to the original owner;

(d) The sale of or charge made for labor and services rendered in respect to the cleaning, fumigating, razing or moving of existing buildings or structures, but shall not include the charge made for janitorial services; and for purposes of this section the term "janitorial services" shall mean those cleaning and caretaking services ordinarily performed by commercial janitor service businesses including, but not limited to, wall and window washing, floor cleaning and waxing, and the cleaning in place of rugs, drapes and upholstery. The term "janitorial services" does not include painting, papering, repairing, furnace or septic tank cleaning, snow removal or sandblasting;

(e) The sale of or charge made for labor and services rendered in respect to automobile towing and similar automotive transportation services, but not in respect to those required to report and pay taxes under chapter 82.16 RCW;

(f) The sale of and charge made for the furnishing of lodging and all other services by a hotel, rooming house, tourist court, motel, trailer camp, and the granting of any similar license to use real property, as distinguished from the renting or leasing of real property, and it shall be presumed that the occupancy of real property for a continuous period of one month or more constitutes a rental or

lease of real property and not a mere license to use or enjoy the same. For the purposes of this subsection, it shall be presumed that the sale of and charge made for the furnishing of lodging for a continuous period of one month or more to a person is a rental or lease of real property and not a mere license to enjoy the same;

(g) The sale of or charge made for tangible personal property, labor and services to persons taxable under (a), (b), (c), (d), (e), and (f) of this subsection when such sales or charges are for property, labor and services which are used or consumed in whole or in part by such persons in the performance of any activity defined as a "sale at retail" or "retail sale" even though such property, labor and services may be resold after such use or consumption. Nothing contained in this subsection shall be construed to modify subsection (1) of this section and nothing contained in subsection (1) of this section shall be construed to modify this subsection.

(3) The term "sale at retail" or "retail sale" shall include the sale of or charge made for personal, business, or professional services including amounts designated as interest, rents, fees, admission, and other service emoluments however designated, received by persons engaging in the following business activities:

(a) Amusement and recreation services including but not limited to golf, pool, billiards, skating, bowling, ski lifts and tows, day trips for sightseeing purposes, and others, when provided to consumers;

(b) Abstract, title insurance, and escrow services;

(c) Credit bureau services;

(d) Automobile parking and storage garage services;

(e) Landscape maintenance and horticultural services but excluding (i) horticultural services provided to farmers and (ii) pruning, trimming, repairing, removing, and clearing of trees and brush near electric transmission or distribution lines or equipment, if performed by or at the direction of an electric utility;

(f) Service charges associated with tickets to professional sporting events; and

(g) The following personal services: Physical fitness services, tanning salon services, tattoo parlor services, steam bath services, turkish bath services, escort services, and dating services.

(4)(a) The term shall also include:

(i) The renting or leasing of tangible personal property to consumers; and

(ii) Providing tangible personal property along with an operator for a fixed or indeterminate period of time. A consideration of this is that the operator is necessary for the equipment to perform as designed. For the purpose of this subsection (4)(a)(ii), an operator must do more than maintain, inspect, or set up the tangible personal property.

(b) The term shall not include the renting or leasing of tangible personal property where the lease or rental is for the purpose of sublease or subrent.

(5) The term shall also include the providing of telephone service, as defined in RCW 82.04.065, to consumers.

(6) The term shall also include the sale of prewritten computer software other than a sale to a person who presents a resale certificate under RCW

82.04.470, regardless of the method of delivery to the end user, but shall not include custom software or the customization of prewritten computer software.

(7) The term shall not include the sale of or charge made for labor and services rendered in respect to the building, repairing, or improving of any street, place, road, highway, easement, right of way, mass public transportation terminal or parking facility, bridge, tunnel, or trestle which is owned by a municipal corporation or political subdivision of the state or by the United States and which is used or to be used primarily for foot or vehicular traffic including mass transportation vehicles of any kind.

(8) The term shall also not include sales of chemical sprays or washes to persons for the purpose of postharvest treatment of fruit for the prevention of scald, fungus, mold, or decay, nor shall it include sales of feed, seed, seedlings, fertilizer, agents for enhanced pollination including insects such as bees, and spray materials to: (a) Persons who participate in the federal conservation reserve program, the environmental quality incentives program, the wetlands reserve program, and the wildlife habitat incentives program, or their successors administered by the United States department of agriculture; (b) farmers for the purpose of producing for sale any agricultural product; and (c) farmers acting under cooperative habitat development or access contracts with an organization exempt from federal income tax under 26 U.S.C. Sec. 501(c)(3) or the Washington state department of fish and wildlife to produce or improve wildlife habitat on land that the farmer owns or leases.

(9) The term shall not include the sale of or charge made for labor and services rendered in respect to the constructing, repairing, decorating, or improving of new or existing buildings or other structures under, upon, or above real property of or for the United States, any instrumentality thereof, or a county or city housing authority created pursuant to chapter 35.82 RCW, including the installing, or attaching of any article of tangible personal property therein or thereto, whether or not such personal property becomes a part of the realty by virtue of installation. Nor shall the term include the sale of services or charges made for the clearing of land and the moving of earth of or for the United States, any instrumentality thereof, or a county or city housing authority. Nor shall the term include the sale of services or charges made for cleaning up for the United States, or its instrumentalities, radioactive waste and other byproducts of weapons production and nuclear research and development.

~~((10) Until July 1, 2003, the term shall not include the sale of or charge made for labor and services rendered for environmental remedial action as defined in RCW 82.04.2635(2).))~~

Sec. 4. RCW 82.04.190 and 2002 c 367 s 2 are each amended to read as follows:

"Consumer" means the following:

(1) Any person who purchases, acquires, owns, holds, or uses any article of tangible personal property irrespective of the nature of the person's business and including, among others, without limiting the scope hereof, persons who install, repair, clean, alter, improve, construct, or decorate real or personal property of or for consumers other than for the purpose (a) of resale as tangible personal property in the regular course of business or (b) of incorporating such property as an ingredient or component of real or personal property when installing, repairing, cleaning, altering, imprinting, improving, constructing, or decorating

such real or personal property of or for consumers or (c) of consuming such property in producing for sale a new article of tangible personal property or a new substance, of which such property becomes an ingredient or component or as a chemical used in processing, when the primary purpose of such chemical is to create a chemical reaction directly through contact with an ingredient of a new article being produced for sale or (d) purchases for the purpose of consuming the property purchased in producing ferrosilicon which is subsequently used in producing magnesium for sale, if the primary purpose of such property is to create a chemical reaction directly through contact with an ingredient of ferrosilicon;

(2)(a) Any person engaged in any business activity taxable under RCW 82.04.290 or section 1 of this act; (b) any person who purchases, acquires, or uses any telephone service as defined in RCW 82.04.065, other than for resale in the regular course of business; (c) any person who purchases, acquires, or uses any service defined in RCW 82.04.050(2)(a) or any amusement and recreation service defined in RCW 82.04.050(3)(a), other than for resale in the regular course of business; and (d) any person who is an end user of software;

(3) Any person engaged in the business of contracting for the building, repairing or improving of any street, place, road, highway, easement, right of way, mass public transportation terminal or parking facility, bridge, tunnel, or trestle which is owned by a municipal corporation or political subdivision of the state of Washington or by the United States and which is used or to be used primarily for foot or vehicular traffic including mass transportation vehicles of any kind as defined in RCW 82.04.280, in respect to tangible personal property when such person incorporates such property as an ingredient or component of such publicly owned street, place, road, highway, easement, right of way, mass public transportation terminal or parking facility, bridge, tunnel, or trestle by installing, placing or spreading the property in or upon the right of way of such street, place, road, highway, easement, bridge, tunnel, or trestle or in or upon the site of such mass public transportation terminal or parking facility;

(4) Any person who is an owner, lessee or has the right of possession to or an easement in real property which is being constructed, repaired, decorated, improved, or otherwise altered by a person engaged in business, excluding only (a) municipal corporations or political subdivisions of the state in respect to labor and services rendered to their real property which is used or held for public road purposes, and (b) the United States, instrumentalities thereof, and county and city housing authorities created pursuant to chapter 35.82 RCW in respect to labor and services rendered to their real property. Nothing contained in this or any other subsection of this definition shall be construed to modify any other definition of "consumer";

(5) Any person who is an owner, lessee, or has the right of possession to personal property which is being constructed, repaired, improved, cleaned, imprinted, or otherwise altered by a person engaged in business;

(6) Any person engaged in the business of constructing, repairing, decorating, or improving new or existing buildings or other structures under, upon, or above real property of or for the United States, any instrumentality thereof, or a county or city housing authority created pursuant to chapter 35.82 RCW, including the installing or attaching of any article of tangible personal property therein or thereto, whether or not such personal property becomes a part

of the realty by virtue of installation; also, any person engaged in the business of clearing land and moving earth of or for the United States, any instrumentality thereof, or a county or city housing authority created pursuant to chapter 35.82 RCW. Any such person shall be a consumer within the meaning of this subsection in respect to tangible personal property incorporated into, installed in, or attached to such building or other structure by such person;

(7) Any person who is a lessor of machinery and equipment, the rental of which is exempt from the tax imposed by RCW 82.08.020 under RCW 82.08.02565, with respect to the sale of or charge made for tangible personal property consumed in respect to repairing the machinery and equipment, if the tangible personal property has a useful life of less than one year. Nothing contained in this or any other subsection of this section shall be construed to modify any other definition of "consumer"; and

(8) Any person engaged in the business of cleaning up for the United States, or its instrumentalities, radioactive waste and other byproducts of weapons production and nuclear research and development(~~(~~and

~~)~~Until July 1, 2003, any person engaged in the business of conducting environmental remedial action as defined in RCW 82.04.2635(2))).

Sec. 5. RCW 82.04.440 and 2003 2nd sp.s. c 1 s 6 are each amended to read as follows:

(1) Every person engaged in activities which are within the purview of the provisions of two or more of sections RCW 82.04.230 to ~~((82.04.290))~~ 82.04.298 and section 1 of this act, inclusive, shall be taxable under each paragraph applicable to the activities engaged in.

(2) Persons taxable under RCW 82.04.250, 82.04.270, or 82.04.260 (4) or (13) with respect to selling products in this state shall be allowed a credit against those taxes for any (a) manufacturing taxes paid with respect to the manufacturing of products so sold in this state, and/or (b) extracting taxes paid with respect to the extracting of products so sold in this state or ingredients of products so sold in this state. Extracting taxes taken as credit under subsection (3) of this section may also be taken under this subsection, if otherwise allowable under this subsection. The amount of the credit shall not exceed the tax liability arising under this chapter with respect to the sale of those products.

(3) Persons taxable under RCW 82.04.240 or 82.04.260(1)(b) shall be allowed a credit against those taxes for any extracting taxes paid with respect to extracting the ingredients of the products so manufactured in this state. The amount of the credit shall not exceed the tax liability arising under this chapter with respect to the manufacturing of those products.

(4) Persons taxable under RCW 82.04.230, 82.04.240, or 82.04.260 (1), (2), (4), (6), or (13) with respect to extracting or manufacturing products in this state shall be allowed a credit against those taxes for any (i) gross receipts taxes paid to another state with respect to the sales of the products so extracted or manufactured in this state, (ii) manufacturing taxes paid with respect to the manufacturing of products using ingredients so extracted in this state, or (iii) manufacturing taxes paid with respect to manufacturing activities completed in another state for products so manufactured in this state. The amount of the credit shall not exceed the tax liability arising under this chapter with respect to the extraction or manufacturing of those products.

(5) For the purpose of this section:

(a) "Gross receipts tax" means a tax:

(i) Which is imposed on or measured by the gross volume of business, in terms of gross receipts or in other terms, and in the determination of which the deductions allowed would not constitute the tax an income tax or value added tax; and

(ii) Which is also not, pursuant to law or custom, separately stated from the sales price.

(b) "State" means (i) the state of Washington, (ii) a state of the United States other than Washington, or any political subdivision of such other state, (iii) the District of Columbia, and (iv) any foreign country or political subdivision thereof.

(c) "Manufacturing tax" means a gross receipts tax imposed on the act or privilege of engaging in business as a manufacturer, and includes (i) the taxes imposed in RCW 82.04.240 and 82.04.260 (1), (2), (4), and (13), and (ii) similar gross receipts taxes paid to other states.

(d) "Extracting tax" means a gross receipts tax imposed on the act or privilege of engaging in business as an extractor, and includes the tax imposed in RCW 82.04.230 and similar gross receipts taxes paid to other states.

(e) "Business", "manufacturer", "extractor", and other terms used in this section have the meanings given in RCW 82.04.020 through 82.04.212, notwithstanding the use of those terms in the context of describing taxes imposed by other states.

Sec. 6. RCW 82.04.460 and 1985 c 7 s 154 are each amended to read as follows:

(1) Any person rendering services taxable under RCW 82.04.290 or section 1 of this act and maintaining places of business both within and without this state which contribute to the rendition of such services shall, for the purpose of computing tax liability under RCW 82.04.290 or section 1 of this act, apportion to this state that portion of ~~((his))~~ the person's gross income which is derived from services rendered within this state. Where such apportionment cannot be accurately made by separate accounting methods, the taxpayer shall apportion to this state that proportion of ~~((his))~~ the taxpayer's total income which the cost of doing business within the state bears to the total cost of doing business both within and without the state.

(2) Notwithstanding the provision of subsection (1) of this section, persons doing business both within and without the state who receive gross income from service charges, as defined in RCW 63.14.010 (relating to amounts charged for granting the right or privilege to make deferred or installment payments) or who receive gross income from engaging in business as financial institutions within the scope of chapter 82.14A RCW (relating to city taxes on financial institutions) shall apportion or allocate gross income taxable under RCW 82.04.290 to this state pursuant to rules promulgated by the department consistent with uniform rules for apportionment or allocation developed by the states.

(3) The department shall by rule provide a method or methods of apportioning or allocating gross income derived from sales of telephone services taxed under this chapter, if the gross proceeds of sales subject to tax under this chapter do not fairly represent the extent of the taxpayer's income attributable to this state. The rules shall be, so far as feasible, consistent with the methods of

apportionment contained in this section and shall require the consideration of those facts, circumstances, and apportionment factors as will result in an equitable and constitutionally permissible division of the services.

NEW SECTION. Sec. 7. A new section is added to chapter 82.04 RCW to read as follows:

(1) A boarding home licensed under chapter 18.20 RCW may deduct from the measure of tax amounts received as compensation for providing adult residential care, enhanced adult residential care, or assisted living services under contract with the department of social and health services authorized by chapter 74.39A RCW to residents who are medicaid recipients.

(2) For purposes of this section, "adult residential care," "enhanced adult residential care," and "assisted living services" have the same meaning as in RCW 74.39A.009.

NEW SECTION. Sec. 8. This act takes effect July 1, 2004.

Passed by the House February 16, 2004.

Passed by the Senate March 11, 2004.

Approved by the Governor March 26, 2004.

Filed in Office of Secretary of State March 26, 2004.

CHAPTER 175

[House Bill 2663]

STATE LAWS AND RULES—RESPECTFUL LANGUAGE

AN ACT Relating to use of respectful language in the Revised Code of Washington and the Washington Administrative Code; adding a new section to chapter 44.04 RCW; and adding a new section to chapter 34.05 RCW.

Be it enacted by the Legislature of the State of Washington:

NEW SECTION. Sec. 1. A new section is added to chapter 44.04 RCW to read as follows:

(1) The legislature recognizes that language used in reference to individuals with disabilities shapes and reflects society's attitudes towards people with disabilities. Many of the terms currently used diminish the humanity and natural condition of having a disability. Certain terms are demeaning and create an invisible barrier to inclusion as equal community members. The legislature finds it necessary to clarify preferred language for new and revised laws by requiring the use of terminology that puts the person before the disability.

(2)(a) The code reviser is directed to avoid all references to: Disabled, developmentally disabled, mentally disabled, mentally ill, mentally retarded, handicapped, cripple, and crippled, in any new statute, memorial, or resolution, and to change such references in any existing statute, memorial, or resolution as sections including these references are otherwise amended by law.

(b) The code reviser is directed to replace terms referenced in (a) of this subsection as appropriate with the following revised terminology: "Individuals with disabilities," "individuals with developmental disabilities," "individuals with mental illness," and "individuals with mental retardation."

(3) No statute, memorial, or resolution is invalid because it does not comply with this section.

NEW SECTION. **Sec. 2.** A new section is added to chapter 34.05 RCW to read as follows:

(1) All agency orders creating new rules, or amending existing rules, shall be formulated in accordance with the requirements of section 1 of this act regarding the use of respectful language.

(2) No agency rule is invalid because it does not comply with this section.

Passed by the House February 12, 2004.

Passed by the Senate March 11, 2004.

Approved by the Governor March 26, 2004.

Filed in Office of Secretary of State March 26, 2004.

CHAPTER 176

[Engrossed Substitute House Bill 2400]

SEX CRIMES AGAINST MINORS—SENTENCE ENHANCEMENTS

AN ACT Relating to sentence enhancement for sex crimes against minors; amending RCW 9.94A.670, 9.92.151, and 9.94A.728; reenacting RCW 9.94A.515 and 9.94A.712; creating new sections; prescribing penalties; and providing an effective date.

Be it enacted by the Legislature of the State of Washington:

***NEW SECTION. Sec. 1.** *(1) The legislature finds that sex offenses against children are among the most heinous of crimes and that the legislature has a paramount duty to protect children from victimization by sex offenders. Sentencing policy in Washington state should ensure that punishment of sex offenders is pursued to the extent that such punishment does not jeopardize the safety of children or hinder the successful prosecution of sex offenses against children.*

The legislature finds that offenders with the most serious sex offenses against children including, but not limited to, rape in the first and second degree, rape of a child in the first and second degree, child molestation in the first degree, indecent liberties with forcible compulsion, and kidnapping in the first or second degree with a sexual motivation should be subject to life sentences. The legislature finds that since September of 2001, these and other most serious sex offenses have been subject to life sentences under a determinate-plus sentencing structure. Those offenders who are more likely than not to reoffend are kept in prison and those who present a low risk to reoffend are released under supervision for the remainder of their life and may be reincarcerated for serious violations that do not constitute a new sex offense. The legislature further finds that persons subject to determinate-plus sentencing who receive a special sex offender sentencing alternative sentence that is subsequently revoked are subject to life sentences as if they had not received a sentencing alternative. The legislature also finds that these offenders' failure in treatment is likely to make it harder for them to receive a release from prison to lifetime community custody. The legislature intends to reiterate its commitment to life sentences for these offenders by reenacting the law on seriousness levels of offenses and determinate-plus sentencing that sets the minimum sentence levels for these offenders.

(2) The legislature also finds that the special sex offender sentencing alternative was enacted in 1984 to protect victims of sexual assault. A 1991 evaluation of the effectiveness of the sentencing alternative concluded that it

accurately selected sex offenders who, with supervision and treatment, reoffend at lower rates and that the use of the sentencing alternative does not increase risk to the community. Today, strong support for the special sex offender sentencing alternative continues among advocates for children who are victims of sexual assault and prosecutors who prosecute sex offenses against children.

(3) The legislature further finds that several weaknesses in the structure and administration of the special sex offender sentencing alternative have been identified and should be addressed. In addition, a comprehensive analysis and evaluation of the special sex offender sentencing alternative is needed to ensure that efforts to reform the sentencing alternative do not result in jeopardizing the safety of children or hindering the successful prosecution of sex offenses against children.

(4) The legislature intends to protect children from victimization by sex offenders by taking immediate action to make changes in the special sex offender sentencing alternative to address perceived weaknesses in the program, and thoroughly evaluating its effectiveness to determine whether additional changes are needed to further increase the protection of children from victimization by sex offenders.

*Sec. 1 was vetoed. See message at end of chapter.

Sec. 2. RCW 9.94A.515 and 2003 c 335 s 5, 2003 c 283 s 33, 2003 c 267 s 3, 2003 c 250 s 14, 2003 c 119 s 8, 2003 c 53 s 56, and 2003 c 52 s 4 are each reenacted to read as follows:

| TABLE 2 | |
|--|---|
| CRIMES INCLUDED WITHIN EACH SERIOUSNESS LEVEL | |
| XVI | Aggravated Murder I (RCW 10.95.020) |
| XV | Homicide by abuse (RCW 9A.32.055) |
| | Malicious explosion 1 (RCW 70.74.280(1)) |
| | Murder 1 (RCW 9A.32.030) |
| XIV | Murder 2 (RCW 9A.32.050) |
| | Trafficking 1 (RCW 9A.40.100(1)) |
| XIII | Malicious explosion 2 (RCW 70.74.280(2)) |
| | Malicious placement of an explosive 1 (RCW 70.74.270(1)) |
| XII | Assault I (RCW 9A.36.011) |
| | Assault of a Child 1 (RCW 9A.36.120) |
| | Malicious placement of an imitation device 1 (RCW 70.74.272(1)(a)) |
| | Rape 1 (RCW 9A.44.040) |
| | Rape of a Child 1 (RCW 9A.44.073) |

- Trafficking 2 (RCW 9A.40.100(2))
- XI Manslaughter 1 (RCW 9A.32.060)
 - Rape 2 (RCW 9A.44.050)
 - Rape of a Child 2 (RCW 9A.44.076)
- X Child Molestation 1 (RCW 9A.44.083)
 - Indecent Liberties (with forcible compulsion) (RCW 9A.44.100(I)(a))
 - Kidnapping 1 (RCW 9A.40.020)
 - Leading Organized Crime (RCW 9A.82.060(1)(a))
 - Malicious explosion 3 (RCW 70.74.280(3))
 - Sexually Violent Predator Escape (RCW 9A.76.115)
- IX Assault of a Child 2 (RCW 9A.36.130)
 - Explosive devices prohibited (RCW 70.74.180)
 - Hit and Run—Death (RCW 46.52.020(4)(a))
 - Homicide by Watercraft, by being under the influence of intoxicating liquor or any drug (RCW 79A.60.050)
 - Inciting Criminal Profiteering (RCW 9A.82.060(1)(b))
 - Malicious placement of an explosive 2 (RCW 70.74.270(2))
 - Robbery 1 (RCW 9A.56.200)
 - Sexual Exploitation (RCW 9.68A.040)
 - Vehicular Homicide, by being under the influence of intoxicating liquor or any drug (RCW 46.61.520)
- VIII Arson 1 (RCW 9A.48.020)
 - Homicide by Watercraft, by the operation of any vessel in a reckless manner (RCW 79A.60.050)
 - Manslaughter 2 (RCW 9A.32.070)
 - Promoting Prostitution 1 (RCW 9A.88.070)
 - Theft of Ammonia (RCW 69.55.010)

- Vehicular Homicide, by the operation of any vehicle in a reckless manner (RCW 46.61.520)
- VII Burglary 1 (RCW 9A.52.020)
- Child Molestation 2 (RCW 9A.44.086)
- Civil Disorder Training (RCW 9A.48.120)
- Dealing in depictions of minor engaged in sexually explicit conduct (RCW 9.68A.050)
- Drive-by Shooting (RCW 9A.36.045)
- Homicide by Watercraft, by disregard for the safety of others (RCW 79A.60.050)
- Indecent Liberties (without forcible compulsion) (RCW 9A.44.100(1) (b) and (c))
- Introducing Contraband 1 (RCW 9A.76.140)
- Malicious placement of an explosive 3 (RCW 70.74.270(3))
- Sending, bringing into state depictions of minor engaged in sexually explicit conduct (RCW 9.68A.060)
- Unlawful Possession of a Firearm in the first degree (RCW 9.41.040(1))
- Use of a Machine Gun in Commission of a Felony (RCW 9.41.225)
- Vehicular Homicide, by disregard for the safety of others (RCW 46.61.520)
- VI Bail Jumping with Murder 1 (RCW 9A.76.170(3)(a))
- Bribery (RCW 9A.68.010)
- Incest 1 (RCW 9A.64.020(1))
- Intimidating a Judge (RCW 9A.72.160)
- Intimidating a Juror/Witness (RCW 9A.72.110, 9A.72.130)
- Malicious placement of an imitation device 2 (RCW 70.74.272(1)(b))

- Rape of a Child 3 (RCW 9A.44.079)
- Theft of a Firearm (RCW 9A.56.300)
- Unlawful Storage of Ammonia (RCW 69.55.020)
- V Abandonment of dependent person 1 (RCW 9A.42.060)
- Advancing money or property for extortionate extension of credit (RCW 9A.82.030)
- Bail Jumping with class A Felony (RCW 9A.76.170(3)(b))
- Child Molestation 3 (RCW 9A.44.089)
- Criminal Mistreatment 1 (RCW 9A.42.020)
- Custodial Sexual Misconduct 1 (RCW 9A.44.160)
- Domestic Violence Court Order Violation (RCW 10.99.040, 10.99.050, 26.09.300, 26.10.220, 26.26.138, 26.50.110, 26.52.070, or 74.34.145)
- Extortion 1 (RCW 9A.56.120)
- Extortionate Extension of Credit (RCW 9A.82.020)
- Extortionate Means to Collect Extensions of Credit (RCW 9A.82.040)
- Incest 2 (RCW 9A.64.020(2))
- Kidnapping 2 (RCW 9A.40.030)
- Perjury 1 (RCW 9A.72.020)
- Persistent prison misbehavior (RCW 9.94.070)
- Possession of a Stolen Firearm (RCW 9A.56.310)
- Rape 3 (RCW 9A.44.060)
- Rendering Criminal Assistance 1 (RCW 9A.76.070)
- Sexual Misconduct with a Minor 1 (RCW 9A.44.093)

- Sexually Violating Human Remains
(RCW 9A.44.105)
- Stalking (RCW 9A.46.110)
- Taking Motor Vehicle Without
Permission 1 (RCW 9A.56.070)
- IV Arson 2 (RCW 9A.48.030)
- Assault 2 (RCW 9A.36.021)
- Assault by Watercraft (RCW
79A.60.060)
- Bribing a Witness/Bribe Received by
Witness (RCW 9A.72.090,
9A.72.100)
- Cheating 1 (RCW 9.46.1961)
- Commercial Bribery (RCW 9A.68.060)
- Counterfeiting (RCW 9.16.035(4))
- Endangerment with a Controlled
Substance (RCW 9A.42.100)
- Escape 1 (RCW 9A.76.110)
- Hit and Run—Injury (RCW
46.52.020(4)(b))
- Hit and Run with Vessel—Injury
Accident (RCW 79A.60.200(3))
- Identity Theft 1 (RCW 9.35.020(2))
- Indecent Exposure to Person Under Age
Fourteen (subsequent sex offense)
(RCW 9A.88.010)
- Influencing Outcome of Sporting Event
(RCW 9A.82.070)
- Malicious Harassment (RCW
9A.36.080)
- Residential Burglary (RCW 9A.52.025)
- Robbery 2 (RCW 9A.56.210)
- Theft of Livestock 1 (RCW 9A.56.080)
- Threats to Bomb (RCW 9.61.160)
- Trafficking in Stolen Property 1 (RCW
9A.82.050)
- Unlawful factoring of a credit card or
payment card transaction (RCW
9A.56.290(4)(b))

- Unlawful transaction of health coverage as a health care service contractor (RCW 48.44.016(3))
- Unlawful transaction of health coverage as a health maintenance organization (RCW 48.46.033(3))
- Unlawful transaction of insurance business (RCW 48.15.023(3))
- Unlicensed practice as an insurance professional (RCW 48.17.063(3))
- Use of Proceeds of Criminal Profiteering (RCW 9A.82.080 (1) and (2))
- Vehicular Assault, by being under the influence of intoxicating liquor or any drug, or by the operation or driving of a vehicle in a reckless manner (RCW 46.61.522)
- Willful Failure to Return from Furlough (RCW 72.66.060)
- III Abandonment of dependent person 2 (RCW 9A.42.070)
 - Assault 3 (RCW 9A.36.031)
 - Assault of a Child 3 (RCW 9A.36.140)
 - Bail Jumping with class B or C Felony (RCW 9A.76.170(3)(c))
 - Burglary 2 (RCW 9A.52.030)
 - Communication with a Minor for Immoral Purposes (RCW 9.68A.090)
 - Criminal Gang Intimidation (RCW 9A.46.120)
 - Criminal Mistreatment 2 (RCW 9A.42.030)
 - Custodial Assault (RCW 9A.36.100)
 - Escape 2 (RCW 9A.76.120)
 - Extortion 2 (RCW 9A.56.130)
 - Harassment (RCW 9A.46.020)
 - Intimidating a Public Servant (RCW 9A.76.180)

- Introducing Contraband 2 (RCW 9A.76.150)
- Malicious Injury to Railroad Property (RCW 81.60.070)
- Patronizing a Juvenile Prostitute (RCW 9.68A.100)
- Perjury 2 (RCW 9A.72.030)
- Possession of Incendiary Device (RCW 9.40.120)
- Possession of Machine Gun or Short-Barreled Shotgun or Rifle (RCW 9.41.190)
- Promoting Prostitution 2 (RCW 9A.88.080)
- Securities Act violation (RCW 2I.20.400)
- Tampering with a Witness (RCW 9A.72.120)
- Telephone Harassment (subsequent conviction or threat of death) (RCW 9.61.230(2))
- Theft of Livestock 2 (RCW 9A.56.083)
- Trafficking in Stolen Property 2 (RCW 9A.82.055)
- Unlawful Imprisonment (RCW 9A.40.040)
- Unlawful possession of firearm in the second degree (RCW 9.41.040(2))
- Vehicular Assault, by the operation or driving of a vehicle with disregard for the safety of others (RCW 46.61.522)
- Willful Failure to Return from Work Release (RCW 72.65.070)
- II Computer Trespass 1 (RCW 9A.52.110)
- Counterfeiting (RCW 9.16.035(3))
- Escape from Community Custody (RCW 72.09.310)
- Health Care False Claims (RCW 48.80.030)

- Identity Theft 2 (RCW 9.35.020(3))
- Improperly Obtaining Financial Information (RCW 9.35.010)
- Malicious Mischief 1 (RCW 9A.48.070)
- Possession of Stolen Property 1 (RCW 9A.56.150)
- Theft 1 (RCW 9A.56.030)
- Theft of Rental, Leased, or Lease-purchased Property (valued at one thousand five hundred dollars or more) (RCW 9A.56.096(5)(a))
- Trafficking in Insurance Claims (RCW 48.30A.015)
- Unlawful factoring of a credit card or payment card transaction (RCW 9A.56.290(4)(a))
- Unlawful Practice of Law (RCW 2.48.180)
- Unlicensed Practice of a Profession or Business (RCW 18.130.190(7))
- I Attempting to Elude a Pursuing Police Vehicle (RCW 46.61.024)
- False Verification for Welfare (RCW 74.08.055)
- Forgery (RCW 9A.60.020)
- Fraudulent Creation or Revocation of a Mental Health Advance Directive (RCW 9A.60.060)
- Malicious Mischief 2 (RCW 9A.48.080)
- Mineral Trespass (RCW 78.44.330)
- Possession of Stolen Property 2 (RCW 9A.56.160)
- Reckless Burning 1 (RCW 9A.48.040)
- Taking Motor Vehicle Without Permission 2 (RCW 9A.56.075)
- Theft 2 (RCW 9A.56.040)

- Theft of Rental, Leased, or Lease-purchased Property (valued at two hundred fifty dollars or more but less than one thousand five hundred dollars) (RCW 9A.56.096(5)(b))
- Transaction of insurance business beyond the scope of licensure (RCW 48.17.063(4))
- Unlawful Issuance of Checks or Drafts (RCW 9A.56.060)
- Unlawful Possession of Fictitious Identification (RCW 9A.56.320)
- Unlawful Possession of Instruments of Financial Fraud (RCW 9A.56.320)
- Unlawful Possession of Payment Instruments (RCW 9A.56.320)
- Unlawful Possession of a Personal Identification Device (RCW 9A.56.320)
- Unlawful Production of Payment Instruments (RCW 9A.56.320)
- Unlawful Trafficking in Food Stamps (RCW 9.91.142)
- Unlawful Use of Food Stamps (RCW 9.91.144)
- Vehicle Prowl 1 (RCW 9A.52.095)

Sec. 3. RCW 9.94A.712 and 2001 2nd sp.s. c 12 s 303 are each reenacted to read as follows:

(1) An offender who is not a persistent offender shall be sentenced under this section if the offender:

(a) Is convicted of:

(i) Rape in the first degree, rape in the second degree, rape of a child in the first degree, child molestation in the first degree, rape of a child in the second degree, or indecent liberties by forcible compulsion;

(ii) Any of the following offenses with a finding of sexual motivation: Murder in the first degree, murder in the second degree, homicide by abuse, kidnapping in the first degree, kidnapping in the second degree, assault in the first degree, assault in the second degree, assault of a child in the first degree, or burglary in the first degree; or

(iii) An attempt to commit any crime listed in this subsection (1)(a); committed on or after September 1, 2001; or

(b) Has a prior conviction for an offense listed in RCW 9.94A.030(32)(b), and is convicted of any sex offense which was committed after September 1, 2001.

For purposes of this subsection (1)(b), failure to register is not a sex offense.

(2) An offender convicted of rape of a child in the first or second degree or child molestation in the first degree who was seventeen years of age or younger at the time of the offense shall not be sentenced under this section.

(3) Upon a finding that the offender is subject to sentencing under this section, the court shall impose a sentence to a maximum term consisting of the statutory maximum sentence for the offense and a minimum term either within the standard sentence range for the offense, or outside the standard sentence range pursuant to RCW 9.94A.535, if the offender is otherwise eligible for such a sentence.

(4) A person sentenced under subsection (3) of this section shall serve the sentence in a facility or institution operated, or utilized under contract, by the state.

(5) When a court sentences a person to the custody of the department under this section, the court shall, in addition to the other terms of the sentence, sentence the offender to community custody under the supervision of the department and the authority of the board for any period of time the person is released from total confinement before the expiration of the maximum sentence.

(6)(a) Unless a condition is waived by the court, the conditions of community custody shall include those provided for in RCW 9.94A.700(4). The conditions may also include those provided for in RCW 9.94A.700(5). The court may also order the offender to participate in rehabilitative programs or otherwise perform affirmative conduct reasonably related to the circumstances of the offense, the offender's risk of reoffending, or the safety of the community, and the department and the board shall enforce such conditions pursuant to RCW 9.94A.713, 9.95.425, and 9.95.430.

(b) As part of any sentence under this section, the court shall also require the offender to comply with any conditions imposed by the board under RCW 9.94A.713 and 9.95.420 through 9.95.435.

Sec. 4. RCW 9.94A.670 and 2002 c 175 s 11 are each amended to read as follows:

(1) Unless the context clearly requires otherwise, the definitions in this subsection apply to this section only.

(a) "Sex offender treatment provider" or "treatment provider" means a certified sex offender treatment provider as defined in RCW 18.155.020.

(b) "Substantial bodily harm" means bodily injury that involves a temporary but substantial disfigurement, or that causes a temporary but substantial loss or impairment of the function of any body part or organ, or that causes a fracture of any body part or organ.

(c) "Victim" means any person who has sustained emotional, psychological, physical, or financial injury to person or property as a result of the crime charged. "Victim" also means a parent or guardian of a victim who is a minor child unless the parent or guardian is the perpetrator of the offense.

(2) An offender is eligible for the special sex offender sentencing alternative if:

(a) The offender has been convicted of a sex offense other than a violation of RCW 9A.44.050 or a sex offense that is also a serious violent offense;

(b) The offender has no prior convictions for a sex offense as defined in RCW 9.94A.030 or any other felony sex offenses in this or any other state; ~~((and))~~

(c) The offender has no prior adult convictions for a violent offense that was committed within five years of the date the current offense was committed;

(d) The offense did not result in substantial bodily harm to the victim;

(e) The offender had an established relationship with, or connection to, the victim such that the sole connection with the victim was not the commission of the crime; and

(f) The offender's standard sentence range for the offense includes the possibility of confinement for less than eleven years.

(3) If the court finds the offender is eligible for this alternative, the court, on its own motion or the motion of the state or the offender, may order an examination to determine whether the offender is amenable to treatment.

(a) The report of the examination shall include at a minimum the following:

(i) The offender's version of the facts and the official version of the facts;

(ii) The offender's offense history;

(iii) An assessment of problems in addition to alleged deviant behaviors;

(iv) The offender's social and employment situation; and

(v) Other evaluation measures used.

The report shall set forth the sources of the examiner's information.

(b) The examiner shall assess and report regarding the offender's amenability to treatment and relative risk to the community. A proposed treatment plan shall be provided and shall include, at a minimum:

(i) Frequency and type of contact between offender and therapist;

(ii) Specific issues to be addressed in the treatment and description of planned treatment modalities;

(iii) Monitoring plans, including any requirements regarding living conditions, lifestyle requirements, and monitoring by family members and others;

(iv) Anticipated length of treatment; and

(v) Recommended crime-related prohibitions and affirmative conditions, which must include, to the extent known, an identification of specific activities or behaviors that are precursors to the offender's offense cycle, including, but not limited to, activities or behaviors such as viewing or listening to pornography or use of alcohol or controlled substances.

(c) The court on its own motion may order, or on a motion by the state shall order, a second examination regarding the offender's amenability to treatment. The examiner shall be selected by the party making the motion. The offender shall pay the cost of any second examination ordered unless the court finds the defendant to be indigent in which case the state shall pay the cost.

(4) After receipt of the reports, the court shall consider whether the offender and the community will benefit from use of this alternative, consider whether the alternative is too lenient in light of the extent and circumstances of the offense, consider whether the offender has victims in addition to the victim of the offense, consider whether the offender is amenable to treatment, consider the risk the offender would present to the community, to the victim, or to persons of

similar age and circumstances as the victim, and consider the victim's opinion whether the offender should receive a treatment disposition under this section. The court shall give great weight to the victim's opinion whether the offender should receive a treatment disposition under this section. If the sentence imposed is contrary to the victim's opinion, the court shall enter written findings stating its reasons for imposing the treatment disposition. The fact that the offender admits to his or her offense does not, by itself, constitute amenability to treatment. If the court determines that this alternative is appropriate, the court shall then impose a sentence or, pursuant to RCW 9.94A.712, a minimum term of sentence, within the standard sentence range. If the sentence imposed is less than eleven years of confinement, the court may suspend the execution of the sentence and impose the following conditions of suspension:

(a) The court shall order the offender to serve a term of confinement of up to twelve months or the maximum term within the standard range, whichever is less. The court may order the offender to serve a term of confinement greater than twelve months or the maximum term within the standard range based on the presence of an aggravating circumstance listed in RCW 9.94A.535(2). In no case shall the term of confinement exceed the statutory maximum sentence for the offense. The court may order the offender to serve all or part of his or her term of confinement in partial confinement. An offender sentenced to a term of confinement under this subsection is not eligible for earned release under RCW 9.92.151 or 9.94A.728.

(b) The court shall place the offender on community custody for the length of the suspended sentence, the length of the maximum term imposed pursuant to RCW 9.94A.712, or three years, whichever is greater, and require the offender to comply with any conditions imposed by the department under RCW 9.94A.720.

~~((b))~~ (c) The court shall order treatment for any period up to ~~((three))~~ five years in duration. The court, in its discretion, shall order outpatient sex offender treatment or inpatient sex offender treatment, if available. A community mental health center may not be used for such treatment unless it has an appropriate program designed for sex offender treatment. The offender shall not change sex offender treatment providers or treatment conditions without first notifying the prosecutor, the community corrections officer, and the court. If any party or the court objects to a proposed change, the offender shall not change providers or conditions without court approval after a hearing.

(d) As conditions of the suspended sentence, the court shall impose specific prohibitions and affirmative conditions relating to the known precursor activities or behaviors identified in the proposed treatment plan under subsection (3)(b)(v) of this section or identified in an annual review under subsection (7)(b) of this section.

(5) As conditions of the suspended sentence, the court may impose one or more of the following:

(a) ~~((Up to six months of confinement, not to exceed the sentence range of confinement for that offense;~~

~~((b))~~ Crime-related prohibitions;

~~((e))~~ (b) Require the offender to devote time to a specific employment or occupation;

~~((d))~~ (c) Require the offender to remain within prescribed geographical boundaries and notify the court or the community corrections officer prior to any change in the offender's address or employment;

~~((e))~~ (d) Require the offender to report as directed to the court and a community corrections officer;

~~((f))~~ (e) Require the offender to pay all court-ordered legal financial obligations as provided in RCW 9.94A.030;

~~((g))~~ (f) Require the offender to perform community restitution work; or

~~((h))~~ (g) Require the offender to reimburse the victim for the cost of any counseling required as a result of the offender's crime.

(6) At the time of sentencing, the court shall set a treatment termination hearing for three months prior to the anticipated date for completion of treatment.

(7)(a) The sex offender treatment provider shall submit quarterly reports on the offender's progress in treatment to the court and the parties. The report shall reference the treatment plan and include at a minimum the following: Dates of attendance, offender's compliance with requirements, treatment activities, the offender's relative progress in treatment, and any other material specified by the court at sentencing.

(b) The court shall conduct a hearing on the offender's progress in treatment at least once a year. At least fourteen days prior to the hearing, notice of the hearing shall be given to the victim. The victim shall be given the opportunity to make statements to the court regarding the offender's supervision and treatment. At the hearing, the court may modify conditions of community custody including, but not limited to, crime-related prohibitions and affirmative conditions relating to activities and behaviors identified as part of, or relating to precursor activities and behaviors in, the offender's offense cycle or revoke the suspended sentence.

(8) At least fourteen days prior to the treatment termination hearing, notice of the hearing shall be given to the victim. The victim shall be given the opportunity to make statements to the court regarding the offender's supervision and treatment. Prior to the treatment termination hearing, the treatment provider and community corrections officer shall submit written reports to the court and parties regarding the offender's compliance with treatment and monitoring requirements, and recommendations regarding termination from treatment, including proposed community custody conditions. ~~((Either party may request, and the court may order, another evaluation regarding the advisability of termination from treatment. The offender shall pay the cost of any additional evaluation ordered unless the court finds the offender to be indigent in which case the state shall pay the cost.))~~ The court may order an evaluation regarding the advisability of termination from treatment by a sex offender treatment provider who may not be the same person who treated the offender under subsection (4) of this section or any person who employs, is employed by, or shares profits with the person who treated the offender under subsection (4) of this section unless the court has entered written findings that such evaluation is in the best interest of the victim and that a successful evaluation of the offender would otherwise be impractical. The offender shall pay the cost of the evaluation. At the treatment termination hearing the court may: (a) Modify conditions of community custody, and either (b) terminate treatment, or (c)

extend treatment in two-year increments for up to the remaining period of community custody.

(9)(a) If a violation of conditions other than a second violation of the prohibitions or affirmative conditions relating to precursor behaviors or activities imposed under subsection (4)(d) or (7)(b) of this section occurs during community custody, the department shall either impose sanctions as provided for in RCW 9.94A.737(2)(a) or refer the violation to the court and recommend revocation of the suspended sentence as provided for in subsections (6) and (8) of this section.

(b) If a second violation of the prohibitions or affirmative conditions relating to precursor behaviors or activities imposed under subsection (4)(d) or (7)(b) of this section occurs during community custody, the department shall refer the violation to the court and recommend revocation of the suspended sentence as provided in subsection (10) of this section.

(10) The court may revoke the suspended sentence at any time during the period of community custody and order execution of the sentence if: (a) The offender violates the conditions of the suspended sentence, or (b) the court finds that the offender is failing to make satisfactory progress in treatment. All confinement time served during the period of community custody shall be credited to the offender if the suspended sentence is revoked.

(11) The offender's sex offender treatment provider may not be the same person who examined the offender under subsection (3) of this section or any person who employs, is employed by, or shares profits with the person who examined the offender under subsection (3) of this section, unless the court has entered written findings that such treatment is in the best interests of the victim and that successful treatment of the offender would otherwise be impractical. Examinations and treatment ordered pursuant to this subsection shall only be conducted by sex offender treatment providers certified by the department of health pursuant to chapter 18.155 RCW unless the court finds that:

(a) The offender has already moved to another state or plans to move to another state for reasons other than circumventing the certification requirements; or

(b)(i) No certified providers are available for treatment within a reasonable geographical distance of the offender's home; and

(ii) The evaluation and treatment plan comply with this section and the rules adopted by the department of health.

(12) If the offender is less than eighteen years of age when the charge is filed, the state shall pay for the cost of initial evaluation and treatment.

Sec. 5. RCW 9.92.151 and 1990 c 3 s 201 are each amended to read as follows:

(1) Except as provided in subsection (2) of this section, the sentence of a prisoner confined in a county jail facility for a felony, gross misdemeanor, or misdemeanor conviction may be reduced by earned release credits in accordance with procedures that shall be developed and promulgated by the correctional agency having jurisdiction. The earned early release time shall be for good behavior and good performance as determined by the correctional agency having jurisdiction. Any program established pursuant to this section shall allow an offender to earn early release credits for presentence incarceration. The correctional agency shall not credit the offender with earned early release credits

in advance of the offender actually earning the credits. In the case of an offender convicted of a serious violent offense or a sex offense that is a class A felony committed on or after July 1, 1990, the aggregate earned early release time may not exceed fifteen percent of the sentence. In no other case may the aggregate earned early release time exceed one-third of the total sentence.

(2) An offender serving a term of confinement imposed under RCW 9.94A.670(4)(a) is not eligible for earned release credits under this section.

Sec. 6. RCW 9.94A.728 and 2003 c 379 s 1 are each amended to read as follows:

No person serving a sentence imposed pursuant to this chapter and committed to the custody of the department shall leave the confines of the correctional facility or be released prior to the expiration of the sentence except as follows:

(1) Except as otherwise provided for in subsection (2) of this section, the term of the sentence of an offender committed to a correctional facility operated by the department may be reduced by earned release time in accordance with procedures that shall be developed and promulgated by the correctional agency having jurisdiction in which the offender is confined. The earned release time shall be for good behavior and good performance, as determined by the correctional agency having jurisdiction. The correctional agency shall not credit the offender with earned release credits in advance of the offender actually earning the credits. Any program established pursuant to this section shall allow an offender to earn early release credits for presentence incarceration. If an offender is transferred from a county jail to the department, the administrator of a county jail facility shall certify to the department the amount of time spent in custody at the facility and the amount of earned release time. An offender who has been convicted of a felony committed after July 23, 1995, that involves any applicable deadly weapon enhancements under RCW 9.94A.533 (3) or (4), or both, shall not receive any good time credits or earned release time for that portion of his or her sentence that results from any deadly weapon enhancements.

(a) In the case of an offender convicted of a serious violent offense, or a sex offense that is a class A felony, committed on or after July 1, 1990, and before July 1, 2003, the aggregate earned release time may not exceed fifteen percent of the sentence. In the case of an offender convicted of a serious violent offense, or a sex offense that is a class A felony, committed on or after July 1, 2003, the aggregate earned release time may not exceed ten percent of the sentence.

(b)(i) In the case of an offender who qualifies under (b)(ii) of this subsection, the aggregate earned release time may not exceed fifty percent of the sentence.

(ii) An offender is qualified to earn up to fifty percent of aggregate earned release time under this subsection (1)(b) if he or she:

(A) Is classified in one of the two lowest risk categories under (b)(iii) of this subsection;

(B) Is not confined pursuant to a sentence for:

(I) A sex offense;

(II) A violent offense;

(III) A crime against persons as defined in RCW 9.94A.411;

(IV) A felony that is domestic violence as defined in RCW 10.99.020;

- (V) A violation of RCW 9A.52.025 (residential burglary);
- (VI) A violation of, or an attempt, solicitation, or conspiracy to violate, RCW 69.50.401 by manufacture or delivery or possession with intent to deliver methamphetamine; or
- (VII) A violation of, or an attempt, solicitation, or conspiracy to violate, RCW 69.50.406 (delivery of a controlled substance to a minor); and
- (C) Has no prior conviction for:
 - (I) A sex offense;
 - (II) A violent offense;
 - (III) A crime against persons as defined in RCW 9.94A.411;
 - (IV) A felony that is domestic violence as defined in RCW 10.99.020;
 - (V) A violation of RCW 9A.52.025 (residential burglary);
 - (VI) A violation of, or an attempt, solicitation, or conspiracy to violate, RCW 69.50.401 by manufacture or delivery or possession with intent to deliver methamphetamine; or
 - (VII) A violation of, or an attempt, solicitation, or conspiracy to violate, RCW 69.50.406 (delivery of a controlled substance to a minor).
- (iii) For purposes of determining an offender's eligibility under this subsection (1)(b), the department shall perform a risk assessment of every offender committed to a correctional facility operated by the department who has no current or prior conviction for a sex offense, a violent offense, a crime against persons as defined in RCW 9.94A.411, a felony that is domestic violence as defined in RCW 10.99.020, a violation of RCW 9A.52.025 (residential burglary), a violation of, or an attempt, solicitation, or conspiracy to violate, RCW 69.50.401 by manufacture or delivery or possession with intent to deliver methamphetamine, or a violation of, or an attempt, solicitation, or conspiracy to violate, RCW 69.50.406 (delivery of a controlled substance to a minor). The department must classify each assessed offender in one of four risk categories between highest and lowest risk.
 - (iv) The department shall recalculate the earned release time and reschedule the expected release dates for each qualified offender under this subsection (1)(b).
 - (v) This subsection (1)(b) applies retroactively to eligible offenders serving terms of total confinement in a state correctional facility as of July 1, 2003.
 - (vi) This subsection (1)(b) does not apply to offenders convicted after July 1, 2010.
 - (c) In no other case shall the aggregate earned release time exceed one-third of the total sentence;
 - (2)(a) A person convicted of a sex offense or an offense categorized as a serious violent offense, assault in the second degree, vehicular homicide, vehicular assault, assault of a child in the second degree, any crime against persons where it is determined in accordance with RCW 9.94A.602 that the offender or an accomplice was armed with a deadly weapon at the time of commission, or any felony offense under chapter 69.50 or 69.52 RCW, committed before July 1, 2000, may become eligible, in accordance with a program developed by the department, for transfer to community custody status in lieu of earned release time pursuant to subsection (I) of this section;
 - (b) A person convicted of a sex offense, a violent offense, any crime against persons under RCW 9.94A.411(2), or a felony offense under chapter 69.50 or

69.52 RCW, committed on or after July 1, 2000, may become eligible, in accordance with a program developed by the department, for transfer to community custody status in lieu of earned release time pursuant to subsection (1) of this section;

(c) The department shall, as a part of its program for release to the community in lieu of earned release, require the offender to propose a release plan that includes an approved residence and living arrangement. All offenders with community placement or community custody terms eligible for release to community custody status in lieu of earned release shall provide an approved residence and living arrangement prior to release to the community;

(d) The department may deny transfer to community custody status in lieu of earned release time pursuant to subsection (1) of this section if the department determines an offender's release plan, including proposed residence location and living arrangements, may violate the conditions of the sentence or conditions of supervision, place the offender at risk to violate the conditions of the sentence, place the offender at risk to reoffend, or present a risk to victim safety or community safety. The department's authority under this section is independent of any court-ordered condition of sentence or statutory provision regarding conditions for community custody or community placement;

(e) An offender serving a term of confinement imposed under RCW 9.94A.670(4)(a) is not eligible for earned release credits under this section:

(3) An offender may leave a correctional facility pursuant to an authorized furlough or leave of absence. In addition, offenders may leave a correctional facility when in the custody of a corrections officer or officers;

(4)(a) The secretary may authorize an extraordinary medical placement for an offender when all of the following conditions exist:

(i) The offender has a medical condition that is serious enough to require costly care or treatment;

(ii) The offender poses a low risk to the community because he or she is physically incapacitated due to age or the medical condition; and

(iii) Granting the extraordinary medical placement will result in a cost savings to the state.

(b) An offender sentenced to death or to life imprisonment without the possibility of release or parole is not eligible for an extraordinary medical placement.

(c) The secretary shall require electronic monitoring for all offenders in extraordinary medical placement unless the electronic monitoring equipment interferes with the function of the offender's medical equipment or results in the loss of funding for the offender's medical care. The secretary shall specify who shall provide the monitoring services and the terms under which the monitoring shall be performed.

(d) The secretary may revoke an extraordinary medical placement under this subsection at any time;

(5) The governor, upon recommendation from the clemency and pardons board, may grant an extraordinary release for reasons of serious health problems, senility, advanced age, extraordinary meritorious acts, or other extraordinary circumstances;

(6) No more than the final six months of the sentence may be served in partial confinement designed to aid the offender in finding work and reestablishing himself or herself in the community;

(7) The governor may pardon any offender;

(8) The department may release an offender from confinement any time within ten days before a release date calculated under this section; and

(9) An offender may leave a correctional facility prior to completion of his or her sentence if the sentence has been reduced as provided in RCW 9.94A.870.

Notwithstanding any other provisions of this section, an offender sentenced for a felony crime listed in RCW 9.94A.540 as subject to a mandatory minimum sentence of total confinement shall not be released from total confinement before the completion of the listed mandatory minimum sentence for that felony crime of conviction unless allowed under RCW 9.94A.540, however persistent offenders are not eligible for extraordinary medical placement.

NEW SECTION. Sec. 7. (1) The Washington state institute for public policy shall conduct a comprehensive analysis and evaluation of the impact and effectiveness of current sex offender sentencing policies. The institute shall analyze and evaluate the effectiveness of sex offender policies and programs, including the special sex offender sentencing alternative, the department of corrections' treatment program for offenders in prison, and the validity of the risk assessment conducted by the end of sentence review committee prior to release from prison. Using detailed information from offender files and court records, and research conducted in Washington state and other states and nations, the analysis shall examine whether changes to sentencing policies and sex offender programming can increase public safety.

(2) Using the research results and other available data, the analysis of the special sex offender sentencing alternative shall specifically evaluate the impact of the sentencing alternative on protection of children from sexual victimization, reporting of sex offenses against children, prosecution of sex offenses against children, and child sex offense recidivism rates.

(3) As part of its study, the institute shall also investigate the views of victims whose cases resulted in a special sex offender sentencing alternative sentence. This study shall include victims whose cases have been prosecuted recently, as well as those whose cases were prosecuted in the past. The victims shall be asked whether they considered the special sex offender sentencing alternative sentence to be a just and appropriate sanction, whether it influenced their healing process, and, if so, whether the influence was negative or positive.

(4) The sentencing guidelines commission shall review the following issues to determine whether modifications in the special sex offender sentencing alternative will increase its effectiveness with respect to protecting children from sexual victimization, successfully prosecuting sex offenses against children, and appropriately punishing perpetrators of sex offenses against children:

(a) Eligibility for the sentencing alternative, including whether the commission of certain types of offenses should render an offender ineligible, whether the disclosure of multiple victims in the course of evaluating an offender should render an offender ineligible, and whether the sentencing alternative should be limited to offenses within families;

(b) Minimum terms of incarceration, including imprisonment at a state facility;

(c) Appropriate conditions or restrictions that should be placed on offenders who receive a sentence alternative; and

(d) Standards for revocation of a sentencing alternative suspended sentence.

(5) The institute and the sentencing guidelines commission shall report their results and recommendations to the appropriate standing committees of the legislature no later than December 31, 2004.

NEW SECTION. Sec. 8. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected.

NEW SECTION. Sec. 9. Sections 2 through 6 of this act take effect July 1, 2005.

Passed by the House March 10, 2004.

Passed by the Senate March 10, 2004.

Approved by the Governor March 26, 2004, with the exception of certain items that were vetoed.

Filed in Office of Secretary of State March 26, 2004.

Note: Governor's explanation of partial veto is as follows:

"I am returning herewith, without my approval as to section 1, Engrossed Substitute House Bill No. 2400 entitled:

"AN ACT Relating to sentence enhancement for sex crimes against minors;"

This bill makes improvements in the Special Sex Offender Sentencing Alternative, which is often needed to get convictions, hold sex offenders accountable, and protect child victims.

I have vetoed section 1, the intent section, because it includes rhetorical language that could inadvertently be misused to increase taxpayers' liability for harm that should be the responsibility of sex offenders themselves. Section 1 discusses a paramount duty of the Legislature to protect children from victimization by sex offenders. Although I agree that the state has the responsibility to take action within its powers and authority, this language could be misunderstood to create a new duty, which would be a higher duty than many equally important government actions and protections. In addition, the section discusses structure and administrative weaknesses in the Special Sex Offender Sentencing Alternative. Taken out of context, this language could be misunderstood and used to indicate an admission of liability when none exists.

For these reasons, I have vetoed section 1 of Engrossed Substitute House Bill No. 2400.

With the exception of section 1, Engrossed Substitute House Bill No. 2400 is approved."

CHAPTER 177

[Engrossed Substitute House Bill 2693]

TIMBER TAX—PUBLIC LANDS

AN ACT Relating to the taxation of timber on publicly owned land; amending RCW 84.33.035, 84.33.051, 84.33.040, 84.33.078, and 79.15.100; adding a new section to chapter 84.33 RCW; creating a new section; and providing an effective date.

Be it enacted by the Legislature of the State of Washington:

Sec. 1. RCW 84.33.035 and 2003 c 313 s 12 are each amended to read as follows:

Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Agricultural methods" means the cultivation of trees that are grown on land prepared by intensive cultivation and tilling, such as irrigating, plowing, or turning over the soil, and on which all unwanted plant growth is controlled continuously for the exclusive purpose of raising trees such as Christmas trees and short-rotation hardwoods.

(2) "Average rate of inflation" means the annual rate of inflation as determined by the department averaged over the period of time as provided in RCW 84.33.220 (1) and (2). This rate shall be published in the state register by the department not later than January 1st of each year for use in that assessment year.

(3) "Composite property tax rate" for a county means the total amount of property taxes levied upon forest lands by all taxing districts in the county other than the state, divided by the total assessed value of all forest land in the county.

(4) "Forest land" is synonymous with "designated forest land" and means any parcel of land that is twenty or more acres or multiple parcels of land that are contiguous and total twenty or more acres that is or are devoted primarily to growing and harvesting timber. Designated forest land means the land only and does not include a residential homesite. The term includes land used for incidental uses that are compatible with the growing and harvesting of timber but no more than ten percent of the land may be used for such incidental uses. It also includes the land on which appurtenances necessary for the production, preparation, or sale of the timber products exist in conjunction with land producing these products.

(5) "Harvested" means the time when in the ordinary course of business the quantity of timber by species is first definitely determined. The amount harvested shall be determined by the Scribner Decimal C Scale or other prevalent measuring practice adjusted to arrive at substantially equivalent measurements, as approved by the department.

(6) "Harvester" means every person who from the person's own land or from the land of another under a right or license granted by lease or contract, either directly or by contracting with others for the necessary labor or mechanical services, fells, cuts, or takes timber for sale or for commercial or industrial use. When the United States or any instrumentality thereof, the state, including its departments and institutions and political subdivisions, or any municipal corporation therein so fells, cuts, or takes timber for sale or for commercial or industrial use, the harvester is the first person other than the United States or any instrumentality thereof, the state, including its departments and institutions and political subdivisions, or any municipal corporation therein, who acquires title to or a possessory interest in the timber. The term "harvester" does not include persons performing under contract the necessary labor or mechanical services for a harvester.

(7) "Harvesting and marketing costs" means only those costs directly associated with harvesting the timber from the land and delivering it to the buyer and may include the costs of disposing of logging residues. Any other costs that are not directly and exclusively related to harvesting and marketing of the timber, such as costs of permanent roads or costs of reforesting the land following harvest, are not harvesting and marketing costs.

(8) "Incidental use" means a use of designated forest land that is compatible with its purpose for growing and harvesting timber. An incidental use may

include a gravel pit, a shed or land used to store machinery or equipment used in conjunction with the timber enterprise, and any other use that does not interfere with or indicate that the forest land is no longer primarily being used to grow and harvest timber.

(9) "Local government" means any city, town, county, water-sewer district, public utility district, port district, irrigation district, flood control district, or any other municipal corporation, quasi-municipal corporation, or other political subdivision authorized to levy special benefit assessments for sanitary or storm sewerage systems, domestic water supply or distribution systems, or road construction or improvement purposes.

(10) "Local improvement district" means any local improvement district, utility local improvement district, local utility district, road improvement district, or any similar unit created by a local government for the purpose of levying special benefit assessments against property specially benefited by improvements relating to the districts.

(11) "Owner" means the party or parties having the fee interest in land, except where land is subject to a real estate contract "owner" means the contract vendee.

(12) "Primarily" or "primary use" means the existing use of the land is so prevalent that when the characteristic use of the land is evaluated any other use appears to be conflicting or nonrelated.

(13) "Short-rotation hardwoods" means hardwood trees, such as but not limited to hybrid cottonwoods, cultivated by agricultural methods in growing cycles shorter than fifteen years.

(14) "Small harvester" means every person who from his or her own land or from the land of another under a right or license granted by lease or contract, either directly or by contracting with others for the necessary labor or mechanical services, fells, cuts, or takes timber for sale or for commercial or industrial use in an amount not exceeding two million board feet in a calendar year. When the United States or any instrumentality thereof, the state, including its departments and institutions and political subdivisions, or any municipal corporation therein so fells, cuts, or takes timber for sale or for commercial or industrial use, not exceeding these amounts, the small harvester is the first person other than the United States or any instrumentality thereof, the state, including its departments and institutions and political subdivisions, or any municipal corporation therein, who acquires title to or a possessory interest in the timber. Small harvester does not include persons performing under contract the necessary labor or mechanical services for a harvester, and it does not include the harvesters of Christmas trees or short-rotation hardwoods.

(15) "Special benefit assessments" means special assessments levied or capable of being levied in any local improvement district or otherwise levied or capable of being levied by a local government to pay for all or part of the costs of a local improvement and which may be levied only for the special benefits to be realized by property by reason of that local improvement.

(16) "Stumpage value of timber" means the appropriate stumpage value shown on tables prepared by the department under RCW 84.33.091, provided that for timber harvested from public land and sold under a competitive bidding process, stumpage value shall mean the actual amount paid to the seller in cash or other consideration. The stumpage value of timber from public land does not

include harvesting and marketing costs if the timber from public land is harvested by, or under contract for, the United States or any instrumentality of the United States, the state, including its departments and institutions and political subdivisions, or any municipal corporation therein. Whenever payment for the stumpage includes considerations other than cash, the value shall be the fair market value of the other consideration. If the other consideration is permanent roads, the value of the roads shall be the appraised value as appraised by the seller.

(17) "Timber" means forest trees, standing or down, on privately or publicly owned land, and except as provided in RCW 84.33.170 includes Christmas trees and short-rotation hardwoods.

(18) "Timber assessed value" for a county means ~~((a value, calculated by the department before October 1st of each year, equal to))~~ the sum of: (a) The total stumpage value of timber harvested from publicly owned land in the county multiplied by the public timber ratio, plus; (b) the total stumpage value of timber harvested from privately owned land in the county ((during the most recent four calendar quarters for which the information is available)) multiplied by ((a) the private timber ratio. The numerator of the public timber ratio is the rate of tax imposed by the county under RCW 84.33.051 on public timber harvests for the year of the calculation. The numerator of the private timber ratio is the rate of tax imposed by the county under RCW 84.33.051 on private timber harvests for the year of the calculation. The denominator of the private timber ratio and the public timber ratio is the composite property tax rate for the county for taxes due in the year of the calculation, expressed as a percentage of assessed value. The department shall use the stumpage value of timber harvested during the most recent four calendar quarters for which the information is available. The department shall calculate the timber assessed value for each county before October 1st of each year.

(19) "Timber assessed value" for a taxing district means the timber assessed value for the county multiplied by a ratio. The numerator of the ratio is the total assessed value of forest land in the taxing district. The denominator is the total assessed value of forest land in the county. As used in this section, "assessed value of forest land" means the assessed value of forest land for taxes due in the year the timber assessed value for the county is calculated plus an additional value for public forest land. The additional value for public forest land is the product of the number of acres of public forest land that are available for timber harvesting determined under section 6 of this act and the average assessed value per acre of private forest land in the county.

(20) "Timber management plan" means a plan prepared by a trained forester, or any other person with adequate knowledge of timber management practices, concerning the use of the land to grow and harvest timber. Such a plan includes:

- (a) A legal description of the forest land;
- (b) A statement that the forest land is held in contiguous ownership of twenty or more acres and is primarily devoted to and used to grow and harvest timber;
- (c) A brief description of the timber on the forest land or, if the timber on the land has been harvested, the owner's plan to restock the land with timber;
- (d) A statement about whether the forest land is also used to graze livestock;

(e) A statement about whether the land has been used in compliance with the restocking, forest management, fire protection, insect and disease control, and forest debris provisions of Title 76 RCW; and

(f) If the land has been recently harvested or supports a growth of brush and noncommercial type timber, a description of the owner's plan to restock the forest land within three years.

Sec. 2. RCW 84.33.051 and 1984 c 204 s 8 are each amended to read as follows:

(1) The legislative body of any county may impose a tax upon every person engaging in the county in business as a harvester effective October 1, 1984. The tax shall be equal to the stumpage value of timber harvested from privately owned land multiplied by a rate of ~~((four))~~ 4 percent; and equal to the stumpage value of timber harvested from publicly owned land multiplied by the following rates:

(a) For timber harvested January 1, 2005, through December 31, 2005, 1.2 percent;

(b) For timber harvested January 1, 2006, through December 31, 2006, 1.5 percent;

(c) For timber harvested January 1, 2007, through December 31, 2007, 1.8 percent;

(d) For timber harvested January 1, 2008, through December 31, 2008, 2.1 percent;

(e) For timber harvested January 1, 2009, through December 31, 2009, 2.4 percent;

(f) For timber harvested January 1, 2010, through December 31, 2010, 2.7 percent;

(g) For timber harvested January 1, 2011, through December 31, 2011, 3.1 percent;

(h) For timber harvested January 1, 2012, through December 31, 2012, 3.4 percent;

(i) For timber harvested January 1, 2013, through December 31, 2013, 3.7 percent;

(j) For timber harvested January 1, 2014, and thereafter, 4.0 percent.

(2) Before the effective date of any ordinance imposing a tax under this section, the county shall contract with the department of revenue for administration and collection of the tax. The tax collected by the department of revenue under this section shall be deposited by the department in the timber tax distribution account. Moneys in the account may be spent only for distributions to counties under RCW 84.33.081 and, after appropriation by the legislature, for the activities undertaken by the department of revenue relating to the collection and administration of the taxes imposed under this section and RCW 84.33.041. Appropriations are not required for distributions to counties under RCW 84.33.081.

Sec. 3. RCW 84.33.040 and 1984 c 204 s 18 are each amended to read as follows:

Timber ~~((on privately owned land or federally owned land shall be))~~ is exempt from ad valorem taxation.

Sec. 4. RCW 84.33.078 and 2003 c 313 s 11 are each amended to read as follows:

~~((When any timber standing on public land, other than federally owned land, is sold separate from the land, the department of natural resources or other governmental unit, as appropriate, shall state in its notice of the sale or prospectus that timber sold separate from the land is subject to property tax and that the amount of the tax paid may be used as a credit against any tax imposed with respect to business of harvesting timber from publicly owned land under RCW 84.33.041.))~~ If the timber from public land is harvested by the state, its departments and institutions and political subdivisions, or any municipal corporation therein, the governmental unit, or governmental units, that harvest or market the timber must provide the harvester purchasing the timber with its harvesting and marketing costs as defined in RCW 84.33.035(7).

Sec. 5. RCW 79.15.100 and 2003 c 334 s 334 are each amended to read as follows:

(1) Valuable materials may be sold separately from the land as a "lump sum sale" or as a "scale sale."

(a) "Lump sum sale" means any sale offered with a single total price applying to all the material conveyed.

(b) "Scale sale" means any sale offered with per unit prices to be applied to the material conveyed.

(2) Payment for lump sum sales must be made as follows:

(a) Lump sum sales under five thousand dollars appraised value require full payment on the day of sale.

(b) Lump sum sales appraised at over five thousand dollars but under one hundred thousand dollars may require full payment on the day of sale.

(c) Lump sum sales requiring full payment on the day of sale may be paid in cash or by certified check, cashier's check, bank draft, or money order, all payable to the department.

(3) Except for sales paid in full on the day of sale or sales with adequate bid bonds, an initial deposit not to exceed twenty-five percent of the actual or projected purchase price shall be made on the day of sale.

(a) Sales with bid bonds are subject to the day of sale payment and replacement requirements prescribed by RCW 79.15.110.

(b) The initial deposit must be maintained until all contract obligations of the purchaser are satisfied. However, all or a portion of the initial deposit may be applied as the final payment for the valuable materials in the event the department determines that adequate security exists for the performance or fulfillment of any remaining obligations of the purchaser under the sale contract.

(4) Advance payments or other adequate security acceptable to the department is required for valuable materials sold on a scale sale basis or a lump sum sale not requiring full payment on the day of sale.

(a) The purchaser must notify the department before any operation takes place on the sale site.

(b) Upon notification as provided in (a) of this subsection, the department must require advanced payment or may allow purchasers to submit adequate security.

(c) The amount of advanced payments or security must be determined by the department and must at all times equal or exceed the value of timber cut and other valuable materials processed or removed until paid for.

(d) Security may be bank letters of credit, payment bonds, assignments of savings accounts, assignments of certificates of deposit, or other methods acceptable to the department as adequate security.

(5) All valuable material must be removed from the sale area within the period specified in the contract.

(a) The specified period may not exceed five years from date of purchase except for stone, sand, gravel, fill material, or building stone.

(b) The specified period for stone, sand, gravel, fill material, or building stone may not exceed thirty years.

(c) In all cases, any valuable material not removed from the land within the period specified in the contract reverts to the state.

(6) The department may extend a contract beyond the normal termination date specified in the sale contract as the time for removal of valuable materials when, in the department's judgment, the purchaser is acting in good faith and endeavoring to remove the materials. The extension is contingent upon payment of the fees specified below.

(a) The extended time for removal shall not exceed:

(i) Forty years from date of purchase for stone, sand, gravel, fill material, or building stone;

(ii) A total of ten years beyond the original termination date for all other valuable materials.

(b) An extension fee fixed by the department will be charged based on the estimated loss of income per acre to the state resulting from the granting of the extension plus interest on the unpaid portion of the contract. The board must periodically fix and adopt by rule the interest rate, which shall not be less than six percent per annum.

(c) The sale contract shall specify:

(i) The applicable rate of interest as fixed at the day of sale and the maximum extension payment; and

(ii) The method for calculating the unpaid portion of the contract upon which interest is paid.

(d) The minimum extension fee is fifty dollars per extension plus interest on the unpaid portion of the contract.

(e) Moneys received for any extension must be credited to the same fund in the state treasury as was credited the original purchase price of the valuable material sold.

(7) The department may, in addition to any other securities, require a performance security to guarantee compliance with all contract requirements. The security is limited to those types listed in subsection (4) of this section. The value of the performance security will, at all times, equal or exceed the value of work performed or to be performed by the purchaser.

(8) ~~((Any time that the department sells timber by contract that includes a performance bond, the department must require the purchaser to present proof of any and all property taxes paid prior to the release of the performance bond. Within thirty days of payment of taxes due by the timber purchaser, the county~~

~~treasurer must provide certified evidence of property taxes paid, clearly disclosing the sale contract number.~~

(9)) The provisions of this section apply unless otherwise provided by statute.

NEW SECTION. Sec. 6. A new section is added to chapter 84.33 RCW to read as follows:

(1) The department shall estimate the number of acres of public forest land that are available for timber harvesting. The department shall provide the estimates for each county and for each taxing district within each county by August 30th of each year except that the department may authorize a county, at the county's option, to make its own estimates for public forest land in that county. In estimating the number of acres, the department shall use the best available information to include public land comparable to private land that qualifies as forest land for assessment purposes and exclude other public lands. The department is not required to update the estimates unless improved information becomes available. The department of natural resources shall assist the department with these determinations by providing any data and information in the possession of the department of natural resources on public forest lands, broken out by county and legal description, including a detailed map of each county showing the location of the described lands. The data and information shall be provided to the department by July 15th of each year. In addition, the department may contract with other parties to provide data or assistance necessary to implement this section.

(2) To accommodate the phase-in of the county forest excise tax on the harvest of timber from public lands as provided in RCW 84.33.051, the department shall adjust its actual estimates of the number of acres of public forest land that are available for timber harvesting. The department shall reduce its estimates for the following years by the following amounts:

- (a) For calendar year 2005, 70 percent;
- (b) For calendar year 2006, 62.5 percent;
- (c) For calendar year 2007, 55 percent;
- (d) For calendar year 2008, 47.5 percent;
- (e) For calendar year 2009, 40 percent;
- (f) For calendar year 2010, 32.5 percent;
- (g) For calendar year 2011, 22.5 percent;
- (h) For calendar year 2012, 15 percent;
- (i) For calendar year 2013, 7.5 percent; and

(j) For calendar year 2014 and thereafter, the department shall not reduce its estimates of the number of acres of public forest land that are available for timber harvesting.

NEW SECTION. Sec. 7. Section 3 of this act applies to taxes levied for collection in 2005 and thereafter.

NEW SECTION. Sec. 8. This act takes effect January 1, 2005.

Passed by the House February 17, 2004.

Passed by the Senate March 10, 2004.

Approved by the Governor March 26, 2004.

Filed in Office of Secretary of State March 26, 2004.

CHAPTER 178

[Substitute House Bill 2367]

APPLE COMMISSION

AN ACT Relating to the Washington apple commission; amending RCW 15.24.020, 15.24.030, 15.24.040, 15.24.050, 15.24.070, 15.24.090, 15.24.100, 15.24.110, 15.24.160, and 15.24.190; adding new sections to chapter 15.24 RCW; and creating a new section.

Be it enacted by the Legislature of the State of Washington:

NEW SECTION. Sec. 1. The commission exists primarily for the benefit of the people of the state of Washington and its economy. The legislature hereby charges the commission, with oversight by the director, to speak on behalf of the Washington state government with regard to apples and apple-related issues.

Sec. 2. RCW 15.24.020 and 2002 c 313 s 116 are each amended to read as follows:

There is hereby created a Washington apple commission to be thus known and designated. The commission shall be composed of nine practical apple producers and four practical apple dealers. ~~((The director shall be an ex officio member of the commission without vote.))~~ In addition, the director shall be a full voting member of the commission and may in his or her place appoint any other employee of the department of agriculture as a designee to attend commission meetings and otherwise represent the director and exercise the director's vote.

The nine producer members shall be citizens and residents of this state, over the age of twenty-five years, each of whom, either individually or as an executive officer of a corporation, firm or partnership, is and has been actually engaged in growing and producing apples within the state of Washington for a period of five years, currently operates a commercial producing orchard in the district represented, and has during that period derived a substantial portion of his or her income therefrom~~((:—PROVIDED, That he or she may own and operate an apple warehouse and pack and store apples grown by others, without being disqualified, so long as a substantial quantity of the apples handled in such warehouse are grown by him or her; and he or she may sell apples grown by himself, herself, and others so long as he or she does not sell a larger quantity of apples grown by others than those grown by himself or herself))~~. The four dealer members shall be persons who, either individually or as executive officers of a corporation, firm, partnership, association, or cooperative organization, are and have been actively engaged as dealers in apples within the state of Washington for a period of five years, and are citizens and residents of this state, and are engaged as apple dealers in the district represented. The qualifications of members of the commission as herein set forth must continue during their term of office. A person who meets the qualifications of both a producer and a dealer as set forth in this section may serve as either a producer member or a dealer member.

Sec. 3. RCW 15.24.030 and 1989 c 354 s 55 are each amended to read as follows:

Thirteen persons, not including the director or the director's representative, with the qualifications stated in RCW 15.24.020 shall be ~~((elected))~~ members of ~~((said))~~ the commission. ~~((Four of the grower members, being positions one, two, three and four, shall be from grower district No. 1, at least one of whom~~

shall be a resident of and engaged in growing and producing apples in Okanogan county; four of the grower members, being positions five, six, seven and eight, from grower district No. 2; and one grower member, being position nine from grower district No. 3. Two of the dealer members, being positions ten and eleven, shall be from dealer district No. 1; and two of the dealer members, being positions twelve and thirteen, shall be from dealer district No. 2.

~~The commission shall have authority in its discretion to establish by regulation one or more subdivisions of grower district No. 1 and one or more subdivisions of grower district No. 2; provided that each of the same includes a substantial apple producing district or districts, and provided the same does not result in an unfair or unequitable voting situation or an unfair or unequitable representation of apple growers on said commission. In such event each of said subdivisions shall be entitled to be represented by one of the said grower members of the commission, who shall be elected by vote of the qualified apple growers in said subdivision of said district, and who shall be a resident of and engaged in growing and producing apples in said subdivision.)~~ Nine of the members shall be producer members, and four shall be dealer members. The number of producer members to be appointed from each grower district shall be determined in accordance with the relative acreages of planted commercial apple orchards within the various districts as of July 1, 2003, according to the most recent census of acreages published by the United States department of agriculture, agricultural statistics service. The number of producer members to be appointed from each of the grower districts shall be subject to readjustment every ten years thereafter in accordance with the then most recent census of acreages of planted commercial apple orchards published by the United States department of agriculture, agricultural statistics service. In the event the information from the United States department of agriculture's agricultural statistics service is not published with respect to the specifically defined districts, the commission shall adopt rules to establish equitable apportionment based on the available information. However, at all times at least two producer members shall be from district 1, one of which shall be from Okanogan county; district 2 shall never have fewer than two producer members; and district 3 shall never have fewer than one producer member. The commission shall adopt rules to effect the efficient transition of reapportioned positions.

The regular term of office of the members of the commission shall be three years from March 1 following their ~~((election))~~ appointment by the director and until their successors are ~~((elected and qualified))~~ appointed. The commission shall hold its annual meeting during the month of March each year ~~((for the purpose of electing officers and the transaction of other business))~~ and shall hold such other meetings during the year as it shall determine. The first commission meeting that takes place after the effective date of this act shall be held in Wenatchee, and subsequent commission meetings shall alternate between Yakima and Wenatchee.

NEW SECTION. Sec. 4. To accomplish the transition to a commission structure as set forth in RCW 15.24.030, the names of the currently elected commission members shall be forwarded to the director for appointment within thirty days of the effective date of this act for appointment for the remainder of their current terms. Thereafter, the director shall appoint commission members pursuant to the commission structure set forth in RCW 15.24.030 as the current

commission member terms expire. As part of the transition, in order to achieve proper representation of producer members relative to planted acreages, as each current producer position expires the director shall appoint a replacement producer member from the district then most underrepresented until the initial balance of representation is achieved. Notwithstanding other provisions of this chapter, nominations for transitioning positions required for underrepresented districts shall be made from the district to be represented by the new commission member. Thereafter, reallocations shall be accomplished as provided in RCW 15.24.030.

NEW SECTION. Sec. 5. (1) The director shall appoint the members of the commission.

(2) Candidates for positions on the commission shall be nominated to the director in accordance with subsection (3) of this section.

(3) Not less than sixty days nor more than seventy-five days prior to the commencement of a commission member's term, the commission shall cause an advisory vote to be held for the director-appointed positions. Advisory ballots shall be mailed to all affected producers for producer positions and to affected dealers for dealer positions and shall be returned to the commission not less than thirty days prior to the commencement of the term. The advisory ballot shall be conducted in a manner so that it is a secret ballot. The names of the two candidates receiving the most votes in the advisory vote shall be forwarded to the director for potential appointment to the commission. In the event only two candidates are nominated for a position, an advisory vote need not be held and the candidates' names shall be forwarded to the director for potential appointment. If only one candidate is nominated for a position, the commission shall select a second candidate whose name will be forwarded to the director.

(4) Any candidate whose name is forwarded to the director for potential appointment shall submit to the director a letter stating why he or she wishes to be appointed to the commission. The director may select either person for the position or may reject both nominees and request a new advisory vote with nominees selected by the commission and, if desired, by the director.

Sec. 6. RCW 15.24.040 and 2002 c 313 s 117 are each amended to read as follows:

The commission shall call a meeting of apple growers, and meetings of apple dealers in dealer district No. 1 and dealer district No. 2 for the purpose of nominating to the advisory ballot for nomination to the director their respective members of the commission, when a term is about to expire, or when a vacancy exists, except as provided in RCW 15.24.050, as amended, at times and places to be fixed by the commission. The meetings shall be held not later than February 15th of each year and insofar as practicable, the meetings of the growers shall be held at the same time and place as the annual meeting of the Washington state horticultural association, or the annual meeting of any other producer organization which represents a majority of the state's apple producers, as determined by the commission, but not while the same is in actual session. Public notice of such meetings shall be given by the commission in such manner as it may determine: **PROVIDED,** That nonreceipt of the notice by any interested person shall not invalidate the proceedings. Any qualified person may be nominated orally for such positions at the respective meetings. Nominations

may also be made within five days after any such meeting by written petition filed in the (~~Wenatchee~~) office of the commission, signed by not less than five apple growers or dealers, as the case may be, residing within the district or within the subdivision if the nomination is made from a subdivision.

~~((The members of the commission shall be elected by secret mail ballot under the supervision of the director: PROVIDED, That in any case where there is but one nomination for a position, a secret mail ballot shall not be conducted or required and the director shall certify the candidate to be elected. Grower members of))~~ Nominees to be forwarded to the director for appointment to producer positions on the commission shall be ((elected)) selected by a majority of the votes cast by the apple growers in the respective districts ((or subdivisions thereof, as the case may be,)). Each grower who operates a commercial producing apple orchard within the district (~~or subdivision~~) being represented, whether an individual proprietor, partnership, joint venture, or corporation, (~~being~~) is entitled to one vote. As to bona fide leased or rented orchards, only the lessee-operator, if otherwise qualified, shall be entitled to vote. An individual commercial orchard operator, if otherwise qualified, shall be entitled to vote as such, even though he or she is also a member of a partnership or corporation which votes for other apple acreage. ~~((Dealer members of))~~ Nominees to be forwarded to the director for appointment to dealer positions on the commission shall be ((elected)) selected by a majority of the votes cast by the apple dealers in the respective districts, each dealer being entitled to one vote. ((If a nominee does not receive a majority of the votes on the first ballot, a run-off election shall be held by mail in a similar manner between the two candidates for such position receiving the largest number of votes.))

Sec. 7. RCW 15.24.050 and 2002 c 313 s 118 are each amended to read as follows:

In the event a position becomes vacant due to resignation, disqualification, death, or for any other reason, such position (~~until the next annual meeting~~) shall be filled (~~by vote of~~) for the balance of the unexpired term by appointment by the director from at least two nominees submitted by the remaining members of the commission. ((At such annual meeting a commissioner shall be elected to fill the balance of the unexpired term.))

A majority of the voting members shall constitute a quorum for the transaction of all business and the carrying out of the duties of the commission.

Each member of the commission shall be compensated in accordance with RCW 43.03.230 and shall be reimbursed for actual travel expenses incurred in carrying out the provisions of this chapter. Employees of the commission may also be reimbursed for actual travel expenses when on official commission business.

NEW SECTION. Sec. 8. (1) The commission shall develop and submit to the director for approval any plans, programs, and projects concerning the following:

(a) The establishment, issuance, effectuation, and administration of appropriate programs or projects within the commission's powers and duties;

(b) The establishment and effectuation of market research projects, market development projects, or both to the end that the marketing and utilization of apples may be encouraged, expanded, improved, or made more efficient; and

(c) The establishment and effectuation of, and/or support of industry organizations work regarding, market access project and programs, trade banner work and industry organization support.

(2) The director shall review the commission's programs to ensure that they properly benefit the people of the state of Washington and its economy and properly speak the message of the state.

(3) The commission, prior to the beginning of its fiscal year, shall prepare and submit to the director for approval its project and program plans and its budget on a fiscal period basis.

(4) The director shall strive to review and make a determination of all submissions described in this section in a timely manner.

Sec. 9. RCW 15.24.070 and 2002 c 313 s 119 are each amended to read as follows:

The Washington apple commission is hereby declared and created (~~a corporate body~~) an agency of the Washington state government. The powers and duties of the commission shall include the following:

(1) To elect a chair and such other officers as it deems advisable; and to adopt, rescind, and amend rules and orders for the exercise of its powers under this chapter, which shall have the force and effect of the law when not inconsistent with existing laws;

(2) To administer and enforce the provisions of this chapter, and do all things reasonably necessary to effectuate the purposes of this chapter;

(3) To employ and at its pleasure discharge a manager, secretary, agents, attorneys, and employees as it deems necessary, and to prescribe their duties and powers and fix their compensation;

(4) To establish offices and incur expense and enter into contracts and to create such liabilities as may be reasonable for the proper administration and enforcement of this chapter. Expenses may include reasonable, prudent use of promotional hosting to benefit the purposes of this chapter;

(5) To investigate and prosecute violations of this chapter;

(6) To conduct scientific research to develop and discover the health, food, therapeutic, and dietetic value of apples and apple products;

(7) To keep accurate record of all of its dealings, which shall be open to inspection and audit by the state auditor;

(8) To sue and be sued(~~(, adopt a corporate seal,))~~ and have all of the powers of (~~a corporation~~) an agency;

(9) To expend funds for commodity-related education, training, and leadership programs as the commission deems expedient;

(10) To borrow money and incur indebtedness;

(11) To accept gifts, grants, conveyances, bequests, and devises, of real or personal property, or both, in trust or otherwise, and sell, lease, exchange, invest, or expend these donations or the proceeds, rents, profits, and income from the donations on any appropriate activity of the commission except as limited by the donor's terms. The commission shall adopt rules to govern and protect the receipt and expenditure of the proceeds, rents, profits, and income of all such gifts, grants, conveyances, bequests, and devises. The authority to make expenditures granted by this subsection includes the authority to make expenditures to provide scholarships or financial assistance to persons as defined

in RCW 1.16.080 or entities associated with the apple industry, but is not limited to the authority to make expenditures for such a purpose;

(12) To engage in appropriate fund-raising activities for the purpose of supporting the activities of the commission authorized by this chapter; ~~(and)~~

(13) To retain, discharge, or contract with, at its pleasure, accountants, marketing agencies, and other professional consultants as necessary, under procedures for hiring, discharging, and review as adopted by the commission;

(14) To maintain, protect, acquire, or own intellectual property rights, including without limitation, licenses, trademarks, copyrights, artwork, or patents and to sell or license any or all of such rights and collect royalties therefrom and from commission-funded research related to apples;

(15) To apply for and administer federal market access programs and/or similar programs or projects and provide matching funds as may be necessary;

(16) With oversight by the director, provide funding and support to organizations providing general support and leadership to and representation of the apple industry;

(17) With oversight by the director, to speak on behalf of the Washington state government on a nonexclusive basis with regard to apples and apple-related issues, including but not limited to trade negotiations, market access negotiations, and the like, and to fund industry organizations engaging in such activities;

(18) To fund, conduct, or otherwise participate in scientific research relating to apples, including without limitation research regarding pests, pesticides, food safety, irrigation, transportation, and environmental stewardship;

(19) To provide services relating to the production, promotion, sale and/or distribution of Washington apples on a fee-for-services basis. However, (a) the product of such services shall belong to the funding party, and (b) the fees for such services shall include a reasonable charge for the commission's overhead expenses as determined by the commission; and

(20) To gather, maintain, and distribute data relating to the production, processing, shipment, and sales of apples, in connection with its ordinary operations and collection of assessments and particularly in connection with services provided on a fee for service basis.

Sec. 10. RCW 15.24.090 and 2002 c 313 s 122 are each amended to read as follows:

If it appears from investigation by the director and the commission that the revenue from the assessment levied on fresh apples under this chapter is too high or is inadequate to accomplish the purposes of this chapter, then with the oversight of the director the commission shall adopt a resolution setting forth the necessities of the industry, the extent and probable cost of the required research ~~(, market promotion, and advertising)~~ or other expenditures, the extent of public convenience, interest, and necessity, and probable revenue from the assessment levied. ~~((H))~~ With the oversight of the director, and subject to the approval by vote of at least two-thirds for increases, or a majority for decreases, of the producers voting; and approval of voting producers who operate at least two-thirds for increases, or a majority for decreases, of the acreage voted in the same election, the commission shall thereupon decrease or increase the assessment to a sum determined by the commission to be necessary for those purposes ~~((based upon a rate per one hundred pounds of apples, gross billing~~

~~weight, shipped in bulk, container, or any style of package or reasonable equivalent net product assessment as determined by the commission).~~ However, if a different rate is determined for any specific variety or for fresh apples sliced or cut for raw consumption, that different rate must be applied to that variety or those sliced or cut apples. A decrease or an increase becomes effective sixty days after the resolution is adopted or on any other date provided for in the resolution, but shall be first referred by the commission to a referendum mail ballot by the apple growers of this state conducted under the supervision of the director and be approved by ~~((a majority))~~ at least two-thirds for increases, or a majority for decreases, of the growers voting on it and also be approved by voting growers who operate ~~((more than fifty percent))~~ at least two-thirds for increases, or a majority for decreases, of the acreage voted in the same election. After the mail ballot, if favorable to the increase or decrease, the commission shall nevertheless exercise its independent judgment and discretion as to whether or not to approve the increase or decrease.

Sec. 11. RCW 15.24.100 and 2002 c 313 s 123 are each amended to read as follows:

(1) Subject to subsection (2) of this section, there is hereby levied upon all fresh apples grown annually in this state, and all apples packed as Washington apples, including fresh sliced, an assessment of ((twelve cents on each one hundred pounds gross billing)) eight and seventy-five one-hundredths cents per one hundred pounds of apples, based on net shipping weight, or reasonable equivalent net product assessment measurement(($\frac{7}{100}$)) as determined by the commission, plus such annual decreases or increases thereof as are imposed pursuant to the provisions of RCW 15.24.090. All moneys collected hereunder shall be expended to effectuate the purpose and objects of this chapter.

(2) No sooner than five years from the effective date of this section, a petition may be filed with the commission to reduce the assessment authorized in this section to zero. To be valid, the petition must be signed by at least eight percent of all apple growers eligible to vote in commission referendum elections. The petition shall contain the name of a person designated to represent the petitioners.

(a) Upon receipt of a valid petition, the commission shall prepare a document discussing the substance of the petition. A statement in favor of the petition shall be written by the proponents of the petition. A statement opposing the petition may be written by the commission or an opponent. The document and a notice of public hearing shall be sent to apple growers eligible to vote in commission referendum elections at least twenty days prior to the scheduled public hearings. The commission shall hold public hearings in Yakima and Wenatchee on the petition.

(b) Following the public hearings, the question of whether to reduce the assessment authorized in this section to zero shall be referred to a referendum mail ballot. The commission shall certify to the director a list of apple growers eligible to vote in commission referendum elections. The referendum shall be conducted and supervised by the director using the certified list. Inadvertent failure to notify an affected grower does not invalidate a referendum.

(c) The referendum will be approved if a simple majority of apple growers voting in the referendum election vote in favor of the elimination of the assessment. The director will certify the results of the vote.

(d) The referendum vote shall be binding and may not be overturned by action of the commission or director. If the referendum is approved, the commission shall immediately commence activities to wind down its operations. However, the elimination of the assessment shall not be effective until six months from the date the referendum result is certified by the director. If the referendum fails, neither the commission nor the director will take further action on the petition.

(e) The commission is responsible for all its own costs and all the director's costs associated with the hearing, notice, and referendum process. A subsequent petition may not be filed any sooner than five years following the certification of the results of any previously held referendum conducted under this subsection.

Sec. 12. RCW 15.24.110 and 2002 c 313 s 124 are each amended to read as follows:

The assessments on fresh apples shall be paid, or provision made therefor satisfactory to the commission, prior to shipment, and no fresh apples shall be carried, transported, or shipped by any person or by any carrier, railroad, truck, boat, or other conveyance until the assessment has been paid or provision made therefor satisfactory to the commission.

The commission shall by rule prescribe the method of collection, and for that purpose may require stamps to be known as "Washington apple stamps" to be purchased from the commission and attached to the containers, invoices, shipping documents, inspection certificates, releases, or receiving receipts or tickets. Rule-making procedures conducted under this section are exempt from the provisions of RCW 43.135.055 when adoption of the rule or rules is determined by a referendum vote of the persons taxed under this chapter.

The commission may also collect assessments imposed under RCW 15.26.120, and in that event, the commission shall establish and be reimbursed by the Washington tree fruit research commission an amount representing a reasonable approximation of the actual costs to the commission of such collection.

Sec. 13. RCW 15.24.160 and 2002 c 313 s 126 are each amended to read as follows:

To maintain and complement the existing comprehensive regulatory scheme, the commission may employ, designate as agent, act in concert with, and enter into contracts with any person, council, or commission, including but not limited to the director, state agencies such as the Washington state fruit commission and its successors, statewide horticultural associations, organizations or associations engaged in tracking the movement and marketing of horticultural products, and organizations or associations of horticultural growers, for the purpose of promoting the general welfare of the apple industry and particularly for the purpose of assisting in the sale and distribution of apples in domestic or foreign commerce, and expend its funds or such portion thereof as it may deem necessary or advisable for such purpose and for the purpose of paying its proportionate share of the cost of any program providing direct or indirect assistance to the sale and distribution of apples in domestic or foreign commerce. For such purposes it may employ and pay for legal counsel and contract and pay for other professional services. ~~((Neither the state, nor any member, agent, or employee of the commission, is liable for the acts of the~~

~~commission, or upon its contracts.))~~ The liability of the state for the acts of the commission, or upon its contracts, shall be limited solely to the assets of the commission. In any civil or criminal action or proceeding for violation of any ~~((rule of [or] statutory))~~ statute, including a rule adopted under that statute, or common law against monopolies or combinations in restraint of trade, including any action under chapter 19.86 RCW, proof that the act complained of was done in compliance with the provisions of this chapter, and in furtherance of the purposes and provisions of this chapter, is a complete defense to such an action or proceeding.

Sec. 14. RCW 15.24.190 and 1987 c 393 s 4 are each amended to read as follows:

Obligations incurred by the commission and any other liabilities or claims against the commission shall be enforced only against the assets of the commission, and, except to the extent of such assets, no liability for the debts or actions of the commission exists against either the state of Washington or any subdivision or instrumentality thereof, or against any member, employee, or agent of the commission in his or her individual capacity. Except as otherwise provided in this chapter, neither the members of the commission nor its employees may be held individually responsible for errors in judgment, mistakes, or other acts, either of commission or omission, as principal, agent, person, or employee, save for their own individual acts of dishonesty or crime. No such person or employee may be held responsible individually for any act or omission of any other member of the commission. The liability of the members of the commission shall be several and not joint, and no member is liable for the default of any other member. This provision confirms that commissioners have been, and continue to be, state officers or volunteers for purposes of RCW 4.92.075 and are entitled to the defenses, indemnifications, limitations of liability, and other protections and benefits of chapter 4.92 RCW, as provided in that chapter.

NEW SECTION. Sec. 15. Sections 1, 4, 5, and 8 of this act are each added to chapter 15.24 RCW.

NEW SECTION. Sec. 16. If any section, subsection, sentence, clause, or part of this act is for any reason held to be invalid or unconstitutional, the judicial decision does not affect the remainder of this act and its application to other persons or circumstances. The legislature declares that each section, subsection, sentence, clause, and part of this act was enacted with the intent that if any portion of this act is severed, the remainder of this act is capable of accomplishing its legislative purpose.

Passed by the House February 11, 2004.

Passed by the Senate March 5, 2004.

Approved by the Governor March 26, 2004.

Filed in Office of Secretary of State March 26, 2004.

CHAPTER 179

[Substitute House Bill 2618]

COMMODITY COMMISSIONS

AN ACT Relating to commodity commissions; and amending RCW 15.66.070, 15.66.080, and 15.66.090.

Be it enacted by the Legislature of the State of Washington:

Sec. 1. RCW 15.66.070 and 2002 c 313 s 46 are each amended to read as follows:

(1) The substance of a petition received under RCW 15.66.050 shall be set out in detail and designated as the proposal. A copy of the proposal shall be mailed to all affected parties or producers based on the list provided for in RCW 15.66.060 or 15.66.143, as applicable, and shall be posted on the department's web site.

(2) Notice of a public hearing to issue, amend, or terminate a marketing order shall be published (~~once a week for four consecutive weeks~~) in the form of a legal notice for a period of two days in a newspaper (~~or newspapers, including a newspaper or newspapers~~) of general circulation within the affected areas, as the director may prescribe (~~, and shall be mailed to all affected parties or affected producers~~). The notice must also be posted on the department's web site. The director shall mail a copy of the public hearing notice along with a copy of the proposal as provided in subsection (1) of this section to all affected parties or affected producers, as applicable, who may be directly affected by the proposal and whose names and addresses appear on the list compiled under this chapter. The mailing must include the department's web site address along with a description of the process for the issuance, amendment, or termination of a marketing order, as applicable.

~~((2))~~ (3) At a public hearing the director shall receive testimony offered in support of, or opposition to, the proposed issuance of, amendment to, or termination of a marketing order and concerning the terms, conditions, scope, and area thereof. Such hearing shall be public and all testimony shall be received under oath. A full and complete record of all proceedings at such hearings shall be made and maintained on file in the office of the director, which file shall be open to public inspection. The director shall base any findings upon the testimony received at the hearing, together with any other relevant facts available from official publications of institutions of recognized standing. The director shall describe in the findings such official publications upon which any finding is based.

~~((3))~~ (4) The director shall have the power to subpoena witnesses and to issue subpoenas for the production of any books, records, or documents of any kind.

~~((4))~~ (5) The superior court of the county in which any hearing or proceeding may be had may compel the attendance of witnesses and the production of records, papers, books, accounts, documents and testimony as required by such subpoena. The director, in case of the refusal of any witness to attest or testify or produce any papers required by the subpoena, shall report to the superior court of the county in which the proceeding is pending by petition setting forth that due notice has been given of the time and place of attendance of the witness or the production of the papers and that the witness has been

summoned in the manner prescribed in this chapter and that he or she has failed to attend or produce the papers required by the subpoena at the hearing, cause or proceeding specified in the subpoena, or has refused to answer questions propounded to him or her in the course of such hearing, cause, or proceeding, and shall ask an order of the court to compel a witness to appear and testify before the director. The court upon such petition shall enter an order directing the witness to appear before the court at a time and place to be fixed in such order and then and there to show cause why he or she has not responded to the subpoena. A copy of the order shall be served upon the witness. If it appears to the court that the subpoena was regularly issued, it shall enter an order that the witness appear at the time and place fixed in the order and testify or produce the required papers, and on failing to obey the order the witness shall be dealt with as for contempt of court.

Sec. 2. RCW 15.66.080 and 1961 c 11 s 15.66.080 are each amended to read as follows:

(1) The director shall make ~~((and publish))~~ findings upon ~~((every))~~ material points controverted at the hearing and required by this chapter and upon such other matters and things as he or she may deem fitting and proper. ~~((He shall also issue a recommended decision based upon his findings and shall cause copies of the findings and recommended decision to be delivered or mailed to all parties of record appearing at the hearing, or their attorneys of record.))~~ Based upon those findings, the director shall make conclusions and develop and issue a recommended decision. The findings, conclusions, and recommended decision, and the full text of the proposal shall be posted on the department's web site. For amendment and termination petitions, the affected commission may include a link on its web site to the department's web site.

(2) The recommended decision ~~((shall contain the text in full of any order, or amendment or termination of existing order, and))~~ may deny or approve the proposal in its entirety, or it may recommend a marketing order containing other or different terms or conditions from those contained in the proposal: PROVIDED, That the same shall be of a kind or type substantially within the purview of the notice of hearing and shall be supported by evidence taken at the hearing or by documents of which the director is authorized to take official notice. The director shall not approve the issuance, amendment, or termination of any marketing order unless he or she shall find with respect thereto:

~~((1))~~ (a) That the proposed issuance, amendment or termination thereof is reasonably calculated to attain the objective sought in such marketing order;

~~((2))~~ (b) That the proposed issuance, amendment, or termination is in conformity with the provisions of this chapter and within the applicable limitations and restrictions set forth therein will tend to effectuate the declared purposes and policies of this chapter;

~~((3))~~ (c) That the interests of consumers of such commodity are protected in that the powers of this chapter are being exercised only to the extent necessary to attain such objectives.

(3) If the director's recommended decision does not make any changes to the proposal, notification will be made by mail in the form of a postcard reciting the director's recommended decision. The postcard will also include the department's web site address where any person can access the full text of the director's findings, conclusions, and recommended decision.

(4) If the director's recommended decision makes changes to the proposal or does not support the proposal, notification will be made by mail in the form of a letter describing the changes made or explaining the reason for not supporting the proposal and a referendum. The letter will also include the department's web site address where any person can access the full text of the director's findings, conclusions, and recommended decision.

(5) After the ~~((issuance of a))~~ director issues his or her findings, conclusions, and recommended decision all interested parties shall have a period of not less than ~~((ten))~~ fifteen days from the date of the mailing of the postcard or letter to file ~~((objections))~~ statements with the director in support of or in opposition to the recommended decision. The director shall consider the ~~((objections))~~ additional statements and shall issue his or her final decision ~~((which)).~~ The final decision may be the same as the recommended decision or may be revised in ~~((the))~~ light of ~~((said objections. The final decision shall set out in full the text of the order))~~ the additional information received in response to the recommended decision. The director shall ~~((deliver or mail copies of the final decision to the same parties to whom copies of the findings and recommended decision are required to be sent))~~ notify affected parties of his or her final decision by mail in the form of a postcard. Notification shall include the department's web site address where any person can access the full text of the director's findings, conclusions, and final decision and the full text of the final proposal. If the final decision denies the proposal in its entirety, no further action shall be taken by the director.

(6) Affected parties who do not have access to materials posted on the department's web site may request notification by fax or mail.

Sec. 3. RCW 15.66.090 and 2002 c 313 s 47 are each amended to read as follows:

After the ~~((issuance by the))~~ director ~~((of the))~~ issues his or her final decision approving the issuance, amendment, or termination of a marketing order, the director shall determine by a referendum whether the affected parties or producers assent to the proposed action or not. The director shall conduct the referendum among the affected parties or producers based on the list as provided for in RCW 15.66.060 or 15.66.143, as applicable, and the affected parties or producers shall be deemed to have assented to the proposed issuance or termination order if fifty-one percent or more by number reply to the referendum within the time specified by the director, and if, of those replying, sixty-five percent or more by number and fifty-one percent or more by volume assent to the proposed order. The producers shall be deemed to have assented to the proposed amendment order if sixty percent or more by number and sixty percent or more by volume of those replying assent to the proposed order. The determination by volume shall be made on the basis of volume as determined in the list of affected producers created under provisions of RCW 15.66.060, subject to rules and regulations of the director for such determination. The director shall consider the approval or disapproval of any cooperative marketing association authorized by its producer members to act for them in any such referendum, as being the approval or disapproval of the producers who are members of or stockholders in or under contract with such association of cooperative producers: PROVIDED, That the association shall first determine that a majority of the membership of the association authorize its action

concerning the specific marketing order. Results of the referendum shall be mailed to all affected parties in the form of a postcard. If the requisite assent is given, the director shall ~~((promulgate))~~ adopt the order ~~((and shall mail notices of the same to all affected producers))~~.

Passed by the House February 13, 2004.

Passed by the Senate March 11, 2004.

Approved by the Governor March 26, 2004.

Filed in Office of Secretary of State March 26, 2004.

CHAPTER 180

[Engrossed Substitute House Bill 2650]

IMPORTANT BIRD AREAS

AN ACT Relating to important bird areas; amending RCW 79.70.020; adding new sections to chapter 79.70 RCW; and creating a new section.

Be it enacted by the Legislature of the State of Washington:

NEW SECTION. Sec. 1. Washington has a rich variety of birds, wildlife, and fish that its citizens and visitors enjoy. With over three hundred sixty-five bird species, Washington can use this natural asset to attract nature tourists and sportsmen from all over the country and the world. According to a United States fish and wildlife service report, thirty-six percent of Washington's residents currently participate in bird watching, and the watchable wildlife industry brings nearly one billion dollars per year into the state's economy. The economic benefits delivered to rural economies in Washington by those choosing to recreate by hunting waterfowl or upland game birds is equally as impressive.

The legislature has long recognized the important role of waterfowl and upland game bird hunting and other sporting pursuits in both the state's economy and the quality of life for Washington residents. Additionally, the 2003 legislature recognized the economic value of promoting watchable wildlife and nature tourism when it required the departments of fish and wildlife and community, trade, and economic development to host a watchable wildlife and nature tourism conference and write a statewide strategic plan. The 2002 legislature recognized the value of identifying and conserving our state's biodiversity for future generations when it created the biodiversity task force and required a plan be developed to recommend ways to conserve biodiversity. Furthermore, over the past fifteen years, the legislature has recognized the important contributions volunteers and nonprofit organizations have made in restoring and monitoring salmon and wildlife habitat. Therefore, it is the goal of the legislature to promote: Partnerships with volunteers; rural economic development; nature tourism; and conservation of biodiversity by encouraging partnerships between state government agencies, volunteers, and nonprofit organizations to designate and conserve natural assets that attract nature tourists and bird watchers to Washington's rural areas.

To accomplish this goal, the legislature recognizes the scientific work by volunteer organizations to use internationally recognized scientific criteria and protocols to identify, conserve, and monitor areas of the state that are important for migrating and resident birds. Scientists, ornithologists, and qualified volunteers have identified important bird areas. Wildlife conservation

organizations and their volunteers are working to develop mutually agreed-upon bird conservation plans and monitoring plans in cooperation with public land managers and private landowners. Volunteers and scientists in more than one hundred countries around the world have already completed identification of fourteen thousand two hundred sixty sites that qualify as important bird areas.

Qualified volunteers and scientists have already successfully used the international criteria to identify fifty-three sites important for birds in Washington. Following the final round of site selection, volunteer organizations plan to work with landowners, businesses, and local and state governments to develop plans to maintain or enhance sites that will then become destinations for nature tourists to promote rural economic development. Therefore, it is the intent of the legislature to have Washington participate in the recognition portion of the important bird area program by directing the natural heritage program at the department of natural resources to officially recognize important bird areas.

NEW SECTION. Sec. 2. A new section is added to chapter 79.70 RCW to read as follows:

(1) The program may use information collected by a qualifying nonprofit organization to recognize important bird areas. The program should, to the greatest extent possible, coordinate with and use internationally agreed-upon, scientific criteria and protocols developed by a qualifying nonprofit organization to officially recognize these sites throughout Washington. Prior to using information collected by a qualifying nonprofit organization, the program must verify that the information was collected by individuals trained in scientific data collection, wildlife biology, or ornithology.

(2) When the program recognizes an important bird area, that information will be included in the program's data bank. An important bird area shall not be designated as a natural area or a natural area preserve unless that area satisfies the substantive and procedural requirements for becoming a natural area or natural area preserve under this chapter.

(3) The qualifying nonprofit organization that collected the information used to recognize important bird areas should be available to work with interested landowners, businesses, and state and local governments to identify ways to maintain or enhance the important bird areas.

(4) The recognition of private property as an important bird area under this chapter, or the inclusion of private property in the program's data bank, does not confer nor imply any rights of access or trespass onto the important bird area without full knowledge and consent of the owner pursuant to any state statutory and common laws dealing with trespass and access to private property.

(5) Recognition of an important bird area does not require or create critical area designation under chapter 36.70A RCW.

NEW SECTION. Sec. 3. A new section is added to chapter 79.70 RCW to read as follows:

Prior to recognizing an important bird area under this chapter, the department must:

(1) Publish notice of the proposed important bird area in the Washington state register;

(2) Publish notice of the proposed important bird area in a newspaper of general circulation in the county where the proposed important bird area is located; and

(3) Conduct at least one public hearing in the county where the proposed important bird area is located.

Sec. 4. RCW 79.70.020 and 2003 c 334 s 548 are each amended to read as follows:

The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Department" means the department of natural resources.

(2) "Natural areas" and "natural area preserves" include such public or private areas of land or water which have retained their natural character, although not necessarily completely natural and undisturbed, or which are important in preserving rare or vanishing flora, fauna, geological, natural historical or similar features of scientific or educational value and which are acquired or voluntarily registered or dedicated by the owner under this chapter.

(3) "Public lands" and "state lands" have the meaning set out in RCW 79.02.010.

(4) "Council" means the natural heritage advisory council as established in RCW 79.70.070.

(5) "Commissioner" means the commissioner of public lands.

(6) "Important bird area" means those areas jointly identified by the natural heritage program and a qualifying nonprofit organization using internationally recognized scientific criteria. These areas have been found to be necessary to conserve populations of wild waterfowl, upland game birds, songbirds, and other birds native to and migrating through Washington, and contain the habitats that birds are dependent upon for breeding, migration, shelter, and sustenance.

(7) "Instrument of dedication" means any written document intended to convey an interest in real property pursuant to chapter 64.04 RCW.

~~((7))~~ (8) "Natural heritage resources" means the plant community types, aquatic types, unique geologic types, and special plant and animal species and their critical habitat as defined in the natural heritage plan established under RCW 79.70.030.

~~((8))~~ (9) "Plan" means the natural heritage plan as established under RCW 79.70.030.

~~((9))~~ (10) "Program" means the natural heritage program as established under RCW 79.70.030.

~~((10))~~ (11) "Qualifying nonprofit organization" means a national nonprofit organization, or a branch of a national nonprofit organization, that conserves and restores natural ecosystems, focusing on birds, other wildlife, and their habitat.

(12) "Register" means the Washington register of natural area preserves as established under RCW 79.70.030.

Passed by the House March 9, 2004.

Passed by the Senate March 2, 2004.

Approved by the Governor March 26, 2004.

Filed in Office of Secretary of State March 26, 2004.

CHAPTER 181

[Substitute House Bill 2988]

FOSTER PARENTS' RIGHTS

AN ACT Relating to foster parents' rights; and adding new sections to chapter 74.13 RCW.

Be it enacted by the Legislature of the State of Washington:

NEW SECTION. Sec. 1. A new section is added to chapter 74.13 RCW to read as follows:

A foster parent who believes that a department employee has retaliated against the foster parent or in any other manner discriminated against the foster parent because:

(1) The foster parent made a complaint with the office of the family and children's ombudsman, the attorney general, law enforcement agencies, or the department, provided information, or otherwise cooperated with the investigation of such a complaint;

(2) The foster parent has caused to be instituted any proceedings under or related to Title 13 RCW;

(3) The foster parent has testified or is about to testify in any proceedings under or related to Title 13 RCW;

(4) The foster parent has advocated for services on behalf of the foster child;

(5) The foster parent has sought to adopt a foster child in the foster parent's care; or

(6) The foster parent has discussed or consulted with anyone concerning the foster parent's rights under this chapter or chapter 74.15 or 13.34 RCW, may file a complaint with the office of the family and children's ombudsman. The office of the family and children's ombudsman shall include its recommendations regarding complaints filed under this section in its annual report pursuant to RCW 43.06A.030. The office of the family and children's ombudsman shall identify trends which may indicate a need to improve relations between the department and foster parents.

NEW SECTION. Sec. 2. A new section is added to chapter 74.13 RCW to read as follows:

The department shall develop procedures for responding to recommendations of the office of the family and children's ombudsman as a result of any and all complaints filed by foster parents under section 1 of this act.

Passed by the House March 10, 2004.

Passed by the Senate March 10, 2004.

Approved by the Governor March 26, 2004.

Filed in Office of Secretary of State March 26, 2004.

CHAPTER 182

[Second Substitute House Bill 3085]

FAMILY DECISION MEETINGS

AN ACT Relating to family decision meetings; adding a new section to chapter 74.13 RCW; and creating a new section.

Be it enacted by the Legislature of the State of Washington:

NEW SECTION. Sec. 1. (1) The legislature finds that engaging families in decision making when their children are involved in the child welfare system generally improves the outcomes for children. By involving families in the decision-making process, it is anticipated that the number of out-of-home placements can be reduced, as well as the incidence of behavioral, physical, and mental health problems for individual children. For those children in out-of-home placements, the number of placements for individual children, the likelihood of placing individual children with siblings, and successful reunifications are expected to improve as a result of family engagement. Based on the experience in the state where families have been engaged in decision making, these improved outcomes will result in cost savings to the state as fewer and less costly services and supports for children and families are needed.

(2) It is the intent of the legislature to encourage and support meaningful family involvement in the decision making related to planning for children involved in the child welfare system, in those instances where family is available and family involvement is in the best interest of the child.

NEW SECTION. Sec. 2. A new section is added to chapter 74.13 RCW to read as follows:

(1) By January 1, 2005, the department shall:

(a) Consider options for the use of family decision meetings in cases in which a child is involved in the child welfare system;

(b) Develop strategies for implementing a policy of meaningful family involvement throughout the state within existing resources; and

(c) Present implementation recommendations to the appropriate committees of the legislature regarding (a) and (b) of this subsection.

(2) For the purposes of this section, "family decision meeting" means a family-focused intervention facilitated by dedicated professional staff that is designed to build and strengthen the natural caregiving system for the child. Family decision meetings may include, but are not limited to, family group conferences, family mediation, family support meetings, or other professionally recognized interventions that include extended family and rely upon the family to make shared decisions about planning for its children. The purpose of the family decision meeting is to establish a plan that provides for the safety and permanency needs of the child.

Passed by the House February 13, 2004.

Passed by the Senate March 3, 2004.

Approved by the Governor March 26, 2004.

Filed in Office of Secretary of State March 26, 2004.

CHAPTER 183

[Engrossed Substitute House Bill 2554]

SUPPORT FOR CHILDREN WITH DISABILITIES

AN ACT Relating to requiring support payments for a child with a developmental disability in out-of-home care; amending RCW 13.34.160, 13.34.270, 74.13.031, 74.13.350, and 74.20A.030; and providing an effective date.

Be it enacted by the Legislature of the State of Washington:

Sec. 1. RCW 13.34.160 and 1997 c 58 s 505 are each amended to read as follows:

(1) In an action brought under this chapter, the court may inquire into the ability of the parent or parents of the child to pay child support and may enter an order of child support as set forth in chapter 26.19 RCW. The court may enforce the same by execution, or in any way in which a court of equity may enforce its decrees. All child support orders entered pursuant to this chapter shall be in compliance with the provisions of RCW 26.23.050.

(2) For purposes of this section, if a dependent child's parent is an unmarried minor parent or pregnant minor applicant, then the parent or parents of the minor shall also be deemed a parent or parents of the dependent child. However, liability for child support under this subsection only exists if the parent or parents of the unmarried minor parent or pregnant minor applicant are provided the opportunity for a hearing on their ability to provide support. Any child support order requiring such a parent or parents to provide support for the minor parent's child may be effective only until the minor parent reaches eighteen years of age.

(3) In the absence of a court order setting support, the department may establish an administrative order for support upon receipt of a referral or application for support enforcement services.

Sec. 2. RCW 13.34.270 and 2000 c 122 s 33 are each amended to read as follows:

(1) Whenever the department places a child with a developmental disability in out-of-home care pursuant to RCW 74.13.350, the department shall obtain a judicial determination within one hundred eighty days of the placement that continued placement is in the best interests of the child. If the child's out-of-home placement ends before one hundred eighty days have elapsed, no judicial determination is required.

(2) To obtain the judicial determination, the department shall file a petition alleging that there is located or residing within the county a child who has a developmental disability and that the child has been placed in out-of-home care pursuant to RCW 74.13.350. The petition shall request that the court review the child's placement, make a determination whether continued placement is in the best interests of the child, and take other necessary action as provided in this section. The petition shall contain the name, date of birth, and residence of the child and the names and residences of the child's parent or legal guardian who has agreed to the child's placement in out-of-home care. Reasonable attempts shall be made by the department to ascertain and set forth in the petition the identity, location, and custodial status of any parent who is not a party to the placement agreement and why that parent cannot assume custody of the child.

(3) Upon filing of the petition, the clerk of the court shall schedule the petition for a hearing to be held no later than fourteen calendar days after the petition has been filed. The department shall provide notification of the time, date, and purpose of the hearing to the parent or legal guardian who has agreed to the child's placement in out-of-home care. The department shall also make reasonable attempts to notify any parent who is not a party to the placement agreement, if the parent's identity and location is known. Notification under this section may be given by the most expedient means, including but not limited to, mail, personal service, and telephone.

(4) The court shall appoint a guardian ad litem for the child as provided in RCW 13.34.100, unless the court for good cause finds the appointment unnecessary.

(5) Permanency planning hearings shall be held as provided in this section. At the hearing, the court shall review whether the child's best interests are served by continued out-of-home placement and determine the future legal status of the child.

(a) For children age ten and under, a permanency planning hearing shall be held in all cases where the child has remained in out-of-home care for at least nine months and an adoption decree or guardianship order under chapter 11.88 RCW has not previously been entered. The hearing shall take place no later than twelve months following commencement of the child's current placement episode.

(h) For children over age ten, a permanency planning hearing shall be held in all cases where the child has remained in out-of-home care for at least fifteen months and an adoption decree or guardianship order under chapter 11.88 RCW has not previously been entered. The hearing shall take place no later than eighteen months following commencement of the current placement episode.

(c) No later than ten working days before the permanency planning hearing, the department shall submit a written permanency plan to the court and shall mail a copy of the plan to all parties. The plan shall be directed toward securing a safe, stable, and permanent home for the child as soon as possible. The plan shall identify one of the following outcomes as the primary goal and may also identify additional outcomes as alternative goals: Return of the child to the home of the child's parent or legal guardian; adoption; guardianship; or long-term out-of-home care, until the child is age eighteen, with a written agreement between the parties and the child's care provider.

(d) If a goal of long-term out-of-home care has been achieved before the permanency planning hearing, the court shall review the child's status to determine whether the placement and the plan for the child's care remains appropriate. In cases where the primary permanency planning goal has not been achieved, the court shall inquire regarding the reasons why the primary goal has not been achieved and determine what needs to be done to make it possible to achieve the primary goal.

(e) Following the first permanency planning hearing, the court shall hold a further permanency planning hearing in accordance with this section at least once every twelve months until a permanency planning goal is achieved or the voluntary placement agreement is terminated.

(6) Any party to the voluntary placement agreement may terminate the agreement at any time. Upon termination of the agreement, the child shall be returned to the care of the child's parent or legal guardian, unless the child has been taken into custody pursuant to RCW 13.34.050 or 26.44.050, placed in shelter care pursuant to RCW 13.34.060, or placed in foster care pursuant to RCW 13.34.130. The department shall notify the court upon termination of the voluntary placement agreement and return of the child to the care of the child's parent or legal guardian. Whenever a voluntary placement agreement is terminated, an action under this section shall be dismissed.

(7) When state or federal funds are expended for the care and maintenance of a child with a developmental disability, placed in care as a result of an action

under this chapter, the department shall refer the case to the division of child support, unless the department finds that there is good cause not to pursue collection of child support against the parent or parents of the child.

(8) This section does not prevent the department from filing a dependency petition if there is reason to believe that the child is a dependent child as defined in RCW 13.34.030. An action filed under this section shall be dismissed upon the filing of a dependency petition regarding a child who is the subject of the action under this section.

Sec. 3. RCW 74.13.031 and 2001 c 192 s 1 are each amended to read as follows:

The department shall have the duty to provide child welfare services and shall:

(1) Develop, administer, supervise, and monitor a coordinated and comprehensive plan that establishes, aids, and strengthens services for the protection and care of runaway, dependent, or neglected children.

(2) Within available resources, recruit an adequate number of prospective adoptive and foster homes, both regular and specialized, i.e. homes for children of ethnic minority, including Indian homes for Indian children, sibling groups, handicapped and emotionally disturbed, teens, pregnant and parenting teens, and annually report to the governor and the legislature concerning the department's success in: (a) Meeting the need for adoptive and foster home placements; (b) reducing the foster parent turnover rate; (c) completing home studies for legally free children; and (d) implementing and operating the passport program required by RCW 74.13.285. The report shall include a section entitled "Foster Home Turn-Over, Causes and Recommendations."

(3) Investigate complaints of any recent act or failure to act on the part of a parent or caretaker that results in death, serious physical or emotional harm, or sexual abuse or exploitation, or that presents an imminent risk of serious harm, and on the basis of the findings of such investigation, offer child welfare services in relation to the problem to such parents, legal custodians, or persons serving in loco parentis, and/or bring the situation to the attention of an appropriate court, or another community agency: PROVIDED, That an investigation is not required of nonaccidental injuries which are clearly not the result of a lack of care or supervision by the child's parents, legal custodians, or persons serving in loco parentis. If the investigation reveals that a crime against a child may have been committed, the department shall notify the appropriate law enforcement agency.

(4) Offer, on a voluntary basis, family reconciliation services to families who are in conflict.

(5) Monitor out-of-home placements, on a timely and routine basis, to assure the safety, well-being, and quality of care being provided is within the scope of the intent of the legislature as defined in RCW 74.13.010 and 74.15.010, and annually submit a report measuring the extent to which the department achieved the specified goals to the governor and the legislature.

(6) Have authority to accept custody of children from parents and to accept custody of children from juvenile courts, where authorized to do so under law, to provide child welfare services including placement for adoption, and to provide for the physical care of such children and make payment of maintenance costs if needed. Except where required by Public Law 95-608 (25 U.S.C. Sec. 1915), no

private adoption agency which receives children for adoption from the department shall discriminate on the basis of race, creed, or color when considering applications in their placement for adoption.

(7) Have authority to provide temporary shelter to children who have run away from home and who are admitted to crisis residential centers.

(8) Have authority to purchase care for children; and shall follow in general the policy of using properly approved private agency services for the actual care and supervision of such children insofar as they are available, paying for care of such children as are accepted by the department as eligible for support at reasonable rates established by the department.

(9) Establish a children's services advisory committee which shall assist the secretary in the development of a partnership plan for utilizing resources of the public and private sectors, and advise on all matters pertaining to child welfare, licensing of child care agencies, adoption, and services related thereto. At least one member shall represent the adoption community.

(10) Have authority to provide continued foster care or group care for individuals from eighteen through twenty years of age to enable them to complete their high school or vocational school program.

(11) Refer cases to the division of child support whenever state or federal funds are expended for the care and maintenance of a child, including a child with a developmental disability who is placed as a result of an action under chapter 13.34 RCW, unless the department finds that there is good cause not to pursue collection of child support against the parent or parents of the child.

(12) Have authority within funds appropriated for foster care services to purchase care for Indian children who are in the custody of a federally recognized Indian tribe or tribally licensed child-placing agency pursuant to parental consent, tribal court order, or state juvenile court order; and the purchase of such care shall be subject to the same eligibility standards and rates of support applicable to other children for whom the department purchases care.

Notwithstanding any other provision of RCW 13.32A.170 through 13.32A.200 and 74.13.032 through 74.13.036, or of this section all services to be provided by the department of social and health services under subsections (4), (6), and (7) of this section, subject to the limitations of these subsections, may be provided by any program offering such services funded pursuant to Titles II and III of the federal juvenile justice and delinquency prevention act of 1974.

~~((12))~~ (13) Within amounts appropriated for this specific purpose, provide preventive services to families with children that prevent or shorten the duration of an out-of-home placement.

~~((13))~~ (14) Have authority to provide independent living services to youths, including individuals eighteen through twenty years of age, who are or have been in foster care.

Sec. 4. RCW 74.13.350 and 1998 c 229 s 1 are each amended to read as follows:

It is the intent of the legislature that parents are responsible for the care and support of children with developmental disabilities. The legislature recognizes that, because of the intense support required to care for a child with developmental disabilities, the help of an out-of-home placement may be needed. It is the intent of the legislature that, when the sole reason for the out-of-home placement is the child's developmental disability, such services be

offered by the department to these children and their families through a voluntary placement agreement. In these cases, the parents shall retain legal custody of the child.

As used in this section, "voluntary placement agreement" means a written agreement between the department and a child's parent or legal guardian authorizing the department to place the child in a licensed facility. Under the terms of this agreement, the parent or legal guardian shall retain legal custody and the department shall be responsible for the child's placement and care. The agreement shall at a minimum specify the legal status of the child and the rights and obligations of the parent or legal guardian, the child, and the department while the child is in placement. The agreement must be signed by the child's parent or legal guardian and the department to be in effect, except that an agreement regarding an Indian child shall not be valid unless executed in writing before the court and filed with the court as provided in RCW 13.34.245. Any party to a voluntary placement agreement may terminate the agreement at any time. Upon termination of the agreement, the child shall be returned to the care of the child's parent or legal guardian unless the child has been taken into custody pursuant to RCW 13.34.050 or 26.44.050, placed in shelter care pursuant to RCW 13.34.060, or placed in foster care pursuant to RCW 13.34.130.

As used in this section, "out-of-home placement" and "out-of-home care" mean the placement of a child in a foster family home or group care facility licensed under chapter 74.15 RCW.

Whenever the department places a child in out-of-home care under a voluntary placement pursuant to this section, the department shall have the responsibility for the child's placement and care. The department shall develop a permanency plan of care for the child no later than sixty days from the date that the department assumes responsibility for the child's placement and care. Within the first one hundred eighty days of the placement, the department shall obtain a judicial determination pursuant to RCW 13.04.030(1)(j) and 13.34.270 that the placement is in the best interests of the child. If the child's out-of-home placement ends before one hundred eighty days have elapsed, no judicial determination under RCW 13.04.030(1)(b) is required. The permanency planning hearings shall review whether the child's best interests are served by continued out-of-home placement and determine the future legal status of the child.

The department shall provide for periodic administrative reviews as required by federal law. A review may be called at any time by either the department, the parent, or the legal guardian.

Nothing in this section shall prevent the department from filing a dependency petition if there is reason to believe that the child is a dependent child as defined in RCW 13.34.030.

The department shall adopt rules providing for the implementation of chapter 386, Laws of 1997 and the transfer of responsibility for out-of-home placements from the dependency process under chapter 13.34 RCW to the process under this chapter.

It is the intent of the legislature that the department undertake voluntary out-of-home placement in cases where the child's developmental disability is such that the parent, guardian, or legal custodian is unable to provide the necessary

care for the child, and the parent, guardian, or legal custodian has determined that the child would benefit from placement outside of the home. If the department does not accept a voluntary placement agreement signed by the parent, a petition may be filed and an action pursued under chapter 13.34 RCW. The department shall inform the parent, guardian, or legal custodian in writing of their right to civil action under chapter 13.34 RCW.

Nothing in this section prohibits the department from seeking support from parents of a child, including a child with a developmental disability if the child has been placed into care as a result of an action under chapter 13.34 RCW, when state or federal funds are expended for the care and maintenance of that child or when the department receives an application for services from the physical custodian of the child, unless the department finds that there is good cause not to pursue collection of child support against the parent or parents.

Sec. 5. RCW 74.20A.030 and 2000 c 86 s 7 are each amended to read as follows:

(1) The department shall be subrogated to the right of any dependent child or children or person having the care, custody, and control of said child or children, if public assistance money is paid to or for the benefit of the child, or for the care and maintenance of a child, including a child with a developmental disability if the child has been placed into care as a result of an action under chapter 13.34 RCW, under a state-funded program, or a program funded under Title IV-A or IV-E of the federal social security act as amended by the personal responsibility and work opportunity reconciliation act of 1996, to prosecute or maintain any support action or execute any administrative remedy existing under the laws of the state of Washington to obtain reimbursement of moneys expended, based on the support obligation of the responsible parent established by a child support order. Distribution of any support moneys shall be made in accordance with RCW 26.23.035.

(2) The department may initiate, continue, maintain, or execute an action to establish, enforce, and collect a support obligation, including establishing paternity and performing related services, under this chapter and chapter 74.20 RCW, or through the attorney general or prosecuting attorney under chapter 26.09, 26.18, 26.20, 26.21, 26.23, or 26.26 RCW or other appropriate statutes or the common law of this state, for so long as and under such conditions as the department may establish by regulation.

(3) Public assistance moneys shall be exempt from collection action under this chapter except as provided in RCW 74.20A.270.

(4) No collection action shall be taken against parents of children eligible for admission to, or children who have been discharged from, a residential habilitation center as defined by RCW 71A.10.020(8) unless the child with a developmental disability is placed as a result of an action under chapter 13.34 RCW. ~~((For the period July 1, 1993, through June 30, 1995, a collection action may be taken against parents of children with developmental disabilities who are placed in community-based residential care. The amount of support the department may collect from the parents shall not exceed one-half of the parents' support obligation accrued while the child was in community-based residential care.))~~ The child support obligation shall be calculated pursuant to chapter 26.19 RCW.

NEW SECTION. **Sec. 6.** This act takes effect July 1, 2004.

Passed by the House March 10, 2004.

Passed by the Senate March 11, 2004.

Approved by the Governor March 26, 2004.

Filed in Office of Secretary of State March 26, 2004.

CHAPTER 184

[Substitute House Bill 2788]

PRIMARY CARE RETIREES—LIABILITY INSURANCE

AN ACT Relating to the liability insurance program for retired primary care providers volunteering to serve low-income patients; and amending RCW 43.70.460 and 43.70.470.

Be it enacted by the Legislature of the State of Washington:

Sec. 1. RCW 43.70.460 and 1993 c 492 s 276 are each amended to read as follows:

(1) The department may establish a program to purchase and maintain liability malpractice insurance for retired primary care providers who provide primary health care services ~~((at community clinics))~~ to low-income patients. The following conditions apply to the program:

(a) Primary health care services shall be provided at ~~((community))~~ clinics serving low-income patients that are public or private tax-exempt corporations or other established practice settings as defined by the department;

(b) Primary health care services provided at the clinics shall be offered to low-income patients based on their ability to pay;

(c) Retired primary care providers providing health care services shall not receive compensation for their services; and

(d) The department shall contract only with a liability insurer authorized to offer liability malpractice insurance in the state.

(2) This section and RCW 43.70.470 shall not be interpreted to require a liability insurer to provide coverage to a primary care provider should the insurer determine that coverage should not be offered to a ~~((physician [primary care provider]))~~ primary care provider because of past claims experience or for other appropriate reasons.

(3) The state and its employees who operate the program shall be immune from any civil or criminal action involving claims against clinics or ~~((physicians [primary care providers]))~~ primary care providers that provided health care services under this section and RCW 43.70.470. This protection of immunity shall not extend to any clinic or primary care provider participating in the program.

(4) The department may monitor the claims experience of retired ~~((physicians [primary care providers]))~~ primary care providers covered by liability insurers contracting with the department.

(5) The department may provide liability insurance under chapter 113, Laws of 1992 only to the extent funds are provided for this purpose by the legislature. If there are insufficient funds to support all applications for liability insurance coverage, priority shall be given to those retired primary care providers working at clinics operated by public or private tax-exempt corporations rather than clinics operated by for-profit corporations.

Sec. 2. RCW 43.70.470 and 1993 c 492 s 277 are each amended to read as follows:

The department may establish by rule the conditions of participation in the liability insurance program by retired primary care providers at clinics utilizing retired (~~(physicians [primary care providers])~~) primary care providers for the purposes of this section and RCW 43.70.460. These conditions shall include, but not be limited to, the following:

(1) The participating primary care provider associated with the clinic shall hold a valid license to practice as a physician under chapter 18.71 or 18.57 RCW, a naturopath under chapter 18.36A RCW, a physician assistant under chapter 18.71A or 18.57A RCW, an advanced registered nurse practitioner under chapter 18.88 RCW, a dentist under chapter 18.32 RCW, or other health professionals as may be deemed in short supply in the health personnel resource plan under chapter 28B.125 RCW. A primary care provider may include a specialist who is practicing in a primary care capacity. All primary care providers must be in conformity with current requirements for licensure as a retired primary care provider, including continuing education requirements;

(2) The participating primary care provider shall limit the scope of practice in the clinic to primary care. Primary care shall be limited to noninvasive procedures and shall not include obstetrical care, or any specialized care and treatment. Noninvasive procedures include injections, suturing of minor lacerations, and incisions of boils or superficial abscesses. Primary dental care shall be limited to diagnosis, oral hygiene, restoration, and extractions and shall not include orthodontia, or other specialized care and treatment;

(3) The provision of liability insurance coverage shall not extend to acts outside the scope of rendering medical services pursuant to this section and RCW 43.70.460;

(4) The participating primary care provider shall limit the provision of health care services to primarily low-income persons provided that clinics may, but are not required to, provide means tests for eligibility as a condition for obtaining health care services;

(5) The participating primary care provider shall not accept compensation for providing health care services from patients served pursuant to this section and RCW 43.70.460, nor from clinics serving these patients. "Compensation" shall mean any remuneration of value to the participating primary care provider for services provided by the primary care provider, but shall not be construed to include any nominal copayments charged by the clinic, nor reimbursement of related expenses of a participating primary care provider authorized by the clinic in advance of being incurred; and

(6) The use of mediation or arbitration for resolving questions of potential liability may be used, however any mediation or arbitration agreement format shall be expressed in terms clear enough for a person with a sixth grade level of education to understand, and on a form no longer than one page in length.

Passed by the House February 16, 2004.

Passed by the Senate March 11, 2004.

Approved by the Governor March 26, 2004.

Filed in Office of Secretary of State March 26, 2004.

CHAPTER 185

[House Bill 2485]

TORT JUDGMENTS—INTEREST

AN ACT Relating to postjudgment interest on tort judgments; amending RCW 4.56.115, 4.56.110, and 19.52.025; and creating a new section.

Be it enacted by the Legislature of the State of Washington:

Sec. 1. RCW 4.56.115 and 1983 c 147 s 2 are each amended to read as follows:

Judgments founded on the tortious conduct of the state of Washington or of the political subdivisions, municipal corporations, and quasi municipal corporations of the state, whether acting in their governmental or proprietary capacities, shall bear interest from the date of entry at two percentage points above the ((maximum rate permitted under RCW 19.52.020 on)) equivalent coupon issue yield (as published by the board of governors of the federal reserve system) of the average bill rate for twenty-six week treasury bills as determined at the first bill market auction conducted during the calendar month immediately preceding the date of entry thereof((: PROVIDED, That)). In any case where a court is directed on review to enter judgment on a verdict or in any case where a judgment entered on a verdict is wholly or partly affirmed on review, interest on the judgment or on that portion of the judgment affirmed shall date back to and shall accrue from the date the verdict was rendered.

Sec. 2. RCW 4.56.110 and 1989 c 360 s 19 are each amended to read as follows:

Interest on judgments shall accrue as follows:

(1) Judgments founded on written contracts, providing for the payment of interest until paid at a specified rate, shall bear interest at the rate specified in the contracts: PROVIDED, That said interest rate is set forth in the judgment.

(2) All judgments for unpaid child support that have accrued under a superior court order or an order entered under the administrative procedure act shall bear interest at the rate of twelve percent.

(3) Judgments founded on the tortious conduct of individuals or other entities, whether acting in their personal or representative capacities, shall bear interest from the date of entry at two percentage points above the equivalent coupon issue yield, as published by the board of governors of the federal reserve system, of the average bill rate for twenty-six week treasury bills as determined at the first bill market auction conducted during the calendar month immediately preceding the date of entry. In any case where a court is directed on review to enter judgment on a verdict or in any case where a judgment entered on a verdict is wholly or partly affirmed on review, interest on the judgment or on that portion of the judgment affirmed shall date back to and shall accrue from the date the verdict was rendered.

(4) Except as provided under subsections (1) (~~and~~), (2), and (3) of this section, judgments shall bear interest from the date of entry at the maximum rate permitted under RCW 19.52.020 on the date of entry thereof(~~: PROVIDED, That~~). In any case where a court is directed on review to enter judgment on a verdict or in any case where a judgment entered on a verdict is wholly or partly affirmed on review, interest on the judgment or on that portion of the judgment affirmed shall date back to and shall accrue from the date the verdict was

rendered. The method for determining an interest rate prescribed by this subsection is also the method for determining the "rate applicable to civil judgments" for purposes of RCW 10.82.090.

NEW SECTION. Sec. 3. The rate of interest required by sections 1 and 2(3), chapter . . . , Laws of 2004 (sections 1 and 2(3) of this act) applies to the accrual of interest:

(1) As of the date of entry of judgment with respect to a judgment that is entered on or after the effective date of this act;

(2) As of the effective date of this act with respect to a judgment that was entered before the effective date of this act and that is still accruing interest on the effective date of this act.

Sec. 4. RCW 19.52.025 and 1986 c 60 s 1 are each amended to read as follows:

Each month the state treasurer shall compute the highest rate of interest permissible under RCW 19.52.020(1), and the rate of interest required by RCW 4.56.110(3) and 4.56.115, for the succeeding calendar month. The treasurer shall file (~~this rate~~) these rates with the state code reviser for publication in the next available issue of the Washington State Register in compliance with RCW 34.08.020(8).

Passed by the House March 10, 2004.

Passed by the Senate March 5, 2004.

Approved by the Governor March 26, 2004.

Filed in Office of Secretary of State March 26, 2004.

CHAPTER 186

[Substitute House Bill 2313]

BAIL BOND RECOVERY AGENTS

AN ACT Relating to bail bond recovery agents; amending RCW 18.185.010, 18.185.040, 18.185.090, 18.185.100, 18.185.110, and 18.185.170; adding new sections to chapter 18.185 RCW; creating a new section; and prescribing penalties.

Be it enacted by the Legislature of the State of Washington:

NEW SECTION. Sec. 1. The legislature recognizes that bail bond agents and bail bond recovery agents serve a necessary and important purpose in the criminal justice system by locating, apprehending, and surrendering fugitive criminal defendants. The legislature also recognizes that locating, apprehending, and surrendering fugitives requires special skills and expertise; that bail bond agents and bail bond recovery agents are often required to perform their duties under stressful and demanding conditions; and that it serves the public interest to have qualified people performing such essential functions. Therefore, bail bond agencies that use the services of bail bond recovery agents must, in the interest of public safety, use bail bond recovery agents who possess the knowledge and competence necessary for the job.

Sec. 2. RCW 18.185.010 and 2000 c 171 s 40 are each amended to read as follows:

Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Department" means the department of licensing.

(2) "Director" means the director of licensing.

(3) "Commission" means the criminal justice training commission.

(4) "Collateral or security" means property of any kind given as security to obtain a bail bond.

~~((4))~~ (5) "Bail bond agency" means a business that sells and issues corporate surety bail bonds or that provides security in the form of personal or real property to ~~((insure))~~ ensure the appearance of a criminal defendant before the courts of this state or the United States.

~~((5))~~ (6) "Qualified agent" means an owner, sole proprietor, partner, manager, officer, or chief operating officer of a corporation who meets the requirements set forth in this chapter for obtaining a bail bond agency license.

~~((6))~~ (7) "Bail bond agent" means a person who is employed by a bail bond agency and engages in the sale or issuance of bail bonds, but does not mean a clerical, secretarial, or other support person who does not participate in the sale or issuance of bail bonds.

~~((7))~~ (8) "Licensee" means a bail bond agency ~~((or))~~, a bail bond agent ~~((or both))~~, a qualified agent, or a bail bond recovery agent.

~~((8))~~ (9) "Branch office" means any office physically separated from the principal place of business of the licensee from which the licensee or an employee or ~~((agents conduct))~~ agent of the licensee conducts any activity meeting the criteria of a bail bond agency.

(10) "Bail bond recovery agent" means a person who is under contract with a bail bond agent to receive compensation, reward, or any other form of lawful consideration for locating, apprehending, and surrendering a fugitive criminal defendant for whom a bail bond has been posted. "Bail bond recovery agent" does not include a general authority Washington peace officer or a limited authority Washington peace officer.

(11) "Contract" means a written agreement between a bail bond agent or qualified agent and a bail bond recovery agent for the purpose of locating, apprehending, and surrendering a fugitive criminal defendant in exchange for lawful consideration.

(12) "Planned forced entry" means a premeditated forcible entry into a dwelling, building, or other structure without the occupant's knowledge or consent for the purpose of apprehending a fugitive criminal defendant subject to a bail bond. "Planned forced entry" does not include situations where, during an imminent or actual chase or pursuit of a fleeing fugitive criminal defendant, or during a casual or unintended encounter with the fugitive, the bail bond recovery agent forcibly enters into a dwelling, building, or other structure without advanced planning.

NEW SECTION. Sec. 3. A new section is added to chapter 18.185 RCW to read as follows:

An applicant must meet the following requirements to obtain a bail bond recovery agent license:

(1) Submit a fully completed application that includes proper identification on a form prescribed by the director;

(2) Pass an examination determined by the director to measure his or her knowledge and competence in the bail recovery business;

(3) Be at least twenty-one years old;

(4) Be a citizen or legal resident alien of the United States;

(5) Not have been convicted of a crime in any jurisdiction, if the director determines that the applicant's particular crime directly relates to a capacity to perform the duties of a bail bond recovery agent, and that the license should be withheld to protect the citizens of Washington state. The director shall make the director's determination to withhold a license because of previous convictions notwithstanding the restoration of employment rights act, chapter 9.96A RCW;

(6) Submit a receipt showing payment for a background check through the Washington state patrol and the federal bureau of investigation;

(7) Have a current firearms certificate issued by the commission if carrying a firearm in the performance of his or her duties as a bail bond recovery agent;

(8)(a) Have a current license to carry a concealed pistol if carrying a firearm in the performance of his or her duties as a bail bond recovery agent;

(b) A resident alien must provide a copy of his or her alien firearm license if carrying a firearm in the performance of his or her duties as a bail bond recovery agent; and

(9)(a) Pay the required nonrefundable fee for each application for a bail bond recovery agent license;

(b) A bail bond agent or qualified agent who wishes to perform the duties of a bail bond recovery agent must first obtain a bail bond recovery agent endorsement to his or her bail bond agent or agency license in order to act as a bail bond recovery agent, and pay the required nonrefundable fee for each application for a bail bond recovery agent endorsement.

Sec. 4. RCW 18.185.040 and 1993 c 260 s 5 are each amended to read as follows:

(1) Applications for licenses required under this chapter shall be filed with the director on a form provided by the director. The director may require any information and documentation that reasonably relates to the need to determine whether the applicant meets the criteria, ~~((which may include))~~ including fingerprints.

(2) ~~((After receipt of an application for a license, the director may conduct an investigation to determine whether the facts set forth in the application are true.))~~ Applicants for licensure or endorsement as a bail bond recovery agent must complete a records check through the Washington state patrol criminal identification system and through the federal bureau of investigation at the applicant's expense. Such record check shall include a fingerprint check using a Washington state patrol approved fingerprint card. The Washington state patrol shall forward the fingerprints of applicants to the federal bureau of investigation for a national criminal history records check. The director may accept proof of a recent national crime information center/III criminal background report or any national or interstate criminal background report in addition to fingerprints to accelerate the licensing and endorsement process. The director is authorized to periodically perform a background investigation of licensees to identify criminal convictions subsequent to the renewal of a license or endorsement.

NEW SECTION. Sec. 5. A new section is added to chapter 18.185 RCW to read as follows:

(1) The director shall adopt rules establishing prelicense training and testing requirements, which shall include a minimum of four hours of classes. The

director may establish, by rule, continuing education requirements for bail bond recovery agents.

(2) The director shall consult with representatives of the bail bond industry and associations before adopting or amending the prelicensing training or continuing education requirements of this section.

(3) A bail bond recovery agent need not fulfill the prelicensing training requirements of this chapter if he or she, within sixty days prior to July 1, 2005, provides proof to the director that he or she previously has met the training requirements of this chapter.

(4) The director, or the director's designee, with the advice of representatives of the bail bond industry and associations, law enforcement agencies and associations, and prosecutors' associations, shall adopt rules establishing prelicense training and testing requirements and shall establish minimum exam standards necessary for a bail bond recovery agent to qualify for licensure or endorsement.

(5) The standards shall be limited to the following:

(a) A minimum level of education or experience appropriate for performing the duties of a bail bond recovery agent;

(b) A minimum level of knowledge in relevant areas of criminal and civil law;

(c) A minimum level of knowledge regarding the appropriate use of force and different degrees of the use of force; and

(d) Adequate training of the use of firearms from the criminal justice training commission or from an instructor who has been trained or certified by the criminal justice training center.

(6) The legislature does not intend, and nothing in this chapter shall be construed to restrict or limit in any way the powers of bail bond agents as recognized in and derived from the United States Supreme Court case of *Taylor v. Taintor*, 16 Wall. 366 (1872).

NEW SECTION. Sec. 6. A new section is added to chapter 18.185 RCW to read as follows:

(1) Each fugitive criminal defendant to be recovered will be treated as an individual contract between the bail bond agent and the bail bond recovery agent. A bail bond agent shall provide a bail bond recovery agent a copy of each individual contract. A bail bond recovery agent must carry, in addition to the license issued by the department, a copy of the contract and, if requested, must present a copy of the contract and the license to the fugitive criminal defendant, the owner or manager of the property in which the agent entered in order to locate or apprehend the fugitive, other residents, if any, of the residence in which the agent entered in order to locate or apprehend the fugitive, and to the local law enforcement agency or officer. If presenting a copy of the contract or the license at the time of the request would unduly interfere with the location or apprehension of the fugitive, the agent shall present the copy of the contract or the license within a reasonable period of time after the exigent circumstances expire.

(2) The director, or the director's designee, with the advice of the bail bond industry and associations, law enforcement agencies and associations, and prosecutors' associations shall develop a format for the contract. At a minimum, the contract must include the following:

- (a) The name, address, phone number, and license number of the bail bond agency or bail bond agent contracting with the bail bond recovery agent;
- (b) The name and license number of the bail bond recovery agent; and
- (c) The name, last known address, and phone number of the fugitive.

Sec. 7. RCW 18.185.090 and 1993 c 260 s 10 are each amended to read as follows:

(1) A bail bond agency shall notify the director within thirty days after the death or termination of employment of any employee who is a licensed bail bond agent.

(2) A bail bond agency shall notify the director within seventy-two hours upon receipt of information affecting a licensed bail bond agent's continuing eligibility to hold a license under the provisions of this chapter.

(3) A bail bond agent or bail bond recovery agent shall notify the director within seventy-two hours upon receipt of information affecting the bail bond recovery agent's continuing eligibility to hold a bail bond recovery agent's license under the provisions of this chapter.

(4) A bail bond agent or bail bond recovery agent shall notify the local law enforcement agency whenever the bail bond recovery agent discharges his or her firearm while on duty, other than on a supervised firearms range. The notification must be made within ten business days of the date the firearm is discharged.

Sec. 8. RCW 18.185.100 and 1996 c 242 s 3 are each amended to read as follows:

(1) Every qualified agent shall keep adequate records for three years of all collateral and security received, all trust accounts required by this section, and all bail bond transactions handled by the bail bond agency, as specified by rule. The records shall be open to inspection without notice by the director or authorized representatives of the director.

(2) Every qualified agent who receives collateral or security is a fiduciary of the property and shall keep adequate records for three years of the receipt, safekeeping, and disposition of the collateral or security. Every qualified agent shall maintain a trust account in a federally insured financial institution located in this state. All moneys, including cash, checks, money orders, wire transfers, and credit card sales drafts, received as collateral or security or otherwise held for a bail bond agency's client shall be deposited in the trust account not later than the third banking day following receipt of the funds or money. A qualified agent shall not in any way encumber the corpus of the trust account or commingle any other moneys with moneys properly maintained in the trust account. Each qualified agent required to maintain a trust account shall report annually under oath to the director the account number and balance of the trust account, and the name and address of the institution that holds the trust account, and shall report to the director within ten business days whenever the trust account is changed or relocated or a new trust account is opened.

(3) Whenever a bail bond is exonerated by the court, the qualified agent shall, within five business days after written notification of exoneration (~~and upon written demand~~), return all collateral or security to the person entitled thereto.

(4) Records of contracts for fugitive apprehension must be retained by the bail bond agent and by the bail bond recovery agent for a period of three years.

Sec. 9. RCW 18.185.110 and 2002 c 86 s 251 are each amended to read as follows:

In addition to the unprofessional conduct described in RCW 18.235.130, the following conduct, acts, or conditions constitute unprofessional conduct:

(1) Violating any of the provisions of this chapter or the rules adopted under this chapter;

(2) Failing to meet the qualifications set forth in RCW 18.185.020 and 18.185.030;

(3) Knowingly committing, or being a party to, any material fraud, misrepresentation, concealment, conspiracy, collusion, trick, scheme, or device whereby any other person lawfully relies upon the word, representation, or conduct of the licensee. However, this subsection (3) does not prevent a bail bond recovery agent from using any pretext to locate or apprehend a fugitive criminal defendant or gain any information regarding the fugitive;

(4) Assigning or transferring any license issued pursuant to the provisions of this chapter, except as provided in RCW 18.185.030;

(5) Conversion of any money or contract, deed, note, mortgage, or other evidence of title, to his or her own use or to the use of his or her principal or of any other person, when delivered to him or her in trust or on condition, in violation of the trust or before the happening of the condition; and failure to return any money or contract, deed, note, mortgage, or other evidence of title within thirty days after the owner is entitled to possession, and makes demand for possession, shall be prima facie evidence of conversion;

(6) Failing to keep records, maintain a trust account, or return collateral or security, as required by RCW 18.185.100;

(7) Any conduct in a bail bond transaction which demonstrates bad faith, dishonesty, or untrustworthiness; ~~((or))~~

(8) Violation of an order to cease and desist that is issued by the director under this chapter;

(9) Wearing, displaying, holding, or using badges not approved by the department;

(10) Making any statement that would reasonably cause another person to believe that the bail bond recovery agent is a sworn peace officer;

(11) Failing to carry a copy of the contract or to present a copy of the contract as required under section 6(1) of this act;

(12) Using the services of an unlicensed bail bond recovery agent or using the services of a bail bond recovery agent without issuing the proper contract;

(13) Misrepresenting or knowingly making a material misstatement or omission in the application for a license;

(14) Using the services of a person performing the functions of a bail bond recovery agent who has not been licensed by the department as required by this chapter; or

(15) Performing the functions of a bail bond recovery agent without being both (a) licensed under this chapter or supervised by a licensed bail bond recovery agent under section 11 of this act; and (b) under contract with a bail bond agent.

NEW SECTION. Sec. 10. A new section is added to chapter 18.185 RCW to read as follows:

(1) A person may not perform the functions of a bail bond recovery agent unless the person is licensed by the department under this chapter.

(2) A bail bond agent may contract with a person to perform the functions of a bail bond recovery agent. Before contracting with the bail bond recovery agent, the bail bond agent must check the license issued by the department under this chapter. The requirements established by the department under this chapter do not prevent the bail bond agent from imposing additional requirements that the bail bond agent considers appropriate.

(3) A contract entered into under this chapter is authority for the person to perform the functions of a bail bond recovery agent as specifically authorized by the contract and in accordance with applicable law. A contract entered into by a bail bond agent with a bail bond recovery agent is not transferable by the bail bond recovery agent to another bail bond recovery agent.

(4) Whenever a person licensed by the department as a bail bond recovery agent is engaged in the performance of the person's duties as a bail bond recovery agent, the person must carry a copy of the license.

(5) A license or endorsement issued by the department under this chapter is valid from the date the license or endorsement is issued until its expiration date unless it is suspended or revoked by the department prior to its expiration date.

(6) No person may perform the functions of a bail bond recovery agent after December 31, 2005, unless the person has first complied with the provisions of this chapter.

(7) Nothing in this chapter is meant to prevent a bail bond agent from contacting a fugitive criminal defendant for the purpose of requesting the surrender of the fugitive, or from accepting the voluntary surrender of the fugitive.

NEW SECTION. Sec. 11. A new section is added to chapter 18.185 RCW to read as follows:

A bail bond recovery agent from another state who is not licensed under this chapter may not perform the functions of a bail bond recovery agent in this state unless the agent is working under the direct supervision of a licensed bail bond recovery agent.

NEW SECTION. Sec. 12. A new section is added to chapter 18.185 RCW to read as follows:

(1) Before a bail bond recovery agent may apprehend a person subject to a bail bond in a planned forced entry, the bail bond recovery agent must notify an appropriate law enforcement agency in the local jurisdiction in which the apprehension is expected to occur. Notification must include, at a minimum: The name of the defendant; the address, or the approximate location if the address is undeterminable, of the dwelling, building, or other structure where the planned forced entry is expected to occur; the name of the bail bond recovery agent; the name of the contracting bail bond agent; and the alleged offense or conduct the defendant committed that resulted in the issuance of a bail bond.

(2) During the actual planned forced entry, a bail bond recovery agent:

(a) Shall wear a shirt, vest, or other garment with the words "BAIL BOND RECOVERY AGENT" displayed in at least two-inch-high reflective print letters

across the front and back of the garment and in a contrasting color to that of the garment; and

(b) May display a badge approved by the department with the words "BAIL BOND RECOVERY AGENT" prominently displayed.

Sec. 13. RCW 18.185.170 and 2002 c 86 s 254 are each amended to read as follows:

(1) (~~After June 30, 1994,~~) Any person who performs the functions and duties of a bail bond agent in this state without being licensed in accordance with the provisions of this chapter, or any person presenting or attempting to use as his or her own the license of another, or any person who gives false or forged evidence of any kind to the director in obtaining a license, or any person who falsely impersonates any other licensee, or any person who attempts to use an expired or revoked license, or any person who violates any of the provisions of this chapter is guilty of a gross misdemeanor.

(2) (~~After January 1, 1994,~~) A person is guilty of a gross misdemeanor if ((he or she)) the person owns or operates a bail bond agency in this state without first obtaining a bail bond agency license.

(3) (~~After June 30, 1994,~~) The owner or qualified agent of a bail bond agency is guilty of a gross misdemeanor if ((he or she)) the owner or qualified agent employs any person to perform the duties of a bail bond agent without the employee having in ((his or her)) the employee's possession a permanent bail bond agent license issued by the department.

(4) After December 31, 2005, a person is guilty of a gross misdemeanor if the person:

(a) Performs the functions of a bail bond recovery agent without first obtaining a license from the department and entering into a contract with a bail bond agent as required by this chapter; or, in the case of a bail bond recovery agent from another state, the person performs the functions of a bail bond recovery agent without operating under the direct supervision of a licensed bail bond recovery agent as required by this chapter; or

(b) Conducts a planned forced entry without first complying with the requirements of this chapter.

Passed by the House March 11, 2004.

Passed by the Senate March 11, 2004.

Approved by the Governor March 26, 2004.

Filed in Office of Secretary of State March 26, 2004.

CHAPTER 187

[Substitute House Bill 2532]

COMMERCIAL DRIVER'S LICENSES

AN ACT Relating to commercial driver's licenses; amending RCW 46.25.010, 46.25.060, 46.25.070, 46.25.080, 46.25.130, 46.25.160, and 46.63.070; reenacting and amending RCW 46.20.308 and 46.25.090; adding a new section to chapter 46.25 RCW; and providing an effective date.

Be it enacted by the Legislature of the State of Washington:

Sec. 1. RCW 46.20.308 and 1999 c 331 s 2 and 1999 c 274 s 2 are each reenacted and amended to read as follows:

(1) Any person who operates a motor vehicle within this state is deemed to have given consent, subject to the provisions of RCW 46.61.506, to a test or tests of his or her breath or blood for the purpose of determining the alcohol concentration or presence of any drug in his or her breath or blood if arrested for any offense where, at the time of the arrest, the arresting officer has reasonable grounds to believe the person had been driving or was in actual physical control of a motor vehicle while under the influence of intoxicating liquor or any drug or was in violation of RCW 46.61.503.

(2) The test or tests of breath shall be administered at the direction of a law enforcement officer having reasonable grounds to believe the person to have been driving or in actual physical control of a motor vehicle within this state while under the influence of intoxicating liquor or any drug or the person to have been driving or in actual physical control of a motor vehicle while having alcohol in a concentration in violation of RCW 46.61.503 in his or her system and being under the age of twenty-one. However, in those instances where the person is incapable due to physical injury, physical incapacity, or other physical limitation, of providing a breath sample or where the person is being treated in a hospital, clinic, doctor's office, emergency medical vehicle, ambulance, or other similar facility in which a breath testing instrument is not present or where the officer has reasonable grounds to believe that the person is under the influence of a drug, a blood test shall be administered by a qualified person as provided in RCW 46.61.506(4). The officer shall inform the person of his or her right to refuse the breath or blood test, and of his or her right to have additional tests administered by any qualified person of his or her choosing as provided in RCW 46.61.506. The officer shall warn the driver that:

(a) His or her license, permit, or privilege to drive will be revoked or denied if he or she refuses to submit to the test;

(b) His or her license, permit, or privilege to drive will be suspended, revoked, or denied if the test is administered and the test indicates the alcohol concentration of the person's breath or blood is 0.08 or more, in the case of a person age twenty-one or over, or in violation of RCW 46.61.502, 46.61.503, or 46.61.504 in the case of a person under age twenty-one; and

(c) His or her refusal to take the test may be used in a criminal trial.

(3) Except as provided in this section, the test administered shall be of the breath only. If an individual is unconscious or is under arrest for the crime of vehicular homicide as provided in RCW 46.61.520 or vehicular assault as provided in RCW 46.61.522, or if an individual is under arrest for the crime of driving while under the influence of intoxicating liquor or drugs as provided in RCW 46.61.502, which arrest results from an accident in which there has been serious bodily injury to another person, a breath or blood test may be administered without the consent of the individual so arrested.

(4) Any person who is dead, unconscious, or who is otherwise in a condition rendering him or her incapable of refusal, shall be deemed not to have withdrawn the consent provided by subsection (1) of this section and the test or tests may be administered, subject to the provisions of RCW 46.61.506, and the person shall be deemed to have received the warnings required under subsection (2) of this section.

(5) If, following his or her arrest and receipt of warnings under subsection (2) of this section, the person arrested refuses upon the request of a law

enforcement officer to submit to a test or tests of his or her breath or blood, no test shall be given except as authorized under subsection (3) or (4) of this section.

(6) If, after arrest and after the other applicable conditions and requirements of this section have been satisfied, a test or tests of the person's blood or breath is administered and the test results indicate that the alcohol concentration of the person's breath or blood is 0.08 or more if the person is age twenty-one or over, or is in violation of RCW 46.61.502, 46.61.503, or 46.61.504 if the person is under the age of twenty-one, or the person refuses to submit to a test, the arresting officer or other law enforcement officer at whose direction any test has been given, or the department, where applicable, if the arrest results in a test of the person's blood, shall:

(a) Serve notice in writing on the person on behalf of the department of its intention to suspend, revoke, or deny the person's license, permit, or privilege to drive as required by subsection (7) of this section;

(b) Serve notice in writing on the person on behalf of the department of his or her right to a hearing, specifying the steps he or she must take to obtain a hearing as provided by subsection (8) of this section;

(c) Mark the person's Washington state driver's license or permit to drive, if any, in a manner authorized by the department;

(d) Serve notice in writing that the marked license or permit, if any, is a temporary license that is valid for sixty days from the date of arrest or from the date notice has been given in the event notice is given by the department following a blood test, or until the suspension, revocation, or denial of the person's license, permit, or privilege to drive is sustained at a hearing pursuant to subsection (8) of this section, whichever occurs first. No temporary license is valid to any greater degree than the license or permit that it replaces; and

(e) Immediately notify the department of the arrest and transmit to the department within seventy-two hours, except as delayed as the result of a blood test, a sworn report or report under a declaration authorized by RCW 9A.72.085 that states:

(i) That the officer had reasonable grounds to believe the arrested person had been driving or was in actual physical control of a motor vehicle within this state while under the influence of intoxicating liquor or drugs, or both, or was under the age of twenty-one years and had been driving or was in actual physical control of a motor vehicle while having an alcohol concentration in violation of RCW 46.61.503;

(ii) That after receipt of the warnings required by subsection (2) of this section the person refused to submit to a test of his or her blood or breath, or a test was administered and the results indicated that the alcohol concentration of the person's breath or blood was 0.08 or more if the person is age twenty-one or over, or was in violation of RCW 46.61.502, 46.61.503, or 46.61.504 if the person is under the age of twenty-one; and

(iii) Any other information that the director may require by rule.

(7) The department of licensing, upon the receipt of a sworn report or report under a declaration authorized by RCW 9A.72.085 under subsection (6)(e) of this section, shall suspend, revoke, or deny the person's license, permit, or privilege to drive or any nonresident operating privilege, as provided in RCW 46.20.3101, such suspension, revocation, or denial to be effective beginning

sixty days from the date of arrest or from the date notice has been given in the event notice is given by the department following a blood test, or when sustained at a hearing pursuant to subsection (8) of this section, whichever occurs first.

(8) A person receiving notification under subsection (6)(b) of this section may, within thirty days after the notice has been given, request in writing a formal hearing before the department. The person shall pay a fee of one hundred dollars as part of the request. If the request is mailed, it must be postmarked within thirty days after receipt of the notification. Upon timely receipt of such a request for a formal hearing, including receipt of the required one hundred dollar fee, the department shall afford the person an opportunity for a hearing. The department may waive the required one hundred dollar fee if the person is an indigent as defined in RCW 10.101.010. Except as otherwise provided in this section, the hearing is subject to and shall be scheduled and conducted in accordance with RCW 46.20.329 and 46.20.332. The hearing shall be conducted in the county of the arrest, except that all or part of the hearing may, at the discretion of the department, be conducted by telephone or other electronic means. The hearing shall be held within sixty days following the arrest or following the date notice has been given in the event notice is given by the department following a blood test, unless otherwise agreed to by the department and the person, in which case the action by the department shall be stayed, and any valid temporary license marked under subsection (6)(c) of this section extended, if the person is otherwise eligible for licensing. For the purposes of this section, the scope of the hearing shall cover the issues of whether a law enforcement officer had reasonable grounds to believe the person had been driving or was in actual physical control of a motor vehicle within this state while under the influence of intoxicating liquor or any drug or had been driving or was in actual physical control of a motor vehicle within this state while having alcohol in his or her system in a concentration in violation of RCW 46.61.503 and was under the age of twenty-one, whether the person was placed under arrest, and (a) whether the person refused to submit to the test or tests upon request of the officer after having been informed that such refusal would result in the revocation of the person's license, permit, or privilege to drive, or (b) if a test or tests were administered, whether the applicable requirements of this section were satisfied before the administration of the test or tests, whether the person submitted to the test or tests, or whether a test was administered without express consent as permitted under this section, and whether the test or tests indicated that the alcohol concentration of the person's breath or blood was 0.08 or more if the person was age twenty-one or over at the time of the arrest, or was in violation of RCW 46.61.502, 46.61.503, or 46.61.504 if the person was under the age of twenty-one at the time of the arrest. The sworn report or report under a declaration authorized by RCW 9A.72.085 submitted by a law enforcement officer is prima facie evidence that the officer had reasonable grounds to believe the person had been driving or was in actual physical control of a motor vehicle within this state while under the influence of intoxicating liquor or drugs, or both, or the person had been driving or was in actual physical control of a motor vehicle within this state while having alcohol in his or her system in a concentration in violation of RCW 46.61.503 and was under the age of twenty-one and that the officer complied with the requirements of this section.

A hearing officer shall conduct the hearing, may issue subpoenas for the attendance of witnesses and the production of documents, and shall administer oaths to witnesses. The hearing officer shall not issue a subpoena for the attendance of a witness at the request of the person unless the request is accompanied by the fee required by RCW 5.56.010 for a witness in district court. The sworn report or report under a declaration authorized by RCW 9A.72.085 of the law enforcement officer and any other evidence accompanying the report shall be admissible without further evidentiary foundation and the certifications authorized by the criminal rules for courts of limited jurisdiction shall be admissible without further evidentiary foundation. The person may be represented by counsel, may question witnesses, may present evidence, and may testify. The department shall order that the suspension, revocation, or denial either be rescinded or sustained.

(9) If the suspension, revocation, or denial is sustained after such a hearing, the person whose license, privilege, or permit is suspended, revoked, or denied has the right to file a petition in the superior court of the county of arrest to review the final order of revocation by the department in the same manner as an appeal from a decision of a court of limited jurisdiction. Notice of appeal must be filed within thirty days after the date the final order is served or the right to appeal is waived. Notwithstanding RCW 46.20.334, RALJ 1.1, or other statutes or rules referencing de novo review, the appeal shall be limited to a review of the record of the administrative hearing. The appellant must pay the costs associated with obtaining the record of the hearing before the hearing officer. The filing of the appeal does not stay the effective date of the suspension, revocation, or denial. A petition filed under this subsection must include the petitioner's grounds for requesting review. Upon granting petitioner's request for review, the court shall review the department's final order of suspension, revocation, or denial as expeditiously as possible. The review must be limited to a determination of whether the department has committed any errors of law. The superior court shall accept those factual determinations supported by substantial evidence in the record: (a) That were expressly made by the department; or (b) that may reasonably be inferred from the final order of the department. The superior court may reverse, affirm, or modify the decision of the department or remand the case back to the department for further proceedings. The decision of the superior court must be in writing and filed in the clerk's office with the other papers in the case. The court shall state the reasons for the decision. If judicial relief is sought for a stay or other temporary remedy from the department's action, the court shall not grant such relief unless the court finds that the appellant is likely to prevail in the appeal and that without a stay the appellant will suffer irreparable injury. If the court stays the suspension, revocation, or denial it may impose conditions on such stay.

(10)(a) If a person whose driver's license, permit, or privilege to drive has been or will be suspended, revoked, or denied under subsection (7) of this section, other than as a result of a breath or blood test refusal, and who has not committed an offense for which he or she was granted a deferred prosecution under chapter 10.05 RCW, petitions a court for a deferred prosecution on criminal charges arising out of the arrest for which action has been or will be taken under subsection (7) of this section, the court may direct the department to stay any actual or proposed suspension, revocation, or denial for at least forty-

five days but not more than ninety days. If the court stays the suspension, revocation, or denial, it may impose conditions on such stay. If the person is otherwise eligible for licensing, the department shall issue a temporary license, or extend any valid temporary license marked under subsection (6) of this section, for the period of the stay. If a deferred prosecution treatment plan is not recommended in the report made under RCW 10.05.050, or if treatment is rejected by the court, or if the person declines to accept an offered treatment plan, or if the person violates any condition imposed by the court, then the court shall immediately direct the department to cancel the stay and any temporary marked license or extension of a temporary license issued under this subsection.

(b) A suspension, revocation, or denial imposed under this section, other than as a result of a breath or blood test refusal, shall be stayed if the person is accepted for deferred prosecution as provided in chapter 10.05 RCW for the incident upon which the suspension, revocation, or denial is based. If the deferred prosecution is terminated, the stay shall be lifted and the suspension, revocation, or denial reinstated. If the deferred prosecution is completed, the stay shall be lifted and the suspension, revocation, or denial canceled.

(c) The provisions of (b) of this subsection relating to a stay of a suspension, revocation, or denial and the cancellation of any suspension, revocation, or denial do not apply to the suspension, revocation, denial, or disqualification of a person's commercial driver's license or privilege to operate a commercial motor vehicle.

(11) When it has been finally determined under the procedures of this section that a nonresident's privilege to operate a motor vehicle in this state has been suspended, revoked, or denied, the department shall give information in writing of the action taken to the motor vehicle administrator of the state of the person's residence and of any state in which he or she has a license.

Sec. 2. RCW 46.25.010 and 1996 c 30 s 1 are each amended to read as follows:

The definitions set forth in this section apply throughout this chapter.

(1) "Alcohol" means any substance containing any form of alcohol, including but not limited to ethanol, methanol, propanol, and isopropanol.

(2) "Alcohol concentration" means:

(a) The number of grams of alcohol per one hundred milliliters of blood; or

(b) The number of grams of alcohol per two hundred ten liters of breath.

(3) "Commercial driver's license" (CDL) means a license issued in accordance with the requirements of this chapter to an individual that authorizes the individual to drive a class of commercial motor vehicle.

(4) The "commercial driver's license information system" (CDLIS) is the information system established pursuant to the CMVSA to serve as a clearinghouse for locating information related to the licensing and identification of commercial motor vehicle drivers.

(5) "Commercial driver's instruction permit" means a permit issued under RCW 46.25.060(~~(4)~~) (5).

(6) "Commercial motor vehicle" means a motor vehicle designed or used to transport passengers or property:

(a) If the vehicle has a gross vehicle weight rating of 26,001 or more pounds;

(b) If the vehicle is designed to transport sixteen or more passengers, including the driver;

(c) If the vehicle is transporting hazardous materials (~~and is required to be identified by a placard in accordance with 49 C.F.R. part 172, subpart F~~) as defined in this section; or

(d) If the vehicle is a school bus (~~as defined in RCW 46.04.524~~) regardless of weight or size.

(7) "Conviction" has the definition set forth in RCW 46.20.270.

(8) "Disqualification" means a prohibition against driving a commercial motor vehicle.

(9) "Drive" means to drive, operate, or be in physical control of a motor vehicle in any place open to the general public for purposes of vehicular traffic. For purposes of RCW 46.25.100, 46.25.110, and 46.25.120, "drive" includes operation or physical control of a motor vehicle anywhere in the state.

(10) "Drugs" are those substances as defined by RCW 69.04.009.

(11) "Employer" means any person, including the United States, a state, or a political subdivision of a state, who owns or leases a commercial motor vehicle, or assigns a person to drive a commercial motor vehicle.

(12) "Gross vehicle weight rating" (GVWR) means the value specified by the manufacturer as the maximum loaded weight of a single or a combination or articulated vehicle, or the registered gross weight, where this value cannot be determined. The GVWR of a combination or articulated vehicle, commonly referred to as the "gross combined weight rating" or GCWR, is the GVWR of the power unit plus the GVWR of the towed unit or units.

(13) "Hazardous materials" (~~has the same meaning found in Section 103 of the Hazardous Materials Transportation Act (49 App. U.S.C. 1801 et seq.)~~) means any material that has been designated as hazardous under 49 U.S.C. Sec. 5103 and is required to be placarded under subpart F of 49 C.F.R. part 172 or any quantity of a material listed as a select agent or toxin in 42 C.F.R. part 73.

(14) "Motor vehicle" means a vehicle, machine, tractor, trailer, or semitrailer propelled or drawn by mechanical power used on highways, or any other vehicle required to be registered under the laws of this state, but does not include a vehicle, machine, tractor, trailer, or semitrailer operated exclusively on a rail.

(15) "Out-of-service order" means a temporary prohibition against driving a commercial motor vehicle.

(16) "School bus" means a commercial motor vehicle used to transport preprimary, primary, or secondary school students from home to school, from school to home, or to and from school-sponsored events. School bus does not include a bus used as a common carrier.

(17) "Serious traffic violation" means:

(a) Excessive speeding, defined as fifteen miles per hour or more in excess of the posted limit;

(b) Reckless driving, as defined under state or local law;

(c) A violation of a state or local law relating to motor vehicle traffic control, other than a parking violation, arising in connection with an accident or collision resulting in death to any person; (~~and~~)

(d) Driving a commercial motor vehicle without obtaining a commercial driver's license;

(e) Driving a commercial motor vehicle without a commercial driver's license in the driver's possession; however, any individual who provides proof to the court by the date the individual must appear in court or pay any fine for such a violation, that the individual held a valid CDL on the date the citation was issued, is not guilty of a "serious traffic offense";

(f) Driving a commercial motor vehicle without the proper class of commercial driver's license endorsement or endorsements for the specific vehicle group being operated or for the passenger or type of cargo being transported; and

(g) Any other violation of a state or local law relating to motor vehicle traffic control, other than a parking violation, that the department determines by rule to be serious.

~~((+7))~~ (18) "State" means a state of the United States and the District of Columbia.

~~((+8))~~ (19) "Tank vehicle" means a vehicle that is designed to transport a liquid or gaseous material within a tank that is either permanently or temporarily attached to the vehicle or the chassis. Tank vehicles include, but are not limited to cargo tanks and portable tanks. However, this definition does not include portable tanks having a rated capacity under one thousand gallons.

~~((+9))~~ (20) "United States" means the fifty states and the District of Columbia.

Sec. 3. RCW 46.25.060 and 2002 c 352 s 18 are each amended to read as follows:

(1)(a) No person may be issued a commercial driver's license unless that person is a resident of this state and has passed a knowledge and skills test for driving a commercial motor vehicle that complies with minimum federal standards established by federal regulation enumerated in 49 C.F.R. part 383, subparts G and H, and has satisfied all other requirements of the CMVSA in addition to other requirements imposed by state law or federal regulation. The tests must be prescribed and conducted by the department. In addition to the fee charged for issuance or renewal of any license, the applicant shall pay a fee of no more than ten dollars for each classified knowledge examination, classified endorsement knowledge examination, or any combination of classified license and endorsement knowledge examinations. The applicant shall pay a fee of no more than fifty dollars for each classified skill examination or combination of classified skill examinations conducted by the department.

(b) The department may authorize a person, including an agency of this or another state, an employer, a private driver training facility, or other private institution, or a department, agency, or instrumentality of local government, to administer the skills test specified by this section under the following conditions:

(i) The test is the same which would otherwise be administered by the state;

(ii) The third party has entered into an agreement with the state that complies with the requirements of 49 C.F.R. part 383.75; and

(iii) The director has adopted rules as to the third party testing program and the development and justification for fees charged by any third party.

(2) The department shall work with the office of the superintendent of public instruction to develop modified P1 and P2 skill examinations that also include the skill examination components required to obtain an "S" endorsement. In no event may a new applicant for an "S" endorsement be

required to take two separate examinations to obtain an "S" endorsement and either a P1 or P2 endorsement, unless that applicant is upgrading his or her existing commercial driver's license to include an "S" endorsement. The combined P1/S or P2/S skill examination must be offered to the applicant at the same cost as a regular P1 or P2 skill examination.

(3) The department may waive the skills test specified in this section for a commercial driver's license applicant who meets the requirements of 49 C.F.R. part 383.77.

~~((3))~~ (4) A commercial driver's license or commercial driver's instruction permit may not be issued to a person while the person is subject to a disqualification from driving a commercial motor vehicle, or while the person's driver's license is suspended, revoked, or canceled in any state, nor may a commercial driver's license be issued to a person who has a commercial driver's license issued by any other state unless the person first surrenders all such licenses, which must be returned to the issuing state for cancellation.

~~((4))~~ (5)(a) The department may issue a commercial driver's instruction permit ((may be issued)) to an ((individual)) applicant who is at least eighteen years of age and holds a valid ((automobile or classified)) Washington state driver's license and who has submitted a proper application, passed the general knowledge examination required for issuance of a commercial driver's license under subsection (1) of this section, and paid the appropriate fee for the knowledge examination and an application fee of ten dollars.

(b) A commercial driver's instruction permit may not be issued for a period to exceed six months. Only one renewal or reissuance may be granted within a two-year period.

(c) The holder of a commercial driver's instruction permit may drive a commercial motor vehicle on a highway only when accompanied by the holder of a commercial driver's license valid for the type of vehicle driven who occupies a seat beside the individual for the purpose of giving instruction in driving the commercial motor vehicle. ~~((An application for a commercial driver's instruction permit shall be accompanied by a fee of ten dollars.))~~ The holder of a commercial driver's instruction permit is not authorized to operate a commercial motor vehicle transporting hazardous materials.

(d) The department shall ~~((forthwith))~~ transmit the fees collected for commercial driver's instruction permits to the state treasurer.

Sec. 4. RCW 46.25.070 and 2003 c 195 s 2 are each amended to read as follows:

(1) The application for a commercial driver's license or commercial driver's instruction permit must include the following:

- (a) The full name and current mailing and residential address of the person;
- (b) A physical description of the person, including sex, height, weight, and eye color;
- (c) Date of birth;
- (d) The applicant's Social Security number;
- (e) The person's signature;
- (f) Certifications including those required by 49 C.F.R. part 383.71(a);
- (g) The names of all states where the applicant has previously been licensed to drive any type of motor vehicle during the previous ten years;
- (h) Any other information required by the department; and

~~((h))~~ (i) A consent to release driving record information to parties identified in chapter 46.52 RCW and this chapter.

(2) An applicant for a hazardous materials endorsement must submit an application and comply with federal transportation security administration requirements as specified in 49 C.F.R. part 1572, and meet the requirements specified in 49 C.F.R. 383.71(a)(9).

(3) When a licensee changes his or her name, mailing address, or residence address, the person shall notify the department as provided in RCW 46.20.205.

~~((3))~~ (4) No person who has been a resident of this state for thirty days may drive a commercial motor vehicle under the authority of a commercial driver's license issued by another jurisdiction.

Sec. 5. RCW 46.25.080 and 1996 c 30 s 2 are each amended to read as follows:

(1) The commercial driver's license must be marked "commercial driver's license" or "CDL," and must be, to the maximum extent practicable, tamperproof. It must include, but not be limited to, the following information:

- (a) The name and residence address of the person;
- (b) The person's color photograph;
- (c) A physical description of the person including sex, height, weight, and eye color;
- (d) Date of birth;
- (e) The person's Social Security number or any number or identifier deemed appropriate by the department;
- (f) The person's signature;
- (g) The class or type of commercial motor vehicle or vehicles that the person is authorized to drive, together with any endorsements or restrictions;
- (h) The name of the state; and
- (i) The dates between which the license is valid.

(2) Commercial driver's licenses may be issued with the classifications, endorsements, and restrictions set forth in this subsection. The holder of a valid commercial driver's license may drive all vehicles in the class for which that license is issued and all lesser classes of vehicles except motorcycles and vehicles that require an endorsement, unless the proper endorsement appears on the license.

(a) Licenses may be classified as follows:

(i) Class A is a combination of vehicles with a gross combined weight rating (GCWR) of 26,001 pounds or more, if the GVWR of the vehicle or vehicles being towed is in excess of 10,000 pounds.

(ii) Class B is a single vehicle with a GVWR of 26,001 pounds or more, and any such vehicle towing a vehicle not in excess of 10,000 pounds.

(iii) Class C is a single vehicle with a GVWR of less than 26,001 pounds or any such vehicle towing a vehicle with a GVWR not in excess of 10,000 pounds consisting of:

(A) Vehicles designed to transport sixteen or more passengers, including the driver; or

(B) Vehicles used in the transportation of hazardous materials ~~((that requires the vehicle to be identified with a placard under 49 C.F.R., part 172, subpart F)).~~

(b) The following endorsements and restrictions may be placed on a license:

(i) "H" authorizes the driver to drive a vehicle transporting hazardous materials.

(ii) "K" restricts the driver to vehicles not equipped with air brakes.

(iii) "T" authorizes driving double and triple trailers.

(iv) "P1" authorizes driving all vehicles, other than school buses, carrying passengers.

(v) "P2" authorizes driving vehicles with a GVWR of less than 26,001 pounds, other than school buses, carrying sixteen or more passengers, including the driver.

(vi) "N" authorizes driving tank vehicles.

(vii) "X" represents a combination of hazardous materials and tank vehicle endorsements.

(viii) "S" authorizes driving school buses.

The license may be issued with additional endorsements and restrictions as established by rule of the director.

(3) All school bus drivers must have either a "P1" or "P2" endorsement depending on the GVWR of the school bus being driven.

(4) Before issuing a commercial driver's license, the department shall obtain driving record information:

(a) Through the commercial driver's license information system((:));

(b) Through the national driver register((, and));

(c) From the current state of record; and

(d) From all states where the applicant was previously licensed over the last ten years to drive any type of motor vehicle.

A check under (d) of this subsection need be done only once, either at the time of application for a new commercial driver's license, or upon application for a renewal of a commercial driver's license for the first time after the effective date of this section, provided a notation is made on the driver's record confirming that the driving record check has been made and noting the date it was completed.

(5) Within ten days after issuing a commercial driver's license, the department must notify the commercial driver's license information system of that fact, and provide all information required to ensure identification of the person.

(6) A commercial driver's license shall expire in the same manner as provided in RCW 46.20.181.

(7) When applying for renewal of a commercial driver's license, the applicant shall complete the application form required by RCW 46.25.070(1), providing updated information and required certifications. If the applicant wishes to retain a hazardous materials endorsement, the applicant shall take and pass the written test for a hazardous materials endorsement.

NEW SECTION. Sec. 6. A new section is added to chapter 46.25 RCW to read as follows:

(1) The department may not issue, renew, upgrade, or transfer a hazardous materials endorsement for a commercial driver's license to any individual authorizing that individual to operate a commercial motor vehicle transporting a hazardous material in commerce unless the federal transportation security administration has determined that the individual does not pose a security risk warranting denial of the endorsement.

(2) An individual who is prohibited from holding a commercial driver's license with a hazardous materials endorsement under 49 C.F.R. 1572.5 must surrender any hazardous materials endorsement in his or her possession to the department.

(3) The department may adopt such rules as may be necessary to comply with the provisions of 49 C.F.R. part 1572.

Sec. 7. RCW 46.25.090 and 2002 c 272 s 3 and 2002 c 193 s 1 are each reenacted and amended to read as follows:

(1) A person is disqualified from driving a commercial motor vehicle for a period of not less than one year if a report has been received by the department pursuant to RCW 46.25.120, or if the person has been convicted of a first violation, within this or any other jurisdiction, of:

(a) Driving a (~~commercial~~) motor vehicle under the influence of alcohol or any drug;

(b) Driving a commercial motor vehicle while the alcohol concentration in the person's system is 0.04 or more as determined by any testing methods approved by law in this state or any other state or jurisdiction;

(c) Leaving the scene of an accident involving a (~~commercial~~) motor vehicle driven by the person;

(d) Using a (~~commercial~~) motor vehicle in the commission of a felony;

(e) Refusing to submit to a test to determine the driver's alcohol concentration while driving a motor vehicle;

(f) Driving a commercial motor vehicle when, as a result of prior violations committed while operating a commercial motor vehicle, the driver's commercial driver's license is revoked, suspended, or canceled, or the driver is disqualified from operating a commercial motor vehicle;

(g) Causing a fatality through the negligent operation of a commercial motor vehicle, including but not limited to the crimes of vehicular homicide and negligent homicide.

If any of the violations set forth in this subsection occurred while transporting (~~(a)~~ hazardous material (~~required to be identified by a placard~~)), the person is disqualified for a period of not less than three years.

(2) A person is disqualified for life if it has been determined that the person has committed or has been convicted of two or more violations of any of the offenses specified in subsection (1) of this section, or any combination of those offenses, arising from two or more separate incidents. (~~Only offenses committed after October 1, 1989, may be considered in applying this subsection.~~)

(3) The department may adopt rules, in accordance with federal regulations, establishing guidelines, including conditions, under which a disqualification for life under subsection (2) of this section may be reduced to a period of not less than ten years.

(4) A person is disqualified from driving a commercial motor vehicle for life who uses a (~~commercial~~) motor vehicle in the commission of a felony involving the manufacture, distribution, or dispensing of a controlled substance, as defined by chapter 69.50 RCW, or possession with intent to manufacture, distribute, or dispense a controlled substance, as defined by chapter 69.50 RCW.

(5) A person is disqualified from driving a commercial motor vehicle for a period of:

(a) Not less than sixty days if:

(i) Convicted of or found to have committed ~~((two))~~ a second serious traffic ~~((violations,))~~ violation while driving a commercial motor vehicle; or

(ii) Convicted of reckless driving, where there has been a prior serious traffic violation; or

(b) Not less than one hundred twenty days if:

(i) Convicted of or found to have committed ~~((three))~~ a third or subsequent serious traffic ~~((violations, committed in))~~ violation while driving a commercial motor vehicle ~~((arising from separate incidents occurring within a three-year period)); or~~

(ii) Convicted of reckless driving, where there has been two or more prior serious traffic violations.

For purposes of determining prior serious traffic violations under this subsection, each conviction of or finding that a driver has committed a serious traffic violation while driving a commercial motor vehicle or noncommercial motor vehicle, arising from a separate incident occurring within a three-year period, must be counted.

(6) A person is disqualified from driving a commercial motor vehicle for a period of:

(a) Not less than ninety days nor more than one year if convicted of or found to have committed a first violation of an out-of-service order while driving a commercial vehicle;

(b) Not less than one year nor more than five years if, during a ten-year period, the person is convicted of or is found to have committed two violations of out-of-service orders while driving a commercial vehicle in separate incidents;

(c) Not less than three years nor more than five years if, during a ten-year period, the person is convicted of or is found to have committed three or more violations of out-of-service orders while driving commercial vehicles in separate incidents;

(d) Not less than one hundred eighty days nor more than two years if the person is convicted of or is found to have committed a first violation of an out-of-service order while transporting hazardous materials ~~((required to be placarded under the Hazardous Materials Transportation Act (46 U.S.C. Sec. 1801-1813)))~~, or while operating motor vehicles designed to transport sixteen or more passengers, including the driver. A person is disqualified for a period of not less than three years nor more than five years if, during a ten-year period, the person is convicted of or is found to have committed subsequent violations of out-of-service orders, in separate incidents, while transporting hazardous materials ~~((required to be placarded under the Hazardous Materials Transportation Act))~~, or while operating motor vehicles designed to transport sixteen or more passengers, including the driver.

(7) A person is disqualified from driving a commercial motor vehicle if a report has been received by the department under RCW 46.25.125 that the person has received a confirmed positive drug or alcohol test either as part of the testing program required by 49 C.F.R. 382 or 49 C.F.R. 40 or as part of a preemployment drug test. A disqualification under this subsection remains in effect until the person undergoes a drug and alcohol assessment by an agency certified by the department of social and health services and, if the person is

classified as an alcoholic, drug addict, alcohol abuser, or drug abuser, until the person presents evidence of satisfactory participation in or successful completion of a drug or alcohol treatment program that has been certified by the department of social and health services under chapter 70.96A RCW and until the person has met the requirements of RCW 46.25.100. The agency making a drug and alcohol assessment under this section shall forward a diagnostic evaluation and treatment recommendation to the department of licensing for use in determining the person's eligibility for driving a commercial motor vehicle. Persons who are disqualified under this subsection more than twice in a five-year period are disqualified for life.

(8)(a) A person is disqualified from driving a commercial motor vehicle for the period of time specified in (b) of this subsection if he or she is convicted of or is found to have committed one of the following six offenses at a railroad-highway grade crossing while operating a commercial motor vehicle in violation of a federal, state, or local law or regulation:

- (i) For drivers who are not required to always stop, failing to slow down and check that the tracks are clear of an approaching train;
- (ii) For drivers who are not required to always stop, failing to stop before reaching the crossing, if the tracks are not clear;
- (iii) For drivers who are always required to stop, failing to stop before driving onto the crossing;
- (iv) For all drivers, failing to have sufficient space to drive completely through the crossing without stopping;
- (v) For all drivers, failing to obey a traffic control device or the directions of an enforcement officer at the crossing;
- (vi) For all drivers, failing to negotiate a crossing because of insufficient undercarriage clearance.

(b) A person is disqualified from driving a commercial motor vehicle for a period of:

- (i) Not less than sixty days if the driver is convicted of or is found to have committed a first violation of a railroad-highway grade crossing violation;
- (ii) Not less than one hundred twenty days if the driver is convicted of or is found to have committed a second railroad-highway grade crossing violation in separate incidents within a three-year period;
- (iii) Not less than one year if the driver is convicted of or is found to have committed a third or subsequent railroad-highway grade crossing violation in separate incidents within a three-year period.

(9) A person is disqualified from driving a commercial motor vehicle for not more than one year if a report has been received by the department from the federal motor carrier safety administration that the person's driving has been determined to constitute an imminent hazard as defined by 49 C.F.R. 383.5.

(10) Within ten days after suspending, revoking, or canceling a commercial driver's license or disqualifying a driver from operating a commercial motor vehicle, the department shall update its records to reflect that action. ((After suspending, revoking, or canceling a nonresident commercial driver's privileges, the department shall notify the licensing authority of the state that issued the commercial driver's license.))

Sec. 8. RCW 46.25.130 and 1989 c 178 s 15 are each amended to read as follows:

(1) Within ten days after receiving a report of the conviction of or finding that a traffic infraction has been committed by any nonresident holder of a commercial driver's license, or any nonresident operating a commercial motor vehicle, for any violation of state law or local ordinance relating to motor vehicle traffic control, other than parking violations, ((committed in a commercial motor vehicle;)) the department shall notify the driver licensing authority in the licensing state of the conviction.

(2)(a) No later than ten days after disqualifying any nonresident holder of a commercial driver's license from operating a commercial motor vehicle, or revoking, suspending, or canceling the nonresident driving privileges of the nonresident holder of a commercial driver's license for at least sixty days, the department must notify the state that issued the license of the disqualification, revocation, suspension, or cancellation.

(b) The notification must include both the disqualification and the violation that resulted in the disqualification, revocation, suspension, or cancellation. The notification and the information it provides must be recorded on the driver's record.

Sec. 9. RCW 46.25.160 and 1989 c 178 s 18 are each amended to read as follows:

Notwithstanding any law to the contrary, a person may drive a commercial motor vehicle if the person has a commercial driver's license or commercial driver's instruction permit issued by any state or jurisdiction in accordance with the minimum federal standards for the issuance of commercial motor vehicle driver's licenses or permits, if the person's license or permit is not suspended, revoked, or canceled, and if the person is not disqualified from driving a commercial motor vehicle or is subject to an out-of-service order.

Sec. 10. RCW 46.63.070 and 2000 c 110 s 1 are each amended to read as follows:

(1) Any person who receives a notice of traffic infraction shall respond to such notice as provided in this section within fifteen days of the date of the notice.

(2) If the person determined to have committed the infraction does not contest the determination the person shall respond by completing the appropriate portion of the notice of infraction and submitting it, either by mail or in person, to the court specified on the notice. A check or money order in the amount of the penalty prescribed for the infraction must be submitted with the response. When a response which does not contest the determination is received, an appropriate order shall be entered in the court's records, and a record of the response and order shall be furnished to the department in accordance with RCW 46.20.270.

(3) If the person determined to have committed the infraction wishes to contest the determination the person shall respond by completing the portion of the notice of infraction requesting a hearing and submitting it, either by mail or in person, to the court specified on the notice. The court shall notify the person in writing of the time, place, and date of the hearing, and that date shall not be sooner than seven days from the date of the notice, except by agreement.

(4) If the person determined to have committed the infraction does not contest the determination but wishes to explain mitigating circumstances surrounding the infraction the person shall respond by completing the portion of

the notice of infraction requesting a hearing for that purpose and submitting it, either by mail or in person, to the court specified on the notice. The court shall notify the person in writing of the time, place, and date of the hearing.

(5)(a) Except as provided in (b) and (c) of this subsection, in hearings conducted pursuant to subsections (3) and (4) of this section, the court may defer findings, or in a hearing to explain mitigating circumstances may defer entry of its order, for up to one year and impose conditions upon the defendant the court deems appropriate. Upon deferring findings, the court may assess costs as the court deems appropriate for administrative processing. If at the end of the deferral period the defendant has met all conditions and has not been determined to have committed another traffic infraction, the court may dismiss the infraction.

(b) A person may not receive more than one deferral within a seven-year period for traffic infractions for moving violations and more than one deferral within a seven-year period for traffic infractions for nonmoving violations.

(c) A person who is the holder of a commercial driver's license may not receive a deferral under this section.

(6) If any person issued a notice of traffic infraction:

(a) Fails to respond to the notice of traffic infraction as provided in subsection (2) of this section; or

(b) Fails to appear at a hearing requested pursuant to subsection (3) or (4) of this section;

the court shall enter an appropriate order assessing the monetary penalty prescribed for the traffic infraction and any other penalty authorized by this chapter and shall notify the department in accordance with RCW 46.20.270, of the failure to respond to the notice of infraction or to appear at a requested hearing.

NEW SECTION. Sec. 11. Sections 1, 5, 7, 8, and 10 of this act take effect July 1, 2005.

Passed by the House February 16, 2004.

Passed by the Senate March 5, 2004.

Approved by the Governor March 26, 2004.

Filed in Office of Secretary of State March 26, 2004.

CHAPTER 188

[Substitute House Bill 2908]

SALVAGED VEHICLES

AN ACT Relating to salvage vehicles; and amending RCW 46.12.030.

Be it enacted by the Legislature of the State of Washington:

Sec. 1. RCW 46.12.030 and 2001 c 125 s 1 are each amended to read as follows:

(1) The application for a certificate of ownership shall be upon a form furnished or approved by the department and shall contain:

((H)) (a) A full description of the vehicle, which shall contain the proper vehicle identification number, the number of miles indicated on the odometer at the time of delivery of the vehicle, and any distinguishing marks of identification;

~~((2))~~ (b) The name and address of the person who is to be the registered owner of the vehicle and, if the vehicle is subject to a security interest, the name and address of the secured party;

~~((3))~~ (c) Such other information as the department may require.

(2) The department may in any instance, in addition to the information required on the application, require additional information and a physical examination of the vehicle or of any class of vehicles, or either.

(3) A physical examination of the vehicle is mandatory if it has been rebuilt after surrender of the certificate of ownership to the department under RCW 46.12.070 due to the vehicle's destruction or declaration as a total loss. The inspection must verify that the vehicle identification number is genuine and agrees with the number shown on the title and registration certificate. The inspection must be made by a member of the Washington state patrol or other person authorized by the department to make such inspections.

(b)(i) A physical examination of the vehicle is mandatory if the vehicle was declared totaled or salvage under the laws of this state, or the vehicle is presented with documents from another state showing the vehicle was totaled or salvage and has not been reissued a valid registration from that state after the declaration of total loss or salvage.

(ii) The inspection must verify that the vehicle identification number is genuine and agrees with the number shown on the original documents supporting the vehicle purchase or ownership.

(iii) A Washington state patrol VIN specialist must ensure that all major component parts used for the reconstruction of a salvage or rebuildable vehicle were obtained legally. Original invoices must be from a vendor that is registered with the department of revenue for the collection of retail sales or use taxes or comparable agency in the jurisdiction where the major component parts were purchased. The invoices must include the name and address of the business, a description of the part or parts sold, the date of sale, and the amount of sale to include all taxes paid unless exempted by the department of revenue or comparable agency in the jurisdiction where the major component parts were purchased. If the parts or components were purchased from a private individual, that bill of sale must be notarized. The bills of sale must include the names and addresses of the sellers and purchasers, a description of the vehicle, the part or parts being sold, including the make, model, year, and identification or serial number, that date of sale, and the purchase price of the vehicle or part or parts. If the presenter is unable to provide an acceptable release of interest or proof of ownership for a vehicle or major component part as described above, an inspection must be completed for ownership-in-doubt purposes as prescribed by WAC 308-56A-210.

(iv) A vehicle presented for inspection must have all damaged major component parts replaced or repaired to meet RCW and WAC requirements before inspection of the salvage vehicle by the Washington state patrol.

(4) Rebuilt or salvage vehicles licensed in Washington must meet the requirements found under chapter 46.37 RCW to be driven upon public roadways.

(5) The application shall be subscribed by the person applying to be the registered owner and be sworn to by that applicant in the manner described by

RCW 9A.72.085. The department shall retain the application in either the original, computer, or photostatic form.

Passed by the House February 12, 2004.

Passed by the Senate March 4, 2004.

Approved by the Governor March 26, 2004.

Filed in Office of Secretary of State March 26, 2004.

CHAPTER 189

[House Bill 2703]

JOINT OPERATING AGENCIES—BID REQUIREMENTS

AN ACT Relating to increasing the minimum amount for bid requirements for materials or work for joint operating agencies; and amending RCW 43.52.560.

Be it enacted by the Legislature of the State of Washington:

Sec. 1. RCW 43.52.560 and 1998 c 245 s 69 are each amended to read as follows:

Except as provided otherwise in this chapter, a joint operating agency shall purchase any item or items of materials, equipment, or supplies, the estimated cost of which is ~~((in excess of five))~~ more than ten thousand dollars exclusive of sales tax, or order work for construction of generating projects and associated facilities, the estimated cost of which is ~~((in excess of))~~ more than ten thousand dollars exclusive of sales tax, by contract in accordance with RCW 54.04.070 and 54.04.080, which require sealed bids for contracts.

Passed by the House February 11, 2004.

Passed by the Senate March 3, 2004.

Approved by the Governor March 26, 2004.

Filed in Office of Secretary of State March 26, 2004.

CHAPTER 190

[House Bill 2615]

INTERLOCAL COOPERATION—CONTRACT NOTICES

AN ACT Relating to modifying the interlocal cooperation act regarding notice requirements for contracting; and amending RCW 39.34.030.

Be it enacted by the Legislature of the State of Washington:

Sec. 1. RCW 39.34.030 and 1992 c 161 s 4 are each amended to read as follows:

(1) Any power or powers, privileges or authority exercised or capable of exercise by a public agency of this state may be exercised and enjoyed jointly with any other public agency of this state having the power or powers, privilege or authority, and jointly with any public agency of any other state or of the United States to the extent that laws of such other state or of the United States permit such joint exercise or enjoyment. Any agency of the state government when acting jointly with any public agency may exercise and enjoy all of the powers, privileges and authority conferred by this chapter upon a public agency.

(2) Any two or more public agencies may enter into agreements with one another for joint or cooperative action pursuant to the provisions of this chapter: PROVIDED, That any such joint or cooperative action by public agencies which

are educational service districts and/or school districts shall comply with the provisions of RCW 28A.320.080. Appropriate action by ordinance, resolution or otherwise pursuant to law of the governing bodies of the participating public agencies shall be necessary before any such agreement may enter into force.

(3) Any such agreement shall specify the following:

(a) Its duration;

(b) The precise organization, composition and nature of any separate legal or administrative entity created thereby together with the powers delegated thereto, provided such entity may be legally created. Such entity may include a nonprofit corporation organized pursuant to chapter 24.03 or 24.06 RCW whose membership is limited solely to the participating public agencies or a partnership organized pursuant to chapter 25.04 RCW whose partners are limited solely to participating public agencies and the funds of any such corporation or partnership shall be subject to audit in the manner provided by law for the auditing of public funds;

(c) Its purpose or purposes;

(d) The manner of financing the joint or cooperative undertaking and of establishing and maintaining a budget therefor;

(e) The permissible method or methods to be employed in accomplishing the partial or complete termination of the agreement and for disposing of property upon such partial or complete termination;

(f) Any other necessary and proper matters.

(4) In the event that the agreement does not establish a separate legal entity to conduct the joint or cooperative undertaking, the agreement shall, in addition to items (a), (c), (d), (e) and (f) enumerated in subdivision (3) hereof, contain the following:

(a) Provision for an administrator or a joint board responsible for administering the joint or cooperative undertaking. In the case of a joint board, public agencies party to the agreement shall be represented;

(b) The manner of acquiring, holding and disposing of real and personal property used in the joint or cooperative undertaking. Any joint board is authorized to establish a special fund with a state, county, city, or district treasurer servicing an involved public agency designated "Operating fund of joint board".

(5) No agreement made pursuant to this chapter (~~shall~~) relieves any public agency of any obligation or responsibility imposed upon it by law except that:

(a) ~~To the extent of actual and timely performance thereof by a joint board or other legal or administrative entity created by an agreement made hereunder, the performance may be offered in satisfaction of the obligation or responsibility; and~~

(b) With respect to one or more public agencies purchasing or otherwise contracting through a bid, proposal, or contract awarded by another public agency or by a group of public agencies, any statutory obligation to provide notice for bids or proposals that applies to the public agencies involved is satisfied if the public agency or group of public agencies that awarded the bid, proposal, or contract complied with its own statutory requirements and either (i) posted the bid or solicitation notice on a web site established and maintained by a public agency, purchasing cooperative, or similar service provider, for

purposes of posting public notice of bid or proposal solicitations, or (ii) provided an access link on the state's web portal to the notice.

(6) Financing of joint projects by agreement shall be as provided by law.

Passed by the House February 11, 2004.

Passed by the Senate March 11, 2004.

Approved by the Governor March 26, 2004.

Filed in Office of Secretary of State March 26, 2004.

CHAPTER 191

[House Bill 2811]

LOCAL GOVERNMENT PROJECT PERMITTING

AN ACT Relating to establishing permit processing timelines and reporting requirements for certain local governments subject to the requirements of RCW 36.70A.215; amending RCW 36.70B.080; and creating a new section.

Be it enacted by the Legislature of the State of Washington:

NEW SECTION. Sec. 1. The legislature finds that the timely issuance of project permit decisions by local governments serves the public interest. When these decisions, that are often responses to land use and building permit applications, are issued according to specific and locally established time periods and without unnecessary or inappropriate delays, the public enjoys greater efficiency, consistency, and predictability in the permitting process.

The legislature also finds that full access to relevant performance data produced annually by local governments for each type of permit application affords elected officials, project proponents, and the general public the opportunity to review and compare the permit application and processing performance of jurisdictions. Furthermore, the legislature finds that the review and comparison of this data, and the requirement to provide convenient and direct internet access to germane and consistent reports, will likely foster improved methods for processing applications, and issuing project permit decisions in a timely manner.

The legislature, therefore, intends to continue and clarify the requirements for certain jurisdictions to produce and provide access to annual permitting performance reports.

Sec. 2. RCW 36.70B.080 and 2001 c 322 s 1 are each amended to read as follows:

(1) Development regulations adopted pursuant to RCW 36.70A.040 ~~((shall))~~ must establish and implement time periods for local government actions ~~((on specific))~~ for each type of project permit application~~((s))~~ and provide timely and predictable procedures to determine whether a completed project permit application meets the requirements of those development regulations. The time periods for local government actions ~~((on specific))~~ for each type of complete project permit application~~((s))~~ or project type~~((s))~~ should not exceed one hundred twenty days, unless the local government makes written findings that a specified amount of additional time is needed ~~((for processing of))~~ to process specific complete project permit applications or project types.

~~((Such))~~ The development regulations ~~((shall))~~ must, for each type of permit application, specify the contents of a completed project permit application

necessary for the ~~((application of such))~~ complete compliance with the time periods and procedures.

(2)(a) Counties subject to the requirements of RCW 36.70A.215 and the cities within those counties that have populations of at least twenty thousand ~~((shall))~~ must, for each type of permit application, identify the ~~((types))~~ total number of project permit applications for which decisions are issued according to the provisions of this chapter. For each type of project permit application identified, these counties and cities ~~((shall))~~ must establish and implement a deadline for issuing a notice of final decision as required by subsection (1) of this section and minimum requirements for applications to be deemed complete under RCW 36.70B.070 as required by subsection (1) of this section.

~~((b))~~ Counties and cities subject to the requirements of this subsection also ~~((shall, through September 1, 2003,))~~ must prepare ~~((at least two))~~ annual performance reports that include, at a minimum, the following information for each type of project permit application identified in accordance with the requirements of (a) of this subsection:

(i) Total number of complete applications received during the year;

(ii) Number of complete applications received during the year for which a notice of final decision was issued before the deadline established under this subsection;

(iii) Number of applications received during the year for which a notice of final decision was issued after the deadline established under this subsection;

(iv) Number of applications received during the year for which an extension of time was mutually agreed upon by the applicant and the county or city; ~~((and))~~

(v) Variance of actual performance, excluding applications for which mutually agreed time extensions have occurred, to the deadline established under this subsection during the year; and

(vi) The mean processing time and the number standard deviation from the mean.

~~((b))~~ ~~((Until July 1, 2003,))~~ (c) Counties and cities subject to the requirements of this subsection ~~((shall))~~ must:

(i) Provide notice of and access to the annual performance reports ~~((required by this subsection))~~ through the county's or city's web site; and

(ii) Post electronic facsimiles of the annual performance reports through the county's or city's web site. Postings on a county's or city's web site indicating that the reports are available by contacting the appropriate county or city department or official do not comply with the requirements of this subsection.

If a county or city subject to the requirements of this subsection does not maintain a web site, notice of the reports ~~((shall))~~ must be given by reasonable methods, including but not limited to those methods specified in RCW 36.70B.110(4).

(3) Nothing in this section prohibits a county or city from extending a deadline for issuing a decision for a specific project permit application for any reasonable period of time mutually agreed upon by the applicant and the local government.

(4) The department of community, trade, and economic development shall work with the counties and cities to review the potential implementation costs of the requirements of subsection (2) of this section. The department, in

cooperation with the local governments, shall prepare a report summarizing the projected costs, together with recommendations for state funding assistance for implementation costs, and provide the report to the governor and appropriate committees of the senate and house of representatives by January 1, 2005.

Passed by the House March 8, 2004.

Passed by the Senate March 3, 2004.

Approved by the Governor March 26, 2004.

Filed in Office of Secretary of State March 26, 2004.

CHAPTER 192

[Engrossed Substitute House Bill 2797]

BASIC HEALTH PLAN ACCESS

AN ACT Relating to providing access to the basic health plan for individuals eligible for the health coverage tax credit under the Trade Act of 2002 (P.L. 107-210); amending RCW 70.47.020, 70.47.030, 70.47.060, 70.47.100, and 48.43.015; and providing an effective date.

Be it enacted by the Legislature of the State of Washington:

Sec. 1. RCW 70.47.020 and 2000 c 79 s 43 are each amended to read as follows:

As used in this chapter:

(1) "Washington basic health plan" or "plan" means the system of enrollment and payment for basic health care services, administered by the plan administrator through participating managed health care systems, created by this chapter.

(2) "Administrator" means the Washington basic health plan administrator, who also holds the position of administrator of the Washington state health care authority.

(3) "Health coverage tax credit program" means the program created by the Trade Act of 2002 (P.L. 107-210) that provides a federal tax credit that subsidizes private health insurance coverage for displaced workers certified to receive certain trade adjustment assistance benefits and for individuals receiving benefits from the pension benefit guaranty corporation.

(4) "Health coverage tax credit eligible enrollee" means individual workers and their qualified family members who lose their jobs due to the effects of international trade and are eligible for certain trade adjustment assistance benefits; or are eligible for benefits under the alternative trade adjustment assistance program; or are people who receive benefits from the pension benefit guaranty corporation and are at least fifty-five years old.

(5) "Managed health care system" means: (a) Any health care organization, including health care providers, insurers, health care service contractors, health maintenance organizations, or any combination thereof, that provides directly or by contract basic health care services, as defined by the administrator and rendered by duly licensed providers, to a defined patient population enrolled in the plan and in the managed health care system; or (b) a self-funded or self-insured method of providing insurance coverage to subsidized enrollees provided under RCW 41.05.140 and subject to the limitations under RCW 70.47.100(7).

((4)) (6) "Subsidized enrollee" means an individual, or an individual plus the individual's spouse or dependent children: (a) Who is not eligible for

medicare; (b) who is not confined or residing in a government-operated institution, unless he or she meets eligibility criteria adopted by the administrator; (c) who resides in an area of the state served by a managed health care system participating in the plan; (d) whose gross family income at the time of enrollment does not exceed two hundred percent of the federal poverty level as adjusted for family size and determined annually by the federal department of health and human services; and (e) who chooses to obtain basic health care coverage from a particular managed health care system in return for periodic payments to the plan. To the extent that state funds are specifically appropriated for this purpose, with a corresponding federal match, "subsidized enrollee" also means an individual, or an individual's spouse or dependent children, who meets the requirements in (a) through (c) and (e) of this subsection and whose gross family income at the time of enrollment is more than two hundred percent, but less than two hundred fifty-one percent, of the federal poverty level as adjusted for family size and determined annually by the federal department of health and human services.

~~((5))~~ (7) "Nonsubsidized enrollee" means an individual, or an individual plus the individual's spouse or dependent children: (a) Who is not eligible for medicare; (b) who is not confined or residing in a government-operated institution, unless he or she meets eligibility criteria adopted by the administrator; (c) who resides in an area of the state served by a managed health care system participating in the plan; (d) who chooses to obtain basic health care coverage from a particular managed health care system; and (e) who pays or on whose behalf is paid the full costs for participation in the plan, without any subsidy from the plan.

~~((6))~~ (8) "Subsidy" means the difference between the amount of periodic payment the administrator makes to a managed health care system on behalf of a subsidized enrollee plus the administrative cost to the plan of providing the plan to that subsidized enrollee, and the amount determined to be the subsidized enrollee's responsibility under RCW 70.47.060(2).

~~((7))~~ (9) "Premium" means a periodic payment, based upon gross family income which an individual, their employer or another financial sponsor makes to the plan as consideration for enrollment in the plan as a subsidized enrollee ~~((or))~~, a nonsubsidized enrollee, or a health coverage tax credit eligible enrollee.

~~((8))~~ (10) "Rate" means the amount, negotiated by the administrator with and paid to a participating managed health care system, that is based upon the enrollment of subsidized ~~((and))~~, nonsubsidized, and health coverage tax credit eligible enrollees in the plan and in that system.

Sec. 2. RCW 70.47.030 and 1995 2nd sp.s. c 18 s 913 are each amended to read as follows:

(1) The basic health plan trust account is hereby established in the state treasury. Any nongeneral fund-state funds collected for this program shall be deposited in the basic health plan trust account and may be expended without further appropriation. Moneys in the account shall be used exclusively for the purposes of this chapter, including payments to participating managed health care systems on behalf of enrollees in the plan and payment of costs of administering the plan.

During the 1995-97 fiscal biennium, the legislature may transfer funds from the basic health plan trust account to the state general fund.

(2) The basic health plan subscription account is created in the custody of the state treasurer. All receipts from amounts due from or on behalf of nonsubsidized enrollees and health coverage tax credit eligible enrollees shall be deposited into the account. Funds in the account shall be used exclusively for the purposes of this chapter, including payments to participating managed health care systems on behalf of nonsubsidized enrollees and health coverage tax credit eligible enrollees in the plan and payment of costs of administering the plan. The account is subject to allotment procedures under chapter 43.88 RCW, but no appropriation is required for expenditures.

(3) The administrator shall take every precaution to see that none of the funds in the separate accounts created in this section or that any premiums paid either by subsidized or nonsubsidized enrollees are commingled in any way, except that the administrator may combine funds designated for administration of the plan into a single administrative account.

Sec. 3. RCW 70.47.060 and 2001 c 196 s 13 are each amended to read as follows:

The administrator has the following powers and duties:

(1) To design and from time to time revise a schedule of covered basic health care services, including physician services, inpatient and outpatient hospital services, prescription drugs and medications, and other services that may be necessary for basic health care. In addition, the administrator may, to the extent that funds are available, offer as basic health plan services chemical dependency services, mental health services and organ transplant services; however, no one service or any combination of these three services shall increase the actuarial value of the basic health plan benefits by more than five percent excluding inflation, as determined by the office of financial management. All subsidized and nonsubsidized enrollees in any participating managed health care system under the Washington basic health plan shall be entitled to receive covered basic health care services in return for premium payments to the plan. The schedule of services shall emphasize proven preventive and primary health care and shall include all services necessary for prenatal, postnatal, and well-child care. However, with respect to coverage for subsidized enrollees who are eligible to receive prenatal and postnatal services through the medical assistance program under chapter 74.09 RCW, the administrator shall not contract for such services except to the extent that such services are necessary over not more than a one-month period in order to maintain continuity of care after diagnosis of pregnancy by the managed care provider. The schedule of services shall also include a separate schedule of basic health care services for children, eighteen years of age and younger, for those subsidized or nonsubsidized enrollees who choose to secure basic coverage through the plan only for their dependent children. In designing and revising the schedule of services, the administrator shall consider the guidelines for assessing health services under the mandated benefits act of 1984, RCW 48.47.030, and such other factors as the administrator deems appropriate.

(2)(a) To design and implement a structure of periodic premiums due the administrator from subsidized enrollees that is based upon gross family income, giving appropriate consideration to family size and the ages of all family members. The enrollment of children shall not require the enrollment of their parent or parents who are eligible for the plan. The structure of periodic

premiums shall be applied to subsidized enrollees entering the plan as individuals pursuant to subsection ~~((9))~~ (11) of this section and to the share of the cost of the plan due from subsidized enrollees entering the plan as employees pursuant to subsection ~~((10))~~ (12) of this section.

(b) To determine the periodic premiums due the administrator from nonsubsidized enrollees. Premiums due from nonsubsidized enrollees shall be in an amount equal to the cost charged by the managed health care system provider to the state for the plan plus the administrative cost of providing the plan to those enrollees and the premium tax under RCW 48.14.0201.

(c) To determine the periodic premiums due the administrator from health coverage tax credit eligible enrollees. Premiums due from health coverage tax credit eligible enrollees must be in an amount equal to the cost charged by the managed health care system provider to the state for the plan, plus the administrative cost of providing the plan to those enrollees and the premium tax under RCW 48.14.0201. The administrator will consider the impact of eligibility determination by the appropriate federal agency designated by the Trade Act of 2002 (P.L. 107-210) as well as the premium collection and remittance activities b the United States internal revenue serviee when determining the administrative cost charged for health coverage tax credit eligible enrollees.

(d) An employer or other financial sponsor may, with the prior approval of the administrator, pay the premium, rate, or any other amount on behalf of a subsidized or nonsubsidized enrollee, by arrangement with the enrollee and through a mechanism acceptable to the administrator. The administrator shall establish a mechanism for receiving premium payments from the United States internal revenue service for health coverage tax credit eligible enrollees.

~~((d))~~ (e) To develop, as an offering by every health carrier providing coverage identical to the basic health plan, as configured on January 1, 2001, a basic health plan model plan with uniformity in enrollee cost-sharing requirements.

(3) To evaluate, with the cooperation of participating managed health care system providers, the impact on the basic health plan of enrolling health coverage tax credit eligible enrollees. The administrator shall issue to the appropriate committees of the legislature preliminary evaluations on June 1, 2005, and January 1, 2006, and a final evaluation by June 1, 2006. The evaluation shall address the number of persons enrolled, the duration of their enrollment, their utilization of covered services relative to other basic health plan enrollees, and the extent to which their enrollment contributed to any change in the cost of the basic health plan.

(4) To end the participation of health coverage tax credit eligible enrollees in the basic health plan if the federal government reduces or terminates premium payments on their behalf through the United States internal revenue service.

(5) To design and implement a structure of enrollee cost-sharing due a managed health care system from subsidized ~~(and)~~, nonsubsidized, and health coverage tax credit eligible enrollees. The structure shall discourage inappropriate enrollee utilization of health care services, and may utilize copayments, deductibles, and other cost-sharing mechanisms, but shall not be so costly to enrollees as to constitute a barrier to appropriate utilization of necessary health care services.

~~((4))~~ (6) To limit enrollment of persons who qualify for subsidies so as to prevent an overexpenditure of appropriations for such purposes. Whenever the administrator finds that there is danger of such an overexpenditure, the administrator shall close enrollment until the administrator finds the danger no longer exists. Such a closure does not apply to health coverage tax credit eligible enrollees who receive a premium subsidy from the United States internal revenue service as long as the enrollees qualify for the health coverage tax credit program.

~~((5))~~ (7) To limit the payment of subsidies to subsidized enrollees, as defined in RCW 70.47.020. The level of subsidy provided to persons who qualify may be based on the lowest cost plans, as defined by the administrator.

~~((6))~~ (8) To adopt a schedule for the orderly development of the delivery of services and availability of the plan to residents of the state, subject to the limitations contained in RCW 70.47.080 or any act appropriating funds for the plan.

~~((7))~~ (9) To solicit and accept applications from managed health care systems, as defined in this chapter, for inclusion as eligible basic health care providers under the plan for ~~((either))~~ subsidized enrollees, ~~((or))~~ nonsubsidized enrollees, or ~~((both))~~ health coverage tax credit eligible enrollees. The administrator shall endeavor to assure that covered basic health care services are available to any enrollee of the plan from among a selection of two or more participating managed health care systems. In adopting any rules or procedures applicable to managed health care systems and in its dealings with such systems, the administrator shall consider and make suitable allowance for the need for health care services and the differences in local availability of health care resources, along with other resources, within and among the several areas of the state. Contracts with participating managed health care systems shall ensure that basic health plan enrollees who become eligible for medical assistance may, at their option, continue to receive services from their existing providers within the managed health care system if such providers have entered into provider agreements with the department of social and health services.

~~((8))~~ (10) To receive periodic premiums from or on behalf of subsidized ~~((and))~~, nonsubsidized, and health coverage tax credit eligible enrollees, deposit them in the basic health plan operating account, keep records of enrollee status, and authorize periodic payments to managed health care systems on the basis of the number of enrollees participating in the respective managed health care systems.

~~((9))~~ (11) To accept applications from individuals residing in areas served by the plan, on behalf of themselves and their spouses and dependent children, for enrollment in the Washington basic health plan as subsidized ~~((or))~~, nonsubsidized, or health coverage tax credit eligible enrollees, to establish appropriate minimum-enrollment periods for enrollees as may be necessary, and to determine, upon application and on a reasonable schedule defined by the authority, or at the request of any enrollee, eligibility due to current gross family income for sliding scale premiums. Funds received by a family as part of participation in the adoption support program authorized under RCW 26.33.320 and 74.13.100 through 74.13.145 shall not be counted toward a family's current gross family income for the purposes of this chapter. When an enrollee fails to report income or income changes accurately, the administrator shall have the

authority either to bill the enrollee for the amounts overpaid by the state or to impose civil penalties of up to two hundred percent of the amount of subsidy overpaid due to the enrollee incorrectly reporting income. The administrator shall adopt rules to define the appropriate application of these sanctions and the processes to implement the sanctions provided in this subsection, within available resources. No subsidy may be paid with respect to any enrollee whose current gross family income exceeds twice the federal poverty level or, subject to RCW 70.47.110, who is a recipient of medical assistance or medical care services under chapter 74.09 RCW. If a number of enrollees drop their enrollment for no apparent good cause, the administrator may establish appropriate rules or requirements that are applicable to such individuals before they will be allowed to reenroll in the plan.

~~((40))~~ (12) To accept applications from business owners on behalf of themselves and their employees, spouses, and dependent children, as subsidized or nonsubsidized enrollees, who reside in an area served by the plan. The administrator may require all or the substantial majority of the eligible employees of such businesses to enroll in the plan and establish those procedures necessary to facilitate the orderly enrollment of groups in the plan and into a managed health care system. The administrator may require that a business owner pay at least an amount equal to what the employee pays after the state pays its portion of the subsidized premium cost of the plan on behalf of each employee enrolled in the plan. Enrollment is limited to those not eligible for medicare who wish to enroll in the plan and choose to obtain the basic health care coverage and services from a managed care system participating in the plan. The administrator shall adjust the amount determined to be due on behalf of or from all such enrollees whenever the amount negotiated by the administrator with the participating managed health care system or systems is modified or the administrative cost of providing the plan to such enrollees changes.

~~((44))~~ (13) To determine the rate to be paid to each participating managed health care system in return for the provision of covered basic health care services to enrollees in the system. Although the schedule of covered basic health care services will be the same or actuarially equivalent for similar enrollees, the rates negotiated with participating managed health care systems may vary among the systems. In negotiating rates with participating systems, the administrator shall consider the characteristics of the populations served by the respective systems, economic circumstances of the local area, the need to conserve the resources of the basic health plan trust account, and other factors the administrator finds relevant.

~~((42))~~ (14) To monitor the provision of covered services to enrollees by participating managed health care systems in order to assure enrollee access to good quality basic health care, to require periodic data reports concerning the utilization of health care services rendered to enrollees in order to provide adequate information for evaluation, and to inspect the books and records of participating managed health care systems to assure compliance with the purposes of this chapter. In requiring reports from participating managed health care systems, including data on services rendered enrollees, the administrator shall endeavor to minimize costs, both to the managed health care systems and to the plan. The administrator shall coordinate any such reporting requirements

with other state agencies, such as the insurance commissioner and the department of health, to minimize duplication of effort.

~~((14))~~ (15) To evaluate the effects this chapter has on private employer-based health care coverage and to take appropriate measures consistent with state and federal statutes that will discourage the reduction of such coverage in the state.

~~((14))~~ (16) To develop a program of proven preventive health measures and to integrate it into the plan wherever possible and consistent with this chapter.

~~((15))~~ (17) To provide, consistent with available funding, assistance for rural residents, underserved populations, and persons of color.

~~((16))~~ (18) In consultation with appropriate state and local government agencies, to establish criteria defining eligibility for persons confined or residing in government-operated institutions.

~~((17))~~ (19) To administer the premium discounts provided under RCW 48.41.200(3)(a) (i) and (ii) pursuant to a contract with the Washington state health insurance pool.

Sec. 4. RCW 70.47.100 and 2000 c 79 s 35 are each amended to read as follows:

(1) A managed health care system participating in the plan shall do so by contract with the administrator and shall provide, directly or by contract with other health care providers, covered basic health care services to each enrollee covered by its contract with the administrator as long as payments from the administrator on behalf of the enrollee are current. A participating managed health care system may offer, without additional cost, health care benefits or services not included in the schedule of covered services under the plan. A participating managed health care system shall not give preference in enrollment to enrollees who accept such additional health care benefits or services. Managed health care systems participating in the plan shall not discriminate against any potential or current enrollee based upon health status, sex, race, ethnicity, or religion. The administrator may receive and act upon complaints from enrollees regarding failure to provide covered services or efforts to obtain payment, other than authorized copayments, for covered services directly from enrollees, but nothing in this chapter empowers the administrator to impose any sanctions under Title 18 RCW or any other professional or facility licensing statute.

(2) The plan shall allow, at least annually, an opportunity for enrollees to transfer their enrollments among participating managed health care systems serving their respective areas. The administrator shall establish a period of at least twenty days in a given year when this opportunity is afforded enrollees, and in those areas served by more than one participating managed health care system the administrator shall endeavor to establish a uniform period for such opportunity. The plan shall allow enrollees to transfer their enrollment to another participating managed health care system at any time upon a showing of good cause for the transfer.

(3) Prior to negotiating with any managed health care system, the administrator shall determine, on an actuarially sound basis, the reasonable cost of providing the schedule of basic health care services, expressed in terms of

upper and lower limits, and recognizing variations in the cost of providing the services through the various systems and in different areas of the state.

(4) In negotiating with managed health care systems for participation in the plan, the administrator shall adopt a uniform procedure that includes at least the following:

(a) The administrator shall issue a request for proposals, including standards regarding the quality of services to be provided; financial integrity of the responding systems; and responsiveness to the unmet health care needs of the local communities or populations that may be served;

(b) The administrator shall then review responsive proposals and may negotiate with respondents to the extent necessary to refine any proposals;

(c) The administrator may then select one or more systems to provide the covered services within a local area; and

(d) The administrator may adopt a policy that gives preference to respondents, such as nonprofit community health clinics, that have a history of providing quality health care services to low-income persons.

(5) The administrator may contract with a managed health care system to provide covered basic health care services to ~~((either))~~ subsidized enrollees, ~~((or))~~ nonsubsidized enrollees, health coverage tax credit eligible enrollees, or ~~((both))~~ any combination thereof.

(6) The administrator may establish procedures and policies to further negotiate and contract with managed health care systems following completion of the request for proposal process in subsection (4) of this section, upon a determination by the administrator that it is necessary to provide access, as defined in the request for proposal documents, to covered basic health care services for enrollees.

(7)(a) The administrator shall implement a self-funded or self-insured method of providing insurance coverage to subsidized enrollees, as provided under RCW 41.05.140, if one of the following conditions is met:

(i) The authority determines that no managed health care system other than the authority is willing and able to provide access, as defined in the request for proposal documents, to covered basic health care services for all subsidized enrollees in an area; or

(ii) The authority determines that no other managed health care system is willing to provide access, as defined in the request for proposal documents, for one hundred thirty-three percent of the statewide benchmark price or less, and the authority is able to offer such coverage at a price that is less than the lowest price at which any other managed health care system is willing to provide such access in an area.

(b) The authority shall initiate steps to provide the coverage described in (a) of this subsection within ninety days of making its determination that the conditions for providing a self-funded or self-insured method of providing insurance have been met.

(c) The administrator may not implement a self-funded or self-insured method of providing insurance in an area unless the administrator has received a certification from a member of the American academy of actuaries that the funding available in the basic health plan self-insurance reserve account is sufficient for the self-funded or self-insured risk assumed, or expected to be assumed, by the administrator.

Sec. 5. RCW 48.43.015 and 2001 c 196 s 7 are each amended to read as follows:

(1) For a health benefit plan offered to a group, every health carrier shall reduce any preexisting condition exclusion, limitation, or waiting period in the group health plan in accordance with the provisions of section 2701 of the federal health insurance portability and accountability act of 1996 (42 U.S.C. Sec. 300gg).

(2) For a health benefit plan offered to a group other than a small group:

(a) If the individual applicant's immediately preceding health plan coverage terminated during the period beginning ninety days and ending sixty-four days before the date of application for the new plan and such coverage was similar and continuous for at least three months, then the carrier shall not impose a waiting period for coverage of preexisting conditions under the new health plan.

(b) If the individual applicant's immediately preceding health plan coverage terminated during the period beginning ninety days and ending sixty-four days before the date of application for the new plan and such coverage was similar and continuous for less than three months, then the carrier shall credit the time covered under the immediately preceding health plan toward any preexisting condition waiting period under the new health plan.

(c) For the purposes of this subsection, a preceding health plan includes an employer-provided self-funded health plan, the basic health plan's offering to health coverage tax credit eligible enrollees as established by this act, and plans of the Washington state health insurance pool.

(3) For a health benefit plan offered to a small group:

(a) If the individual applicant's immediately preceding health plan coverage terminated during the period beginning ninety days and ending sixty-four days before the date of application for the new plan and such coverage was similar and continuous for at least nine months, then the carrier shall not impose a waiting period for coverage of preexisting conditions under the new health plan.

(b) If the individual applicant's immediately preceding health plan coverage terminated during the period beginning ninety days and ending sixty-four days before the date of application for the new plan and such coverage was similar and continuous for less than nine months, then the carrier shall credit the time covered under the immediately preceding health plan toward any preexisting condition waiting period under the new health plan.

(c) For the purpose of this subsection, a preceding health plan includes an employer-provided self-funded health plan, the basic health plan's offering to health coverage tax credit eligible enrollees as established by this act, and plans of the Washington state health insurance pool.

(4) For a health benefit plan offered to an individual, other than an individual to whom subsection (5) of this section applies, every health carrier shall credit any preexisting condition waiting period in that plan for a person who was enrolled at any time during the sixty-three day period immediately preceding the date of application for the new health plan in a group health benefit plan or an individual health benefit plan, other than a catastrophic health plan, and (a) the benefits under the previous plan provide equivalent or greater overall benefit coverage than that provided in the health benefit plan the individual seeks to purchase; or (b) the person is seeking an individual health benefit plan due to his or her change of residence from one geographic area in

Washington state to another geographic area in Washington state where his or her current health plan is not offered, if application for coverage is made within ninety days of relocation; or (c) the person is seeking an individual health benefit plan: (i) Because a health care provider with whom he or she has an established care relationship and from whom he or she has received treatment within the past twelve months is no longer part of the carrier's provider network under his or her existing Washington individual health benefit plan; and (ii) his or her health care provider is part of another carrier's provider network; and (iii) application for a health benefit plan under that carrier's provider network individual coverage is made within ninety days of his or her provider leaving the previous carrier's provider network. The carrier must credit the period of coverage the person was continuously covered under the immediately preceding health plan toward the waiting period of the new health plan. For the purposes of this subsection (4), a preceding health plan includes an employer-provided self-funded health plan, the basic health plan's offering to health coverage tax credit eligible enrollees as established by this act, and plans of the Washington state health insurance pool.

(5) Every health carrier shall waive any preexisting condition waiting period in its individual plans for a person who is an eligible individual as defined in section 2741(b) of the federal health insurance portability and accountability act of 1996 (42 U.S.C. Sec. 300gg-41(b)).

(6) Subject to the provisions of subsections (1) through (5) of this section, nothing contained in this section requires a health carrier to amend a health plan to provide new benefits in its existing health plans. In addition, nothing in this section requires a carrier to waive benefit limitations not related to an individual or group's preexisting conditions or health history.

NEW SECTION. Sec. 6. This act takes effect January 1, 2005.

Passed by the House March 11, 2004.

Passed by the Senate March 11, 2004.

Approved by the Governor March 26, 2004.

Filed in Office of Secretary of State March 26, 2004.

CHAPTER 193

[Substitute House Bill 2904]

ESTATE ADJUDICATION NOTICE

AN ACT Relating to estate adjudication for the department of social and health services; and amending RCW 11.28.330 and 11.28.340.

Be it enacted by the Legislature of the State of Washington:

Sec. 1. RCW 11.28.330 and 1974 ex.s. c 117 s 31 are each amended to read as follows:

If no personal representative is appointed to administer the estate of a decedent, the person obtaining the adjudication of testacy, or intestacy and heirship, within thirty days shall ~~((cause written notice of said))~~ personally serve or mail a true copy of the adjudication ~~((to be mailed))~~ to each heir, legatee, and devisee of the decedent, which ~~((notice))~~ copy shall contain the name of the decedent's estate and the probate cause number, and shall:

(1) State the name and address of the applicant;

(2) State that on the day of , ((19. . . .)) , the applicant obtained an order from the superior court of county, state of Washington, adjudicating that the decedent died intestate, or testate, whichever shall be the case;

(3) In the event the decedent died testate, enclose a copy of his will therewith, and state that the adjudication of testacy will become final and conclusive for all legal intents and purposes unless any heir, legatee, or devisee of the decedent shall contest said will within four months after the date the said will was adjudicated to be the last will and testament of the decedent;

(4) In the event that the decedent died intestate, set forth the names and addresses of the heirs of the decedent, their relationship to the decedent, the distributive shares of the estate of the decedent which they are entitled to receive, and that said adjudication of intestacy and heirship shall become final and conclusive for all legal intents and purposes, unless, within four months of the date of said adjudication of intestacy, a petition shall be filed seeking the admission of a will of the decedent for probate, or contesting the adjudication of heirship.

Notices provided for in this section may be served personally or sent by regular mail, and proof of such service or mailing shall be made by an affidavit filed in the cause;

(5) Mail a true copy of the adjudication, including the decedent's social security number and the name and address of the applicant, to the state of Washington department of social and health services office of financial recovery.

Sec. 2. RCW 11.28.340 and 1988 c 29 s 1 are each amended to read as follows:

Unless, within four months after the entry of the order adjudicating testacy or intestacy and heirship, and the mailing or service of the notice required in RCW 11.28.330 any heir, legatee or devisee of the decedent shall offer a later will for probate or contest an adjudication of testacy in the manner provided in this title for will contests, or offer a will of the decedent for probate following an adjudication of intestacy and heirship, or contesting the determination of heirship, an order adjudicating testacy or intestacy and heirship without appointing a personal representative to administer a decedent's estate shall, as to those persons by whom notice was waived or to whom said notice was mailed or on whom served, be deemed the equivalent of the entry of a final decree of distribution in accordance with the provisions of chapter 11.76 RCW for the purpose of:

(1) Establishing the decedent's will as his last will and testament and persons entitled to receive his estate thereunder; or

(2) Establishing the fact that the decedent died intestate, and those persons entitled to receive his estate as his heirs at law.

The right of an heir, legatee, or devisee to receive the assets of a decedent shall, to the extent otherwise provided by this title, be subject to the prior rights of the decedent's creditors and of any persons entitled to a homestead award or award in lieu of homestead or family allowance, and nothing contained in this section shall be deemed to alter or diminish such prior rights, or to prohibit any person for good cause shown, from obtaining the appointment of a personal representative to administer the estate of the decedent after the entry of an order adjudicating testacy or intestacy and heirship. However, if the petition for letters

testamentary or of administration shall be filed more than four months after the date of the adjudication of testacy or of intestacy and heirship, the issuance of such letters shall not affect the finality of said adjudications.

Four months after providing all notices as required in RCW 11.28.330, any person paying, delivering, transferring, or issuing property to the person entitled thereto under an adjudication of testacy or intestacy and heirship that is deemed the equivalent of a final decree of distribution as set forth in this section is discharged and released to the same extent as if such person has dealt with a personal representative of the decedent.

Passed by the House February 16, 2004.

Passed by the Senate March 11, 2004.

Approved by the Governor March 26, 2004.

Filed in Office of Secretary of State March 26, 2004.

CHAPTER 194

[Engrossed Substitute House Bill 2488]

ELECTRONIC PRODUCT MANAGEMENT

AN ACT Relating to electronic product management; creating a new section; and providing an expiration date.

Be it enacted by the Legislature of the State of Washington:

NEW SECTION. Sec. 1. (1) The department of ecology, in consultation with the solid waste advisory committee created under RCW 70.95.040, shall conduct research and develop recommendations for implementing and financing an electronic product collection, recycling, and reuse program. The department and the solid waste advisory committee shall consult with stakeholders including persons who represent covered electronic product manufacturers, covered electronic product retailers, waste haulers, electronics recyclers, charities, cities, counties, environmental organizations, public interest organizations, and other interested parties that have a role or interest in the collection, reuse, and recycling of covered electronic products.

(2) The department shall identify and evaluate existing projects and encourage new pilot projects for covered electronic product collection, recycling, and reuse that allow for new information to be obtained. In evaluating new and existing projects, factors to be considered include:

- (a) Urban versus rural recycling challenges and issues;
- (b) The involvement of covered electronic product manufacturers;
- (c) Different methods of financing the collection, reuse, and recycling programs for covered electronic products;
- (d) The impact of the approach on local governments, nonprofit organizations, waste haulers, and other stakeholders;
- (e) How to address historic and orphan waste; and
- (f) The effect of landfill bans on collection and recovery of covered electronic products.

(3) The department shall also:

- (a) Examine existing programs and infrastructure for reuse and recycling of electronic waste;

(b) Compile information on electronic product manufacturers' covered electronic product collection, recycling, and reuse programs;

(c) Review existing data on the costs to collect, transport, and recycle electronic waste;

(d) Develop possible performance measures to assess the effectiveness of collection, reuse, and recycling of covered electronic products;

(e) Develop a description of what could be accomplished voluntarily and what would require regulation or legislation if needed to implement the recommended statewide collection, recycling, and reuse program for covered electronic products;

(f) Research the potential impacts of recycling or reusing electronic waste on jobs, recycling infrastructure, and economic development;

(g) Evaluate the suitability of lined and unlined facilities for the disposal of covered electronic products;

(h) Explore state financial incentives for developing business opportunities and jobs in the area of covered electronic product recycling and reuse infrastructure;

(i) Develop and assess ways to establish and finance a statewide collection, reuse, and recycling program for covered electronic products;

(j) Work with the federal environmental protection agency, other federal agencies, and interested stakeholders to:

(i) Determine the amount of electronic waste exported from Washington that is subject to reporting under 40 C.F.R. part 262;

(ii) Determine the amount of electronic waste exported from Washington that is not subject to reporting under 40 C.F.R. part 262, including electronic waste from households, small quantity generators, regulated generators, and other sources; and

(iii) Identify methods to determine if exports of electronic waste from Washington are in compliance with national laws in destination countries;

(k) Examine the need for and develop recommendations to address electronic waste collection, reuse, and recycling services, and financing options for charities, school districts, government agencies, and small businesses; and

(l) Give special consideration to costs incurred by charitable organizations receiving unwanted electronic products and possible pilot projects and other waste collection systems that could be developed to address these products and costs related to disposal.

(4) The department shall report its findings and recommendations for implementing and financing an electronic product collection, recycling, and reuse program to the appropriate committees of the legislature by December 15, 2004, and December 15, 2005.

(5) For purposes of this section "covered electronic product" means computer monitors, personal computers, and televisions sold to consumers for personal use, but does not include: (a) An automobile or any cathode ray tube, cathode ray tube device, flat panel screen, personal computer, or other similar video display device that is contained within, and is not separate from, the automobile; or (b) monitoring and control instruments and systems, medical devices and products, including materials intended for use as ingredients in such products, as such terms are defined in the federal food, drug, and cosmetic act (21 U.S.C. Sec. 301 et seq.) or the virus-serum-toxin act of 1913 (21 U.S.C. Sec.

151 et seq.), and regulations issued under those acts, and other equipment used in the delivery of patient care in a health care setting.

(6) This section expires December 31, 2005.

Passed by the House March 10, 2004.

Passed by the Senate March 3, 2004.

Approved by the Governor March 29, 2004.

Filed in Office of Secretary of State March 29, 2004.

CHAPTER 195

[Substitute House Bill 2504]

AQUIFER REGULATION

AN ACT Relating to water policy in regions with regulated reductions in aquifer levels; adding new sections to chapter 89.12 RCW; and adding a new section to chapter 90.44 RCW.

Be it enacted by the Legislature of the State of Washington:

NEW SECTION. Sec. 1. A new section is added to chapter 89.12 RCW to read as follows:

(1) The legislature finds that conserved water from the developed portions of the federal Columbia basin project can provide an immediate source of surface water to offset a limited portion of ground water depletions within the undeveloped portions of the federal project extending the availability of ground water for domestic, municipal, industrial, and agricultural uses. The department of ecology has adopted rules establishing ground water management subareas within the federal Columbia basin project. A primary purpose of some of the rules was to manage ground water depletions that are occurring as a result of the department's decision to allow continued deep well agricultural irrigation in anticipation that development of the federal Columbia basin project would continue at its historic pace and that project water would replace ground water and recharge the depleted aquifer.

(2) The legislature also finds that recent studies have documented water conservation in areas served by project irrigation districts as a result of distribution system lining and piping and use of more efficient conveyance system technology.

NEW SECTION. Sec. 2. A new section is added to chapter 89.12 RCW to read as follows:

It is the intent of the legislature that the department of ecology enter into agreements with the United States and Columbia basin project irrigation districts regarding the allocation of water conserved from within areas currently served by project waters to deep well irrigated lands within the federal Columbia basin project and for other authorized project beneficial uses. The department may provide the irrigation districts data identifying areas with the most serious ground water depletions. The irrigation districts shall consider and may rely on the department's data and recommendations in making allocation decisions to offset ground water withdrawals consistent with the operational constraints of the distribution system.

NEW SECTION. Sec. 3. A new section is added to chapter 90.44 RCW to read as follows:

The department shall issue a superseding water right permit or certificate for a ground water right where the source of water is an aquifer for which the department adopts rules establishing a ground water management subarea and water from the federal Columbia basin project is delivered for use by a person who holds such a ground water right. The superseding water right permit or certificate shall designate that portion of the ground water right that is replaced by water from the federal Columbia basin project as a standby or reserve right that may be used when water delivered by the federal project is curtailed or otherwise not available. The period of curtailment or unavailability shall be deemed a low flow period under RCW 90.14.140(2)(b). The total number of acres irrigated by the person under the ground water right and through the use of water delivered from the federal project must not exceed the quantity of water used and number of acres irrigated under the person's water right permit or certificate for the use of water from the aquifer.

Passed by the House February 11, 2004.

Passed by the Senate March 3, 2004.

Approved by the Governor March 29, 2004.

Filed in Office of Secretary of State March 29, 2004.

CHAPTER 196

[Engrossed Substitute House Bill 2905]

INTENSIVE RURAL DEVELOPMENT

AN ACT Relating to modifying provisions for limited areas of more intensive rural development; and amending RCW 36.70A.070.

Be it enacted by the Legislature of the State of Washington:

Sec. 1. RCW 36.70A.070 and 2003 c 152 s 1 are each amended to read as follows:

The comprehensive plan of a county or city that is required or chooses to plan under RCW 36.70A.040 shall consist of a map or maps, and descriptive text covering objectives, principles, and standards used to develop the comprehensive plan. The plan shall be an internally consistent document and all elements shall be consistent with the future land use map. A comprehensive plan shall be adopted and amended with public participation as provided in RCW 36.70A.140.

Each comprehensive plan shall include a plan, scheme, or design for each of the following:

(1) A land use element designating the proposed general distribution and general location and extent of the uses of land, where appropriate, for agriculture, timber production, housing, commerce, industry, recreation, open spaces, general aviation airports, public utilities, public facilities, and other land uses. The land use element shall include population densities, building intensities, and estimates of future population growth. The land use element shall provide for protection of the quality and quantity of ground water used for public water supplies. Where applicable, the land use element shall review drainage, flooding, and storm water run-off in the area and nearby jurisdictions and provide guidance for corrective actions to mitigate or cleanse those

discharges that pollute waters of the state, including Puget Sound or waters entering Puget Sound.

(2) A housing element ensuring the vitality and character of established residential neighborhoods that: (a) Includes an inventory and analysis of existing and projected housing needs that identifies the number of housing units necessary to manage projected growth; (b) includes a statement of goals, policies, objectives, and mandatory provisions for the preservation, improvement, and development of housing, including single-family residences; (c) identifies sufficient land for housing, including, but not limited to, government-assisted housing, housing for low-income families, manufactured housing, multifamily housing, and group homes and foster care facilities; and (d) makes adequate provisions for existing and projected needs of all economic segments of the community.

(3) A capital facilities plan element consisting of: (a) An inventory of existing capital facilities owned by public entities, showing the locations and capacities of the capital facilities; (b) a forecast of the future needs for such capital facilities; (c) the proposed locations and capacities of expanded or new capital facilities; (d) at least a six-year plan that will finance such capital facilities within projected funding capacities and clearly identifies sources of public money for such purposes; and (e) a requirement to reassess the land use element if probable funding falls short of meeting existing needs and to ensure that the land use element, capital facilities plan element, and financing plan within the capital facilities plan element are coordinated and consistent. Park and recreation facilities shall be included in the capital facilities plan element.

(4) A utilities element consisting of the general location, proposed location, and capacity of all existing and proposed utilities, including, but not limited to, electrical lines, telecommunication lines, and natural gas lines.

(5) Rural element. Counties shall include a rural element including lands that are not designated for urban growth, agriculture, forest, or mineral resources. The following provisions shall apply to the rural element:

(a) Growth management act goals and local circumstances. Because circumstances vary from county to county, in establishing patterns of rural densities and uses, a county may consider local circumstances, but shall develop a written record explaining how the rural element harmonizes the planning goals in RCW 36.70A.020 and meets the requirements of this chapter.

(b) Rural development. The rural element shall permit rural development, forestry, and agriculture in rural areas. The rural element shall provide for a variety of rural densities, uses, essential public facilities, and rural governmental services needed to serve the permitted densities and uses. ~~((In order))~~ To achieve a variety of rural densities and uses, counties may provide for clustering, density transfer, design guidelines, conservation easements, and other innovative techniques that will accommodate appropriate rural densities and uses that are not characterized by urban growth and that are consistent with rural character.

(c) Measures governing rural development. The rural element shall include measures that apply to rural development and protect the rural character of the area, as established by the county, by:

(i) Containing or otherwise controlling rural development;

(ii) Assuring visual compatibility of rural development with the surrounding rural area;

(iii) Reducing the inappropriate conversion of undeveloped land into sprawling, low-density development in the rural area;

(iv) Protecting critical areas, as provided in RCW 36.70A.060, and surface water and ground water resources; and

(v) Protecting against conflicts with the use of agricultural, forest, and mineral resource lands designated under RCW 36.70A.170.

(d) Limited areas of more intensive rural development. Subject to the requirements of this subsection and except as otherwise specifically provided in this subsection (5)(d), the rural element may allow for limited areas of more intensive rural development, including necessary public facilities and public services to serve the limited area as follows:

(i) Rural development consisting of the infill, development, or redevelopment of existing commercial, industrial, residential, or mixed-use areas, whether characterized as shoreline development, villages, hamlets, rural activity centers, or crossroads developments.

(A) A commercial, industrial, residential, shoreline, or mixed-use area shall be subject to the requirements of (d)(iv) of this subsection, but shall not be subject to the requirements of (c)(ii) and (iii) of this subsection.

(B) Any development or redevelopment other than an industrial area or an industrial use within a mixed-use area or an industrial area under this subsection (5)(d)(i) ((is not required to)) must be principally designed to serve the existing and projected rural population.

(C) Any development or redevelopment in terms of building size, scale, use, or intensity shall be consistent with the character of the existing areas. Development and redevelopment may include changes in use from vacant land or a previously existing use so long as the new use conforms to the requirements of this subsection (5);

(ii) The intensification of development on lots containing, or new development of, small-scale recreational or tourist uses, including commercial facilities to serve those recreational or tourist uses, that rely on a rural location and setting, but that do not include new residential development. A small-scale recreation or tourist use is not required to be principally designed to serve the existing and projected rural population. Public services and public facilities shall be limited to those necessary to serve the recreation or tourist use and shall be provided in a manner that does not permit low-density sprawl;

(iii) The intensification of development on lots containing isolated nonresidential uses or new development of isolated cottage industries and isolated small-scale businesses that are not principally designed to serve the existing and projected rural population and nonresidential uses, but do provide job opportunities for rural residents. Rural counties may allow the expansion of small-scale businesses as long as those small-scale businesses conform with the rural character of the area as defined by the local government according to RCW 36.70A.030(14). Rural counties may also allow new small-scale businesses to utilize a site previously occupied by an existing business as long as the new small-scale business conforms to the rural character of the area as defined by the local government according to RCW 36.70A.030(14). Public services and public facilities shall be limited to those necessary to serve the isolated nonresidential use and shall be provided in a manner that does not permit low-density sprawl;

(iv) A county shall adopt measures to minimize and contain the existing areas or uses of more intensive rural development, as appropriate, authorized under this subsection. Lands included in such existing areas or uses shall not extend beyond the logical outer boundary of the existing area or use, thereby allowing a new pattern of low-density sprawl. Existing areas are those that are clearly identifiable and contained and where there is a logical boundary delineated predominately by the built environment, but that may also include undeveloped lands if limited as provided in this subsection. The county shall establish the logical outer boundary of an area of more intensive rural development. In establishing the logical outer boundary the county shall address (A) the need to preserve the character of existing natural neighborhoods and communities, (B) physical boundaries such as bodies of water, streets and highways, and land forms and contours, (C) the prevention of abnormally irregular boundaries, and (D) the ability to provide public facilities and public services in a manner that does not permit low-density sprawl;

(v) For purposes of (d) of this subsection, an existing area or existing use is one that was in existence:

(A) On July 1, 1990, in a county that was initially required to plan under all of the provisions of this chapter;

(B) On the date the county adopted a resolution under RCW 36.70A.040(2), in a county that is planning under all of the provisions of this chapter under RCW 36.70A.040(2); or

(C) On the date the office of financial management certifies the county's population as provided in RCW 36.70A.040(5), in a county that is planning under all of the provisions of this chapter pursuant to RCW 36.70A.040(5).

(e) Exception. This subsection shall not be interpreted to permit in the rural area a major industrial development or a master planned resort unless otherwise specifically permitted under RCW 36.70A.360 and 36.70A.365.

(6) A transportation element that implements, and is consistent with, the land use element.

(a) The transportation element shall include the following subelements:

(i) Land use assumptions used in estimating travel;

(ii) Estimated traffic impacts to state-owned transportation facilities resulting from land use assumptions to assist the department of transportation in monitoring the performance of state facilities, to plan improvements for the facilities, and to assess the impact of land-use decisions on state-owned transportation facilities;

(iii) Facilities and services needs, including:

(A) An inventory of air, water, and ground transportation facilities and services, including transit alignments and general aviation airport facilities, to define existing capital facilities and travel levels as a basis for future planning. This inventory must include state-owned transportation facilities within the city or county's ~~(jurisdiction)~~ jurisdictional boundaries;

(B) Level of service standards for all locally owned arterials and transit routes to serve as a gauge to judge performance of the system. These standards should be regionally coordinated;

(C) For state-owned transportation facilities, level of service standards for highways, as prescribed in chapters 47.06 and 47.80 RCW, to gauge the performance of the system. The purposes of reflecting level of service standards

for state highways in the local comprehensive plan are to monitor the performance of the system, to evaluate improvement strategies, and to facilitate coordination between the county's or city's six-year street, road, or transit program and the department of transportation's six-year investment program. The concurrency requirements of (b) of this subsection do not apply to transportation facilities and services of statewide significance except for counties consisting of islands whose only connection to the mainland are state highways or ferry routes. In these island counties, state highways and ferry route capacity must be a factor in meeting the concurrency requirements in (b) of this subsection;

(D) Specific actions and requirements for bringing into compliance locally owned transportation facilities or services that are below an established level of service standard;

(E) Forecasts of traffic for at least ten years based on the adopted land use plan to provide information on the location, timing, and capacity needs of future growth;

(F) Identification of state and local system needs to meet current and future demands. Identified needs on state-owned transportation facilities must be consistent with the statewide multimodal transportation plan required under chapter 47.06 RCW;

(iv) Finance, including:

(A) An analysis of funding capability to judge needs against probable funding resources;

(B) A multiyear financing plan based on the needs identified in the comprehensive plan, the appropriate parts of which shall serve as the basis for the six-year street, road, or transit program required by RCW 35.77.010 for cities, RCW 36.81.121 for counties, and RCW 35.58.2795 for public transportation systems. The multiyear financing plan should be coordinated with the six-year improvement program developed by the department of transportation as required by RCW 47.05.030;

(C) If probable funding falls short of meeting identified needs, a discussion of how additional funding will be raised, or how land use assumptions will be reassessed to ensure that level of service standards will be met;

(v) Intergovernmental coordination efforts, including an assessment of the impacts of the transportation plan and land use assumptions on the transportation systems of adjacent jurisdictions;

(vi) Demand-management strategies.

(b) After adoption of the comprehensive plan by jurisdictions required to plan or who choose to plan under RCW 36.70A.040, local jurisdictions must adopt and enforce ordinances which prohibit development approval if the development causes the level of service on a locally owned transportation facility to decline below the standards adopted in the transportation element of the comprehensive plan, unless transportation improvements or strategies to accommodate the impacts of development are made concurrent with the development. These strategies may include increased public transportation service, ride sharing programs, demand management, and other transportation systems management strategies. For the purposes of this subsection (6) "concurrent with the development" shall mean that improvements or strategies

are in place at the time of development, or that a financial commitment is in place to complete the improvements or strategies within six years.

(c) The transportation element described in this subsection (6), and the six-year plans required by RCW 35.77.010 for cities, RCW 36.81.121 for counties, RCW 35.58.2795 for public transportation systems, and RCW 47.05.030 for the state, must be consistent.

(7) An economic development element establishing local goals, policies, objectives, and provisions for economic growth and vitality and a high quality of life. The element shall include: (a) A summary of the local economy such as population, employment, payroll, sectors, businesses, sales, and other information as appropriate; (b) a summary of the strengths and weaknesses of the local economy defined as the commercial and industrial sectors and supporting factors such as land use, transportation, utilities, education, work force, housing, and natural/cultural resources; and (c) an identification of policies, programs, and projects to foster economic growth and development and to address future needs. A city that has chosen to be a residential community is exempt from the economic development element requirement of this subsection.

(8) A park and recreation element that implements, and is consistent with, the capital facilities plan element as it relates to park and recreation facilities. The element shall include: (a) Estimates of park and recreation demand for at least a ten-year period; (b) an evaluation of facilities and service needs; and (c) an evaluation of intergovernmental coordination opportunities to provide regional approaches for meeting park and recreational demand.

(9) It is the intent that new or amended elements required after January 1, 2002, be adopted concurrent with the scheduled update provided in RCW 36.70A.130. Requirements to incorporate any such new or amended elements shall be null and void until funds sufficient to cover applicable local government costs are appropriated and distributed by the state at least two years before local government must update comprehensive plans as required in RCW 36.70A.130.

Passed by the House February 17, 2004.

Passed by the Senate March 3, 2004.

Approved by the Governor March 29, 2004.

Filed in Office of Secretary of State March 29, 2004.

CHAPTER 197

[Substitute House Bill 2781]

DEVELOPMENT REGULATIONS—STATE REVIEW

AN ACT Relating to state agency review of development regulations; and amending RCW 36.70A.106.

Be it enacted by the Legislature of the State of Washington:

Sec. 1. RCW 36.70A.106 and 1991 sp.s. c 32 s 8 are each amended to read as follows:

(1) Each county and city proposing adoption of a comprehensive plan or development regulations under this chapter shall notify the department of its intent to adopt such plan or regulations at least sixty days prior to final adoption. State agencies including the department may provide comments to the county or

city on the proposed comprehensive plan, or proposed development regulations, during the public review process prior to adoption.

(2) Each county and city planning under this chapter shall transmit a complete and accurate copy of its comprehensive plan or development regulations to the department within ten days after final adoption.

(3)(a) Any amendments for permanent changes to a comprehensive plan or development regulation that are proposed by a county or city to its adopted plan or regulations shall be submitted to the department in the same manner as initial plans and development regulations under this section. Any amendments to a comprehensive plan or development regulations that are adopted by a county or city shall be transmitted to the department in the same manner as the initial plans and regulations under this section.

(b) Each county and city planning under this chapter may request expedited review for any amendments for permanent changes to a development regulation. Upon receiving a request for expedited review, and after consultation with other state agencies, the department may grant expedited review if the department determines that expedited review does not compromise the state's ability to provide timely comments related to compliance with the goals and requirements of this chapter or on other matters of state interest. Cities and counties may adopt amendments for permanent changes to a development regulation immediately following the granting of the request for expedited review by the department.

Passed by the House February 17, 2004.

Passed by the Senate March 4, 2004.

Approved by the Governor March 29, 2004.

Filed in Office of Secretary of State March 29, 2004.

CHAPTER 198

[House Bill 3045]

"HAT AND BOOTS" LAND EXCHANGE

AN ACT Relating to public lands; creating a new section; and declaring an emergency.

Be it enacted by the Legislature of the State of Washington:

NEW SECTION. Sec. 1. By December 31, 2004, the board of natural resources shall exchange common school trust land, commonly known as the "Hat and Boots" parcel, adjoining the Duwamish training center branch of South Seattle Community College for land of equal value granted to the state for the support of charitable, educational, penal, and reformatory institutions. The state board for community and technical colleges shall pay one dollar per year to lease the exchanged property at the site commonly known as the "Hat and Boots" parcel once the exchange is completed by the board. Access to the training facilities established at the Duwamish training center branch of South Seattle Community College shall be afforded to apprenticeship programs without regard to union affiliation.

NEW SECTION. Sec. 2. This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately.

Passed by the House March 9, 2004.

Passed by the Senate March 4, 2004.

Approved by the Governor March 29, 2004.

Filed in Office of Secretary of State March 29, 2004.

CHAPTER 199

[Substitute House Bill 2321]

PUBLIC LAND LAWS—DEFINITIONS

AN ACT Relating to the clarification of certain definitions in Title 79 RCW and related public land statutes; amending RCW 43.30.700, 79.02.010, 79.02.040, 79.02.050, 79.02.160, 79.02.280, 79.02.290, 79.02.300, 79.02.340, 79.10.060, 79.10.100, 79.11.100, 79.13.380, 79.15.030, 79.15.055, 79.19.030, 79.22.300, 79.36.330, 79.36.355, 79.36.380, 79.36.390, 79.38.010, 79.38.020, 79.38.030, 79.38.050, 79.38.060, 79.64.020, and 79.70.040; reenacting and amending RCW 79.64.040; adding a new section to chapter 79.02 RCW; and creating a new section.

Be it enacted by the Legislature of the State of Washington:

PART 1

TITLE 43 AMENDMENTS

Sec. 101. RCW 43.30.700 and 1986 c 100 s 50 are each amended to read as follows:

(1) The department may:

(a) Inquire into the production, quality, and quantity of second growth timber to ascertain conditions for reforestation; and

(b) Publish information pertaining to forestry and forest products which it considers of benefit to the people of the state.

(2) The department shall:

(a) Collect information through investigation by its employees, on forest lands owned by the state, including:

(i) Condition of the lands;

(ii) Forest fire damage;

(iii) Illegal cutting, trespassing, or thefts; and

(iv) The number of acres and the value of the timber that is cut and removed each year, to determine which state lands are valuable chiefly for growing timber;

(b) Prepare maps of each timbered county showing state land therein; and

(c) Protect ~~((state land))~~ forested public land, as defined in RCW 79.02.010, as much as is practical and feasible from fire, trespass, theft, and the illegal cutting of timber.

(3) When the department considers it to be in the best interest of the state, it may cooperate with any agency of another state, the United States or any agency thereof, the Dominion of Canada or any agency or province thereof, and any county, town, corporation, individual, or Indian tribe within the state of Washington in:

(a) Forest surveys;

(b) Forest studies;

(c) Forest products studies; and

(d) Preparation of plans for the protection, management, and replacement of trees, wood lots, and timber tracts.

PART 2
TITLE 79 AMENDMENTS

Sec. 201. RCW 79.02.010 and 2003 c 334 s 301 are each amended to read as follows:

The definitions in this section apply throughout this title unless the context clearly requires otherwise.

(1) "Aquatic lands" means all state-owned tidelands, shorelands, harbor areas, and the beds of navigable waters as defined in chapter 79.90 RCW that are ~~((managed))~~ administered by the department.

(2) "Board" means the board of natural resources.

(3) "Commissioner" means the commissioner of public lands.

(4) "Community and technical college forest reserve lands" means lands managed under RCW 79.02.420.

(5) "Department" means the department of natural resources.

(6) ~~("Improvements," when referring to state lands,)~~ "Improvements" means anything considered a fixture in law placed upon or attached to ~~((such))~~ lands administered by the department that has changed the value of the lands or any changes in the previous condition of the fixtures that changes the value of the lands.

(7) "Land bank lands" means lands acquired under RCW 79.19.020.

(8) "Person" means an individual, partnership, corporation, association, organization, cooperative, public or municipal corporation, or agency of a federal, state, or local governmental unit, however designated.

(9) "Public lands" means lands of the state of Washington ~~((and includes lands belonging to or held in trust by the state, which are not devoted to or reserved for a particular use by law. They include))~~ administered by the department including but not limited to state lands, ((tidelands, shorelands, and harbor areas as defined in chapter 79.90 RCW, and the beds of navigable waters belonging to the)) state forest lands, and aquatic lands.

(10) "State forest lands" means lands acquired under RCW 79.22.010, 79.22.040, and 79.22.020.

(11) "State lands" includes:

(a) School lands, that is, lands held in trust for the support of the common schools;

(b) University lands, that is, lands held in trust for university purposes;

(c) Agricultural college lands, that is, lands held in trust for the use and support of agricultural colleges;

(d) Scientific school lands, that is, lands held in trust for the establishment and maintenance of a scientific school;

(e) Normal school lands, that is, lands held in trust for state normal schools;

(f) Capitol building lands, that is, lands held in trust for the purpose of erecting public buildings at the state capital for legislative, executive, and judicial purposes;

(g) Institutional lands, that is, lands held in trust for state charitable, educational, penal, and reformatory institutions; and

(h) ~~((All public lands of the state, except tidelands, shorelands, harbor areas, and the beds of navigable waters))~~ Land bank, escheat, donations, and all other

lands, except aquatic lands, administered by the department that are not devoted to or reserved for a particular use by law.

(12) (~~("Valuable materials," when referring to state lands or state forest lands;)~~) "Valuable materials" means any product or material on the lands, such as forest products, forage or agricultural crops, stone, gravel, sand, peat, and all other materials of value except mineral, coal, petroleum, and gas as provided for under chapter 79.14 RCW.

Sec. 202. RCW 79.02.040 and 2003 c 334 s 432 are each amended to read as follows:

The department may review and reconsider any of its official acts relating to ~~((state))~~ public lands until such time as a lease, contract, or deed shall have been made, executed, and finally issued, and the department may recall any lease, contract, or deed issued for the purpose of correcting mistakes or errors, or supplying omissions.

Sec. 203. RCW 79.02.050 and 2003 c 334 s 365 are each amended to read as follows:

(1) Any sale, transfer, or lease ~~((of state lands))~~ in which the purchaser, transfer recipient, or lessee obtains the sale or lease by fraud or misrepresentation is void, and the contract of purchase or lease shall be of no effect. In the event of fraud, the contract, transferred property, or lease must be surrendered to the department, but the purchaser, transfer recipient, or lessee may not be refunded any money paid on account of the surrendered contract, transfer, or lease.

~~((2))~~ (2) In the event that a mistake is discovered in the sale or lease ~~((of state lands))~~, or in the sale of valuable materials ~~((on state lands))~~, the department may take action to correct the mistake in accordance with RCW 79.02.040 if maintaining the corrected contract, transfer, or lease is in the best interests of the affected trust or trusts.

Sec. 204. RCW 79.02.160 and 2003 c 334 s 308 are each amended to read as follows:

In case any person interested in any tract of land heretofore selected by the territory of Washington or any officer, board, or agent thereof or by the state of Washington or any officer, board, or agent thereof or which may be hereafter selected by the state of Washington or the department, in pursuance to any grant of ~~((public))~~ lands made by the United States to the territory or state of Washington for any purpose or upon any trust whatever, the selection of which has failed or been rejected or shall fail or shall be rejected for any reason, shall request it, the department shall have the authority and power on behalf of the state to relinquish to the United States such tract of land.

Sec. 205. RCW 79.02.280 and 2003 c 334 s 377 are each amended to read as follows:

All contracts of purchase~~(;)~~ or leases~~(, of state lands)~~ issued by the department shall be assignable in writing by the contract holder or lessee and the assignee shall be subject to and governed by the provisions of law applicable to the assignor and shall have the same rights in all respects as the original purchaser, or lessee, of the lands, provided the assignment is approved by the department and entered of record in its office.

Sec. 206. RCW 79.02.290 and 2003 c 334 s 363 are each amended to read as follows:

Whenever the holder of a contract of purchase (~~(of any state lands,)~~) or the holder of any lease (~~(of any such lands)~~), except for mining of valuable minerals or coal, or extraction of petroleum or gas, shall surrender the same to the department with the request to have it divided into two or more contracts, or leases, the department may divide the same and issue new contracts, or leases, but no new contract, or lease, shall issue while there is due and unpaid any interest, rental, or taxes or assessments on the land held under such contract or lease, nor in any case where the department is of the opinion that the state's security would be impaired or endangered by the proposed division. For all such new contracts, or leases, a fee as provided under this chapter, shall be paid by the applicant.

Sec. 207. RCW 79.02.300 and 2003 c 334 s 435 are each amended to read as follows:

(1) Every person who, without authorization, uses or occupies public lands, removes any valuable material as defined in RCW (~~(79.01.038)~~) 79.02.010 from public lands, or causes waste or damage to public lands, or injures publicly owned personal property or publicly owned improvements to real property on public lands, is liable to the state for treble the amount of the damages. However, liability shall be for single damages if the department determines, or the person proves upon trial, that the person, at time of the unauthorized act or acts, did not know, or have reason to know, that he or she lacked authorization. Damages recoverable under this section include, but are not limited to, the market value of the use, occupancy, or things removed, had the use, occupancy, or removal been authorized; and any damages caused by injury to the land, publicly owned personal property or publicly owned improvement, including the costs of restoration. In addition, the person is liable for reimbursing the state for its reasonable costs, including but not limited to, its administrative costs, survey costs to the extent they are not included in damages awarded for restoration costs, and its reasonable attorneys' fees and other legal costs.

(2) This section does not apply in any case where liability for damages is provided under RCW 64.12.030, 4.24.630, 79.02.320, or 79.02.340.

(3) The department is authorized and directed to investigate all trespasses and wastes upon, and damages to, public lands of the state, and to cause prosecutions for, and/or actions for the recovery of the same to be commenced as is provided by law.

Sec. 208. RCW 79.02.340 and 2003 c 334 s 504 are each amended to read as follows:

It shall be unlawful for any person to enter upon (~~(any of the state)~~) public lands(~~(, including all land under the jurisdiction of the department,)~~) or upon any private land without the permission of the owner thereof and to cut, break, or remove therefrom for commercial purposes any evergreen trees, commonly known as Christmas trees, including fir, hemlock, spruce, and pine trees. Any person cutting, breaking, or removing or causing to be cut, broken, or removed, or who cuts down, cuts off, breaks, tops, or destroys any of such Christmas trees shall be liable to the state, or to the private owner thereof, for payment for such trees at a price of one dollar each if payment is made immediately upon demand.

Should it be necessary to institute civil action to recover the value of such trees, the state in the case of ~~((state))~~ public lands, or the owner in case of private lands, may exact treble damages on the basis of three dollars per tree for each tree so cut or removed.

Sec. 209. RCW 79.10.060 and 2003 c 334 s 544 are each amended to read as follows:

The department may comply with county or municipal zoning ordinances, laws, rules, or regulations affecting the use of ~~((state))~~ public lands ~~((under the jurisdiction of the department))~~ where such regulations are consistent with the treatment of similar private lands.

Sec. 210. RCW 79.10.100 and 2003 c 334 s 534 are each amended to read as follows:

The legislature hereby directs that a multiple use concept be utilized by the department in the ~~((management and))~~ administration of ~~((state-owned))~~ public lands ~~((under the jurisdiction of the department))~~ where such a concept is in the best interests of the state and the general welfare of the citizens thereof, and is consistent with the applicable ~~((trust))~~ provisions of the various lands involved.

Sec. 211. RCW 79.11.100 and 2003 c 334 s 328 are each amended to read as follows:

In no case shall any lands granted to the state be offered for sale under this chapter unless the same shall have been appraised by the board within ninety days prior to the date fixed for the sale. A purchaser of state lands may not rely upon the appraisal prepared by the department or made by the board for purposes of deciding whether to make a purchase from the department. All purchasers are required to make their own independent appraisals.

Sec. 212. RCW 79.13.380 and 2003 c 334 s 491 are each amended to read as follows:

The department has the power, and it is its duty, to adopt, from time to time, reasonable rules for the grazing of livestock on such tracts and areas of the indemnity or lieu ~~((public))~~ lands of the state contiguous to national forests and suitable for grazing purposes, as have been, or shall be, obtained from the United States under the provisions of RCW 79.02.120.

Sec. 213. RCW 79.15.030 and 2003 c 334 s 339 are each amended to read as follows:

All sales of valuable materials ~~((upon state lands and state forest lands))~~ shall be made subject to the right, power, and authority of the department to prescribe rules or procedures governing the manner of the sale and removal of the valuable materials. Such procedures shall be binding when contained within a purchaser's contract for valuable materials and apply to the purchaser's successors in interest and shall be enforced by the department.

Sec. 214. RCW 79.15.055 and 2003 c 334 s 309 are each amended to read as follows:

For the purposes of this chapter, "appraisal" means an estimate of the market value of ~~((land or))~~ valuable materials. The estimate must reflect the value based on market conditions at the time of the sale or transfer offering. The appraisal must reflect the department's best effort to establish a reasonable market value for the purpose of setting a minimum bid at auction or transfer. A purchaser of

~~((state lands or))~~ valuable materials may not rely upon the appraisal prepared by the department for purposes of deciding whether to make a purchase from the department. All purchasers are required to make their own independent appraisals.

Sec. 215. RCW 79.19.030 and 2003 c 334 s 527 are each amended to read as follows:

The department, with the approval of the board, may:

(1) Exchange property held in the land bank for any other ~~((public))~~ lands of equal value administered by the department, including any lands held in trust.

(2) Exchange property held in the land bank for property of equal or greater value which is owned publicly or privately, and which has greater potential for natural resource or income production or which could be more efficiently managed by the department, however, no power of eminent domain is hereby granted to the department; and

(3) Sell property held in the land bank in the manner provided by law for the sale of state lands without any requirement of platting and to use the proceeds to acquire property for the land bank which has greater potential for natural resource or income production or which would be more efficiently managed by the department.

Sec. 216. RCW 79.22.300 and 2003 c 334 s 213 are each amended to read as follows:

Whenever the board of county commissioners of any county shall determine that state forest lands, that were acquired from such county by the state pursuant to RCW 79.22.040 and that are under the administration of the department, are needed by the county for public park use in accordance with the county and the state outdoor recreation plans, the board of county commissioners may file an application with the board for the transfer of such state forest lands.

Upon the filing of an application by the board of county commissioners, the department shall cause notice of the impending transfer to be given in the manner provided by RCW 42.30.060. If the department determines that the proposed use is in accordance with the state outdoor recreation plan, it shall reconvey said state forest lands to the requesting county to have and to hold for so long as the state forest lands are developed, maintained, and used for the proposed public park purpose. This reconveyance may contain conditions to allow the department to coordinate the management of any adjacent ~~((state owned))~~ public lands with the proposed park activity to encourage maximum multiple use management and may reserve rights of way needed to manage other ~~((state owned))~~ public lands in the area. The application shall be denied if the department finds that the proposed use is not in accord with the state outdoor recreation plan. If the land is not, or ceases to be, used for public park purposes the land shall be conveyed back to the department upon request of the department.

Sec. 217. RCW 79.36.330 and 2003 c 334 s 228 are each amended to read as follows:

In the event the department should determine that the property interests acquired under the authority of this chapter are no longer necessary for the purposes for which they were acquired, the department shall dispose of the same in the following manner, when in the discretion of the department it is to the best

interests of the state of Washington to do so, except that property purchased with educational funds or held in trust for educational purposes shall be sold only in the same manner as are ~~((public))~~ state lands ~~((of the state))~~:

(1) Where the state property necessitating the acquisition of private property interests for access purposes under authority of this chapter is sold or exchanged, the acquired property interests may be sold or exchanged as an appurtenance of the state property when it is determined by the department that sale or exchange of the state property and acquired property interests as one parcel is in the best interests of the state.

(2) If the acquired property interests are not sold or exchanged as provided in subsection (1) of this section, the department shall notify the person or persons from whom the property interest was acquired, stating that the property interests are to be sold, and that the person or persons shall have the right to purchase the same at the appraised price. The notice shall be given by registered letter or certified mail, return receipt requested, mailed to the last known address of the person or persons. If the address of the person or persons is unknown, the notice shall be published twice in an official newspaper of general circulation in the county where the lands or a portion thereof is located. The second notice shall be published not less than ten nor more than thirty days after the notice is first published. The person or persons shall have thirty days after receipt of the registered letter or five days after the last date of publication, as the case may be, to notify the department, in writing, of their intent to purchase the offered property interest. The purchaser shall include with his or her notice of intention to purchase, cash payment, certified check, or money order in an amount not less than one-third of the appraised price. No instrument conveying property interests shall issue from the department until the full price of the property is received by the department. All costs of publication required under this section shall be added to the appraised price and collected by the department upon sale of the property interests.

(3) If the property interests are not sold or exchanged as provided in subsections (1) and (2) of this section, the department shall notify the owners of land abutting the property interests in the same manner as provided in subsection (2) of this section and their notice of intent to purchase shall be given in the manner and in accordance with the same time limits as are set forth in subsection (2) of this section. However, if more than one abutting owner gives notice of intent to purchase the property interests, the department shall apportion them in relation to the lineal footage bordering each side of the property interests to be sold, and apportion the costs to the interested purchasers in relation thereto. Further, no sale is authorized by this section unless the department is satisfied that the amounts to be received from the several purchasers will equal or exceed the appraised price of the entire parcel plus any costs of publishing notices.

(4) If no sale or exchange is consummated as provided in subsections (1) through (3) of this section, the department shall sell the properties in the same manner as state lands are sold.

(5) Any disposal of property interests authorized by this chapter shall be subject to any existing rights previously granted by the department.

Sec. 218. RCW 79.36.355 and 2003 c 334 s 396 are each amended to read as follows:

The department may grant to any person such easements and rights in ~~((state lands or state forest))~~ public lands, not otherwise provided in law, as the applicant applying therefor may acquire in privately owned lands ~~((through proceedings in eminent domain))~~. No grant shall be made under this section until such time as the full market value of the estate or interest granted together with damages to all remaining property of the state of Washington has been ascertained and safely secured to the state.

Sec. 219. RCW 79.36.380 and 1982 1st ex.s. c 21 s 168 are each amended to read as follows:

Every grant, deed, conveyance, contract to purchase or lease made since ~~((the fifteenth day of))~~ June 15, 1911, or hereafter made to any person, firm, or corporation, for a right of way for a private railroad, skid road, canal, flume, watercourse, or other easement, over or across any ~~((state))~~ public lands for the purpose of, and to be used in, transporting and moving timber, minerals, stone, sand, gravel, or other valuable materials of the land, shall be subject to the right of the state, or any grantee or lessee thereof, or other person who has acquired since ~~((the fifteenth day of))~~ June 15, 1911, or shall hereafter acquire, any lands containing valuable materials contiguous to, or in proximity to, such right of way, or who has so acquired or shall hereafter acquire such valuable materials situated upon ~~((state))~~ public lands or contiguous to, or in proximity to, such right of way, of having such valuable materials transported or moved over such private railroad, skid road, flume, canal, watercourse, or other easement, after the same is or has been put in operation, upon paying therefor just and reasonable rates for transportation, or for the use of such private railroad, skid road, flume, canal, watercourse, or other easement, and upon complying with just, reasonable and proper rules and regulations relating to such transportation or use, which rates, rules, and regulations, shall be under the supervision and control of the utilities and transportation commission.

Sec. 220. RCW 79.36.390 and 1982 1st ex.s. c 21 s 169 are each amended to read as follows:

Any person, firm, or corporation, having acquired such right of way or easement since ~~((the fifteenth day of))~~ June 15, 1911, or hereafter acquiring such right of way or easement over any ~~((state))~~ public lands for the purpose of transporting or moving timber, mineral, stone, sand, gravel, or other valuable materials, and engaged in such business thereon, shall accord to the state, or any grantee or lessee thereof, having since ~~((the fifteenth day of))~~ June 15, 1911, acquired, or hereafter acquiring, from the state, any ~~((state))~~ public lands containing timber, mineral, stone, sand, gravel, or other valuable materials, contiguous to or in proximity to such right of way or easement, or any person, firm, or corporation, having since ~~((the fifteenth day of))~~ June 15, 1911, acquired, or hereafter acquiring, the timber, mineral, stone, sand, gravel, or other valuable materials upon any ~~((state))~~ public lands contiguous to or in proximity to the lands over which such right of way or easement is operated, proper and reasonable facilities and service for transporting and moving such valuable materials, under reasonable rules and regulations and upon payment of just and reasonable charges therefor, or, if such right of way or other easement is not then in use, shall accord the use of such right of way or easement for transporting and

moving such valuable materials, under reasonable rules and regulations and upon the payment of just and reasonable charges therefor.

Sec. 221. RCW 79.38.010 and 2003 c 334 s 499 are each amended to read as follows:

In addition to any authority otherwise granted by law, the department shall have the authority to acquire lands, interests in lands, and other property for the purpose of affording access by road to public lands (~~(or state forest lands)~~) from any public highway.

Sec. 222. RCW 79.38.020 and 1981 c 204 s 1 are each amended to read as follows:

To facilitate the carrying out of the purpose of this chapter, the department (~~(of natural resources)~~) may:

(1) Grant easements, rights of way, and permits to cross public lands (~~(and state forest lands)~~) to any person in exchange for similar rights over lands not under its jurisdiction;

(2) Enter into agreements with any person or agency relating to purchase, construction, reconstruction, maintenance, repair, regulation, and use of access roads or public roads used to provide access to public lands (~~(or state forest lands)~~);

(3) Dispose, by sale, exchange, or otherwise, of any interest in an access road in the event it determines such interest is no longer necessary for the purposes of this chapter.

Sec. 223. RCW 79.38.030 and 2003 c 334 s 500 are each amended to read as follows:

Purchasers of valuable materials from public lands (~~(or state forest lands)~~) may use access roads or public roads for the removal of such materials where the rights acquired by the state will permit, but use shall be subject to the right of the department:

(1) To impose reasonable terms for the use, construction, reconstruction, maintenance, and repair of such access roads; and

(2) To impose reasonable charges for the use of such access roads or public roads which have been constructed or reconstructed through funding by the department.

Sec. 224. RCW 79.38.050 and 2003 c 334 s 502 are each amended to read as follows:

The department shall create, maintain, and administer a revolving fund, to be known as the access road revolving fund in which shall be deposited all moneys received by it from users of access roads as payment for costs incurred or to be incurred in maintaining, repairing, and reconstructing access roads, or public roads used to provide access to public lands (~~(or state forest lands)~~). The department may use moneys in the fund for the purposes for which they were obtained without appropriation by the legislature.

Sec. 225. RCW 79.38.060 and 2003 c 334 s 503 are each amended to read as follows:

All moneys received by the department from users of access roads that are not deposited in the access road revolving fund shall be paid as follows:

(1) To reimburse the state fund or account from which expenditures have been made for the acquisition, construction, or improvement of the access road or public road, and upon full reimbursement, then

(2) To the funds or accounts for which the public lands (~~and state forest lands~~), to which access is provided, are pledged by law or constitutional provision, in which case the department shall make an equitable apportionment between funds and accounts so that no fund or account shall benefit at the expense of another.

Sec. 226. RCW 79.64.020 and 2003 c 334 s 520 are each amended to read as follows:

A resource management cost account in the state treasury is created to be used solely for the purpose of defraying the costs and expenses necessarily incurred by the department in managing and administering ~~((public))~~ state lands and aquatic lands and the making and administering of leases, sales, contracts, licenses, permits, easements, and rights of way as authorized under the provisions of this title. Appropriations from the resource management cost account to the department shall be expended for no other purposes. Funds in the resource management cost account may be appropriated or transferred by the legislature for the benefit of all of the trusts from which the funds were derived.

Sec. 227. RCW 79.64.040 and 2003 c 334 s 522 and 2003 c 313 s 8 are each reenacted and amended to read as follows:

The board shall determine the amount deemed necessary in order to achieve the purposes of this chapter and shall provide by rule for the deduction of this amount from the moneys received from all leases, sales, contracts, licenses, permits, easements, and rights of way issued by the department and affecting ~~((public))~~ state lands and aquatic lands, provided that no deduction shall be made from the proceeds from agricultural college lands. Moneys received as deposits from successful bidders, advance payments, and security under RCW 79.15.100, 79.15.080, and 79.11.150 prior to December 1, 1981, which have not been subjected to deduction under this section are not subject to deduction under this section. The deductions authorized under this section shall in no event exceed twenty-five percent of the moneys received by the department in connection with any one transaction pertaining to ~~((public))~~ state lands and aquatic lands other than second class tide and shore lands and the beds of navigable waters, and fifty percent of the moneys received by the department pertaining to second class tide and shore lands and the beds of navigable waters.

In the event that the department sells logs using the contract harvesting process described in RCW 79.15.500 through 79.15.530, the moneys received subject to this section are the net proceeds from the contract harvesting sale.

Sec. 228. RCW 79.70.040 and 1972 ex.s. c 119 s 4 are each amended to read as follows:

The department is further authorized to purchase, lease, set aside, or exchange any public ~~((land or state-owned trust))~~ lands which are deemed to be natural areas: PROVIDED, That the appropriate state land trust receives the fair market value for any interests that are disposed of: PROVIDED, FURTHER, That such transactions are approved by the board of natural resources.

An area consisting of public land ~~((or state-owned trust lands))~~ designated as a natural area preserve shall be held in trust and shall not be alienated except

to another public use upon a finding by the department of natural resources of imperative and unavoidable public necessity.

PART 3 MISCELLANEOUS

NEW SECTION. Sec. 301. A new section is added to chapter 79.02 RCW under the subchapter heading "general provisions" to read as follows:

The provisions of this act are not intended to affect the trust responsibilities or trust management by the department for any trust lands granted by the federal government or legislatively created trusts. The trust obligations relating to federally granted lands, state forest lands, community and technical college forest reserve lands, and university repayment lands shall not be altered by the definition clarifications contained in this act. The rights, privileges, and prerogatives of the public shall not be altered in any way by this act, and no additional or changed authority or power is granted to any person, corporation, or entity.

NEW SECTION. Sec. 302. Part headings used in this act are not any part of the law.

Passed by the House March 10, 2004.

Passed by the Senate March 4, 2004.

Approved by the Governor March 29, 2004.

Filed in Office of Secretary of State March 29, 2004.

CHAPTER 200

[House Bill 2483]

TITLE FEES—DISPOSITION

AN ACT Relating to the disposition of title fees; amending RCW 46.12.040, 46.12.101, and 46.68.020; and providing an effective date.

Be it enacted by the Legislature of the State of Washington:

Sec. 1. RCW 46.12.040 and 2002 c 352 s 3 are each amended to read as follows:

(1) The application for an original certificate of ownership accompanied by a draft, money order, certified bank check, or cash for five dollars, together with the last preceding certificates or other satisfactory evidence of ownership, shall be forwarded to the director.

(2) The fee shall be in addition to any other fee for the license registration of the vehicle. The certificate of ownership shall not be required to be renewed annually, or at any other time, except as by law provided.

(3) In addition to the application fee and any other fee for the license registration of a vehicle, the department shall collect from the applicant a fee of fifteen dollars for vehicles previously registered in any other state or country. The proceeds from the fee shall be deposited in ~~((the motor vehicle fund))~~ accordance with RCW 46.68.020. For vehicles requiring a physical examination, the inspection fee shall be fifty dollars and shall be deposited in ~~((the motor vehicle fund))~~ accordance with RCW 46.68.020.

Sec. 2. RCW 46.12.101 and 2003 c 264 s 7 are each amended to read as follows:

A transfer of ownership in a motor vehicle is perfected by compliance with the requirements of this section.

(1) If an owner transfers his or her interest in a vehicle, other than by the creation, deletion, or change of a security interest, the owner shall, at the time of the delivery of the vehicle, execute an assignment to the transferee and provide an odometer disclosure statement under RCW 46.12.124 on the certificate of ownership or as the department otherwise prescribes, and cause the certificate and assignment to be transmitted to the transferee. The owner shall notify the department or its agents or subagents, in writing, on the appropriate form, of the date of the sale or transfer, the name and address of the owner and of the transferee, the transferee's driver's license number if available, and such description of the vehicle, including the vehicle identification number, the license plate number, or both, as may be required in the appropriate form provided or approved for that purpose by the department. The report of sale will be deemed properly filed if all information required in this section is provided on the form and includes a department-authorized notation that the document was received by the department, its agents, or subagents on or before the fifth day after the sale of the vehicle, excluding Saturdays, Sundays, and state and federal holidays. Agents and subagents shall immediately electronically transmit the seller's report of sale to the department. Reports of sale processed and recorded by the department's agents or subagents may be subject to fees as specified in RCW 46.01.140 (4)(a) or (5)(b). By January 1, 2003, the department shall create a system enabling the seller of a vehicle to transmit the report of sale electronically. The system created by the department must immediately indicate on the department's vehicle record that a seller's report of sale has been filed.

(2) The requirements of subsection (1) of this section to provide an odometer disclosure statement apply to the transfer of vehicles held for lease when transferred to a lessee and then to the lessor at the end of the leasehold and to vehicles held in a fleet when transferred to a purchaser.

(3) Except as provided in RCW 46.70.122 the transferee shall within fifteen days after delivery to the transferee of the vehicle, execute the application for a new certificate of ownership in the same space provided therefor on the certificate or as the department prescribes, and cause the certificates and application to be transmitted to the department accompanied by a fee of five dollars in addition to any other fees required.

(4) Upon request of the owner or transferee, a secured party in possession of the certificate of ownership shall, unless the transfer was a breach of its security agreement, either deliver the certificate to the transferee for transmission to the department or, when the secured party receives the owner's assignment from the transferee, it shall transmit the transferee's application for a new certificate, the existing certificate, and the required fee to the department. Compliance with this section does not affect the rights of the secured party.

(5) If a security interest is reserved or created at the time of the transfer, the certificate of ownership shall be retained by or delivered to the person who becomes the secured party, and the parties shall comply with the provisions of RCW 46.12.170.

(6) If the purchaser or transferee fails or neglects to make application to transfer the certificate of ownership and license registration within fifteen days after the date of delivery of the vehicle, he or she shall on making application for transfer be assessed a twenty-five dollar penalty on the sixteenth day and two dollars additional for each day thereafter, but not to exceed one hundred dollars. The director may by rule establish conditions under which the penalty will not be assessed when an application for transfer is delayed for reasons beyond the control of the purchaser. Conditions for not assessing the penalty may be established for but not limited to delays caused by:

- (a) The department requesting additional supporting documents;
- (b) Extended hospitalization or illness of the purchaser;
- (c) Failure of a legal owner to release his or her interest;
- (d) Failure, negligence, or nonperformance of the department, auditor, or subagent.

Failure or neglect to make application to transfer the certificate of ownership and license registration within forty-five days after the date of delivery of the vehicle is a misdemeanor.

(7) Upon receipt of an application for reissue or replacement of a certificate of ownership and transfer of license registration, accompanied by the endorsed certificate of ownership or other documentary evidence as is deemed necessary, the department shall, if the application is in order and if all provisions relating to the certificate of ownership and license registration have been complied with, issue new certificates of title and license registration as in the case of an original issue and shall transmit the fees together with an itemized detailed report to the state treasurer.

(8) Once each quarter the department shall report to the department of revenue a list of those vehicles for which a seller's report has been received but no transfer of title has taken place.

Sec. 3. RCW 46.68.020 and 2003 c 264 s 8 are each amended to read as follows:

The director shall forward all fees for certificates of ownership or other moneys accruing under the provisions of chapter 46.12 RCW to the state treasurer, together with a proper identifying detailed report. The state treasurer shall credit such moneys as follows:

(1) The fees collected under RCW 46.12.040(1) and 46.12.101(6) shall be credited to the multimodal transportation account in RCW 47.66.070.

(2)(a) Beginning July 27, 2003, and until July 1, 2008, the fees collected under RCW 46.12.080, 46.12.101(3), 46.12.170, and 46.12.181 shall be credited as follows:

(i) 58.12 percent shall be credited to a segregated subaccount of the air pollution control account in RCW 70.94.015;

(ii) ~~((15.74))~~ 16.60 percent shall be credited to the vessel response account created in RCW 90.56.335; and

(iii) The remainder shall be credited into the transportation 2003 account (nickel account).

(b) Beginning July 1, 2008, and thereafter, the fees collected under RCW 46.12.080, 46.12.101(3), 46.12.170, and 46.12.181 shall be credited to the transportation 2003 account (nickel account).

(3) (~~All other fees under chapter 46.12 RCW shall be credited to the motor vehicle account, unless specified otherwise~~) The fees collected under RCW 46.12.040(3) and 46.12.060 shall be credited to the motor vehicle account.

NEW SECTION. Sec. 4. This act takes effect July 1, 2004.

Passed by the House February 16, 2004.

Passed by the Senate March 2, 2004.

Approved by the Governor March 29, 2004.

Filed in Office of Secretary of State March 29, 2004.

CHAPTER 20I

[Second Engrossed Substitute Senate Bill 5536]

CONDOMINIUMS

AN ACT Relating to condominiums; amending RCW 64.34.100, 64.34.324, 64.34.425, 64.34.445, 64.34.450, 64.34.452, 64.34.020, 64.34.312, and 64.34.410; adding a new section to chapter 64.34 RCW; adding a new chapter to Title 64 RCW; creating new sections; and providing an effective date.

Be it enacted by the Legislature of the State of Washington:

NEW SECTION. Sec. 1. A new section is added to chapter 64.34 RCW to read as follows:

(1) The legislature finds, declares, and determines that:

(a) Washington's cities and counties under the growth management act are required to encourage urban growth in urban growth areas at densities that accommodate twenty-year growth projections;

(b) The growth management act's planning goals include encouraging the availability of affordable housing for all residents of the state and promoting a variety of housing types;

(c) Quality condominium construction needs to be encouraged to achieve growth management act mandated urban densities and to ensure that residents of the state, particularly in urban growth areas, have a broad range of ownership choices.

(2) It is the intent of the legislature that limited changes be made to the condominium act to ensure that a broad range of affordable homeownership opportunities continue to be available to the residents of the state, and to assist cities' and counties' efforts to achieve the density mandates of the growth management act.

Sec. 2. RCW 64.34.100 and 1989 c 43 s 1-113 are each amended to read as follows:

(1) The remedies provided by this chapter shall be liberally administered to the end that the aggrieved party is put in as good a position as if the other party had fully performed. However, consequential, special, or punitive damages may not be awarded except as specifically provided in this chapter or by other rule of law.

(2) Except as otherwise provided in chapter 64.— RCW (sections 101 through 2002 of this act), any right or obligation declared by this chapter is enforceable by judicial proceeding.

Sec. 3. RCW 64.34.324 and 1992 c 220 s 16 are each amended to read as follows:

(1) Unless provided for in the declaration, the bylaws of the association shall provide for:

(a) The number, qualifications, powers and duties, terms of office, and manner of electing and removing the board of directors and officers and filling vacancies;

(b) Election by the board of directors of such officers of the association as the bylaws specify;

(c) Which, if any, of its powers the board of directors or officers may delegate to other persons or to a managing agent;

(d) Which of its officers may prepare, execute, certify, and record amendments to the declaration on behalf of the association; ~~((and))~~

(e) The method of amending the bylaws; and

(f) A statement of the standard of care for officers and members of the board of directors imposed by RCW 64.34.308(1).

(2) Subject to the provisions of the declaration, the bylaws may provide for any other matters the association deems necessary and appropriate.

(3) In determining the qualifications of any officer or director of the association, notwithstanding the provision of RCW 64.34.020(32) the term "unit owner" in such context shall, unless the declaration or bylaws otherwise provide, be deemed to include any director, officer, partner in, or trustee of any person, who is, either alone or in conjunction with another person or persons, a unit owner. Any officer or director of the association who would not be eligible to serve as such if he or she were not a director, officer, partner in, or trustee of such a person shall be disqualified from continuing in office if he or she ceases to have any such affiliation with that person, or if that person would have been disqualified from continuing in such office as a natural person.

Sec. 4. RCW 64.34.425 and 1992 c 220 s 23 are each amended to read as follows:

(1) Except in the case of a sale where delivery of a public offering statement is required, or unless exempt under RCW 64.34.400(2), a unit owner shall furnish to a purchaser before execution of any contract for sale of a unit, or otherwise before conveyance, a resale certificate, signed by an officer or authorized agent of the association and based on the books and records of the association and the actual knowledge of the person signing the certificate, containing:

(a) A statement disclosing any right of first refusal or other restraint on the free alienability of the unit contained in the declaration;

(b) A statement setting forth the amount of the monthly common expense assessment and any unpaid common expense or special assessment currently due and payable from the selling unit owner and a statement of any special assessments that have been levied against the unit which have not been paid even though not yet due;

(c) A statement, which shall be current to within forty-five days, of any common expenses or special assessments against any unit in the condominium that are past due over thirty days;

(d) A statement, which shall be current to within forty-five days, of any obligation of the association which is past due over thirty days;

(e) A statement of any other fees payable by unit owners;

(f) A statement of any anticipated repair or replacement cost in excess of five percent of the annual budget of the association that has been approved by the board of directors;

(g) A statement of the amount of any reserves for repair or replacement and of any portions of those reserves currently designated by the association for any specified projects;

(h) The annual financial statement of the association, including the audit report if it has been prepared, for the year immediately preceding the current year.

(i) A balance sheet and a revenue and expense statement of the association prepared on an accrual basis, which shall be current to within one hundred twenty days;

(j) The current operating budget of the association;

(k) A statement of any unsatisfied judgments against the association and the status of any pending suits or legal proceedings in which the association is a plaintiff or defendant;

(l) A statement describing any insurance coverage provided for the benefit of unit owners;

(m) A statement as to whether there are any alterations or improvements to the unit or to the limited common elements assigned thereto that violate any provision of the declaration;

(n) A statement of the number of units, if any, still owned by the declarant, whether the declarant has transferred control of the association to the unit owners, and the date of such transfer;

(o) A statement as to whether there are any violations of the health or building codes with respect to the unit, the limited common elements assigned thereto, or any other portion of the condominium;

(p) A statement of the remaining term of any leasehold estate affecting the condominium and the provisions governing any extension or renewal thereof; ~~(and)~~

(q) A copy of the declaration, the bylaws, the rules or regulations of the association, and any other information reasonably requested by mortgagees of prospective purchasers of units. Information requested generally by the federal national mortgage association, the federal home loan bank board, the government national mortgage association, the veterans administration and the department of housing and urban development shall be deemed reasonable, provided such information is reasonably available to the association; and

(r) A statement, as required by section 301 of this act, as to whether the units or common elements of the condominium are covered by a qualified warranty, and a history of claims under any such warranty.

(2) The association, within ten days after a request by a unit owner, and subject to payment of any fee imposed pursuant to RCW 64.34.304(1)(l), shall furnish a resale certificate signed by an officer or authorized agent of the association and containing the information necessary to enable the unit owner to comply with this section. For the purposes of this chapter, a reasonable charge for the preparation of a resale certificate may not exceed one hundred fifty dollars. The association may charge a unit owner a nominal fee for updating a resale certificate within six months of the unit owner's request. The unit owner shall also sign the certificate but the unit owner is not liable to the purchaser for

any erroneous information provided by the association and included in the certificate unless and to the extent the unit owner had actual knowledge thereof.

(3) A purchaser is not liable for any unpaid assessment or fee against the unit as of the date of the certificate greater than the amount set forth in the certificate prepared by the association unless and to the extent such purchaser had actual knowledge thereof. A unit owner is not liable to a purchaser for the failure or delay of the association to provide the certificate in a timely manner, but the purchaser's contract is voidable by the purchaser until the certificate has been provided and for five days thereafter or until conveyance, whichever occurs first.

Sec. 5. RCW 64.34.445 and 1992 c 220 s 26 are each amended to read as follows:

(1) A declarant and any dealer warrants that a unit will be in at least as good condition at the earlier of the time of the conveyance or delivery of possession as it was at the time of contracting, reasonable wear and tear and damage by casualty or condemnation excepted.

(2) A declarant and any dealer impliedly warrants that a unit and the common elements in the condominium are suitable for the ordinary uses of real estate of its type and that any improvements made or contracted for by such declarant or dealer will be:

(a) Free from defective materials; ~~(and)~~

(b) Constructed in accordance with sound engineering and construction standards ~~(and)~~;

(c) Constructed in a workmanlike manner; and

(d) Constructed in compliance with all laws then applicable to such improvements.

(3) A declarant and any dealer warrants to a purchaser of a unit that may be used for residential use that an existing use, continuation of which is contemplated by the parties, does not violate applicable law at the earlier of the time of conveyance or delivery of possession.

(4) Warranties imposed by this section may be excluded or modified as specified in RCW 64.34.450.

(5) For purposes of this section, improvements made or contracted for by an affiliate of a declarant, as defined in RCW 64.34.020(1), are made or contracted for by the declarant.

(6) Any conveyance of a unit transfers to the purchaser all of the declarant's implied warranties of quality.

(7) In a judicial proceeding for breach of any of the obligations arising under this section, the plaintiff must show that the alleged breach has adversely affected or will adversely affect the performance of that portion of the unit or common elements alleged to be in breach. As used in this subsection, an "adverse effect" must be more than technical and must be significant to a reasonable person. To establish an adverse effect, the person alleging the breach is not required to prove that the breach renders the unit or common element uninhabitable or unfit for its intended purpose.

(8) Proof of breach of any obligation arising under this section is not proof of damages. Damages awarded for a breach of an obligation arising under this section are the cost of repairs. However, if it is established that the cost of such

repairs is clearly disproportionate to the loss in market value caused by the breach, then damages shall be limited to the loss in market value.

Sec. 6. RCW 64.34.450 and 1989 c 43 s 4-113 are each amended to read as follows:

(1) ~~((Except as limited by subsection (2) of this section))~~ For units intended for nonresidential use, implied warranties of quality:

(a) May be excluded or modified by written agreement of the parties; and

(b) Are excluded by written expression of disclaimer, such as "as is," "with all faults," or other language which in common understanding calls the buyer's attention to the exclusion of warranties.

(2) ~~((With respect to a purchaser of a unit that may be occupied))~~ For units intended for residential use, no ((general)) disclaimer of implied warranties of quality is effective, ((but)) except that a declarant ((and any)) or dealer may disclaim liability in ((an instrument)) writing, in type that is bold faced, capitalized, underlined, or otherwise set out from surrounding material so as to be conspicuous, and separately signed by the purchaser, for a specified defect or specified failure to comply with applicable law, if: (a) The declarant or dealer knows or has reason to know that the specific defect or failure ((entered into and became a part of the basis of the bargain)) exists at the time of disclosure; (b) the disclaimer specifically describes the defect or failure; and (c) the disclaimer includes a statement as to the effect of the defect or failure.

(3) A declarant or dealer may offer an express written warranty of quality only if the express written warranty does not reduce protections provided to the purchaser by the implied warranty set forth in RCW 64.34.445.

Sec. 7. RCW 64.34.452 and 2002 c 323 s 11 are each amended to read as follows:

(1) A judicial proceeding for breach of any obligations arising under RCW 64.34.443 ~~((and)),~~ 64.34.445, and 64.34.450 must be commenced within four years after the cause of action accrues: PROVIDED, That the period for commencing an action for a breach accruing pursuant to subsection (2)(b) of this section shall not expire prior to one year after termination of the period of declarant control, if any, under RCW 64.34.308(4). Such periods may not be reduced by either oral or written agreement, or through the use of contractual claims or notice procedures that require the filing or service of any claim or notice prior to the expiration of the period specified in this section.

(2) Subject to subsection (3) of this section, a cause of action or breach of warranty of quality, regardless of the purchaser's lack of knowledge of the breach, accrues:

(a) As to a unit, the date the purchaser to whom the warranty is first made enters into possession if a possessory interest was conveyed or the date of acceptance of the instrument of conveyance if a nonpossessory interest was conveyed; and

(b) As to each common element, at the latest of (i) the date the first unit in the condominium was conveyed to a bona fide purchaser, (ii) the date the common element was completed, or (iii) the date the common element was added to the condominium.

(3) If a warranty of quality explicitly extends to future performance or duration of any improvement or component of the condominium, the cause of

action accrues at the time the breach is discovered or at the end of the period for which the warranty explicitly extends, whichever is earlier.

(4) If a written notice of claim is served under RCW 64.50.020 within the time prescribed for the filing of an action under this chapter, the statutes of limitation in this chapter and any applicable statutes of repose for construction-related claims are tolled until sixty days after the period of time during which the filing of an action is barred under RCW 64.50.020.

(5) Nothing in this section affects the time for filing a claim under chapter 64.— RCW (sections 101 through 2002 of this act).

NEW SECTION. Sec. 8. (1) A committee is established to study:

(a) The required use of independent third-party inspections of residential condominiums as a way to reduce the problem of water penetration in residential condominiums; and

(b) The use of arbitration or other forms of alternative dispute resolution to resolve disputes involving alleged breaches of implied or express warranties under chapter 64.34 RCW.

(2) The committee consists of the following members who shall be persons with experience and expertise in condominium law or condominium construction:

(a) A member, who shall be the chair of the committee, to be appointed by the governor;

(b) Three members to be appointed by the majority leader of the senate; and

(c) Three members to be appointed by the speaker of the house of representatives.

(3) The committee shall:

(a) Examine the problem of water penetration of condominiums and the efficacy of requiring independent third-party inspections of condominiums, including plan inspection and inspection during construction, as a way to reduce the problem of water penetration;

(b) Examine issues relating to alternative dispute resolution, including but not limited to:

(i) When and how the decision to use alternative dispute resolution is made;

(ii) The procedures to be used in an alternative dispute resolution;

(iii) The nature of the right of appeal from an alternative dispute resolution decision; and

(iv) The allocation of costs and fees associated with an alternative dispute resolution proceeding or appeal;

(c) Deliver to the judiciary committees of the senate and house of representatives, not later than December 31, 2004, a report of the findings and conclusions of the committee, and any proposed legislation implementing third-party water penetration inspections or providing for alternative dispute resolution for warranty issues.

Sec. 9. RCW 64.34.020 and 1992 c 220 s 2 are each amended to read as follows:

In the declaration and bylaws, unless specifically provided otherwise or the context requires otherwise, and in this chapter:

(1) "Affiliate (~~(of a declarant)~~)" means any person who controls, is controlled by, or is under common control with (~~(a declarant)~~) the referenced

person. A person "controls" (~~((a-declarant))~~) another person if the person: (a) Is a general partner, officer, director, or employer of the (~~((declarant))~~) referenced person; (b) directly or indirectly or acting in concert with one or more other persons, or through one or more subsidiaries, owns, controls, holds with power to vote, or holds proxies representing, more than twenty percent of the voting interest in the (~~((declarant))~~) referenced person; (c) controls in any manner the election of a majority of the directors of the (~~((declarant))~~) referenced person; or (d) has contributed more than twenty percent of the capital of the (~~((declarant))~~) referenced person. A person "is controlled by" (~~((a-declarant))~~) another person if the (~~((declarant))~~) other person: (i) Is a general partner, officer, director, or employer of the person; (ii) directly or indirectly or acting in concert with one or more other persons, or through one or more subsidiaries, owns, controls, holds with power to vote, or holds proxies representing, more than twenty percent of the voting interest in the person; (iii) controls in any manner the election of a majority of the directors of the person; or (iv) has contributed more than twenty percent of the capital of the person. Control does not exist if the powers described in this subsection are held solely as security for an obligation and are not exercised.

(2) "Allocated interests" means the undivided interest in the common elements, the common expense liability, and votes in the association allocated to each unit.

(3) "Assessment" means all sums chargeable by the association against a unit including, without limitation: (a) Regular and special assessments for common expenses, charges, and fines imposed by the association; (b) interest and late charges on any delinquent account; and (c) costs of collection, including reasonable attorneys' fees, incurred by the association in connection with the collection of a delinquent owner's account.

(4) "Association" or "unit owners' association" means the unit owners' association organized under RCW 64.34.300.

(5) "Board of directors" means the body, regardless of name, with primary authority to manage the affairs of the association.

(6) "Common elements" means all portions of a condominium other than the units.

(7) "Common expenses" means expenditures made by or financial liabilities of the association, together with any allocations to reserves.

(8) "Common expense liability" means the liability for common expenses allocated to each unit pursuant to RCW 64.34.224.

(9) "Condominium" means real property, portions of which are designated for separate ownership and the remainder of which is designated for common ownership solely by the owners of those portions. Real property is not a condominium unless the undivided interests in the common elements are vested in the unit owners, and unless a declaration and a survey map and plans have been recorded pursuant to this chapter.

(10) "Conversion condominium" means a condominium (a) that at any time before creation of the condominium was lawfully occupied wholly or partially by a tenant or subtenant for residential purposes pursuant to a rental agreement, oral or written, express or implied, for which the tenant or subtenant had not received the notice described in (b) of this subsection; or (b) that, at any time within twelve months before the conveyance of, or acceptance of an agreement

to convey, any unit therein other than to a declarant or any affiliate of a declarant, was lawfully occupied wholly or partially by a residential tenant of a declarant or an affiliate of a declarant and such tenant was not notified in writing, prior to lawfully occupying a unit or executing a rental agreement, whichever event first occurs, that the unit was part of a condominium and subject to sale. "Conversion condominium" shall not include a condominium in which, before July 1, 1990, any unit therein had been conveyed or been made subject to an agreement to convey to any transferee other than a declarant or an affiliate of a declarant.

(11) "Conveyance" means any transfer of the ownership of a unit, including a transfer by deed or by real estate contract and, with respect to a unit in a leasehold condominium, a transfer by lease or assignment thereof, but shall not include a transfer solely for security.

(12) "Dealer" means a person who, together with such person's affiliates, owns or has a right to acquire either six or more units in a condominium or fifty percent or more of the units in a condominium containing more than two units.

(13) "Declarant" means ~~((any person or group of persons acting in concert who))~~:

(a) Any person who executes as declarant a declaration as defined in subsection (15) of this section~~(;)~~; or

(b) ~~((reserves or succeeds to any special declarant right under))~~ Any person who reserves any special declarant right in the declaration; or

(c) Any person who exercises special declarant rights or to whom special declarant rights are transferred; or

(d) Any person who is the owner of a fee interest in the real property which is subjected to the declaration at the time of the recording of an instrument pursuant to RCW 64.34.316 and who directly or through one or more affiliates is materially involved in the construction, marketing, or sale of units in the condominium created by the recording of the instrument.

(14) "Declarant control" means the right of the declarant or persons designated by the declarant to appoint and remove officers and members of the board of directors, or to veto or approve a proposed action of the board or association, pursuant to RCW 64.34.308 (4) or (5).

(15) "Declaration" means the document, however denominated, that creates a condominium by setting forth the information required by RCW 64.34.216 and any amendments to that document.

(16) "Development rights" means any right or combination of rights reserved by a declarant in the declaration to: (a) Add real property or improvements to a condominium; (b) create units, common elements, or limited common elements within real property included or added to a condominium; (c) subdivide units or convert units into common elements; (d) withdraw real property from a condominium; or (e) reallocate limited common elements with respect to units that have not been conveyed by the declarant.

(17) "Dispose" or "disposition" means a voluntary transfer or conveyance to a purchaser or lessee of any legal or equitable interest in a unit, but does not include the transfer or release of a security interest.

(18) "Eligible mortgagee" means the holder of a mortgage on a unit that has filed with the secretary of the association a written request that it be given copies

of notices of any action by the association that requires the consent of mortgagees.

(19) "Foreclosure" means a forfeiture or judicial or nonjudicial foreclosure of a mortgage or a deed in lieu thereof.

(20) "Identifying number" means the designation of each unit in a condominium.

(21) "Leasehold condominium" means a condominium in which all or a portion of the real property is subject to a lease, the expiration or termination of which will terminate the condominium or reduce its size.

(22) "Limited common element" means a portion of the common elements allocated by the declaration or by operation of RCW 64.34.204 (2) or (4) for the exclusive use of one or more but fewer than all of the units.

(23) "Master association" means an organization described in RCW 64.34.276, whether or not it is also an association described in RCW 64.34.300.

(24) "Mortgage" means a mortgage, deed of trust or real estate contract.

(25) "Person" means a natural person, corporation, partnership, limited partnership, trust, governmental subdivision or agency, or other legal entity.

(26) "Purchaser" means any person, other than a declarant or a dealer, who by means of a disposition acquires a legal or equitable interest in a unit other than (a) a leasehold interest, including renewal options, of less than twenty years at the time of creation of the unit, or (b) as security for an obligation.

(27) "Real property" means any fee, leasehold or other estate or interest in, over, or under land, including structures, fixtures, and other improvements thereon and easements, rights and interests appurtenant thereto which by custom, usage, or law pass with a conveyance of land although not described in the contract of sale or instrument of conveyance. "Real property" includes parcels, with or without upper or lower boundaries, and spaces that may be filled with air or water.

(28) "Residential purposes" means use for dwelling or recreational purposes, or both.

(29) "Special declarant rights" means rights reserved for the benefit of a declarant to: (a) Complete improvements indicated on survey maps and plans filed with the declaration under RCW 64.34.232; (b) exercise any development right under RCW 64.34.236; (c) maintain sales offices, management offices, signs advertising the condominium, and models under RCW 64.34.256; (d) use easements through the common elements for the purpose of making improvements within the condominium or within real property which may be added to the condominium under RCW 64.34.260; (e) make the condominium part of a larger condominium or a development under RCW 64.34.280; (f) make the condominium subject to a master association under RCW 64.34.276; or (g) appoint or remove any officer of the association or any master association or any member of the board of directors, or to veto or approve a proposed action of the board or association, during any period of declarant control under RCW 64.34.308(4).

(30) "Timeshare" shall have the meaning specified in the timeshare act, RCW 64.36.010(11).

(31) "Unit" means a physical portion of the condominium designated for separate ownership, the boundaries of which are described pursuant to RCW 64.34.216(1)(d). "Separate ownership" includes leasing a unit in a leasehold

condominium under a lease that expires contemporaneously with any lease, the expiration or termination of which will remove the unit from the condominium.

(32) "Unit owner" means a declarant or other person who owns a unit or leases a unit in a leasehold condominium under a lease that expires simultaneously with any lease, the expiration or termination of which will remove the unit from the condominium, but does not include a person who has an interest in a unit solely as security for an obligation. "Unit owner" means the vendee, not the vendor, of a unit under a real estate contract.

Sec. 10. RCW 64.34.312 and 1989 c 43 s 3-104 are each amended to read as follows:

(1) Within sixty days after the termination of the period of declarant control provided in RCW 64.34.308(4) or, in the absence of such period, within sixty days after the first conveyance of a unit in the condominium, the declarant shall deliver to the association all property of the unit owners and of the association held or controlled by the declarant including, but not limited to:

(a) The original or a photocopy of the recorded declaration and each amendment to the declaration;

(b) The certificate of incorporation and a copy or duplicate original of the articles of incorporation of the association as filed with the secretary of state;

(c) The bylaws of the association;

(d) The minute books, including all minutes, and other books and records of the association;

(e) Any rules and regulations that have been adopted;

(f) Resignations of officers and members of the board who are required to resign because the declarant is required to relinquish control of the association;

(g) The financial records, including canceled checks, bank statements, and financial statements of the association, and source documents from the time of incorporation of the association through the date of transfer of control to the unit owners;

(h) Association funds or the control of the funds of the association;

(i) All tangible personal property of the association, represented by the declarant to be the property of the association or ostensibly the property of the association, and an inventory of the property;

(j) Except for alterations to a unit done by a unit owner other than the declarant, a copy of the declarant's plans and specifications utilized in the construction or remodeling of the condominium, with a certificate of the declarant or a licensed architect or engineer that the plans and specifications represent, to the best of their knowledge and belief, the actual plans and specifications utilized by the declarant in the construction or remodeling of the condominium;

(k) Insurance policies or copies thereof for the condominium and association;

(l) Copies of any certificates of occupancy that may have been issued for the condominium;

(m) Any other permits issued by governmental bodies applicable to the condominium in force or issued within one year before the date of transfer of control to the unit owners;

(n) All written warranties that are still in effect for the common elements, or any other areas or facilities which the association has the responsibility to

maintain and repair, from the contractor, subcontractors, suppliers, and manufacturers and all owners' manuals or instructions furnished to the declarant with respect to installed equipment or building systems;

(o) A roster of unit owners and eligible mortgagees and their addresses and telephone numbers, if known, as shown on the declarant's records and the date of closing of the first sale of each unit sold by the declarant;

(p) Any leases of the common elements or areas and other leases to which the association is a party;

(q) Any employment contracts or service contracts in which the association is one of the contracting parties or service contracts in which the association or the unit owners have an obligation or a responsibility, directly or indirectly, to pay some or all of the fee or charge of the person performing the service; ~~((and))~~

(r) A copy of any qualified warranty issued to the association as provided for in section 1001 of this act; and

(s) All other contracts to which the association is a party.

(2) Upon the transfer of control to the unit owners, the records of the association shall be audited as of the date of transfer by an independent certified public accountant in accordance with generally accepted auditing standards unless the unit owners, other than the declarant, by two-thirds vote elect to waive the audit. The cost of the audit shall be a common expense unless otherwise provided in the declaration. The accountant performing the audit shall examine supporting documents and records, including the cash disbursements and related paid invoices, to determine if expenditures were for association purposes and the billings, cash receipts, and related records to determine if the declarant was charged for and paid the proper amount of assessments.

Sec. 11. RCW 64.34.410 and 2002 c 323 s 10 are each amended to read as follows:

(1) A public offering statement shall contain the following information:

(a) The name and address of the condominium;

(b) The name and address of the declarant;

(c) The name and address of the management company, if any;

(d) The relationship of the management company to the declarant, if any;

(e) A list of up to the five most recent condominium projects completed by the declarant or an affiliate of the declarant within the past five years, including the names of the condominiums, their addresses, and the number of existing units in each. For the purpose of this section, a condominium is "completed" when any one unit therein has been rented or sold;

(f) The nature of the interest being offered for sale;

(g) A brief description of the permitted uses and use restrictions pertaining to the units and the common elements;

(h) A brief description of the restrictions, if any, on the renting or leasing of units by the declarant or other unit owners, together with the rights, if any, of the declarant to rent or lease at least a majority of units;

(i) The number of existing units in the condominium and the maximum number of units that may be added to the condominium;

(j) A list of the principal common amenities in the condominium which materially affect the value of the condominium and those that will or may be added to the condominium;

(k) A list of the limited common elements assigned to the units being offered for sale;

(l) The identification of any real property not in the condominium, the owner of which has access to any of the common elements, and a description of the terms of such access;

(m) The identification of any real property not in the condominium to which unit owners have access and a description of the terms of such access;

(n) The status of construction of the units and common elements, including estimated dates of completion if not completed;

(o) The estimated current common expense liability for the units being offered;

(p) An estimate of any payment with respect to the common expense liability for the units being offered which will be due at closing;

(q) The estimated current amount and purpose of any fees not included in the common expenses and charged by the declarant or the association for the use of any of the common elements;

(r) Any assessments which have been agreed to or are known to the declarant and which, if not paid, may constitute a lien against any units or common elements in favor of any governmental agency;

(s) The identification of any parts of the condominium, other than the units, which any individual owner will have the responsibility for maintaining;

(t) If the condominium involves a conversion condominium, the information required by RCW 64.34.415;

(u) Whether timesharing is restricted or prohibited, and if restricted, a general description of such restrictions;

(v) A list of all development rights reserved to the declarant and all special declarant rights reserved to the declarant, together with the dates such rights must terminate, and a copy of or reference by recording number to any recorded transfer of a special declarant right;

(w) A description of any material differences in terms of furnishings, fixtures, finishes, and equipment between any model unit available to the purchaser at the time the agreement for sale is executed and the unit being offered;

(x) Any liens on real property to be conveyed to the association required to be disclosed pursuant to RCW 64.34.435(2)(b);

(y) A list of any physical hazards known to the declarant which particularly affect the condominium or the immediate vicinity in which the condominium is located and which are not readily ascertainable by the purchaser;

(z) A brief description of any construction warranties to be provided to the purchaser;

(aa) Any building code violation citations received by the declarant in connection with the condominium which have not been corrected;

(bb) A statement of any unsatisfied judgments or pending suits against the association, a statement of the status of any pending suits material to the condominium of which the declarant has actual knowledge, and a statement of any litigation brought by an owners' association, unit owner, or governmental entity in which the declarant or any affiliate of the declarant has been a defendant, arising out of the construction, sale, or administration of any

condominium within the previous five years, together with the results thereof, if known;

(cc) Any rights of first refusal to lease or purchase any unit or any of the common elements;

(dd) The extent to which the insurance provided by the association covers furnishings, fixtures, and equipment located in the unit;

(ee) A notice which describes a purchaser's right to cancel the purchase agreement or extend the closing under RCW 64.34.420, including applicable time frames and procedures;

(ff) Any reports or statements required by RCW 64.34.415 or 64.34.440(6)(a). RCW 64.34.415 shall apply to the public offering statement of a condominium in connection with which a final certificate of occupancy was issued more than sixty calendar months prior to the preparation of the public offering statement whether or not the condominium is a conversion condominium as defined in RCW 64.34.020(10);

(gg) A list of the documents which the prospective purchaser is entitled to receive from the declarant before the rescission period commences;

(hh) A notice which states: A purchaser may not rely on any representation or express warranty unless it is contained in the public offering statement or made in writing signed by the declarant or by any person identified in the public offering statement as the declarant's agent;

(ii) A notice which states: This public offering statement is only a summary of some of the significant aspects of purchasing a unit in this condominium and the condominium documents are complex, contain other important information, and create binding legal obligations. You should consider seeking the assistance of legal counsel;

(jj) Any other information and cross-references which the declarant believes will be helpful in describing the condominium to the recipients of the public offering statement, all of which may be included or not included at the option of the declarant;

(kk) A notice that addresses compliance or noncompliance with the housing for older persons act of 1995, P.L. 104-76, as enacted on December 28, 1995; ~~((and))~~

(ll) A notice that is substantially in the form required by RCW 64.50.050; and

(mm) A statement, as required by section 301 of this act, as to whether the units or common elements of the condominium are covered by a qualified warranty, and a history of claims under any such warranty.

(2) The public offering statement shall include copies of each of the following documents: The declaration, the survey map and plans, the articles of incorporation of the association, bylaws of the association, rules and regulations, if any, current or proposed budget for the association, and the balance sheet of the association current within ninety days if assessments have been collected for ninety days or more.

If any of the foregoing documents listed in this subsection are not available because they have not been executed, adopted, or recorded, drafts of such documents shall be provided with the public offering statement, and, before closing the sale of a unit, the purchaser shall be given copies of any material changes between the draft of the proposed documents and the final documents.

(3) The disclosures required by subsection (1)(g), (k), (s), (u), (v), and (cc) of this section shall also contain a reference to specific sections in the condominium documents which further explain the information disclosed.

(4) The disclosures required by subsection (1)(ee), (hh), (ii), and (ll) of this section shall be located at the top of the first page of the public offering statement and be typed or printed in ten-point bold face type size.

(5) A declarant shall promptly amend the public offering statement to reflect any material change in the information required by this section.

NEW SECTION. Sec. 12. Sections 5 and 6 of this act apply only to condominiums created by declarations recorded on or after July 1, 2004.

NEW SECTION. Sec. 13. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected.

NEW SECTION. Sec. 14. Sections 1 through 13 of this act take effect July 1, 2004.

ARTICLE 1 GENERAL PROVISIONS

NEW SECTION. Sec. 101. DEFINITIONS. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Affiliate" has the meaning in RCW 64.34.020.

(2) "Association" has the meaning in RCW 64.34.020.

(3) "Building envelope" means the assemblies, components, and materials of a building that are intended to separate and protect the interior space of the building from the adverse effects of exterior climatic conditions.

(4) "Common element" has the meaning in RCW 64.34.020.

(5) "Condominium" has the meaning in RCW 64.34.020.

(6) "Construction professional" has the meaning in RCW 64.50.010.

(7) "Conversion condominium" has the meaning in RCW 64.34.020.

(8) "Declarant" has the meaning in RCW 64.34.020.

(9) "Declarant control" has the meaning in RCW 64.34.020.

(10) "Defect" means any aspect of a condominium unit or common element which constitutes a breach of the implied warranties set forth in RCW 64.34.445.

(11) "Limited common element" has the meaning in RCW 64.34.020.

(12) "Material" means substantive, not simply formal; significant to a reasonable person; not trivial or insignificant. When used with respect to a particular construction defect, "material" does not require that the construction defect render the unit or common element unfit for its intended purpose or uninhabitable.

(13) "Mediation" means a collaborative process in which two or more parties meet and attempt, with the assistance of a mediator, to resolve issues in dispute between them.

(14) "Mediation session" means a meeting between two or more parties to a dispute during which they are engaged in mediation.

(15) "Mediator" means a neutral and impartial facilitator with no decision-making power who assists parties in negotiating a mutually acceptable settlement of issues in dispute between them.

(16) "Person" has the meaning in RCW 64.34.020.

(17) "Public offering statement" has the meaning in RCW 64.34.410.

(18) "Qualified insurer" means an entity that holds a certificate of authority under RCW 48.05.030, or an eligible insurer under chapter 48.15 RCW.

(19) "Qualified warranty" means an insurance policy issued by a qualified insurer that complies with the requirements of this chapter. A qualified warranty includes coverage for repair of physical damage caused by the defects covered by the qualified warranty, except to the extent of any exclusions and limitations under this chapter.

(20) "Resale certificate" means the statement to be delivered by the association under RCW 64.34.425.

(21) "Transition date" means the date on which the declarant is required to deliver to the association the property of the association under RCW 64.34.312.

(22) "Unit" has the meaning in RCW 64.34.020.

(23) "Unit owner" has the meaning in RCW 64.34.020.

ARTICLE 2 EXCLUSIVE REMEDY AND PROCEDURE IN CASES WHERE A QUALIFIED WARRANTY IS PROVIDED

NEW SECTION. Sec. 201. No declarant, affiliate of a declarant, or construction professional is liable to a unit owner or an association for damages awarded for repair of construction defects and resulting physical damage, and chapter 64.50 RCW shall not apply if: (1) Every unit is the subject of a qualified warranty; and (2) the association has been issued a qualified warranty with respect to the common elements. If a construction professional agrees on terms satisfactory to the qualified insurer to partially or fully indemnify the qualified insurer with respect to a defect caused by the construction professional, the liability of the construction professional for the defect and resulting physical damage caused by him or her shall not exceed damages recoverable under the terms of the qualified warranty for the defect. Any indemnity claim by the qualified insurer shall be by separate action or arbitration, and no unit owner or association shall be joined therein. A qualified warranty may also be provided in the case of improvements made or contracted for by a declarant as part of a conversion condominium, and in such case, declarant's liability with respect to such improvements shall be limited as set forth in this section.

ARTICLE 3 DISCLOSURE

NEW SECTION. Sec. 301. (1) Every public offering statement and resale certificate shall affirmatively state whether or not the unit and/or the common elements are covered by a qualified warranty, and shall provide to the best knowledge of the person preparing the public offering statement or resale certificate a history of claims under the warranty.

(2) The history of claims must include, for each claim, not less than the following information for the unit and/or the common elements, as applicable, to the best knowledge of the person providing the information:

- (a) The type of claim that was made;
- (b) The resolution of the claim;

- (c) The type of repair performed;
- (d) The date of the repair;
- (e) The cost of the repair; and
- (f) The name of the person or entity who performed the repair.

ARTICLE 4
MINIMUM COVERAGE STANDARDS FOR QUALIFIED
WARRANTIES

NEW SECTION. Sec. 401. TWO-YEAR MATERIALS AND LABOR WARRANTY. (1) The minimum coverage for the two-year materials and labor warranty is:

(a) In the first twelve months, for other than the common elements, (i) coverage for any defect in materials and labor; and (ii) subject to subsection (2) of this section, coverage for a violation of the building code;

(b) In the first fifteen months, for the common elements, (i) coverage for any defect in materials and labor; and (ii) subject to subsection (2) of this section, coverage for a violation of the building code;

(c) In the first twenty-four months, (i) coverage for any defect in materials and labor supplied for the electrical, plumbing, heating, ventilation, and air conditioning delivery and distribution systems; (ii) coverage for any defect in materials and labor supplied for the exterior cladding, caulking, windows, and doors that may lead to detachment or material damage to the unit or common elements; (iii) coverage for any defect in materials and labor which renders the unit unfit to live in; and (iv) subject to subsection (2) of this section, coverage for a violation of the building code.

(2) Noncompliance with the building code is considered a defect covered by a qualified warranty if the noncompliance:

(a) Constitutes an unreasonable health or safety risk; or

(b) Has resulted in, or is likely to result in, material damage to the unit or common elements.

NEW SECTION. Sec. 402. FIVE-YEAR BUILDING ENVELOPE WARRANTY. The minimum coverage for the building envelope warranty is five years for defects in the building envelope of a condominium, including a defect which permits unintended water penetration so that it causes, or is likely to cause, material damage to the unit or common elements.

NEW SECTION. Sec. 403. TEN-YEAR STRUCTURAL DEFECTS WARRANTY. The minimum coverage for the structural defects warranty is ten years for:

(1) Any defect in materials and labor that results in the failure of a load-bearing part of the condominium; and

(2) Any defect which causes structural damage that materially and adversely affects the use of the condominium for residential occupancy.

NEW SECTION. Sec. 404. BEGINNING DATES FOR WARRANTY COVERAGE. (1) For the unit, the beginning date of the qualified warranty coverage is the earlier of:

(a) Actual occupancy of the unit; or

(b) Transfer of legal title to the unit.

(2) For the common elements, the beginning date of a qualified warranty is the date a temporary or final certificate of occupancy is issued for the common elements in each separate multiunit building, comprised by the condominium.

NEW SECTION. Sec. 405. BEGINNING DATES FOR SPECIAL CASES; DECLARANT CONTROL. (1) If an unsold unit is occupied as a rental unit, the qualified warranty beginning date for such unit is the date the unit is first occupied.

(2) If the declarant subsequently offers to sell a unit which is rented, the declarant must disclose, in writing, to each prospective purchaser, the date on which the qualified warranty expires.

(3) If the declarant retains any declarant control over the association on the date that is fourteen full calendar months following the month in which the beginning date for common element warranty coverage commences, the declarant shall within thirty days thereafter cause an election to be held in which the declarant may not vote, for the purpose of electing one or more board members who are empowered to make warranty claims. If at such time, one or more independent board members hold office, no additional election need be held, and such independent board members are empowered to make warranty claims. The declarant shall inform all independent board members of their right to make warranty claims at no later than sixteen full calendar months following the beginning date of the common element warranty.

NEW SECTION. Sec. 406. LIVING EXPENSE ALLOWANCE. (1) If repairs are required under the qualified warranty and damage to the unit, or the extent of the repairs renders the unit uninhabitable, the qualified warranty must cover reasonable living expenses incurred by the owner to live elsewhere in an amount commensurate with the nature of the unit.

(2) If a qualified insurer establishes a maximum amount per day for claims for living expenses, the limit must be the greater of one hundred dollars per day or a reasonable amount commensurate with the nature of the unit for the complete reimbursement of the actual accommodation expenses incurred by the owner at a hotel, motel, or other rental accommodation up to the day the unit is ready for occupancy, subject to the owner receiving twenty-four hours' advance notice.

NEW SECTION. Sec. 407. WARRANTY ON REPAIRS AND REPLACEMENTS. (1) All repairs and replacements made under a qualified warranty must be warranted by the qualified warranty against defects in materials and labor until the later of:

(a) The first anniversary of the date of completion of the repair or replacement; or

(b) The expiration of the applicable qualified warranty coverage.

(2) All repairs and replacements made under a qualified warranty must be completed in a reasonable manner using materials and labor conforming to the building code and industry standards.

ARTICLE 5
PERMITTED TERMS FOR QUALIFIED WARRANTIES

NEW SECTION. Sec. 501. A qualified insurer may include any of the following provisions in a qualified warranty:

(1) If the qualified insurer makes a payment or assumes liability for any payment or repair under a qualified warranty, the owner and association must fully support and assist the qualified insurer in pursuing any rights that the qualified insurer may have against the declarant, and any construction professional that has contractual or common law obligations to the declarant, whether such rights arose by contract, subrogation, or otherwise.

(2) Warranties or representations made by a declarant which are in addition to the warranties set forth in this chapter are not binding on the qualified insurer unless and to the extent specifically provided in the text of the warranty; and disclaimers of specific defects made by agreement between the declarant and the unit purchaser under RCW 64.34.450 act as an exclusion of the specified defect from the warranty coverage.

(3) An owner and the association must permit the qualified insurer or declarant, or both, to enter the unit at reasonable times, after reasonable notice to the owner and the association:

- (a) To monitor the unit or its components;
- (b) To inspect for required maintenance;
- (c) To investigate complaints or claims; or
- (d) To undertake repairs under the qualified warranty.

If any reports are produced as a result of any of the activities referred to in (a) through (d) of this subsection, the reports must be provided to the owner and the association.

(4) An owner and the association must provide to the qualified insurer all information and documentation that the owner and the association have available, as reasonably required by the qualified insurer to investigate a claim or maintenance requirement, or to undertake repairs under the qualified warranty.

(5) To the extent any damage to a unit is caused or made worse by the unreasonable refusal of the association, or an owner or occupant to permit the qualified insurer or declarant access to the unit for the reasons in subsection (3) of this section, or to provide the information required by subsection (4) of this section, that damage is excluded from the qualified warranty.

(6) In any claim under a qualified warranty issued to the association, the association shall have the sole right to prosecute and settle any claim with respect to the common elements.

ARTICLE 6
PERMITTED EXCLUSIONS FROM QUALIFIED WARRANTIES—
GENERAL

NEW SECTION. Sec. 601. (1) A qualified insurer may exclude from a qualified warranty:

(a) Landscaping, both hard and soft, including plants, fencing, detached patios, planters not forming a part of the building envelope, gazebos, and similar structures;

(b) Any commercial use area and any construction associated with a commercial use area;

(c) Roads, curbs, and lanes;

(d) Subject to subsection (2) of this section, site grading and surface drainage except as required by the building code;

(e) Municipal services operation, including sanitary and storm sewer;

(f) Septic tanks or septic fields;

(g) The quality or quantity of water, from either a piped municipal water supply or a well;

(h) A water well, but excluding equipment installed for the operation of a water well used exclusively for a unit, which equipment is part of the plumbing system for that unit for the purposes of the qualified warranty.

(2) The exclusions permitted by subsection (1) of this section do not include any of the following:

(a) A driveway or walkway;

(b) Recreational and amenity facilities situated in, or included as the common property of, a unit;

(c) A parking structure in a multiunit building;

(d) A retaining wall that:

(i) An authority with jurisdiction requires to be designed by a professional engineer; or

(ii) Is reasonably required for the direct support of, or retaining soil away from, a unit, driveway, or walkway.

**ARTICLE 7
PERMITTED EXCLUSIONS—DEFECTS**

NEW SECTION. Sec. 701. A qualified insurer may exclude any or all of the following items from a qualified warranty:

(1) Weathering, normal wear and tear, deterioration, or deflection consistent with normal industry standards;

(2) Normal shrinkage of materials caused by drying after construction;

(3) Any loss or damage which arises while a unit is being used primarily or substantially for nonresidential purposes;

(4) Materials, labor, or design supplied by an owner;

(5) Any damage to the extent caused or made worse by an owner or third party, including:

(a) Negligent or improper maintenance or improper operation by anyone other than the declarant or its employees, agents, or subcontractors;

(b) Failure of anyone, other than the declarant or its employees, agents, or subcontractors, to comply with the warranty requirements of the manufacturers of appliances, equipment, or fixtures;

(c) Alterations to the unit, including converting nonliving space into living space or converting a unit into two or more units, by anyone other than the declarant or its employees, agents, or subcontractors while undertaking their obligations under the sales contract; and

(d) Changes to the grading of the ground by anyone other than the declarant or its employees, agents, or subcontractors;

(6) An owner failing to take timely action to prevent or minimize loss or damage, including failing to give prompt notice to the qualified insurer of a defect or discovered loss, or a potential defect or loss;

(7) Any damage caused by insects, rodents, or other animals, unless the damage results from noncompliance with the building code by the declarant or its employees, agents, or subcontractors;

(8) Accidental loss or damage from acts of nature including, but not limited to, fire, explosion, smoke, water escape, glass breakage, windstorm, hail, lightning, falling trees, aircraft, vehicles, flood, earthquake, avalanche, landslide, and changes in the level of the underground water table which are not reasonably foreseeable by the declarant;

(9) Bodily injury or damage to personal property or real property which is not part of a unit;

(10) Any defect in, or caused by, materials or work supplied by anyone other than the declarant, an affiliate of a declarant, or their respective contractors, employees, agents, or subcontractors;

(11) Changes, alterations, or additions made to a unit by anyone after initial occupancy, except those performed by the declarant or its employees, agents, or subcontractors as required by the qualified warranty or under the construction contract or sales agreement;

(12) Contaminated soil;

(13) Subsidence of the land around a unit or along utility lines, other than subsidence beneath footings of a unit or under driveways or walkways;

(14) Diminution in the value of the unit.

ARTICLE 8

MONETARY LIMITS ON QUALIFIED WARRANTY COVERAGE

NEW SECTION. Sec. 801. (1) A qualified insurer may establish a monetary limit on the amount of the warranty. Any limit must not be less than:

(a) For a unit, the lesser of (i) the original purchase price paid by the owner, or (ii) one hundred thousand dollars;

(b) For common elements, the lesser of (i) the total original purchase price for all components of the multiunit building, or (ii) one hundred fifty thousand dollars times the number of units of the condominium.

(2) When calculating the cost of warranty claims under the standard limits under a qualified warranty, a qualified insurer may include:

(a) The cost of repairs;

(b) The cost of any investigation, engineering, and design required for the repairs; and

(c) The cost of supervision of repairs, including professional review, but excluding legal costs.

(3) The minimum amounts in subsections (1) and (2) of this section shall be adjusted at the end of each calendar year after the effective date by an amount equal to the percentage change in the consumer price index for all urban consumers, all items, as published from time to time by the United States department of labor. The adjustment does not affect any qualified warranty issued before the adjustment date.

**ARTICLE 9
PROHIBITED POLICY PROVISIONS**

NEW SECTION. Sec. 901. (1) A qualified insurer must not include in a qualified warranty any provision that requires an owner or the association:

(a) To sign a release before repairs are performed under the qualified warranty; or

(b) To pay a deductible in excess of five hundred dollars for the repair of any defect in a unit covered by the qualified warranty, or in excess of the lesser of five hundred dollars per unit or ten thousand dollars in the aggregate for any defect in the common elements.

(2) All exclusions must be permitted by this chapter and stated in the qualified warranty.

**ARTICLE 10
CONSEQUENCES OF NOT PROVIDING INFORMATION**

NEW SECTION. Sec. 1001. (1) If coverage under a qualified warranty is conditional on an owner undertaking proper maintenance, or if coverage is excluded for damage caused by negligence by the owner or association with respect to maintenance or repair by the owner or association, the conditions or exclusions apply only to maintenance requirements or procedures: (a) Provided to the original owner in the case of the unit warranty, and to the association for the common element warranty with an estimation of the required cost thereof for the common element warranty provided in the budget prepared by the declarant; or (b) that would be obvious to a reasonable and prudent layperson. Recommended maintenance requirements and procedures are sufficient for purposes of this subsection if consistent with knowledge generally available in the construction industry at the time the qualified warranty is issued.

(2) If an original owner or the association has not been provided with the manufacturer's documentation or warranty information, or both, or with recommended maintenance and repair procedures for any component of a unit, the relevant exclusion does not apply. The common element warranty is included in the written warranty to be provided to the association under RCW 64.34.312.

**ARTICLE 11
MANDATORY NOTICE OF EXPIRATION OF WARRANTY**

NEW SECTION. Sec. 1101. (1) A qualified insurer must, as soon as reasonably possible after the beginning date for the qualified warranty, provide an owner and association with a schedule of the expiration dates for coverages under the qualified warranty as applicable to the unit and the common elements, respectively.

(2) The expiration date schedule for a unit must set out all the required dates on an adhesive label that is a minimum size of four inches by four inches and is suitable for affixing by the owner in a conspicuous location in the unit.

ARTICLE 12 DUTY TO MITIGATE

NEW SECTION. Sec. 1201. (1) The qualified insurer may require an owner or association to mitigate any damage to a unit or the common elements, including damage caused by defects or water penetration, as set out in the qualified warranty.

(2) Subject to subsection (3) of this section, for defects covered by the qualified warranty, the duty to mitigate is met through timely notice in writing to the qualified insurer.

(3) The owner must take all reasonable steps to restrict damage to the unit if the defect requires immediate attention.

(4) The owner's duty to mitigate survives even if:

(a) The unit is unoccupied;

(b) The unit is occupied by someone other than the owner;

(c) Water penetration does not appear to be causing damage; or

(d) The owner advises the homeowners' association corporation about the defect.

(5) If damage to a unit is caused or made worse by the failure of an owner to take reasonable steps to mitigate as set out in this section, the damage may, at the option of the qualified insurer, be excluded from qualified warranty coverage.

ARTICLE 13 NOTICE OF CLAIM

NEW SECTION. Sec. 1301. (1) Within a reasonable time after the discovery of a defect and before the expiration of the applicable qualified warranty coverage, a claimant must give to the qualified insurer and the declarant written notice in reasonable detail that provides particulars of any specific defects covered by the qualified warranty.

(2) The qualified insurer may require the notice under subsection (1) of this section to include:

(a) The qualified warranty number; and

(b) Copies of any relevant documentation and correspondence between the claimant and the declarant, to the extent any such documentation and correspondence is in the control or possession of the claimant.

ARTICLE 14 HANDLING OF CLAIMS

NEW SECTION. Sec. 1401. A qualified insurer must, on receipt of a notice of a claim under a qualified warranty, promptly make reasonable attempts to contact the claimant to arrange an evaluation of the claim. Claims shall be handled in accordance with the claims procedures set forth in rules by the insurance commissioner, and as follows:

(1) The qualified insurer must make all reasonable efforts to avoid delays in responding to a claim under a qualified warranty, evaluating the claim, and scheduling any required repairs.

(2) If, after evaluating a claim under a qualified warranty, the qualified insurer determines that the claim is not valid, or not covered under the qualified

warranty, the qualified insurer must: (a) Notify the claimant of the decision in writing; (b) set out the reasons for the decision; and (c) set out the rights of the parties under the third-party dispute resolution process for the warranty.

(3) Repairs must be undertaken in a timely manner, with reasonable consideration given to weather conditions and the availability of materials and labor.

(4) On completing any repairs, the qualified insurer must deliver a copy of the repair specifications to the claimant along with a letter confirming the date the repairs were completed and referencing the repair warranty provided for in section 407 of this act.

ARTICLE 15 MEDIATION OF DISPUTED CLAIMS

NEW SECTION. Sec. 1501. (1) If a dispute between a qualified insurer and a claimant arising under a qualified warranty cannot be resolved by informal negotiation within a reasonable time, the claimant or qualified insurer may require that the dispute be referred to mediation by delivering written notice to the other to mediate.

(2) If a party delivers a request to mediate under subsection (1) of this section, the qualified insurer and the party must attend a mediation session in relation to the dispute and may invite to participate in the mediation any other party to the dispute who may be liable.

(3) Within twenty-one days after the party has delivered a request to mediate under subsection (1) of this section, the parties must, directly or with the assistance of an independent, neutral person or organization, jointly appoint a mutually acceptable mediator.

(4) If the parties do not jointly appoint a mutually acceptable mediator within the time required by subsection (3) of this section, the party may apply to the superior court of the county where the project is located, which must appoint a mediator taking into account:

- (a) The need for the mediator to be neutral and independent;
- (b) The qualifications of the mediator;
- (c) The mediator's fees;
- (d) The mediator's availability; and
- (e) Any other consideration likely to result in the selection of an impartial, competent, and effective mediator.

(5) After selecting the mediator under subsection (4) of this section, the superior court must promptly notify the parties in writing of that selection.

(6) The mediator selected by the superior court is deemed to be appointed by the parties effective the date of the notice sent under subsection (5) of this section.

(7) The first mediation session must occur within twenty-one days of the appointment of the mediator at the date, time, and place selected by the mediator.

(8) A party may attend a mediation session by representative if:

- (a) The party is under a legal disability and the representative is that party's guardian ad litem;
- (b) The party is not an individual; or

(c) The party is a resident of a jurisdiction other than Washington and will not be in Washington at the time of the mediation session.

(9) A representative who attends a mediation session in the place of a party as permitted by subsection (8) of this section:

(a) Must be familiar with all relevant facts on which the party, on whose behalf the representative attends, intends to rely; and

(b) Must have full authority to settle, or have immediate access to a person who has full authority to settle, on behalf of the party on whose behalf the representative attends.

(10) A party or a representative who attends the mediation session may be accompanied by counsel.

(11) Any other person may attend a mediation session on consent of all parties or their representatives.

(12) At least seven days before the first mediation session is to be held, each party must deliver to the mediator a statement briefly setting out:

(a) The facts on which the party intends to rely; and

(b) The matters in dispute.

(13) The mediator must promptly send each party's statement to each of the other parties.

(14) Before the first mediation session, the parties must enter into a retainer agreement with the mediator which must:

(a) Disclose the cost of the mediation services; and

(b) Provide that the cost of the mediation will be paid:

(i) Equally by the parties; or

(ii) On any other specified basis agreed by the parties.

(15) The mediator may conduct the mediation in any manner he or she considers appropriate to assist the parties to reach a resolution that is timely, fair, and cost-effective.

(16) A person may not disclose, or be compelled to disclose, in any proceeding, oral or written information acquired or an opinion formed, including, without limitation, any offer or admission made in anticipation of or during a mediation session.

(17) Nothing in subsection (16) of this section precludes a party from introducing into evidence in a proceeding any information or records produced in the course of the mediation that are otherwise producible or compellable in those proceedings.

(18) A mediation session is concluded when:

(a) All issues are resolved;

(b) The mediator determines that the process will not be productive and so advises the parties or their representatives; or

(c) The mediation session is completed and there is no agreement to continue.

(19) If the mediation resolves some but not all issues, the mediator may, at the request of all parties, complete a report setting out any agreements made as a result of the mediation, including, without limitation, any agreements made by the parties on any of the following:

(a) Facts;

(b) Issues; and

(c) Future procedural steps.

**ARTICLE 16
ARBITRATION**

NEW SECTION. Sec. 1601. A qualified warranty may include mandatory binding arbitration of all disputes arising out of or in connection with a qualified warranty. The provision may provide that all claims for a single condominium be heard by the same arbitrator, but shall not permit the joinder or consolidation of any other person or entity. The arbitration shall comply with the following minimum procedural standards:

(1) Any demand for arbitration shall be delivered by certified mail return receipt requested, and by ordinary first class mail. The party initiating the arbitration shall address the notice to the address last known to the initiating party in the exercise of reasonable diligence, and also, for any entity which is required to have a registered agent in the state of Washington, to the address of the registered agent. Demand for arbitration is deemed effective three days after the date deposited in the mail;

(2) All disputes shall be heard by one qualified arbitrator, unless the parties agree to use three arbitrators. If three arbitrators are used, one shall be appointed by each of the disputing parties and the first two arbitrators shall appoint the third, who will chair the panel. The parties shall select the identity and number of the arbitrator or arbitrators after the demand for arbitration is made. If, within thirty days after the effective date of the demand for arbitration, the parties fail to agree on an arbitrator or the agreed number of arbitrators fail to be appointed, then an arbitrator or arbitrators shall be appointed under RCW 7.04.050 by the presiding judge of the superior court of the county in which the condominium is located;

(3) In any arbitration, at least one arbitrator must be a lawyer or retired judge. Any additional arbitrator must be either a lawyer or retired judge or a person who has experience with construction and engineering standards and practices, written construction warranties, or construction dispute resolution. No person may serve as an arbitrator in any arbitration in which that person has any past or present financial or personal interest;

(4) The arbitration hearing must be conducted in a manner that permits full, fair, and expeditious presentation of the case by both parties. The arbitrator is bound by the law of Washington state. Parties may be, but are not required to be, represented by attorneys. The arbitrator may permit discovery to ensure a fair hearing, but may limit the scope or manner of discovery for good cause to avoid excessive delay and costs to the parties. The parties and the arbitrator shall use all reasonable efforts to complete the arbitration within six months of the effective date of the demand for arbitration or, when applicable, the service of the list of defects in accordance with RCW 64.50.030;

(5) Except as otherwise set forth in this section, arbitration shall be conducted under chapter 7.04 RCW, unless the parties elect to use the construction industry arbitration rules of the American arbitration association, which are permitted to the extent not inconsistent with this section. The expenses of witnesses including expert witnesses shall be paid by the party producing the witnesses. All other expenses of arbitration shall be borne equally by the parties, unless all parties agree otherwise or unless the arbitrator awards

expenses or any part thereof to any specified party or parties. The parties shall pay the fees of the arbitrator as and when specified by the arbitrator;

(6) Demand for arbitration given pursuant to subsection (1) of this section commences a judicial proceeding for purposes of RCW 64.34.452;

(7) The arbitration decision shall be in writing and must set forth findings of fact and conclusions of law that support the decision.

ARTICLE 17 ATTORNEYS' FEES

NEW SECTION. Sec. 1701. In any judicial proceeding or arbitration brought to enforce the terms of a qualified warranty, the court or arbitrator may award reasonable attorneys' fees to the substantially prevailing party. In no event may such fees exceed the reasonable hourly value of the attorney's work.

ARTICLE 18 TRANSFER

NEW SECTION. Sec. 1801. (1) A qualified warranty pertains solely to the unit and common elements for which it provides coverage and no notice to the qualified insurer is required on a change of ownership.

(2) All of the applicable unused benefits under a qualified warranty with respect to a unit are automatically transferred to any subsequent owner on a change of ownership.

ARTICLE 19 ACCEPTANCE OF DECLARANT FOR QUALIFIED WARRANTY

NEW SECTION. Sec. 1901. (1) No insurer is bound to offer a qualified warranty to any person. Except as specifically set forth in this section, the terms of any qualified warranty are set in the sole discretion of the qualified insurer. Without limiting the generality of this subsection, a qualified insurer may make inquiries about the applicant as follows:

(a) Does the applicant have the financial resources to undertake the construction of the number of units being proposed by the applicant's business plan for the following twelve months;

(b) Does the applicant and its directors, officers, employees, and consultants possess the necessary technical expertise to adequately perform their individual functions with respect to their proposed role in the construction and sale of units;

(c) Does the applicant and its directors and officers have sufficient experience in business management to properly manage the unit construction process;

(d) Does the applicant and its directors, officers, and employees have sufficient practical experience to undertake the proposed unit construction;

(e) Does the past conduct of the applicant and its directors, officers, employees, and consultants provide a reasonable indication of good business practices, and reasonable grounds for belief that its undertakings will be carried on in accordance with all legal requirements; and

(f) Is the applicant reasonably able to provide, or to cause to be provided, after-sale customer service for the units to be constructed.

(2) A qualified insurer may charge a fee to make the inquiries permitted by subsection (1) of this section.

(3) Before approving a qualified warranty for a condominium, a qualified insurer may make such inquiries and impose such conditions as it deems appropriate in its sole discretion, including without limitation the following:

(a) To determine if the applicant has the necessary capitalization or financing in place, including any reasonable contingency reserves, to undertake construction of the proposed unit;

(b) To determine if the applicant or, in the case of a corporation, its directors, officers, employees, and consultants possess reasonable technical expertise to construct the proposed unit, including specific technical knowledge or expertise in any building systems, construction methods, products, treatments, technologies, and testing and inspection methods proposed to be employed;

(c) To determine if the applicant or, in the case of a corporation, its directors, officers, employees, and consultants have sufficient practical experience in the specific types of construction to undertake construction of the proposed unit;

(d) To determine if the applicant has sufficient personnel and other resources to adequately undertake the construction of the proposed unit in addition to other units which the applicant may have under construction or is currently marketing;

(e) To determine if:

(i) The applicant is proposing to engage a general contractor to undertake all or a significant portion of the construction of the proposed unit; and

(ii) The general contractor meets the criteria set out in this section;

(f) Requiring that a declarant provide security in a form suitable to the qualified insurer;

(g) Establishing or requiring compliance with specific construction standards for the unit;

(h) Restricting the applicant from constructing some types of units or using some types of construction or systems;

(i) Requiring the use of specific types of systems, consultants, or personnel for the construction;

(j) Requiring an independent review of the unit building plans or consultants' reports or any part thereof;

(k) Requiring third-party verification or certification of the construction of the unit or any part thereof;

(l) Providing for inspection of the unit or any part thereof during construction;

(m) Requiring ongoing monitoring of the unit, or one or more of its components, following completion of construction;

(n) Requiring that the declarant or any of the design professionals, engineering professionals, consultants, general contractors, or subcontractors maintain minimum levels of insurance, bonding, or other security naming the potential owners and qualified insurer as loss payees or beneficiaries of the insurance, bonding, or security to the extent possible;

(o) Requiring that the declarant provide a list of all design professionals and other consultants who are involved in the design or construction inspection, or both, of the unit;

(p) Requiring that the declarant provide a list of trades employed in the construction of the unit, and requiring evidence of their current trade's certification, if applicable.

**ARTICLE 20
MISCELLANEOUS**

NEW SECTION. Sec. 2001. All qualified warrantees shall be deemed to be "insurance" for purposes of RCW 48.01.040, and shall be regulated as such.

NEW SECTION. Sec. 2002. Captions and part headings used in this act are not any part of the law.

NEW SECTION. Sec. 2003. Sections 101 through 2002 of this act constitute a new chapter in Title 64 RCW.

Passed by the Senate March 11, 2004.

Passed by the House March 10, 2004.


Approved by the Governor March 29, 2004.

Filed in Office of Secretary of State March 29, 2004.

AUTHENTICATION

I, Dennis W. Cooper, Code Reviser of the State of Washington, certify that, with the exception of such corrections as I have made in accordance with the powers vested in me by RCW 44.20.060, the laws published in this volume are a true and correct reproduction of the copies of the enrolled laws of the 2003 3rd special session, chapter I, and the 2004 regular session (58th Legislature), chapters I through 20I, respectively, as certified and transmitted to the Statute Law Committee by the Secretary of State under RCW 44.20.020.

IN TESTIMONY WHEREOF, I have hereunto set my hand at Olympia, Washington, this 13th day of April, 2004.

A handwritten signature in black ink that reads "Dennis W. Cooper". The signature is written in a cursive style with a large, prominent initial "D".

DENNIS W. COOPER
Code Reviser